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RELEASE OF PROPERTY – SELECTED ISSUES

Summary

The issue mentioned in the title of this paper embraces a number of questions referring to the scope of powers of a court bailiff, levying execution on the basis of an enforceable title that pledges a debtor to release the property, including admissibility of the enforcement proceedings regarding a release of a property which covers the housing needs of the debtor against persons other than those indicated in the enforceable title. This paper advocates the possibility of enforcement proceedings regarding vacating rooms of persons and items on the basis of an enforceable title, which obligates to release the property, equally refusing the creditor a possibility of enforcement proceedings “erga omnes”. The author appeals to interpret the provisions in close connection with a just interest of the creditor and a necessary protection of the debtor.

Key words: enforcement, release, enforceable title

Introduction

Current legal regulations concerning the issues of a county court bailiff procedures levying an execution on the basis of an enforceable title that pledges the debtor to release the property induce a number of doubts¹. It may be therefore adopted that such an enforceable title² provides the basis for:

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¹ Apart from the properties the deliberation covers also a cooperative member's ownership right to properties and a cooperative tenant law for the apartment; hereinafter referred to as a property.

² The basis of the substantive law defined in the enforceable title obligation of releasing the property usually results from Article 222 Sections 1 and 2, Article 344 Section 1, Article 348 and Article 363 Section 1 of the Civil Code. The basis of releasing the property may also be the notary deed, in which the debtor submitted to the enforcement proceedings (Article 777 Section 1 Subsection 4 of the Civil Procedure Code) or legally binding verdict on conferring the ownership (Article 999 Section 1 of the Civil Procedure Code).

- making the creditor a co-owner of the property³,
- vacating the property of persons and items, so called eviction⁴.

1. The release and vacating the property

According to Article 1046 of the Civil Procedure Code: *if a debtor is to release a property or a vessel or vacate a room, the court bailiff, in the area of whom the objects are located, will call the debtor to perform the duty voluntarily within the deadline set for that purpose, and after the deadline lapses, the court bailiff shall proceed to make the creditor a co-owner of the property.* Therefore, in Article 1046 Section 1 of the Civil Procedure Code beside the phrase *release of a property or a vessel* there is also a phrase *vacate a room* or in Section 4 of this Article *vacate a property which covers the housing needs of the debtor.* There is therefore a question if these phrases may be interpreted as synonyms? Renata Drozd-Sweklej thinks that a necessity of distinguishing the release from vacating is obvious, because the right enforcement proceedings regarding a release of a property may involve vacating the existing buildings⁵, but on the other hand, those proceedings may not refer to any property⁶. This means that vacating a room may be a part of the enforcement proceedings, and sometimes it may be entirely their subject. Taking possession of a property means therefore a possibility of impartible control over it. It is possible only when the properties are not occupied by other persons⁷. The provision of the Article 1046 Section 1 of the Civil Procedure Code on taking possession of a property covers an independent ownership of a property by a creditor, not co-ownership with a debtor. If in the course of the procedures a court bailiff establishes that the property is occupied by the debtor, an essential element of taking

³ It seems that: Z. Świeboda, *Postępowanie zabezpieczające i egzekucyjne. Komentarz*, Warszawa 1994, p. 314; P. Cieciora, *Wydanie a opróżnienie lokalu – rozważania na tle art. 777 § 1 pkt 4 oraz art. 1046 k.p.c.*, *Przegląd Prawa Egzekucyjnego* 2011, no 2, p. 25 – The author took the view that the notary deed, in which the debtor submitted to the enforcement proceedings does not constitute a basis for vacating the property of the persons and items.

⁴ Eviction is a common word, used by the legislator e.g. in Article 58 of the Family and Guardianship Code (*Journal of Laws* 1964 No 9, item 59 with further amendments).

⁵I.e. the rooms in those buildings.

⁶E.g. the rooms on a vessel.

⁷R. Drozd-Sweklej, *Egzekucja na podstawie postanowienia o przysądzeniu własności*, *Przegląd Prawa Egzekucyjnego* 2011, no 8-9, p. 15-44.

possession of the property will be a removal of resistance of the debtor. In the course of those procedures the court bailiff has the right to take all the measures according to the law established⁸.

Article 1046 Section 1 of the Civil Procedure Code covers also the situations when in the enforceable title the co-owner is granted a part of the property for their exclusive use⁹. In a situation when there is an obligation of co-ownership resulting from the enforceable title, it is conducted according to Article 1050 or Article 1051 of the Civil Procedure Code. The enforcement body is therefore the court¹⁰.

In the context of the above the changes ordering the existing rules made in Article 999 Section 1 of the Civil Procedure Code should be found positive. According to the second sentence of this provision, in force, as of 3 May 2012, the legally binding verdict on conferring the ownership constitutes an enforceable title allowing the buyer to come into possession of the property and vacating the rooms located on the territory of this property, without a necessity of an enforcement order. The amendment dispelled the doubts arising against a backdrop of the previous legal situation in Article 999 Section 1 of the Civil Procedure Code, in terms of the powers resulting from a legally valid decision on conferring the ownership. Supporters of a wide interpretation of the above provision in the previous legal situation already argued that the decision on conferring the ownership includes directly a writ of releasing the property to the buyer. As they claim, taking possession means the control over the property, excluding other persons, in the scope defined in Article 140 of the Civil Code. When the buyer has the right to use the property excluding other persons, it is equivalent to a right to demand from the debtor releasing the property without any additional restrictions¹¹.

⁸Z. Woźniak, [in:] *Wybrane zagadnienia egzekucji sądowej*, (ed.) J. Gołaczyński, Warszawa 2008, p. 383.

⁹The act of the Supreme Court of 28 September 1963, III Co 33/62, OSNC 1964 no 2, item 22.

¹⁰M. Krakowiak, [in:] *Kodeks postępowania cywilnego. Komentarz, Vol. II*, (ed.) J. Jankowski, Warszawa 2013, p. 1092 and next.

¹¹R. Drozd-Sweklej, *Wydanie lokalu nabytego w drodze egzekucji z nieruchomości przez dłużnika i osoby wywodzące prawo do jego zajmowania od dłużnika w trybie art. 1046 i 791 § 1 k.p.c.*, *Przegląd Prawa Egzekucyjnego* 2008, no 10-12, p. 77; The Supreme Court in the act of 10 February 2006, (III CZP 127/05, LEX no 167160) stated that a legally binding verdict on conferring the ownership constitutes an enforcement

2. Enforceable title *erga omnes*

In further deliberation the author will focus on admissibility of enforcement proceedings regarding the release of the property, which covers the housing needs of the debtor, against persons other than the ones indicated in the enforceable title. In connection with an extensive subject to regulation included in the provisions of the Civil Procedure Code and the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code¹² the author limits the deliberation to the enforcement order in the form of court's judgement, which results in an obligation of releasing the property, notary deed determined in Article 777 Section 1 Subsection 4 of the Civil Procedure Code (except from occasional lease) and a legally valid verdict on conferring the ownership, in a situation when the occupied property covers the housing needs of the debtor.

According to Article 791 of the Civil Procedure Code¹³, an enforceable title obliging to the release of a property or vacating a room entitles to enforcement proceedings also against every person, who gained control over the property after initiating the procedure, which resulted in the enforceable title. The enforceable title entitles to enforcement proceedings not only against the debtor, but also the household, relatives and other persons representing the rights of the debtor. It does not exclude the rights determined by the provisions on the protection of the tenants and the rights, which are effective as against creditors. If the debtor claims that they have a right effective as against the creditor, the court bailiff will suspend the enforcement proceedings, informing that within a week there may be brought an action for depriving the debtor the enforceability of the enforcement title.

The complex of provisions introduced in Article 791 of the Civil Procedure Code, in the legislator's intention, was supposed to be a breakthrough in an elementary rule of enforcement proceedings in the form of a lack of possibility of such proceedings (*eviction* here) against persons other than those indicated in the enforceable title. The

title to make the creditor a co-owner of the property against the debtor not indicated in the title.

¹² The Act of 21 June 2001, Journal of Laws No 71, item 733, with further amendments.

¹³ As amended by the act of 16 September 2011 on amending the act – the Code of Civil Procedure and some other Acts (Journal of Laws No 233, item 1381; the amendment came into force 3 May 2012).

amendment was supposed to cover all the persons, both those who use the property on the basis of the enforceable title and those without. This provision gives rise to a number of controversies in practice and in the doctrine. In literature there was expressed an opinion that the text of Article 791 of the Civil Procedure Code does not allow the enforcement proceedings regarding vacating the property which covers the housing needs of the debtor against persons other than those indicated in the enforceable title¹⁴. However, this viewpoint is not commonly accepted¹⁵.

To assess the possibility of enforcement proceedings of a property which covers the housing needs of the debtor against persons other than those indicated in the enforceable title, firstly there should be considered the compliance of Article 791 Sections 1 and 2 of the Civil Procedure Code with Article 1046 Sections 1 and 4 of the Civil Procedure Code, in terms of the phrases included. It is undeniable that only the correspondence of the provisions decides about the possibility of applying Article 791 of the Civil Procedure Code in eviction (*release here*) from the property which covers the housing needs of the debtor.

Article 791 Sections 1 and 2 of the Civil Procedure Code states: *the enforceable title obliging to the release of a property, a vessel or vacating a room....* It is contradictory to Article 1046 Section 4 of the Civil Procedure Code, which determines the vacating of a property, *which covers the housing needs of the debtor*. Article 791 Sections 1 and 2 of the Civil Procedure Code corresponds therefore with Article 1046 Section 1 of the Civil Procedure Code, which also determines the release of a property, a vessel or vacating a room. For the reasons mentioned it should be accepted that Article 791 of the Civil Procedure

¹⁴ H. Pietrzykowski, [in:] *Kodeks postępowania cywilnego. Postępowanie egzekucyjne. Komentarz*, (ed.) T. Ereciński, Warszawa 2012, p. 698; it seems that: H. Ciepła, [in:] *Kodeks postępowania cywilnego. Komentarz*, (ed.) H. Dolecki, T. Wiśniewski, Warszawa 2014, p. 749-750; Z. Knypl, *Eksmisja z lokali mieszkalnych*, Nowa Currenda, 2012, no 10, p. 18 – The author indicates non-compliance of the Article 791 of the Civil Procedure Code with Article 15 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code.

¹⁵It seems that: P. Telenga, *Komentarz aktualizowany do art. 791 Kodeksu postępowania cywilnego*, [in:] *Komentarz aktualizowany do ustawy z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego*, (ed.) A. Jakubecki, LEX/el. 2014 no 167049; D. Zawistowski, [in:] *Kodeks postępowania cywilnego. Komentarz*, (ed.) H. Dolecki, T. Wiśniewski, Warszawa 2014, p. 238-239; A. Stangret-Smoczyńska, *Komentarz do art. 791 Kodeksu postępowania cywilnego*, [in:] *Kodeks postępowania cywilnego. Postępowanie zabezpieczające i egzekucyjne. Komentarz*, (ed.) J. Gołaczyński, LEX/el. 2012 no 127703.

Code involves only the properties, which do not cover the housing needs of the debtor¹⁶.

A particular cause for concern is the text of Article 791 Section 3 of the Civil Procedure Code, which in terms of releasing a property or vacating a room requires the compliance with laws determined by the provisions of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code. Does Article 791 of the Civil Procedure Code therefore cover in its scope the persons occupying the property? Article 15 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code provide that in case of releasing the property the court - in a situation when the eviction may cover also other people, who do not appear in court as defendants - shall call upon the claimant to indicate those persons within the prescribed time in such a way that it is possible to call them, and when needed, apply for a guardian. It seems that this provision opens a possibility to the persons not indicated in the enforceable title to independent and impartial tribunal.

Enforcement proceedings are a part of civil proceedings and including the substantive law they contribute to the existing law. In that regard the compliance is essential, not only within its particular elements but also mutually¹⁷. This language analysis of the provisions of the Civil Procedure Code and the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code does not prove clearly that Article 791 of the Civil Procedure Code involves, in the situation of an eviction from a property, which covers the housing needs of a debtor, the persons not indicated in the enforceable title. It seems that in such a situation only a reference to the systemic and functional rules may lead to an objective verification of the statutory solutions. First of all, an analysis of an influence of the verified law on the legal situation of the persons covered *ex lege* by the content of the enforceable title is necessary.

As mentioned above, according to Article 15 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code, if in a case regarding the vacating of the property, should it appear that in the event of accepting the claim also

¹⁶A commercial property may also cover the housing needs of the debtor.

¹⁷The act of Supreme Court of 7 February 1997, III CZP 120/96, OSNC 1997/6 - 7, item 69.

other persons may be obliged to vacate the property, who do not appear in court as defendants, the court shall call upon the claimant to indicate those persons within the prescribed time in such a way that it is possible to call them, and when needed, apply for a guardian. The persons called upon to attend the trial should be all the persons, who beside the defendant shall be obliged to vacate the property, no matter if their participation in the case is necessary¹⁸. In the doctrine it is stated that the claimant, who cares about a fast termination of the proceeding should indicate in the lawsuit the persons, who should be covered by the enforceable title and inform if there are minors among them or other persons under specific legal protection¹⁹. The provision of Article 15 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code corresponds with Article 45 Section 1 of the Constitution, according to which every person is entitled to a fair and public hearing without undue delay, by a competent, independent and impartial tribunal. The constitutional right to a trial is guaranteed to all, therefore also the household, relatives and other people representing the rights of the debtor²⁰. The provision of Article 15 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code covers also the rights guaranteed by the European Convention for the Protection of Human Rights and the International Covenant on Civil and Political Rights. The creditor's cunning, who shall indicate one of the debtors, may cause serious consequences for the debtor's relatives and household, regardless of the moment of the property's occupation by those persons. The acceptance of a legal interpretation, according to which the enforceable title against the debtor would cover the persons not indicated in the enforceable title will disenable ruling by court on the right to the social housing for the household and the relatives of the debtor (including pregnant women, minors, people confined to bed).

It should be also emphasized that such a legal interpretation would infringe the rights of the household, relatives and other people representing the debtor equally (stipulated in Article 67 Section 2 of the Constitution). Such enforceable titles would be effective against any

¹⁸K. Zdun-Załęska, *Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego. Komentarz*, Warszawa 2014, p. 123.

¹⁹A. Gola, L. Myczkowski, *Ochrona praw lokatorów. Dodatki mieszkaniowe. Komentarz*, Warszawa 2003, p. 69.

²⁰In the act the phrase "people representing the rights of the debtor" was not defined.

person, who obtained the control over the object after initiating the procedure, which resulted in the enforceable title, and also, it must be emphasized, regardless of the moment of obtaining the control against the household, relatives and other persons representing the rights of the debtor. The disposition provided for in Article 791 of the Civil Procedure Code would never cover a perpetual usufruct of undeveloped property²¹ and on the basis of Article 791 Section 1 of the Civil Procedure Code out of court enforceable titles (notary deeds and bank enforceable titles). A legal interpretation which extends the law and equally limits the rights and freedom of the citizens is unacceptable. The law of the court is one of those laws. An extensive interpretation may be applied only in justified cases, when the literal interpretation causes contradictions to the fundamental constitutional values²².

To summarise this deliberation, it must be stated that the interpretation of Article 791 Section 2 of the Civil Procedure Code, allowing the enforcement proceeding *erga omnes*, would lead to discrimination of the household and relatives of the debtor, who would always remain subject to eviction (regardless of the moment of obtaining the control over the property²³), in comparison with:

- the persons who obtained control over the property after initiating the procedure, which resulted in the enforceable title, whereas those persons are not the household or relatives of the debtor;
- the persons with the right to perpetual usufruct of the undeveloped property, who are not covered by the provision of Article 791 of the Civil Procedure Code;
- the persons against whom an out of court enforceable title was issued – those persons are also not covered by the provision of Article 791 of the Civil Procedure Code.

²¹In case of an obligation of releasing the perpetual usufruct of undeveloped property, a possibility of taking advantage of a universal enforcement title does not exist.

²²L. Morawski, *Zasady wykładni prawa*, Toruń 2006, p. 176-182.

²³A historic interpretation inclines to consider such a thesis true. In the explanatory memorandum we can read: *In the project it is specified that the enforcement title, defined in this provision is effective also against every person, who obtained control after initiating the procedure that resulted in the enforcement title, and in cases of releasing the property or vacating the rooms also against the household, relatives and other persons representing the rights of the debtor.*

Family or personal ties should not be subject to modifying the legal situation of the citizens. It infringes the prohibition of discrimination defined in Article 26 of the International Covenant on Civil and Political Rights and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The difference in treatment of the similar entities must be based on proper arguments. They must be in a direct connection with the aim and the fundamental content of the provisions that cover the legal standard and provide achievement of its objectives and implementation of its content. It is essential to keep appropriate proportion of the importance of interests, which will be infringed as a result of the difference in treatment of the similar entities. Additionally, the arguments must be in a connection with other constitutional values or standards that justify the difference in treatment of those entities²⁴.

The presented interpretation shows that the enforceable title *erga omnes* would influence the legal sphere of all the persons who stay in personal ties with the debtor. The successful lawsuit of the creditor would protect him from the possibility of defence used by the persons uncovered by the enforceable title in the form of a complaint about the decision on the enforcement clause and against the intentions of the legislator also in the form of a complaint about depriving the enforceability of the enforcement title. After a month the court bailiff takes further enforcement proceedings towards the debtor, unless the court suspends the procedure. It results from the literal wording of the provision that the right to the defence defined in Article 791 Sections 3 and 4 of the Civil Procedure Code was granted only to the debtor, despite the fact that in the explanatory memorandum it was dissimilarly stated that: *there was specified also the way of defence of the persons, who are not covered by the enforceable title as debtors. It would be the action for discontinuation of enforcement, only against them.* Thereby, by using in the provision of Article 791 Section 3 of the Civil Procedure Code the phrase: *will suspend [...] against them*, which means only the debtor, the legislator would deprive other persons than those indicated in the enforceable title of the right to defence. The illusory nature of the protection of third parties is also confirmed by a lack of possibility of deciding by the court on the basis of Article 840 of the

²⁴The judgement of the Constitutional Tribunal of 24 February 1999, SK 4/98, OTK ZU 1999/2, item 24.

Civil Procedure Code with the participation of the persons who are not debtors²⁵.

Moreover, the legislator when indicating the weekly period for bringing the action to deprive the enforceability of the enforcement title, did not define if this is also an exclusion period. It should be taken into consideration that in practice a weekly period is too short, like a monthly period for the court to issue the decision on suspending the enforcement proceedings²⁶.

The lack of time restrictions, determined in Article 1046 Section 8 of the Civil Procedure Code, for the execution of the enforceable title brings a possible situation when on the basis of one enforceable title obliging to releasing the property, the creditor would obtain the right to enforcement proceedings against the person, who is the owner of this property, even several years after granting the enforceable title (provided that it was not used). In the result it may terminate the application of Article 817 of the Civil Procedure Code²⁷.

The act of 31 August 2011²⁸ repealed the provision of Article 1046 Section 8 of the Civil Procedure Code, which stated: *if the execution of vacating the property which covers the housing needs of the debtor refers to minors or people under guardianship, the court bailiff suspends the procedure and notifies the guardianship court. Further proceedings are taken by the court bailiff according to the decision of the guardianship court, which determines the place of residence of the minors or people under guardianship.* The rights of the minors, who are not covered and covered by the enforceable title, in the existing legal situation are protected by Article 572 Section 1 of the Civil Procedure Code. According to its content each person (including the court bailiff) who is familiar with the event justifying the initiation of ex officio procedure is obliged to notify the guardianship court. The lack of possibility of the

²⁵They were not determined in the content of the enforcement title.

²⁶The court has three days for it, in practice it takes longer; D. Popłonyk, T. Zawisłak, *Uwagi do projektu ustawy zmieniającej KPC i inne ustawy przygotowanego przez Komisję Kodyfikacyjną Prawa Cywilnego w zakresie postępowania cywilnego*, [in:] *Reforma postępowania cywilnego w świetle projektów Komisji Kodyfikacyjnej*, (ed.) K. Makarewicz, Warszawa 2011, p. 197.

²⁷P. Telenga, *Komentarz aktualizowany do art. 791 Kodeksu postępowania cywilnego*, [in:] *Komentarz aktualizowany do ustawy z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego*, (ed.) A. Jakubecki, LEX/el. 2014 no 167049.

²⁸Journal of Laws No 224, item 1342; the amendment came into force 16 November 2011.

eviction of a minor to a night shelter or temporary accommodation results also from the UN Convention on the Rights of the Child, which prohibits inhuman or degrading treatment of children. According to Article 91 Section 2 of the Polish Constitution an international agreement ratified upon prior consent granted in the Act takes precedence over the Act, if this Act cannot be reconciled with the agreement²⁹.

To summarise it should be acknowledged that in the existing legal situation there is no possibility of an execution of the property release, which covers the housing needs of the debtor, against the persons other than in the enforceable title. The execution of the enforceable titles *erga omnes* in a situation when the property is used for the housing purposes constitutes a risk to the social rights of the citizens, who due to the degree of the disease or poor social adaptation are not able to manage on their own. A derogation from the fundamental rules of the enforcement proceedings towards a less beneficial direction for the citizens without defining strict statutory rules would have to be based on strong axiological basis. The reason cannot constitute an improvement of effectiveness of the creditor's judicial protection. A derogation from the fundamental rules is a violation of fundamental human right, which is the right to a substantive verification of the case by the independent court. Protecting the dominant position of the creditor, it transfers the substantive ordering to the court bailiff, inadequately to their structure position.

3. The release of the property and the right to the social housing or temporary accommodation

At this point there an important question must be asked: if a person obliged to release the property which covers their housing needs³⁰, will be entitled to the social housing or perhaps only temporary accommodation, and in case of a satisfactory resolution of this matter, is

²⁹S. Suliński, Z. Knypl, *Jak wykonywać eksmisję, by nie naruszyć prawa*, Nowa Currenda 2013, no 8, p. 71-72; Odmienne J. Chaciński, *Ochrona praw lokatorów. Komentarz*, Warszawa 2013, p. 143.

³⁰Frequently the commercial properties are used for the housing purposes, thereby the enforcement title obliging to release the developed property, e.g. with a garage, may be the basis for eviction of the debtor from the property which covers their housing needs. The Supreme Court in the act of 9 February 2007 (III CZP 157/06, LEX no 212427) adopted that *when acknowledging the property as the one which covers the housing needs, the aspect significant is the exact way of using it, not its purpose*.

deciding upon the right to the above property in the enforcement proceedings permissible³¹.

In the existing legal situation there are no doubts that the court bailiff will not vacate the property which covers the housing needs of the debtor without providing them temporary accommodation³². It is disputable therefore, if the persons obliged to release the property are entitled to the social housing. The issue is all the more important as the eviction to the temporary housing may in consequence result in homelessness³³.

According to Article 25c of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code and Article 1046 of the Civil Procedure Code a tenancy agreement regarding the temporary accommodation is concluded with a person against whom an enforcement proceedings were initiated on the basis of the enforceable title, which involves an obligation of releasing the property which covers the housing needs, without a right to the social housing or substitute accommodation. It results from the above provision that the verdict on eviction must involve a legal decision on the right, or its lack, to the social housing. The ruling on conferring the property shall never include such a content³⁴. The Supreme Court in the judgement of 19 November 2009³⁵ stated that in the ruling on conferring a cooperative ownership right to the property, given in enforcement proceedings, the court does not decide on the right of the debtor to the social housing. A statement on a submission to the enforcement proceedings should be submitted in the absence of legal proceedings, thereby the notary deed does not constitute the decision of the court. Taking into consideration the importance of the decision on the right to the social housing and a lack of a possibility for the decision of the court in that regard, in a notary deed, in which the debtor submitted themselves to enforcement proceedings and in the decision on conferring the ownership, it seems that in this situation the debtor may, by a separate legal action, demand

³¹Further deliberation shall cover a legally binding verdict on conferring the ownership and a notary deed, in which the debtor submitted to the execution of the property release. The deliberation do not involve the decision of the court in that regard.

³²It seems that: Renata Drozd-Sweklej, *Egzekucja na podstawie...*, p. 23 i 42.

³³In the situation when the municipality does not indicate temporary accommodation for half a year, the court bailiff will evict the tenant directly to a night shelter, which means homelessness.

³⁴J. Mucha, *Egzekucja ze spółdzielczego własnościowego prawa do lokalu a prawo do lokalu socjalnego*, Przegląd Prawa Egzekucyjnego 2014, no 3-4, p. 22-23.

³⁵IV CSK 238/09, LEX no 558800.

the decision of the court on the right to the social housing (Article 189 of the Civil Procedure Code).

In a situation of initiating an enforcement proceedings on the basis of a notary deed, in which the debtor submitted themselves to the procedure or a legally binding verdict on conferring the ownership, in case of lack of the decision on the right or lack of the right to the social housing, in connection with the lack of any protection of the third parties rights, *per analogiam*, the application of Article 35 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code is possible³⁶. In the present provision special protection was provided for:

- pregnant women,
- a minor, a disabled person within the meaning of the act of 29 November 1990 on social welfare or an incapacitated person and the person who cares for and lives with the incapacitated person,
- people confined to bed,
- pensioners and annuitants who qualify under the criteria for granting social assistance,
- unemployed persons,
- persons who meet the conditions defined by the Municipality Council, by way of resolution

In a situation when the enforcement proceedings were brought against the above persons, the court bailiff has a duty of:

- notifying the person about the fact that they may bring a legal action on establishing a right to the social housing within the deadline,
- suspending the enforcement proceedings,
- notifying the court bailiff about suspending the enforcement proceedings.

³⁶The limited time when the provision remains in force should be considered. It covers the persons defined in Article 14 Section 2 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code, in respect of which the eviction was imposed before 10 July 2001 and it was not executed until that day. For the application in this situation of Article 35 of the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code: H. Pietrzykowski, [in:] *Kodeks postępowania cywilnego. Postępowanie egzekucyjne. Komentarz*, (ed.) T. Ereciński, Warszawa 2012, p. 700.

Summary

In this article there only a part of issues connected with a release of a property was presented. The author would like to express his hope that other issues will be subject to deliberation of the doctrine in the future. It seems that the provisions regarding a release of a property require a fundamental modification by means of a broad amendment of the Civil Procedure Code.

Legal acts

- [1]. The act of 17 November 1965 of the Civil Procedure Code (Journal of Laws 1964 No 43, item 296 with further amendments).
- [2]. The act of 21 June 2001 on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code (Journal of Laws No 71, item 733, with further amendments).
- [3]. The act of 25 February 1965 of the Family and Guardianship Code (Journal of Laws 1964 No 9, item 59 with further amendments).

Case law

- [1]. A resolution of the Supreme Court of 10 February 2006, III CZP 127/05, LEX no 167160.
- [2]. A resolution of the Supreme Court of 9 February 2007, III CZP 157/06, LEX no 212427.
- [3]. A resolution of the Supreme Court of 19 November 2009, IV CSK 238/09, LEX no 558800.
- [4]. A resolution of the Supreme Court of 28 September 1963, III Co 33/62, OSNC 1964/ 2, item 22.
- [5]. A resolution of the Supreme Court of 7 February 1997, III CZP 120/96, OSNC 1997/6 - 7, item 69.
- [6]. The decision of the Constitutional Court of 24 February 1999, SK 4/98, OTK ZU 1999/2, item 24.

Literature

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