



Legal Regulation of Leasing Contract in the Republic of Kosovo

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Abstract: According to the contemporary law, the contract on leasing as a legal matter is of great importance in legal circulation. The dynamic development, which characterized the leasing contract, forced the states where this contract was applied to regulate it by special legal provisions. Furthermore, in the international aspect, the leasing contract has a proper regulation pertaining the rights and obligations of the contracting parties, the lessor and the lessee. Internationally, the first convention that has foreseen and regulated the issue of leasing, is the Unidroit convention. In the Republic of Kosovo, the leasing contract is regulated by a special law, the Law on Leasing of 2009. This paper provides an insight to the legal regulation of the leasing contract in the International Convention on Financial Leasing, the legal regulation of the leasing contract in comparative law in some large countries related to this contract, focusing on the reflection of legal regulations in the Republic of Kosovo. This paper also addresses the rights and obligations of the contracting parties, the lessor and the lessee, as well as the most important types of leasing, such as leasing of consumables (consumer), investor, short-term (operating), leasing of leasing associations, concerns, local and international. We have addressed all these types of leasing in this paper. In this regard, leasing in Kosovo occupies an important place for implementation as a powerful mechanism for increasing the efficiency of business activities.

Keywords: Leasing contract; legal regulation; Kosovo; Law on Leasing; types of leasing

1. Introduction

According to the contemporary law, the contract on leasing as a legal matter is of great importance in legal circulation. In this circulation within the autonomous commercial law, new contracts are presented including the leasing contract. In the conditions of modern life, the realization of the financial function of a business entity requires finding the most appropriate solutions to increase efficiency in providing financial means by which they will be supplied with equipment that will withstand technical and technological trends as well as for the sake of realization of

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the financial function. In this regard leasing in Kosovo occupies an important place for implementation as a powerful mechanism for increasing the efficiency of business activities. The leasing contract appears in different types, but the most important type in Kosovo is the financial leasing. The dynamic development, which characterized the leasing contract, put pressure on the states where this contract was applied to regulate it by legal provisions. Issues related to leasing in the Republic of Kosovo are regulated by the Law on Leasing.

Furthermore, the leasing contract is regulated in the Republic of Kosovo by the Law on Leasing no. 03/L-103, adopted by the Assembly of the Republic of Kosovo on 25 June 2009.

1.1. Kosovo Law on Leasing no. 03/L-103

Kosovo Law on Leasing is a law that for the first time regulates leasing in general in the country. This law contains a total of 30 articles and regulates the leasing of movable and immovable property, both financial and operational, and defines the rights and obligations of the leasing parties (Article 1 of the Law on Leasing). The law does not apply for land leasing, building leasing, office or apartment leasing and shall not apply for leasing of money, documents, financial instruments, accounts, securities, art works, intellectual property (Article 1 para. 2 of the Law on Leasing).

Kosovo Law on Leasing regulates in detail the leasing contract by specifying the meaning (notion of this contract, contracting parties, rights and obligations of the contracting parties - lessor and lessee, supplier (Articles 4 - 25), the detailed content of leasing contract (Article 5 of the Law on Leasing). The Law contains VIII chapters, so Chapter I contains (incorporates) general provisions on the scope of the Law (Article 1 - 3), the form of the leasing contract (Article 4), the content of the leasing contract (Article 5) Chapter III regulates the form of the leasing contract (Article 4), the content of the leasing contract, the types of this contract (Article 5). Chapter IV regulates the rights of the lessor (Articles 6 - 14), the rights and obligations of the lessee (Articles 15 - 20). Chapter V regulates the default of the parties in the leasing contract (Articles 21 - 23). Chapter VI regulates the rights and obligations of the supplier (Articles 24 - 25). Chapter VII regulates the issue of bankruptcy of the lessor (Article 26), bankruptcy of the lessee (Article 27). Chapter VIII contains the final provisions.

2. International Conventions on Financial Leasing

Furthermore, in the international aspect, the leasing contract has a proper regulation pertaining the rights and obligations of the contracting parties, the lessor and the lessee.

Internationally, the first convention that has foreseen and regulated the issue of leasing, is the UNIDROIT convention (*Unidroit Convention on International Financial Leasing, Ottawa 1988*), which partially regulates this matter. The convention regulates the so-called *financial leasing* (Vasiljevič, 1997, pp. 670-671), where Article 1 provides that a financial lease is a transaction in which the lessor enters into two contracts - one with a third party (supplier) for the supply of equipment, installations, or other materials, under conditions determined by the recipient of the lease, leasing, through which it carries to use the device by making the payment of the respective reward.

According to this convention, financial leasing is a transaction in which one party - the lessor enters into two contracts: a) based on the specification of the other party - the lessee enters into a delivery contract with the third party - the deliverer, on the basis of which realizes the equipment under the conditions accepted by the lessee in dimensions (frames) which belong to their interests; b) enters into a lease agreement with the lessee, by which they transfer to the lessee the right to use the equipment in exchange for payment of remuneration (Article 1.1 of the Convention).

The characteristics of financial leasing according to the Convention are: a) the lessee makes the specification of the equipment and selects the deliverer relying primarily on the professionalism of the lessor; b) the lessor provides the equipment in accordance with the lease contract, concluded or to be concluded between the lessor and the lessee, by the knowledge (notification of the lessor); c) the remuneration of the lease paid in accordance with the leasing contract is calculated in such a way that in particular the total depreciation or most of the value of the equipment is taken into account (Article 1.2 of the Convention) (Obradović, 2003, p. 414).

2.1. Legal Regulation of the Leasing Contract in Comparative Law

Leasing contract is regulated differently in comparative law. Thus, in the *first group* of countries this contract is still not regulated by law even though it is a contract that is very often implemented in practice. In these countries, the leasing contract is regulated based on the principle of freedom of contract (most Western European countries). In the *second group*, the leasing contract is regulated within the civil codes e.g. The Quebec Civil Code and the Civil Code of Russia. In the *third group* of states this contract is regulated by special laws e.g. France, Belgium

(Perović, 2003, p. 8). Leasing Law of Albania, that of Macedonia, Leasing Law of Kosovo.

In *France*, this contract is regulated by the Law on Leasing of 1966 and 1976, which is characterized as the rent of equipment, materials and real estate of professional frames, which are realized by specialized institutions, which remain as their owner. Two forms of leasing operation are differentiated: *Arenda* - renting (credit lease) and real estate lease (Simin, 1979, p. 33).

Belgium issued a special law on leasing in 1967, while *Italy* regulates this issue with the Law on Tax Facilities of 1968, the Law on Leasing of 1973, 1977, 1979 (Obradović, 2003, p. 413).

British legislation considers leasing to be the sale of goods in installments. Operations between French leasing companies and British companies are considered on the one hand as credit leases, and on the other hand as credit sales (Simin, 1979, p. 36).

In the *legislation of Albania*, starting from the *Civil Code of Albania* of 1994, (Civil Code of the Republic of Albania, 1999, p. 251) which initially regulated this issue, but also in the special Law on Leasing (Law on Financial Leasing, no. 9396, 2005) the term *financial lease* is used, since with the name we understand that the Albanian legislation considers this as a special form of lease. According to Article 849 of this Code “according to the financial lease contract, one party is obliged to make available to the other party, for a certain period of time, a movable or immovable item, against a payment with periodic deadlines, determined in relation to purchase of the item, with the duration of the contract, eventually with other elements according to the agreement of the parties.

3. Rights and Obligations of the Contracting Parties in a Leasing Contract

The lease contract is concluded between the *contracting parties*: the *lessor* and the *lessee*. These two entities have respective rights and obligations, which derive from the leasing contract. What is right for one party is an obligation for the other party.

3.1. Obligations of the Lessor

Liability also arises for the *lessor* according to the concluded leasing contract. The lessor in case of late delivery or non-delivery as well as in case of defects of the leasing object is liable to the lessee in accordance with the rules that apply to the leasing contract. It follows that the lessor must a) maintain the object of the lease, 2) oblige the lessor to enable the lessee to use the object economically, and c) oblige the lessor to act as a good economist.

3.1.1. Obligations to Deliver the Object to the Recipient

The lessor has as its main obligation to deliver to the lessee the object of the lease, equipment, tools and supporting material. Should the material fail to be delivered, the purpose for which the contracting parties have taken into account when concluding this contract cannot be fulfilled.

3.1.2. Obligation to Transfer the Authorization of Economic Use to the Recipient

The lessee must use the object of the leasing contract according to the "*good economist*" standard, to treat such object as if it were his property. In this case the lessor does not transfer the ownership to the lessee but only the possibility of economic use of the object. The delivered material must have the contracted characteristics, because very expensive equipment is in question.

3.1.3. Obligation for Maintenance of the Object

The lessor has the duty to maintain the object in order for the user to use it properly. The lessor is obliged to take care of the servicing of the equipment and the supply of spare parts. This happens in cases when the equipment that is the object of leasing becomes unprofitable for the time in which it is used and the need arises to replace it.

3.1.4. Obligation to Guarantee the Recipient for Physical and Legal Deficiencies

The lessor is obliged to guarantee the lessee related to physical and legal deficiencies of the item subject to leasing. For this obligation, the general rules for physical and legal deficiencies of items that are regulated by the provisions of the law on obligations must apply.

3.2. Obligations of the Lessee

The obligations of the lessee are: *the obligation to accept the object, to pay the contract price, to use the item received in the contracted manner, to check the item, to return the item upon the expiration of the term.*

3.2.1. Obligation to accept the object of Leasing

The lessee is obliged to accept the object of leasing in the manner provided by the leasing contract. Until the fulfilment of the obligation to send the object of the contract, the lessee is not obliged to pay the remuneration which according to the leasing contract is obliged to do when delivering the leasing object. The lessee (according to Article 9 of the Law on Leasing) has the right to reject the Asset under lease, when the leased object is not delivered or delivered late or is not in accordance with the supply contract.

3.2.2. Payment of the Contracting Price

It is one of the basic obligations of the lessee to regularly pay the price for the use of the given item. The price of this contract is set for one, three, six months or one year.

3.2.3. Obligation to Use the Received Item in the Contracted Manner

The lessee has the duty to use the received item in accordance with the contracted manner. When using it, the lessee must act with the care of a good businessman, and must use the received item in a way that corresponds to the nature and characteristics of that item. Expenses for maintenance are covered by lessee. The Law on Leasing in its Article 8 explicitly regulates the obligation to accept the Leased Asset.

3.2.4. Obligation to Enable the Lessor Control Over the Item

The lessor has the right to inspect the leased object at any time during the lease term. The control does not affect the lessor's guarantee for peaceful use and possession of the item.

3.2.5. Obligation to Guarantee Possession in Peace

There is a legal obligation of the lessor deriving from Article 13, according to which the lessor guarantees that the peaceful possession of the lessee will not be disturbed by any person who has a superior title or right or who claims a superior title or right, or acts under the authority of a court, when such title, right, or claim arises from a negligent or intentional act or omission of the lessor.

3.2.6. Return of the Item Upon Expiry of the Term

The lessee has the obligation to return the item to the lessor after the expiration of the lease contract. This obligation is included in the leasing contract itself with the determination of the term of the same, as well as the place and manner of return. In cases where the lessee does not return the leased asset on time or returns it late, the lessee will be liable for payment for the delay period, unless otherwise provided in the lease contract.

3.2.7. Obligation of the Lessee to Inform

The lessee shall inform the lessor of any loss, claim or other material event arising in connection with the use and possession by the lessee of the leased asset. The lessee must provide this information accurately and in a timely manner.

4. Types of Leasing

Leasing in practice appears in different forms and types (Veljković, 2008, p. 798; Vasiljević, 1997, pp. 671-673; Hetemi, 2007, pp. 235-236).

a) *According to the nature or qualities of the leasing object*, the following should be distinguished:

1. *Leasing of consumables (consumables)* such as automobiles, household appliances, etc.
2. *Investment leasing (equipment leasing)* which is of great importance in economic life, which is not given in the form of financial means, but in the form of equipment (technology, investment machines) and is often combined with engineering (thus) e.g. the whole factory is given with the obligation that the lessor regularly maintains the equipment and at the same time trains the professional staff of the lessee.
3. Furthermore, in some countries from a *legal point of view* it is important to distinguish between leasing in *movable* and *immovable property*; (Dauti, 2016, p. 313).

b) *In terms of duration of the leasing contract*, the following types of leasing must be distinguished:

1. *Short-term leasing (operating leasing)*, which usually deals with consumables (consumables) (Obradović, 2003, p. 414).

Operating leasing is characterized as a short-term leasing contract, which the contracting parties can terminate at any time. The lessee bears the risk of statute of

limitation and loss of equipment, pays insurance, taxes and license fees. All these, as well as the costs of maintenance and insurance of the equipment, are calculated by the lessor to the same recipient through the lease repayment rate (Obradović, 2003, p. 414).

c) In terms of the *position of the lessor*, the following types of leasing contracts should be distinguished:

1. *Leasing carried out by leasing associations;*

2. *Leasing of concerns.* In this type of leasing, leasing associations are involved with manufacturing, commercial and financial organizations, and thus their financial relations can be regulated in different ways. Leasing recipients are also involved in some economic activities, because based on the integration of the requirements for the object of leasing, the most successful business arrangements can be realized (Hetemi, 2007, p. 466).

d) *Domestic and international leasing*

The Law on Leasing in Kosovo explicitly defines two types of leasing contracts, *domestic* and *international*. When both parties to the Leasing Agreement are residents of Kosovo the *contract is Domestic*, while it is *international*, when either the lessor or the lessee is not a resident of Kosovo.

1) *Domestic leasing* is called leasing when the contracting parties, the lessor and the lessee are citizens of the Republic of Kosovo;

2) *International leasing.* – Leasing companies take on an international character, if the companies that lease the goods and the companies that use such goods are based in different countries. Lessors sometimes in turn enter into contracts with intermediaries who are in a third country. The most rapid development of international leasing is in the field of renting aircraft and ships, the value of which is very high and which often are not affordable for purchase (e.g. international aircraft Boeing 747, about 25 million dollars, etc.), large tanks, about \$ 30 million, etc.). On the other hand, financing the production of ships is aggravated by the influence of the indefinite position of shipbuilding and the uncertainty about whether the use of such ships will be profitable in the future. In this case, credit leasing often comes to the rescue. The leasing contract is also concluded through a contract, which guarantees the employment of workers for the construction or building ships or aircrafts in the long run. The object of the international leasing contract may be various industrial equipment and real estate (Simin, 1979, p. 25). As other elements apart from the substantial ones, there appear the extension of the contract duration, time and manner of paying the price, payment of award for maintenance of equipment, technical documentation, time and manner of contract conclusion (Simin, 1979, p. 25).

The diversity of legal provisions of some states which are determined for different levels of taxation, in the field of leasing, have made its realization an objective obstacle. Contribution to the intention to overcome these has been made by international economic entities through the rules on the construction, content and form of the special contractual relationship accepted with this name in international business practice. The interest of countries whose economic activity is export-oriented has been increased due to the fact that in leasing works they have discovered the possibility of their international export. Thus e.g. more than 35% of the equipment installed in the US economy is financed through leasing (Hetemi, 2005, p. 159).

5. Termination of the Leasing Contract

The lease contract concluded by the contracting parties, the lessor and the lessee, creates legal effects and then terminates. Termination of the contract is considered termination of the entire contract in force, upon the will of the contracting parties for reasons provided in the Law on Leasing. The reasons for the termination of the contract are different.

The leasing contract in most cases terminates: 1. upon expiration of the time for which the contract is concluded; 2. upon fulfilment (execution); and 3. It is terminated if the object is destroyed.

6. Termination of Contract upon Expiration of the Time for Which the Contract was concluded

Expiration of time is a voluntary way of terminating the leasing contract, in those cases when the contract has determined the time of extension of the contractual obligation. This way of terminating the contract applies to contracts with permanent prestations with successive ones.

The leasing contract is terminated upon the expiration of the term for which the contract has been concluded. This time is set by the contracting parties themselves on their own will, so that this time according to the Law on Leasing of our country it cannot be less than one year (Article 2 of the Law). According to this Law, "lease term" is the period initially as defined in the leasing contract, during which the lessee has the right to possess and use the Asset under lease and which cannot be less than one year and not longer than economic viability of the Leased Asset. Our country's law on leasing contains a bargain purchase option under which the lessee can acquire (receive) leasing assets lower than the real market value at the end of the lease term. The duration of the lease is for a period longer than 75% of the

economic viability of the assets leased (See for more detail Article 2 para. 1, 2, 3, 4 of the Law on Leasing of the Republic of Kosovo).

7. Termination upon Fulfilment (Execution)

The most common way to terminate the leasing contract, as in other contracts is upon fulfilment of the contract. This contract is considered to have been executed when the subject of the contract in use has been transferred, for which use the lessee must pay the specified fee, and after the expiration of the specified term the given item must be returned to the lessor, unless the pre-emptive right has been exercised by the lessee.

8. Termination if the Leasing Object is Destroyed

Termination of the contract when its subject disappears is a case of termination of the contract that may be caused under the influence of force majeure or accident.

This case of termination can be caused under the influence of force majeure or accident, to be caused after the conclusion of the contract, since the disappearance of the subject of the contract causes the impossibility of fulfilment and termination of the contract (Perović, 1995, p. 267).

The debtor has the risk for the disappearance of the item – *periculum est debitorum*. When in a bilateral contract the execution of the duty of one contracting party becomes impossible due to the destruction of the item by force majeure, then neither the other contracting party will be obliged to execute its duty nor will the contract cease to exist (Dauti, 2013, p. 138).

If the destruction of the item is caused due to fault of the debtor, the contract is not terminated. It is not terminated if the debtor through its own fault delays the delivery of the subject matter of the contract, while in the meantime the item disappears due to force majeure. The lease contract is terminated if the object is destroyed (Hetemi, 2007, p. 384).

In this case of termination of the contract, there must be significant damage to the subject matter of the contract or it has disappeared for any reason for which the lessee is not at fault. The basic condition is that the item be *res in specie* - an individually determined item, while the object of the contract can be replaced or the damaged part can be replaced, it is replaced and in this case the contract remains in force (Perović, 2003, p. 106).

Conclusions

From the analysis presented in this paper, we can conclude that this contract is a new contract and very important for the economy of Kosovo. The prospect of its implementation in practice will be of a broad scope, taking into account the main factors that influenced its introduction and implementation in the contemporary economy of circulation of goods and provision of services. Financing investments through this method is a necessity of the time, because buyers are without sufficient financial means, and sellers find it increasingly difficult to find buyers of investment equipment, so they are guided towards each other. The review was conducted based on the applicable legislation in Kosovo - namely the Law on Leasing adopted in the Assembly of Kosovo in 2009, as well as often focused on the problems that exist in practice. There are different types of leasing, the most important being as follows: *leasing of consumables, investment, short-term (operating), long-term - financial, leasing of leasing associations, concerns, domestic and international.*

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