den ablehnt (vgl. z. B. für Berlin, Hauptstadt der DDR, Ziff. 3.9. der Ordnung über die Zuständigkeit für die Entscheidung über Anträge auf Wohnungstausch vom 30. April 1971 [VOBl. Nr. 11 S. 85] i. d. F. der Ergänzung vom 13. November 197'2 [VOBl. 1973 Nr. 1 S. 1], auch abgedruckt in der Textausgabe "Sozialistische Wohnungspolitik", Berlin 1977, S. 51 ff.), In diesen Fällen ist der Tauschvertrag mit der Genehmigung voll wirksam geworden, und eine gegen die Genehmigung eingelegte Beschwerde wäre vom Wohnraumlenkungsorgan als unzulässig abzuweisen. Eine Unterbrechung des gerichtlichen Verfahrens bis zur Entscheidung über diese unzulässige Beschwerde kommt dann nicht in Betracht, weil nach § 71 Abs. 2 Ziff. 1 ZPO das Verfahren nur zu unterbrechen ist, wenn die Entscheidung eines anderen Organs für die in der Sache zu treffende gerichtliche Entscheidung von Bedeutung sein kann.

In der Praxis gibt es Fälle, in denen sich Tauschpartner von einem abgeschlossenen Wohnungstauschvertrag auch durch Eingaben und Beschwerden zivilrechtlichen Inhalts an die Wohnraumlenkungsorgane lösen wollen, wie dies im vorliegenden Verfahren geschehen ist. Deshalb erscheint es erforderlich, den Ausführungen Kellners zur Verfahrensfrage einige Bemerkungen zur Wirksamkeit eines Wohnungstauschvertrags und zu den Möglichkeiten, sich von ihm zu lösen, hinzuzufügen.

Im vorstehenden Verfahren hat der Verklagte vorgetragen, daß er noch vor Genehmigung des Wohnungstauschvertrags durch das Wohnraumlenkungsorgan diesem mitgeteilt habe, daß er nicht tauschen wolle. Er ist der Auffassung, daß die Genehmigung deshalb nicht hätte erteilt werden dürfen.

Abgesehen davon, daß über die Berechtigung des Einwands des Verklagten wegen seines zivilrechtlichen Gehalts sachlich nicht das Wohnraumlenkungsorgan, sondern das Gericht zu entscheiden hat, ist auf folgendes hinzuwei-

sen:

Die Partner eines Wohnungstauschvertrags sind auch vor der Genehmigung grundsätzlich an den Vertrag gebunden. Es würde dem Grundsatz der sozialistischen Vertragstreue widersprechen, wenn sich die Partner in der Zeit zwischen Abschluß des Vertrags und seiner Genehmigung durch das Wohnraumlenkungsorgan einseitig vom Vertrag lösen könnten. Aus dem Vertragsabschluß wächst vielmehr jedem Partner die Verpflichtung, das Erforderliche zu veranlassen, um die Genehmigung herbeizuführen (§§44, 47 ZGB). Das gilt grundsätzlich für alle Verträge, die einer Genehmigung bedürfen, so z. B. auch für die Partner eines Grundstückskaufvertrags nach der notariellen Beurkundung bis zur Genehmigung des Vertrags durch den Rat des Kreises bzw. durch die für den Kreis zuständige Außenstelle oder Arbeitsgruppe des Liegenschaftsdienstes des Rates des Bezirkes oder für den Verkäufer beim Verkauf einer Ware an einen Minderjährigen in der Zeit zwischen Vertragsabschluß und seiner Genehmigung durch den gesetzlichen Vertreter bzw. bis zum Ablauf eines Monats nach Kenntnisnahme des gesetzlichen Vertreters vom Vertragsabschluß (§ 50 ZGB).

Auch eine Überprüfung der Gründe eines Rücktritts vom Wohnungstauschvertrag erfolgt grundsätzlich — gleich ob der Rücktritt vor oder nach der Genehmigung erklärt wird — nur durch das Gericht. Dabei ist allerdings im ersten Fall die Entscheidung des Wohnraumlenkungsorgans abzuwarten, weil dann, wenn der Vertrag aus wohnungswirtschaftlichen Gesichtspunkten nicht genehmigt wird, für eine Entscheidung über einen Rücktritt von dem dann gemäß § 68 Abs. 1 Ziff. 4 ZGB nichtigen Vertrag kein Raum ist. In diesem Sinne leitet auch der Magistrat von Berlin, Abt. Wohnungspolitik und Wohnungswirtschaft, die örtlichen Wohnraumlenkungsorgane an (vgl. hierzu K.-H. Beyer, "Rücktritt vom ungenehmigten Wohnungstauschvertrag", NJ 1977, Heft 17, S. 607). EDGAR PRÜFER,

wiss. Mitarbeiter am Obersten Gericht

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