

Conclusions of the summary report on the termination of co-ownership

On 16 January 2015, the President of the Curia decided to set up a jurisprudence-analysing working group on the courts' case-law related to the termination of co-ownership on the basis of the 1959 Civil Code and the new Civil Code that entered into force on 15 March 2014.

The jurisprudence-analysing working group conducted its investigation by examining the answers given to a questionnaire that had been drafted on the basis of the propositions of the high courts and regional appellate courts. The main findings of the summary report are as follows:

- In case of the joinder of a large number of parties, the court should be entitled to proceed with hearing the case without returning the claim to the plaintiff for remedying the claim's deficiencies if the claim's objective is to settle the internal relationship of the parties concerned and if it can be concluded that the remainder of the co-owners would not be affected by the proceedings. However, the court should terminate its proceedings in the event that, despite the court's order, the plaintiff fails to extend his claim to all the co-owners whose rights and/or obligations may be affected by the outcome of the court's proceedings [section 130, subsection (1), point g) of the Code of Civil Procedure, section 157, point a) of the Code of Civil Procedure].
- In legal actions for the termination of co-ownership, the principle of the prohibition of going beyond the limits of the action brought by the plaintiff should not apply, therefore the court has to examine *ex officio* all the methods of termination in the order specified by the law.
- With regard to the fact that the primary method of termination of co-ownership is the division of the objects of co-ownership in kind, the reasoning part of the court's judgement has to indicate what were the reasons behind not examining the possibility of the division in kind in substance and disregarding its application. Failure by the courts to provide appropriate justification in that regard should not be acceptable.
- It is not tenable that the courts fail to clearly define the title of the right of use of the former co-owner who is entitled to stay in the previously co-owned real estate after the termination of co-ownership, as the courts' failure may lead to further disputes between the former co-owner or auction buyer who purchased the whole real estate and the other former co-owner who is entitled to continue to use the real estate.
- As regards the settling of the depreciation in value of the real estate due to the residency of minor child(ren), the appropriate judicial practice would be to take the difference between the vacant and occupied value of the real estate as the basis for calculating the value of the right to housing of the minor child(ren).
- In the overwhelming majority of cases, the courts determine only one method of termination of co-ownership in their judgements.
- The jurisprudence-analysing working group, however, is of the opinion that judgements containing two or more methods of termination in an alternative manner could also be acceptable with regard to reasons of expediency and economy of procedure.
- A legal action for the termination of co-ownership may be rejected by the court particularly if the plaintiff, as one of the co-owners, abuses his right to request the termination of co-ownership or if the co-ownership would be terminated via one of the methods listed in the Civil Code at an inopportune date.
- If, in the proceedings for the termination of co-ownership, the plaintiff alleges that the co-owners' ownership shares have changed without their registration in the land and property registry, the court is not obliged to deliver a partial judgement to establish whether the ownership shares have truly changed.
- The market value of the co-owned real estate at the time of the delivery of judgement is taken as the basis for calculating the real estate's value by the court in the proceedings for the termination of co-ownership. In the absence of the parties' concurring statements, the market value is established by way of taking of expert evidence. The value of the subject matter of the proceedings has to be related to the real market value of the co-owned real estate.
- It is suggested for the future that the parties be obliged to pay for their costs occurred independently of court proceedings in proportion to their ownership share, while be obliged to pay for their costs occurred in the proceedings in proportion to their degree of success defined by the court's judgement.

At its meeting on 4 April 2016, the Civil Department of the Curia discussed and approved the above summary report.