



NEWS REPORT

Date: 30 November 2012
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Title: Succession to the tenancy of a same-sex partner
Country: Poland
Context
Issue at stake: Succession to the tenancy of the same sex partner who lived in a common household and in “*de facto* cohabitation” (*konkubinat*) with life-partner who died (legal question answered by the Supreme Court)
Ground of discrimination: Sexual orientation
Source: National court decision - *A.K. v. City of Warsaw* of 28 November 2012
Field: Housing
Legislative provisions: Art. 691 §1, Civil code

Content

Case: *A.K. v. City of Warsaw*, motion for succession to a tenancy after the death of partner

A.K. had lived with his partner Y in a same-sex relation since 2000, and until the death of Y in 2010, in the municipality flat rented by Y. They lived in a common household where they raised together A.K.’s son and showed strong emotional, physical and economical ties. After the death of Y, A.K. applied to the City of Warsaw to succeed to the tenancy. The municipality denied his application. A.K. challenged this decision before the Warsaw Mokotów District Court, which stated (13 October 2011) that the law on *de facto* cohabitation (*konkubinat*) does not cover homosexual relations. The verdict was appealed to the Regional Court in Warsaw which (on 27 February 2012) decided to formulate a legal question to the Supreme Court – whether the law on *de facto* cohabitation (art. 691 § 1 civil code, “*osoba, która pozostawała faktycznie we wspólnym pożyciu z najemcą*”) covers also factual partners of same-sex (SC case III CZP 65/12, filled on 27 July 2012).

Decision of the Court: In its ruling (28 November 2012) the Supreme Court declared that “the person remaining in *de facto* cohabitation with the tenant – in the meaning of the Art. 691 § 1 of the Civil Code – is a person who is tied with the tenant with emotional bond, physical and economic, including a person of the same sex”.

The Regional Court that asked the legal question is bound by the position of the Supreme Court.



Internet link source and additional information:

The SC court verdict (the written justification will be available in 2,3 months):

[http://www.sn.pl/sprawy/SitePages/Zagadnienia%20prawne.aspx?](http://www.sn.pl/sprawy/SitePages/Zagadnienia%20prawne.aspx?ItemID=335&ListID=411c5dda-68cb-4ad8-b865-2705079f8593&el=Izba%20Cywilna)

[ItemID=335&ListID=411c5dda-68cb-4ad8-b865-2705079f8593&el=Izba%20Cywilna](http://www.sn.pl/sprawy/SitePages/Zagadnienia%20prawne.aspx?ItemID=335&ListID=411c5dda-68cb-4ad8-b865-2705079f8593&el=Izba%20Cywilna)

Information about the case on the website of the Helsinki Foundation for Human Rights ("Sprawa X"): <http://www.hfhr.org.pl/dyskryminacja/litygacja/dyskryminacja-ze-wzgledu-na-orientacje-seksualna/>

Information about the Regional Court decision: <http://www.hfhr.org.pl/dyskryminacja/program/aktualnosci/sad-okregowy-skieruje-pytanie-prawne-do-sadu-najwyzszego-w-sprawie-wstapienia-w-stosunek-najmu-po-zmarlym-partnerze-homoseksualnym>

Information about the District Court verdict at:

<http://www.hfhr.org.pl/dyskryminacja/program/aktualnosci/wyrok-w-sprawie-wstapienia-w-stosunek-najmu-po-zmarlym-partnerze-homoseksualnym-oddalenie-powodztwa>