

LEASING CONTRACT – SIMILARITIES AND DIFFERENCES WITH THE CONTRACT OF RENT

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Abstract: *Social relations regulated with the legal norms are called judicial relations. There are cases when parties are in a situation to enter into the determined relations in order to achieve their goals. Goals are always achieved with the fulfilment of duties and with the realization of their rights. In the modern world, in addition to the contract of sales, contract of rent, credit contract, etc., there exist other contracts which can make buyer a legal possessor, after the fulfilment of the contractual obligations. Contracts are the more often forms of the legal relationships between contract parties. Before the contracts are signed several conditions shall be fulfilled. For their fulfilment, parties shall be careful, otherwise they may come to a situation of nonfulfillment and even to the annulment of the contracts.*

Paper deals with the norms which regulate conditions for signing a contract, including general and specific conditions, characteristics of the contract, the rights and the duties of the parties and the ways of extinction of the contract of leasing. Authors for the needs of this paper have used the method of legal analysis, method of comparison, method of description, and the method of systemic analysis. Thus through these methods the differences and similarities of this contract with the contract of rent will be explained and analysed along with specific cases from the practice. At the end, the ways of extinction will be explained and analysed as the conclusion with the agreement, by missing deadliness; with the fulfilment; with the annulment; and with the extinction of the business society when it is in the role of lessor.

Keywords: *law, contract, leasing, norm, agreement*

1. INTRODUCTION

The life dynamics have increased the ways of creating the legal relationships. The growth of labour market and the every day needs on trade, sophisticated the ways of buying in one side and also selling in the other side, as well. The contract of sale, is among the most frequent contracts by name, which is used worldwide. It through the agreement of parties makes the transfer of the property from the seller to buyer. The contract of rent is the most used in the justice in the every day life. It is used more and more, whereas after it ends, the item which was under the rent is turned back to the owner and in this case lessee is not the legal possessor of the item. Paper analyses the contract of leasing as one of the most frequent and the newest one at the recent times. This contract belongs relatively to the new ages. The leasing contract basically derives from the rent contract whereas its name indeed means rent (leasing). Even though its name is rent, it is not the contract of rent and at the end the lessee becomes the legal possessor of the item. Property moves from the lessor to the lessee after a determined period of time as determined by the contract. The paper contains the analysis of norms and at the same time the theories of various authors regarding the leasing is analysed. The parts of the conditions for concluding the contract are taken from the disposals of the law on obligations which basically regulate the general part of obligations. Paper also analyses the subjects of this contract, the rights and obligations of parties, the characteristics of the contract, etc. At the end, the ways of extinction of the leasing contract are presented.

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2. NOTION OF THE CONTRACT

The contract of leasing is a new contract that has been frequently applied after the World War the Second. As a contract, it is very frequent and important, therefore in Kosovo it is regulated with the special law ---Law on Leasing.

Contract of leasing is one of the most modern contracts in justice. This contract is a complex of legal acts and based on the law on leasing it regulates leasing of movable and immovable properties. This law does not apply on the rent of land, rent of buildings, the rent of offices or apartments and it will not be applied on the leasing or for the rent of everlasting items, rent on money, documents, financial instruments, accountables, works of arts, intellectual property or other inviolable property.³

Contract is created after the Second World War and the country where it was more used was USA, whereas the word leasing derives from the English word *lease* that means rent or something that is given under the rent.

The leasing contract is not a simple one. It is composed of the contract of rent, contract of sale, contract in work, etc. The goal of the contract of leasing is creation of the possibilities and the rights to use a complex of means which the determined subject cannot buy and whose period of amortization is not longer than the period of their sustainability in the leasing contract.⁴

3. CONDITIONS OF CONTRACT AGREEMENT

Contract agreement requires the offer and the negotiations which preceded the contract agreement. The contract agreement is called creation, connection or stipulation.⁵ After agreement, the contract produces legal effects but first of all it should fulfil determined conditions. For the contract agreement the fulfillment of general and special conditions is needed. The general conditions or needed conditions for this contract are: working abilities of contract parties, the free will, the contract subject and the contract basis. As the special conditions of this contract there are: contract form, contract agreement by item delivery and giving consent for contract agreement.⁶

Essential conditions are those that are absolutely necessary and required for concluding the determined contract⁷, and the contract will be invalid if the lack of one of these conditions is faced. Special conditions are those which are faced in determined types of contracts. These conditions are foreseen by the permitted legal norms or dispositive norms.⁸

Technical conditions are named conditions which are not either usual or essential but they are found in that contract because such a thing was foreseen by parties.⁹

³ Kosovo Leasing Law, article 1, paragraph 2, Kosovo Official Gazzette , Ligji nr.03/L-103

⁴ Armand Krasniqi, E Drejta Kontraktore Biznesore, Csara, Pejë, 2015

⁵ Nerxhivane Dauti, Kontrat, Universiteti i Prishtinës, Prishtinë, 2012, pg. 33.

⁶ Ibid, pg.33.

⁷ Marjana Tutulani - Semini, E Drejta e Detyrimeve, pjesa e përgjithshme, Skanderbag, Tiranë, 2006, pg.47.

⁸ Ibid, pg. 49.

⁹ Ibid, pg.49.

4. WORKING ABILITIES OF THE CONTRACT PARTIES

Working abilities of parties mean their ability to act. According to the law this is gained after the years of 18. Working ability of contract parties in some cases is gained before the age of 18, respectively in the age of 16 by the institute of emancipation. If a person concludes a contract of leasing before this age it will be considered like it was not agreed at all and the contract will be declared nule. All effects produced by the contract (in this case) will be considered nule.

5. CONSENT OF WILL

This is the second condition of contract agreement. The free will or consent shall be mutual. Both contract parties shall be of the same consent on concluding the contract. The inner will shall be the same with the declared external will. Parties with their will enter into the contract and the agreed will makes it as contract is agreed. Apart that contract is agreed it is considered that parties agreed on essential elements of the contract.

6. OBJECT OF CONTRACT

Subject of the legal relationship is that upon what the rights and the duties of parties are inter-linked which at the end of the day contain the goal for agreeing of the contract.¹⁰ The subject of the contract is the general condition and it is that on what parties have agreed upon or on what the contract was agreed.¹¹

Object is one for what the contract is agreed. Leasing is an atypical contract which contains the specific construct of financing and placement of investive wealth which are selected by the user of leasing.¹² Object of the contract may be immovable and movable items, consumable and unconsumable items and that, that item shall be an item in the judicial circulation. Object of the contract may be also considerable amount of money, acts and non-acts, products of the intellectual activities and personal goods of nonwealth character.

Item should be determined or one which could be determined; it has to be legal, it has to be valuable, it has to be possible for realization.¹³

The other condition for contract agreement is also the basis of the contract. Basis of the contract is legal goal that pushed the parties to take obligations and this has determined the nature of the judicial work of this contract.

7. SUBJECTS

Subjects in the judicial obligation relations are called parties of the contract. All contracts are agreed between parties who at least have to be two. As such they may be physical or judicial persons. Contract parties of the leasing are: lessor and lessee.

¹⁰ Mariana Tutlani-Semini, *E Drejta e Detyrimeve dhe Kontraktore*, pjesa e vecantë, Skanderbeg, Tiranë, 2006, pg. 25.

¹¹ Nerxhivane Dauti, *Kontratati*, Univeriteti i Prishtina, Prishtina, 2012, pg.36

¹² Vilim Gorenc, *Bazat e së Drejtës tregtare statusore dhe kontraktore*, Viktori, Prishtina, 2010, pg.219.

¹³ Nerxhivane Dauti, *Kontratati*, Univeriteti i Prishtina, Prishtina, 2012, pg.26.

Lessee means one physical or judicial person who gains the right to possession and to use the assets of the leasing object based on the contract of leasing.¹⁴ Whereas, the other party, lessor is a licenced judicial person in a specific way from the Kosovo Central Bank in order to exercise mutually the leasing financial transactions or the operative leasing and who gives the right to possession of the assets of the leasing object based on the contract.¹⁵

Apart the lessor and lessee as the other parties could be also the supplier. Lessor and the supplier could be the same person.¹⁶

8. CHARACTERISTICS OF THE LEASING CONTRACT

Starting from the point that this contract is regulated with the special law since 2009, this is a contract known as the contract by the name. This contract has to be made in the written form and in accordance with the procedures determined by the law.¹⁷ The contract of leasing is principal contract since it may exist independently of other obligations. It is a mutual contract where parties appear to be as holders of the rights and the duties. Leasing contract is a contract with the reward. Reward consists on delivering the rate of leasing. This contract is consensual because it is considered as agreed at the moment when the will of both parties is in accordance.

Leasing contract consists of a big number of contracts but its name itself associates to the contract of rent. It has similarities with the contract of rent but nonetheless it differs. Contract of rent is a contract by which one party is obliged to give to the other party a determined item so it could use temporarily against a determined reward.¹⁸ Whereas the leasing contract is agreement between two or more contracting parties in which case, one party is obliged to give to the other party a determined item but the item could not be of temporary use, it has to be everlasting against a reward. After payment of all installments, lessee is transformed into a legal possessor of the item which was used and for what he has paid price during a determined period of time until the last installment. This shows that the leasing contract has some characteristics of the sale contract. By the sale contract the transfer of movable or immovable property is made possible, or even the transfer of a right is made no matter if it is a right from the credit or real against a reward.¹⁹

9. TYPES OF LEASING

There are various types of leasing which are divided into several groups: according to specifics of leasing – objects; according to the duration of the contract of leasing; according to the position on which is found the lessor.²⁰ According to the specifics of the object, it could be noticed: leasing of the consumable goods, leasing of imovables and movables and the leasing of used goods. According to the duration there are: short term leasing and long term leasing. According

¹⁴ Law on Leasing, Kosovo Official Gazzette, Prishtina, 2009, art. 2.

¹⁵ Ibid, art. 2.

¹⁶ Law on Leasing, Kosovo Official gazette, Prishtina, 2009, art. 3, paragraf 2.

¹⁷ Ibid, art. 4.

¹⁸ Kodi Civil i Republikës së Shqipërisë, Fletorja Zyrtare e Republikës së Shqipërisë, Tiranë, 1994, art. 801.

¹⁹ Ardian Nuni, Ilir Mustafaj & Asim Vokshi, E Drejta e Detyrimeve II, Tiranë, 2008, pg.9.

²⁰ Mazllum Baraliu, E Drejta Biznesore, Universiteti i Prishtinës, Prishtinë, 2010, pg.492.

to the position of the lessor there are: leasing through the leasing associations, concert leasing, sale and back leasing, production leasing and financial production leasing.²¹

Law also allows the leasing as a domestic and the international leasing. Contract is considered to be domestic if it is agreed between inhabitants in Kosovo. Contract is international when either lessor or lessee are not inhabitants in Kosovo.

10. CONTENT OF THE LEASING CONTRACT

Together with the contract of rent, the leasing contract is the most frequent contract on gaining the ownership therefore its form is determined by the law. Initially it was a legal-obligatory institute and the contact of legal order in USA, however it has been accepted and applied consequently by the other legislations.²² According to the Law on Leasing, article 5, the leasing contract is a contract which within itself has the following elements: identity and the addresses of the contract parties, description of the assets of the object of leasing, total amount of the all installments paid by the lessee to the lessor, duration, number of payments, total leasing payments, deadliness of payments, etc.

11. RIGHTS AND THE OBLIGATIONS OF CONTRACT PARTIES

The rights and the obligations of the lessor – with the leasing contract obligations of lessor and the lessee are not refundable and independent of the time when parties enter into the contract.²³ According to the law lessor keeps the right on the property over the assets of the leasing object during the all time. Lessor has no responsibilities for any damage in which case the lessee should pay a reasonable attentions to avoid any damage or any other encroachment in the property. Delivery of the object of the leasing contract, guarantee for quiet possession of the leasing object are the main obligations for him. Lessor can time after time ask for information regarding any loss, pretending, damage or other material acts which may appear while it is being used and possessing of the assets of the leasing object by the side of lessee. Lessee should give such an information in a precise way and at the needed time.²⁴ Lessor has also the right to inspect the asset of the leasing object at every moment during the leasing duration.

The rights and the obligations of the lessee – Lessee has the right to receive the leasing object, to refuse it and he is obliged to maintain the leasing object. Lessee has no right to put the leasing object under the hostage or mortgage or to burden it with any other obligations --- the leasing object.²⁵ The lessee should also turn back the object of leasing if the obligation is not fulfilled according to the contract. The object should also be turned back in the similar conditions as it was delivered by the lessor.

²¹ Ibid pg. 493-494.

²² Riza Smaka, E Drejta Biznesore, Kolegji Iliria, Prishtinë, 2010, pg. 389.

²³ Law on Leasing, Kosovo Official Gazette, Prishtina, 2009, art. 6.

²⁴ Ibidem, art. 14.

²⁵ Law on Leasing, Kosovo Official Gazette, 2009, art. 18.

12. DELAYS OF PARTIES IN THE LEASING CONTRACT

In the case of delay from the lessee, lessor can gain unpaid accumulated installments and that with the interest and compensation of damages. Delay on paying the leasing, from the lessee are considered as the material losses.

13. REPOSSESSION OF THE LEASING OBJECT

Repossession could be realized in these forms: with the court decision by lessor if this is being done without damaging the public order and by the administrative act. Within three days term after the repossession of the leasing object, in case of the delays by the lessee, lessor can nominate a selected person by the court to take on the possession the object of leasing.

14. EXINCTION OF THE LEASING CONTRACT

There are various forms of leasing contract extinction. Here we talk about executing the payment or the termination of the contract do to the fact that it is not executed.²⁶ Bankruptcy, liquidation are also other forms of the leasing contract extinction. Leasing contract is extinguished also by the court decision of annulment. If it comes to the stage of annulment of the contract all acts that are undertaken after the contract agreement are considered like they were not undertaken.

15. CONCLUSION

Leasing contract is a contract of new ages. It has started to be more frequent after the Second World War. Dinamisation of the trade development has made that this contract is being more and more used. According to the definition we see that this contract is agreed between two or more contract parties. In the side of the lessor, it always appears the judicial person. In this case, it has always to be registered and licenced to deliver leasing by the Central Bank. In the side of the lessee, it could appear physic or judicial persons. Apart from this, this contract is a contract by name and this is seen that it is regulated by the special law. This is commutative contract, formal and written, contract with the reward which should be verified by the competent organs.

Conditions for this contract are divided into the general and specific ones. This contract belongs to the contracts where the leasing object should be delivered in the moment when it was agreed by lessor and the lessee.

Being that not all things could be bought in cash, buying was made with the leasing. Leasing is principal contract but within it there are present also a number of other contracts as mentioned with this paper.

This contract has similarities with the contract of sale and with the contract of rent. With the contract of sale the similarity exists from the fact that with the last installment of leasing we could come to the property as it is the case with the contract of sale. Similarity with the rent exists and it is bigger, but the difference stays on that that the object of rent is turned back to the owner whereas the object of leasing remains to the lessee. According to this, we see that this contract has elements of the rent contract and the contract of sale.

²⁶ Georges Vermelle, E Drejta Civile, Kontratrat, pjesa e posacme, Papirus, 2006, pg.175.

Shortcoming of this contract is of that, that impossibility to pay the installments is the violation of the contract which makes lessee impossible to be the owner of the item under the leasing. Then all rights and the obligations of lessee and the lessor are almost the same with those from the contract of sale and the contract of rent. Even lessor has the right of control over the object of leasing at any time he thinks it is needed. It should be needed and optimal deadline about informing the lessee about the intention of the control over the leasing object.

Lessee also should compensate all damages in the case of turning back the leasing object. If it comes to the damage on the object of leasing by all means, the lessee should turn back the object in the conditions it was taken on the leasing. For some items, it is a little bit difficult because they are consumable by being used. Leasing contract is extinguished in various ways. In most cases this is done by fulfilling the conditions. However, contract of leasing could be extinguished similarly to the contract of sale and the contract of rent by: nonfulfillment, with the destruction of the item, by bankruptcy, by liquidation and with the annulment with the court decision, what shows that principal conditions of the contracts were not fulfilled.

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