Renting Dwellings and Professional Spaces in Accordance with the New Civil Code

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Abstract

In art. 1824-1835, the new Civil Code institutes a series of particular rules in the matter of renting dwellings, rules that apply mainly to renting spaces destined to the practice of a professional’s activity. Among these we mention the dispositions regarding the termination of the agreement (art. 1824 -1825), the unwritten clauses (art.1826), vices that threaten the body health or integrity (art. 1827) or the right to preference when renting (art. 1828).

We consider the analysis of these dispositions useful all the more so as the regulation of the new Civil Code in the matter of renting dwellings is not singular. That is why in this study we also aim at referring to the stipulations contained in Law no. 114/1996 regarding dwellings and to the O.U.G. no. 40/1999 regarding the tenants’ protection and setting the rental price for the spaces destined as dwellings, as main normative documents that, together with the new Civil Code, regulate the rental of dwellings.

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1. Introduction

Maintaining the constitutive of the lease provided for by the 1864 Civil Code, the current regulations define lease as the contract by means of which a party – called lessor – takes upon the duty to insure to the other party – called

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lessee – the use of a certain asset, for a certain period, in the exchange of a price called rent (article 1777 of the Civil Code). The new Civil Code uses the notion of rent, unlike the 1864 Civil Code, in which the lawmaker was using the notion of price.

According to the provisions of article 1778 paragraph (1), the lease of movable assets, but also the lease of immovable assets, is called *rental*, whereas the lease of the agricultural assets is called *farming/agricultural lease*. Since the second paragraph of article 1778 shows that the general provisions of lease are applied accordingly to the rental of houses and farming, if these two are compatible to the particular rules provided for those contracts, it results that rental and farming – each with their own names and rules – are varieties of the lease contract. The latter constitutes the *common law* both for the agricultural contract and for the rental contract of houses, a field for which the new Civil Code provides for a series of specific rules, included in the provisions of articles 1824-1850. As a novelty element, the same article 1778 institutes a new version of lease at its last paragraph, namely the lease of the spaces designed for the activities performed by professionals. It therefore emerges a legal regime subject both to the general provisions in the field and to the special ones provided for by articles 1824 and 1828-1831 of the new Civil Code. This is a welcomed regulation, in agreement with contemporary realities, as the space necessary for exercising their activity plays an important role for professionals.

In agreement with its legal regulation, the lease contract can be particularized by means of the following legal characters:

- is a *bilateral* (*synallagmatic*) contract, as it generates duties for both parties;
- is a contract with an *essentially onerous title*, as the contracting parties – the lessor and the lessee – pursue their own patrimonial interest (Deak, 1998, 139);
- is a *commutative* contract due to the fact that, when it is concluded, the existence of the rights and duties of the parties is certain, whereas its expansion is determined or determinable;
- is a *consensual* contract, which is concluded with the simple will agreement of the parties, without any formality (*solo consensus*). Although it preserves the consensual character of the lease, article 1798 of the new Civil Code provides as a novelty element the enforceable character of the contracts concluded under private signature, registered at the fiscal administration, but also of those concluded in an authentic form, meaning that these contracts will be enforced for the payment of the rental within the terms and ways stipulated by the contract. Consequently, observing the forms mentioned above has the advantage of an enforcement of a judgment for the payment of the rental, without being necessary anymore to file a case law against the lessee and to obtain a court decision. This provision regards only the obligation related to the payment of the rental and cannot be expanded to the enforcement of other duties resulting from the contract;
- is a contract with *subsequent enforcement*, in time, as it presupposes the enforcement of several performances phased on a certain period of time. For the lease, the element “time” is connected to the essence of the contract, as the rent is always established for a time unit. The length of the contract can be determined or undetermined, but the lease cannot be eternal (perpetual). This is a novelty element, resulting from the fact that the new Civil Code provides that leases cannot be concluded for a period longer than 49 years, but if the parties establish a term longer than that, the contract ceases anyway, by law, when reaching the 49 years term.
- is a *translation* contract for a temporary use of a determined asset. The lease transmits exclusively the right of use and not the right to property, so that the risk of the unexpected destruction of the asset is supported by the owner (Stânciulescu, Nemeş, 2013, 210-211).

2. Special rules on the house rental

2.1. House rental – a version of the lease

The house rental contract is a variety of the lease contract, being subject to a special regulation, due to its specific object, namely *the dwelling area*. For this reason, within specialized literature, rental is not qualified as a special distinct contract, but as a variety of the lease (Deak, 1998, 167; Stânciulescu, Nemeş, 2013, 210-211).

Given the importance which a house has for a person, the lawmaker has paid the necessary attention to this regulation field, for which the special provisions of the dwelling legislation apply, the most important being...
provided for by the Housing Law No. 114/1996 (published in the Official Gazette No. 254 from October 21st 1996 and republished in the Official Gazette No. 393 from December 31st 1997, Law No. 114/1996 has gone through several changes and amendments, recently through Law No. 170/2010 and Law No.71/2011). This act refers only to the rental contract having a house as object, and is not applicable to the situation in which the exclusive object of the contract is another real estate.

The provisions mentioned above are completed by the enforcement of the common law norms on lease, according to the provisions of article 1778 paragraph (2) of the new Civil Code. In its turn, the Civil Code also includes a special section of Chapter V, consecrated to the lease, in which the lawmaker institutes a series of particular rules in the field of house rental, which are fully applicable also to the rental of spaces dedicated to the performance of a professional’s activity.

a. The special legal regime instituted by the new Civil Code

Going on the traditional structure of the legal regime regarding contracts, we will analyze the specific features regarding the effects of the contract, the sub-lease, the cession of the contract, the house exchange and the termination of the contract.

A. The effects of the contract

At the conclusion of the contract, the parties take upon themselves certain duties, according to common law.

Thus, the lessor (the owner) has the following main duties:

- render the house to the lessee in a normal state of use;
- carry out the important renovations;
- answer for the flaws threatening health or physical integrity (the guarantee duty).

Of all the duties mentioned above, the guarantee duty is subject to a special regulation in the new Civil Code. Thus, according to the provisions of article 1827 paragraph (1), if the real estate rent poses a serious danger for the health of those working or living therein, as a result of its structure or condition, the lessee, even if he has given up to this right, will be able to resile from the rental contract, according to law. Moreover, the good faith lessee who was not aware of the flaws at the conclusion of the contract can demand damages [article 1827 paragraph (2)].

As specialized literature also points out, when it comes to houses rental, the legal norms regarding the duties of the owner are imperative and cannot be modified by the parties; any clause related to the exemption of the owner from accountability is void (Moţiu, 2011, 179).

Regarding the tenant, the rental contract triggers his following main duties:

- take over the asset subject to lease;
- use the house with prudence and diligence;
- pay the rent;
- give back the asset.

The special provisions instituted by the new Civil Code add, for the buildings with more apartments, the duty of the tenant to contribute to the expenses for the light, heat, cleaning of the common areas and facilities, but also to any other expense which the law establishes to be paid by him [article 1829 paragraph (2)]. This duty is correlated to the right instituted by law for tenants, namely that of using the common areas and facilities according to the destination of each one of them [article 1829 paragraph (1)].

Speaking about the effects of the contract, there is a special provision of the new Civil Code regarding some duties to which tenants cannot commit. Thus, the new Civil Code considers as null by law any unwritten clause which does not observe the following:

a) the lessor cannot impose to the lessee to conclude an insurance with a certain insurer;

b) under no circumstance can lessees be jointly or indivisibly obliged to support the expenses generated by the degradation of the building elements and facilities, of the objects and endowments corresponding to the common areas of the building in which they live. In these cases, their duty is proportional with the lease value of the part which they occupy out of the whole building rent;
c) the tenant does not take upon the duty to admit or to pay in advance amounts of money on the basis of the estimations made exclusively by the lessor (owner), which are supposed to be used for the reparations of the building.

d) the lessor is not entitled to diminish or to abolish, without an equivalent compensation, the performances assumed by contract.

B. Sublease, cession and home exchange

While Law No. 114/1996 does not contain any provision regarding the cession of the lease contract, according to the new Civil Code (article 1833), the tenant can assign the lease contract or sublease the building only in the following conditions:

- with the previous agreement of the landlord;
- according to the conditions established by the landlord (Moțiu, 2011, 180).

Consequently, given that the lease contract is not in principle a contract concluded \textit{intuitu personae}, the lawmaker provides for the possibility of the lessee to assign or to sublease the building, only with the written assent of the owner. If the sublease or the cession of the contract intervene and in the absence of a contrary stipulation, the sublessee, respectively, the cessionary, are jointly accountable with the lessee for the duties taken in front of the lessor (landlord), by means of the lease. Consequently, with the aim to protect the lessor, law provides for the duty mentioned above to be complied with by the sublessee, although he is not in direct legal relations with the landlord.

According to provisions of article 1834 paragraph (4) of the new Civil Code, if the main lease contract is terminated with the end of the 30 days term from the moment the lessee’s death was registered, the sublease contract agreed by the lessee will also end. By exception, the lessee’s descendants and ascendants can choose to continue the lease contract, if they have been mentioned in the contract or have lived together with the lessee. In this case, they can all agree to appoint the person or the persons who will sign and replace the dead lessee, while if no agreement is reached, the appointment shall be done by the lessor [article 1834 paragraph (3)].

In the system of the new Civil Code, the home exchange between lessees has the form of a double cession of contracts, an optional character and can only be done with the written agreement of the lessors, according to the provisions of article 1833, already mentioned. The new Civil Code does not regulate the compulsory home exchange and neither Law No. 114/1996 contains any legal provision for that matter. However, the compulsory home exchange is provided for by other special laws.

C. Termination of the contract

Clearly provided for also by the Housing Law No. 114/1996, the causes for the termination of the lease, regulated by the provisions of the new Civil Code, are: the expiration of the term, the unilateral denunciation, the rescission of the contract and the lessee’s death.

a) The expiration of the term

Regarding the expiration of the term, there must be taken into account the provisions of articles 1828 and 1831 of the new Civil Code. Thus, according to the provisions of article 1828, at the termination of the lease contract, the lessee who fully fulfilled his duties resulting from the contract, has the right of choice at the conclusion of a new contract, in equal conditions. According to the provisions of article 132 of Law No. 71/2011 (published in the Official Gazette No. 409 from June 10th 2011), the lessee’s right of choice, provided for by article 1828, is applicable for any lease contract, concluded in relation to the same house or with a part of it:

- after at most 3 months from the termination of the lease, if the latter lasted more than one year;
- after at most 1 month from the termination of the lease, if the latter lasted for more or for exactly a month;
- after at most 3 days from the termination of the contract, if the latter lasted for less than one month.

This regulation contains novelty elements for the field of the lease and concerns both the houses serving as living areas and the spaces designed for the activity of professionals. The same regulation represents a protection measure both for the lessee of a house and the professionals, who are interested in obtaining the use of the space again, when the initial contract expires. Moreover, there are not forgotten the lessor’s interests either, as the right of choice acknowledged by law can be exerted only in equal conditions, so that, if the lessee does not comply accordingly with his duties resulting from the initial contract, he loses this right. According to the provisions of article 1828 paragraph (2), the regulation of the preemption right in the field of sales is also accordingly applied in
the field of lease. In the context of these provisions, starting from the definition of the preemption right (Foltiș, 2011, 6-14) but also from the situations appearing in practice, it emerges the question whether the lessee of a place functioning as a home or as the office of a professional has a preemption right when the place is sold by the lessor-landlord.

According to the opinions expressed by specialized literature, to which we agree as well, the new Civil Code does not institute a preemption right on favor of the lessee (tenant) of a movable asset serving as home or office of a professional, as the current regulations only concern the lessee’s right of choice at the moment of the lease (Veres, 2012, 460-462). Yet, it can be involved here a conventional preemption right, created by the parties, by stipulating it on the favor of the lessee, with the observance of the duty to be recorded in the real estate register, according to the provisions of article 1737 of the new Civil Code.

When the contract ceases due to the expiration of the term, the lessee is bound to leave from the building. If he refuses, according to the provisions of article 1831 paragraph (1) of the new Civil Code, the lessee will be evacuated on the basis of a court decision, if the special law does not provide otherwise. This provision of the new Civil Code reflects in fact the solutions adopted by the judicial practice which has encountered this kind of situations. Until the building representing the object of the lease is actually free, the lessee owes the rent established to the lessor, but also eventual amends for any type of prejudice caused to the lessor [article 1831 paragraph (2)].

b) The unilateral denunciation of the contract

The unilateral denunciation is another cause for which a lease can cease, regulated by the provisions of articles 1824 and 1825 of the new Civil Code. Thus, according to the provisions of article 1824 paragraph (1), if the lease was concluded without establishing its length and no other provision has been made, the lessee can denunciate the contract by notification, with the observance of a notice term, which cannot be shorter than a quarter of the period for which the payment of the rent has been established. The provisions mentioned above regulate the possibility of the lessee to denunciate unilaterally the contract, which is nonetheless conditioned by the observance of a notice term. Regarding the notice term, the law clearly establishes that it cannot be shorter than the quarter of the period for which the payment of the rent has been established. In our opinion, this provision is in the benefit of the lessor, as he has the possibility to find another lessee.

The lessor can also denunciate the lease. Thus, according to the provisions of article 1824 paragraph (2) of the new Civil Code, in the case provided for by the first paragraph, the lessor can denunciate the contract by notification, by observing a notice term which cannot be shorter than:
- 60 days, if the period of time for which the payment of the rent has been established is of one month or longer;
- 15 days if the period of time for which the payment of the rent has been established is shorter than one month.

The new Civil Code clearly provides for the possibility of both parties to denunciate the contract, also when the lease has been concluded for a determined period, on the condition that the notice terms are observed accordingly (article 1825). Thus, according to article 1825 paragraph (1), if the rent is done on a determined period, the lessee can unilaterally denunciate the contract by notification, by observing a notice term of at least 60 days. Any contrary clause is considered as not written. Moreover, the lessor can unilaterally denunciate the contract for fulfilling his own living needs or of his family, if this has been included in the contract, also with the observance of a notice term, having a length which is identical to the one provided for by article 1824 paragraph (2).

c) The rescission of the contract

The lease can also be terminated by rescission, regulated by the special rules of the new Civil Code, at article 1830. Thus, according to article 1830 paragraph (1), the rescission of the lease can take place for the unjustified transgression by one of the parties of the duties assumed with the conclusion of the contract. This general regulation continues at the second paragraph of article 1830, by indicating some special cases in which the lease can be subject to rescission, which concern a behavior of the lessee making impossible the living or normal use of the house.

d) The lessee’s death

The death of the lessee – the titular of the contract – triggers the termination of the lease, within a determined term of 30 days, from the moment the death was registered, as pointed out by the provisions of article 1834 paragraph (1) of the new Civil Code. According to law, the tenants, ascendants or descendants of the dead lessee, who are entitled to invoke the benefit of the contract, can chose within 30 days to continue the contract until the lease term expires [article 1834 paragraph (2)]. Those who choose to continue the contractual relations can agree to
appoint the person or the persons who will sign and replace the dead lessee, whereas if no agreement is reached, the appointment shall be done by the lessor [article 1834 paragraph (3)]. If the main lease contract will cease when the 30 days term expires, the sublease contract agreed to by the lessee will also cease [article 1834 paragraph (4)]. According to provisions of article 134 of Law No. 71/2011, the provisions of article 1834 are also applicable to the contracts under enforcement when the new Civil Code entered in force.

Conclusions

The regulation of the assets use, by means of lease, represents a theme of interest, whereas the lease relations reflect in their turn an important part of the social and legal life. Given this context, the current work has attempted to capture the recent intervention of the lawmaker in the field of house rental, by means of the provisions contained by the new Civil Code.

Considering house rental as variety of the lease, the new Civil Code consecrates a set of special rules to it and makes it particular in relation to the other varieties of lease. These rules join the norms included in the Housing Law No. 114/196 which has experienced several modifications in its turn, together with the entry in force of the new Civil Code. The objective of the current scientific work is to underline the features of this Code, by pointing out the novelty elements, being convinced that we can speak about a real reconfiguration of a contract having a major impact upon civil relations.

Consequently, regarding the current legal regime of the lease of houses and professional spaces, we would like to point out the following novelty elements brought by the Civil Code:

- regulating the length of the notice term (article 1824);
- accountability for the flaws threatening health or physical integrity (article 1827);
- the right of the choice for rent (article 1828).

It should also be noticed that the new legal regime of the contract for lease of houses and professional spaces shows the influence of the advanced solutions expressed within legal practice and literature, for its adaptation to the new realities.

References


