

The Impact of Enforcing The Jordanian Defense Act on the Employment Contract in Light of Corona Pandemic (COVID-19)

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Abstract

This study addressed the negative impacts of enforcing the Jordanian defense Act. No. (13) of (1992) after the spread of Corona Pandemic (COVID-19) in the world in general, and in Jordan in particular, and how the Jordanian government tried to reduce the spread of this pandemic by issued the defense Act. which led to breakdown the economic and commercial activities, consequently the commercial establishments suspended to operate, due to this suspension the establishments have terminate their workers illegally. Hence the idea of this research aimed to find a kind of economic balance in the contractual relationship between the employee and employer by identifying some theories to address this imbalance such as the force majeure and theory of contingent circumstances to determine whether the defense orders are kind of force majeure or contingent circumstances, in addition to the role of the judge in restoring the economic balance of the contractual relationship between employee and employer.

Keywords: Defense Order, Force Majeure, Contingent Circumstance.

Study significance:

The significance of this study lies on highlighting the scientific and practical of activating the collateral circumstances theory and its impact on how to restore the economic balance of the contracts in general and employment contract in particular, on the other hand, to find legal resolutions for the contractual relationship between employee and employer, especially in light of collateral circumstances that happened after spread of Corona pandemic.

Study problem:

The study problem lies on answering the following questions:

- Is it legal for some companies to fire their employees in light of the defense orders that were issued?
- Are defense orders considered as force majeure?
- Are defense orders considered as contingent circumstances?
- Is the judge's power absolute in restoring the economic balance of the contract?
- What are the legal means by which a judge can restore balance to the contract?

Introduction

The spread of Corona virus (Covid-19) across the world, and its penetration of the borders of most countries has led to many negative consequences for the lives of people in all countries of the world. Given the severity of this disease, the World Health Organization declared that the Coronavirus is a global pandemic, which prompted many countries of the world to take exceptional measures to curb this epidemic, by imposing a contingent circumstance.

This led to the paralysis of economic life. In Jordan the government has imposed restrictions on the establishments and individuals for the safety of individuals, through the activation of Defense Act. No. (13) of (1992),⁽¹⁾ pursuant to Article (124) of the Jordanian constitution⁽²⁾.

The defense orders issued under the Defense Act. led to the breakdown the economic life and made many companies unable to fulfill their obligations towards their employees, which prompted many of these companies to terminate their workers illegally or not to comply with the payment of workers' rights by referring of defense orders and the state of breakdown which imposed; hence the idea of this study came to shed light on legal solutions in such circumstances. Accordingly, we will divide this study into two subjects; the first subject is about the extent to which defense orders are considered as force majeure or a contingent circumstance, the second subject is about how to restore the economic balance of an employment contract under defense orders.

First Section

The extent to which defense orders are considered force majeure or contingent circumstances

In order to find fair legal solutions for the contract's parties, it is necessary to determine whether the defense orders issued by the government are considered as force majeure, or contingent circumstances? The answer to this question guides us to a way for the solution, therefore which theories will be applied to the case of the defense orders. Accordingly, we will divide this topic into two topics; the first topic

(1) *In certain cases, according to the Jordanian constitution, the executive authority replaces the legislative authority and assumes the task of legislating on issues explicitly specified in the constitution*

(2) Review Article (24) of the Jordanian constitution, *"If something happens that calls for the defense of the homeland in the event of an emergency, then a law is issued in the name of the defense Act under which the authority is given to the person designated by law to take the necessary measures and actions, including the power to cease the state's just laws to secure the defense of the homeland."*. The second article of the Defense Act also stipulated that: *"In the event of the spread of a pandemic or epidemic, the Act shall be declared enforceable by a royal decree issued upon a decision of the Council of Ministers)"*.

regarding considering defense orders as force majeure, and the second topic on the theory of contingent circumstances and its conditions.

First Topic

Defense Orders As Force Majeure

The situation in the country at this time, specifically in light of the Corona pandemic that struck the East and West, and the material damage it caused as a result of the difficulty of movement due to the restrictions imposed by the government on people and the countries among them. Up to this moment there are countries that are still in a state of total closure for fear of exacerbating the epidemiological situation, this pandemic, as the World Health Organization called it, had a direct impact on contractual obligations, and this leads us to a very important question: Is the Corona pandemic considered as a force majeure that makes the implementation of the commitment impossible or not? Therefore, it was necessary to discuss the topic of force majeure by clarifying its legal concept and what are its conditions?

First Division: The concept of force majeure

The Force Majeure is one of the most prominent terms that jurists have founded and the legislators of law, as it has been used in most legal texts in international legislation and various legal explanations, and legal scholars sometimes call force majeure the term impossibility. The correct view is that impossibility is an effect of force majeure, they are both the cause and the cause linked by causation, where force majeure is the reason that results in the cause, which is the impossibility of application⁽¹⁾.

The definition of impossibility here is an absolute impossibility, not personal relativity⁽²⁾. () Article (159) of the Jordanian Civil Code states that: “*If the condition was impossible in itself at the time of the contract, the contract is invalid.*” Article (448) also states: “*The obligation expires if the debtor proves or fulfills it becomes impossible, because of an exceptional condition beyond his control*”. The impossibility here intended is absolute, not relative, because the absolute impossibility was not in the same condition and nature, and it nullifies the contract and eliminate the obligation if it is preceded by the contract according to the rule, not an obligation with impossible. The contract if it was later concluded due to its possibility at the time the contract was established, but it is decided to terminate due to the exceptional impossibility upon its concluded, and to terminate it if the contract is one of the contracts binding the two parties.

(1) Khaled Bani Ahmed, *The Difference Between Force Majeure and Contingent Circumstances, A Comparative Jurisprudence Study between Islamic Jurisprudence and Positive Law*, a research published in the Jordanian Journal of Islamic Studies, The University of Jordan, vol 2, 2006, p. 4

(2) Yassin Mohammed Aljbour, *Almabsout in explanation of civil law*, Dar Wael For Publishing, Amman, p208, 1st Ed., 2002

The concept of (Force Majeure) is rooted in French law, which its origin in the (Law System) where the debtor must prove that the implementation of the contractual obligation has become impossible and not only onerous⁽¹⁾.

In fact, the French Council of State has expanded the concept of force majeure, thus becoming it has two meanings in its judiciary. The first meaning of force majeure is an external accident that is impossible to counter, that leads to absolute impossibility and leads in this case to terminate the contract by the force of law, as if war leads to the destruction of the subject of the contract, which is the original meaning of force majeure, while the second meaning of force majeure, which was introduced by the French Council of State, which is an unknown meaning in private law, which is defined as an external accident that would turn the economics of the contract upside-down without the condition of the contract having become impossible and does not entail an exemption to the contractor to fulfill his obligations⁽²⁾.

The researcher considers that there is a confusion between the close concept of force majeure and contingent circumstances, therefore we find that it is not possible to merge these two meanings and say that they are correct to define as a force majeure. So, we agree with the first meaning of force majeure and present the second meaning as it is closest to the contingent circumstances, which will be explained later.

There is an important aspect of jurisprudence considers that force majeure must be distinguished from a sudden accident⁽³⁾. It ruled that the force majeure is distinguished by the impossibility of counter it, while a sudden accident is characterized by the impossibility of anticipating. Accordingly, they do not stipulate that these two characteristics must be combined in each of them. As for the Jordanian legislator, did not defined the force majeure, but he stipulated that it makes the provision of the contract null. Also, the Court of Cassation considered that⁽⁴⁾.

Second Division: Requirements of force majeure

As we have defined the force majeure is a unexpected accident to the parties of the contract and it was not expected when they entered into the contract, which would lead to the impossibility of fully or partially implementing the contract, as it is something that cannot be attributed to the defendant, such as war and the consequent deportation of the population in the face of an invasion Enemy, earthquakes, and lightning strikes⁽⁵⁾,() so Article (261) of the Jordanian Civil Code states that: “*If the*

(1)Younes Salah Addin Ali, *The force majeure requirement in English law (An analytical study comparing the Iraqi civil law)*, Published Research, Local Investigator's Journal of Legal and Political Sciences, vol 4, 2018.

(2)HamdiYassinAkashah, *Corona Pandemic (COVID-19) and its impact on the contracts and contractual obligations*, Dar alnahdaalarabia, 1st Ed, p66, 2020

(3) Anwar Sultan, *The summary in Sources of Commitment*, monchaatalmaref, Alexandria, without Ed, 1996.

(4) See article (247) of Jordanian Civil Law

(5) See: Judgment No. (3264) of 2020, the Court of Cassation in its legal capacity, issued on 17/09/2020, publications of qarark legal site.

person proves that the damage was caused by a foreign cause that he has no control over, such as a celestial pest, a sudden accident, or force majeure, or the action of others, or the act of the affected person, he is not obligated to guarantee unless the law or agreement requires otherwise". However, not attribute the accident to the defendant is not sufficient to consider it as a force majeure or a sudden accident, but it must meet several conditions that arguable to be in place for force majeure, and these conditions are as follows:⁽¹⁾

1) The accident is beyond the control of the contractors

The event that causes the inability to implement the obligation must be beyond the control of the parties, and this condition must be a valid condition in order to consider the event as force majeure. It is illogical to say that force majeure is available through the control of the parties, since this is a form of evading the implementation of the contract, in order to achieve the contractual balance, achieve the contractual security, stabilize legal transactions, and preserve rights, the accident must be beyond the control of the parties, otherwise the contractual liability will be conducted accordingly⁽²⁾.

2) Unpredictability of the action or event

The event or action must be unexpected, which cannot be irreparable and the contractor cannot counter, as for the act or event that the parties can anticipate as if it was a seasonal act such as torrential rains or floods, or the act is expected to take place in periodic periods even if they are spaced cycles or it sometimes occurs, it is not considered a force majeure, as the contractor with the administration must anticipate it and take sufficient possible measures to prevent its occurrence or avoid its harm and effects⁽³⁾.

3) Impossibility of fulfilling obligations

Article (247) of the Jordanian Civil Code states that: "*In contracts that are binding on both parties, if a force majeure arises that makes the implementation of the obligation impossible, the corresponding obligation lapses with it, and the contract is terminated on its own, if the impossibility is partial, what corresponds to the impossible part has passed, and the same as partial impossibility is a temporary impossibility in continuous contracts, in both, the creditor may terminate the contract on the condition of the debtor's knowledge*"

In a decision by Irbid Court of Appeal, it made the snowfall a form of force majeure and stated that: "*Whereas snowfall in the area in which the project is located is considered*

(1) See: A recent decision by the Egyptian Court of Cassation between the conditions for establishing force majeure, published on the following Egyptian Court of Cassation website: http://www.cc.gov.et/advance_search?section=civil,22/12/2020.

(2) See: HamdiYassinAkasheh, op.cit, p74.

(3) See: HamdiYassinAkasheh, op.cit, p74.

a force majeure that prevents the completion of the work at that time, and force majeure prevents the defendant from assuming responsibility in this case."⁽¹⁾

Third Division: The extent to which defense orders can be considered force majeure

In an attempt by the researcher to drop force majeure on what we are living today in light of the Corona pandemic, we find that it is clear that the effects of the epidemic and the exceptional government measures to deal with it, including defense orders that have placed restrictions on movement, entry and exit, and even on the borders between countries have affected the parties' ability to fulfil their contractual obligations, but is this force majeure?

There are some contracts that include the text on force majeure, in the event of a contractual clause regarding force majeure, it must be examined to determine the events referred to in the paragraph and the terminology used (with a narrow or broad approach) to determine whether it applies to the Covid-19 pandemic and the applicable government measures currently, as for the absence of a specific clause in the contract, we will have to refer to the legal definition of force majeure and the terms of its applicability.

In any case, the presence of force majeure, and whether there is an event of a temporary or final nature preventing performance, must be determined on a case-by-case basis, in this regard, the courts will have wide discretionary power and the classification of force majeure may also depend on the specific limit that is invoked to justify non-performance of contractual obligations.

In the case of Covid-19, the situation is unprecedented due to the widespread nature and severity of the virus, so courts may consider in some cases to fulfill the conditions of a force majeure event, and for such a claim to succeed, the conditions of force majeure, which are unpredictability, must be verified, if the contract was concluded after the outbreak began, it may be difficult to say that it was unexpected; But if the contract was concluded before the pandemic, is that enough for the courts to consider it unexpected? This is obvious, of course, as it cannot be said that this event was originally expected.

In this regard, it will be necessary to verify whether the measures taken are foreseen or not, if the contract is concluded after the start of the epidemic, it will be necessary to take into account any public declarations made by the authorities before entering into the contract, the gradual nature and predictability of the restrictions.

In any case, the courts will use their discretion on a case-by-case basis to determine whether the events as a whole constitute force majeure or not, and this is what the Jordanian Court of Cassation confirmed by saying: ". . .*the emergence of*

(1) Judgment No. (9831) of 2016, Irbid Court of Appeal, issued on 10/06/2016, publications of qarark legal site

force majeure in the circumstances of the contract execution is one of the matters assessed by the competent court"⁽¹⁾.

In the end, it must be stated that in order to implement the force majeure theory that all the aforementioned conditions are met, and there is no difference between partial or total impossibility, since the impossibility of implementing the obligation is assumed to be absolute.

Second Topic

Defense orders and Contingent Circumstances theory

The principle is the authority of the control to conclude contracts, as the parties of the contract have the right to set the contract's terms, but the theory of contingent circumstances is out of this principle, which has led to a great debate among the legal scholars about whether or not to adopt them.

In light of the Covid-19 pandemic and the issuance of defense orders, those conditions that discouraged the effectiveness of trade and investment and affected contracts widely, the fate of commercial contracts has become the subject of a prospective and foreseen dispute, especially in contracts with lax implementation until after the contract, which opens the way, to apply the theory of contingent circumstances, there is no denying that the implementation of the contract has become burdensome on the debtor party, who is no longer able to implement the contract according to the standards, manner and time specified in the contract before the outbreak of the pandemic.

Is it possible to solve the resulting legal problems based on the general rules mentioned in the civil law?

Before renting to the question, it is necessary to understand the concept of the theory of contingent circumstances and its occurrence conditions to state that it can be applied to contracts in light of the Corona pandemic, as if the meaning of this theory is not defined, then it is logical that we find it difficult to apply it to contracts that have been affected by the Corona pandemic.

First Division: The concept of contingent circumstances theory and its conditions

Most legislations of developed western countries did not set a specific definition for contingent circumstances, but they did set examples of these conditions, such as war, epidemic, crop failure, etc⁽²⁾.() The contingent circumstances are in exceptional situations, and this theory is not implemented unless certain conditions are met, these conditions are:

(1) Judgment No. (233) of 1982, the Court of Cassation in its legal capacity, issued on 22/05/1982, publications of qarark legal site

(2) HasbAlrasoulAlshakhAlazawi, The effect of contingent circumstances on contractual commitment in comparative law, Ph.D thesis, Faculty of Law, Cairo University, Aljezah Press, Alexandria, 1979

First Condition: Existence of a contractual obligation

This condition means that the debtor's obligation derives from the contract, and every obligation that does not arise from the contract is not subject to the provisions of this theory⁽¹⁾, but does this apply to all types of contracts? Where the theory came in absolute terms, it applies to all types of contracts, but on condition that the exceptional circumstance is not anticipated, it excludes from its application potential contracts⁽²⁾, because the basis of this theory is the contingent loss, one of the contractors shall be borne it⁽³⁾.

To apply the theory of contingent circumstance, it is not necessary that the mutual obligations be lax in implementation, rather it suffices to have a lax obligation assumed by one of the contracting parties until after the contingent circumstance, after that it became burdensome for the debtor without regard to whether the mutual commitment has been implemented or its implementation was also lax⁽⁴⁾.

Accordingly, the theory applies to the sale contract of installment or deferred price⁽⁵⁾, so the theory applies to the installment or future installments and does not apply to the installments that due before the occurrence of the contingent circumstance, and the debtor's failure to fulfill them until the time of the occurrence of the circumstance and it must be taken in the legal sense of the default, which is only achieved with excuses⁽⁶⁾.

Second Condition: Exceptional Event

Exceptional meaning is not familiar, as it is exceptional in the element of commitment to the contract.

The theory of contingent circumstances is an exception to the binding force of the contract, so the main supportive main of this exceptional is that the contingent circumstance arises from an exceptional accident, so it is not considered if it is

(1) Abdulsalam Altermanini, Contingency theory, Without Ed, Dar Alfekr, p 120, 1971.

(2) Abdul Majeed Alhakim, Al-Wajeez in Compliance Theory in Iraqi Civil Law, part 1, Dar ibnalatheir, 1980, p 27.

(3) Ramadan Abo Alsoud, Principles of commitment in Egyptian and Lebanese law, without Ed, al dar university, Beirut, p 219, 1984. 21. Fared Metan, Commitment sources, Alani Press, Bagdad, P32, 1975.

(4) Mahmoud Jamal Alddin Zaki, Al-Wajeez in the General Theory of Obligations in Egyptian Civil Law, Cairo University Press, 3rd Ed, 1978, p 322.8.

Hussam Alddin Alahwani, General theory of commitment, 1st Part, Commitment sources, 2nd Ed. 1995, p 324. 15. Abdul Razzaq Alsanhoury, op.cit, p 524, Amin Dawasop.cit, p 222

(5) Where the Egyptian Court of Cassation ruled that "the application of Article (147/2) of the Civil Code to sales contracts in which the price is deferred or in installments does not preclude the implementation of the penalty stipulated therein - which is restoring the burdensome obligation to a reasonable extent (04/01/1963 – 1437) Referred to by Abd al-Hakam Foudaop.cit, p 151, Abdul Razzaq Alsanhoury, op.cit, p 524.

(6) Hussam Alddin Alahwani: op.cit, p 324

familiar and it is not considered burdensome for that loss that inflicts the debtor from him, because it is a normal and usual to be probable by virtue of habit or deal⁽¹⁾.

An exceptional accident means that one rarely occurs, so that it appears odd, according to the usual in the life of society, so that the common man does not depend on it and does not come into his account⁽²⁾.

Third Condition: To be Public

It is not enough for the contingent circumstance to be exceptional, but it must be public, as the legislator tended to impose the condition of exceptional with respect to the circumstance in order to set a control to apply the theory, it also argued to impose the condition of generality for the same reason⁽³⁾.

Fourth Condition: Not to be expected

The circumstance must be unexpected and not included in the plans of the contracting parties at the time of the conclusion of the contract, and if the circumstance was expected or could have been anticipated, then there would be no opportunity to apply the theory of contingent circumstances, so the currency fluctuation and the Nile flood if it was not an exceptional flood and the spread of the cotton worm, all these circumstances can be expected⁽⁴⁾.

Fifth Condition: Makes the obligation burdensome

In the circumstances that are intended to be relied upon to amend the contract, it must result in making the obligation burdensome, as the burdensome is the effect of the emergence of a general exceptional event that could not be anticipated, which leads to the implementation of the contractual obligation becoming burdensome, not impossible, and threatening the debtor with a severe loss⁽⁵⁾.

The burdensome condition is subject to the discretionary authority of the judge, and there is no control over it from the Court of Cassation as long as its conclusion is permissible, as this condition must be adhered to before the competent court, otherwise it may not be presented for the first time before the Court of Cassation, because it relates to objective considerations related to the deal⁽⁶⁾.

Second Division: Defense orders between force majeure and contingent circumstances

(1)AbdulhamidAlshawarbi: op.cit, p 283

(2)AbdulhamidFoudeh, op.cit, p 48. Mousa Abu Malouh, Commitment Sources, op.cit, p 225. Mohammed Alsanari, op.cit, p44

(3) See: Ismail Ghanim, General Theory of Commitment, Sources of commitment, op.cit, p 316

(4)AbdulrazzaqAlsanhour, op.cit, p 525.

(5)AbdulrazzaqAlsanhour, op.cit, p 525.

(6) Ahmad ShawqiAbdulrahman, General theory of commitment, contract and sole will, p189, AbdulnaserTawfiqAlattar,Sources of Voluntary Commitment in the UAE Civil Transactions, p219, No. Fringe (3).

The two concepts of contingent circumstances and force majeure seem to be related to each other, especially since they share some features: they both satisfy the situations of exceptional circumstances. The difference between the two concepts is described in terms, as the theory of contingent circumstances makes the performance of the debtor party more burdensome, but it is not impossible, while force majeure means that the implementation by concerned party has become impossible. Moreover, there could be a functional difference between the two concepts, the contingent circumstances constitute a reason for a change in the contractual program of the parties, and the two parties' objective remains to implement the contract. However, force majeure falls in the context of non-Performance, so its deal with the suspension or termination of a contract.

In the light of the above; (The difference between the two theories, their conditions and divisions), the Corona epidemic is similar in the impact of natural phenomena and wars, that prevent the implementation of the contract in the agreed manner, and its effect may reach the impossibility of implementing the contract, so there are cases of contracts in which the Corona virus is considered a contingent circumstance that leads to an amendment the contract, and other cases in which the Corona virus is considered a force majeure, especially since this epidemic came suddenly, spread quickly, directly affected many commercial contracts, and suspended many and varied contracts.

The majority of Sharia jurists and legal scholars have argued that the Corona epidemic is subject to both theories and the criterion of its submission is the extent of its impact on the contract to be executed, if the effect is severely burdensome by one of the parties to the contract, which the epidemic causes to increase in the cost of production or increase in freight rates, it is considered here as an contingent circumstance, but if this epidemic causes the impossibility of implementing the contract, such as if the transportation and export of goods becomes impossible due to the closure of the borders of a country, then the epidemic becomes force majeure.

Second Section

How To Restore The Economic Balance Of The Employment Contract In Light Of Defense Orders

After we explained the conditions of applying the force majeure as well as the conditions of applying the theory of contingent circumstances in the first section, we will address in this section the impact of applying the theory of contingent circumstances and the effect of defense orders on the employment contract in particular, in two topics, the first topic on the impact of applying the theory of contingent circumstances in restoring the economic balance of the contract, and the second topic is about the effect of defense orders on the employment contract.

First Topic

The impact of contingent circumstances theory in Restoring the Economic Balance for the contract

Determining whether the event is a contingent circumstance is within the jurisdiction of the court, so the judiciary has the authority to assess the contingent circumstance and based on it. The task of adapting the event is the competence of the judge handling the dispute and not of the individuals. Consequently, the judge is not bound by the adaptation contained in the documents of the lawsuit submitted by the plaintiff or the defendant. In a recent decision of the Amman Court of First Instance, the defendant's claim was dismissed as considering the power down for the air condition in the individual's lounge as a contingent circumstance, by stated that: "*As for the third and fourth reasons, which are include a mistake by the Magistrate's Court, considering the circumstance and the contingent event as the occurrence of disrupting the adaptation as a serious mistake, although it did not happen only once, which is unusual*".

That what also confirms the adaptation of the event as a contingent circumstance is one of the court's prerogatives what was stated in the decision of the Jordanian Court of Cassation: *that the appeal in this way constitutes a challenge to the discretionary authority of the court of the matter by weighting and weighting the evidence in accordance with the provisions of Articles (33) and (34) of the Evidence Law and where the court was The appeal has used its powers to weigh the evidence and reached the dismissal of the plaintiff, "Muhammad Islam Al-Ajlouni" from the College of Police Sciences and Law in the Republic of Sudan, due to his emergency situation represented by the state of health, which requires re-expenses that were spent on him in a salary allowance of (122) dinars per month from the date of 21 / 7/2015 until this lawsuit was filed and it was deducted from the salary of the first defendant in his capacity as a guarantor for the second defendant, the total of which is (2,196) dinars, as established through the evidence presented in the lawsuit and the defendant's acknowledgment of its response to the case list, but the plaintiff's claim included an amount (2074) dinars, after reviewing and demonstrating the evidence with which it was convinced based on the documents of the file, it is not confused by this objective issue, which is considered one of the core of its work, which becomes with him that what came with these reasons It does not respond to the contested decision and must be rejected⁽¹⁾.*

After dealing the conditions of applying the theory of contingent circumstances, we can summarize these following effects:⁽²⁾

First: Obligation of the debtor contractor to implement the contract

- (1) Judgment No. (456) of 2019, Amman First Instance Court in its appellate capacity, issued on 08/07/2019, publications of qarark legal site
- (2) AbdulqaderAwadKhalf Allah Aldabi, The effects of contingent circumstances theory on the contractual relationship, Published research, University of Bakht al-Ruda University Journal, vol 12. 2014, p 16

The first direct effect of the contingent circumstance theory is that the contracting parties commit to the debtor who suffered a serious loss from the occurrence of the unexpected contingent circumstance, which his implementation of his contractual obligations is beyond of his control, and does not exempt from the implementation of his obligations, because the contingent circumstance did not make the implementation of the obligation impossible, but made it burdensome for the contracting debtor, although it is possible.

Second: The right of the debtor contractor to compensation

When the conditions for applying the theory of contingent circumstances are met, and the contracting debtor continues to implement his contract obligations despite the severe burdensome that befalls him from the implementation of this obligation, he deserves the assistance of the creditor contractor, in order to get out of the crisis that the contract is going through, by partially compensating him for the loss that hit him as a result of the occurrence of the contingent circumstance.

Third: The power of the judge to restore the economic balance of the contract

If the conditions stipulated by the law are met to apply the theory of contingent circumstances, then the court has the right to intervene for the purpose of counter the burdensome obligation to a reasonable extent, and when the court exercises the right to restore the commitment to a reasonable extent, it uses an objective criterion related to the conditions of the contract itself, and the facts that pertain to it are attached, but do not consider the personal circumstances of the two parties in terms of affluence and ability to fulfill commitment.

Second Topic

The impact of issuing defense orders on the employment contract

In order to get this effect, it is necessary to know the nature of the employment contract, is it from immediate contracts or from continuous contracts, as follows:

Part One: The impact of issuing defense orders on immediate contracts

The Kingdom of Jordan has taken unprecedented precautionary measures regarding the spread of the new Corona virus, this pandemic that has struck the whole world, as government measures aimed to protect the public health of individuals in the Hashemite Kingdom of Jordan, whether they are citizens or foreigners, and what included those decisions was suspended many economic activities, the closure of commercial stores, the imposition of absolute and partial curfews, and the suspension of air and sea navigation in an unprecedented manner. Undoubtedly these government decisions issued based on the pandemic that imposed itself as a material fact have overshadowed by various activities, whether civil or commercial in general, and the contracts related to them in particular, the implementation of many of these contracts has completely stopped, accordingly the existing contracts have been affected by these government decisions based on the pandemic, which resulted in the

impossibility of implementing some contracts, and the difficulty of implementing others⁽¹⁾.

Thus, the current Corona pandemic crisis has put many economic entities in a state of mess, as most productive enterprises have closed their doors, and have become in a situation in which it is difficult to implement their contractual obligations, most of them have fallen into delay in implementation, and the impossibility of securing goods, in addition to a significant increase in prices of raw materials, and the difficulty of securing liquidity to pay dues from workers' wages, loans and rents, in light of these catastrophic circumstances, as the principle of commitment to the sanctity of contracts is unrealistic. To face this crisis, it is necessary to resort to other means provided by law, where the debtors who fail to fulfill their duties may seek to be shaded by traditional legal theories such as force majeure and contingent circumstances, perhaps helping them in their crisis⁽²⁾.

Hence, it must be noted that the Jordanian Defense Act has devoted a general rule related to contracts and obligations that cannot be implemented during the period of the state of contingent, as Article (11) of it states that: *“If any contract or commitment cannot be executed due to observance of the provisions of this law or any order, assignment or instructions issued pursuant to it, or because of compliance with these provisions, the person bound to this contract is not considered to be in being in breach of its terms, rather, the contract is considered suspended to the extent that the implementation of the contract is impossible, and this is considered a defense in any lawsuit filed against that person, or any measures taken against him as a result of failure to implement the contract or commitment. ”*

What is understood from the previous legal text is that the Jordanian legislator has to suspend all contracts and legal obligations that cannot be fulfilled due to the commencement of the defense law, as it considered that all contracts concluded are suspended according to the law to the extent that it is not possible to implement the stated obligations, due to the state of contingent. Consequently, whoever fails to implement the obligations required of him under those contracts shall not be deemed to be in breach of them, so that if any lawsuit or judicial claim was instituted against him due to failure to implement his contractual obligations, he has the right to insist in

(1) Fares Mohammed Alajami, The legal options available to the parties to the commercial contract in the face of the Coronavirus pandemic, and the judge's authority to restore the economic balance of the contract, Published research, Kuwait International Law School Journal, 8th year, special supplement, vol 6, June 2020, p 332

(2) Ahmad Ishafeah, Legal means to confront the effects of the emerging corona virus pandemic on contractual relationships, published research, Kuwait International Law School Journal, vol 8, special ed, issue 6, June 2020, p 733

facing the plaintiff that his failure to do what is bound by him in the contract is due to the validity of the Defense Act and the written orders issued pursuant thereto⁽¹⁾.

The researcher considers that the defense by the defendant in this direction is the safest and must be presented and relied upon in the case against him. It does not envisage the implementation of obligations under the Defense Act and its provisions and imposing a curfew on citizens, thus the contracts become suspended.

The Jordanian legislator defined the suspended contract in Article (171) of the Civil Code, by saying: *“The disposition is suspended in effect on the license if it is issued by a curious person in the money of someone else or from an owner of property to which the right of others is related, or from a person who lacking in the legal competence in what he was a between behavior of benefit and harm or coercion, and if the law stipulates that”*⁽²⁾.

So, the suspended contract is the contract has effect immediately and its validity is subject to its approval or revocation, and if it is passed, it becomes valid retrospectively, and if it is revoked, it becomes invalid with retrospective effect as well⁽³⁾.

With regard to the immediate contract, which is defined as a contract in which time is not an essential element, its execution will be immediate even if the execution is slackened to a time or successive terms, so selling something that is delivered immediately at a price that pays immediately is an immediate contract, because the element of time here is absent and the sale may be delayed delivery the sale remains, because the time here, and if there is an occasional element by which the amount of sale is not determined, and the time that strikes the execution may be compulsory rather than optional, and still remains a contingent element by which the place contracted is not determined, so the contract is immediate, an example of that is the carpenter who agrees with the client to make a cupboard for him, as the time it takes to make the cupboard is a mandatory period in which the place of the contract is not determined. Consequently, the suspend has no effect on the contractual obligations in the immediate contracts, rather, these obligations remain complete as they were before the suspend⁽⁴⁾.

As for the persons who are entitled to adhere to the suspended contract theory as stated in the Defense Act, they are individuals who were unable to fulfill their

(1) Laith Kamal Nasrwin, Legal regulation to confront the Coronavirus pandemic in Jordanian legislation, published research, Kuwait International Law School Journal, 8th year, special supplement, vol 6, June 2020, p 467

(2) The Jordanian legislator has dealt with the suspended contract in Articles (171-175) of the Civil Code

(3) Ahmad Fanous Ma'adi, Suspended Contract, Published Research, At Madenat Aleem University College Journal, Bagdad, vol 10, issue 2, 2018, see also p 285 same reference.

(4) Abdul Razzaq Alsanhoury, Al-Wajeez in the General Theory of Commitment, monchaatalmaref, Alexandria, without Ed, 2004, p 44-45.

obligations established in the contracts they concluded, due to the validity of the state of contingent, and this category includes all persons, commercial and industrial sectors that were not authorized to work during the period of defense orders, which have been affected by curfews and movement decisions. As for the other groups who were permitted to carry out their work and commercial activities during the breakdown period, they cannot adhere to the theory of the suspended contract to justify their inability to implement what they have committed to, especially if the terms of the contract are not fulfilled, they have nothing to do with the work of the Defense Act and the orders issued pursuant to it⁽¹⁾.

In the end, we find that the legal implications of activating the defense Act in relation to immediate contracts made them dependent on the authorization of the concerned person in this regard, and the party who is unable to implement his obligations is not considered in the state of breach the contract throughout this period, so every person who was responsible for his obligations in any contract to adhere to the defense Act to confront the plaintiff, without any liability to him.

Part Two: The effect of issuing defense orders on Continuing contractual obligations

Continuing contract are defined as contracts in which time is a fundamental element, so that it is a measure by which the subject of the contract is estimated. The lease contract⁽²⁾ is a time contract because it falls on the benefit and time is an essential element in its estimation, as the benefit can only be estimated with a period, and the employment contract is a time contract because the services performed by the worker are only measured in time only, the time is an essential element in it, as it determines the orbit of the place where it is held⁽³⁾(). Given the reality in which we live, we find that these two contracts are the most affected by the Corona pandemic, so we chose them as a model for the contracts affected by the pandemic, perhaps it has an impact on the social and economic aspect, and on a large class of society members, so we will hand over the light on the effect of issuing defense orders on the employment contract as it is a continuing contract.

Part Three: The effect of issuing defense orders on the employment contract

The employment contract may face after the meeting of its elements what impedes it and makes its implementation impossible, and the impossibility has different types the Jurisprudence differed over its division⁽⁴⁾, (force majeure theory), (contingent circumstances theory), as the employment contract, like any other contract or commitment, it emerges, arises, grows and ends by its inevitable deadline, it is terminated in various ways in which the individual will of one of the parties to the

(1) Laith Kamal Nasrawin, op.cit, p 479.

(2) The Jordanian legislator defined the lease contract in Article (658) of the Civil Code by saying: *The rent is the ownership of the lessor to the lessee for an intended benefit of the leased thing for a certain period in exchange for a known compensation*

(3) Abdul Razzaq Alsanhoury, op.cit, p 44.

(4) Yusef Obiedat, op.cit, p 580

work relationship may play a major role, such as the resignation of the employee, or the exemption for the employer⁽¹⁾, and the employment contract may be terminated by the joint will of two parties within the scope of reconciliation or voluntary dismissal. In addition to these cases, the employment contract may terminate by force majeure and some laws did not explicitly stipulate force majeure as a reason for the termination of the employment contract, such as the situation in the Omani Labor Law, while others and their number are few have explicitly stipulated them, as is the case with the Tunisian law of 1966, which was stipulated in Chapter (14) as: "*The employment contract terminates... when the completion is not possible upon either a contingent event or a force majeure that occurred before or during the completion of the contract or the death of the employee.*"⁽²⁾"

The labor law is one of the most important laws concerned with the economic and social aspect of any country, through it a balance is achieved in the contractual relationship between the employee and the employer. Therefore, it is one of the most prominent laws most affected by the Corona pandemic, hence, many countries of the world have been keen to enact legal legislations that contribute to limiting and containing the effects resulting from this pandemic on the parties to the contractual relationship between an employer or employee, in recognition of the necessity of intervention and amendment, therefore, it is imperative to focus on the importance of having legal rules in the labor law that regulate the mechanism for managing and maintaining rights in circumstances and natural disasters, including the Corona pandemic.

The devote of the aforementioned suspended contract theory⁽³⁾ in the defense Act did not prevent the Prime Minister from issuing a defense order No. (6) for the year 2020 that redrawn the contractual relationship between the employee and the employer. The defense order imposed new legal frameworks outside the theory of the suspended contract, that governs the relationship between the employer and employee, in relation to the nature of the work to be performed, how it is performed, and with regard to how the employer pays the monthly wage and its amount, and this

(1) Anwar Sultan, Consolidator in the General Theory of Commitment, A comparative study in Egyptian and Lebanese law, Dar alnahdaalarabia, Beirut, 1983

(2) Yousef Ahmad Nawafleh, The extent of the impact of Corona pandemic on Employment contracts in the Sultanate of Oman and Jordan, Published research in Law and Business Journal, Hassan I University, Faculty of Economic, Legal and Social Sciences, Business Law Research Lab, vol 60 of Sep. 2020, p 135.

(3) The jurisprudence stipulates conditions for suspend the contract: 1) The presence of an obstacle preventing the implementation of the contract, as in the case of force majeure or sudden event. 2) That the impediment is temporary and not permanent. If it is permanent, the contract shall be terminated. 3) The period of execution should not be an essential element in the contract, as if the contract was a fixed term, for here the impossibility leads to terminate the contract and not its suspension. Refer to that: Fatima Al-Razzaz, Explanation of the New Labor Law, Dar Al-Nahda Al-Arabiya, Cairo, 2004, p. 341. Also: Muhammad Husayn Mansur, Labor Law, Al-Halabi Legal Publications, 1st Edition, 2010, p. 296

deviation from the rules of the suspended contract in the Defense Act corresponds to the legislative nature of the defense orders, as it a legislative act that can stop work with ordinary laws, including the defense law itself, and to lay down new general and abstract legal rules to replace them⁽¹⁾.

It was stated in Jordanian Defense Order No. (6) of 2020⁽²⁾: First: A- All workers in private sector establishments or in any other entity subject to the Labor Law are entitled to their regular wages for the period from 18/03/2020 until 31/03/2020. Provided that none of the workers in the sectors excluded from the decision of the Council of Ministers to suspend shall be entitled to an additional wage during that period, unless they are assigned to overtime in accordance with the provisions of Article (59) of Labor Law No. (8) of 1996. Therefore the Jordanian government has dealt with the employment contract in the private sector from the period of the pandemic declaration to the date of 31/03/2020 to oblige the employer to pay the full wage without any deductions to the worker, therefore the Jordanian government took this aspect of force majeure and its impact on the contract, so the employer may not make any deductions to the worker as a result of the inability to work during the period of launching this defense order, and if any deductions are made to the worker, he is has the right to a judicial claim and is entitled to the full wage that was previously agreed or as specified in the employment contract.

But the Jordanian government, with the same defense order, has determined the wages that the employer in the private sectors must pay from the date of 01/04/2020 by saying: *“Fourth: As of the date of 01/04/2020, the wages of workers in the institutions and establishments of the private sector and in any party are determined subject to the Labor Law as follows: a - Workers who perform their work in the workplace are entitled to their full wages, provided that it is permissible to agree upon the free will of the worker to reduce wages, provided that the amount of the reduction does not exceed (30%) of the worker's usual wage, and that resorting to for this option, unless the reduction includes the salaries of the facility's senior management.”*

Consequently, workers who have not been affected by the breakdown and curfew decision and who have a work and travel permit have the right to the full monthly wage, and it is permissible to agree with the employer to reduce the wage by no more than (30%) of the wage, provided that this option is not used unless the reduction was included the senior management salaries, and the wisdom of this amendment is that the pandemic has negatively affected many economic sectors, and in order to protect these sectors from entering into economic downturn, the government approved the right to amend, either with the consent of the worker or for

(1) Laith Nasrwin, Legal regulation to confront the Coronavirus pandemic in Jordanian legislation, published research, Kuwait International Law School Journal, 8th year, special supplement, vol 6, June 2020, p470

(2) Defense order issued under the provisions of the Defense Law of 2020 as amended, published in the Official Gazette vol 5631, p 1981, 09/04/2020

this decision to include all salaries of senior management, provided that it does not exceed (30%) of the worker's usual wage.

As for the workers who work remotely, they are entitled to their full wages, and in the authorized establishments and institutions, or those covered by the suspension decision and not authorized to work, their wages according to the actual working hours⁽¹⁾.

In sum, the legal implications of declaring the defense Act to work on contracts and contractual obligations are that all contracts and obligations are suspended according to the law until they are approved by the one who has the right to do so, and that during this period the contracting party that has not fulfilled his obligations is not considered to have violated the terms of the contract. Therefore, it is not permissible to request execution against him, and he has the right to insist before the courts that his failure to implement his contractual obligations was caused by the announcement of the Defense Act and the written orders issued pursuant thereto.

It is important to note that the other party has the ability to keep the contract valid by offering or agreeing to amend the terms of the relevant contract, in this regard, the new situation, provided the above conditions are met, gives an opportunity to raise the issue of contract modification.

The question that can be asked here is, should a defense law be issued that regulates the lease and employment contract?

To answer this question, we find that if the conditions of force majeure are fulfilled, there is no need to issue a defense order, and if the conditions of contingent circumstances are met, no need to defense orders in this case, but the actual value of defense orders emerges under the ambiguous circumstances that cannot be determined whether they are force majeure or not or an contingent circumstance or not, here the defense orders can help us to say that failure to implement the obligation was the result of defense orders, but in all cases when it comes to liability for the damage caused to the creditor as a result of default or delay in fulfilling contractual obligations, it is not exempt the debtor shall be free from liability for damage unless he proves that he has not fulfilled or delayed fulfilling his obligations due to circumstances that he could not prevent, cancel or avoid after the conclusion of the contract, in this regard, the circumstances resulting from the pandemic / epidemic of the new Coronavirus can in principle be considered force

(1) Article No. (1) of Defense Order No. (6) Paragraph (B) states: “Workers who perform their work (remotely) entirely in authorized establishments and institutions to work or those covered by the amendment decision or who are not authorized to work are entitled to their full wages. And as remote workers partially in the authorized establishments and institutions or those covered by the decision of suspension and who are not authorized to work are entitled to their wages according to the actual working hours, with no less than the minimum wage specified for one hour, or according to the wage stipulated in Paragraph (E) of this item, whichever is higher”

majeure, or an contingent circumstance, but this is subject to proof in each case separately, that is, the epidemic by itself does not necessarily lead to the conclusion that the debtor was not able to properly fulfill his obligations⁽¹⁾.

Conclusion

Through this study, some findings and recommendations were reached

First: Findings

1. The issuance of defense orders and restricting the freedoms of individuals and establishments created a legal problem in the contractual relationship between the employee and the employer.
2. The issuance of defense orders is included in some contracts under force majeure and in others under contingent circumstances.
3. The application of the theory of contingent circumstances gives the judge a kind of discretionary power to find a kind of economic balance in the contract between the employee and employer.

Second: Recommendations

1. The Jordanian legislator recommended to set out special provisions regarding termination of the employment contract in light of the exceptional circumstances that grant workers access to their workplace.
2. Amending the text of Article (43) of the Jordanian Civil Code by granting greater discretionary power to the judge in light of exceptional circumstances.
3. Establishing legal texts in the Jordanian Defense Law No. (13) of (1992) indicating how the government is obligated to compensate for damages caused to others as a result of issuing defense orders.
4. Set out legal controls that the executive authority adheres to when issuing defense orders.
5. Establishing legal solutions to the problem of disabling workers from work under defense orders, so that the Labor Law includes legal articles that protect the worker in such circumstances.

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