

<https://doi.org/10.22364/jull.16.13>

## Regulation on Terminating Joint Ownership and Reform Thereof in Latvia

*Dr. iur.* **Erlens Kalniņš**

Faculty of Law, University of Latvia  
 Docent at the Department of Civil Law Sciences  
 E-mail: [erlens.kalnins@lu.lv](mailto:erlens.kalnins@lu.lv)

On 1 May 2022, amendments to Section 1074 and 1075 of the Civil Law entered into force, reforming the basic regulation on terminating joint ownership in Latvia. The current article provides a focussed overview of the previous regulation on terminating joint ownership and the case law, as well as considers the causes, aims and achieved outcomes of the reform implemented by the legislator, providing, to the extent possible, comparison with the Austrian, Swiss and German basic regulation on terminating joint ownership. Due to the limited scope of the article, the new regulation of Section 1074<sup>1</sup> of the Civil Law on excluding one joint owner from joint ownership is not examined; moreover, in practice this outcome can be achieved also by applying the new solutions for terminating joint ownership, set out in Section 1075 of the Civil Law.

**Keywords:** termination of joint ownership, types of division, partial termination of joint ownership, division of built-up immovable property into apartment properties.

### Contents

<i>Introduction</i> . . . . .	213
1. <i>Previous regulation and case law</i> . . . . .	214
1.1. <i>Right to request termination of joint ownership</i> . . . . .	214
1.2. <i>Restrictions on division</i> . . . . .	215
1.3. <i>Terminating joint ownership through court</i> . . . . .	215
a) <i>Types of division and the court's jurisdiction</i> . . . . .	216
b) <i>Actual division of jointly owned property</i> . . . . .	217
c) <i>Adjudging the whole jointly owned property to one joint owner</i> . . . . .	217
d) <i>Auctioning the whole jointly owned property</i> . . . . .	218
2. <i>New regulation</i> . . . . .	218
2.1. <i>Causes and aim of the reform</i> . . . . .	218
a) <i>Law-making instead of law development</i> . . . . .	218
b) <i>Substance and aim of the new regulation</i> . . . . .	219
2.2. <i>New restriction on division</i> . . . . .	220
2.3. <i>New types of division</i> . . . . .	220
a) <i>Transferring the whole jointly owned property to several joint owners</i> . . . . .	221
b) <i>Transferring a share to one or several joint owners</i> . . . . .	221
c) <i>Auctioning a share</i> . . . . .	222
d) <i>Dividing the jointly owned property into apartment properties</i> . . . . .	222

Summary . . . . .	223
References . . . . .	224
Bibliography . . . . .	224
Normative acts . . . . .	224
Case law . . . . .	224
Other sources . . . . .	225

## Introduction

On 1 May 2022, the law of 3 February 2022 “Amendments to the Civil Law” (hereafter – the Amendments) entered into force, reforming the basic regulation on terminating divided joint ownership, included in Section 1074 and 1075 of the Civil Law (hereafter – CL).

The need to reform the regulation on terminating joint ownership was foregrounded by the practice of some businessmen, becoming more widespread over recent years, of purchasing residential buildings or undivided shares of apartment property at compulsory auctions in order to submit, soon afterwards, with the aim of gaining profit, a claim to court regarding termination of joint ownership, requesting the court to auction the whole immovable property and divide the received moneys among joint owners, thus creating serious risk for the other joint owners of losing their previous and, often, the only home.

Moreover, the Supreme Court (the Senate) already by its ancillary decision in case No. SKC-259/2019 (C04169414) informed the Latvian legislator about the incompatibility of CL Section 1075 with the contemporary circumstances, by not conceiving the forms of terminating joint ownership consistent with them. The Senate also noted that the regulation of CL Section 1075 regarding the forms of terminating joint ownership should be revised and improved consistently with the current situation, envisaging, *inter alia*, division of a multi-apartment building into apartment properties as one of the forms of terminating joint ownership.<sup>1</sup>

To clearly characterise the outcomes of the reform implemented by the Amendments, the first part of the article will focus on the previous regulation concerning termination of joint ownership and the practice of its application. The second part of the article, in turn, will examine the new regulation, included in CL Section 1074 and 1075, analysing, insofar possible, the most important innovations and providing legal assessment thereof.

Due to the limited length of the article, the new regulation of CL Section 1074<sup>1</sup> regarding the exclusion of a joint owner (referred to as a “disloyal joint owner”) from joint ownership due to their illegal actions will not be examined. Furthermore, in practice, this outcome could also be achieved by applying the new solutions for terminating joint ownership, as set out in CL Section 1075. That is, in case of a joint ownership termination dispute, by adjudicating the share of the “disloyal joint owner” to one or several other joint owners (see para. 2 of CL Section 1075 (1)), or by deciding to sell the share of the “disloyal joint owner” at an auction (see para. 3 of CL Section 1075).

<sup>1</sup> The Senate’s Ancillary Decision of 17.12.2019 in case No. SKC-259/2019 (C04169414), paras 9–10.

## 1. Previous regulation and case law

### 1.1. Right to request termination of joint ownership

CL Section 1074 provides that “none of the joint owners may be forced to remain in jointly owned property, provided that it is not provided otherwise in the provisions under which the joint ownership is established”, therefore “each joint owner may at any time require a division”. I.e., in accordance with the general principle, each joint owner has the right to require, at any time and without any special pre-conditions setting in, division or termination of joint ownership.

The reciprocal right of joint owners, set out in CL Section 1074, to require termination of jointly owned property, is a claim of constitutive nature, inseparably linked to the undivided shares owned by the respective joint owner. Since the said claim can be exercised “at any time”, it is not subject to prescription.<sup>2</sup> Moreover, the fact that the joint property had been in divided use, determined by an agreement between the joint owners or by a court’s judgement (see CL Section 1070 (1)), *per se* does not affect the right of each joint owner to require termination of joint ownership at any time.<sup>3</sup>

Termination of joint ownership may be voluntary, i.e., by joint owners concluding an agreement on division. However, if the joint owners are unable to agree on termination of joint ownership or specific type of division, the dispute must be resolved in court through claims procedure, on the basis of a claim, brought by one or several joint owners, aimed at terminating the joint ownership and determining the specific type of division by a court’s decision (see CL Section 1075).<sup>4</sup>

Upon concluding an agreement on division, joint owners may freely choose a specific type of division, *inter alia*, agree on partial termination of the joint ownership, e.g., one joint owner leaving the joint ownership for commensurate monetary compensation, retaining the joint ownership relations among the remaining joint owners.

As regards termination of joint ownership through judicial proceedings, CL Section 1074 (in the wording that was in force until 30.04.2022) did not envisage the court’s jurisdiction to terminate joint ownership only partially. Therefore, in the case of a dispute, joint owners had to take into consideration that, pursuant to the general principle, the court could choose only one of the ways for terminating joint ownership, listed exhaustively in CL Section 1075.<sup>5</sup> Thus, for example, the court did not have the jurisdiction to satisfy, by its judgement, a claim, whereby three joint owners had requested “excluding” from joint ownership the fourth joint owner (for commensurate monetary compensation), retaining the joint ownership relations among the claimants.<sup>6</sup>

It should be noted that, in exceptional cases, the Senate, in its previous case law, has approved of such type of division, as the result of which the joint ownership was only partially terminated, actually dividing the built-up immoveable property

<sup>2</sup> Grūtups, A., Kalniņš, E. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums*. 2. izd. [Commentaries on the Civil Law. Part Three. Rights *in Rem*. Property. 2<sup>nd</sup> ed.]. Rīga: Tiesu namu aģentūra, 2002, p. 275; Senāta 25.02.2009. spriedums lietā Nr. SKC-54/2009 (C28210405), para. 10.3.

<sup>3</sup> The Senate’s Judgement of 03.02.2022 in case No. SKC-53/2022 (C33327619), para. 9.3.

<sup>4</sup> Grūtups, A., Kalniņš, E. *Civillikuma komentāri*, p. 277; The Senate’s Judgement of 22.04.2020 in case No. SKC-120/2020 (C17096215), para. 10.3.

<sup>5</sup> The Senate’s Judgement of 05.12.2007 in case No. SPC-60/2007, reasoned part.

<sup>6</sup> Augstākās tiesas tiesu prakses apkopojums “Kopīpašums” [Digest of the Supreme Court’s Case Law “Joint Ownership”]. Rīga, 2011, pp. 17, 30–31.

into two shares, one of which remained in the joint ownership of two joint owners, whereas the second one was transferred into individual ownership of the third joint owner, concluding that, in the special circumstances of the particular case, such a solution was not contrary to the meaning of CL Section 1075.<sup>7</sup>

Pursuant to CL Section 1075 (in the wording that was in force until 30.04.2022), division of a jointly owned residential building into apartment properties (see Section 6 of Law on Residential Properties) was not considered to be “dividing” in the meaning of CL Section 1074.<sup>8</sup> Hence, the court did not have the jurisdiction to resolve disputes among joint owners regarding termination of joint ownership, by deciding to divide such a building into several apartment properties.<sup>9</sup>

## 1.2. Restrictions on division

Pursuant to CL Section 1074, the right to request termination of joint ownership may be denied or otherwise restricted; moreover, such a restriction on division may follow not only from the legal transaction (e.g., testament, joint owners’ agreement) or law (see Section 4 (2) of the Law on Residential Properties), but also from the principle of good faith, enshrined in CL Section 1.

Thus, for example, it has been recognised in the previous case law that such joint owner of apartment property (merchant) had acted contrary to good faith who, already two months after acquiring 1/3 of the undivided shares at an auction, with the purpose of gaining profit, had required termination of the joint ownership and auctioning of the joint apartment property, thereby trying to oust from the joint ownership two other joint owners (natural persons), whose valid interests to continue the joint ownership relation and not to lose their sole home – compared to the claimant’s interests, in the special circumstances of the particular case, had to be recognised as being more important and deserving greater protection,<sup>10</sup> as the result of which the totality of circumstances is the grounds for dismissing the claim regarding termination of joint ownership, brought by the claimant.<sup>11</sup>

## 1.3. Terminating joint ownership through court

In the case of a dispute, each of the joint owners has the right to bring a claim against all the other joint owners<sup>12</sup> regarding termination of joint ownership to achieve, thus, termination of joint ownership through court.

The claim regarding termination of joint ownership is “a double-sided claim” (*actio duplex*), i.e., its goal is a positive solution to the issue of division. This means, firstly, that, in accordance with the general principle, the adjudication of this claim may not end with a dismissal of the claim. Unless a restriction on division exists, the court must positively resolve the dispute among the joint owners regarding termination of the joint ownership and should rule, in the interests of all the joint owners, on satisfying (fully or partially) the claim that has been brought.<sup>13</sup> Secondly, in legal

<sup>7</sup> Augstākās tiesas tiesu prakses apkopojums “Kopīpašums” [Digest of the Supreme Court’s Case Law “Joint Ownership”]. Rīga, 2011, pp. 5–9, 31.

<sup>8</sup> *Grūtups, A., Kalniņš, E. Civillikuma komentāri*, p. 275; The Senate’s Judgement of 17.12.2019 in case No. SKC-259/2019 (C04169414), para. 7.5.

<sup>9</sup> E.g.: Judgement by the Department of Civil Cases of the Supreme Court of 20.06.2016 in case No. C31187908, para. 13.5.

<sup>10</sup> The Senate’s Judgement of 16.12.2020 in case No. SKC-231/2020 (C30501917), para. 6.2.

<sup>11</sup> Judgement by the Riga Regional Court of 14.10.2021 in case No. C30501917, para. 12.

<sup>12</sup> *Rozenfelds, J. Lietu tiesības [Rights in Rem]*. 4. izd. Rīga: Zvaigzne ABC, 2011, p. 56.

<sup>13</sup> *Grūtups, A., Kalniņš, E. Civillikuma komentāri*, p. 277; The Senate’s Judgement of 08.06.2021 in case No. SKC-542/2021 (C30434016), para. 10.2.

proceedings, the legal status of all participants in the civil case (parties) substantially is equal, although procedurally the party bringing the claim acts as the claimant, while all the other joint owners appear as defendants. Therefore, the court may rule (enforce) on execution in favour of the other party not only from the defendant but also from the claimant themselves, and, in this regard, it is not required that the defendant should bring a respective counter-claim.<sup>14</sup>

### a) Types of division and the court's jurisdiction

In adjudicating a dispute regarding termination of joint ownership, in principle, a court may choose only one of the types of division, listed exhaustively in CL Section 1075<sup>15</sup>, and it is not authorised to apply a type of division not envisaged in this provision.<sup>16</sup>

I.e., pursuant to CL Section 1075 (in the wording that was in force until 30.04.2022), a court could terminate joint ownership by determining one of the three following types of division: (1) actual division of the joint property and adjudging to each of the joint owners actual shares in ownership, (2) transferring the whole joint property (adjudging) to one of the joint owners in individual ownership with their duty to pay to the others for their shares in money, or (3) auctioning the joint property and dividing the moneys received among the joint owners according to their undivided shares.

It should be noted for comparison that, e.g., the basic regulation on terminating joint ownership in Austria,<sup>17</sup> Switzerland<sup>18</sup> and Germany<sup>19</sup> does not even envisage the court's jurisdiction, in case of a dispute, for transferring the whole joint property to one of the joint owners with their duty to pay to the others for their shares in money,<sup>20</sup> because a court has the jurisdiction to decide either on (1) actual division of the joint property (division in kind) or else (2) auctioning it (civil division).

As recognised in the Senate's judicature, CL Section 1075 authorises the court to choose, at its own discretion, the type of division, which, considering all facts of the case, is the most appropriate and just.<sup>21</sup> In this respect, the court, firstly, "shall decide on the matter in accordance with a sense of justice and the general principles of law" (see CL Section 5). Secondly, in choosing a particular type of division pursuant to CL Section 1075, the court must consider, in particular, "the characteristics of the subject-matter to be divided and the circumstances regarding the property".

At the same time, the authorisation included in CL Section 1075 does not grant to the court the possibility to choose one or another type of division arbitrarily, at

<sup>14</sup> Grūtups, A., Kalniņš, E. *Civillikumā komentāri*, pp. 277–278; The Senate's Judgement of 22.04.2020 in case No. SKC-120/2020 (C17096215), para. 10.3.

<sup>15</sup> The Senate's Judgement of 17.12.2019 in case No. SKC-259/2019 (C04169414), para. 7.5.

<sup>16</sup> The Senate's Judgement of 05.12.2007 in case No. SPC-60/2007, reasoned part.

<sup>17</sup> The Civil Code of Austria (*Allgemeines bürgerliches Gesetzbuch*), paras 842 and 843.

<sup>18</sup> The Civil Code of Switzerland (*Zivilgesetzbuch*), para. 651.

<sup>19</sup> The Civil Code of Germany (*Bürgerliches Gesetzbuch*), paras 752 and 753.

<sup>20</sup> In the Swiss Law, this type of division is envisaged only in the special norms, which regulate, e.g., termination of spouses' jointly owned property or termination of joint ownership of a pet (see the 2<sup>nd</sup> part of para 205, para. 271, para. 651.a of the Civil Code of Switzerland).

<sup>21</sup> The Senate's Judgement of 28.10.2016 in case No. SKC-415/2016 (C04224109), para. 10; The Senate's Judgement of 15.02.2018 in case No. SKC-73/2018 (C17073413), para. 9; The Senate's Judgement of 03.02.2022 in case No. SKC-53/2022 (C33327619), para. 9.1.

its subjective discretion. The court's choice should be objectively substantiated, have sufficiently convincing motivation and comply with the requirements of justice.<sup>22</sup>

### **b) Actual division of jointly owned property**

Legal divisibility of the joint property is the pre-condition for actual division (see CL Section 847); moreover, the actual shares, determined through division, as to their value, in principle, should correspond to an owner's undivided shares. Since such division is not always feasible in practice, division of the joint immovable property into such shares that do not coincide precisely with the undivided shares of the joint owners is also admissible, simultaneously collecting from the acquirer of the largest share commensurate monetary remuneration in favour of the joint owner receiving a smaller actual share in terms of value.<sup>23</sup>

In deciding on actual division, the court should take into consideration, which of the joint owners has a more valid interest to receive one or another actual share, in particular, if the joint owners have determined a divided use of the joint immovable property and each of them is already separately using a particular area of the immovable property (see CL Section 1070 (1)).<sup>24</sup>

If the actual division of the immovable property does not ensure an appropriate totally independent use of one share to be partitioned, the court, simultaneously with determining the actual division, may also establish a coercive servitude, required for such use (see CL Section 1075), for example, a road servitude to ensure access to one plot of land, to be actually partitioned, from a public road or street, which crosses the other land plot to be separated.

### **c) Adjudging the whole jointly owned property to one joint owner**

Pursuant to CL Section 1075 (in the wording that was in force until 30.04.2022), the court had the jurisdiction to adjudge the whole joint property to one joint owner, simultaneously collecting from them monetary remuneration for the undivided shares of other joint owners not only when the property was not actually divisible, but also in other cases when, pursuant to the circumstances of the case, this type of division, compared to actual division of the joint property or its auctioning, was preferable (e.g., the undivided share of one joint owner is much larger compared to the undivided share of the other joint owner).<sup>25</sup>

Joint property should be adjudged to that joint owner who has expressed the wish to keep the whole property with the duty to pay their share in moneys to the other joint owners. If several joint owners have expressed this wish, the court must consider which of the said joint owners has a more valid interest to receive the whole property. If the interests of both or several joint owners in keeping the whole joint property are equally valid, the court may resolve the said matter by resorting to drawing of lots, referred to in CL Section 1075, as "a desperate measure".

In determining the amount of remuneration to be collected, the court should use as the basis the market value of the joint property at the time when the civil case

<sup>22</sup> Kalniņš, E. *Laulāto manta laulāto likumiskajās mantiskajās attiecībās* [Spouses' Property in Legal Property Relations]. Rīga: Tiesu namu aģentūra, 2010, p. 300.

<sup>23</sup> The Senate's Judgement of 21.02.2019 in case No. SKC-33/2019 (C19046014), para. 9.2.

<sup>24</sup> Grūtups, A., Kalniņš, E. *Civillikuma komentāri*, p. 279.

<sup>25</sup> The Senate's Judgement of 14.05.2013 in case No. SKC-173/2013 (C04220405), para. 7.

regarding termination of the joint property is examined on its merits.<sup>26</sup> Moreover, the amount of remuneration that the other joint owners are entitled to should be determined in accordance with the size of their undivided shares, i.e., as the share of the value of the entire joint property proportionate to the undivided share of the particular joint owner.<sup>27</sup>

#### **d) Auctioning the whole jointly owned property**

Considering the characteristics of the property to be divided and the circumstances regarding the property, the court, pursuant to CL Section 1075 (in the wording that was in force until 30.04.2022), could also choose as the most suitable and just type of division auctioning the whole property, dividing the moneys gained from the sale between the joint owners, in accordance with their undivided shares.

As recognised in the previous case law, the reason for deciding on auctioning of the joint immovable property may be, e.g., the fact that the undivided shares of all the joint owners are encumbered by mortgages and none of the joint owners has expressed the wish to keep the whole joint property, or to divide it into actual shares.<sup>28</sup> Whereas if, e.g., the jointly owned house (which is not actually divisible) has been the sole permanent place of residence for one joint owner for more than 30 years, but two other joint owners had stayed in this house periodically and do not want to keep it as “estate left by the parents”, the most appropriate and just type of division is not auctioning the jointly owned house but adjudging it to the first joint owner who, by bringing a counter claim, has expressed the wish to keep the whole house with the duty to pay out to the other joint owners their shares in moneys.<sup>29</sup>

## **2. New regulation**

### **2.1. Causes and aim of the reform**

As confirmed by the recent Latvian case law, the previous basic regulation on terminating joint ownership (see CL Section 1074 and 1075), intended for “standard situations”, not always turned out to be suitable for adjudicating fairly and, most importantly, positively a dispute regarding termination of joint ownership in such situations where special circumstances were found, *inter alia*, incompatibility of the actions by the joint owner requiring division with good faith (see CL Section 1).

#### **a) Law-making instead of law development**

Likewise, the application of the provisions of CL Section 1074 and 1075 in conjunction with the principle of good faith, enshrined in CL Section 1, in the previous case law, basically, has not led to positive resolution of the dispute regarding termination of joint ownership (e.g., by a court’s judgement terminating the joint ownership only partially and excluding from it the joint owner who had

<sup>26</sup> The Senate’s Judgement of 14.05.2013 in case No. SKC-173/2013 (C04220405), para. 8; The Senate’s Judgement of 15.11.2017 in case No. SKC-263/2017 (C04205509), para. 9; The Senate’s Judgement of 02.12.2021 in case No. SKC-84/2021 (C04306814), para. 7.1.

<sup>27</sup> The Senate’s Judgement of 30.03.2017 in case No. SKC-105/2017 (C04344910), para. 12.3; Judgement by the Riga Regional Court of 13.09.2017 in case No. C04344910, paras 15–17.

<sup>28</sup> The Senate’s Judgement of 16.01.2020 in case No. SKC-36/2020 (C04148214), paras 1, 3, 4.

<sup>29</sup> The Senate’s Judgement of 15.02.2018 in case No. SKC-73/2018 (C17073413), para. 10; Judgement by the Riga Regional Court of 08.04.2019 in case No. C17073413, para. 9.4.

acted contrary to good faith) but to dismissal of the claim brought by the dishonest joint owner.<sup>30</sup>

Moreover, the possibility for the court, by applying CL Section 1, to depart from the regulation of CL Section 1075 and by its judgement divide the jointly owned residential building into apartment properties, if this building is not actually divisible, but can be divided into apartment properties and if, in the special circumstances of the particular case, the application of two other types of division, envisaged in CL Section 1075, would lead to an obviously unfair result (e.g., in a situation where one of the joint owners, acting contrary to good faith, has required termination of the joint ownership and auctioning the jointly owned residential building, as a result of which the other joint owners might lose their sole home)<sup>31</sup> has not been accepted in the previous case law.

Hence, the Latvian legislator has decided to reform the regulation on terminating joint ownership through legislation, i.e., by the Amendments, firstly, by expanding the court's jurisdiction and introducing several new types of division.

### **b) Substance and aim of the new regulation**

In reforming the regulation on terminating joint ownership, firstly, CL Section 1075 has been expressed in new wording, significantly expanding the court's jurisdiction and introducing several new types of division, in the case of application whereof the joint ownership relations are not terminated completely, i.e., these relations are either retained among those joint owners who do not wish to terminate joint ownership (see para. 2 and para. 3 of CL Section 1075 (1)), or are transformed into "qualified" joint ownership relations or relations between apartment owners (see para. 5 of CL Section 1075 (1)).

Secondly, a second part has been added to CL Section 1074, which sets out a new legal restriction on division. I.e., if the joint property is "immovable property, containing a building with residential premises", then a joint owner who has acquired an undivided share through legal transaction "may request division of the joint ownership no sooner than five years after corroboration of the title to property in the Land Register, and only if there is an important reason for that."

Thirdly, a new section, Section 1074<sup>1</sup>, has been added to CL, which regulates the exclusion from joint ownership a joint owner who "by exercising their rights in bad faith or by not fulfilling the duties as an honest and careful manager causes to the other joint owners or to third persons significant harm" (as noted in the introduction to this article, this new regulation will not be examined here).

The main reason why a new legal restriction on division (see CL Section 1074 (2)), as well as several new types of division (see paras 2, 3 and 5 of CL Section 1075 (1)) were added to the regulation on terminating joint ownership is, of course, the practice, referred to in the introduction to this article, which has become more widespread over recent years.

Thus, the jurisdiction, granted to the court, to divide the joint immovable property into apartment properties (see para. 5 of CL Section 1075 (1)) is, first of all, intended for the protection of the rights and valid interests of the joint owners of multi-apartment buildings against such dishonest actions by one or several joint

<sup>30</sup> E.g.: The Senate's Judgement of 14.01.2004 in case No. SKC-5/2004, reasoned part; The Senate's Judgement of 16.12.2020 in case No. SKC-231/2020 (C30501917), paras 2, 6.3; Judgement by the Riga Regional Court of 14.10.2021 in case No. C30501917, para. 12.

<sup>31</sup> The Senate's Judgement of 17.12.2019 in case No. SKC-259/2019 (C04169414), paras 3.3, 7.4, 7.5.



owners who request termination of joint ownership with the aim of gaining profit and ignoring the valid and protected interests of the other joint owners. However, the basic aim for introducing the other new types of division is the same because, *inter alia*, also the joint owners of such immovable property, where the building belonging to it cannot be either legally or actually divided into apartment properties, can end up in a similar situation.

Moreover, the new types of division, set out in CL Section 1075, may prove to be the most suitable solutions also in cases where the joint owner who has requested termination of the joint ownership has not acted contrary to good faith.

## 2.2. New restriction on division

Pursuant to CL Section 1074 (2), a joint owner who, through a legal transaction, has acquired an undivided share of “immovable property containing a building with residential premises” has the right to request through court termination of the joint ownership no sooner than within five years after acquisition of the undivided share and only if they have “serious reason” (this provision does not restrict the possibility for the new joint owner to terminate the joint ownership by reaching an agreement thereof with the other joint owners).

Notwithstanding the proportionality assessment, included in the Justification for the Amendments,<sup>32</sup> a reasonable legal justification cannot be found in it as to why the new joint owner has been denied the possibility to request through court at least the division of the jointly owned immovable property into apartment properties (see para. 5 of CL Section 1075 (1)). Of course, in cases where the other joint owners totally ignore or unfoundedly dismiss the proposal of the new joint owner to agree on dividing the joint immovable property into apartment properties, such action by the other joint owners could possibly be qualified as “a serious reason” in the meaning of CL Section 1074 (2). However, a much more foreseeable solution that would also decrease the possible legal risks for the new joint owner in the case law would be, e.g., application of teleological reduction, with the court narrowing the scope of application for CL Section 1074 (2) and, as an exception, not applying the restriction on division envisaged therein to a case, where the joint owners are unable to reach an agreement on dividing the joint immovable property into apartment properties, or a specific version of such division.

## 2.3. New types of division

Amendments to CL Section 1075 have significantly expanded the court’s jurisdiction, by introducing, in addition to the three existing types of division, four new types. Moreover, the new regulation grants to the court the jurisdiction to terminate the joint ownership fully or partially, simultaneously applying or combining several of the types of division, exhaustively enumerated in CL Section 1075.

Thus, firstly, alongside (1) actual division of the whole jointly owned property, (2) transferring the whole jointly owned property to one joint owner, or (3) auctioning the whole jointly owned property, CLS Section 1075 provides also for the court’s jurisdiction (4) “to transfer the whole property to several joint owners with the duty to compensate for the share in moneys”, (5) “to transfer a share to one or several joint owners with the duty to compensate for the share in moneys”, or (6) to rule on

<sup>32</sup> Likumprojekta Nr. 906/Lp13 “Grozījumi Civillikumā” anotācija [Annotation to the Draft Law No. 906/Lp13 “Amendments to the Civil Law”]. Available: <http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/123C10880FD85CA5C2258663003A0CEF?OpenDocument#B> [last viewed 11.04.2023].

“selling a share” (see paras 2 and 3 of CL Section 1075 (1)), as well as the possibility (7) to decide to “divide into apartment properties immovable property containing a building with residential premises” (see para. 5 of CL Section 1075 (1)). Thus, similarly to the Austrian law,<sup>33</sup> now, in Latvia, a division of built-up immovable property into apartment properties is envisaged as one of the types of division.

Secondly, a provision has been added to CL Section 1075, providing that, insofar possible, selling of the undivided share should be considered instead of selling the whole jointly owned property (see CL Section 1075 (3)). Whereas such immovable property, which contains a building with residential premises, should be divided, to the extent possible, into apartment properties (the 1<sup>st</sup> sentence of CL Section 1075 (2)), not excluding the possibility for the court to determine another type of division, more appropriate for the joint owners’ interests or more suitable otherwise (see the 2<sup>nd</sup> sentence of CL Section 1075 (2)).

It needs to be added that, with the new wording of CL Section 1075, the majority of findings expressed in the previous legal doctrine and case law in relation to termination of joint ownership has not lost its relevance.

At the same time, of course, it should be taken into account that the previous wording of CL Section 1075 did not envisage the court’s jurisdiction to terminate the joint ownership only partially; i.e., this norm provided only for the court’s possibility to choose one of the three types of division, listed exhaustively in CL Section 1075; moreover, division of immovable property into apartment properties was not considered as being a “division” in the meaning of CL Section 1074.

#### **a) Transferring the whole jointly owned property to several joint owners**

In difference to the previous regulation, which authorised the court to choose as the most appropriate and just type of division the transferring of the whole property to only one joint owner, the new regulation of CL Section 1075 envisages the possibility for a court also to rule on “transferring the whole property to several joint owners with the duty to compensate for the share in moneys (see para. 2 of CL Section 1075 (1)).

This type of division is a very appropriate solution if, e.g., two of the four joint owners want to keep the joint property in joint ownership, whereas the other two want to exit the joint ownership, receiving for it a commensurate monetary compensation but the joint owners are unable to agree on the amount of compensation to be disbursed to the two other joint owners, which has led to the first two joint owners, as co-claimants, bringing a claim in court on terminating the joint ownership.

#### **b) Transferring a share to one or several joint owners**

In difference to the previous regulation, which authorised the court to choose as the most appropriate and fair type of division the auctioning of the whole property, i.e., the undivided shares of all other joint owners, to only one joint owner, the new regulation of CL Section 1075 provides also a possibility for the court to rule on “transferring a share to one or several joint owners with the duty to compensate for the share in moneys” (see para. 2 of CL Section 1075 (1)).

The court may decide on this type of division not only when, e.g., the claimant has requested the court to transfer (adjudge) their undivided share to other joint owners, collecting from them monetary compensation, but also if, for example, the claimant has requested the court to adjudge to them the undivided shares of one or several

<sup>33</sup> Item 3 of para. 3 of the Austrian Law on Apartment Property (*Wohnungseigentumsgesetz*).

joint owners, simultaneously collecting from the claimant a monetary compensation in favour of these joint owners.

### **c) Auctioning a share**

In difference to the previous regulation, which authorised the court to choose as the most appropriate and just type of division selling the whole property at an auction, the new regulation of CL Section 1075 provides a possibility for the court to rule on “selling a share” at an auction (see para. 3 of CL Section 1075). Moreover, pursuant to the general principle, selling of an undivided share takes the priority over selling the whole property (see CL 1075 (3)).

It is underscored in the Substantiation of the Amendments<sup>34</sup> that a joint owner does not have the right to request through court an auctioning of an undivided share of another joint owner, because such a claim “would be incompatible with the meaning and purpose of CL Section 1074 and 1075”. Whereas the court, in adjudicating disputes regarding termination of joint ownership, has the jurisdiction to choose, in its fair discretion, the aforementioned type of division and thus, “exclude” one of the joint owners from the joint ownership if, in the circumstances of the particular case, this is the most appropriate and just solution.

This, in particular, applies to situations where the joint owner requesting the division has acted contrary to good faith. I.e., in difference to the previous case law, pursuant to which the attempts of one joint owner to exercise the right, envisaged in CL Section 1074, contrary to good faith led, basically, to the dismissal of the claim brought by them (not to positive adjudication of the dispute regarding termination of joint ownership), in such a situation, the new regulation gives the court the opportunity to satisfy partially the claim brought by the dishonest joint owner, by ruling on partial termination of the joint ownership and auctioning the share of the dishonest joint owner.

### **d) Dividing the jointly owned property into apartment properties**

The most significant innovation is the type of division, envisaged in para. 5 of CL Section 1075 (1), i.e., division of built-up immovable property into apartment property. This type of division has certain similarities to the division of immovable property into actual shares; therefore, several basic rules of the actual division are applicable also to the division into apartment properties.

Since the precondition for the division, envisaged in para. 5 of CL Section 1075 (1), is the possibility to divide the jointly owned immovable property into separate apartment properties, this type of division, in principle, is applicable only to such immovable property, which contains a multi-apartment building, i.e., a residential building that contains more than one apartment (see Section 2 (1), Section 3 (1) and Section 6 of the Law on Residential Properties).

Pursuant to the general principle, the apartment properties, formed as the result of such division, should correspond to the number of joint owners and their undivided shares (value thereof), although such accuracy in division is not always possible. Moreover, in difference to the Austrian law,<sup>35</sup> division of the immovable property

<sup>34</sup> Likumprojekta Nr. 906/Lp13 “Grozījumi Civillikumā” anotācija [Annotation to the Draft Law No. 906/Lp13 “Amendments to the Civil Law”]. Available: <http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/123C10880FD85CA5C2258663003A0CEF?OpenDocument#B> [last viewed 11.04.2023].

<sup>35</sup> Pursuant to the Austrian law, the basic rules of actual division must be accordingly applied to the division of built-up immovable property into apartment property (see item 3 of para. 3 of the Austrian Law on Apartment Property). Moreover, to implement such division, each joint owner must receive

into apartment properties is not mandatorily required to form objects of apartment properties, corresponding to the number of all joint owners, because those joint owners who (e.g., due to the small undivided share), as the result of this division, do not obtain apartment property, have the right to “receive compensation for their share in moneys” (see the 1<sup>st</sup> sentence of CL Section 1075 (2)).

In dividing immovable property into apartment properties, the court, to the extent possible, should take into account, which apartments (groups of premises) are already used separately by each of the joint owners if they have agreed on divided use of the jointly owned immovable property (see CL Section 1070 (1)). I.e., in the case of dispute, the court must assess, which joint owner has more valid interests in receiving one or another newly formed apartment property.

If, in dividing a residential building into apartment properties, it is possible to adjudge to each joint owner one or several apartment properties, but they do not correspond accurately to their undivided shares, the court may act in accordance with the solution approved in the previous case law by collecting commensurate monetary compensation.

## Summary

In reforming the regulation on terminating joint ownership, four new types of division have been envisaged in the law in addition to the three existing types of division, *inter alia*, the division of built-up immovable property into apartment properties.

The main advantage of the new types of division, envisaged in CL Section 1075, is the fact that these additional legal solutions give to the court the possibility to terminate joint ownership only partially, *amongst other things*, by applying or combining several types of division and, thus, impacting to a lesser extent or not at all the rights and valid interests of other joint owners.

The new regulation of CL Section 1075 not only significantly relieves the court from the need to consider, in each particular dispute regarding termination of joint ownership, application of the principle of good faith, enshrined in CL Section 1, and the need to adjust the existing legal regulation, but also makes the regulation on terminating joint ownership more flexible and more suitable for resolving different disputes fairly.

The new regulation allows dealing effectively with dishonest joint owners who have requested the termination of joint ownership, moreover, with the types of division already envisaged in law. This is because the court, when adjudicating the dispute on its merits, has the authority to terminate joint ownership only partially, i.e., with respect to the dishonest joint owner, thus, excluding them from the joint ownership relations while retaining the relations among the other joint owners.

Since the new restriction on division, set out in CL Section 1074 (2), applies to all joint owners who have acquired their undivided shares through legal transactions, in certain situations, it places disproportional restriction, *inter alia*, for the duration of five years, on the right of every joint owner, set out in CL Section 1074 (1) and para. 5 of CL Section (1), to request through the court the division of the jointly owned

---

an object corresponding to their undivided shares, having approximately the same features, i.e., it should be possible to form sufficiently appropriate objects of apartment properties corresponding to the number of joint owners. (Iro, G. Sachenrecht [Property law]. 6. Aufl. Wien: Verlag Österreich, 2016, Rz 5/24, 5/30, 5/32; Koziol, H., Bydlinski, P., Bollenberger, R. (Hrsg.) Kurzkomentar zum ABGB [Brief Commentary on General Civil Code]. 5. Aufl. Wien: Verlag Österreich, 2017, § 830, Rz 4, § 843, Rz 1, 3).

immovable property into apartment properties. One of the solutions is narrowing the scope of application of CL Section 1074 (2) through teleological reduction and not apply this provision to the aforementioned new type of division.

## References

### Bibliography

- Grūtups, A., Kalniņš, E. *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums*. 2. izd. [Commentaries on the Civil Law. Third Part. Property Right. 2<sup>nd</sup> ed.]. Rīga: Tiesu namu aģentūra, 2002.
- Iro, G. *Sachenrecht*. 6. Aufl. Wien: Verlag Österreich, 2016.
- Kalniņš, E. *Laulāto manta laulāto likumiskajās mantiskajās attiecībās* [Spouses' Property in Legal Property Relations]. Rīga: Tiesu namu aģentūra, 2010.
- Koziol, H., Bydlinski, P., Bollenberger, R. (Hrsg.) *Kurzkommentar zum ABGB* [Brief Commentary on General Civil Code]. 5. Aufl. Wien: Verlag Österreich, 2017.
- Rozenfelds, J. *Lietu tiesības* [Rights in Rem]. 4. izd. Rīga: Zvaigzne ABC, 2011.

### Normative acts

- Civillikums [The Civil Law] (28.01.1937). Available: <https://likumi.lv/ta/id/225418-civillikums> [last viewed 11.04.2023].
- Dzīvokļa īpašuma likums [The Law on Residential Properties] (28.10.2010). Available: <https://likumi.lv/ta/id/221382-dzivokla-ipasuma-likums> [last viewed 11.04.2023].
- Grozījumi Civillikumā [Amendments to the Civil Law] (03.02.2022). Available: <https://likumi.lv/ta/id/330031-grozijumi-civillikuma> [last viewed 11.04.2023].
- Allgemeines bürgerliches Gesetzbuch [General Civil Code]. Available: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622> [last viewed 11.04.2023].
- Bürgerliches Gesetzbuch [Civil Code]. Available: <https://www.gesetze-im-internet.de/bgb/> [last viewed 11.04.2023].
- Wohnungseigentumsgesetz [Homeownership Act]. Available: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001921> [last viewed 11.04.2023].
- Zivilgesetzbuch [Civil Code]. Available: [https://www.fedlex.admin.ch/eli/cc/24/233\\_245\\_233/de](https://www.fedlex.admin.ch/eli/cc/24/233_245_233/de) [last viewed 11.04.2023].

### Case law

- Augstākās tiesas tiesu prakses apkopojums “Kopīpašums” [Digest of the Supreme Court's Case Law “Joint Ownership”]. Rīga, 2011. Available: <https://www.at.gov.lv/lv/tiesu-prakse/tiesu-prakses-apkopojumi> [last viewed 11.04.2023].
- The Senate's Judgement of 14.01.2004 in case No. SKC-5/2004. Available: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 05.12.2007 in case No. SPC-60/2007. Available: <http://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 25.02.2009 in case No. SKC-54/2009 (C28210405). Available: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 14.05.2013 in case No. SKC-173/2013 (C04220405). Available: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 28.10.2016 in case No. SKC-415/2016 (C04224109). Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- The Senate's Judgement of 30.03.2017 in case No. SKC-105/2017 (C04344910). Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- The Senate's Judgement of 15.11.2017 in case No. SKC-263/2017 (C04205509). Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- The Senate's Judgement of 15.02.2018 in case No. SKC-73/2018 (C17073413). Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- The Senate's Judgement of 21.02.2019 in case No. SKC-33/2019 (C19046014). Available: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].

- The Senate's Judgement and Ancillary Decisions of 17.12.2019 in case No. SKC-259/2019 (C04169414). Available: <https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 16.01.2020 in case No. SKC-36/2020 (C04148214). Available: <http://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 22.04.2020 in case No. SKC-120/2020 (C17096215). Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- The Senate's Judgement of 16.12.2020 in case No. SKC-231/2020 (C30501917). Available: <http://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 08.06.2021 in case No. SKC-542/2021 (C30434016). Available: <http://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- The Senate's Judgement of 02.12.2021 in case No. SKC-84/2021 (C04306814). Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- The Senate's Judgement of 03.02.2022 in case No. SKC-53/2022 (C33327619). Available: <http://at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs> [last viewed 11.04.2023].
- Judgement by the Department of Civil Cases of the Supreme Court of 20.06.2016 in case No. C31187908. Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- Judgement by the Riga Regional Court of 13.09.2017 in case No. C04344910. Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- Judgement by the Riga Regional Court of 08.04.2019 in case No. C17073413. Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].
- Judgement by the Riga Regional Court of 14.10.2021 in case No. C30501917. Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 11.04.2023].

## Other sources

- Likumprojekta Nr.9 06/Lp13 "Grozījumi Civillikumā" anotācija [Annotation to the Draft Law No. 906/Lp13 "Amendments to the Civil Law"]. Available: <http://titania.saeima.lv/LIVS13/SaeimaLIVS13.ns/f/0/123C10880FD85CA5C2258663003A0CEF?OpenDocument#B> [last viewed 11.04.2023].

© University of Latvia, 2023

This is an open access article licensed under the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>).