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Law

Legal regime of some special tenancy relations according to the legislation of

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Abstract
The specificity of some lease relationships is determined by the category, destination of the leased assets, as well as the status of the parties to the contract, therefore, in the content of the article we intend to examine: the specificity of the lease of housing stock; the contract on periodic accommodation; the lease of dormitories during studies or work activities; the lease of housing for a special purpose; the lease of maneuvering housing, etc. In this context, we intend to show the distinction between special lease relationships and the varieties of lease that, in fact, refer to rent and leasing, often confused by the legislation and doctrine of many European states. Moreover, each time, in matters of civil law analysis, the doctrine attributes the latter categories of relationships to the category of varieties of lease, which affects the meaning and applicative efficiency of different categories of lease. However, the manner of concluding and executing such lease contracts is established by special norms, contained in normative acts and special laws.

Keywords: Lease contract, periodic accommodation, rent, types of lease, temporary housing.

Introduction

Given the specifics of certain categories of goods for which the lease contract is concluded, the status of the subjects who engage in the lease relationship, the destination of the leased property or the social necessity that determined the resort to the lease, it was considered that these lease relationships are special, a fact that requires us to examine them in a separate chapter, called - special lease relationships. As I said, the particularity of lease relationships is determined by the category, destination of the leased goods, as well as the status of the subjects party to the contract, therefore, in this section we will examine the specifics of the lease of housing stock, the lease of public domain goods, the lease of housing for special purposes, the lease in employment relationships, etc., and not the varieties of lease that refer to rent, leasing or concession, which, by the way, we examined in the previous section. Or, every time, in terms of civil-legal analysis, the doctrine attributes the last

categories of relationships to the category of varieties of lease. With a clarification in the given context, we come to the fact that, usually, the doctrine attributes the lease of the residential space to the varieties of lease, a matter that we do not agree with, considering that this is not a variety of lease, but rather a particular lease relationship dictated only by the destination of the property and some small nuances that do not influence the nature of the lease itself. In other words, when we refer to the lease relationship established under special conditions, we are considering the special clauses and procedures for concluding a contract, which exempt the general rules for concluding a contract. Respectively, the manner of concluding and executing such lease contracts are established by special norms, contained in normative acts (3) and special laws [6]. For example, the lease of social housing is established in compliance with special conditions for awarding the contract to certain categories of special subjects (registered families, whose monthly income for each family member does not exceed the minimum subsistence level established in the country), respectively, the lease relationship is no longer a common law one, regulated by the Civil Code, but a special one.

Materials and methods

In order to achieve the predetermined goal, within the research of the present subject, different research methods will be applied, among which we mention the most relevant ones, such as: the analysis method, the synthesis method, the deduction method, the historical method, the comparative method, the systemic method and the empirical method. Results and discussion The rental of housing stock Varieties of renting private residential space Since the field of renting residential space is the most widespread, not only in our country, but also throughout the world, we will start from the analysis of the respective subject, insisting on specifying that the rental of private residential space does not present essential particularities and derogations from the general legislative framework in the matter of rental, both in terms of establishing the rental relationship and in the matter of executing the conditions of the contract. Moreover, our legislator does not allocate a separate section to the regulation of rental relationships established when renting residential space, as, for example, the Romanian legislator does. However, we have decided that, in this section, we will discuss separately some specific aspects of the lease of private housing stock, as well as that managed by public authorities but belonging to the private domain. Over time, it has become undeniable that, among the needs that lead a person to resort to leasing, the priority is securing housing, especially in conditions where not everyone can afford to buy a home. For this reason, the relationships established on the occasion of renting housing space have gained momentum all over the world, especially in the context in which people are increasingly abandoning sedentary lifestyles, having the thirst to travel, to migrate from one job to another, to establish relationships and to do business with partners outside their area of activity. Under such conditions, the legislator was forced to diversify the regulations on the rental of residential space, expanding the scope of regulation to all relationships that are established when renting a home, starting from the usual permanent residence and continuing with occasional, service, manoeuvre, periodic accommodation, etc.

Contract for periodic accommodation. With a novelty in the matter of rental relations, comes after March 1, 2019, the norm of art. 1618 of the Civil Code that concerns the regulation of the contract for periodic accommodation, although in a separate compartment from the one in which the lease is regulated. From this perspective, it would seem that this report is not a rental, but an accommodation by virtue of the provision of the holiday product, but it remains in our opinion, a special rental report constituted by a contract

for periodic accommodation. So, according to art. 1618 CC, the contract for periodic accommodation is the contract by which a professional undertakes to grant the consumer the right to use a dwelling or other accommodation unit overnight, periodically, during a period exceeding 12 months, and the consumer undertakes to pay a total price. Therefore, as I said, the respective rental relationship is a special one, because one of the parties, namely the tenant, must have the status of a professional, the relationships are established within the framework of the entrepreneurial activity, but its object also concerns living only during certain periods (only at night) with a limited minimum term of exercise (12 months). In fact, the need to resort to such a category of rental arises during the holiday, the respective contract being regulated in section 2 (some holiday products and their intermediation) of Chapter XIX (Travel packages and holiday products) of the Civil Code. However, as we argue and as the legislator provides in paragraph 2 of art. 1618 CC, this consumer right can also take the form of: a) a share in the common property, with the establishment of the respective mode of use, or a share in the periodic property; b) a right of usufruct, habitation or other real right; c) a right of lease or other right of claim; d) a right resulting from the quality of membership of a legal person or civil society. This lease relationship is also special, because it provides the consumer with the right to choose the accommodation unit from a group of accommodation units made available by the professional. Also, the specialty of periodic lease is that the lease right extends to movable property according to the destination of the accommodation unit. As can be seen, apparently, periodic lease would overlap with the contract for the provision of tourist services, where a clause of the contract would cover the obligation of the provider to provide the consumer with accommodation, but in essence, this is a distinct contract, with special conditions regarding the use of a residential space, i.e. periodically (overnight) and for a period of more than 12 months. Moreover, it is regarded by civil law as a separate contract (Periodic Accommodation Contract) and not as a clause of the contract for the provision of tourist or holiday services.

1. **Specifics of dormitory rental during studies or work activities.** As a special report of rental, in the national legislation, the field of dormitory use by a special category of subjects appears - students during their studies. It is a special rental, because it only targets a specific category of subjects as tenants (students or workers of an enterprise), moreover, in the case of student dormitories managed by educational institutions with funding from the state budget, the landlords are also special subjects. Also, the regime of living in dormitories is unique for all tenants, exercised according to strictly regulated rules, both by normative acts and by special internal regulations. Because the rental of student dormitories is quite widespread in the Republic of Moldova, we decided that in the present subject we will refer to the specifics of this category of legal report, taking into account the fact that the respective contractual relationships also target legal entities under private law. Or, according to art. 25 paragraph 3 of Law no. 75/2015 (Law on housing No. 75 of 30.04.2015) dormitories belong to legal entities of public and private law and cannot be alienated if they were built or purchased from the sources of the state budget or local budgets. The owner or the authority under whose administration these dormitories are located decides on the categories of persons who have the right to live in them. Regarding the concept of the norm in art. 25 paragraph 3, in the part that refers to the prohibition of alienation of dormitories belonging to legal entities of public and private law built or purchased from the sources of the state budget or local budgets, we have a small claim. Namely, the lack of students that the Republic of Moldova is currently suffering from, and every year the problem is becoming more acute, universities being forced by these circumstances to merge, therefore, we find ourselves in a situation where the need

for accommodation places that was once, becomes a surplus. Therefore, the lack of necessity, the financial burden generated by their maintenance and management, leads to the revision of the concept by which the legislator prohibited their alienation, leaving room for the decision of the authorities in whose ownership they are, to alienate them in the event of demonstrating the lack of necessity. However, it must also be taken into account that over time the situation at the country level may change for various reasons (demographic growth, attracting students from abroad, returning citizens of the Republic of Moldova to the country, etc.). Under these conditions, rather than allowing the permanent alienation of the dormitories, an optimal solution would be their alienation with the right of redemption, the legal relationship of sale-purchase being established under the conditions of art. 1136-1141 of the Civil Code. Another solution would be to admit the possibility of renting out dormitories to subjects other than students, thus making it possible to remove this relationship from the scope of special rental relationships. And again, here everything depends on the strategy adopted by the public authority that owns these dormitories, either alienating them with the right to buy them back or renting them out to subjects other than students. Therefore, we consider that the norm in art. 25 paragraph 3 of Law no. 75/2015 must leave more alternatives to the owners of these housing spaces. In fact, one of the alternatives we were talking about, that is, that of the possibility of renting out to other persons, is already provided for in the text of the analyzed norm, through the phrase in which it is mentioned that the owner or the authority in whose administration these dormitories are located decides on the categories of persons who have the right to live in them. Therefore, it remains to suggest to the legislator to revise the text in art. 25 paragraph 3, sentence I. of Law no. 75/2015, by assigning the following content: Dormitories belong to legal entities of public and private law and cannot be alienated if they were built or purchased from the sources of the state budget or local budgets, except in cases where their lack of necessity is demonstrated, confirmed by the Government. The owner or the authority under whose administration these dormitories are located decides on the categories of persons who have the right to live in them, as well as their transfer to the management of private real estate companies.

Thus, the object to which the contractual lease relationships under discussion are linked is the dormitory as a construction with residential purpose with distinct infrastructure, Law No. 75/2015 defines it as a building intended for the residence of persons during the period of work or studies. So, the fact that the tenants concerned (students, in particular), obtain this status upon conclusion of the lease agreement, is even indicated by the norm in Art. 25 paragraph 1 of the law, according to which, during the period of studies and work activity, persons have the right to benefit from housing space in dormitories, within the limits of the available spaces, under the lease agreement. We have shown above some elements that make a lease contract that has as its object a living space in a dormitory, to be a special one, and to them is added the fact that tenants acquire the right to conclude such a contract (we are talking about publicly owned dormitories) only after registering as persons who require the provision of living space in dormitories, and the manner of use and administration of dormitories is established by regulation approved by the Government (Government Decision No. 1055 of 15.09.2016). Moreover, the surface area of the living space is regulated, mentioning in art. 26 of the law, that in dormitories, regardless of their category, the norm of the habitable surface is established in the size of 6 m2 for one person, at the same time, accommodation in the same room of persons of different sexes over the age of 9 is not allowed, with the exception of spouses.

The peculiarity of renting temporary housing. The peculiarity of certain contractual rental relationships can also be determined by circumstances independent of the potential tenant's will to contract. That is, these are cases in which the tenants of a building are to be temporarily relocated for repairs or remediation of their homes following massive damage caused by ordinary conditions or natural disasters. However, according to the notion given in art. 4 of Law no. 75/2015, temporary housing is housing intended for the temporary accommodation of people whose homes are undergoing major repair or reconstruction works, which cannot be carried out in blocks of flats without the evacuation of the tenants, or intended for the accommodation of people left homeless following natural disasters or intended for people who have been evacuated from social housing. Although at first glance the meaning of the above-mentioned norm would be clear, something still remains confusing, namely, the specific cases in which rental contracts are concluded for temporary housing. Moreover, the cause of natural disasters that gives the right to rent housing intended for the accommodation of people left without housing is a restrictive one, as these relationships are also needed by other people in other exceptional situations such as, for example, a state of emergency, siege or war, which, in fact, gives the basis for their internal displacement. In fact, the subject of internal displacement of citizens is broader. First of all, there is no legislative framework that provides for the procedure and social guarantees of internally displaced persons. Secondly, although this issue was raised in the case of the conflict on the Dniester in 1922, when approximately 51,300 people (28,746 of them children) were displaced from the war zones and registered on the right bank of the Dniester (Center for Strategic Investigations and Reforms, 2009) without any legislative measures being taken, and currently, the return to the same circumstances is increasingly imminent. Moreover, the need for internal displacement can also be determined by other causes, some of them being major catastrophes generated by industrial activities, and the first and most important action to be taken would be considered limiting the damage, i.e. preventing its expansion, as well as the internal displacement of people who otherwise expose themselves to the risk of suffering damage to their health [Ardelean, 2017, p.73]. Therefore, once such an approach is required, in the process of preparing the legislative framework intended to protect potential internally displaced persons, it is also necessary to prepare all normative acts that directly or tangentially address the issue of these persons, a matter also valid for Law no. 75/2015, which provides for the right of internally displaced persons to rent temporary housing. Therefore, we believe that the most appropriate option would be the one in which, through art. 4 of the law under discussion, the category of special subjects of the lease relationship, found in different situations, would be expanded. In this sense, in order to include all categories of beneficiary persons, the legislator should not limit their circle to those left without housing as a result of natural disasters, but as a result of the state of emergency, siege and war. According to the definition of internally displaced persons found in the UN Guiding Principles on Internal Displacement, they are "persons or groups of persons who have been forced or obliged to leave their homes or to leave their territory of residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed any internationally recognized state border [9]. In the same sense, Law no. 212/2004 (Law on the regime of the state of emergency, siege and war, No. 212 of 24.06.2004), when defining the state of emergency, also refers to the category of internally displaced persons. Thus, according to the notion given in art. 1 of the Law in question, a state of emergency is a set of measures of a political, economic, social nature and

of maintaining public order, which is temporarily established in some localities or throughout the country in case of: a) imminent onset or onset of exceptional situations of a natural nature, technogenic or biological-social, which makes it necessary to prevent, mitigate and eliminate their consequences; b) existence of a danger to national security or constitutional order, which makes it necessary to defend the rule of law, maintain or restore the state of legality.

Having said this, we propose revising the text of the notion given in art. 4 of Law no. 75/2015 in the following version: temporary housing is housing intended for temporary accommodation of persons whose homes are undergoing major repairs or reconstruction, which cannot be carried out in blocks of flats without evacuating the tenants, or intended for the accommodation of internally displaced persons during a state of emergency, siege and natural war or intended for persons who have been evacuated from social housing. Therefore, in continuing the study of the respective rental relationships, it is stated in the norm of art. that these categories of relationship are established on the basis of a rental contract. 23 paragraph 2 of the Law on Housing, namely, during the period of residence in temporary housing in connection with the major repairs or reconstruction of housing, the tenants pay the payment for renting the housing and for communal and non-communal services under the rental contract concluded for this period. And again, the respective categories of relationships are special because they are carried out according to special rules, under special norms, and under special conditions. Or, according to paragraph 1 of art. Under Law no. 75/2015, temporary housing must have a habitable area of at least 6 m2 per person. Also, the method for establishing and assigning temporary housing, and the conditions for its use, are set by the local public administration authorities.

Conclusions

In conclusion to what has been examined, we believe that a much more prominent intervention by the legislator is necessary in the regulation of special tenancy relations, given that man has become much more nomadic, the eminence of natural disasters, but also those generated by industrial activities, is increasing, demographic development is becoming increasingly accelerated, there is a need to provide housing for a growing number of applicants, and the problem can only be solved by expanding the regulatory field by consecrating new categories of relations under the incidence of the tenancy institution.

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