# THE OBJECT OF LEASING OPERATIONS

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**Abstract**

*The leasing operation according to article 1, paragraph (2) of Government Ordinance 51/1997 covers movable or immovable property by their nature or which become movable by destination and by the definition of the leasing operation that the legislator offers in the same law, the leasing operation appears to be reduced to signing a lease agreement. But as practice proves, and recognized by part of the legal doctrine, leasing operations cannot be reduced only to the conclusion of the lease agreement. If the lease agreement represents the materialization of the will of the parties (lender and user), it is fact only a stage (final stage) of several operations that precede and accompany the leasing operations along their development. It is recognized in the doctrine that within the leasing operations we have a sequence of operations and contracts without which the final act, namely the lease agreement would not exist. We are referring to the sale-purchase contract signed by the financier with the supplier of goods, the mandate contract of the financier concluded with the user and the actual funding contract, the last two coexisting in the wording of the lease agreement.*

*Through the study developed, we aimed to individualize concretely the specific subject of each of these legal operations, with the intention of consolidate the own identity of the lease agreement and of the leasing operations implicitly.*

**Keywords:** *leasing, leasing operation, the purpose of the contract, the object of the obligation*

Romanian civil law doctrine uses phrases such as "object of the contract", "the object of the obligation", "the object of the benefit ", but without referring each time, to the legal meaning of each of them. So frequently we are giving the same interpretation both to the legal notion of *object of the contract* as well as to the *object of the obligation*. This confusion has been possible due to the legal definition given by the legislator in Article 962 of the old Civil Code, which by taking over the wording in Article 1126 of the French civil code specifies that "*the object of the contract is that which one party undertakes to give or one party undertakes to do or not do*[1]*."*

The current Civil Code, inspired by the new regulation of the Civil Code of Quebec[2] defines in Article 1225, paragraph 1 the concept of object of the contract as "the *legal operation, such as the sale, rental, lending and other such agreed by the Parties, as revealed by all rights and contractual obligations*" and Article 1226 defines by means of the legislature distinctly the object of the obligation, as the *services undertaken to be performed by the debtor* thereby eliminating any confusion, being offered a possible, clear rule.

Legal literature on the subject, states by means of the view expressed by most authors that "the subject of the civil legal act is itself the object of the civil legal relationship born of that legal act, conduct of the parties namely the actions and inactions to which they are entitled or which they must meet"[3] completed by the situation in which the conduct refers to a good, it is said that the good forms the derived object of the civil legal act. Therefore, it is considered that the object of the civil legal act coincides with the object of the civil legal relationship which was born (amended or extinguished) of that legal act[4].

Finding ourselves thus before a complex concept, in my opinion, it must be defined as accurately as possible, and then to distinguish clearly between the object of the contract, the object of the obligation and the object of the benefit, distinction imposed in terms of the codification of the European contract law which requires a unified legal terminology.

As prescribed by the new Civil Code, which provides in Article 1226, paragraph 1 that "*the object of the obligation is the benefit that the debtor undertakes to provide"* it lead us to conclude that the provisions contained in the subsequent norm or paragraph 2 of the same text, belong to the benefit and not to the object of obligation, this relation to benefit and not to the object being thus found in all the statutory provisions which underlie the establishment of the provisions inserted in the new Civil Code[5].

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[1] PhD Univ. Prof. Sache Neculaescu, Discussions on the concept of the object of the contract, Faculty of Law and Social-Political Sciences, "Valahia" University from Târgoviște.

[2] The text of Article 1412 CCQ provides that "the object of the contract is the legal operation envisaged by the parties at the time of its conclusion, as it results from all rights and obligations which the contract establishes.".

[3] E. Lupan, I. Sabău-Pop, Tratat de drept civil român (Treaty of Romanian Civil Law). Volume I. General Part, C.H.Beck Publishing House, Bucharest, 2006, p. 211.

[4] G.Boroi, C.A.Anghelescu, Curs de drept civil.Parte generala (Civil law course, General part)., 2nd edition revised and enlarged. Hamangiu Publishing House2012, p.164.

[5] The Civil Code of Quebec after which it provides in Article 1373 that the object of obligation is benefit that the debtor has against the creditor, which consists in doing or not do something, rules in paragraph 2 that "performance should be possible, determined or determinable; It should not be prohibited by law or contrary to public policy ".

Returning to the topic proposed for debate in this study, I am opportune to detail in a summary the leasing operations so we can individualize the object characteristic to each action.

Leasing is clearly a complex operation, which is performed in several stages that precede, accompany and succeed this operation, the lease agreement itself being just one of those stages. In this context, the doctrine argues that "the leasing operation" is a complex of legal relationships, which includes, besides the actual lease agreement, all other legal consequences springing from the conclusion of the contract.

The lease agreement is recognized universally to be an original contract, freestanding, built under several legal concrete operations which imply the existence of several parties, which due to the common economic aims are interrelated to each other, forming a unitary whole with an own, particular legal physiognomy.

Apodictically the "triangular" legal operation of the leasing involves the existence of three parts which interact in legal terms: the seller of the good (supplier), the buyer of the good (financier / lessor usually a leasing company) and the user (lessee) [6].

Therefore, this tripartite transaction involves a manufacturer or a supplier of goods, a financier / lessor, namely the leasing company and a lessee / user, be it a natural person or a legal person.

But as noted above, the lease agreement involves some ancillary contracts that participants conclude, and among them there are: the contract between the supplier and financier / lessor (sale and purchase or novation), the insurance contract of the property that is the object of the leasing, the mandate between the lessor / financer and the lessee / user (lease agreement).

Although according to some authors[7], it is alleged that a leasing operation can be mistaken for the conclusion of a lease agreement, the leasing operation cannot be reduced only to the conclusion of this contract. The two concepts cannot be mistaken for one another, because they do not have the same scope, the Romanian legislature, in fact, making a clear distinction between the normative provisions, between the leasing operation concept and the lease agreement[8].

The codification enacted by developing G.O. no. 51/1997 in an updated form, dissociates clearly in terms of terminology, the lease agreement, on the one hand and from the leasing operations, on the other hand[9].

Article 1 of the Ordinance defines leasing operations: "(1) This Ordinance shall apply to leasing operations whereby one party, called the lessor / financer, transmits for a fixed period the right to use an asset, whose owner he/she is to the other party, lessee / user, at his request, for a periodical payment called leasing rate, and at the end of the lease, the lessor / financer undertakes to respect the right of option of the lessee / user to buy the good, to extend the lease agreement without changing the nature of the leasing or to terminate the contractual relationship. The lessor / user may choose to purchase the property before the end of the lease, but not earlier than 12 months if the parties so agree and if they pay all obligations under the contract. "

From the definition given by the legislator we retain therefore, that the legal relationship which materializes and leads to completion of the leasing operations through a lease agreement consists of the transmission of the right of use of an asset over a specified period by its owner, in this case the lessor / financier, to the lessee/ user for a periodic payment, called leasing rate.

The object of this specific legal relationship appears to be the duty of the lessor / financer, to give for use to the lessee / user the immovable object as derivative benefit, legally provided that at the end of this period to respect the right of option of the lessee / user to purchase the asset, extend the lease agreement or return the property, which is the very essence of the entire operation.

From this perspective we can note as an additional argument brought to the purpose for which the legislator in the text of the normative act regulating leasing operations, uses the terminology adopted in the current form of GO 51/1997, respectively financier / lessor and user / lessee. As shown in the text of article 1, which defines the leasing operation in terms of the conduct that parties must have following the conclusion of the lease agreement, the object of contract is the granting to use, term which in our view defines the lease.

The ordinance specifies in Chapter III dedicated to the obligations incumbent to the parties participating in a leasing operation, namely in Article 9. that – *The lessor / financer undertakes: a) to observe the right of the lessee / user to choose the supplier of goods, according to its interests; b) to contract the good with the supplier designated by the lessee / user, under the terms expressly stated by it or, where appropriate, to receive the right to permanently use the computer program.* Under this codification the rule of conduct imposed is drawn, therefore the lessor / financer which is required to contract the good only with the supplier indicated by the lessor / user, under the conditions negotiated by him as the object of the obligation.

Given the duty imposed by the legal norm, the financier will not do anything but conclude with the supplier a contract for the sale and purchase of a

[6] G.Garlisteanu George si R.Bischin, Considerations on leasing operations– Revista de Stiinte Juridice.

[7] "*We believe, however, that the rigid dissociation of the leasing operation from the lease agreement is not always pertinent, as one cannot ignore the totality of acquired rights and obligations assumed even if only by the two parties (the financier and the user), before or after the conclusion of the lease agreement. These rights and obligations are interrelated, so that only their approach as a whole can lead to the solution according to the purpose of the conclusion"* Tita-Gabriel Niculescu - Leasing, C.H.Beck Publishing House, 2006, page 41.

[8] Carpenaru D.Stanciu, Tratat de drept comercial roman, Contractul de leasing (Treaty of Romanian Commercial Law. The Lease Agreement)– Universul Juridic Publishing House 2014,p.585.

[9] S. Popovici - Contractul de leasing (The Lease Agreement), Universul Juridic Publishing House 2010; p.56.

property, the object of the benefit in their own name but for the use of another, namely of the user which will show the data necessary for its individualization. This course leads us to the contract of mandate, which will subsist in the lease agreement and by means of which the user mandates the financier to purchase a specific property for its use (Article2009, Article2013 paragraph 2, Article 2014 Civil Code).

From the definition given by our legislator, the leasing operations develop certain features characteristic to the lease, but a lease affected by the condition of observing the right of option enjoyed by the lessee-user, namely at the end of the lease it has to express their option to purchase the asset, to return the asset or extend the lease agreement on the same terms.

In this regard, depending on the option of the lessee / user, we deduce that the completion of the lease agreement can operate under any of the three aspects, the lessor / financer being obliged to accept the option chosen by the lessee / user.

In case the user opts for returning the good to the rightful owner, the financier will accept the good unreservedly. In this situation I believe that given the perspective offered by the regulations of the new Civil Code, the leasing operation develops a conduct specific to the lease, namely the transfer of the right to use for a specified period, for a specified price (Article 1777 Civil Code) at the end of the period the good re-entering the possession of its rightful owner. As I stated above, I assume that this was also the basis for which the legislature considered it appropriate to change by means of law 284/2008 the name of parts from financier and user as they were called in GO 51/1997 original form, in the financier / lessor or user / lessee as reflected in the updated normative act.

The user is also provided the possibility to opt to extend the lease agreement so that it continue to benefit from a right to use the good for a further fixed period, the consideration of this new use being further the lease rate. The ordinance does not specify whether at the end of this new period of lease, the way in which the contract is concluded provides the same opportunity of option to the user, namely to acquire the good, return it or to continue the lease or if the residual value changes. But by means of the specification performed by the legislature, namely that the extension will operate under the same circumstances, we consider that the user will have the same opportunity this time, to choose between the three variants. The object in this case is certainly the use, the operation being repeated as in the original situation.

The last variant the user has is the option to purchase the good that was the derivative object of the contract, which will require the conclusion of a sale and purchase document between the two parties of the lease agreement. Their conduct will ultimately be reduced to the obligation of the financier which is this time subrogated to the seller, to convey ownership of the property for a price. The price is individualized by the specific rule regulating the leasing operations in the concept of residual value because the transfer of ownership will operate only upon payment, the obligation which is incumbent upon the user being therefore to pay this amount (Article 1650 Civil Code).

## Conclusions

The complex nature of the leasing operations, both from an economic as well as from a legal perspective, prompted the assimilation of the lease agreement with various other contracts, sometimes the individuality being ignored.

But to determine the exact legal nature, the corresponding delimitations must be made in relation to the tenancy, credit, loan agreements, and from the sale and purchase agreement (in instalments or upon deadline), contracts the structure of which resembles that of the lease agreement, but which should not be mistaken for this.

It therefore remains to note the main feature of the leasing operation, which lies in its atypical, special character - in that it inserts in its fundamental elements legal features specific to the legal agreement, to the sale and purchase agreement and to the loan agreement, but in no case it must be regarded from their perspective, but it should be seen and accepted individuality, as a combination thereof. Only in the ensemble conferred by their interference we shall find ourselves under the incidence of a leasing operation.

For this, the lease agreement has been described in the research literature as a "sui generis" contract, the followers of this theory relying on its characteristics[10]:

- the lease is a manner of special financing is for the concession of use of the leasing object;
- the lease agreement is not especially regulated by the Civil Code;
- the lease agreement constitutes specific triangular relationship between the provider of the property that is the object of the lease agreement - financer of the leasing operation – the user of the property which is object of leasing operation.

Under the empire of the issues presented in conjunction with the definition of the lease agreement found in the research legal literature, I believe that the object of the obligation of the leasing operation is the full financing of an asset, and the object of performance are *immovables by their nature* or which *become movable by destination, under the civil circuit, except for the audio and video tape recordings, of theatre plays, of manuscripts, patents, copyrights and intangible property*, and regarding the agreement cause, we can say that this is the use.

Thus, I believe that *a lease operation is the operation whereby one party, called the lessor / financer, will provide funding for the purchase of a property, movable or immovable, in order to transmit*

[10] T. Molico, E. Wunder, Leasingul, un instrument modern de investiţii şi finanţare, Editura CECCAR, Bucureşti, 2003, pag. 60.

*for a specified period the right to use it, which it owns, to the other party, lessee / user at its request, for a periodic payment, called leasing rate, and at the end of the lease period the lessor / financer undertakes to respect the right of option of the lessee / user to buy the property, to extend the lease agreement without changing the nature of leasing or to terminate the contractual relationship*.

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