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Federal Supreme Court decision on lease termination during blocking period

Contributed by **Pestalozzi Attorneys at Law**

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According to Article 271a(1)(d) of the Code of Obligations, a notice of termination served by a landlord may be challenged, in particular, when it is issued during conciliation or court proceedings in connection with the lease, unless the tenant has initiated proceedings in bad faith.

The Federal Supreme Court recently had to decide for the first time whether challenging the termination of a lease during conciliation or court proceedings requires the landlord's knowledge of the pending proceedings. Whereas previous instances did not consider termination of the lease by the landlord as against good faith, because the landlord did not and could not know about the proceedings at the time it gave notice, the court decided otherwise. It concluded that protection of the tenant against untimely termination under Article 271a(1)(d) applies from the start of the proceedings and until a final decision is rendered, irrespective of when the landlord becomes aware of the proceedings.

The court based its decision⁽¹⁾ on the grammatical, teleological and systematic method of interpreting the law. The wording of Article 271a(1)(d) does not allow it to be said that the protection against termination must begin when the landlord has knowledge of the proceedings. In addition, according to the provision's meaning and purpose, a teleological interpretation does not support a restrictive interpretation of the protection against termination. The meaning and purpose of the provision is to ensure that the tenant can engage in proceedings against the landlord without fear of termination of the lease. In this respect, it is irrelevant whether the landlord has knowledge of the proceedings or whether it terminates the lease for reasons of retaliation. Termination during the proscribed period is based on the statutory assumption that it is retaliatory and thus contrary to the provision's purpose. Although in this particular case it could not be presumed that the landlord wanted to terminate the lease because of its disapproval of the proceedings, this motive is presumed under the law. A systematic analysis also supports the conclusion that the landlord's knowledge is irrelevant for the application of the protection of the tenant against termination of the lease. Article 271a(3) exhaustively lists exceptions from this protection; there is no justification for adding other exceptions. Finally, the court shared view expressed in the legal doctrine that reasons of legal certainty and practicability also speak against requiring the landlord's knowledge of proceedings as a criterion for the application of protection against termination.

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Endnotes

(1) Federal Supreme Court, 4A_482/2014, January 20 2015.

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