



## The Special Legal Nature of the Lease Contract as a Legal Act in Commercial Agreements

Elton Musa<sup>1</sup>

Julinda Shehaj<sup>2</sup>

Enis Fita<sup>3</sup>

<sup>1</sup>Dr., "Aleksander Moisiu" University of Durrës, Durrës, Albania

<sup>2</sup>Dr., "Anti-Terrorism Directorate under the General Directorate of State Police, Tirana, Albania

<sup>3</sup>Prof.Asoc., "University College of Bussiness, Tirana, Albania

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### Abstract

*This paper aims to provide a theoretical and practical treatment of the lease contract, due to the characteristics that this contract presents, it is important to treat it in detail, in order to highlight the special legal nature of the lease contract as a legal act, the elements of the lease contract, the characteristics, the conditions of its validity, the resolution, termination and waiver of the contract. This paper also aims to present a general overview of the types of lease contracts, the theoretical and practical treatment of this contract. Due to the characteristics that this contract presents, it is important to treat it in detail, being one of the oldest contracts that international free trade organizations have recognized. Although this paper will make a modest contribution to Albanian legislation and judicial practice, it will serve for commercial law scholars and all banking system experts to gain more knowledge in the practical and legal aspects of the lease contract, especially when it comes to "approximation of national legislation with European legislation".*

**Keywords:** Legislation, Lease Contracts, Legal Nature, Judicial Practice, International Organizations

### 1. Introduction – Historical Legal Analysis of the Lease Contract

A general aspect of the lease contract has been around since Roman law, where our civil legislation has taken its main elements, where the lease contract is envisaged as one of the most important contracts, ranking it immediately after the sales contract. The lease contract according to Roman law is understood as a consensual contract, by which one of the parties, the lessor, temporarily places an item or a work at the disposal of another person, the lessee, who receives the item and gives a payment (rent or a reward). (Arta M "Roman Law", 2001, p.274)

The fact that the lease contract is a consensual contract was also accepted by the famous jurist Paulus, according to whom "The lease contract, since it belongs to natural law or jus gentium, is not related otherwise than by consensus, like a sale. As the object of the lease contract, Roman law recognized not only movable and immovable objects, which had to be individually determined, but a service, a work (performed work) could also be given as a lease. (Arta M "Roman Law", 2001, p.281)

Depending on the type of contract, we also have the appointment of a person as a lessee or lessor. Lease contract for labor or services (location conduction operarum). Based on this contract, the parties agreed with each other that one person, the worker, who had the status of locator, would make his labor available to the employer (iconductor) in

exchange for a reward, the payment of rent. (Arta M "Roman Law", 2001, p.276)

The rules were very similar to those applied in the leasing of an item. The object of this contract was the labor force, or the physical and intellectual activity of the worker. A special aspect of the lease contract was its term. So, the item was given to the lessee for temporary enjoyment, within a clearly defined term, if it was not defined, the contract was considered concluded within a reasonable and necessary term, depending on the type of contract. A characteristic of the lease contract was also the fact that the lessor had to deliver the materials to the lessee, who would carry out a certain work, otherwise we would not have a lease contract, but we would have a contract.

As a bilateral contract, the lease created mutual rights and obligations between the contracting parties. Thus, the lessor's obligation to deliver the thing corresponded to the lessee's right to pay the rent within the period specified in the contract. The latter had the obligation to use the thing according to the purpose specified in the contract; if this purpose was not specified, the lessee had to use the thing according to its nature and destination. The legal defenses available to the parties, which obliged them to fulfill their respective duties, were (lawsuit) *actio locati*, for the lessor (*locator*) and (lawsuit) *actio conducti* for the lessee (*conductor*). (Andrew B & Paul Du P, "Roman Law", p.370).

As for the general historical-chronological aspect of the lease contract, according to Albanian law, it should be borne in mind that the historical analysis of the way the lease contract is regulated has functioned best in the chronological way of how the Albanian legislation has documented the lease contract. Despite the fact of the late Albanian state formation, Albanian legislations have over the years evaluated and regulated the lease contract, also addressing its termination and premature termination. For the purpose of simply informing, but also for the purpose of highlighting the Albanian legal tradition in this matter, we will briefly address it by highlighting its main parts.

Although the lease contract is one of the oldest and most widespread contracts, our customary law did not recognize the lease contract by this name. The "Kanun of Lekë Dukagjini" in the sixth book, entitled "të dhanunt"(to given), speaks only of the loan. *Where it is said "the canoe of the mountains is not a canoe with additional profits. The canoe is a simple canoe: as much as they gave you, you will give. (Shtjefen Gj. "Kanuni i Leke Dukagjinit", p. 111.)* However, although not under this name, the lease was provided for by this canon, precisely in the chapter "sixteenth", entitled "Bulgu". In the sense of this chapter, we say that the lease of land created mutual obligations for the parties. The lessor was obliged to give the lessee the agricultural property and the lessee had to be responsible for the implementation of the contract. Both the lessor and the lessee had mutual obligations in this contract. Thus, the lessor delivered the agricultural land and had the obligation to build on behalf of the lessee, while the latter had the obligation to work the lessor's land, who could do it with his own or the lessor's cattle. (Shtjefen Gj. "Kanuni i Leke Dukagjini", page 165.)

Lease contract under the perspective of democratic movements and the overthrow of totalitarian power in Albania, brought changes in the legal field. New political concepts were also reflected in the field of legal changes, with a chronology giving it a special importance by gradually passing Albanian law, from the socialist family to the Western European family of civil law. These changes affected in general, the essence of private law and in particular, were reflected both in the object, subjects and content of the lease contract, as well as in the very way of its normative regulation.

The lease contract under the perspective of democratic movements and the overthrow of the totalitarian government in Albania, brought changes in the legal field as well. More specifically, the recognition and protection of foreign investments in Albania, the recognition and protection of the diversity of property, the sanctioning of private property and the free market economy, as political ideas, also required new legal protection, which at this time came through normative acts such as: Decree no. 7406, dated 31.07.1990 « On the protection of foreign investments in the R.P.S.S. »(Approved by Law no. 7428, dated 14.11.1990, (repealed) by Law no. 7594, dated 04.08.1992 and then by Law 7764 dated 02.11.1993)

Decree No. 7437 dated 01.12.1990 "On the granting of land for lease to foreign or Albanian legal and natural persons with headquarters outside the territory of the RSSS who exercise joint economic activity with our enterprises, institutions and cooperatives in the territory of the RSSS", Decree No. 7476 dated 12.03.1991 "On the authorization and protection of private property and activity", these normative acts were also followed by the constitutional package of the time, Law No. 7491 dated 29.04.1991 "On the Main Constitutional Provisions".

These normative acts were followed by other acts which, in addition to creating the circumstances, directly influenced a new reconceptualization of the lease relationship but also the urgent need for an immediate legal regulation, in order to respond to the demands of society but also to be in harmony with the new legal principles. As such normative acts we will mention: Law no. 7501, August 1991 "On Land", Law no. 7698 dated 15.04.1993 "On the Return and Compensation of Property to Former Owners", Law no. 7652 dated 23.12.1992 "On the privatization of state-owned

housing" (Immovable Property, Book II, (compilation of legal and sub-legal acts), page 460.)

As a result of the operation of these legal acts, in post-monist Albania the circle of owners increased, therefore the circle of possible parties to the lease contract increased; together with the circle of possible subjects of law, the circle of possible objects for legal actions also increased, therefore as possible objects of the lease contract. The recognition and protection of foreign investments in Albania, the market economy, free initiative, etc., were premises that promoted the economic and commercial relationship, the means of implementation of which is also considered the lease contract.

Some specific normative acts, such as the one on the privatization of state-owned housing, directly affect the lease contract, extinguishing the lease relationship that existed between the family and the State on the one hand, and thus opening up the possibility of constructing new, non-standard lease contracts between new owners and interested legal entities.

## 2. Rental Contract According to Current Legislation

The changes in the new civil code specifically regulate the lease contract, dedicating it an important place, in Chapter VI of its special part. (*Civil Code of the Republic of Albania, approved by Law 7850 dated 29.07.1994 (amended)*) In reality, our Civil Code defines a certain number of typical contracts, in its special part. However, it simultaneously recognizes and protects contracts that are not expressly defined in this code, provided that they do not contradict the general principles of law and do not violate the interests of the parties, thus justifying contracts not expressly defined in the code and typical ones

This position has also been held by the Albanian doctrine on contracts: "People. . . can enter into contracts that are not expressly defined in law, they are valid if they do not conflict with the general principles of law and the interests of the parties" (M. TUTULANI-SEMINI *The Law of Obligations and Contracts*, p. 38). The very fact of the provision and regulation of the lease contract, as a typical/specific contract and not as an atypical contract of the act-agreement type, indicates an assessment made of this contract by our legislation, for the very importance that its normative regulation has in the stability of legal relations between legal subjects.

The position of the lease contract in the continuity of the contracts provided for and regulated in this legislation is logical and systematic. The lease contract is located between the emphyteusis contract and the enterprise contract. Such a position is acceptable in the logical and systematic plan since the chain of specific contracts described in this special part has as its criterion of arrangement the ownership rights that are transferred from one party to the other, which from the sale, donation and exchange contract, begin to soften to the emphyteusis contract and are even more softened to the lease contract.

The lease contract is treated in the current Civil Legislation organized in two main parts - in a general part, in which the general principles and elements of the lease contract are explained and analyzed, not focusing on specific manifestations of this contract (*such as the apartment lease contract, the property lease contract, etc.*), but providing a general legal overview of this contract. - in a special part, which focuses on the treatment of several specific forms of the appearance of the lease contract (*the lease contract for immovable property of an agricultural nature, the lease contract of production items and the financial lease contract*), treating specific cases of this contract and at the same time departing from the general rules treated in the general part, thanks to the specifics that these cases of lease contracts present

Due to its broad scope and the importance it has in regulating legal relations in the conditions of a market economy, the lease contract actually occupies a good part of the volume of the Special Part of the Civil Code, extending to 49 articles, thus constituting one of the most voluminous contracts regulated by our Civil Code. (*Civil Code of the Republic of Albania, approved by Law 7850 dated 29.07.1994 (amended)*)

## 3. Legal Nature of the Termination and Termination of the Rental Contract

The emergence of the legal possibility to conclude a lease contract has a beginning and a closure or an end, which often, given its temporary nature, coincides with the moment of its termination. But often this end can be premature, of the type of contractual solution, which has to do with the non-fulfillment of the lease contract. Our legislation contains both these notions of the termination of the lease contract, both its termination and its solution.

The termination of the contract is addressed by our legislation in Article 820 of the Civil Code, while the premature termination of the lease contract is provided for according to the causes of termination, in certain articles, distributed and provided for both by the general part of our Civil Code, specifically the normative segment that includes Articles 698-704

of this Code (See the content of Article 707 of the Civil Code). As well as by the legal norms that specifically regulate the lease contract in this Code, such as, for example, Articles 806§1,3, 812 §1, 2, etc.

### 3.1 What are the legal causes and consequences of terminating a lease agreement?

According to Albanian legislation, the rental contract ends (According to the content of Article 820, paragraphs 1 and 2 of the Civil Code.)

- 1- upon completion of the term, when the lease contract was concluded for a term determined by the parties, or
- 2- 2-upon notification by one party of withdrawal from the lease contract before the completion of the maximum legal term determined in Article 803 of the Civil Code, when the contract was concluded without a term determined in the contract by the parties.

Both of these cases have in common the termination of the lease contract due to the completion or approaching completion of the term, whether voluntary or legal, but they differ from each other because in the first case it is not necessary for the parties to declare its termination, so the termination of the contract comes as a result of the completion of the term automatically, while in the second case the termination of the contract is the result of the manifestation of the will of one party to terminate it, a will that is notified to the other party.

Also, the cases mentioned above are cases that have in common the full understanding of the parties to end the contractual relationship and should be distinguished from the termination of the lease contract which, in addition to terminating the contract in the continuation of its execution (*it is premature*), has as its essence as a cause, the action or inaction of one of the parties in contradiction with the content of the contract, which brings about the non-fulfillment of the contract for the "fault" of one of the parties. Even the legal consequences for the parties that mutually accompany both the termination of the lease contract on the one hand, and the termination of the lease contract on the other, are different. So as we saw above, our legislation provides that the contract terminates automatically (*without notification of the parties*), but also with the renunciation of the contract (*with notification of one party to the other*). Let us look below, specifically, at some of the cases of termination of the lease contract, without prior notice to the parties, according to the content of Article 820, paragraph 1 of the Civil Code.

#### 3.1.1 A fixed-term lease contract ends upon completion of its term.

Our Civil Code establishes that a lease contract may be concluded for a fixed term, according to the content of Article 820§ 1 thereof. The expiry of this term automatically terminates the lease contract, without the need for prior notice to the contracting parties. The duration of the lease contract may be expressly determined in the content of the contract (*e.g. renting a house for 3 months, or until a precisely determined end date*). However, the determination of the extension period may also arise from circumstances that are tacitly accepted (*e.g. renting a house for the duration of a conference, or renting a conference room from an association for the entire duration of the extension of the contract*). According to a legal opinion, even lease contracts that last until a certain event occurs, but whose exact date cannot be determined in advance, will be considered fixed-term lease contracts (*e.g. the lease contract will last until the day of the tenant's death*). (David L, "Le Bail a Loyer", p. 397)

### 3.2 Termination of the lease contract, its causes and legal consequences.

As I mentioned above, the termination of the lease agreement also ends the contractual relationship between the lessor and the lessee. The early termination of the lease agreement is provided for in cases of non-fulfillment of the obligations of the contracting parties, which, according to the causes of termination, are regulated in certain articles, distributed both in the general and special parts of our Civil Code.

A lease contract with an indefinite term is generally terminated by a unilateral declaration of will by one of the parties, in which the contract is terminated (or the other party is given a deadline for terminating the contract). For a contract termination to be valid, it must be subject to certain rules. Above all, it must be addressed by one party to the lease contract to the other party. (See for this article 820 §2 of the Civil Code)

Previously, the termination of the lease contract is preceded by a notification from one party to the other party, because the latter has failed to fulfill the obligations arising from the lease contract. (See the content of Article 700 of the Civil Code.) By means of this notification, the creditor party warns the debtor party to fulfill the obligation within a specified period, otherwise it will terminate the contract. Previously, we must bear in mind that the rules on the termination of the

lease contract operate when the lessee still holds the leased item in possession.

-*What form will the notice of one party to terminate the lease contract have?* Our legislation speaks of the notice as a way of warning the creditor to the debtor, in a contract, when the debtor has failed to fulfill the contractual obligations. The purpose of this notice is not the notice of contractual termination, but to warn the debtor to be correct in fulfilling the contract, otherwise he will terminate the contract. Regarding the form that this notice should have, Article 700 of the Civil Code, mentions that it will be formulated in writing. The contracting party must provide the notice in written form. Such a notice must be signed by the contracting party itself or by its representative. It is understood that such a form must be respected for reasons of its provability in the future

Even according to Albanian civil law, the termination of the contract goes through the phase of notification for the termination of the lease contract, or more simply put, when one of the parties does not fulfill certain contractual obligations for which the legislation provides as an alternative for the creditor party, the termination of the contract, it requests the debtor party to terminate the lease contract, that is, to deliver the leased item and be responsible for the obligations due to the premature termination of the contract.

In order to terminate a lease contract, according to this legislation, a prior notice from one contracting party to the other must generally be respected, in the content of which the request and motivation for terminating the lease contract are presented. For contracts that do not have as their object, the apartment, the commercial premises, nor the objects that are leased as an accessory part thereof, the notice of termination may be transmitted to the other party in any form. A photocopied signature is not valid, and at the same time a notice of termination of the contract by telegram or by fax, in which the written signature is damaged, cannot be considered valid. The termination of a contract that does not respect the aforementioned form is null, (*David L, "Le Bail a Loyer", p. 407.*) and its invalidity may be requested at any time.

Withdrawal of the decision to terminate the lease contract. Our legislation does not expressly provide for this case, but it does not prohibit such an act. A notice is complete and extends its effects from the moment it reaches the receiving contracting party. From that moment it cannot be withdrawn, except in justified cases such as when the decision to withdraw must arrive before or at the same time as the notice of termination. This moment is provided for in the general rules of the law of obligations when it comes to the proposal and acceptance in relation to the contract, and consequently will also be used in the case of withdrawal of the decision to terminate the lease contract. If the notice of termination has reached the receiving contracting party, the parties may, through a mutual agreement, reach the drafting of a new lease contract with the same conditions as the lease contract that is already considered terminated.

-*Partial termination of the lease contract.* The lease contract is perceived as a whole. If it is terminated, the effects of its termination will extend to all tenants. However, when the lease contract is concluded not only for one item, but for several items, the possibility of partial termination of the contract can be discussed. Our legislation does not specifically address this case, but does not expressly prohibit it.

The notice of termination of the contract will be considered partial in the case where the parties to the contract have concluded several lease contracts between them, having as their object of lease, different objects. For example, it often happens that a lease contract which has as its object a garage, a parking space or a scrap yard, is always connected together with a residential premises and cannot be terminated only with the second contract. In these hypotheses of the above contracts, the termination of the contract on the main object (the apartment) usually brings the termination also on the accessory object (the garage, the parking space, the place to stay at the scrap yard). This notice of termination of the contract would have effect even if the notice letter did not mention the accessory object but only the main one. (*See Article 803 of the Civil Code.*)

By mutual agreement, the parties may provide for a partial notice of termination of the lease contract in the following manner: the tenant expresses to the landlord that he wishes to terminate the lease contract for only part of the premises subject to the contract. This termination is equivalent to an offer to agree to conclude a new contract, with a reduced area as the object. As a result, we can conclude that such a contract is also considered terminated by the landlord's silence in accepting the offer.

-*Termination of the lease contract conditionally.* The lease contract, according to modern world literature, (*David L, "Le Bail a Loyer", page 415.*) also recognizes the method of its termination conditionally. According to our legislation, in the general part, the case is affected when the confirmation of the condition binds or terminates the legal action (referring to the consequences of the legal action). This case is partially accepted in modern theory. According to it, in general, the notice for the termination of the lease contract should not contain in its content any other condition, except for the obligation to terminate the one to whom it is addressed.

#### 4. Conclusion and Recommendations

At the end of this paper, we must consider the definition of the lease contract, based on the purpose and role of the contract as a contract that serves for the temporary transfer of the right of subordination and use of a certain thing, in return for a reward. At the end of the treatment of this paper, there are some issues that I will briefly summarize as a legal analysis and, by their legal nature, will serve in the future to scholars of scientific research as well as international commercial legislation.

In conclusion or as a conclusion and recommendation, we can say that in this material, importance has been given to the treatment of the aspects and historical development of the lease contract as a legal transaction, bilateral and with remuneration, where the lease price, as in the sales contract, constitutes a necessary element for the validity of this contract. It is worth mentioning the informal character of the lease contract as a legal transaction, which must always be taken into account by the court in resolving a dispute, where its object is the lease contract.

The parties to the contract have mutual rights and obligations. The main obligations of the lessor are set out in Article 802 of the Civil Code. One of the main obligations of the lessor is to deliver the item in a timely manner and in a condition that allows it to be used for its intended purpose. The fulfillment of this obligation conditions the emergence of other obligations of the lessor as well as the obligation of the lessee to take delivery of the item. This obligation consists of two aspects;;

1. Active obligation, to carry out necessary repairs

2. Negative obligation, to not carry out construction or changes to the property that infringe on the tenant's right to enjoy the property.

This paper deals with the termination of a lease contract, mentioning several specific cases when the parties may request the termination of a lease contract. Also, a distinction is made between the concepts of "Termination of the contract", which only makes sense for a valid contract, upon the termination of the lease contract, as a result of the completion of the deadline set by the parties or the legal one. Also, the waiver of the lease contract is dealt with, which is a contract with continuous execution and as such, the waiver of this contract, based on Article 696, paragraph two thereof, can be made at any time and the withdrawal and termination of the contract has no effect on the executions carried out or that are in progress

In conclusion, we can say that the rental contract is an important act in civil circulation and as such presents many features and problems. During this treatment, several important aspects of this contract have come to light, both in terms of substantive and procedural law. When I have deemed it necessary, I have also given my opinion on controversial issues from time to time.

Hoping that this work has had some value, albeit modest, in addressing this important legal action, I hope that it will be of assistance to many lawyers and law students and serve as a starting point for the realization of works to fill all the gaps that this legal action presents every day in time with the economic, technological, and cultural development of society.

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