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Being relieved from contractual obligations in era of covid-19: evolution of Luxembourg case law

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Introduction

Due to the evolution of the covid-19 pandemic and the related measures taken by governmental authorities, sometimes the performance of a given contract no longer makes any economic sense. It has been the subject of much debate as to whether one of the parties to a contract may ask the court to be completely or partially relieved from its contractual obligations.

While the well-known legal concept of force majeure and the unforeseeability theory are the first legal bases that come to mind (for further details please see "Impact of COVID-19 on contractual obligations: *force majeure* and case law" and "Unforeseeability theory developments in aftermath of COVID-19 crisis"), an analysis of decisions rendered by courts since 2020 shows that other, less obvious legal bases have also been considered, with differing degrees of success.

This article highlights two legal bases that have been considered by the courts in the specific context of commercial lease agreements (a type of contract that gave rise to many judicial disputes during the pandemic), but the same bases could well be invoked by litigators in disputes relating to all types of commercial and civil contracts.

Right to be relieved of obligations based on theory of risks

Certain leaseholders have tried to base their claims on the theory of risks. According to this theory, when a party to a contract is relieved from its obligations due to force majeure, the other party to the contract is also relieved from its own obligations.

In the specific context of lease agreements, article 1722 of the Luxembourg Civil Code applies the theory of risks by providing that if a leased good is completely destroyed pursuant to a force majeure event, the lease agreement is automatically terminated, and that, if it is only partially destroyed, the leaseholder may request a rent reduction or the termination of the lease agreement, depending on the circumstances.

In two judgments on 13 and 14 January 2021 (94/21 and 124/21), the Justice of the Peace (which is the first-instance court for disputes relating to the performance of lease agreements) ruled that:

- article 1722 must not only be applied in cases of material destruction of a leased good, but also in cases of legal loss of the peaceful enjoyment of a leased good;
- a temporary closure of leased premises, imposed by the authorities, constitutes a legal loss of the peaceful enjoyment of the premises within the meaning of article 1722; and
- as a consequence, the leaseholders were indeed allowed to request a rent reduction for the period of closure.

However, the District Court (which is the second-instance court for disputes relating to the performance of lease agreements, and has a higher authority than the Justice of the Peace) has since showed its disagreement with the analysis given by the Justice of the Peace.

In a judgment on 30 March 2021 (TAL-2020-09641), the District Court ruled that the pandemic-related measures taken by the Luxembourg authorities did not directly impose a closure of leased premises, but prohibited the exercise of certain commercial activities carried out at the premises.

As a result of this nuance, the District Court considered that it is not really the use of the premises as such, but the exercise of certain specific activities that was hindered due to the force majeure event, and thus concluded that leaseholders could not rely on article 1722 to be granted a rent reduction.

The District Court also maintained this position in subsequent judgments.⁽¹⁾

Nevertheless, in the broader context of (commercial or civil) contracts, the theory of risks remains a very interesting argument, provided that the contractual party that requests to be relieved from its obligations can demonstrate that the failure (by the other party) to perform its obligations was indeed directly caused by the pandemic or by pandemic-related measures taken by the authorities.

Right to be relieved of obligations based on other party's obligation to perform contract in good faith

Certain leaseholders have argued that their landlord should be forced to accept rent reductions because, in certain circumstances, refusing them could be considered as a breach of the landlord's obligation to perform the lease agreement in good faith.

Indeed, article 1134 of the Luxembourg Civil Code provides that the parties to a contract must perform the contract in good faith.

First, the Justice of the Peace rejected this legal ground by upholding that the parties' obligation to perform a contract in good faith could not allow the judge to go as far as imposing a modification of the terms of the contract.⁽²⁾

However, the District Court soon took the opposite stance on 28 June 2021 (TAL-2021-00994).

By citing a position taken by French courts that has made it into case law (despite being heavily debated by certain legal authors), the

District Court ruled that the obligation to perform a contract in good faith could impose that a party exercises its contractual rights with moderation or restraint. Therefore, a party to a contract who stubbornly refuses to amend a contract that has clearly become imbalanced (due to external circumstances) could breach its obligation to act in good faith, and the judge may remedy this breach by granting a rent reduction.

The District Court's stance was confirmed in later judgments.⁽³⁾

Therefore, subject to any possible further evolutions of Luxembourg case law, the other party's obligation to perform the contract in good faith may be considered – in disputes related to the performance of contracts of any type – as a very strong argument for the party who requests to be relieved from its obligations because of the imbalance created by the evolution of the pandemic and the related measures taken by governmental authorities.

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Endnotes

(1) See, for example, Luxembourg District Court, 28 June 2021, TAL-2021-00994, TAL-2021-02457 and TAL-2021-02480; Luxembourg District Court, 12 July 2021, TAL-2021-02935, TAL-2021-03029 and TAL-2021-04656; Luxembourg District Court, 8 December 2021, TAL-2021-03756).

(2) See Luxembourg Justice of the Peace, 14 January 2021, 124/2021; Luxembourg Justice of the Peace, 21 January 2021, 204/21).

(3) See, for example, Luxembourg District Court, 12 July 2021, TAL-2021-02935 and TAL-2021-03029; Luxembourg District Court, 8 December 2021, TAL-2021-03756).