THE LAND LEASING AGREEMENT IN THE NEW CIVIL CODE

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Abstract

Since ancient time this type of agreement was thought to have a special utility in exploiting the land property. The land leasing agreement is a juridical instrument specific for exploiting agricultural goods at present time as well. Therefore, after 1990, the land leasing agreement was regulated by Law no.16/1996 of the land leasing, complemented by the dispositions of the Civil Code in 1864.

The new Civil Code regulates the land leasing agreement in art. 1836-1850 and although mainly keeping the old regulation which, it also comprises aspects of novelty referring to several notions that define the contract, as well as the form, duration, parties' ability, managing risks or termination of the land leasing agreement.

Thus, an improved and better adapted to the new realities juridical regime is shaped, and we aim at analyzing it in the present study.

Key words: *land leasing, landlord, tenant, first refusal, sublease*

1. Introduction

In the present study we will approach the juridical regime of the land leasing agreement whose existance, especially in the current economical background, cannot be ignored from the juridical point of view.

The presence of the land leasing agreement in the juridical relations whose object is the use of agricultural assets, and especially land, must be encouraged, and knowing and understanding the issue regarding singning, performimg and terminating such an agreement will be really useful.

Until 1991, the institution of land leasing was prohibited[1] but after that, the role played by the land leasing agreement increased in importance as a consequence of elaborating and implementing land legislation[2], as the holders of the right to private ownership over agricultural land, who actually could not work their land, used the land leasing agreement.

In this context, the land lease agreement became the subject of the special regulation given by the Land Lease Law no. 16/1994[3], whose stipulations completed those of the old Civil Code[4].

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[1] On the institution of land lease in Romania see, Florin Scrieciu, *Drept agrar şi drept funciar,* Lumina Lex, Publishing House, Bucharest, 2000, p. 149 -152.

[2] Land Law no. 18/1991, Published in the Official Gazette of Romania, part I, no. 37 from February 20th 1991 and republished in the Official Gazette no. 1 from the 5th of January 1998; Law no. 1/2000 for the reconstitution of the right to ownership over agricultural land and forested land, required according to the stipulations of the Land Law no. 18/1991 and of Law no. 169/1997, Published in the Official Gazette of Romania, part I, no. 8 from the 12th of January 2000, with the subsequent changes and complements; Law no. 247/2005 regarding the reform in the domains of ownership and justice, as well as some adjoining measures, published in the Official Gazette of Romania, part I, no. 653 from the 22nd of July 2005, with the subsequent changes and complements.

[3] Published in the Official Gazette of Romania, part I, no. 91 from the 7th of April 1994, the Land Lease Law suffered several changes and complements by means of Law no. 58/1995, Law no. 65/1998, O.U.G. no. 157/2002, approved with its changes by Law no. 350/2003, Law no. 247/2005, Law no. 276/2005, Law no. 223/2006 and Law no. 20/2008, in agreement with the changes suffered by the land legislation.

[4] As a variety of the lease agreement, the land lease agreement had a general regulation in the old Civil Code comprised in title III, and called „ On the lease agreement" (art. 1410-1453) and a specific regulation, containing rules that are specific to the lease, in art. 1454 -1469. Once Law no. 16/1994 entered into force, the stipulations of Civil Code that were not compatible with the new regulation were abolished.

In the present study we aim at analysing the regulation of the land lease agreement in the new Civil Code, while emphasizing the novelty elements. The specific of this regulation will also be approached in the light of a comparative analysis, in relation to the in force norms until October the 1st 2011[5].

Considering the land lease a variety of the agreement for leasing assets , the new Civil Code Cod regulates it under all the aspects particularizing it, in relation to the other varieties of lease. In those cases where the particular regulation is not enough, the norms of the common law in the matter of lease will apply[6].

Following the traditional analysis structure we will consider aspects such as: notion, legal frame and juridical features of the lease agreement, parties to the agreement and object of the agreement, the effects and the termination of the lease agreement.

Until today, the lease agreement constituted mainly the subject of academic manuals elaborated for the students' study, withour exhausting the theretical and practical issue in the matter.

The purpose of the present scientific approach is to underline the features of the current regulation that will certainly not be ignored in the future either by the doctrine or by the juridical practice in the matter.

2. Content

2.1. Notion, regulation, juridical features

2.1.1. Notion

Similarly to the Civil Code in 1864, the new Civil Code does not define expressly the lease agreement. Taking into account the particularities in the new Civil Code regulation, we can define the lease agreement as the agreement by which a party called lessor gives the other party, called a lessee the right to exploit agricultural assets, for a determined period of time, in exchange of a price, called a premium[7].

According to the provisions of art. 1778 al. (1) the new Civil Code, the land lease contract is a variety of the lease, presenting both resemblances and differences compared to other contracts, such as sale contracts.

The object of the lease contract makes it particular compared to the lease of things, for instance, concerning the price, duration and even form[8].

2.1.2. Regulation

The lease agreement is regulated in the new Civil Code[9], Book V "On obligations", Title IX "Different special contracts", Chapter V "The lease", 3rd Section "Specific rules referring to lease", art. 1836 - 1850.

2.1.3. Juridical features

The lease presents the following juridical features:

- It is a *deed indented* contract*,* because it creates mutual obligations between both parties, the lessor binding himself to transmit the use of the agricultural assets for a determined period, and the lesser binds himself to pay the lease price;

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[5] The date when the new Civil Code entered into force.

[6] In art. 230 let. r) of the Law no. 71/2011 for the implementation of the Law no. 287/2009 regarding the new Civil Code, it was purposely stipulated the abrogation of the Lease Law no. 16/1994.

[7] Regarding the other definitions of the contract, see Francisc Deak, Tratat de drept civil*. Contracte speciale,* ACTAMI Publishing house, Bucharest, 1998, p. 234; Stanciu D. Carpenaru, Liviu Stanciulescu, Vasile Nemes, *Contracte civile si comerciale,* Hamangiu Publishing House, Bucharest, 2009, p.152; Eugeniu Safta-Romano, *Contracte civile,* Graphix Publishing House, Iași, 1995, p. 136.

[8] This aspect will be developed in the following sections.

[9] Law no. 287/2009 regarding the Civil Code*,* published in the Official Gazette of Romania, part I, no. 511 from the 24th of July 2009, modified by Law no. 71/2011, published in the Official Gazette of Romania, part I, no. 409 from June 10th, 2011, republished, the Official Gazette of Romania, part I, no. 505 from July 15th, 2011, into force since October 1st, 2011, in this study called the new Civil Code, in order to distinguish it from the old Civil Code.

- It is an essentially *for good and valuable consideration* contract, as both parties pursue their own patrimonial interest. If the use transmission is free of charge, the contract is void from the aspect of land lease but it can be considered valid as a gratuitous loan[10];

- It is a *commutative* contract, as, when signing the contract, the parties are aware of the existence and the extent of the services they bind themselves to. Although the crops realized depend on natural factors, always existing some risks of loss, the land lease is not an aleatory contract, as both parties' obligations are determined from the moment of signing the contract[11];

- It is a *formal* contract. While regulating the conditions of form, art. 1838 in the new Civil Code expressly stipulates the formal character of the land lease. Thus, according to art. 1838 par. (1): „The land lease must be settled in writing, under the sanction of absolute nullity. One can notice that, compared to the lease, which is a consensual contract, the land lease is a formal contract, its written form being required *ad validitatem* under the sanction of absolute nullity. Contrary to the principle of consensualism governing the Civil Code of 1864, the formal character of the land lease is also set by Law no. 16/1994[12]. Art. 1838 in the new Civil Code puts in the lessor's charge the obligation to file a copy of the land lease to the local board or boards responsible for the area where the asset is placed, and in case the lessor does not observe this obligation, he will be forced by the court to pay a civil penalty, for each day of delay [art. 1838 par. (2)]. Compared to Law no. 16/1994, the new Civil Code does not set a dead line for the registration of the land lease, but its dispositions are much more efficient, as after the date of signing the contract, every delay in registering it to the local board forces the lessee to pay a civil penalty. The registration of the land lease answers another condition of form, which is also derogatory from the principle of consensualism, which is the form required for the *enforceability against third parties.* According to art. 1838 par. (5) in the new Civil Code, all expenses occurring for signing, registering and advertising the land lease are the lessee's charge. This is a similar disposition to those in the land lease law, a suppletive norm, and the parties can depart from it, meaning that they can introduce in the contract clauses referring to the equal charges or they can charge only the lessor for such expenses;

- It is a *call-off contract* as the parties' obligations are fulfilled in time, during the lease. In accordance to the law, the parties are free to set the duration of the lease, without legal dead lines and in case this duration was not determined, one will consider that the lease was set for the time necessary to the lessee, usually an agricultural year (art. 1837). These dispositions reflect the fact that, traditionally, in Romania, leases are generally set for a year, without constraining the parties, like in the regulation of Law no. 16/1994, to sign the lease for an excessively long period[13];

- It is a contract *that does not transfer any property rights*, because by signing this contract, one will only transfer the right to use some agricultural assets for a determined period. Similarly to the tenant, the lessee is a simple temporary custodian, and not a holder. As a conclusion, he cannot acquire ownership over the real estates in prescription or over movable assets by possessing them in good faith(art. 935);

- It is an *intuitu personae* character, from the point of view of the lessee's person. Given this feature of the lease, the law expressly prohibits the total or partial sublease, and the non-observance of this interdiction will be sanctioned with absolute nullity [art. 1847 par. (2)]. The consequence of the *intuitu personae* character of the lease is that the lessee's death, physical entity, or the dissolution of the juridical entity determines the lease termination. The regulation in the new Civil Code is

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[10] Francisc Deak, *op.cit.,* p. 235.

[11] L. Lefterache, C.M. Crăciunescu, *Legea arendării nr. 16/1994, Comentata si adnotata,* All Beck Publishing House, Bucharest, 2000, p. 14.

[12] According to an opinion that remained unique, the land lease was considered a real contract. See, in this matter, Ioan Adam, *Contractul de arendare (I),* in Dreptul magazine no. 6/1995, p. 13.

[13] As for the duration of the lease in the system of Law no. 16/1994, see Romeo Popescu, *Contractul de arendare(II),* in Dreptul magazine no. 6/1995, p.18; Aspazia Cojocaru, Bogdan Patrascu, *Contractul de arendare. Noțiune. Părți. Caractere juridice (I),* in the magazine Drept Comercial no. 1/1995, p. 122-124.

similar to that in Law no. 16/1994 contrarily to the old Civil Code, where only fruit lease was signed *intuitu personae,* but the parties could expressly stipulate the possibility of sublease, as the norm was dispositive[14]. In case of money lease, the sublease was allowed, as a rule;

- Leases signed while respecting the authentic form required under the sanction of absolute nullity and those registered at the local board are considered *enforceable* for the payment of the premium at the terms and in the ways set by the parties when signing the contract (art. 1845). It is a stipulation considered new in relation to the previous regulations, and one that makes foreclosure easier in case the premium is not paid.

2.2. Parties and object of the land lease

2.2.1. Contracting parties

The parties to the land lease are the lessor and the lessee (physical or juridical entities). The owner, the user or any other legal holder of agricultural assets can be lessors. The previous doctrine that recorded many opinions and quite different of the old Civil Code, regarding the content of the notion of *legal holder of agricultural assets*[15]. Thus, we consider that we can include in this category the holders of other real and main rights over agricultural assets, such as the holder of the superficies right[16]. If the user can be the lessee, the holder of the right to use the asset cannot have this position, given the strictly personal character of this right[17].

The lessee cannot be the lessor, as the dispositions of art. 1847 in the new Civil Code forbid, under the sanction of absolute nullity, the sublease of agricultural assets that are already leased, and the lessee's services are also forbidden[18].

But the law allows the land lease transfer. Thus, according to art. 1846 in the new Civil Code, the lessee can submit the land lease to certain categories of people, determined by the legislator, namely to the people actually participating to the use of the asset subject to the lease, and to the coming of age heirs, but only with the lessor's written consent.

As for the parties'ability, in relation to the dispositions of art. 1784 in the new Civil Code, in order to sign a lease for a period longer than 5 years, because an act of disposition is settled, both the lessor and the lessee must have complete exercise capacity. The people, who, according to the law, can only sign administration documents, will only be able to sign land leases that do not exceed a period of 5 years [art. 1784 par.(3)].

Beyond these aspects, the new Civil Code does not stipulate, concerning the contracting parties, special incapacities in the matter of the land lease, which leads to a broader use of this contract[19].

2.2.2. Object of the land lease

Being a synallagmatic contract, the land lease has a double object: *the agricultural assets leased and the price (the premium).*

The assets that can be leased are mentioned by the legislator in art. 1836 in the new Civil Code. Here, the legislator defines the agricultural assets, contrarily to the old Civil Code, which defined them as rural funds[20].

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[14] According to art. 1467 in the Civil Code of 1864.

[15] Notion used by the Land Lease Law no. 16/1994.

[16] Gheorghe Beleiu, *Contractul de arendare(II),* in Dreptul magazine no. 6/1995, p. 25.

[17] For the notion and features of the right to use, see, Bujorel Florea, *Drept civil. Drepturile reale principale,* Universul Juridic Publishing House, Bucharest, 2000, p. 205.

[18] Intermediation in the matter of land lease is not allowed.

[19] Contrarily to the Land Lease no. 16/1994 which set a special incapacity for the lessors in art. 4 par. (1) and in. art. 18, as changed by Law no. 350/2003, it set a special incapacity for the lessees, incapacity that leads to the absolute nullity of the lease.

[20] The Civil Code in 1864 defined the land lease as *the lease of rural funds*, agricultural land being the main rural fund (art. 1413).

As a conclusion, the land used in agriculture and the assets destined to the agricultural exploitation can be considered object of the land lease. These are movable or immovable assets destined to the agricultural exploitation. This regulation determines the particularity of the land lease, avoiding the confusion with the assets that constitute the object of other lease contracts.

The assets subject to the land lease must accomplish the following conditions:

- To exist when signing the contract;
- To be individually or generically determined;
- To be legal and possible;
- To be the lessors'property or to be owned by the user or legal holder;
- To be in the civil circulation, according to art. 1229 in the new Civil Code [21].

The new Civil Code no longer stipulates as the parties' liability, the obligation to include in this contract a detailed description of all the agricultural assets under lease, their inventory and a situation plan for the land[22].

In exchange for the use of the agricultural assets, the lessee pays a price called premium. According to the law, the premium can be set either in money or in fruit[23]. The parties are free to set the ways to pay the premium as well as the elements that determine its amount. As for paying the premium, it will be made at the dates and place set in the contract, taking into account the type of products and the way they were obtained. If the parties do not set a place for the payment, common law will apply in this matter (art.1494).

Taking into account the juridical nature of the land lease and the purpose of the parties, the land lease must be real[24] and serious, which means it must not be enormous compared to the object of the contract and obligations assumed by both parties[25].

2.3. Effects of the land lease

2.3.1. The lessor's obligations

The particular rules provisioned by the new Civil Code in the matter of land lease do not concern the lessor's obligations on which we will make appeal to the general rules stipulated in art. 1786, in the matter of lease. As a consequence, the lessor has the following obligations:

a) The obligation to hand in the leased goods;

b) The obligation to warrant against total or partial eviction coming from own or third parties deeds and from the hidden vices of the leased goods;

c) The obligation to respect the right to first refusal of the lessee.

d) One of the lessor's main obligations is to hand in the leased goods at the term and place convened by the parties in the contract. The lessor has to hand in the agricultural goods according to the contract, in a state proper for agricultural exploitation. After the hand in, the lessee has the obligation to maintain the leased goods in a usable condition for the whole contract period, taking into account the nature of the good or the one conferred by the parties' will.

e) It is also in the lessee's duty the obligation to warrant referring to the quite and efficient use of the leased good[26].

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[21] L. Lefterache, C.M. Crăciunescu, *op.cit.,* p. 5-6.

[22] Such obligations were stipulated in art. 5 lit. b) of the Land Lease Law no. 14/1996.

[23] The old Civil Code regulates the two ways to pay the premium, in nature and money, and Law no. 16/1994 added another one: the premium in nature and money.

[24] It is the honest price.

[25] In the system of the Land Lease Law no. 16/1994, setting the amount of the premium for each category of land use could be done according to: surface, production potential, land division structure, relief and degree of accessibility for mechanization, access possibilities, distance to the storage facilities, industrialization or commercialization, condition of buildings, land improvement facilities or other endowments (art. 14).

[26] The law no. 16/1994 refers exclusively to the warranty against eviction (art. 8), its rules being completed with the dispositions of the common law regarding the obligation to warrant against the hidden vices of a thing.

Because, mainly, the land lease refers to agricultural land, the parties may stipulate in the contract the solutions for the possible issues generated by their spread in the conditions in which the new Civil Code does not contain dispositions regarding the resolution of a conflict related to this aspect[27].

Of course it will be possible to apply the rules from the sale having as consequence the increase or decrease of the price (premium).

f) In the matter of land lease, the new Civil Code admits expressly and abstrusely that the lessee has the right to first refusal. Thus, art.1849 stipulates that: "The lessee has the right to first refusal in relation with the leased agricultural goods, which is exercised according to art. 1730-1739". From this text results that, on one side, the law institutes a right of first refusal in favor of the lessee, and on the other side, under the procedural aspect, for the effective use of the right just created, it send to the rules regarding the exercise of first refusal in the matter of sale, which are applicable accordingly. As a consequence, the lessee benefits from a right of first refusal when selling the goods which make the object of the land lease[28]. This is why we mention the lessor's obligation to respect the lessee's right of first refusal as an obligation correlative to the real right instituted by law in his favor.

2.3.2. The lessee's obligations

Corroborating the particular rules in the matter of land lease with the general provisions in the matter of the lease contract, we take out the following obligations falling in the lessee's responsibility:

a) The obligation to pay the premium. The most important obligation of the lessee is to pay the premium at the terms, location and manner set up in the contract. The premium is paid in money or products.

In contrast with the Land Lease Law no. 16/1994, the new Civil Code does not impose on the contracting parties special obligations for fixing the premium, neither when the premium is paid in money, nor when the payment is done in nature. Leaving this initiative to the parties, the new Civil Code make a progress compared to the old rule often criticized in the specialty doctrine[29].

When the payment is done in fruit, taking into account that these are perishable goods, the law stipulates that the lessee has to make the pay at the picking up time and the lessor has to make the reception of the picked up fruits at the date when he is notified by the lessee (art. 1844).

If the parties did not establish the place of the payment in the contract, the rules of common right will be applied.[30].

b) The obligation to take over the leased goods. Generally, the goods are handed in to the lessee and taken over from him based on an inventory which testifies their condition at the moment of contract closure. In the absence of an inventory it is presumed that the goods have been received in a good condition. This is the relative presumption (*iuris tantum)* which can be denied with contrary evidence[31].

c) The obligation to use the leased goods as a good owner and according to their destination. The lessee is compelled to use the leased goods with the care and skills which their owner would

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[27] In this respect, the old Civil code, stipulated in art. 1454 that: "If, in the land lease, is shown a surface smaller or larger than the one it has in reality, the lease will neither decrease nor increase with the exception of the cases and rules enclosed in the selling title". From these dispositions the parties could derogate either purposely or tacitly.

[28] And land lease Law no. 16/1994 instituted a preemption right for the lessee in case of selling agricultural unincorporated areas which he received in lease. In this respect, see also, Adina Foltiş, *Dreptul de preempţiune,* Hamangiu Publishing House, Bucharest, 2011, p. 184-187.

[29] At large, on the dispositions regarding the determination of lease according to Law no. 16/1994, see also, Romeo Popescu, *cit. op.,* p. 22-23.

[30] According to the provisions of art. 1494 of the new Civil Code.

[31] Francis Deak, *cit. op.,* p.247.

have employed, seeking the preservation of their production potential and the execution of the needed work in this purpose. This way the lessee will be responsible for *culpa levis in abstracto*, by the type of prudent and mindful person[32]. The lessee behavior is evaluated more severely because he is a professional, the feature imposed by the specific object of the land lease, which are agricultural goods[33].

Even though the new Civil Code does not comprise a distinct disposition for the lessee regarding the obligation to preserve the use category of the land, this results implicitly from the dispositions of art. 1839, according to which, the lessee may change the category of use for the leased land only with the previous and written agreement of the owner. In this respect, the new Civil Code maintains the same conditions in which such a change may happen like in the system of Law no. 16/1994, being necessary the owner's previous and written agreement and not of some other persons which may lease it (ex. user)[34]. *Mutatis mutandis*, the obligation instituted for the lessee by the dispositions of art. 1839 in the new Civil Code may be extended to the other leased agricultural goods in connection with the change of their destination.

d) The obligation to ensure the leased goods. We find it again in the dispositions of art. 1840 of the new Civil Code according to which, the lessee has the obligation to sign an insurance contract to ensure the goods which form the object of the land lease. If the insurance is missing the lessee will be responsible before the lessor for the prejudice thus caused.

e) The obligation to defend the leased good against usurpation, under the conditions of common law (lease contract). Similarly to any tenant, the lessee will have to notice the tenant in the case the good is being usurped by a third party. Otherwise he will be responsible for the damages suffered by the lessor.

f) The obligation to give back**.** At the contract termination, independent of the reason, the lessor has to give back the leased goods in the condition he received them, according to the inventory issued at the hand over. In case of refusal, the lessor may request the goods restitution either through the promotion of a claim of request (which can be used only if the lessor is also the leased goods owner), or through the promotion of a personal action *ex contractu*. As we already pointed out, by the dispositions of art. 1847 al. (2), the new Civil Code forbids the sublease and in principle, the lessee cannot surrender the contract. As an exception, only with the written agreement of the lessor, the lessee may surrender the land lease to a category of people determined by the legislator, like the husband that effectively participate at the exploitation of the good, object of contract and the descendants who come of age (art. 1846).

g) The obligation to pay the expenses. It is provisioned in the last paragraph of art. 1838 from the new Civil Code, according to which, all the expenses caused by the land lease contract closure, registration and publicity, are the lessee's charge.

2.4. The risk in the matter of land lease

The contracting parties have the possibility to insert in the land lease contract some clauses referring to the risk charge. In the case they are missing or insufficient, the problem of risk charge will be solved following the rules dedicated in the provisions of the new Civil code.

For that purpose, we mention the following situations:

- the risk of losing, totally or partially, the leased agricultural goods as an act of God, is born by the lessor, in his position of owner, according to the rule *res perit domino (*art. 558). In such a case, the lessee must bring evidence that the loss occurred without any of his fault (but due to a

[32] In the previous regulation, in case these obligations are not respected by the lessee, the lessor had the right to request the reposition of the leased goods to their previous state or the termination of contract with interests-damages (art. 24 al. (2) of the Law no. 16/1994 and art. 1455 al. (1) of the Civil Code.

[33] See also, Francisc Deak, *cit. op.,* p.246.

[34] For argument, see also Gheorghe Beleiu, *cit.op.,* p. 26.

strange cause, such as force majeure or acts of God). In case the lessor is not the owner of the assets (for instance the user), he will bear the risk of losing the asset, „...in accordance to the right he has over the asset”[35]. In case he was delayed, although the asset loss was due to an act of God, the lessee will bear the risk as he is the debtor of the obligation to return the leased assets[36];

- in case the lease was set in money and during the lease the whole crop is lost or at least half of it is lost due to an act of God, the lessee can ask for a proportional deduction of the premium set in the contract [art. 1841 par. (1)]. In case the land lease was signed for a period of several years, the premium deduction can be made at the termination of the contract, by means of a compensation, and after calculating the crop harvested during the contract [art. 1841 par. (2)]. By exception, the lessee cannot be granted a proportional deduction of the premium if the crop loss was due to an act of God occurred after being harvested or in case he was aware of the damage when signing the land lease (art. 1842);

- in case the premium was set under the form of fruit share (percentage wise premium) the crop loss due to an act of God will be proportionally born by both parties, according to the dispositions of art. 1843 par.1 in the new Civil Code. Things are different in case the fruit are lost after being harvested, when the risk is born by the party that delayed handing over the fruit [art. 1843 par. (2)].

According to art. 135 par. (1) of Law no. 71/2011[37], in the cases stipulated by the new Civil Code at art. 1841-1843, if signing the insurance contract for the risk of losing the crop due to an act of God is mandatory, according to the law or to the land lease, the insurance indemnity will be born by both contracting parties proportionally with the parties' bearing the risk of crop loss due to an act of God. In case an insurance contract was not signed, according to the law or to the land lease, the party compelled to sign the insurance contract is liable before the other party for the damage thus produced [art. 135 par. (2)].

2.5. Termination of the land lease

Along with the general causes to terminate the lease, applicable in the case of the land lease, article 1850 in the new Civil Code stipulates a series of special situations for the termination of the land lease such as: death, lessee's incapacity or bankruptcy. These dispositions set the *intuitu personae* character of the land lease, compared to the lease, which does not have this characteristic.

Contrarily to the Land Lease Law no. 16/1994[38], the new Civil Code no longer stipulates the possibility to continue the land lease in case the lessor or the lessee die, which means that in such cases a new land lease must be signed. This will also be the situation in case of lessee's incapacity or bankruptcy.

In the land lease case as well, the expiry of the term leads to the contract termination. Especially referring to the land lease, the dispositions of art. 1848 in the new Civil Code stipulate, in case none of the contracting parties noticed the other, in writing, within the terms stipulated by the law, the refusal to continue the contracting relations, the land lease is rightfully renewed.

3. Conclusions

From the analysis realized in this study, regarding the novelty aspects comprised by the land lease, in the light of the dispositions in the new Civil Code, a reconfiguration of this particularly useful instrument in the civil relations.

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[35] Francisc Deak, *op.cit.,* p.243.

[36] Delaying moves the risk in the debtor's charge [art. 1047 par. (2) Civil Code in 1864]. According to art. 1844 in the New Civil Code, when the premium is paid in fruit, *the lessee is lawfully late* to hand them in at the date of harvesting them, and the lessor is lawfully late to receive them from the date he was notified in writing by the lessor.

[37] Law no. 71/2011 to apply Law no. 287/2009 referring to the Civil Code.

[38] See art. 25 of the Land Lease no. 16/1994.

The new Civil Code mainly keeps the previous regulation, but it also brings important changes that we aimed at emphasizing in this study.

Consequently, regarding the current juridical regime of the land lease, we must point out the following novelty aspects brought by Law no. 287/2009:

- the new Civil Code does not stipulate, from the point of view of the contracting parties, special incapacities in the matter of the land lease, aspect that is meant to produce a wider use of this type of agreement;
- more eficient are the dispositions regarding the form and the registration of the land lease (art. 1838);
- the parties are free to set the lease duration, without legal bound, and in case this duration was not determined, the contract is considered signed for the entire period necessary to the lessee, such as an agricultural year (art. 1837);
- within the conditions stipulated by the law, the land lease acquires an enforceable character (art.1845);
- the obligation to insure the leased goods is a new aspect (art. 1840);
- bearing the risks is a specific regulation of the land lease (art. 1841-1843);
- lessee's death, incapacity or bankruptcy as well as renewal of the contract lead to signing a new land lease.

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