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The issue of claims for compensation under Article 18(1) of the Polish Act of 21 June 2001 on the protection of tenant rights, communal housing resources and amendments to the Civil Code

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Abstract

The paper briefly outlines some selected issues regarding claims for compensation against a person occupying residential premises without a legal title under Article 18(1) of the Act of 21 June 2001 on the Protection of Tenants' Rights, Commune Housing Resources and Amendments to the Civil Code. The nature of the compensation and the obligation to pay the same, the nature of liability for compensation on the part of the person occupying residential premises without a legal title as well the right of action to pursue claims under Article 18(1) of the above-mentioned Act have been discussed.

Keywords: residential premises, owner, tenant, liability of the person occupying residential premises without a legal title, compensation

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Z problematyki roszczenia o odszkodowanie z art 18 ust 1 Ustawy z dnia 21 czerwca 2001 r. o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego

Streszczenie

W artykule poruszono ogólnie wybrane zagadnienia dotyczące roszczenia z art. 18 ust. 1 Ustawy z dnia 21 czerwca 2001 r. o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego o odszkodowanie przeciwko osobie zajmującej lokal mieszkalny bez tytułu prawnego. Omówiono charakter tego odszkodowania oraz zobowiązania do jego zapłaty, charakter odpowiedzialności odszkodowawczej osoby zajmującej lokal mieszkalny bez tytułu prawnego, jak też kwestię legitymacji czynnej do dochodzenia roszczenia z art. 18 ust. 1 tejże ustawy.

Słowa kluczowe: lokal mieszkalny, właściciel, lokator, odpowiedzialność osoby zajmującej lokal bez tytułu prawnego, odszkodowanie

1. Introduction

The paper briefly outlines some selected issues regarding claims for compensation against a person occupying residential premises without a legal title under Article 18(1) of the Act of 21 June 2001 on the protection of tenant rights, communal housing resources and amendments to the Civil Code[2]. It discusses the issue of this compensation nature and its payment obligation, as well as the nature of the liability for compensation of the person occupying residential premises without a legal title. The next issue presented in this paper is the right of action to pursue claims under Article 18(1) of the Act of 21 June 2001 raising doubts both in science and in the case law. The point is whether it should be treated as a specific form of claim for remuneration for the use of third party's property referred to in Articles 224-225 of the Polish Civil Code or as a claim for compensation for non-fulfilment of the obligation to return the property after the end of the legal relationship being the basis for the use of premises, or finally maybe as a claim for compensation resulting from a special kind of tort in the form of occupying the premises without legal grounds. The issue of the right of action to pursue this claim will differ depending on which of these points is supported. This issue was the object of two resolutions of the Supreme Court of 8 November 2019[3] and of 5 December 2019[4], in which it was stated that a person being the owner of premises within the meaning of Article 2(1)(2) of the Act of 21 June 2001 is entitled to the claim provided for in Article 18(1) of this Act in the period to which the statement of claim pertains. Sometimes the concept of the owner defined in Article 2(1)(2) of the Act of 21 June 2001 is not treated as universal for the entire Act on the protection of tenant rights, communal housing resources and amendments to the Civil Code, which will be discussed further in the following part of this paper.

2. Compensation obligation under Article 18 of the Act of 21 June 2001

The provision of Article 18 of the Act of 21 June 2001 constitutes special regulation concerning civil-law liability for the violation of the obligation to return premises after the expiry of the legal title to it. Relying on the systemic interpretation (this provision follows the provisions regulating the grounds for terminating the legal relationship of the use of premises and the mode of ruling in cases for vacating premises) entitles us to assume that it regulates only cases when persons that occupied the premises had previously had the legal title to the premises, which later expired[5]. That is why persons that has moved into the premises without legal basis are not entitled to the claim based on this provision of

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[2] Consolidated text: Journal of Laws of 2020, item 611 (hereinafter referred to as the Act of 21 June 2001). Reference in the article of the number of provision without referring to the normative act from which it originates means that it is the Act of 21 June 2001.

[3] File reference III CZP 28/19, OSNC 2020, no. 6, item 49.

[4] File reference III CZP 35/19, OSNC 2020, no. 7-8, item 57.

[5] See F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code,* Warsaw 2002, p. 235; A. Doliwa, *Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code* [in:] *Housing Law. Commentary,* Warsaw 2015, commentary to Article 18 of the Act of 21 June 2001, section no. 3; resolution of the Supreme Court of 15 November 2001, file reference III CZP 66/01, OSNC 2002, no. 9, item 109; resolution adopted by seven judges of the Supreme Court of 20 May 2005, file reference III CZP 6/05, OSNC 2006, no. 1, item 1; resolution of the Supreme Court of 21 October 2015, file reference III CZP 70/15, OSNC 2016, no. 10, item 118.

the Act of 21 June 2001[6]. Part of the doctrine takes a different view and covers with the scope of the provision of Article 18 of the Act of 21 June 2001 all persons that occupy premises without a legal title to it, i.e. persons that have never had the title to occupy the premises and persons that had the title, but has lost it[7].

From the point of view of persons that have lost the legal title to further occupy the premises, Article 18 of the Act of 21 June 2001 ensures protection against high compensation. On the other hand, it ensures that the owner's losses resulting from the occupation of the premises by an authorised person will be covered[8]. The claim provided for in this provision has been designed as a form of compensating the owner for a situation when – with the legislator's acceptance and due to the protection regulation created thereby – a debtor in the scope of the obligation to vacate residential premises stays in this premises until the prerequisite conditions for compulsory fulfilment of the obligation imposed on them are met[9]. In cases covered by the regulation of Article 18(1) and (2) of the Act of 21 June 2001, the reservation for the owner of the right to request the person occupying the premises to provide a benefit corresponding to the rent that can be obtained on account of lease strengthens the owner's position, releasing them from the obligation to prove whether the state occurred in connection with non-performance of the obligation to return them the object of lease caused on its side damage in the form of non-achievement of expected profits. If the owner's damage exceeded the compensation due on the basis of Article 18(1) and (2) of the Act of 21 June 2001, the owner may request supplementary compensation, but they should pursue it under general principles.

The judiciary and the doctrine notice that compensation under Article 18(1) of the Act of 21 June 2001 differs significantly from compensation to which the general provision of Article 361(2) of the Polish Civil Code applies[10] For Fryderyk Zoll, Magdalena Olczyk and Marlena Pecyna, the use of the 'compensation' term in the context of Article 18 of the Act of 21 June 2001 is unfortunate. According to them, 'the legislator should have rather used terminology applied on the grounds of supplementary claims (Articles 224 and 225 of the Polish Civil Code). Therefore, the legislator should speak about remuneration for the use of premises'[11]. Nevertheless, it seems that the correctness of terminology used here by the legislator is not the most important issue. It results, for example, from the fact that the Polish Civil Code (as well as special acts) did not define the 'compensation' concept or the 'remuneration' concept, although it uses both these concepts. The use of this term in Article 18 of the Act of 21 June 2001 can probably be ultimately approved because compensation is a benefit fulfilled in order to repair financial damage to legally protected assets. Such damage (at least potential) is suffered

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6 Similarly the Supreme Court in resolution of 5 December 2019, file reference III CZP 35/19. Differently E. Bończak-Kucharczyk. *Protection of Tenant Rights and Lease of Residential Premises. Commentary,* Warsaw 2019, p. 513.

7 See E. Bończak-Kucharczyk, *Protection of Tenant Rights and Lease of Residential Premises. Commentary, op.cit.,* p. 513; J. Chaciński, *Protection of tenant rights. Commentary,* Warsaw 2019, commentary to Article 18 of the Act of 21 June 2001, section no. 1.

8 See judgement of the Supreme Court of 25 April 2018, file reference III CA 1/18, LEX no. 2508080.

9 See resolution of the Supreme Court of 8 November 2019, file reference III CZP 28/19.

10 See resolution of the Supreme Court of 6 December 2012, file reference III CZP 72/12, OSNC 2013, no. 6, item 71.

11 See e.g. F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit,* p. 236.

by the owner as a result of the fact that the premises is not returned to them upon the expiry of the title on the basis of which currently former tenant occupied it. However it should be remembered that the obligation to pay compensation occurs regardless of whether the person entitled to it has suffered any damage in connection with the tenant's failure to vacate the premises after the expiry of the lease relationship (and it is certain argument for using the term 'remuneration, not 'compensation'). This compensation replaces the rent and performs its function (it is the equivalent of the rent)[12]. The periodicity of the benefit under Article 18(1)-(3a) of the Act of 21 June 2001 is important for determining the maturity and limitation period of the claim for its payment[13]. Compensation claims under Article 18(1) of the Act of 21 June 2001 are time-barred after the period of 3 years provided in Article 118 of the Polish Civil Code for claims for periodical benefits, not after the period determined in Article 229 of the Polish Civil Code. The relationship of the compensation under Article 18(1) of the Act of 21 June 2001 with the rent is expressed by the fact that its amount is determined by reference to the rent to which the owner would be entitled in connection with the lease of premises. It is also reflected in the fact that the amount of compensation may change together with changes in the amount of the rent (increase or decrease in the value of monthly compensation)[14]. The solution resulting in significant improvement of the tenant's situation after the cessation of the lease relationship cannot be accepted – in practice the tenant could not be removed and additionally they would pay the same fee[15].

In the lease agreement (or another agreement regarding the use of premises), the parties cannot determine in a different manner the amount of compensation referred to in Article 18(1)-(3a) of the Act of 21 June 2001, e.g. establish it at the level of 200% of the previous rent. In this aspect the regulation of the Act of 21 June 2001 has the character of peremptory norms of law *(ius cogens),* and therefore such a contractual provision would be absolutely invalid[16]. Also it should not be assumed that this is the case of semi-imperative (unilaterally absolutely mandatory) norms, the derogation from which would be admissible, but only in 'one direction', i.e. for the benefit of the former tenant, as the tenant cannot be considered as the so-called weaker party in the obligation, requiring special

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12 See M. Olczyk, *Legal Situation of Former Parties to the Lease Relationship in the Case of Further Occupation of the Residential Premises by the Former Tenant,* Warsaw 2015, p. 277-279.

13 See e.g. judgements of the Supreme Court: of 18 May 2012, file reference IV CSK 490/11, LEX no. 1243072; of 9 November 2012, file reference IV CSK 303/12, LEX no. 1225407; of 7 March 2014, file reference IV CNP 33/13, LEX no. 1438649; F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit,* p. 237; M. Olczyk, *Legal Situation of Former Parties to the Lease Relationship in the Case of Further Occupation of the Residential Premises by the Former Tenant, op.cit,* p. 279-285; A. Doliwa, *Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code* [in:] *Housing Law. Commentary,* Warsaw 2015, commentary to Article 18 of the Act of 21 June 2001, section no. 6.

14 See judgement of the Supreme Court of 25 April 2018, file reference III CA 1/18, LEX no. 2508080.

15 See e.g. F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit,* p. 242; J. Panowicz-Lipska [in:] J. Panowicz-Lipska (ed.), *Private Law System. Volume 8. Contract Law – Detailed Part,* Warsaw 2011, p. 166; M. Bednarek, *Right to Housing in the Polish Constitution and Legislation,* Warsaw 2007, p. 702; M. Olczyk, *Legal Situation of Former Parties to the Lease Relationship in the Case of Further Occupation of the Residential Premises by the Former Tenant, op.cit,* p. 348 et seq.; K. Pałka [in:] K. Osajda (ed.), *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code. Commentary,* Warsaw 2020, commentary to Article 18 of the Act of 21 June 2001, point 9.

16 See M. Olczyk, *Legal Situation of Former Parties to the Lease Relationship in the Case of Further Occupation of the Residential Premises by the Former Tenant, op.cit.*, p. 344-346; K. Pałka [in:] *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code. Commentary, op.cit,* commentary to Article 18 of the Act of 21 June 2001, point 11, similarly the Regional Court in Łódź in judgement of 20 March 2019, file reference III Ca 2014/18, LEX no. 2704081.

protection.

The legal relationship established under Article 18(1)-(3a) of the Act of 21 June 2001 between the owner and the person occupying premises without a legal title in the period between the issue of the decision ordering the tenant to vacate and empty the premises and its performance concerns not only the former tenant, but also these persons that as close to the tenant occupied the premises together with them in the period of the lease relationship. In the light of Article 2(1)(1), the tenant of the premises or the person using the premises on the basis of another legal title than the ownership right is a tenant. In connection with the execution of the lease agreement, the legal title to use the premises being its object may be obtained also by persons other than only the tenant, i.e. persons whose use of the premises results from the tenant's right and will. In practice, most frequently persons towards whom the tenant – by ensuring them the housing – fulfils the maintenance obligation and other obligations provided for in the family law occupy the premises together with the tenant and derive their title to use the premises from them. These persons cannot be freely deprived by the tenant from the possibility to use together with the tenant the object of lease, and the landlord must take into account the tenant's obligations in this scope and cannot request persons close to the tenant belonging to this group to leave the premises without the tenant. Allowing other persons in a close relationship with the tenant towards whom, however, the tenant does not have the maintenance obligation, to occupy the leased premises, the tenant makes with them an agreement close to lending. This type of a legal relationship usually connects tenants with their adult children, who after reaching the age of majority and becoming independent did not leave the leased premises. The party to the agreement with such persons is the tenant, who may terminate it (Article 716 of the Polish Civil Code). Such persons' rights to use the premises are derivative towards the landlord and depend on the tenant's rights, which means that they expire together with the tenant's rights[17].

The lease rent is paid periodically within the agreed deadlines (Article 669 of the Polish Civil Code), and persons occupying the premises together with the tenant are liable for its payment jointly with the tenant (Article 688^1 of the Polish Civil Code). In circumstances determined in Article 18(1)-(3a) of the Act of 21 June 2001, these persons bear liability for the payment of compensation *in solidum*[18]. In this case there are no grounds for adopting the analogy from Article 688^1 of the Polish Civil Code[19], or for supporting the division of the liability into the same number of parts as the number of persons occupying this premises *(pro rata parte)*[20]. The Supreme Court has put it well[21] stating that it is impossible to determine part of compensation corresponding to each of debtors. The point,

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17 See resolutions adopted by seven judges of the Supreme Court of 9 March 1959, file reference I CO 1/59, OSN 1959, no. 4, item 95, and of 6 April 1970, file reference III CZP 61/69 – legal principle – OSNCP 1971, no. 7-8, item 118.

18 Similarly also e.g. resolutions of the Supreme Court: of 7 December 2007, file reference III CZP 121/07, OSNC 2008, no. 12, item 137, and of 8 November 2019, file reference III CZP 28/19. See also E. Bończak-Kucharczyk, *Protection of Tenant Rights and Lease of Residential Premises. Commentary, op.cit,* p. 514, 521-522. See also decision of the Supreme Court of 21 June 2012, file reference III CZP 37/12, LEX no. 1217215.

19 Differently F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit,* p. 238.

20 Differently, but incorrectly in literature: J. Misztal-Konecka, *Liability for Occupying Residential Premises without a Legal Title in the Light of Article 18 of the Act on the Protection of Tenant Rights,* 'Monitor Prawniczy' 2013, no. 22. p. 1199.

21 Resolution of the Supreme Court of 21 October 2015, file reference III CZP 70/15, OSNC 2016, no. 10, item 118.

however, does not concern the indivisibility of the compensation benefit, but the indivisibility of the reason which led to damage. The occupation of the premises by even one person excludes in full the owner's possibility to use it. For uniform damage understood in this manner, the number of persons occupying the premises does not have any importance.

The *in solidum* obligation – referred to also as accidental, incorrect, apparent or improper solidarity[22] – consists in the obligation of several debtors (at lest two) to fulfil an identical benefit for the same creditor. However, these debtors' obligations result from different legal titles, and neither the act nor the legal action reserves solidarity between them. Each debtor is liable for the entire benefit. The creditor may request each debtor to cover the entire benefit or its part. The fulfilment of the benefit by one debtor releases the other from the obligation to fulfil it. Hence if in the case of the *in solidum* obligation one of the obliged persons fulfils the benefit pursuant to its content, the debt of the other co-debtors is cancelled and their obligation to fulfil the benefit expires[23]. The *in solidum* liability concerns completely separate obligations related to the common purpose of the benefit fulfilment. Therefore, it is difficult to speak about 'multiple entities in the obligation' as in this case there are many separate obligations. Maintaining the independence of individual ties throughout their duration should result from it[24].

Pursuant to Article 369 of the Polish Civil Code, an obligation is joint and several if it results from the Act or legal action. Therefore, the Act or parties' will expressed in an agreement prejudges the existence of solidarity, not features of the obligation. The solidarity of the obligation cannot be presumed and created by a court judgement[25]. In resolution of 21 October 2015[26] the Supreme Court correctly indicated that the impossibility to consider the liability regulated in Article 18(1)-(3) of the Act of 21 June 2001 as tort liability for compensation excludes the application of Article 441(1) of the Polish Civil Code to the liability of several persons on account of the occupation of premises without a legal title. Passive solidarity under this provision occurs only if the liability of each debtor results from a tort. The Supreme Court rightly concluded that each of the persons fulfilling the conditions provided for in Article 18(1) of the Act of 21 June 2001 was liable for damage up to the full amount. The legal relationship of a compensation nature resulting from circumstances indicated in this provision connects the owner with a specific person occupying the premises. Individual legal relationships of a

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22 See e.g. judgement of the Supreme Court of 12 April 1972, file reference II CK 57/72, OSNCP 1972, no. 10, item 183, and resolution adopted by seven judges of the Supreme Court – legal principle – of 9 March 1974, file reference III CZP 75/73, OSNCP 1974, no. 7-8, item 123; A. Kawałko, H. Witczak, *Obligations,* Warsaw 2010, p. 13; W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Obligations. Outline of Lecture,* Warsaw 1999, p. 124-125.

23 See more e.g. S. Garlicki, *In solidum* Liability, 'New Law' (Nowe Prawo) 1961, no. 4; B. Lewaszkiewicz-Petrykowska, *In solidum Obligations,* 'Legal and Economic Studies' (Studia Prawno-Ekonomiczne) 1977, volume XVII; A. Szpunar, *On improper solidarity,* 'Legal, Economic and Sociological Movement' (Ruch Prawniczy, Ekonomiczny i Socjologiczny) 1980, no. 4, p. 23-29; E. Łętowska [in:] Z. Radwański (ed.), *Civil Law System. Contract Law – General Part,* Wrocław 1981, p. 342-346; M. Pyziak-Szafnicka [in:] E. Łętowska (ed.), *Private Law System. Volume 5. Contract Law – General Part,* Warsaw 2013. p. 386-401; Z. Radwański, A. Olejniczak, *Obligations – General Part,* Warsaw 2012, p. 112-113; K. Zawada [in:] K. Pietrzykowski (ed.), *Polish Civil Code. Volume I. Commentary. Articles 1-449[10],* Warsaw 2013, commentary to Article 369 of the Polish Civil Code, section no. 10, p. 1035.

24 See M. Pyziak-Szafnicka [in:] E. Łętowska (ed.), *Private Law System. Volume 5. Contract Law – General Part,* Warsaw 2006, p. 349 and 359; A. Szpunar, *On improper solidarity, op.cit.,* p. 23.

25 Similarly the Supreme Court stated rightly in resolution of 21 October 2015, file reference III CZP 70/15.

26 Resolution of the Supreme Court of 21 October 2015, file reference III CZP 70/15, OSNC 2016, no. 10, item 118.

compensation nature connecting persons occupying the premises without a legal title with the owner of the premises are connected due to the concept of damage and theoretical foundation related to it. The fulfilment of the compensation benefit by one of the persons leads to the repair of damage resulting from loss of possibility to lease the premises in a given time, and thus it satisfies the whole interest of the premises owner. The legal situation of several persons liable under Article 18(1) of the Act of 21 June 2001, consisting in the existence of one creditor and several debtors obliged to fulfil a compensation benefit of the same kind, aimed at the satisfaction of the same legal interest of the owner (landlord), while the fulfilment of the benefit by one debtor releases other debtors in the case of impossibility to assign the status of joint debtors to these debtors, allows regarding the assumption that these persons are liable *in solidum* as justified[27].

3. Character of the liability of the person occupying residential premises without a legal title

The recognition of the claim referred to in Article 18(1) of the Act of 21 June 2001 as a special form of remuneration for the use of a third party's asset provided for in Articles 224-225 of the Polish Civil Code[28] (1st possibility) would mean that only the owner of the premises within the meaning of the provisions of property law has the right of action to submit this claim, as these provisions constitute an element of the civil-law protection of property. Its qualification as a claim concerning compensation for non-performance of the obligation to return the asset after the expiry of the legal relationship being the basis for the use of premises (2nd possibility) should mean that the owner has the right of action to pursue it within the meaning of Article 2(1)(2) of the Act of 21 June 2001. It should be connected with the contractual liability (ex *contracto* – Article 471 of the Polish Civil Code). Finally, noticing in it features of compensation for a special kind of tort (3rd possibility) would entail granting the person that has suffered damage due to an unlawful situation the right to pursue it. Then, this claim should be connected with liability resulting from a tort (ex *delicto* – Article 415 of the Polish Civil Code).

As regards these three positions, first of all it should be indicated that the state in which the former tenant (lessee, debtor) uses normative solutions determined for their benefit should not be considered as a tort. This opinion was adopted by

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27 Differently M. Olczyk, *Gloss to the Resolution of the Supreme Court of 21 October 2015, file reference III CIP 70/15.* 'Case Law of Polish Courts' (Orzecznictwo Sądów Polskich) 2006, no. 7-8, item 68, p. 939 et seq. In her opinion, all adult persons permanently living with the tenant should be jointly liable with the former tenant (who had an independent title to occupy the premises) for the payment of remuneration.

28 Such an opinion is expressed by A. Doliwa, who states that the provisions of Article 18 of the Act of 21 June 2001 refer to compensation; however the essence of the benefit which the person occupying premises without a legal title is obliged to fulfil towards the owner of this premises, provided for in Article 18(1)-(3) of the Act of 21 June 2001, is rather closer to the benefit on account of remuneration for the use of a third party's asset (premises); compare the provisions of Articles 224-225 of the Polish Civil Code (see A. Doliwa, *Lease of premises. Commentary,* Warsaw 2010, p. 315, and *idem, Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit,* commentary to Article 18 of the Act of 21 June 2001, section no. 2). In turn, B. Rakoczy is of the opinion that it may be assumed that the claim under Article 18(2) of the Act of 21 June 2001 is a claim similar to the claim for remuneration for the use of an asset, while the claim under Article 18(3) of the Act of 21 June 2001 is a compensation claim, whereas in this second case it should be indicated that it is liability related to the exercise by the former tenant of their subjective rights (see B. Rakoczy, *Liability for Occupying Premises without a Legal Title,* Warsaw 2011, p. 71). M. Olczyk, explaining the object of former tenants' debt, states that it is not the compensation benefit, but remuneration for the use of premises. Only failure to pay it may entail damage to the owner's property. However, it is secondary towards the original claim for the payment of remuneration (see *idem, Gloss to the Resolution of the Supreme Court of 21 October 2015, file reference III CIP 70/15, op.cit.,* p. 939 et seq.).

the Supreme Court in resolutions of 7 December 2007 and 21 October 2015.[29] These judgements pointed out that the provision of Article 18 of the Act of 21 June 2001 fully concerns only such persons occupying premises without a legal title who previously had this title, and therefore they were tenants within the meaning of Article 2(1)(1) of the Act of 21 June 2001. In this case we have completely different titles: not only in the aspect of obligation, but also in legal and substantive aspects. The Act clearly connects with some of these titles the obligation to return premises upon the expiry of the title (e.g. Article 675(1) in connection with Article 680 of the Polish Civil Code, Article 718(1) of the Polish Civil Code and Article 11(24) of the Polish Act of 15 December 2000 on housing cooperatives[30]); in the remaining scope Article 56 of the Polish Civil Code should be referred to. It does not allow treating the liability referred to in Article 18(1)-(3a) of the Act of 21 June 2001 as liability resulting from a tort. The resignation in these provisions from fault as the prerequisite of liability does not allow the qualification of actual situations covered by their hypotheses as torts within the meaning of Article 415 of the Polish Civil Code, while they cannot be subsumed under other provisions of the Polish Civil Code on torts. In the Supreme Court's opinion, there are also no grounds for assuming that these provisions specify a tort of a special kind, and in any case such a possibility is excluded in relation to persons occupying premises without a legal title towards whom the eviction judgement has ruled on the right to social housing. The same concerns the situation in which the court has ruled on the suspension of vacating the premises until the provision of substitute premises. In these cases, the occupation of premises by a person towards whom the eviction ruling has been issued as an unlawful action until they are provided with social or substitute premises. In the above-mentioned cases, the liability for damage resulting from exercising subjective rights or taking an action on the basis of a statutory authorisation could be only constructed.

Moreover in its case law, the Supreme Court correctly concludes with the approval of part of literature that the 'owner' term used in Article 18 of the Act of 21 June 2001 should be explained with reference to the definition determined in Article 2(1)(2) of the Act of 21 June 2001, referring to the obligation relationship on whose basis the person occupying premises was entitled to use it, not with reference to terms used in Article 224(2) in connection with Article 230 of the Polish Civil Code and indicating entities within whose interrelations claims provided for in these provisions exist. No relationship between obligations to pay compensation formed by these provisions and the determination of good or bad faith of the person occupying premises without a legal title results from Article 18(1)-(3a) of the Act of 21 June 2001. Undoubtedly, the person using residential premises after the expiry of the lease until the performance towards them of enforcement proceedings is not an autonomous holder of the premises within the meaning of Article 336 *in princ.* of the Polish Civil Code, but at best – also due to the form of their relationship with the owner determined by the legislator in Article 18(1)-(3a) of the Act of 21 June 2001 – a dependent holder of this premises within the meaning of Article 336 *in fine* of the Polish Civil Code. The above-presented features of compensation under

[29] Resolutions of the Supreme Court of 7 December 2007, file reference III CZP 121/07, OSNC 2008, no. 12, item 137, and of 21 October 2015, file reference III CZP 70/15.

[30] Consolidated text: Journal of Laws of 2020, item 1465.

Article 18 of the Act of 21 June 2001 make it different from remuneration referred to in Article 224(2) in connection with Article 230 of the Polish Civil Code. Furthermore, even if relationships between the former landlord and the former tenant were described as a kind of relationships between the owner and the dependant holder of the asset, Article 18(1)-(3a) of the Act of 21 June 2001 being – in the light of the reservation in Article 230 *in fine* of the Polish Civil Code – a special regulation in relation to the provisions of the Polish Civil Code on remuneration for the use of an asset, would apply to these relationships in the first place before the general regulation from Article 224(2) of the Polish Civil Code in connection with Article 230 of the Polish Civil Code.[31]

After the expiry of the premises lease relationship, former tenants and persons who derived the title to use the premises from them should immediately hand over the object of the agreement to the landlord (Article 675(1) of the Polish Civil Code). If the event being the source of the legal title to the premises is an agreement, this obligation has its basis in this agreement (Article 56 of the Polish Civil Code). The improper performance of this obligation results in consequences determined in Article 471 et seq. of the Polish Civil Code.[32] If this obligation is not fulfilled voluntarily, the landlord holding an enforcement title stating the discussed obligation may involve in its implementation enforcement bodies authorised to apply state coercion. That is why currently it is generally acknowledged that the liability under Article 18(1) of the Act of 21 June 2001 is of a contractual nature and is realised under the rules determined in Article 471 of the Polish Civil Code, in the case of a violation of the obligation to return premises after the expiry of the legal relationship justifying previously its use[33]. The described legal relationship may and should be perceived as a consequence of non-performance of the obligation to hand over the premises, determined due to the fact that the legislator in some way accepts the attitude of the former tenant consisting in delay in the performance of its obligation, and involves in its performance public law entities on which it has imposed tasks from the scope of meeting housing needs[34]. Such a kind of anchoring in the former lease relationship, resulting directly from the title of the Act and the legal definition of the tenant term contained in Article (2)(1)(1), means that former tenants occupying such premises and persons deriving from them derivative rights to use premises are obliged to repair the damage also after the expiry of the independent legal title possessed by the former tenant[35]. Moreover, regardless of the fact whether persons obliged to hand over the premises voluntarily left it or whether they still occupy it despite the issue of the eviction

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31 See resolution of the Supreme Court of 15 December 2017, file reference III CZP 81/17, OSNC 2018, no. 10, item 92; resolution of the Supreme Court of 8 November 2019, file reference III CZP 28/19. Similarly F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit.,* p. 235, and J. Panowicz-Lipska [in:] *Private Law System. Volume 8. Contract Law – Detailed Part, op.cit,* p. 165.

32 See e.g. judgements of the Supreme Court: of 11 March 1999, file reference III CKN 198/98, OSNC 1999, no. 10, item 175; of 18 May 2012, file reference IV CSK 490/11; of 9 November 2012, file reference IV CSK 303/12, LEX no. 1225407, and resolution of the Supreme Court of 7 December 2007, file reference III CZP 121/07, OSNC 2008, no. 12, item 137.

33 See resolutions of the Supervisory Court of: 7 December 2007, file reference III CZP 121/07, OSNC 2008, no. 12, item 137; 21 October 2015, file reference III CZP 70/15, OSNC 2016, no. 10, item 118; 8 November 2019, file reference III CZP 28/19, OSNC 2020, no. 6, item 49; se judgements of the Supreme Court of: 18 May 2012, file reference IV CSK490/11; 9 November 2012, file reference IV CSK 303/12, LEX no. 1225407; 7 March 2014, file reference IV CNP 33/13, LEX no. 1438649; 25 April 2018, file reference III CA 1/18, LEX no. 2508080.

34 See judgements referred to in the previous footnote.

35 Similarly the Supreme Court stated rightly in resolution of 5 December 2019, file reference III CZP 35/19.

ruling, and regardless of possession or lack of possession of ruling granting them the right to social housing, the legal basis for pursuing compensation by the owner is the same (Article 471 of the Polish Civil Code in connection with Article 18 of the Act of 21 June 2001).

The legal relationship established on the basis of the Act between the former landlord and the former tenant and persons deriving from the tenant the right to use the premises, lasting until the performance of the obligation to vacate the premises and to hand it over to the landlord, is called by part of the doctrine a *quasi*-lease or incorrect lease. According to, e.g., Magdalena Olczyk, the arrangement of rights and obligations occurring after the expiry of the lease results from the original legal relationship, and these rights and obligations occur as a result of further legal events leading to the transformation of the obligation to return premises into a new obligation relationship. These relationships still result from the original agreement; they may continue until the complete expiry of rights and obligations of the parties to the lease. Therefore, they may constitute the justification of the existence of *quasi*-lease, and then the liquidation obligations related to the expiry of these relationships. This new obligation relationship cannot be identified with the original legal relationship (lease), with which, however, it is connected by basic elements. The similarity of the position of the former parties to the lease after its expiry and the existence between them of a new obligation relationship, which however still results from the agreement, forces us to call this relationship an incorrect lease or *quasi*-lease, and the parties to this relationship – *quasi*-landlord or *quasi*-tenant (incorrect landlord/tenant)[36]. In the author's opinion, non-performance of the obligation to return premises results in the occurrence of a new obligation relationship, i.e. quasi-lease, but not in the occurrence of liability for compensation, as the original tie connecting the parties. Nevertheless, it is an obligation relationship which reminds lease to such an extent that the provisions on lease should be applicable here accordingly, including Article 688^1 of the Polish Civil Code. She considers this approach as possible and acceptable[37]. In my opinion, however, such an approach is incorrect, as it entails (if I correctly understand M. Olczyk's intentions) the assumption that those entities, i.e. the former landlord and the former tenant and persons deriving from them the title to use the premises until handing over the premises to the former landlord, are connected by the agreement, while it is not true. The source of this relationship and its content is the Act, not the agreement. The civil law is based on the principle of the autonomy of the will and the equal status of entities in civil-law relationships[38]. Therefore, it is impossible to impose on any person the status of the party to the agreement. This relationship is more correctly qualified by the judiciary, which indicates that it is a kind of legal relationship with features similar to a lease agreement, whose source is the Act[39].

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36 See M. Olczyk, *Legal Situation of Former Parties to the Lease Relationship in the Case of Further Occupation of the Residential Premises by the Former Tenant, op.cit.*, p. 156.

37 See *ibidem,* and also *idem, Gloss to the Resolution of the Supreme Court of 21 October 2015, III CIP 70/15, op.cit.,* item 68.

38 See e.g. S. Grzybowski [in:] S. Grzybowski (ed.), *Civil Law System. General Part,* 1.1, Wrocław 1974, p. 18; M. Safjan [in:] M. Safjan (ed.), *Private Law System. Volume I. Civil Law – General Part,* Warszawa 2012, p. 32-44; A. Wolter J. Ignatowicz, K. Stefaniuk, *Civil Law. Outline of the General Part,* Warsaw 2018, p. 21-25; Z. Radwański, A Olejniczak *Civil Law – General Part,* Warsaw 2011, p. 2-3,6-7; A. Kawałko, H. Witczak *Civil Law – General Part,* Warsaw 2017. p. 3-4; A Bieliński, M. Pannert, *Civil Law – General Part. Property Law,* Warsaw 2018, p. 4-5.

39 See resolutions of the Supreme Court of 6 December 2012, file reference III CZP 72/12, OSNC 2013, no. 6, item 71, and of 7 December 2007, file reference III CZP 121/07, OSNC 2008, no. 12, item 137.

The occurrence of this relationship depends on binding its parties previously by an agreement which *essentialia negotii* includes the obligation to return the premises to the person that made it available to the tenant.

4. Right of action to pursue claims for compensation under Article 18(1) of the Act of 21 June 2001

Article 18(2) of the Act of 21 June 2001 does not indicate persons entitled to pursue claims for compensation. It may be concluded only on the basis of Article 18(1) of the Act of 21 June 2001 – which determines the amount of compensation corresponding to the amount of the rent which the owner could obtain on account of lease – that the owner has the right of action in the compensation process, and the person using the premises without a legal title is an entity obliged towards the owner to fulfil the benefit [40]. The Act on the protection of tenant rights and communal housing resources concerns obligation relationships, not legal and substantive relationships, and the definition of the premises owner adopted for the purposes of this regulation in Article 2(1)(1) of the Act of 21 June 2001 corresponds to this assumption. The legal definition of the owner is also of an autonomous nature[41]. The provision of Article 2(1) of the Act of 21 June 2001 contains legal definitions important from the point of view of the object and purpose of the Act, which it uses while regulating rules and detailed measures of protection of tenant rights[42].

Each person that occupies the premises, holding any legal title to it, is a tenant, of course except for the owner. The concept adopted in literature and judiciary of broad understanding of the tenant term allows covering with its scope also the 'former tenant'[43]. In turn, as the Supreme Court indicated (e.g. in resolution of 15 May 2013, file reference III CZP 23/13), according to the legal definition included in Article 2(1)(2) of the Act of 21 June 2001 the landlord or another person connected with the tenant by the legal relationship entitling the tenant to use the premises is the owner. Therefore, this provision detaches the concept of owner from the relationships of the property law, transferring it to the grounds of the contract law. As a consequence, the owner within the meaning of the Act may be not only the person possessing the ownership right (or the co-ownership right) or the perpetual usufruct of the real property on which the premises is located (alternatively: separate ownership right to this premises or cooperative ownership right to the premises), but each person that enters into a lease agreement as the landlord or transfers the premises for use on the basis of another legal title. The

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40 Similarly the Supreme Court in judgement of 25 April 2018, file reference III CA 1/18.

41 See e.g. R. Dziczek, *Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code* [in:] *Protection of tenant rights. Housing allowances. Commentary. Templates of suits,* Warsaw 2020, commentary to Article 2 of the Act of 21 June 2001, point 1; K. Krzekotowska, M. Malinowska-Wójcicka, *Protection of Tenant Rights and Communal Housing Resources. Commentary,* Warsaw 2019, commentary to Article 2 of the Act of 21 June 2001, point 1; K. Zdun-Załęska, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code. Commentary,* Warsaw 2014, commentary to Article 2 the Act of 21 June 2001, point 8, A. Doliwa, *Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit.,* commentary to Article 2 of the Act of 21 June 2001, section no. 1.

42 Similarly A. Doliwa stated rightly in *Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit.,* commentary to Article 2 of the Act of 21 June 2001, section no. 1. See also decision of the Supreme Court of 10 August 2018, file reference III CZP 27/18.

43 See resolution of the Supreme Court of 16 April 2003, file reference III CZP 22/03, OSNC 2004, no. 2, item 19.

most frequently indicated example of the concept of owner understood in this manner is a tenant subleasing or lending the premises, member of the housing cooperative holding the cooperative right to residential premises if they stay with another person (tenant) in a legal relationship creating their legal title to use the premises. However, the lease relationship will be also established if the landlord does not have any legal title (any right) to the premises handed over to the tenant[44]. Sometimes even persons representing the owner are included within the discussed category[45]. In the decision of 22 July 2005[46] the Supreme Court referred to the situation when premises is encumbered with use and the user leases this premises to its owner within the meaning of Article 140 of the Polish Civil Code. In the Court's opinion, the user-landlord is in this situation the owner of the premises in matters resulting from the lease relationship, while the tenant-owner of the premises within the meaning of Article 140 of the Polish Civil Code is the owner in matters resulting from the use relationship. It was emphasised in this judgement that the landlord is entitled to the claim for handing over the residential premises after the expiry of the contractual lease relationship, regardless whether they are its owner. They may request handing over the asset also in the case when the tenant is the owner only if the landlord has the right to use this asset, e.g. as a user. If the landlord is the owner of the leased asset, regardless of the claim for returning the asset due to the expiry of the lease, they are entitled to the debt collection claim (Article 222(1) of the Polish Civil Code).

Also in literature[47] it is stated that the Act contains in Article 2(1)(2) an autonomous definition of the owner concept, formed in isolation from the provisions of the Polish Civil Code. In the light of the Act of 21 June 2001, not only the person that has the ownership right within the meaning of Article 140 of the Polish Civil Code is the owner, but also each person connected with the tenant by a legal relationship entitling the tenant to use the premises; the provision lists the landlord as the example. Therefore, the person that has the ownership right to the premises (Article 140 of the Polish Civil Code) may be the owner within the meaning of the Act of 21 June 2001 if this person is connected with the tenant by a legal relationship giving rise to the tenant's legal title to use the premises. However also the following persons may be the owner: user, lessee, tenant, person entitled on account of the cooperative ownership right or tenancy right to premises, person entitled on account of easement, annuitant, lender, etc., if they make the premises

44 Similarly A. Gola, J. Suchecki [in:] A. Gola, J. Suchecki, *Lease and ownership of premises. Provisions and Commentary,* Warsaw 2000, p. 24; M. Nazar, *Protection of tenant rights.,* part I, 'Monitor Prawniczy' 2001, no. 19, p. 96; F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit.,* p. 45. Similarly the Supreme Court in judgement of 19 January 2006, file reference IV CK 336/05, LEX no. 178241.

45 Similarly E. Bończak-Kucharczyk, *Protection of Tenant Rights and Lease of Residential Premises. Commentary, op.cit.,* p. 52.

46 Decision of the Supreme Court of 22 July 2005, file reference III CZP 39/05, LEX no. 159117.

47 See e.g. F. Zoll, M. OIczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit,* p. 45; K. Pałka, J. Zawadzka [in:] K. Osajda (ed.), *The Act on the Protection of Tenant Rights, Commual Housing Resources and Amendments to the Civil Code. Commentary, op.cit.,* commentary to Article 2 of 21 June 2001, point 50. 52; A. Doliwa, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code, op.cit.,* commentary to Article 2 of the Act of 21 June 2001, section no. 5; M. Nazar, *Protection of Tenant Rights, op.cit.,* p. 96; M. Sekuła-Leleno. *Right of Action of the Person Managing the Real Property. Gloss to the Resolution of the Supreme Court of 10 August 2018, III CZP 27/18,* 'Local Authority' (Samorząd Terytorialny) 2019, no. 5, p. 84-92. See also literature indicated in footnote no. 47.

available to another person on the basis of a legal relationship[48]. It will also happen when this another person is the owner of the premises within the technical and legal sense (Article 140 of the Polish Civil Code) unless the owner within the meaning of the Act of 21 June 2001 has the title towards this person to use the asset. If the tenant's legal title to use the premises results from a sublease agreement, the owner within the meaning of the Act of 21 June 2001 will be the tenant who has made with the sub-lessee a sublease agreement[49].

In view of the obligation nature of a lease agreement, its validity does not depend on the possession by the landlord of the ownership right to the asset which is to be handed over to the tenant for use[50]. If the landlord, as a result of the fact that they are not the owner of the asset constituting the object of lease or they are not entitled to dispose of it on the basis of another title, does not hand over the asset to the tenant on time, sanctions provided for in Article 491(1) of the Polish Civil Code may be imposed on them. In particular, the tenant may withdraw from the agreement[51]. The landlord, however, should be able to fulfil their benefit, i.e. to hand over the asset to the tenant on time and ensure them that they can use it peacefully throughout the term of the lease[52]. In its case law, the Supreme Court indicates that the landlord not being the owner of the leased asset may request the repair of damage resulting from not taking into account by the tenant the obligation to return the asset only if they are entitled to dispose of the asset after the expiry of the lease[53]. In the judgement of 11 March 1999[54] it stated that the landlord not being the owner of the leased asset may request the repair of damage resulting from not taking into account by the tenant the obligation to return the asset only if they are entitled to dispose of the asset after the expiry of the lease. Non-performance or improper performance of obligations due to reasons attributable to the debtor does not constitute sufficient grounds for the occurrence of contractual liability; moreover, damage being a usual consequence of non-performance or improper performance of the obligation is necessary (Article 471 in connection with Article 361 of the Polish Civil Code). In relation to the landlord towards whom the tenant has not fulfilled the obligation provided for in Article 675(1) of the Polish Civil Code, it means that they must prove that as a result of the tenant's failure to return them on time the object of the lease they incurred specific damage to their assets. Hence, the demonstration by the landlord of damage resulting from non-performance of the obligation provided for in Article 675(1) of the Polish Civil Code requires primarily the determination of legal possibility to dispose of the asset after the day on which this asset should be returned to them.

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48 See also resolution of the Supreme Court of 5 December 2019, file reference III CZP 35/19, OSNC 2020, no. 7-8, item 57.

49 See e.g. K. Pałka, J. Zawadzka [in:] K. Osajda (ed.), *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code. Commentary, op.cit.,* commentary to Article 2 of the Act of 21 June 2001, point 53.

50 See resolution of the Supreme Court of 14 April 1961, file reference III CR 806/60, OSN 1962/III, item 101.

51 Similarly the Supreme Court stated rightly in resolution of 11 March 1999, file reference III CKN 198/98, OSNC 1999, no. 10, item 175.

52 See also judgement of the Supreme Court of 25 April 2018, file reference III CA 1/18, LEX no. 2508080.

53 See judgement of the Supreme Court of 11 March 1999, file reference III CKN 198/98, OSNC 1999, no. 10, item 175; judgements of the Supreme Court of: 4 August 2005, file reference III CK 689/04, LEX no. 277067; 18 April 2013, file reference III CSK 229/12, LEX no. 1353198; 28 March 2014, file reference III CSK 156/13, LEX no. 1489247; 23 September 2016, file reference II CSK 747/15, LEX no. 2174069; resolution of the Supreme Court of 5 December 2019, file reference III CZP 35/19.

54 Judgement of the Supreme Court of 11 March 1999, file reference III CKN 198/98, OSNC 1999, no. 10, item 175.

As mentioned in the introduction, sometimes the concept of the owner defined in Article 2(1)(2) of the Act of 21 June 2001 is not treated as universal for the entire Act of 21 June 2001. For example, in the resolution of the Supreme Court of 15 May 2013[55] it was concluded that only the owner within the meaning of Article 140 of the Polish Civil Code may pursue claims under Article 18(5) of the Act of 21 June 2001.[56] The Supreme Court in resolution of 10 August 2018[57] took different, thoroughly argued and – in my opinion – correct position, stating that both Article 18(2) as well as Article 18(5) of the Act of 21 June 2001 refer to the broad autonomous definition of the owner contained in Article 2(1)(2) of the Act of 21 June 2001, not to Article 140 of the Polish Civil Code, and moreover the broad definition of the owner contained in Article 2(1)(2) of the Act of 21 June 2001 in connection with Article 18(5) of the Act of 21 June 2001 is just the starting point for determining the group of entities entitled to pursue compensation from a commune. Persons who may submit effectively such a request are determined by general principles specified in Article 361 of the Polish Civil Code. It means that compensation is due only to the person that proves damage which is in a relevant cause-and-effect relationship with lack of delivery of social housing[58], i.e. damage in the amount of difference between assets that this person would have if they disposed freely of the premises and assets that they have without the possibility to dispose freely of this premises because of the inability to carry out the eviction as a result of lack of delivery of social housing. This damage may include both lost benefits in the form of profits which would be gained with a sufficient degree of probability if the premises was vacated, as well as loss in the form of costs of the premises operation and maintenance not compensated within the rent[59]. Assessing on the basis of these rules which entities have the right to pursue claims under Article 18(5) of the Act of 21 June 2001, the Supreme Court considered as legitimate to take into account the case law and the doctrine concerning the possibility to pursue compensation by the holder who has been deprived illegally of the opportunity to use an asset. Therefore, the possibility to seek compensation from the commune by the holder of premises (building, real property) with an effective legal title towards the owner to possess the asset should not raise doubts, and this situation may concern not only the ownership or another real right, but also a right of an obligation type derived from the owner (e.g. lease or rental, compare Article 379 of the Code of Obligations)[60]. In particular it is clear that preventing the exercise of such person's right effective towards the owner and subject to the constitutional protection (Article 64(1) of the Constitution of the Republic of Poland) to collect civil profits from the asset constitutes damage to

55 Resolution of the Supreme Court of 15 May 2013, file reference III CZP 23/13, OSNC 2013, no. 11, item 122.

56 OSNC 2013, no. 11, item 122.

57 Decision of the Supreme Court of 10 August 2018, file reference III CZP 27/18, LEX no. 2531314.

58 See judgements of the Supreme Court of 19 June 2008, file reference VCSK 31/08, LEX no. 457701, and of 13 January 2010, file reference II CSK 323/09, LEX no. 602680; points 2 and 4 of judgement of the Constitutional Tribunal of 8 April 2010, file reference P 1/08, OTK-A 2010, no. 4, item 33.

59 See judgements of the Supreme Court of 19 June 2008, file reference VCSK 31/08, and of 13 January 2010, file reference II CSK 323/09, and resolutions of the Supreme Court of: 16 May 2012, file reference III CZP 12/12, OSNC 2012, no. 12, item 138, 15 May 2013, file reference III CZP 23/13, and 3 December 2014, file reference III CZP 92/14, OSNC 2015, no. 10, item 113.

60 See judgements of the Supreme Court of 5 October 1967, file reference I CR 243/67, OSP 1969, no. 3, item 62, and of 28 May 1975, file reference III CRN 70/75, OSNC 1976, no. 7-8, item 164, and resolution of the Supreme Court of 15 November 1968, file reference III CZP 101/68, OSNCP 1969, no. 9, item 153.

legally protected assets. Taking into account such person's compensation claims also does not cause a danger that the debtor (commune) will be obliged to pay the compensation twice, as the owner has authorised materially or obligatorily to collect profits (Article 140 of the Polish Civil Code) another person, and therefore in this scope they could not demonstrate their own damage (unlike in the case of damage to the substance of the asset).

A broader and more flexible interpretation of the concept of 'owner' is also suggested by the omission – which cannot be easily explained taking into account the restrictive interpretation referring to Article 140 of the Polish Civil Code – in Article 18(5) of the Act of 21 June 2001 of other categories of entities entitled materially to use the asset and to collect profits from it (e.g. the user of the real property or the person entitled on account of the cooperative ownership right to premises). In the Supreme Court's correct opinion, the opposite position cannot be justified by the statement that the Constitutional Tribunal, expressing its opinion in a binding manner on the compliance with the Constitution of Article 18(4) and (5) of the Act of 21 June 2001[61], referred primarily to the protection of the owner and the ownership right. Contrasting the interests of the owner (Article 140 of the Polish Civil code), the tenant and public authorities liable for implementing the appropriate housing policy serves as a model. Therefore, it should not be surprising that it attracted the attention of the Tribunal, and the use of the 'owner' concept may be additionally explained by reference to terminology of Article 18(4) and (5) of the Act of 21 June 2001. In this context, the Supreme Court claimed that it should not be forgotten that Article 18(4) of the Act of 21 June 2001 was considered as non-compliant, for example, with Article 64(1) of the Constitution, which protects not only the property, but also other ownership rights. It results from the justification of the judgement of 23 May 2006[62] that the Constitutional Tribunal took into account also these other rights (at least the ownership right to premises in a housing cooperative[63]), and the applied argumentation[64] is adequate also in relation to them. According to the Supreme Court, emphasising by the Tribunal in particular the necessity to compensate damage incurred by the 'owner' connected with further occupation of their premises by evicted persons and deprivation of the 'owner' of the right to dispose of the object of their 'property' and to use it assumes that in the case of eviction the owner would be entitled to use the premises or to collect civil profits, while such a right may be transferred e.g. to the user, tenant or lessee (these persons may hand over the premises for further use for a consideration). In the context of constitutional argumentation, it noticed that the compensation protection of rights of persons deriving their legal title to use the asset from the owner (Article 140 of the Polish Civil Code) is not unimportant also to the owner, as it may prevent e.g. earlier termination of a legal relationship (e.g. lease or rental) bringing them profits. Moreover, the Supreme Court referred to the fact that only the holder in good faith [65] that has not lost the possession may effectively pursue

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61 See judgements of the Constitutional Tribunal of 23 May 2006, file reference SK 51/05, OTK-A 2006, no. 5, item 58; of 11 September 2006, file reference P 14/06, OTK-A 2006, no. 8, item 102, and of 8 April 2010, file reference P 1/08, OTK-A 2010, no. 4, item 33.

62 Judgement of the Supreme Court of 23 May 2006, file reference SK 51/05.

63 See point 2.1 of the justification of this judgement of the Constitutional Tribunal.

64 See in particular points 4.2-4.3 and 5.2 of the justification of this judgement of the Constitutional Tribunal.

65 Differently in judgement of the Supreme Court of 28 May 1975, file reference III CRN 70/75, OSNC 1976, no. 7-8, item 164,

compensation for lost profits – and only if the determination of the hypothetical course of events indicates that they would obtain profits in accordance with Article 224(1) sentence 2 of the Polish Civil Code. The holder in bad faith may request compensation only to the extent in which they could request the owner to return necessary expenditure incurred, and they have lost this claim as a result of the violation of the possession. Through this prism it interpreted the thesis of resolution of 15 May 2013[66], in which it was ruled that compensation referred to in Article 18(5) of the Act of 21 June 2001 cannot be sought from the commune by the association of real property owners managing – without a legal title – the real property and building located on it.

As in Article 2(1)(2) of the Act of 21 June 2001 the legislator used the term of owner defined for the purposes of legal relationships regulated in the Act of 21 June 2001, also in Article 18(1)-(5) it is used in the meaning determined in Article 2(1)(2) of the Act of 21 June 2001, referring to the obligation relationship on the basis of which the person occupying premises was authorised to use it, especially that it is difficult to find arguments of a systemic or purpose nature which would undermine such an interpretation[67].

It is also important to refer to the issue whether the transfer by the owner on the basis of an agreement (e.g. rental agreement) made by them with a third party of the ownership right to collect profits is equal to the transfer to this third party of the right of action to pursue claims under Article 18 of the Act of 21 June 2001. In this context, the case law draws also attention to the essence of legal relationships connecting lessees of real properties on which buildings with premises belonging to communal housing resources are located with former tenants occupying such premises and persons holding derivative rights to use them after the expiry of the independent legal title of the former tenant[68]. It is concluded that the execution of a rental agreement[69] means the authorisation of the lessee to collect civil profits[70], and together with the transfer of ownership rights (rights to collect profits from the object of the property), all protection rights related to it, including the right to request compensation in the case of a violation of this entitlement by a third party's action, consisting in the use of premises despite the expiry of the legal relationship which entitled to it, are also transferred to the lessee[71]. Not only the owner of the real property, but also the entity referring to other rights to the asset, entitling it to establish obligation relationships concerning real properties and collection of profits on this account, may be the landlord. However, these relationships may cease to exist at a different time in relation to the lease agreement. Entering by another person in the place of the landlord in a valid lease relationship would

which was criticised by part of the doctrine. Compare judgement of the Supreme Court of 18 June 1999, file reference II CKN 378/98, OSNC 2000, no. 1, item 12.

66 Resolution of the Supreme Court of 15 May 2013, file reference III CZP 23/13.

67 Similarly the Supreme Court stated rightly in resolution of 8 November 2019, file reference III CZP 28/19.

68 See resolution of the Supreme Court indicated in the previous footnote.

69 See more about the rental agreement in: Z. Radwański [in:] S. Grzybowski (ed.), *Civil Law System. Contract Law – Detailed Part, op.cit.,* p. 351-374; A. Lichorowicz [in:] *Private Law System. Volume 8. Contract Law – Detailed Part, op.cit.,* p. 179-255, Z. Radwański, J. Panowicz-Lipska, *Obligations – Detailed Part,* Warsaw 2012, p. 155-163.

70 See decision of the Supreme Court of 10 August 2018, file reference III CZP 27/18, LEX no. 2531314.

71 See resolution of the Supreme Court of 8 November 2019, file reference III CZP 28/19; resolution of the Supreme Court of 5 December 2019, file reference III CZP 35/19.

require the execution of agreements for the transfer of receivables and assumption of debt[72], unless the succession resulted from the disposal of the leased asset during the lease term, regulated in Article 678(1) of the Polish Civil Code. The necessity to use both these constructions in order to cause the change of the parties to the lease agreement results from its mutual nature, which means that the landlord is both the creditor as well as the debtor of the tenant, and vice versa. However after the termination of the lease, regardless of the reason, it is difficult to speak about entering by another person into the valid legal relationship having features of a mutual agreement. If in such a situation there are outstanding receivables of the former landlord against the former tenant (and vice versa), they can be the object of transfer resulting in a change of the person entitled to obtain the benefit appropriate for the receivables transferred[73]. The person that disposes of the legal and substantive title to the asset may transfer to a third party – on the basis of the legal transaction of the transfer – the right to collect civil profits *(ius fruendi),* belonging to the triad of ownership rights (Article 140 of the Polish Civil Code).

The provision of Article 678(1) of the Polish Civil Code states that in the case of disposal of the leased asset during the lease term, the purchaser enters into the lease relationship in the place of the seller; however they may terminate the lease in compliance with statutory notice periods. This provision applies only to the disposal of an asset leased on the basis of a civil law transaction[74]. The consequence of the disposal of the lease object is only the subjective transformation, which results in entering by the purchaser in the legal relationship in the place of the seller, without change in its original content[75]. The wording of this provision, however, does not mean that in the case of the execution of an agreement regarding the rental of real properties on which buildings with premises belonging to communal housing resources are located, being the object of lease, the lessee enters into the landlord's rights resulting from lease agreements. Both the transfer of the property of the leased asset as well as the establishment on it of such a real right whose content would limit the seller's further exercise of the landlord's obligations should be considered as a disposal within the meaning of this provision. The transfer of the use of the leased asset to a third party on the basis of a relative relationship is not a disposal[76], and the contractual relationship of rental belongs to this type. Therefore, the execution of the rental agreement does not lead to the effect under Article 678(1) of the Polish Civil Code.

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72 Similarly the Supreme Court in resolution of 15 December 2017, file reference III CZP 81/17, OSNC 2018, no. 10, item 92.

73 Similarly the Supreme Court in resolution of 8 November 2019, file reference III CZP 28/19.

74 See judgement of the Supreme Court of 9 September 1966, file reference I CR 151/66, OSNCP 1967, no. 2, item 36; judgement of the Supreme Court of 19 January 1968, file reference III CRN 410/67, LEX no. 1671880.

75 See e.g. resolution of the Supreme Court of 30 September 2005, file reference III CZP 50/05, OSNC 2006, no. 3, item 40; judgement of the Supreme Court of 29 October 2010, file reference I CSK 625/09, LEX no. 688664; judgement of the Administrative Court in Warsaw of 30 October 2013, file reference VI ACa 467/13, LEX no. 1459106; S. Buczkowski [in:] J. Ignatowicz (ed.), *Polish Civil Code. Commentary*, vol. 2, Warsaw 1972, p. 1476; J. Panowicz-Lipska [in:] *Private Law System Volume 8. Contract Law – Detailed Part, op.cit.,* p. 47; A. Grzesiok-Horosz [in:] M. Załucki (ed.), *Polish Civil Code. Commentary,* Warsaw 2020, commentary to Article 678 of the Polish Civil Code, section no. 2 and literature indicated therein.

76 Similarly e.g. Z. Radwański [in:] S. Grzybowski (ed.), *Civil Law System. Volume III, part 2 - Contract Law – Detailed Part,* Wrocław 1976, p. 286; J. Panowicz-Lipska [in:] *Private Law System. Volume 8. Contract Law – Detailed Part, op.cit.,* p. 47-48; K. Pietrzykowski [in:] K. Pietrzykowski (ed.), *Polish Civil Code. Volume II. Commentary. Articles 450-1088. Introductory provisions,* Warsaw 2013, commentary to Article 678 of the Polish Civil Code, section no. 1, p. 391.

In this context, it is worth noting the resolution of the Supreme Court of 15 December 2017[77], which rightly answers the question whether a limited liability company established instead of liquidated local state company may be considered as a landlord on the basis of a rental agreement made with such a company by the commune, which e.g. covered the real property on which the residential premises being the object the lease agreement is located.

As the Supreme Court rightly stated: first of all, there is no provision which in such a situation would allow deviation from general rules concerning the change of parties to the agreement, in this case to the residential premises lease agreement. Although of course the admissibility of the change of parties to the agreement that has already been made is not excluded, neither party to this agreement has full independence in this scope in the case of mutual agreements when either party is a debtor and creditor at the same time. While the transfer of receivables may be made without the debtor's consent, the assumption of debt requires the debtor's consent. Hence, the rental agreement may not be considered as an agreement transferring the landlord's rights from the lessor to the lessee, as in this scope the tenant's consent would be necessary. Secondly, it results from Article 678 of the Polish Civil Code that ex *lege* in the case of the disposal of the lease object the tenant becomes the landlord. The rental agreement does not lead to the change of the owner, as the real property is not sold, but only leased, and therefore the owner of the lease object does not change. Thus in the case of its execution, the effect provided for in Article 678 of the Polish Civil Code will not arise. In the case of the existence of a state company, a territorial self-government unit is the owner of its assets because such an entity is not a legal entity. In the case of the liquidation of such a company, the owner does not change: the territorial self-government unit is still the owner of the assets. These arguments lose importance in relation to pursuing compensation claims on the basis of Article 18(1)-(3a) of the Act of 21 June 2001 by the lessee for the period after the expiry of the lease relationship in the case of later execution of a rental agreement due to the independent legal title resulting from the Act of 21 June 2001 and special character of the provision of Article 18.

Therefore, the position expressed in resolution of the Supreme Court of 5 December 2019[78] that also an entity which derives its rights from a rental agreement made with the owner of the premises is the owner within the meaning of Article 2(1)(2) of the Act of 21 June 2001 should be approved. The lessee's right of action to pursue compensation under Article 18(1) of the Act of 21 June 2001 does not depend on binding them earlier by a lease agreement with the tenant and covers only receivables for the term of the rental agreement. Moreover, regardless of the fact whether persons obliged to hand over the premises voluntarily left it or whether they still occupy it despite the issue of the eviction ruling, and regardless of possession or lack of possession of ruling granting them the right to social housing, the legal basis for pursuing compensation by the lessee is the same

5. Summary

[77] Resolution of the Supreme Court of 15 December 2017, file reference III CZP 81/17, OSNC 2018, no. 10, item 92.

[78] Resolution of the Supreme Court of 05 December 2019, file reference III CZP 35/19.

The article has attempted to demonstrate that liability under Article 18(1) of the Act of 21 June 2001 is of a contractual nature (both in relation to the former tenant as well as to persons deriving from them their derivative right to occupy the premises) and is realised under the rules determined in Article 471 of the Polish Civil Code in the case of a violation of the obligation to return the premises after the expiry of the legal relationship justifying its previous use. The legal relationship established under Article 18(1)-(3a) of the Act of 21 June 2001 between the owner and the person occupying premises without a legal title in the period between the issue of the decision ordering the tenant to vacate and empty the premises and its performance concerns not only the former tenant, but also these persons that as close to the tenant occupied the premises together with them in the period of the lease relationship. The above legal relationship has features similar to a lease agreement, but the Act constitutes its source. The Act of 21 June 2001 contains its own definition of owner, not corresponding to the definition from the Polish Civil Code, for the purposes of the regulation contained therein, including the regulation concerning the obligation of former tenants leasing residential premises without a legal title to pay compensation. As a consequence, it must be regarded that a person being the owner of premises within the meaning of Article 2(1)(2) of the Act of 21 June 2001 is entitled to the compensation claim provided for in Article 18 of this Act in the period to which the statement of claim pertains. As this compensation is to compensate for lack of the possibility to collect profits from the premises occupied by the former tenant and persons that moved into this premises due to tenant's decision, the person that in the period when the premises is occupied by entities obliged to vacate it has the status of the person authorised to lease the premises and to collect profits on this account (e.g. rent) is entitled to obtain it. It is either the owner not only within the meaning of Article 2(1)(2), but also within the meaning of the property law, or the person that has the status of owner within the meaning of Article 2(1)(2) of the Act of 21 June 2001 due to the legal relationship in which they remain with the owner within the meaning of the property law. Therefore, more than one person can be the owner of the premises entitled to compensation under Article 18(1)-(3) of the Act of 21 June 2001 in the period when there are grounds for its collection. Usually the owner within the meaning of the Polish Civil Code has the legal title allowing them to make with a tenant a lease agreement or another agreement authorising the use of the premises. However, it may be each person that makes a lease agreement as a landlord or transfers the premises for use on the basis of a legal title other than ownership.

Bibliography

Scientific books and articles

1. M. Bednarek, *Right to Housing in the Constitution and Legislation,* Warsaw 2007.
2. A. Bieliński, M. Pannert, *Civil Law – General Part. Property Law,* Warsaw 2018.
3. E. Bończak-Kucharczyk, *Protection of Tenant Rights and Lease of Residential Premises. Commentary,* Warsaw 2019.
4. S. Buczkowski [in:] J. Ignatowicz (ed.), *Polish Civil Code. Commentary*, volume

2, Warsaw 1972.

5. J. Chaciński, *Protection of Tenant Rights. Commentary,* Warsaw 2019.
6. W. Czachórski, A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, *Obligations. Outline of Lecture,* Warsaw 1999.
7. A. Doliwa, *Lease of premises. Commentary,* Warsaw 2010.
8. A. Doliwa, *Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code* [in:] *Housing Law. Commentary,* Warsaw 2015.
9. R. Dziczek, *Commentary to the Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code* [in:] *Protection of tenant rights. Housing allowances. Commentary. Templates of suits,* Warsaw 2020.
10. S. Garlicki, *In solidum* Liability, 'New Law' (Nowe Prawo) 1961, no. 4.
11. A. Gola, J. Suchecki [in:] A. Gola, J. Suchecki, *Lease and ownership of premises. Provisions and Commentary*, Warsaw 2000.
12. A. Grzesiok-Horosz [in:] M. Załucki (ed.), *Polish Civil Code. Commentary,* Warsaw 2020.
13. S. Grzybowski [in:] S. Grzybowski (ed.), *Civil Law System. General Part*, volume 1, Wrocław 1974.
14. K. Krzekotowska, M. Malinowska-Wójcicka, *Protection of Tenant Rights and Communal Housing Resources. Commentary,* Warsaw 2019.
15. B. Lewaszkiewicz-Petrykowska, *In solidum Obligations,* 'Legal and Economic Studies' (Studia Prawno-Ekonomiczne)1977, volume XVII.
16. A. Lichorowicz [in:] J. Panowicz-Lipska (red.), *Private Law System. Volume 8. Contract Law – Detailed Part,* Warszawa 2011.
17. E. Łętowska [in:] Z. Radwański (ed.), *Civil Law System. Contract Law – General Part,* Wrocław 1981.
18. M. Nazar, *Protection of Tenant Rights,* part I, 'Monitor Prawniczy' 2001, no.
19.
19. M. Olczyk, *Gloss to the Resolution of the Supreme Court of 21 October 2015, file reference III CZP 70/15,* 'Case Law of Polish Courts' (Orzecznictwo Sądów Polskich) 2006, no. 7-8, item 68.
20. M. Olczyk, *Legal Situation of Former Parties to the Lease Relationship in the Case of Further Occupation of the Residential Premises by the Former Tenant*, Warszawa 2015.
21. K. Pałka [in:] K. Osajda (ed.), *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code. Commentary,* Warsaw 2020.
22. K. Pałka, J. Zawadzka [in:] K. Osajda (ed.), *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code. Commentary,* Warsaw 2020.
23. J. Panowicz-Lipska [in:] J. Panowicz-Lipska (red.), *Private Law System.*

Volume 8. Contract Law – Detailed Part, Warszawa 2011.

24. K. Pietrzykowski [in:] K. Pietrzykowski (ed.), *Polish Civil Code. Volume II. Commentary. Articles 450-1088. Introductory provisions*, Warsaw 2013.
25. M. Pyziak-Szafnicka [in:] E. Łętowska (ed.), *Private Law System. Volume 5. Contract Law – General Part,* Warsaw 2006.
26. M. Pyziak-Szafnicka [in:] E. Łętowska (ed.), *Private Law System. Volume 5. Contract Law – General Part,* Warsaw 2013.
27. Z. Radwański [in:] S. Grzybowski (ed.), *Civil Law System. Volume III, part 2 - Contract Law – Detailed Part,* Wrocław 1976.
28. Z. Radwański, A. Olejniczak, *Civil Law – General Part,* Warsaw 2011.
29. Z. Radwański, A. Olejniczak, *Obligations – General Part,* Warsaw 2012.
30. Z. Radwański, J. Panowicz-Lipska, *Obligations – Detailed Part,* Warsaw 2012.
31. B. Rakoczy, *Liability for Occupying Premises without a Legal Title,* Warsaw 2011.
32. M. Safjan [in:] M. Safjan (ed.), *Private Law System. Volume I. Civil Law – General Part,* Warsaw 2012.
33. M. Sekuła-Leleno, *Right of Action of the Person Managing the Real Property. Gloss to the Resolution of the Supreme Court of 10 August 2018, III CZP 27/18,* 'Local Authority' (Samorząd Terytorialny) 2019, no. 5.
34. A. Szpunar, *On improper solidarity,* 'Legal, Economic and Sociological Movement' (Ruch Prawniczy, Ekonomiczny i Socjologiczny) 1980, no. 4.
35. A. Wolter, J. Ignatowicz, K. Stefaniuk, *Civil Law. Outline of the General Part,* Warsaw 2018.
36. K. Zawada [in:] K. Pietrzykowski (ed.), *Polish Civil Code. Volume I. Commentary. Articles 1-449[10],* Warsaw 2013.
37. K. Zdun-Załęska, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code. Commentary,* Warsaw 2014.
38. F. Zoll, M. Olczyk, M. Pecyna, *The Act on the Protection of Tenant Rights, Communal Housing Resources and Amendments to the Civil Code,* Warsaw 2002.

Case law

1. Judgement of the Supreme Court of 14 April 1961, file reference III CR 806/60, OSN 1962/III, item 101.
2. Decision of the Supreme Court of 22 July 2005, file reference III CZP 39/05, LEX no. 159117.
3. Decision of the Supreme Court of 21 June 2012, file reference III CZP 37/12, LEX no. 1217215.
4. Decision of the Supreme Court of 10 August 2018, file reference III CZP 27/18, LEX no. 2531314.

5. Resolution adopted by seven judges of the Supreme Court of 9 March 1959, file reference I CO 1/59, OSN 1959, no. 4, item 95.
6. Resolution of the Supreme Court of 15 November 1968, file reference III CZP 101/68, OSNCP 1969, no. 9, item 153.
7. Resolution adopted by seven judges of the Supreme Court – legal principle – of 6 April 1970, file reference III CZP 61/69, OSNCP 1971, no. 7-8, item 118.
8. Resolution adopted by seven judges of the Supreme Court – legal principle – of 9 March 1974, file reference III CZP 75/73, OSNCP 1974, no. 7-8, item 123.
9. Resolution of the Supreme Court of 15 November 2001, file reference III CZP 66/01, OSNC2002, no. 9, item 109.
10. Resolution of the Supreme Court of 16 April 2003, file reference III CZP 22/03, OSNC2004, no. 2, item 19.
11. Resolution adopted by seven judges of the Supreme Court of 20 May 2005, file reference III CZP 6/05, OSNC 2006, no. 1, item 1.
12. Resolution of the Supreme Court of 30 September 2005, file reference III CZP 50/05, OSNC 2006, no. 3, item 40.
13. Resolution of the Supreme Court of 7 December 2007, file reference III CZP 121/07, OSNC 2008, no. 12, item 137.
14. Resolution of the Supreme Court of 16 May 2012, file reference III CZP 12/12, OSNC 2012, no. 12, item 138.
15. Resolution of the Supreme Court of 6 December 2012, file reference III CZP 72/12, OSNC 2013, no. 6, item 71.
16. Resolution of the Supreme Court of 15 May 2013, file reference III CZP 23/13, OSNC 2013, no. 11, item 122.
17. Resolution of the Supreme Court of 3 December 2014, file reference III CZP 92/14, OSNC 2015, no. 10, item 113.
18. Resolution of the Supreme Court of 21 October 2015, file reference III CZP 70/15, OSNC 2016, no. 10, item 118.
19. Resolution of the Supreme Court of 15 December 2017, file reference III CZP 81/17, OSNC 2018, no. 10, item 92.
20. Resolution of the Supreme Court of 8 November 2019, file reference III CZP 28/19, OSNC 2020, no. 6, item 49.
21. Resolution of the Supreme Court of 5 December 2019, file reference III CZP 35/19, OSNC 2020, no. 7-8, item 57.
22. Judgement of the Administrative Court in Warsaw of 30 October 2013, file reference VI ACa 467/13, LEX no. 1459106.
23. Judgement of the Regional Court in Łódź of 20 March 2019, file reference III Ca 2014/18, LEX no. 2704081.
24. Judgement of the Supreme Court of 9 September 1966, file reference I CR 151/66, OSNCP 1967, no. 2, item 36.

25. Judgement of the Supreme Court of 5 October 1967, file reference I CR 243/67, OSP 1969, no. 3, item 62.
26. Judgement of the Supreme Court of 19 January 1968, file reference III CRN 410/67, LEX no. 1671880.
27. Judgement of the Supreme Court of 12 April 1972, file reference II CK 57/72, OSNCP 1972, no. 10, item 183.
28. Judgement of the Supreme Court of 28 May 1975, file reference III CRN 70/75, OSNC 1976, no. 7-8, item 164.
29. Judgement of the Supreme Court of 11 March 1999, file reference III CKN 198/98, OSNC 1999, no. 10, item 175.
30. Judgement of the Supreme Court of 18 June 1999, file reference II CKN 378/98, OSNC 2000, no. 1, item 12.
31. Judgement of the Supreme Court of 4 August 2005, file reference III CK 689/04, LEX no. 277067.
32. Judgement of the Supreme Court of 19 January 2006, file reference IV CK 336/05, LEX no. 178241.
33. Judgement of the Supreme Court of 19 June 2008, file reference V CSK 31/08, LEX no. 457701.
34. Judgement of the Supreme Court of 13 January 2010, file reference II CSK 323/09, LEX no. 602680.
35. Judgement of the Supreme Court of 29 October 2010, file reference I CSK 625/09, LEX no. 688664.
36. Judgement of the Supreme Court of 18 May 2012, file reference IV CSK 490/11, LEX no. 1243072.
37. Judgement of the Supreme Court of 9 November 2012, file reference IV CSK 303/12, LEX no. 1225407.
38. Judgement of the Supreme Court of 18 April 2013, file reference III CSK 229/12, LEX no. 1353198.
39. Judgement of the Supreme Court of 7 March 2014, file reference IV CNP 33/13, LEX no. 1438649.
40. Judgement of the Supreme Court of 28 March 2014, file reference III CSK 156/13, LEX no. 1489247.
41. Judgement of the Supreme Court of 23 September 2016, file reference II CSK 747/15, LEX no. 2174069.
42. Judgement of the Supreme Court of 25 April 2018, file reference III CA 1/18, LEX no. 2508080.
43. Judgement of the Constitutional Tribunal of 23 May 2006, file reference SK51/05, OTK-A2006, no. 5, item 58.
44. Judgement of the Constitutional Tribunal of 11 September 2006, file reference P 14/06, OTK-A2006, no. 8, item 102.

45. Judgement of the Constitutional Tribunal of 8 April 2010, file reference P 1/08, OTK-A2010, no. 4, item 33.