AGRICULTURAL TENANCIES IN ROMANIA: EN EVOLUTIONARY PERSPECTIVE OF LEGAL REGULATIONS

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Abstract:
Having its origins in the Roman law and benefiting from an increased academic attention and political agenda focus in most Western countries, the agricultural tenancy contract and legislation altogether have a rather unpopular image and virtually no identity in Romania. While countries in Western Europe, along with the EU legislation, acknowledge the benefits of agricultural tenancies for the economy, in general, our country's legislation is less supportive of tenants and tends to associate this practice with property rental. However, agricultural leases have a significant importance, with irreplaceable contributions for the ecologic agriculture and the rural economy. The present study aims at delineating the evolution of the legal framework around agricultural tenancies so as to provide potential improvements to the current legislation. Precisely, law no. 16 of 1994 (repealed), law no. 223 of 2006 completing law no. 16 of 1994 (repealed) and the provisions of the current Civil Code on agricultural leases are the subject of this analytical undertaking. The paper ends with a SWOT analysis of the Romanian legislation in regards to agricultural lease contracts.
Keywords: agricultural lease contracts in Romania; law no. 16 of 1994; law no. 223 of 2006; Romanian agricultural tenancies

Introduction

The agricultural tenancy contract has the generic definition of a contract in which one party allows another the usufruct of some goods for the purpose of agricultural use, in exchange of an established price and over a period of time[1]. Its solemn, synallagmatic, onerous, commutative, successive and non-translational nature is unanimously recognized in the doctrine [1]. At the same time, as a measure of protecting the lessor with regards to the payment of the lease, the law recognizes the executory nature of the agricultural lease contract [2].

[1] The present study is a translated excerpt of my PhD thesis, entitled The agricultural tenancy contract-legal perspectives within a European context, pending to be defended at the “Alexandru Ioan Cuza” Police Academy.

The topic of agricultural leases remains largely unattractive in the Romanian outlook as it is known that these practices imply multiple investments and risks for the tenants, on one side, and little to no benefits in other cases. In addition, the previsions of the current Civil Code are not encouraging towards tenants. Much space in this regard has been dedicated to tenants' obligations: paying for the lease in the amount and at the terms established by the contract; using the leased goods with caution and diligence; insuring the leased goods in order to cover the risks that natural disasters may cause; returning the leased goods in the condition in which they were received; bearing all the costs related to the conclusion, registration (at each Local Council where the goods are located) and publicity of the lease contract (art. 1838 and all of the subsequent). Furthermore, tenants are prohibited from subletting the leased goods, as well as uniting in niched registries (art. 1847)- with this last part being extremely difficult to justify as it is unconstitutional, as well as unaligned with European practices in joint agriculture.

Thus, the only understood benefits for the tenant consist in the usufruct of the goods for which he/ she has agreed to pay in money or a quota of the crop –while taking full responsibility of the potential risks that may go beyond an insurance policy- and his/ hers preemptive rights. From this perspective, it becomes clear that agricultural tenancy contracts tend to be equated with simple rental agreements, although the generated value long-term of the first are much higher than the latter, while also impacting far more people.

Although the issue of tenants' liability represents a very rich topic, which has raised some debates on whether they could genuinely be accountable for unintentional damage to leased objects- see, for instance, [3], [4], [5]- this will not represent the subject of this analysis. Rather, the purpose of the present paper is to investigate the origins of our current legislative framework on agricultural leases –in an effort to understand why it is largely unsupportive of tenants- and to propose potential improvements in this regard.

Agricultural tenancies in the light of law 16/1994 and 223/ 2006: developments and repealed provisions

The agricultural tenancy legislation has undergone a series of amendments from its form in 1994 (law no. 16/1994) to the version in which it is currently presented in the Civil Code.

Firstly, in its current form, the agricultural lease law no longer provides for a profile of the lessee. The old regulation stipulated in Article 3 (2) that tenants must have had some specialized agricultural training, and in the case of foreign nationals, that they had approval from the competent authorities of their mother country.

Similarly, the obligation to have guarantees required by the lessor has disappeared, as well as the condition that the lessees have as their explicit object of activity the exploitation of agricultural goods. There is also no provision in the current regulation according to which the autonomous utilities and all state-owned institutions can lease various agricultural goods.

Another provision that no longer exists in the agricultural tenancy law is that the lessor had the right to verify and control the manner in which the agricultural property was administered by the lessee.

The other provisions that were removed from the contents of the current regulations can be summarized as follows:

- Article 11 (1) of Law No. 16 of 1994: Consideration of the lessee as a farmer whose agricultural taxes are to be paid in accordance with the provisions in force
- Article 11 (2): Benefits in regards to accessing bank loans and tax benefits in force for the lessees
- Article 14 (1): Elements of establishing the agricultural lease price for the surface of a given land
- Article 14 (2): Determination of the lease price according to the plantation for vines, trees, fruit-bearing shrubs, hops, and mulberries
- Article 14, paragraph 3: Determination of the lease according to the characteristics of the animals in case of their lease

The analysis of the elements that have been removed from the lease law shows that the legislator has tried to eliminate the restrictions on defining a lessee, perhaps in order to encourage leasing activities, as well as superfluous wording that could have hindered the understanding of this activity.

Article 6, paragraph 5; together with Article 21, paragraphs 1 and 2, of the old regulation, have been replaced by Article 1841, 1842 and 1843 of the current Civil Code.

Thus, if Article 6 stipulated that the price of the tenancy could not change due to factors such as natural disasters, and Article 21 stated that the contracting parties may set parameters in which they undertake to bear damage caused by natural factors or natural disasters, the current Code Civil provides for the possibility that the lessee may request a reduction in proportion to the rent if at least half of the crop has suffered accidental losses.

At the same time, the current regulation establishes that the reduction of the tenancy cost in this case is made at the end of the contractual period, in the case of an agreement made for a period of several years. In addition, the law maker added in the current form of the lease law that if various fortuitous losses have occurred after the harvest has been collected, then no reduction to the tenancy price is applicable. The fact that the proportional bearing of fortuitous losses by the lessee and the lessor is mentioned is an important evolution compared to the old regulation, but since the text of the law does not stipulate exactly the percentage in which these losses are divided, it can be deduced that it is left to the courts they will be supported - which, of course, contributes to a significant volume of pending lawsuits in this regard as well. Article 12, paragraph 2) and Article 7 of Law No. 16 of 1994 have been replaced by Article 1848, paragraphs 1) and 2). The previous regulation emphasized the obligation to notify the other party at least three months before the expiry of the contract as to whether or not to sign a new tenancy contract. Article 7 stated that the lease term was contractually fixed and was eliminated accordingly - most likely due to its superfluous nature. Article 1848 of the current Civil Code provides a somewhat wider freedom to the contracting parties from the perspective of the bureaucracy involved by signing the agreement, leaving the possibility of tacit extension of the contract if the parties did not express their wish to the contrary at least six months before the expiration of the contract. Furthermore, for contracts established for one year or less, the refusal to renew must be made at least three months in advance.

Unfortunately, one of the important provisions that existed under Law 16 of 1994 and which significantly contributed to the continuation of the lease process, and, presumably, to the welfare of the parties, was Article 25, which stated that the death of the lessee or lessor were not grounds for automatic termination of the contract, leaving the heirs the opportunity to communicate their intentions to continue the contract within

30 days of death and, therefore, to maintain the contract in force. Article 1850 of the current Civil Code, which currently replaces this provision, only stipulates that the death, incapacity and bankruptcy of the lessee are grounds for termination of the contract - unfairly so, as it opens the possibility of practicing agricultural tenancies at higher prices and in more cases, to legal persons, and not to individuals.

One can observe, therefore, that some efforts have been made to change the legislative framework on agricultural tenancies, however not in a substantial way, which would really motivate the lessees, beyond certain lighter contractual terms. It should be noted that the current Civil Code does not even mention the existence of special lending opportunities for tenants, as did paragraph 2) of Article 11, which was a fundamental factor for our country's agriculture.

Notably, the contents of article 25 (Law no. 16/1994) should be found in a future regulation, as they are among the few that support the individual tenants, and especially if we consider the context of a death, in which the family has to face the loss of a dear member, having to manage the situation of exponentially lower incomes due to the termination of the tenancy. We must not lose sight of the fact that the death of the lessee may also entail the extinction of the preemptive rights[2], according to Article 1740 of the Civil Code, thus, eliminating the provision according to which the death of the lessee entails the termination of the lease should be highly considered.

The guarantee of the lessee against eviction is a provision of law no. 223 of 2006 and, more precisely, the content of Article 7, paragraph 2) - repealed by the current Civil Code. Although it has been mentioned in the doctrine that this regulation is still an obligation of the lessor- for instance, in [6]- neither the articles of the Civil Code regarding the lease, nor those regarding rental contracts, in general[3], do not make explicit clarifications to confirm this.

The only provision regarding the lease or lease of property in connection with eviction is Article 1794 (3), which specifies that the lessee who was aware of the existence

[2] The reference here is to the situation in which a lessee surrenders the contract to his/ her spouse or one of the major descendants. In the event of death, the lessee, the surviving spouse or their children lose their preemptive rights.
[3] Especially in relation to the articles on the obligations of the lessor and the lessee in general (art. 1790 et seq. of the Civil Code).

of a cause of eviction may not claim damages. The fact that the prohibition of eviction in the Civil Code is not explicit is likely to give us the conclusion that the lessor has no obligations in this regard.

The introduction of such an explicit and punishable prohibition would be of interest to the lessee's status, especially if we consider that there are a multitude of reasons for termination of the contract by the lessor, with a significant power gap, in terms of legal regulations in force.

At the same time, while it is true that a landlord could not simply make use of such eviction without clear provisions in the contract, the presence of a provision in this regard could help optimize the text of the law in the idea that the leasing activity should seem, at least, to be one protected and encouraged by the law maker.

Agricultural tenancies in the light of Civil Code provisions: a SWOT analysis

Without going into lengths on all the details of the agricultural lease contracts nowadays, the following strengths, weaknesses, opportunities and risks can be identified:

Strenghts:

- ✓ The Romanian legislation allows for the tacit extension of agricultural tenancy contracts based on the good faith of the parties, which exempts them for any further bureaucratic undertakings.
- ✓ The conditions for contract termination are easy to understand and intuitive for the parties

Weaknesses

- The lessee's status is rather ingrate, as evidenced by the fact that the termination of the contract is most often legally imputed to this person. In addition, the Romanian legislation does not provide for the possibility that the lessor may carry out actions in bad faith, and these may be the basis for the termination of the contract. A legal solution here may be to determine the termination of the contract on the grounds of bad faith of either party, proven by substantive evidence.

- The contract does not end under other natural circumstances such as the death of the family members of the lessee who are of interest to the object of the contract, nor if the lessee becomes the owner of other agricultural land in the meantime. As such,

beyond the fact that the lessee's status is largely overlooked, agricultural tenancy contracts in Romania are rigid, and their termination is inflexible.

Opportunities

- The unilateral termination of the contract provides a reasonable period of notice, thus giving the parties a chance to find new contractual partners.
- At the same time, at present, legal entities and especially companies tend to become lessees, which is why that the status of the lessee is likely to become better. The lobbying efforts that companies can make on legislative decision-makers can be considerably more impactful than those made by individuals.

Risks

- ◊ The lessor's obligations are not very well defined in terms of supporting the lessee with agricultural machinery or any kind of support in case of extreme weather conditions that can significantly affect crops. This jeopardizes the possibility of the lessee completing his duties, hastens the termination of a contract and discourages the desire of any individual to lease agricultural goods.
- ◊ The provisions of the Civil Code do not make any reference towards any financial support that could be provided to tenants (as opposed to law 16/1994, which offered some initiatives in regards to accessing bank loans, aside from tax benefits). This has been argued as being highly detrimental for embracing any form of agricultural tenancy and will, most likely, result in less individuals engaging in such practices.
- ◊ The guarantee of the lessee against eviction does not exist in the current Civil Code (as opposed to law 223/2006), thus further contributing to tenants' vulnerability.

Following this expose, one can observe that the legislative framework on agricultural tenancy needs many improvements, especially in regards to the status of the lessee, currently rather ingrate. Regardless of how the text of the law can influence the degree to which people ultimately assume the status of lessee, the legislator has designed the provisions' contents in an unpopular manner, which does not stimulate this activity in any way, nor the private sector in general. It is understandable that the legal language often cuts certain phenomena in a synthetic and objective way, but perhaps

offering certain incentives through law provisions or at least outlining the fact that agricultural tenancy remains an important field for the Romanian and European agriculture could help create a legislative framework to encourage this practice.

Conclusion: From past to present in agricultural leases

Although the legislation on agricultural tenancies has seen a number of positive developments from the Law 16/ 1994 to date, such as the elimination of restrictions on the definition of lessees, the proportionate bearing of accidental losses by tenants and landlords, the tacit extension of contracts, a number of key issues illustrated by Law no. 16 were also lost sight of, such as the possibility of leases extension by parties' family members in the event of the lessor or lessee death, and, most importantly, the existence of special loan opportunities for tenants. This has been highlighted as essential to make the tenancy practice as attractive as possible for individuals, as well as for the longevity of contractual relationships.

These measures should be reintroduced in future lease regulations, as well as reinforcing the guarantee of the lessee against eviction, encouraging support from landlords in terms of machinery or any other relevant resource supporting agricultural gains; and allowing the possibility of contract termination on grounds of bad faith, proven by substantive evidence. This latter provision could generate wider contract flexibility, as well as, for instance, allowing oral contracts (like in France).

The fact that Romanian legislation and local practices have not reached a certain maturity is illustrative of the lack of importance attributed to the field of agriculture so far and to a sustainable economic vision on the long run, in which the potential profits of agricultural tenancies are completely ignored. In the absence of any improvements in this regard, this practice risks being taken over by legal entities, without leaving any room for individuals, and with important consequences for organic farming.

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