

# Some Aspects Concerning the Concept of Rent in the Romanian Law

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## Abstract

*The notion of rent was analyzed through the ages by both lawyers and economists generically representing an equivalent to the lack of use due to the owner of the property by the person who benefits from that good and form of profit that can be obtained by the owner of a good from the person exploiting the good.*

*The interest that this issue presents refers to the location of each of these types of understanding the concept of rent in areas where it is found and used to get to know the specifics and peculiarities of this term. Whether we speak of "ground rent" or "land rent" or "farm rent", we will consider the real legal relationships of the property, regarding the relationship between the land owner to the other people, who must adopt a certain behavior towards the owner and his/her good.*

**Key words:** rent, land rent, lifetime tenancy agreement, rentor

**J.E.L. classification:** K11, K12, K23,

## 1. Introduction

*Rent* is defined as income or regular income that an owner can get under its right of ownership of a good, whether it is movable or immovable, by giving in return for payment of right to use the said property. Also, the rent is seen as an interest produced by a bond.

Currently we meet the notion of rent in various fields, and defining this term acquires the specific features that define the area.

## 2. The concept of ground rent – the economic and legal sense

### 2.1. Issues relating to the concept of rent

The legal literature recognizes and regulates various types of rent, respectively, *annuity* (the amount of money that a person commits her pay periodically to another the during the latter's lifetime), and *ground rent / farm rent* (which is a specialized form of life annuity, which is carried out, usually on land).

Throughout history we find the notion of *feudal rent*, which represents the performance through labor, goods or money that the serf was required to give to his lord. It was also known under the name of *serving* or *food ration*. When cereals were involved, usually this portion was measured and transported by bushel (according to A. Popescu 2015: 135, the English equivalent of the Romanian word "obroc" - term of Slavic origin attested in documents dating from the end of the 16<sup>th</sup> century), which was a bowl of cylindrical form, with a wide opening, made of lime wood.

On the other hand, the concept of *ground rent* is addressed in studies of economists, who relate it to the price and quantity of the land, but is also found in lawyers' concerns who, analyzing the issues of heritage and ownership, felt the need of legally regulating this notion. Since our analysis throughout this study will relate to a legal analysis of the concept of *ground rent*, we will make only brief assessments on the economic opinion and will further develop the lawyers' view of this concept.

## 2.2. The forms of the concept of rent

Studying the concerns of the economic and legal specialists, we find that the concept of rent takes different forms, depending on the area in which it is used and the goods which are under. Without proceeding to a thorough analysis, we shall go on by enumerating the forms that we may encounter in regard to the concept of rent so that we can form an opinion about it, and to be able to make assessments on the actuality or obsolescence of the term analyzed.

We note that if in the economic field we may come across several forms of rent, in the legal field this notion has fewer forms. We understand to articulate this assessment because the rent forms known in the economic field are subject to specific conditions specific to the legal field.

The rent forms known so far are the following:

**a) Ground rent** represents the income made by the owner of land through its lease for a determined period of time. Being a factor of production of a limited quantity, land is said to produce extra income in the form of rent (ground rent).

In analyzing this concept, lawyers started from the content of the civil legal relationship, continued with heritage, ownership and special contract matters. The concept of ground rent is explained by Adam Smith (economist, politician and philosopher) as part of the new value created in agriculture which is defined as the price to be paid for the use of private owned land.

**b) Mining Rent** is known in the extractive industry and it refers to people owning mining resources that can be exploited (Padure I., Tudorascu, M. M., 2005 : 14).

**c) Construction Rent** occurs when there are differences between the types of land on which one can build. Thus, some of these may have infrastructure / access to utilities (electricity, water sources, close to the main road or center).

**d) Seller's rent**, respectively, **buyer's rent** is deemed to be the difference in the sale price given that the contracting parties (seller and buyer) estimate a price, and at the time of the transaction the asset is sold for a higher price (favoring the seller) or a lower price (favoring the buyer). That price is in the form of rent according to the definition given by economists (income or profit obtained following the completion of a transaction) (I. Turcu, M. Stan Botină, 2008 : 121).

**e) Capacity or skill rent** represents the profit generated by certain professionals proving superior professional skills, managing to obtain higher incomes than others in the same professional category.

**f) Opportunistic Rent** is a artifice similar to stock market operations, where certain professionals invest capital in stocks of goods, during the period in which they have a low price, in order to sell them later on, after their price increases, thus obtaining a price difference, a profit.

**g) Scarcity or monopoly rent** represents a type of rent in which certain resources are limited as a result of the imposition of monopoly or due to natural circumstances, allowing a profit that is actually the rent itself (F., Braşoveanu, 2013: 108, 165).

**h) Transfer rent** is the profit earned as a result of the alteration of one of the production factors.

**i) Trade or business rent**, known as umbrella price, is an artifice specific to marketing, in which some large companies that have sufficient availabilities lower price of goods to the level of small companies so that the latter are required to raise prices in order to survive.

**j) State Rent** is an operation involving a sum of money paid by the state. This type of rent is found in the analysis of agricultural rent, when the state annually pays the holder a certain amount to the farmland owner to support his land cultivation. Sometimes we find this type of state in state borrowing operations, when a fixed percentage of the value of treasury bonds is paid (according to F., Braşoveanu, 2013: 147).

**k) Economic rent** is payment for the use of nonfungible economic resources whose total supply over demand is insufficient, resulting in an income for its owner as rent.

**l) Lifetime tenancy** is a sum of money that a natural or legal person undertakes to pay an individual periodically for the latter's lifetime (F. Dobre, 2011 : 46).

### **3. Romanian law which is specific for land rent**

#### **3.1. Ground rent under Romanian law**

Regarding *ground rent*, this is regulated by legislation specific to the issue of land without the laws concerning land regulating it themselves. Only with the advent of Law no. 247/2005 this was regulated as agricultural *lifelong annuity* (in Title XI) and subsequently completed and amended by ministerial orders and government ordinances.

Romanian lawmaker has defined as agricultural lifelong annuity *money paid to the agricultural annuitants who alienate or lease the farmland outside the city which is owned by them or who sign an agreement with the investor, in compliance with Art. 4 paragraph (1<sup>3</sup>) of Law no. 1/2000 for the restoration of property rights over agricultural and forested land applied according to Law no. 18/1991 and Law no. 169/1997, as amended and supplemented afterwards, with the certainty of a source of lifelong income to be guaranteed by the state* (Art. 2 of Law no. 247/2005).

Consequently, we find that the lawmaker links lifelong agricultural annuity to the lease agreement (in which *one party, called the Lessor, provides farm goods to the other party, called the Lessee, to be operated for a period of time, for a price, called rent*) and to the rent agreement (the part called *renter, shall undertake, to the benefit of a certain person, called rentor, regular benefits, consisting of money or other fungible goods*). Underlying each of these contracts there is a binding civil legal relationship (in which for each individual civil right there is a corresponding obligation) and a bilateral civil legal act (in which each of the contracting parties express their will in the sense of producing legal effects).

#### **3.2. Lifetime tenancy agreement**

As for the *lifetime tenancy agreement* encountered in special civil contract law, that term was defined in both the former civil code (from 1864) and in the current Civil Code (entered into force on 01.10.2011) (F. Dobre, 2010 : 27).

Both the former civil code (Art. 1640) and the current civil code (Art. 2242) have defined and characterized the lifetime tenancy agreement as a convention, usually onerous, random, that is active for the entire life of the rentor (the tenancy creditor), unless the parties have established its duration for the renter's lifetime (the tenancy debtor) or for a third party.

This legal form is based on the legal relationship of obligations /debts, in which it is pursued the aim of concluding this type of contract in terms of rent. In this context, the creditor is a person receiving benefits representing life tenancy, and the debtor is one who undertakes to fulfill regular benefits.

The Romanian lawmaker has provided that establishing lifetime tenancy is at the discretion of the Contracting Parties. Thus, it can be established to the rentor's lifetime, the renter's lifetime or a specific third party.

### **4. Conclusions**

At the end of our study regarding the meanings of the concept of *rent* we find that the notion we have analyzed is used in various fields, such as law, finance, mining, construction, agriculture etc. Incidentally, this was the starting point for our topic of research. Among these meanings that we can come across in everyday practice, two are most common, namely *agricultural rent* and *lifetime tenancy agreement*.

The existence of a legal relationship that is based on rent (any of its forms) requires obtaining a regular income entering the heritage of the owner's property over which rent is exerted in return for the owner's yielding the usage of the heresaid asset for a fixed or unfixed period of time, depending on the rent type.

We cannot claim to have exhausted the complete investigation of all the meanings that the concept of *rent* undergoes, but we tried to bring to the attention of those interested a substantial part of the gathered information.

## 5. References

1. Codul civil român (1864, 2009)
2. Legea nr. 18/1991
3. Legea nr. 169/1997
4. Legea nr. 1/2000
5. Legea nr. 247/2005
6. Ordin 33/2011 privind modificarea și completarea Ordinului nr. 1272/26503/2005 pentru aprobarea Normelor metodologice de aplicare a prevederilor titlului XI "Renta viageră agricolă" din Legea nr. 247/2005 privind reforma în domeniile proprietății și justiției, precum și unele măsuri adiacente, Monitorul Oficial, Partea I nr. 138 din 23 februarie 2011
7. Ordin pentru modificarea Normelor metodologice de aplicare a prevederilor titlului XI Renta viageră agricolă din Legea nr. 247/2005 privind reforma în domeniile proprietății și justiției, Monitorul Oficial, Partea I nr. 236 din 9 aprilie 2012
8. OUG nr. 106/2011 - modificarea titlului XI "Renta viageră agricolă" din Legea nr. 247/2005, reforma în domeniile proprietății și justiției, precum și unele măsuri adiacente, Monitorul Oficial al României, Partea I, Nr. 858, din 6 decembrie 2011
9. Brașoveanu, F., 2013, *Dreptul european al mediului*, Editura Pro Universitaria, București
10. Dobre, F., 2010, *Drept civil. Contracte civile și comerciale în economia de piață*, Editura Ex Ponto, Constanța
11. Dobre, F., 2011, *Drept civil. Contracte civile*, Editura Ex Ponto, Constanța
12. Padure I., Tudorascu, M. M., 2005, *Încadrarea juridică a lucrărilor de cadastru minier*, Revista de Geodezie, Cartografie și cadastru, nr. 1-2
13. Popescu, A., 2015, *Dicționar de termeni juridici și economici englez-român*, Editura Universitară, București
14. Turcu, I., (Stan) Botină, M., 2008, *Tratat teoretic și practic de drept comercial, volumul I*, Editura C.H. Beck, București