

# COMPARATIVE LEGAL REGIME OF CONTRACTS FOR THE USE OF AGRICULTURAL LAND

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**Summary:** *The study focuses on the legal regime and the comparison of the two main types of agricultural land use contracts - the lease agreement and the rent agreement. The general legal features of these contracts, their peculiarities arising from the subject matter and the differences between them, are set out. Changes in the legal framework related to limiting the risks of fraud and abuse of agricultural lands are being considered. The applicability of the *lex specialis* to the legal settlement of the relationship between owner / co-owner and third party as well as the mandatory case-law on the admissibility of leasing contracts under the Special Agricultural Lease Act are analyzed.*

**Keywords:** *Land, Agricultural Use; Rent; Lease; Contract*

**JEL code:** *K15 Civil Law; Common Law*

## 1. INTRODUCTION

The interest in the topic is dictated by the wide range of concern legal persons - owners and potential users of farmland.

The main provisions on the use of agricultural land are contained in the Agricultural Land Ownership and Use Act, the Farming Lease Act, the Obligations and Contracts Act, the Cooperatives Act and the Agricultural Producers Assistance Act.

A catalyst for regulatory changes has been a number of cases of unscrupulous entry of rental contracts into the land register when the owners have not been a party to them. This scheme was most often applied in cases where a landowner has not entered into a personal agreement and has not submitted a declaration on a mode of sustainable use and management, where the landed property falls into the area of "white spots" formed under the conditions of Art. 37c, para. 3, item 2 of the Agricultural Land Ownership and Use Act.

The importance of the relationship under consideration is also underlined by the existence of European legislation in this field: EU Regulation No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009.

Changes made to the legal regime when granting third-party farming make the research particularly relevant not only for legal doctrine but for life practice as well.

The study also points to developments in the case law summarized in an Interpretative Decision of the General Assembly of the Civil and Commercial Colleges of the Supreme Court of Cassation of the Republic of Bulgaria.

The choice of a legal form to regulate legal relationships is crucial in the following main directions:

1. Requirements for the form of contract conclusion
2. Minimum and maximum duration of the contract
3. Opportunities for termination of the relationship

4. Legal certainty for the parties to the contract
5. Influence of co-ownership over the land
6. Admissibility for re-lease / re-rent and change of the user - tenant or lessee.
7. Legal basis as a condition for access to support to farmers through direct payment schemes and measures under the Farmers Support Act.

The content of the report is limited to legal relationships in the contracts for land use between private parties. Outside it is the landing of land - state or municipal property or included in the State Land Fund, as well as opportunities for joint cultivation of the land. Legal relationships concerning the use of so called "White spots", subject to regulation of Art. 37c of the Agricultural Land Ownership and Use Act after the legislative changes, which are analyzed in details by Kourteva, St., (2018) , are not not subject of the survey as well.

## **II. GENERAL LEGAL CHARACTERISTICS OF THE LEGAL ARRANGEMENTS OF AGREEMENTS FOR AGRICULTURAL USE BY PERSONS WHO ARE NOT OWNERS.**

It is necessary to clarify the subject of the contracts for agricultural use, understood within the meaning of the term in §2 of the Supplementary Provisions of the Agricultural Lease Act - use for the production of plant, plant and tree and / or animal products.

In the term "agricultural land" given in Art. 2 of the Agricultural Land Ownership and Use Act, two criteria are formulated: 1. positive - the purpose of the use for agricultural production, and 2. negative - the land is not in urbanized territory, in the forest fund, it is not built up, it is not occupied by open mines and quarries and shared facilities.

The text of Art. 8, item 2 of the Spatial Development Act distinguishes two categories of agricultural land: for cultivated lands (fields, fruit and vegetable gardens, vineyards, meadows, etc.) and non-cultivated lands (pastures, ravines, ravines, etc.).

There are no legal arguments to exclude as a possible subject of the contracts, both for lease and for rent, the available land properties and the two types of agricultural land mentioned above.

It should be emphasized that in both eligible forms of negotiation - by lease or rent - it is not permissible to change the purpose of the use of agricultural land. Meanwhile, the tenant / lessee is obliged to comply with all the statutory requirements for such use and the land should be returned to the owner in the same condition as it was given.

While respecting the freedom of the will as a method of regulation in civil law, the above Interpretation Decision highlights the two main differences between rent and rent: the first contract is formal and longer, while the rent is informal and can be significantly - low duration.

In the event that the parties have chosen to settle their relations through a lease, they will have to comply with the specifics of the site and with the provisions of the Agricultural Land Ownership and Use Act (Article 5, Article 24, paragraph 1, Art. 37b, etc.), the Regulations for its application, as well as in the Law for the Conservation of Agricultural Land.

The concerned law enforcement agencies have common characteristics that deserve to be marked (Stoyanov, V., 2017).

There are many similarities in the legal characteristics of the lease and the rent - ***both contracts are: governed by the bond law; term; bilateral; for consideration; management transactions; consensual, causal and named.***

## **III. LEGAL CHARACTERISTICS OF THE ARENDA CONTRACT.**

### **1. The subject of the lease agreement.**

In Art. 2 of the Agricultural Lease Act as possible object of the lease agreement is mentioned the agricultural land as well as the immovable and movables for agricultural production. However, the yields that are acquired by the lessee from the time of their separation are excluded. Under the prescribed rules, the lessor may set up a commercial pledge on them as well as on the imported goods in order to secure the collection of any monetary claims arising from the failure to fulfill the lease agreement for the respective year.

### **2. Parties to the lease agreement.**

The general legal regime under the Agricultural Lease Act does not impose requirements on the parties. The term "landlord" used allows the party to the contract not to be the owner.

In the lease agreement Art. 3, para. (4) of the Agricultural Lease Act requires the contract to be concluded, amended or terminated only by an owner, co-owner of an agricultural land whose ownership is more than 50 percent of the common shares of a common property or by a person authorized by the owner or co-owners having common more than 50 percent of the common property.

When the lease agreement is not concluded with the participation of all co-owners, the rest are entitled to receive a proportion of the rent payable according to the general rule of art. 30, para. 2 of the Property Act. It is envisaged that all contracts concluded before 07.02.2017, when the amendments in the Agricultural Land Ownership and Use Act came into force, which were entered in the Property Register at the Registry Agency, are preserved and have priority over later lease agreements.

Due to the principle long-term relationship of the lease, the legislator has clarified how to proceed under a change of the parties to the contract. Where this is explicitly stated in the contract, the successor will inherit the landlord, and such an assignment to the rights and obligations of the previous lessee for registered lease contracts will be a priori for two business years after the year of acquisition.

### **3. Form of the lease agreement.**

The lease agreement is deemed to have been concluded once the parties have reached agreement on the most important points of its contents. It is about the object of the contract (property) - what is given and what will be the rental pay. These are the basic, mandatory elements, and otherwise the parties are free to negotiate other conditions - such as term, re-arrangement or something else.

For this type of contracts, the written form with notary certification of the signatories and the landlord is mandatory, and this certification should be done simultaneously. At the signing of the signatures, a notary's obligation has been established to establish the rights of the persons who conclude the contract of the land of the landlord. In view of the security of the parties, especially in the case of co-ownership of the land, as well as of potential third party counterparties, the law provided for compulsory registration in two places: the Registry Agency and the relevant municipal office of agriculture in a special register (Gigova, V., 2018).

### **4. Duration and Termination of the Rental Agreement.**

The peculiarities of the cultivation of agricultural land as an object of the lease contract lead to the setting of a minimum period for it - five years, the year is counted from 1 October of the current year to 1 October of the following year.

Normally, there is no limit to the maximum duration of the lease agreement, including when a party is a natural person (renting between individuals is only allowed for up to 10 years).

It should be taken into account that the minimum period laid down by law does not exclude the legal possibility, by analogy with the rent, that the lease be concluded without a deadline. Such a contract may be terminated without a specific legal basis only after the expiry of the fourth year and the unilateral written notice shall be no later than the end of the business year preceding the start of the two business year.

The lease terms apply to the general grounds for termination of the contracts: expiration of the agreed term; by mutual agreement; with unilateral notice when such grounds are provided for in law or in the contract.

Interest is provided for the special cases of termination of the lease agreement, which are explicitly mentioned in the Agricultural Lease Act, and are not applicable under the legal regime of rental contracts for agricultural use.

Firstly, the total termination due to a default on one of the parties is subject to a limitation on the deferment of the lease payment - it can only lead to the cancellation of the lease if it has lasted more than three months and, in the case of agreed installments for periods, shorter than one business year, the breach is permissible in case of late payment in at least two consecutive installments.

Next, due to the long-term relationships that imply and create personal confidence in the fulfillment of the obligations, the death or the placement of the lessee, respectively the termination of the legal lessee is grounds for termination of the lease, unless the parties at the conclusion of the contract excluded any of the above mentioned legal facts as such. This is an exception to the lease agreement, where, except where expressly agreed upon by the parties, the termination of a party does not result in the termination of the contract itself, but the rights and obligations assumed become those of the successors of the country.

A specific ground is also the termination of the contract in case of permanent disability of the tenant, which he can make from the next business year with a written notice. This type of objective impossibility will apply when the tenant is a natural person.

Thirdly, termination of the contract will also result from the forced expropriation of land being leased for state and municipal needs, which would place the landlord on an impossibility to ensure the use of the rented site.

Termination of a tenancy contract for more than 10 years or lifetime may be done only by court order in order to make an objective and lawful assessment of the existence of legally permissible and negotiated terms.

Whatever has led to the termination of the lease agreement, the redemption rights are terminated and the landlord has the right to request the return of the land directly from the third party with which the tenant has contracted.

#### **IV. LEGAL CHARACTERISTICS OF THE RENTAL AGREEMENT FOR AGRICULTURAL USE.**

##### **1. Admissibility of concluding a lease for agricultural land.**

Particularly important for the practice is the explicit interpretation given in the Interpretative Decision No. 2 of 20.07.2017 of the Supreme Court of Cassation under case No. 2/2015 of the General Assembly of the Council of The Civil and Trade College, rapporteur Judge Irina Petrova, that "the rent contract in which agricultural land is given for use against payment under the provisions of the Obligations and Contracts Act are applicable is valid ", despite the existence of *lex specialis* - that of the agricultural lease (Panayotova-Chalakov, L., 2018). The proximity, but not the identity of rent and lease for agricultural use make it

possible to convert a lease contract for which the required form has not been complied with into a rent contract.

## **2. Subject of the rental contract for agricultural use.**

In Art. 228 of the Obligations and Contracts Act there are no restrictions on the subject of the contracts - they may be both for movable or for immovable property. This creates a legal opportunity for the subject of the contract to be both agricultural land and anything else that would be necessary for agricultural production.

It is important to note that the due performance on the part of the tenant is always a rental price, i. money, as opposed to lease, where it is possible to make the lease contribution to be expressed in addition to a sum of money, also a part of the harvest.

## **3. Parties to the lease for agricultural use.**

The general legal regime of the lease under the Obligations and Contracts Act does not impose requirements on the parties. The term "landlord" used allows the party to the contract not to be the owner. Such will be the cases of surrender and letting by a person who is only possessor/holder of the property.

In the special legal regulation - the Law on the Ownership and Use of Agricultural Land, in 2018 (State Gazette, N 17/2018), additional measures were created for the security of the interests of the owners as a counteraction to the cases of fraud and lack of transparency in the relations arisen to serve the agricultural use of land .

It is these legislative changes that outline the characteristics of the rental contract of agricultural land compared to the general legal framework of the rental relationship.

First of all, such are the introduced in Art. 4a restrictions on persons who may be landlords of agricultural land - the circle is restricted to owners of property rights, their proxies or persons holding rights to agricultural land, including in their content the power to use or manage the land.

When on the party of the the lessor of the land there are co-owners, the relationship concerning the management of the land (and other movable and immovable property) related to its use shall be settled in accordance with the provisions of the Ownership Act. For example, the decision to conclude a lease contract, the appointment of a tenant, the rental price, etc. the terms of the contract may be taken at the discretion of the co-owners holding more than half of the total land, respectively, of other items rented with the land. However, this does not deprive the other co-owners to receive part of the rental price in proportion to their ideal share, as each co-owner participates in the benefits and burdens of the co-owned property. This right arises without the need to invite, as provided in the case of the use of the whole object only by one of the co-owners. Furthermore, in the event of disagreement, any of them may claim at the court to obtain the right to use de facto his share, effectively blocking the execution of the lease.

It is not permissible to conclude a contract for a term of more than 3 years from persons who are only required to carry out ordinary management.

It deserves to be mentioned the possibility of re-renting (permissible for part of the object of the lease and without the express consent of the lessor), where the tenant acts as a landlord. After frequent occurrences in the life practice of renting agricultural land from non-owners or their proxies, the requirement for the explicit written consent of the owners to be subrogated was introduced by analogy with the lease, thereby protecting the interests of the actual owners of the property right, even though they do not become direct parties to the rental relationship.

## **4. Form of the lease for agricultural use.**

In order to outline the specifics of the rental relationship, whose object includes agricultural land, it is necessary to mark some general terms for the rental contract.

The legislator has not provided a form of reality for the rental contract. However, the proof of verbal hiring contracts worth over BGN 5,000 is inadmissible by testimony.

From the point of view of the interests of the landlord, guarantees are created by the possibilities for notarization of the signatures of the parties and eventually the entry in the Property Register at the Registry Agency. These measures relate to ensure that the lease is preserved in the event of a change of ownership of the property. For a contract with a term of up to one year the notarial certification guarantees its obligation for the subsequent transferee, and for a longer period the legal relationship is maintained until the end of the contract, but not for more than one year. The entry in the property register of the real estate batch implies that any interested person can establish the existence of a contract of lease by reference to the register, which explains why the contract remains in force until the expiry of its full term.

In the new Art. 4b of the Ownership and Use of Agricultural Land, established in 2018, there is a mandatory written form with a notary certification of the signatures of the parties, simultaneously performed both for concluding and for modifying or terminating the lease contract with an object of agricultural land, in case that the term of the contract is more than one year.

A second major change to the regime concerns the requirement for a notary certification of the signature and the content of a power of attorney entitling to a rent, which is an exception to the general legal regime of the rental contracts.

The third substantial change concerns the provision in the new version of Art. 37b, para. (1) of the Ownership and Use of Agricultural Land, according to which there is an obligation to register rental contracts, which are not entered in the land register, ie. those for a period of less than one year.

It should be emphasized that while under the general rental regime the entry of a contract takes place at the request of one of the parties, a mandatory entry of the conclusion, modification and termination of lease agreements on agricultural land and the land register has already been introduced when the term is greater than one year.

## V. CONCLUSIONS

The analysis of the more important features of the lease agreement and the lease of agricultural land make it possible to make a general comparison of their similarities and differences which once again underline that these are two very close but not identical legal possibilities for settling the legal relations for agricultural use of land. This requires the parties to know the legal institutes, especially in view of the legislative changes made to reduce the risks and frauds.

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