THE REALITY OF THE REAL ESTATE LEASE AGREEMENT IN THE SYRIAN ARAB REPUBLIC

AUTHORSHIP
Mohamad Aghyad Omran
Postgraduate student (Syrian Arab Republic) Department of Civil Law and Private International Law Peoples’ Friendship University of Russia (RUDN University) Law Institute, Miklukho-Maklaya str. 6, Moscow, Russia.
ORCID: https://orcid.org/0000-0001-5580-3968
E-mail: aghyadomran.90@mail.ru

INTRODUCTION
The lease agreement is one of the most widely traded and common contracts and the lease law is one of the laws that people frequently refer to in their transactions.

And since the rent has a close relationship with the two things that are closely related to the public order, namely, ownership and work, it was necessary for the rent to have provisions that would preserve the property that concerns the lessors and preserve the rights of the tenants, as the large class that has no property other than what it obtains from its labor and not, She has no shelter except what she rents from the property of others. Therefore, it was necessary to achieve solidarity between the landlord and the tenant from the social and economic aspects.

What helps to establish this solidarity is the appropriate legislation with the two cases, and the legislator intends to make the interests of the landlords and tenants close and not contradictory, and he’s forced to intervene to restore the balance between the rights of the two groups so that the landlords’ class does not overstep the rights of the tenants and the tenants do not exaggerate in neglecting the rights of the landlords and underestimating their ownership. The first special law regulating the relationship between the landlord and tenant in Syria was Law No. /26/ issued on December 29, 1943, which was the first step to highlight the rental relationship as a special legislation. Several amendments were made to this law that filled many of the gaps shown by the practical application of this Law.

Private legal relations for renting real estate in Syria are governed by Art. 526-601 of the Civil law of the Syrian Arab Republic (hereinafter referred to as the (Civil law of the Syrian Arab Republic), the Law of the Syrian Arab Republic No. 6/2001 “On Rent” and Legislative Decrees No. 111/1952 and No. 3/1987.

The concept of a lease is enshrined in Art. 526 of the Civil law of the SAR, according to which a lease agreement is understood as an agreement on the transfer by the lessor of the property to the lessee for use and / or possession for a specified period in exchange for a specified fee. The definition of a lease agreement in Syrian legislation corresponds to its definition not only in the legislation of the Arab countries (for example, Article 588 of the (Civil law of the Arab Republic of Egypt), but also in the normative legal acts of the European state for example, Article 606 of the (Civil law of the Russian Federation). This definition is universal and applies to any type of property, be it immovable or movable property, residential buildings or agricultural land.

The popularity of the lease agreement is due, on the one hand, to the desire of the wealthiest segment of the population to increase their capital by leasing their own property, and the needs of the middle class and the poor for housing, premises / land for doing business, on the other. It would not be wrong to assume that more than half of the working-age population of the entire planet has entered into this agreement at least once. Leases of personal property are also surprisingly pervasive. By one estimate, leases accounts for more than 25 percent of all new capital equipment in the USA, and approximately 80 percent of all U.S. companies lease some equipment (GAVAZZA, 2010, p. 62–84).

Larger trends in society suggest that leasing will continue to expand at the expense of ownership. Leasing entails the acquisition of assets for limited periods of time, whereas ownership entails the permanent acquisition of assets (MERRILL, 2020, p. 221-272). One of the features of a lease agreement is the presence of constant communication between the tenant and the landlord throughout the entire term of the agreement. This determines the need for detailed regulation of the rules of this communication, a detailed explanation of the rights and obligations of each of the parties.
RENT AND DEPOSIT

The amount of the rent is an essential condition of the lease. As a general rule, the parties are free to determine the amount of the rent. The exception is contracts that were adopted before the entry into force of Law SAR No. 1/2001 (law of lease in Syrian Arab Republic), according to which the amount of rent should be equal to 5% of the market value of a residential property and 7% of commercial property. The amount of rent under lease agreements that are governed by the old legislation can only be increased by revaluating the market value of the property.

The parties have the right to stipulate a condition for the tenant to make a deposit, the amount of which is usually equal to the amount of the monthly rent. In addition, in accordance with the provisions of the Civil Code of the SAR, all movable property of the lessee located inside the property is pledged to the lessor. If the lessee violates the terms of the lease agreement, the lessor has the right to sell the pledged movable property only after receiving the relevant court order. The money paid by the tenant as a security deposit is subject to return upon the expiration of the term for which the lease agreement was concluded and provided that all its conditions were fulfilled properly, and the tenant has no payment arrears.

Legal status of the parties to the lease of real estate in Syria

The rights, obligations and responsibilities of the parties to the lease of real estate in Syria are established by the Civil Code of the SAR and the Law of lease of the SAR No. 6/2001. Despite the existence of two legislative acts regulating the relationship between the tenant and the landlord, there are still quite a lot of unresolved problems. Therefore, it is necessary to continue to search and work on improving the rental legislation in Syria, especially in the field of reconstruction and construction. The civil law of Syria establishes the following rights and obligations of the lessor:

1) Transfer of the property specified in the agreement to the tenant in proper condition and maintaining it in such condition throughout the entire term of the lease agreement. The landlord has a duty to deliver possession to the tenant and must give the tenant what he needs to gain access to the property (e.g. keys or garage door opener) (SMITH, 2006). If necessary, the lessor is obliged to carry out current repairs of the property. If the lessor does not start carrying out the current repairs within the time period specified in the agreement, then the lessee has the right, after obtaining a court permission, to independently bring the rented property into proper condition. Expenses incurred by the lessee are deducted from the rent for the property. Also, if the lessor violates the conditions for maintaining the property in good condition, the lessee has the right to terminate the contract unilaterally, or to demand a reduction in the rental price.

2) Payment of all taxes imposed on rented property in accordance with Syrian law.

3) Refrain from taking actions that could hinder the beneficial use of the property by the tenant, as well as from any impact on the property that causes him any damage.

4) Eliminate any deficiencies in the leased property that prevent the tenant from using it normally. An exception is made for defects which the tenant was notified of in advance or of which he became aware during the conclusion of the agreement.

The following rights and obligations are assigned to the tenant by the civil legislation of Syria:

1) Pay the agreed payment for the rented property in a timely manner. As a rule, the transfer of funds is carried out at the location of the leased property.

2) Provide the opportunity for the landlord to carry out urgent repairs of the property, necessary for its preservation. However, in the event that this worsens his situation, the tenant has the right to demand a reduction or cancellation of the rent.

3) Use the rented property solely for the purposes specified in the rental agreement. And in the absence of these conditions in the lease agreement, in accordance with the usual conditions for the use of this type of property.
4) Refrain from making changes to the rented property without obtaining permission from the landlord. Otherwise, the lessor has the right to demand that the tenant return the property to its previous state and pay material compensation.

5) Notify the landlord as soon as possible about the threat or damage to the rented property.

The term of the lease agreement and the procedure for its termination

Syrian civil law provides for the possibility of concluding both fixed-term and perpetual real estate lease agreements. In the event that the parties have established a specific term for the lease of real estate, then it terminates upon its expiration without notification requirements.

Real estate lease agreements concluded after the reforms of the civil legislation of 2001 are subject to compulsory state registration. According to these agreements, the lessor has the right to appeal to the bailiffs with a demand to evict the tenant, if he does not vacate the property, the lease term of which has expired.

The parties have the right to stipulate in the real estate lease a condition on its automatic termination in the event of a violation by one of the parties of its obligations. If the parties did not provide for this condition, then the lessor or lessee has the right to terminate the contract in the event of the occurrence of circumstances that make the fulfillment of contractual obligations onerous. In this case, the legislator established the requirement to comply with a three month notification period and to pay compensation by the terminating party.

Also, any of the parties to the lease of real estate has the right to terminate it for a good reason, which may be a violation of one of the parties of its obligations. Termination of real estate lease agreements for this reason is carried out in court. But, before going to court, the applicant is obliged to send a notification to the violating party with the requirement to eliminate these violations. The court can either decide to terminate the lease of real estate and give the violating party time to eliminate the violation and properly fulfill its obligations or refuse the request due to the insignificance of the violation committed by one of the parties compared to the obligation as a whole.

The death of one of the parties to the real estate lease does not constitute grounds for its termination. However, the lessee's heirs have the right to terminate the agreement unilaterally if they prove that the fulfillment of the contractual obligations is onerous for them or exceeds their income. Real estate lease agreements concluded before the entry into force of Law Syria No. 6/2001 were concluded for an indefinite period, since the previous socialist lease laws did not allow the conclusion of fixed-term agreements. For these agreements, the Law of Syria No. 6/2001 established the following grounds for unilateral termination of the lease agreement:

1) Failure to pay rent within 30 days from the submission of the claim for payment by the lessor. rent arrears seem to be the most common formal cause of evictions in many countries (STENBERG, DOORN, GERULL, 2011, p. 39-61).

2) Improper use of the rented property.

3) Unauthorized sublease of the property.

In addition, the lessor has the right to terminate this agreement unilaterally if he pays the tenant compensation in the amount of 40% of the value of the property.

CONCLUSION

The legal system and legislation strive for internal consistency, which is determined by the harmony of the semantic ideas of legal doctrines, theories, and unified legal principles. This conditionality is recognized in legal systems voluntarily and consciously or as a result of indirect Imposition (OLEINYKOV, MAMYCHEV, SHESTOPAL, PLOTNIKOV, SARYCHEV, 2019, p. 123-130).

With a systematic approach, the gaps in domestic law can be replenished through the international legal doctrine of general law principles recognized by civilized nations, such as: the legal state principle, the equality principle, the justice principle, the 'pacta sunt servanda' principle (KOROLEV, SHULZHENKO, RUSAKOVA, BATYAEVA, DUDIN, 2018, p.
The adoption in 2001 of the Lease Law is one of the most important stages in the development of Syrian civil legislation governing relations arising in connection with the lease of real estate. This law regulates in detail the procedure and conditions for the conclusion and termination of a real estate lease agreement, the legal status of the parties to the rental agreements. However, to this day in Syria there are still real estate lease agreements concluded before the civil law reform in 2001, which are regulated not by modern civil law, but by the socialist Legislative Decree No. 111/1952, which creates additional problems for law enforcement and judicial authorities.

The crisis that Syria is going through requires the issuance of exceptional rules that protect the tenant from the greed of the landlords to increase wages and frequent eviction from the property by issuing a law providing for temporary protection for tenants from eviction for a period of one year subject to renewal, while maintaining the rule of freedom of contract and the survival of the executive force of the lease contract.

REFERENCES
CIVIL LAW OF THE SYRIAN ARAB REPUBLIC. Available at: https://www.parliament.gov.sy/arabic/index.php?node=201&nid=12162&ref=tree&. Access: May 01, 2021.

CIVIL LAW OF THE RUSSIAN FEDERATION (part one) of November 30, 1994, No. 51-FZ (as amended on July 31, 2020). Available at: http://www.consultant.ru/document/cons_doc_LAW_5142/. Access: May 01, 2021.

EGYPTIAN CIVIL LAW. Available at: https://www.trans-lex.org/602800/_/egyptian-civilcode/. Access: May 01, 2021.

GAVAZZA, A. Asset Liquidity and Financial Contracts: Evidence from Aircraft Leases. 95 J. Finan. Econ. 2010, p. 62–84.

KOROLEV, S.V.; SHULZHENKO, Y. L.; RUSAKOVA, E.P.; BATYAEVA, A.R.; DUDIN, M.N. wrong price tag’ at a supermarket in the focus of general principles of law. Journal of Advanced Research in Law and Economics, 2018, T.9, No. 3, C. p. 1004-1010. Available at: https://www.researchgate.net/publication/330344277_Wrong_Price_Tag_at_a_supermarket_in_the_focus_of_general_principles_of_law. Access: May 01, 2021.

LAW OF LEASE IN SYRIAN ARAB REPUBLIC. New Tenancy Law No. 6 of 2001. Available at: http://www.casi.gov.sy/node15/arabic/index.php?node=5518&cat=14806&. Access: May 01, 2021.

MERRILL, T. The Economics of Leasing. Journal of Legal Analysis, volume 12, 2020, p. 221-272. Available at: https://doi.org/10.1093/jla/laa003. Access: May 01, 2021.

OLEINYKOV, S.N.; MAMYCHEV, A.Y.; SHESTOPAL, S.S.; PLOTNIKOV, A.A.; SARYCHEV, I.A. the factors of impact on content and dynamics of legislation evolution. Humanities and Social Sciences Reviews. 2019. T. 7, No 6. C. p. 123-130. Available at: https://www.researchgate.net/publication/337330182_THE_FACTORS_OF_IMPACT_ON_CONTENT_AND_DYNAMICS_OF_LEGISLATION_EVOLUTION. Access: May 01, 2021.

RUSAKOVA E.P.; FROLOVA E.E.; GORBACHEVA, A.I. digital rights as a new object of civil rights: issues of substantive and procedural law. Advances in Intelligent Systems and Computing (см. в книге), 2020. Т.1100 AISC. С. р. 665-673. Available at: https://link.springer.com/chapter/10.1007%2F978-3-030-39319-9_74. Access: May 01, 2021.

SMITH, S. Landlord and tenant obligations. Conference: Landlord-Tenant Law At: Las Vegas, Nevada, June, 2006. Available at: https://www.researchgate.net/publication/283795575_Landlord_and_Tenant_Obligations. Access: May 01, 2021.
The reality of the real estate lease agreement in the Syrian Arab Republic

A realidade do contrato de arrendamento de bens imóveis na República Árabe Síria

La realidad del contrato de arrendamiento de bienes raíces en la República Árabe Siria

Abstract
This article examines concept and the importance of the lease agreement and the genesis of rent law in Syria and some of the features of the civil legal regulation of relations arising in connection with the lease of real estate in Syria. Differences in the determination of the amount of rent under lease agreements concluded before and after the 2001 reform are considered. The basis of the civil status of the parties to the lease agreement in Syria is considered and the rights and obligations of the landlord and tenant in law. In the conclusion of the work, a conclusion is made about the need for further development of civil legislation in Syria and refusal to apply the old socialist laws, and the need to set exceptional rules that protect tenants in the reality of the Syrian crisis.

Keywords: Lease. Real estate. Syrian Civil law. Law of lease.

Resumo
Este artigo examina o conceito e a importância do contrato de arrendamento e a gênese da lei de aluguel na Síria e algumas das características da regulamentação legal civil das relações decorrentes do arrendamento de bens imóveis na Síria. São consideradas as diferenças na determinação do valor da renda dos contratos de arrendamento celebrados antes e depois da reforma de 2001. A base do estado civil das partes no contrato de arrendamento na Síria é considerada e os direitos e obrigações do senhorio e do inquilino por lei. Na conclusão do trabalho, é feita uma conclusão sobre a necessidade de um maior desenvolvimento da legislação civil na Síria e a recusa em aplicar as antigas leis socialistas, e a necessidade de definir regras excepcionais que protejam os inquilinos na realidade da crise síria.

Palavras-chave: Locação. Imobiliário. Direito civil sírio. Lei do arrendamento.

Resumen
Este artículo examina el concepto y la importancia del contrato de arrendamiento y la génesis de la ley de alquileres en Siria y algunas de las características de la regulación legal civil de las relaciones que surgen en relación con el arrendamiento de bienes raíces en Siria. Se consideran las diferencias en la determinación del monto del alquiler en virtud de los contratos de arrendamiento celebrados antes y después de la reforma de 2001. Se considera la base del estado civil de las partes del contrato de arrendamiento en Siria y los derechos y obligaciones del propietario y el inquilino en la ley. En la conclusión del trabajo, se llega a una conclusión sobre la necesidad de un mayor desarrollo de la legislación civil en Siria y la negativa a aplicar las antiguas leyes socialistas, y la necesidad de establecer reglas excepcionales que protejan a los inquilinos en la realidad de la crisis siria.

Palabras-clave: Arrendamiento. Inmobiliaria. Derecho civil sirio. Ley de arrendamiento.