

## **SUCCESSIVE LAND LEASE AGREEMENTS WITH DIFFERENT TENANTS FOR THE SAME PIECE OF LAND**

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**Abstract:** *The evolution of rural lease concluded by different lease persons may be subject to complex disputes and the courts need to analyse legal grounds regarding the involved rural lease provisions, standing crops, legal regime of ownership and partie's liability.*

**Keywords:** *rural lease, standing crops, acquisition, liability*

### **Premises**

In practice, there were cases when the land lease agreement ended and the landlord concluded a new land lease agreement with a different tenant. Quite often, the new tenant is introduced by the former tenant, in order to ease the continuation of the farm. Not always the things went right in the case of these successive operations. Sometimes, the relations between the landlord, the former tenant and the new tenant were hostile due to different issues such as the failure to adapt the crops in the last year of land lease to the optimum harvesting season, the failure to harvest crops till the termination of the land lease agreement and the discontent of the new tenant who cannot manage the farming calendar because the previous tenant did not harvest the crops. In such cases, complex litigations arised, when the court analysed issues regarding the effects of successive land lease agreements, the situation of ungathered fruits, the legal regime of their ownership of them and the civil liability of the participants. These potential situations and their judicial treatment represent the present object of study.

### *Object of the land lease agreement*

According to article 1778 paragraph 1 of the Civil Code, any lease agreement regarding the lease of pieces of land is called land lease, and according to article 1836 paragraph a) of the Civil Code, this category includes arable lands, respectively those on which there are crops. The form of the contract must be written, under the sanction of absolute nullity, and the advertising of the agreement must obey the provisions of article 1838 paragraphs 2 and 3 of the Civil Code, under the sanction of a fine established by the court for every day of delay. The land lease agreement is valid from the date it was concluded till its termination date, by right with the consent of the parties, situation regulated by article 1809 of the Civil Code or through special cases of agreement termination, mentioned at article 1850 of the Civil Code. According to article 1777 of the Civil Code, the land lease agreement, as type of the lease agreement, has as object to lease "the use of some goods for a certain period of time, in exchange of a price". Thus, what

makes the object of the land lease agreement is the transfer of one of the three attributes of the right to property, respectively the utilization attribute (*jus fruendi*). Nor possession (*jus utendi*) neither disposition (*jus abutendi*) cannot make the object of this type of lease agreement. Of course, when the land lease agreement is terminated the right to use the pieces of land which made its object ceases. Together with the termination of this right the right to use the fruits ceases, that is why issues may arise between the landlord, the former tenant and the new tenant.

### **The right to property to the ungathered fruits**

Crops situated on agricultural lands are the result of human intervention and, consequently, are included in the category of industrial fruits, as mentioned at article 548 paragraph 3 of the Civil Code. What happens when the land lease agreement of the former tenant terminated and they did not manage to harvest all crops still situated on the agricultural lands? Is the former tenant entitled to access the lands they worked after the termination of the land lease agreement in order to harvest crops? The former tenant could invoke in a justified manner the right to property on the crops they established? Which are the means of protection the new tenant may use? Does the owner of the land play any part in all this situation?

There are various questions which we will try to give an answer.

According to article 1821 of the Civil Code “when the lease ends, the tenant has to return the goods taken in lease in the status they received them”, which means that, in principle, when the lease ends and they hand over the leased lands, there should be no cultures in the last year of lease. This thing is obvious, because at the time the former tenant received the land there were no cultures on it. Thus, they shouldn’t hand it over with unharvested crops. If, nevertheless, at the termination of the land lease agreement there are unharvested crops, it means that the former tenant failed to meet their legal obligations and, most likely, contractual obligations, because they did not hand it over in the status they received it.

Is it however possible for the former tenant to access the lands even if they don’t enjoy the right to use, which implicitly restricts the right to access and harvest industrial fruits? Wouldn’t they infringe the right to use of the new tenant? Obviously, beginning with the date the land lease ended, the former tenant has no longer the right to access and harvest industrial fruits. Nothing would support their position. There is no legal ground to allow the former tenant to enjoy the right to use the land, use which involves access, developing works and/or pick up crops. And the landlord is obliged by the land lease agreement concluded with the new owner to forbid the former tenant any violation of the present tenant’s right to use, with the risk of incurring their contractual liability.

In this complex situation, what happens however to the unharvested crops? Which would be their legal regime?

#### *The right to accession of the land owner to the unharvested crops*

The will of the land owner is essential in clarifying the legal regime of the unharvested crops. They have the right to dispose of the unharvested crops left on their land after the termination of the former tenant’s lease and, if they do not want to draft in their personal name the documents for cropping, they may hand over this right to the new

tenant. The latter, notified by the landlord regarding the disposition given to the new tenant, may dispose any measures regarding them, respectively destruction, harvest, even sale. Why is the will of the landlord essential? Because, once the right to use of the former tenant ends, they lose the right to property to the unharvested crops in the favour of the landlord, who acquires them through artificial immovable accession. The Civil Code of 1864 regulated artificial immovable accession when a third party made plantations, constructions or other works on somebody else's land. As it was mentioned in the case law of the Constitutional Council, "article 494 paragraph 3 final thesis of the Civil Code is to be applied in the case of artificial immovable accession when o third persons made plantations, buildings or other works on somebody else's land using their own materials. In this case the owner of the ground where there are situated the constructions or plantations made by somebody else owes compensations to the one that built or planted them" (D. 2003).

As a consequence, the Civil Code of 1864 regulated the way the land owner could acquire through accession the right to property to the unharvested crops from the plantation established by the tenant. The present Civil Code regulates the artificial immovable accession in article 577 paragraph of the Civil Code. According to this article, as long as through the land lease agreement the former tenant and the landlord did not agree that the first preserves the right to property to the crops even after the termination of the land lease agreement, the latter acquired the right to the unharvested crops left on the land. The aquisition of the right to property through artificial immovable accession is made if the land owner expressed their right of option. This unilateral judicial document of the land owner must meet the requirements of articles 1324-1326 of the Civil Code, respectively it must be issued with the indication of landlord's wishes and communicated to the person who established the cultures, respectively the former tenant.

An important feature regarding the analysis of the owner's right of option to invoke immovable accession is represented by the one regarding the law to be applied. As it has been shown in jurisprudence, "regarding accession, the new law as well as the former law include some contradictory stipulations, meaning that, according to Law no. 71/2011, in all cases when the artificial immovable accession supposes that the owner of the real property enjoys the right of option, the effects of the accession are governed by the law in force at the beginning of the work, and according to article 6 paragraph (2) of the Civil Code of 1865, the accession is subject to the law in force at the moment the circumstance or deed which implies the accession was produced or committed, in the case of continuing deeds subject to the law in force at the moment it began."

Thus, after the termination of the right to use, the former tenant acts in bad faith because they did not fulfill their judicial obligation to hand over to the land owner the land free of cultures, as they received it at the beginning of the land lease. Also, at is has been shown in jurisprudence, "the defendant ceased to be in good faith the moment they were notified by the plaintiff regarding their right to property, being asked to stop the material acts of use and possession of the real property". Being in bad faith, as they did not hand over the land free of cultures, the former tenant cannot acquire the ungathered fruits. As it has been shown in the doctrine, "the simple owner obtains the fruits only if they are in good faith. On the contrary, they must return them together with the object to the owner that claims them. The owner is in good faith when they possess as an owner, by act translative of ownership whose vices are not known by them." (B. 2003)

If he had harvested crops till the termination of the land lease, such an issue would have not been the case. But, because of the failure to harvest, the deed of the former tenant is illegal regarding the owner, to whom they have a contractual liability, as well as regarding the new tenant, to whom they may have a criminal liability. It is certain that, if the crop was not harvested till the termination of the land lease, the owner of the land has a protestative right of option to invoke the acquisition of property of the unharvested crop, through artificial immovable accession (T. 2010). The right of option emerges “the moment the right to claim the land and plantation is expressed, a protestative and insusceptible right of abuse of the owner ”(M. 2010) and it is just to be this way, because, otherwise, there would be an unjustified superposition of rights to property, one on the land and the other on the cultures. Or, this is the sanction the former tenant must bear because they failed to meet the obligation to hand over the arable lands free of any culture.

Through artificial immovable accession the owner of the agricultural lands also becomes the owner of the unharvested crops, right they have the full liberty to transfer, under any title, subject to payment or not, to the new tenant. This right is based on direct accession. As it has been shown in the doctrine, “in the case of artificial immovable accession, it is important the distinction between direct accession and indirect accession. Regarding property, direct accession takes place by the incorporation of a thing in the land, without rising a new right to property. The thing which is incorporated is named the accessory thing, and the one on which the incorporation takes place is called the principal thing” (S. 2020). The agricultural land is the principal thing and the unharvested crop is the accessory thing.

If the owner notifies the new tenant regarding the right to have at their disposal the unharvested crops as they consider necessary, they have the right to proceed as they consider necessary and useful, respectively either destroy the unharvested crops in order to make room for the new cultures, either harvest them in order to sell them. Of course, the behaviour of the former tenant is important in deciding the judicial regime of the unharvested crops. If the former tenant planted cultures at a late moment with a plant which has a slow development regime (for example, to establish corn cultures in April-May is unsuitable if the land lease terminates at the end of August, because corn is harvested in October) and which could be harvested a long time after the termination of the land lease, represents an unjustified behaviour of the tenant, a professional in agriculture, which has no relevant reasons to claim the right to access on land in order to harvest even after the termination of the land lease. Also, the failure to harvest justified by a too high humidity of lands, if the former tenant had specialised equipment to access the lands no matter their status, does not represent a valid reason to claim the right to access on lands in order to harvest industrial fruits.

Besides, in fortuitous cases, when severe weather conditions could have caused an increased humidity of the ground thus preventing the harvesting, even if this situation took place long after the termination of the right to use, in jurisprudence it was settled that “the devastation of cultures does not represent a fortuitous case or force majeure, as they are regulated by the provisions of article 1351 of the Civil Code. Heavy precipitations do not represent unpredictable events, any cautious and diligent person being able to foresee the apparition of such events, and even more, contesting in capacity of professional they could not invoke the fact that the events were unpredictable” (R. 2006). Hence, the judicial treatment of such a situation is that, in the case the former tenant fails to meet the

obligations to harvest on term the cultures and to hand over to the land owner the agricultural land in the same conditions as it was when they took it, free of plants, the land owner has a right of option to acquire the property on the accessory goods based on accession.

*Means of protection of the new tenant's right to use*

When the land lease agreement starts to produce judicial effects, the new tenant enjoys the right to exclusive use of the agricultural land, right which also includes the right to access the lands and the right to harvest the ungathered civil fruits, if it was granted to them by the owner that acquired them by invoking accession. As it has been shown, even if the new tenant did not establish the culture, the fact that the former tenant did not harvest it gave the owner the protestative right of option in order to acquire through accession the unharvested crops. The right to property acquired through artificial immovable accession may be given by the owner to the new tenant as a consequence of their unilateral act of will, communicated to the latter. From this date, the new tenant enjoys judicial protection in order to protect their right to use by not allowing the former tenant to access the agricultural lands and by requiring the former tenant not to use any act of violence in order to harvest ungathered cultures. Also, the new tenant enjoys full rights to decide on the unharvested crop, as they were given to them by the land owner, the one that invoked artificial immovable accession on the ungathered fruits.

As it has been mentioned in the doctrine, "immovable property by destination (that are those goods which, although they are movable goods, are destined to managing a real property) are also considered movable goods, as well as movables by anticipation 11 (crops, forest, etc.)." (P. 2016). According to other opinion, "the provisions of article 537 of the Civil Code include in the category of immovable goods, together with the immovable goods by their nature (lands, constructions), also plantations connected to the land by roots, including the harvests standing on roots on the leased lands, they being immovables by incorporation, thus belonging to the owner of the fund, in the virtue of their right to property. The Civil Code of 1864 expressly mentioned, at article 465, that crops still standing by roots and the fruits of trees not yet gathered are also immovables. As soon as crops are cut and the fruits gathered, they are movables". Regarding fruits ungathered yet, compared to the provisions of the former Civil Code, which considered them immovables, the provisions of the new Civil Code, through article 540, considers the fruits ungathered yet as being movables by anticipation.

There must be made a clear distinction between plantations standing on roots, such as crops not harvested yet connected to the land by roots, which are immovables by incorporation, and the ungathered fruits from the trees situated on the leased land, as, in this second hypothesis, fruits are not connected to the ground by roots, only the trees are connected by roots to the leased lands. Such a distinction also derives from the fact that the new Civil Code gives a different judicial regimes to plantations standing on roots compared to the fruits ungathered yet." Also, if the new tenant spent money to harvest crops, they may act directly against the former tenant in order to recover the expenses made to clean the land and harvest crops.

*The former tenant could invoke the civil delictual liability of the new tenant?*

If, at the termination of the land lease, the former tenant does not free the agricultural lands of cultures, they have no right to access the land in order to harvest, no longer being the holder of a right to use (*jus fruendi*) or a right to harvest industrial fruits. The only person who has these rights is the new tenant, on the basis of the land lease agreement concluded with the owner and, on whose basis, is the only holder of the attribute of the right to use (*jus fruendi*) and the right to harvest the industrial fruits. Of course, such a situation may cause misunderstandings, even arguments between the former tenant, who could claim their property of the unharvested crops, and the new tenant, who is hindered from managing their own farming calendar and who, additionally, has to make additional, unplanned expenses, in order to harvest, clean and prepare the lands for seeding their own cultures. As a consequence, the new tenant has a lawful interest to forbid the former tenant to access the lands and to cover the expenses made to clean the lands in order to establish their own cultures.

In order to decide what person has the right to property of the unharvested crops the following elements must be taken into consideration:

- (i) The former tenant did not exercise their rights within the limits established by the law, according to article 555 paragraph 1 of the Civil Code, as long as the crops not harvested by them remained on the agricultural lands after the termination of their land lease agreement;
- (ii) The land lease agreement between the former tenant and the owner of the lands represents the law of the parties;
- (iii) The termination of the right to use together with the termination of the land lease agreement imply the termination of the plaintiff's right to harvest the industrial fruits;
- (iv) The landowner has won the right to property of the ungathered fruits, through accession;
- (v) The landowner gave the new tenant the right of disposal on the unharvested crops.

According to article 555 of the Civil Code, the ownership is the right to enjoy and dispose of property exclusively and absolutely, subject to the limits and conditions for doing so determined by law. The attributes of the right to ownership are possession (*jus utendi*), representing the right to use, the utilization (*jus fruendi*), representing the right to enjoy the fruits and the right of disposal of a thing (*jus abutendi*). The right to enjoy the fruits, also named *fructus*, is the prerogative offered to the holder to gather and collect fruits. The material act of harvesting must nevertheless be based, when harvesting, on the right to access the land, which is a fundamental and essential right so that the action could take place. Without the right to access of the former tenant, the material act of harvesting cannot be put into practice.

The case in which the owner gives the new tenant the liberty to decide and forbids the former tenant to access the land in order to harvest, inclusively in the case where the reasons invoked by the former owner refer to external elements such as a fortuitous case (for example, the former tenant may say they did not harvest crops during their land lease agreement because of excessive humidity of lands, situation which does represent a fortuitous case for a professional in agricultural works) may lead to complex litigations. In such a case, could the plaintiff invoke civil delictual liability of the new tenant, pretending that they were prejudiced following the interdiction to access the lands in order to harvest and the harvesting by the new tenant, followed by the sale of the crop in order to cover the costs?

The former tenant could state that, in the absence of an agreement with the new tenant, civil delictual liability may be incident, without civil contractual liability. Possibly, the land lease agreement could represent a support for an action of civil contractual liability between the owner and the former tenant or between the owner and the new tenant. As it has been shown in jurisprudence, "usually the criminal act, as element of civil delictual liability, is defined as any deed through which, by breaking the norms of objective right, are caused prejudices to the subjective right or the interest of some persons". In order to justify the existence of the elements of civil delictual liability, the former tenant should prove that the new tenant committed a deed through which, by breaking the norms of the objective right, caused prejudices to the former. Or, in our perspective, as long as the new tenant justifies the exclusivity of the right to use, the act of forbidding the former tenant to access the land cannot have an illicite character. On the contrary, the situation in caused exactly by the criminal act of the former tenant, who from various reasons (for example, unripe crop) did not gather industrial fruits at the termination of their land lease agreement and did not return to the owner the land free of any culture, as they had received it.

The deed of the new tenant of gathering ungathered industrial fruits cannot be qualified as being illicite as long as, according to jurisprudence, "the use offers the owner the capacity to use their goods, by gathering or collecting in property all fruits they produce. Natural and industrial fruits are acquired through collection". With the artificial immovable accession in favor of the owner and the fact that the owner gives the new tenant their assent to dispose, as they consider right regarding the unharvested crops, the latter may make any kind of material acts to collect the industrial fruits. Their collection by the new tenant is equivalent to acquiring the right to property to them and, consecutively, to the right of disposal, in order to consume or sell them. As a consequence, it is difficult to discuss if the new tenant meets the elements of the civil delictual liability, respectively if the new tenant commits an illicite deed, with guilt, which may have caused the former tenant a prejudice, with a connection of causality between them. The new tenant did only exert their prerogatives recognised by the legislator based on the land lease agreement registered at local authorities, thus bearing a certified date.

Not in the least, it must not be omitted that, in exerting their prerogatives, the tenant is protected by legal regulations regarding their right to use to the leased agricultural lands and their right of disposal to the cultures harvested after receiving the use. They did not comit any illicite act against the former tenant, whence the reduced chances of success of an action in civil delictual liability against them.

## **Conclusions**

In conclusion, in practice various situations were met when the former tenant and the new tenant came into conflict because of different situations such as the failure to adapt the crops in the last year of land lease to the optimum harvesting season, the failure to harvest crops till the termination of the land lease, the discontent of the new tenant who cannot manage their farming calendar because the previous tenant did not harvest the crops. In such situations, litigations may be complex, each participant to the material legal report having the interest to invoke the most advantageous reasons existing in fact and stated by the law, which could be included in different procedural tipologies. Finally though, the

courts have to analyse facts regarding the effects of land lease agreements, the situation of ungathered fruits, the legal regime regarding them and the civil liability of the participants.

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