

Is the cancellation of the lease agreement subject to registration?

The lease agreement is an agreement through which the lessor provides an object for temporary use by the lessee who, in turn, undertakes to pay a certain price. The leased object could be either a movable chattel or immovable property and it has to be individualized and non-perishable, i.e. not subject to deterioration and decay in the course of its normal use. The Obligations and Contracts Act does not provide for the registration of the lease in the property register as a mandatory requisite. The only provision to this effect is that upon the transfer of immovable property the lease remains in force if the agreement has been entered into the property register. A requirement to register lease agreements with a term of more than a year is set out in Article 4(f) of the Registry Rules. The registration of a lease agreement with a term of more than a year has the effect of announcement to third parties and makes it enforceable with regard to third parties who acquire rights from the right-holder. The registration may produce also a protective effect in the sense that the right *in rem* acquired on grounds of the registered act may be enforceable with regard to all other rights *in rem* to the same property, which were acquired prior to the registration. However, this is possible only in the cases which are exhaustively laid down in the law, whereas the registration of a lease agreement with a term of more than a year does not belong to this exhaustive list.

The terms of the lease agreement and the opportunity for its early termination or cancellation are essential for the parties to the agreement with a view to the already existing announcement effect with regard to third parties and the need, as perceived by the parties and especially the lessor, to announce the legal change. The agreement may be terminated at the mutual consent of the parties. Where it is not bound by a fixed term, the agreement may be terminated through serving a one-month notice by any of the parties. If the lease is agreed for a fixed day, a one-day notice is sufficient. In the event of non-performance, the non-defaulting party is entitled to terminate the agreement in accordance with the general provisions of Article 87 of the Obligations and Contracts Act (OCA) which envisage giving an appropriate time limit for corrective action and a warning that after the expiration of this time limit the non-defaulting party will consider the agreement cancelled. Even when it reaches the other party and leads to termination or cancellation of the agreement, this unilateral statement will not be announced through registration in the property register. Hence even when it is terminated or cancelled, the lease agreement will continue to be registered in the name of the lessor in the property register and it will be valid for all third parties until the expiration of its term or the registration of a subsequent lease agreement.

The existing law does not provide for the registration of either the early termination notice or the unilateral cancellation statement of the non-defaulting party. The Supreme Court of Cassation has repeatedly answered in the negative to the question on the admissibility of the registration of the termination or cancellation of a registered immovable property lease agreement due to the absence of such explicit provisions in the Registry Rules or a law.

This opinion is substantiated on the grounds of Articles 13, 19 and 32 of the Registry Rules, which contain explicit provisions on the deletion of registration entries. The deletion of a registered lease agreement is not included on the explicit and exhaustive list of acts subject to statutory registration. Therefore it is not prescribed by the law and is not subject to registration. This opinion is supported also by the wording of Article 112 of the Ownership Act and Article 4 of the Registry Rules, laying down the list of acts subject to registration, which does not include the statement on the termination or cancellation of a lease agreement.

Fully consistent with the opinion that subject to registration are only those acts which are explicitly laid down in a law or in the Registry Rules is the content of Interpretative Decision No 7 of 25 April 2013 of the Supreme Court of Cassation in Interpretative Case No 7 of 2012 of the General Assembly of the Civil and Commercial Law College concerning the scope of the investigation which the registry judge makes prior to issuing the requested registration order. The compliance investigation is limited to the check whether the act is subject to registration, whether it is compliant with the required form and whether its contents meet the requirements of the Registry Rules. The registry judge does not examine the substantive legal prerequisites for the act, unless this is explicitly prescribed by the law.

The reasons of Interpretative Decision No 2 of 20 July 2017 of the Supreme Court of Cassation in Interpretative Case No 2 of 2015 of the General Assembly of the Civil and Commercial Law College are in the same spirit. With regard to the specific case of agricultural tenancy agreements, the court reasons add that the registry judge may not assess the validity of the unilateral termination statement and therefore invoke the lack of competence to make such an assessment as grounds for refusal to register the termination of an agricultural tenancy agreement which is set out in a unilateral statement with a specific addressee.

Unlike the termination of a lease agreement which has been concluded under the Obligations and Contracts Act, the termination of an agricultural tenancy agreement is subject to registration. This is explicitly provided for in Article 27(2) of the Agricultural Tenancy Act (ATA). The 2017 interpretative decision gives an answer to the question on the prerequisites for the registration of the termination of an agricultural tenancy agreement with a term of up to ten years in accordance with Article 27(2) ATA due to its unilateral out-of-court termination on the specific grounds for termination or cancellation of the agreement under the Agricultural Tenancy Act in case of failure to make the tenancy payments for more than three months. Unlike the requirement to give an appropriate time limit for corrective action, which is set out in the general grounds for cancellation of agreements under the Obligations and Contracts Act, this specific provision does not contain such a requirement and therefore it is not necessary to submit evidence to the registry judge that a notice has been served.

Beyond this specific case and in all cases in which the Agricultural Tenancy Act does not contain any explicit provision, the cancellation of an agricultural tenancy agreement is subject to the general rules on the cancellation of bilateral agreements just like any lease agreement in accordance with Article 87 of the Obligations and Contracts Act.

As is seen from the interpretative decision, it is required for registration purposes to submit to the registry judge the act (e.g. the notice, notarized invitation, letter or another act given in writing) which contains the statement of the landlord's will to terminate the agreement due to failure of the obligation to make the tenancy payment and to provide proof that it has reached the addressee. If the termination statement gives a certain time limit for the payment to be made and serves a warning (which the Agricultural Tenancy Act does not require, unlike the Obligations and Contracts Act), the request for registration should be filed after the expiration of the time limit, i.e. the time limit should have expired prior to the date of the registration request.

In accordance with the existing legislation and mandatory case law, the early termination or cancellation of a registered lease agreement is not subject to registration because, unlike the termination or cancellation of an agricultural tenancy agreement, it is not bound by any legal grounds for its registration.