

Corona Pandemic Impact on the Performance of the Iraqi Clinics¹

Abdullah Najim Abd Al Khanaifswy

*Department of English Language, College of Education,
Sawa University, Almathana, Iraq.*

DOI:10.37648/ijrmst.v15i01.010

Received: 18 March 2023; Accepted: 27 May 2023; Published:08 June 2023

ABSTRACT

Contractual obligations in Iraq have been affected by the worldwide outbreak of coronavirus and the restrictive measures it has adopted, such as the announcement of the Defense Law. The enforcement of the Defense Law led in some cases to the impossibility to perform the contractual obligations that were previously established which triggered the parties to the contract - the debtor in particular - to invoke the application of force majeure or the doctrine of exceptional circumstances, and in both cases either demand contract frustration or mitigation of the contract. This research addresses the impact of applying the doctrine of unexpected circumstances and force majeure on contractual obligations following the provisions of Iraqi law and considering the legal texts of the defense and civil laws in force in Iraq. To achieve the goals of this research, the relevant legal texts were covered with explanation and detail, supported by the jurisprudence of the Iraqi courts.

INTRODUCTION

On 31st December 2019, the World Health Organization (WHO) declared a global emergency because of the emergence of a novel disease in the Chinese province of Wuhan. The reports indicated that with the first days of January of 2020, 44 cases were reported, including 11 critical cases, without knowing the actual causes behind those cases. Actual actions began by the WHO to follow up on developments in the situation in Wuhan, China.

On January 5, 2020, a detailed report was issued on the cases discovered in Wuhan Province and the procedures followed (WHO, Interactive Timeline). Within a few days of the discovery of the virus, the Chinese authorities made a preliminary decision regarding the underlying cause of the disease, as they considered that a novel Coronavirus (or it could be that the traditional one) is behind the discovered cases, especially since the medical examinations and the available preliminary information indicating the presence of cases of infection of Pulmonary disease in patients and that the Coronavirus (CoV) (WHO-statement) is one of the potential pathogens causing this disease. However, after carrying out several laboratory tests, the Chinese authorities issued a report that ruled out SARS-CoV, MERS-CoV, influenza, A H7N9, H7N7 adenovirus, and other common respiratory pathogens.

With the succession of the events related to the disease and the beginning of its spread outside China, the Regional Office for the Americas (PAHO / AMRO) issued the first epidemiological alert regarding the new Coronavirus, which included some recommendations for international travelers, measures to be taken to prevent infection and a mechanism to combat it. And laboratory tests to be performed (Pan American Health Organization World Health Organization-

¹ How to cite the article:

Al Khanaifswy A.N.A Corona Pandemic Impact on the Performance of the Iraqi Clinics; *International Journal of Research in Medical Sciences and Technology*, Jan-Jun 2023, Vol 15, 65-75, DOI: <http://doi.org/10.37648/ijrmst.v15i01.010>

6/2021). The report issued indicated that, as of January 13, there are no indications of infection among humans, but the WHO Regional Office for the Western Pacific of the WHO (WHO / WPRO) soon declared on January 19, 2020, the possibility of infection among humans (WHO, interactive timeline) and The WHO/ WPRO confirmed it on 01/21/2020. With the increasing declaration of the discovery of cases in various parts of the world, the Director-General proclaimed that the outbreak of the novel virus has become a global health emergency of international concern on January 30, 2020. (WHO Declaration 2020). On February 11, 2020, The WHO announced that the disease is caused by a new Coronavirus called COVID-19. On March 11, 2020, the WHO announced that, after assessing the epidemiological situation in the world, it stated that the Corona epidemic is now considered a pandemic. (Daoud, 2020)

After the rapid outbreak of the coronavirus and its consequences worldwide, *Iraq* has officially reported infected cases (WHO-Middle East 5/3/2020), which was followed immediately by the Royal Decree which was issued on 3/17/2020 approving Cabinet Resolution No. 9060 and the declarations of Defense Law No. 12 of 1992 (JDL) throughout *Iraq* from the date of its issuance. Regarding the provisions of the *Iraqi* Constitution, Article 124 stipulates that

In the event of what necessitates the defense of the country in the case of emergencies, a law in the name of the Defense Law shall be enacted by which power shall be given to the person specified by the law to take the necessary actions and measures including the power of the suspension of the ordinary laws of the State to ensure the defense of the country. The Defense Law shall come into force when this is declared by a Royal Decree to be issued based on a decision by the Council of Ministers.

On the other hand, article 2 of the JDL states that

If anything occurs that requires defending the country in emergencies that threaten the national security or general safety in all or one part of the kingdom due to wars, a state leading to them, disorders, internal armed uprising, general disasters, outbreaking of a plague or epidemic, this Law becomes effective by a Royal Decree issued based on the decision of the Cabinet.

The decision to implement the JDL clarified that its enforcement came because of the emergent circumstances that the Hashemite Kingdom of *Iraq* is going through and because the WHO announced the spread of the Corona epidemic and to confront this epidemic at the national level and protect public safety throughout the Kingdom.

With the issuance of the royal decree for the enforcement of the JDL and the series of binding orders that accompanied it, some aspects of life in *Iraq* were completely disrupted, which was reflected in the contractual obligations of individuals. Whereas the issue of performing contractual obligations was adopted by the legislator within the provisions of the *Iraqi* Civil Code (JCC), Article 11 of the JDL issued to address the issue of the impossibility of performing any contract or commitment that is attributable to the implementation of the provisions of the JDL, any orders, or instructions issued under it or because of compliance for these provisions. The legislator considered the party to this contract not violating the contract clauses rather, it considered the contract suspended to the extent that the fulfillment of the contract is impossible. This text is considered to protect any lawsuit that may be brought against the other party or any measure taken against him due to his failure to comply with the contract or obligations. It is, therefore, necessary to restore the balance between the two parties to the contractual relationship, especially since failure to comply with the provisions of the Defense Law and the orders issued according to it would result in legal liability.

The practical significance of this research lies in shedding light on the reality of contractual obligations under the JDL and the JCC, especially that the contract is concluded in principle in a manner in which the obligations are equal. However, the obligations of the parties to the contract under this JDL are not equal, especially since the legislator in the JDL has considered that the contract is suspended "to the extent to which the fulfillment of the contract is impossible" because of the implementation of the JDL. On the other hand, the JCC has intervened to establish legal mechanisms to restore obligations to their equal status by applying the doctrine of emergency circumstances and force majeure.

This study adopts the inductive analytical approach, whereby the researcher sheds light on the legal texts related to the topic of the research and analyzes them to identify the possibility of applying them to the repercussions of the Corona pandemic, specifically regarding contractual obligations. In other words, the researcher uses the texts and

provisions of the JCC and the JDL and orders issued pursuant thereto to determine whether these texts assist both the creditor and debtor and restore balance to the contractual relationship in light of the new circumstances associated with the Corona pandemic that occurred after the conclusion of the contract particularly, besides, one of the contractual parties may invoke the Corona pandemic for the dissolution of contractual obligations or at least exemption from delay penalties associated with the contract and agreed upon in advance with the other party, or even an attempt to evade compensation for delay in implementation and thus not arising contractual liability under the provisions of the JCC. (Abd al-Qadir al-Far, 143).

The researcher divided this research into three main sections, in addition to the introduction and conclusion. In the introduction, the researcher reviewed the emergence of the Corona pandemic and the sequence of events from the moment the disease was discovered until the WHO declared that the disease was a global epidemic, which required *Iraq* to decide to implement the JDL, and it also addressed the objectives of the research and its problems, the methods, and the adopted approach. The second section on the other hand, is devoted to dealing with the two doctrines of emergency circumstances and force majeure in *Iraqi* legislation, the conditions for adherence to each of them, and the implications thereof. While the third section discusses the legal adaptation of the pandemic and the overlap between the two theories of force majeure and emergency conditions in the adaptation process. The fourth section demonstrates the possibility of performing contractual obligations considering the Corona pandemic and the laws in force in *Iraq*. The researcher concluded the research with a set of findings and recommendations.

THE "EMERGENCY CIRCUMSTANCES" AND "FORCE MAJEURE" DOCTRINE IN THE IRAQI CIVIL CODE

The general rule in contracts is that a party is always obligated to perform its obligations under the contract and may be held liable for a failure to do so. According to Article 202 of the JCC, the contracting parties are obligated to fulfill what was entailed in the contract in accordance with good faith. Hence, the creditor has the right to request the other party's adherence to the contract clauses, so that he has the right to demand the debtor to implement in kind without considering the unexpected circumstances that occurred after the conclusion of the contract. On the other hand, the debtor tries hard - if a circumstance occurs after the conclusion of the contract - to restore the balance to the obligations that have arisen from the contract, trying hard to invoke by the exceptional circumstances that have occurred and prevented the fulfillment of the entire contract or part of it. In an attempt to reach the midpoint between the creditor's rights and the debtor's obligations and what may arise after the conclusion of the contract, the *Iraqi* legislator in Article 205 of the JCC stipulated that

If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor to threaten him with grave loss, it shall be permissible for the judge after weighing up the interests of each party, to mitigate the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.

Having said that, it is noted that Article 247 of JCC made it clear that even though contracts should be binding on both parties, if force majeure supervenes, which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically annulled. It also stated that in the case of partial impossibility to implement the contractual clauses, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligor to cancel the contract provided that the obligee is so aware. (Barahimi, 2020)

The Emergency Doctrine

The *Iraqi* legislature has authorized courts to intervene in the process of balancing the interests of the parties to the contractual relationship and has opened the way for them to reasonably resort to the burdensome commitment clause if justice requires that in exceptional and unforeseen circumstances that have been arisen following the conclusion of the contract and before its implementation (Resolution of the *Iraqi* Court of Cassation in its legal capacity in the Resolution. No. 2538/1998; 3950/2005; 1565/2005 and 1565/2005).

Furthermore, The JCC has regulated the provisions for the emergency doctrine in Article 205, and it is noticed that the legislator did not open the way broadly for the parties to the contract to resort to an exceptional circumstance clause for dissolution - even partially - from the obligations easily. Rather, it regulated the provisions regarding the adherence to the doctrine of emergency by stipulating a set of conditions included in the Resolution of the *Iraqi* Court of Cassation No. (1671/2007 - 888/2007 - 3377/2014).

One of the most prominent conditions is that the presence of a fixed-term contract which is not one of the contracts that are implemented immediately (Resolution of the *Iraqi* Court of Cassation No 3534/2005) so that there is a time lag between the conclusion of the contract and its implementation (Resolution of the *Iraqi* Court of Cassation No 1671/2007) so that time is considered a fundamental element that affects the determination of the scope of the parties' obligations (Abdel Qader El-Far, 41), whereby it does not allow the debtor to adhere to the theory of contingent circumstances if the contract was immediate because it is not logical.

Whereas it is assumed that a new matter will come after the conclusion of the contract and before the completion of the implementation because there is no room for applying the theory of emergency circumstances if the debtor has fulfilled his contractual obligations before the occurrence of the extraordinary circumstance (Resolution of the *Iraqi* Court of Cassation No 1013/92). It must be noted that if the contract is immediate that is, its obligations were established and arranged as soon as offer- acceptance is established - but the issue of implementation has been delayed until a later time due to the debtor's fault, so in this situation, there is no room for the theory of contingent circumstances to apply, and the debtor bears the consequences of that.

Furthermore, the legislator requires that a general and exceptional circumstance occurs after the conclusion of the contract and before its execution. Exceptional emergency circumstance implies every circumstance that cannot be expected according to the usual affairs of ordinary life. As for being general, it is an attribute attached to these exceptional circumstances, so that the circumstance is not specific to the debtor alone, that is, it includes a large group of people if not all of them. Moreover, another condition is that the occurrence of these general exceptional accidents could not be foreseen by the debtor (Resolution of the *Iraqi* Court of Cassation No 1303/2008). If the debtor can anticipate the occurrence of circumstances, it is inconceivable that he could be allowed to invoke the existence of an exceptional circumstance that precludes the possibility of fulfilling the obligations as usual. It is also stipulated that exceptional circumstances include situations that can not be evaded or avoided their effects, because if they can be avoided, then it would be possible to adhere to the application of Article 205, whether the circumstances were expected or unexpected, and this is not logical.

Finally, in the theory of the general exceptional and unforeseen circumstances, the contractual obligations of a debtor should be onerous and not impossible. If the impossibility of implementing the contract necessarily requires the application of the provisions of the "force majeure theory", as we shall see later. But if the implementation of the obligation was burdensome, exceeding the usual limit to a heavy loss, then the condition of exhaustion has been fulfilled so that it becomes unfair to force the debtor to fully fulfill his obligations.

It should be noted that not every difficulty that the debtor may be subjected to is an obstacle that prevents him from fulfilling his in-kind commitment, rather, it must of extreme difficulty that causes extraordinary loss to the debtor due to exceptional circumstances. In other words, it is not sufficient for the mere hardship, cost, and distress to say that there is harm for the debtor, but he shall prove the heavy loss and extreme hardship to adhere to the counterpart of emergency circumstances. (Al-Jubouri S1, 207). The legislator has intervened to protect the party by giving the courts the right to intervene by modifying the contractual obligations by restoring the burdensome obligation to a reasonable extent, and this is a violation of the principle that the contract is the contractor's obligation, but does the judge have the right to increase the corresponding obligation considering that it is the most appropriate option for the debtor? In other words, does the judge have the right to increase the creditor's obligations to attain a balance between the interests of both parties? Does the debtor have the right to demand the termination of the contract under the pretext of fatigue? First, the researcher argues that the *Iraqi* legislator did not give the judge the right to increase the corresponding commitment, since the legislator, in Article 205, stipulated that the judge's discretionary authority is limited to "resorting the commitment to a reasonable extent," meaning the reduction of obligations without increasing the corresponding obligation. As for the debtor's right to invoke the frustration of the contract, it is also noted that the aforementioned article did not give the debtor the right to demand to amend the terms of the contract, and the *Iraqi* Court of Cassation confirmed this. It is also noted that the legislator did not grant the judge the right to revoke the fixed-term contract, which caused by general and exceptional circumstances that hindered the fulfillment of the obligations if such a right would make the creditor alone bear the consequences of the emergency and this is unfair (Resolution of

the *Iraqi* Court of Cassation No . 251/2018). Finally, there is no justification for applying the theory of contingent circumstances if the debtor's fatigue is not due to an exceptional circumstance. Rather, the debtor bears the consequences of his failure to implement the obligation and contractual liability is based on that (Lewis, R et al 2020).

Force Majeure Doctrine

In Article 247 of the JCC, the *Iraqi* legislature regulated the doctrine of "force majeure" and its effect on contractual obligations. The *Iraqi* Court of Cassation defined "force" as the inability to be free from anything that made it oppressive or impossible to fulfill the obligation, and it cannot be avoided or overcome by implementing it in any other way. (Resolution of the *Iraqi* Court of Cassation No . 6143/2018).

Force Majeure was defined as an accident that is unpredictable and impossible to be avoided and that would make the performance of the obligation oppressive or impossible (Court of Cassation Resolution. No. 3104/2019; 3660/2016 and 1473/2016). This should be noted that the *Iraqi* legislator has touched on the issue of force majeure and its impact on contractual obligations in many legal texts such as the *Iraqi* Trade Law (Law No. 12 of 1966), the Maritime Trade Law (Law No. 12 of 1972), and the Labor Law (Law No. 8 of 1996) The Road Transport Law (Law No. 21 of 2006), the Civil Aviation Law of 2007 (Law No. 41 of 2007), and the International Multimodal Transport Law of 2018 (Law No. 29 of 2018).

Through the previous definition of force majeure, it can be said that the circumstance must not be expected or impossible to prevent, and they are two basic conditions that must be met under force majeure doctrine (Resolution of the *Iraqi* Court of Cassation No. 805 / 5282/20202019). Besides, Humans should have no hand in creating them (Resolution of the *Iraqi* Court of Cassation No. 964/2019). Accordingly, it can be said that the external cause may be a sudden accident, force majeure, the acts of others, or the fault of a creditor, and accordingly, the act of the debtor himself does not justify triggering force majeure. The most prominent feature that distinguishes this theory from the theory of emergency conditions is that the legislator has considered that the availability of force majeure makes commitment impossible to implement, whether it is an actual or legal impossibility (Al-Sanhouri, Paragraph 587 - p. 983).

Addressing the topic of force majeure requires talking about the debtor's non-liability, as the contract has been valid and binding, but the impossibility has occurred after the inception of the obligation because if the contract was not enforceable from the outset, it does not arise in the first place and therefore there is no room for applying force majeure. Talking about force majeure and the impossibility of implementation entails the termination of the obligation (Resolution of the *Iraqi* Court of Cassation No . 2254/2020), so that each party returns to its pre-contracting status and there is no room for compensation in such a case because the debtor's obligation has expired by force of law based on force majeure (Resolution of the *Iraqi* Court of Cassation No . 2672/202), and the legislator made it clear that the burden of proof rests on the debtor, as it is proved that all the mentioned conditions are in place, as Article 248 states that:

If the contract is cancelled automatically or by the act of the parties, the two contracting parties shall be restored to the position they were in before the contract was made, and if that is not possible, compensation shall be ordered.

THE LEGAL ADAPTATION OF THE CORONA PANDEMIC CONSIDERING THE AVAILABLE DATA.

Considering the previous legal texts and the decision issued by the WHO regarding Corona as a "global epidemic" and the royal will to act according to the JDL and the orders issued pursuant to it, it was necessary to try to adapt the Corona pandemic and determine whether it is considered a "force majeure" or is it just an "exceptional circumstance" because this has an impact on the implementation of contractual obligations.

Adapting The Corona Pandemic By Applying The Doctrine Of Force Majeure

If we studied the jurisprudential interpretations, the provisions of the JCC, and the jurisprudence of the *Iraqi* Court of Cassation, we could notice that a set of conditions are required to consider the Corona pandemic as a force majeure, which are as follows:

The external element of the pandemic: meaning that there is no interference by the parties to the legal relationship or negligence by the party claiming the occurrence of the damage that resulted from exceptional circumstances

"specifically the global spread of the epidemic" which is beyond his control and that it is the reason behind the imbalance in contractual obligations, otherwise, the creditor has the right to demand real implementation if the debtor does not perform his contractual obligations and compensation if there is room for that.

The unpredictability of the pandemic: For the Corona pandemic to be applied, according to the force majeure theory, it is stipulated that the exceptional circumstance cannot be expected after the conclusion of the contract. Therefore, there is no room for adhering to the application of force majeure if the contract was concluded after the WHO declared "Corona" a global epidemic that affected the economic, social, and even political movement in the whole world. The inability to prevent the pandemic, in other words, the implementation of obligations considering the Corona pandemic has become impossible and not burdensome.

Accordingly, since the Corona pandemic is subject to the conditions of force majeure as imposed by the *Iraqi* legislator and jurisprudence, and confirmed by the Court of Cassation, there is nothing to prevent the Corona pandemic from being adapted by force majeure that will lead to frustrate the contract with the force of law as the performance of the obligation is impossible because of its extraordinary effects.

Adapting The Corona Pandemic By Using The Doctrine Of Emergency Circumstances

An emergency circumstance is an unusual event, an unexpected that can be described as an "exceptional" event, which results in a disruption of contractual obligations to the extent that burdens the debtor, threatening him with a heavy loss. The obligation becomes hard, but it is not impossible. (Al-Iftihat, Y,2020).

Determining whether the Corona pandemic is a general justification for applying the theory of emergency requires reminding that contracts are generally of various types so that it is not possible to generalize absolutely that the Corona pandemic is a justification for interfering in the contract implementation process, for example, the immediate contract that had established and implemented before the announcement of the Corona pandemic can not adhere to according with the doctrine of emergency. In addition to that, some of the special provisions of the law have touched upon some exceptional circumstances that may encounter the parties to the legal relationship. For example, the *Iraqi* Labor Law, Article 31 specifies that if the economic or technical conditions of the employer entail reducing the size of the workforce, replacing a production system with another, or stopping work completely which may result in terminating unlimited period work contracts or suspend all or some of the contracts, then the employer shall follow certain and temporary procedures to solve such problems and the Court of Cassation affirmed that dismissing the worker in such circumstances is considered arbitrary dismissal and contrary to the provisions of Article 28, which regulates cases of dismissal of the worker.(Resolution of the *Iraqi* Court of Cassation No.159 of 2015 , 738 of 2016).

Regarding lease contracts and in accordance with the Landlords and Tenants Law of 1994, the failure of the tenant to pay the wage is considered one of the reasons for the eviction of the wage according to the provisions of Article 5 thereof. Concerning the law of landlords and tenants , we find that the legislator did not address the economic conditions that may be behind the non-implementation of contractual obligations. However, the *Iraqi* Court of Appeal issued a decision considering the Corona pandemic and linked the debtor's obligation to pay the remuneration owed by him until after the benefit has been paid (Resolution. NO .4352 / 2020) and the tenant must prove that he has no use of the property resulting from his liability (the Court of First Instance, in its appellate capacity, Resolution. NO. 26/2020). Accordingly, it can be said that there is no single decision covering all contracts, rather contracts must be viewed from several angles such as the contact form, the time of conclusion of the contract, the time of execution of the contract, and in the end it is up to the judge's discretion as to whether there is a justification for applying the theory of emergency circumstances or not.

The Overlap Between Force Majeure And Emergency Conditions In Adapting The Corona Pandemic.

If we go back to the available data regarding the Corona pandemic considering international and local decisions, then it can be asserted that this pandemic is nothing than a form of an extraneous cause mentioned in Article 261 of the JCC, which was a form of an extraneous cause such as a natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering the loss. Most jurists do not differentiate between force majeure and an emergency circumstance, and they consider the two terms to denote one meaning by which they mean "every matter that cannot be foreseen and cannot be prevented, so that it is the cause of the harm." (Al-Jubouri, Part 2, 146).

The Corona pandemic is nothing but an exceptional general circumstance that affected most - if not all - aspects of life in the world, including *Iraq*. Talking about the interference in the adaptation process for this pandemic is important from the practical view, because of the impact of legal conditioning on contractual obligations: as this pandemic has prevented in some cases from fully implementing contractual obligations, and it was also the cause of the imbalance. The balance between the two sides of this contractual equation, by implementing the obligation sometimes an absolute impossibility, and at other times impossible a temporary impossibility, and sometimes it made the commitment on the debtor burdensome. (Hassan,2020)

PERFORMING CONTRACTUAL OBLIGATIONS DURING THE CORONA PANDEMIC

We explained previously that the principle is to implement contracts according to what the parties have agreed upon and in accordance with good faith. We have previously indicated that the JDL has been activated to face exceptional circumstances that the Kingdom is going through, which were the Corona pandemic and the global outbreak of the epidemic. The legislator in Article 11 of the JDL stated :

If it is impossible to implement any contract or commitment due to observance of the provisions of this law or any order, mandate, or instructions issued pursuant thereto, or because of compliance with these provisions, the party of the contract is not considered to be in breach of its terms, but the contract is considered suspended to the extent In which the implementation of the contract is not possible and this is considered a defense for any lawsuit that may be filed against that party or any measures taken against him as a result of his failure to perform the contract or the commitment.

In this regard, it can be said that the legislator is aware that the activation of the JDL will reflect the contractual relationship, whereby the implementation of some contractual obligations will not be performed, and others are impossible to be implemented. Regarding Article 11, we find that the legislator has begun the text with an expectational phrase the phrase. The legislator attributed the failure to implement contractual obligations to activating the JDL and the orders issued pursuant to it, and not to the Corona pandemic itself. Accordingly, it can be said that failure to fulfill contractual obligations may be caused by either the activation of the JDL on the one hand or the Corona pandemic on the other hand. Therefore, it must be noted that government decisions and Defense orders issued under the JDL are temporary measures subject to modification following the requirements of public health in the Kingdom.

In addition to the above, the legislator in Article 11 also indicated that failure to implement contractual obligations would consider the contract suspended. The contract shall be suspended according to Article 171 of the JCC if

it was issued by a curious person in respect of property belonging to another or by owner in respect of property of his encumbered by a third party right or by a person lacking capacity in respect of his property, where such transaction lies in the area between (pure) advantage and (pure) detriment or is made under duress, or if the law so provides.

To reconcile Article 11 of the JDL and Article 171 of the JCC, it is noted that Article 11 deals with the case of "suspension of implementation", not "suspension of enforcement". Whereas the contract under discussion in Article 11 of the JDL in terms of origin has been concluded correctly and accordingly, it is a valid contract and is necessary, but the work of the JDL has hindered the issue of its implementation, and this is what was confirmed by the law itself, as it linked the issue of suspension of execution (to the extent in which the contract is impossible). In other words, the scope of Article 11 deals only with a valid contract. As for a void, suspended, or corrupt contract, it remains governed by the general rules of JCC and will not be affected by Article 11. Therefore, if the performance of the obligation was impossible and a temporary impossibility at the due deadline because of the JDL, it does not permit the contractual parties to terminate the contract as long as it is possible to implement the obligation after stopping the work of the JDL, or the issuance of defense orders that reduce the impact of the work of the JDL. Where this is a form of temporary impossibility stipulated in Article 247 of the JCC. Whereas if the JDL has caused the impossibility of actually implementing the obligation at the expected time for the execution of the obligation, whether it is a complete or partial impossibility, the legislator has granted the creditor in Article 247 the right to revoke the contract on the condition that the debtor is aware of this cancellation. The Court of Cassation considered that the law and administrative orders that are enforceable when the implementation of the obligation becomes impossible because of them, the contract expires

with the force of law and without compensation (Resolution of the *Iraqi* Court of Cassation No.4714/2020, 120/1987, 245/1990, 1969/1997).

If we considered the impact of the Corona pandemic on the implementation of contractual obligations, this can be summed up as follows considering the provisions of the civil law and the Defense law and the orders issued pursuant thereto:

- Regarding the void, invalid, and suspended contract they will not be affected by the Corona pandemic and will be subject to general provisions in JCC.
- Regarding the immediate contracts and long-term or Fixed-term contracts that arose and were implemented before the Corona pandemic or before the start of the JDL, they will not be affected and will remain binding following the provisions of the contract and the law in force.
- Regarding the immediate contracts that arose before the declaration of the JDL or the Coronavirus pandemic, but their implementation was delayed due to the debtor, it does not give the debtor the right to disavow contractual obligations because the theories of force majeure or emergency circumstances do not apply to him on the one hand and the inability to apply Article 11 on the other hand. I attributed the failure to implement the obligation due to the work of the JDL.
- The long-term contracts or Fixed-term contracts, which were affected by the declaration of the work of the JDL, where it was not possible to implement them, are subject to the provisions of Article 11 of the Defense Law so that their implementation will be suspended. However, if the contracts are sloppy or long-term, or from employment or benefit contracts that have not been affected by the enforcement of the JDL, they will not, in principle, be subject to the provisions of Article 11 of the JDL, even if they may be affected and are subject to general provisions in civil law regarding the theories of force majeure and circumstances Special.
- The long-term or Fixed-term contracts that have been affected by the announcement of the work of the JDL, so that compliance with its provisions entails the impossibility of implementing the contract, there is no room for the application of Article 11, which suspended the implementation of the contract (to the extent in which the implementation of the contract is damaged), and the contract implementation is subject to general rules.
- Concerning long-term, immediate, and Fixed-term contracts, which by their nature deviates from the provisions of the JDL, they are fundamentally not affected by the work of the JDL and Article 11, such as contracts for the supply of medical supplies and basic foodstuffs, due to the conflict of the purpose of the JDL and the suspension of the implementation of such contracts.
- Concerning long-term contracts or Fixed-term contracts, which resulted in suspension due to the work of the JDL and thus resulted in impossibility of implementation or burdensome of the debtor, they are subject to general rules in the JCC.
- Regarding long-term contracts or Fixed-term contracts and (endowment) that is binding by its nature their nature, such as leases, for example, subject to the law of owners and tenants, they fall outside the scope of application of Article 11 of the JDL and have an impact on the lessee at the expense of the lessor, as for other lease contracts that have become impossible as its implementation is an absolute impossibility, it is subject to the provisions of the force majeure theory, and the contract shall be terminated by the rule of law by the impossibility of execution, such as lease contracts for cars or sports halls, for example, or movables of any kind, but if the impossibility is partial, then according to the general rules the obligation corresponding to the impossible part.
- The long-term contracts or Fixed-term contracts, in which the intended benefit of the contract was affected, which resulted in damage and prejudice to the debtor's right and burdens him, in this case, the judge shall intervene to amend the terms of the contract, considering the period of suspension stipulated in the JDL.

CONCLUSION AND RECOMMENDATIONS

In this paper, we explained the implications of the Corona pandemic on contractual obligations under the enforcement of the JDL and the provisions relating to the theories of emergency conditions and force majeure. According to the general provisions governing the performing contractual obligations, the debtor is obliged to implement in-kind the obligations arising from his debt, but it is possible to completely relieve from these obligations if he is able to prove the availability of force majeure that was beyond his control and prevented the fulfillment of obligations by making it impossible. The legislator also granted the debtor the right if he proves that there is an exceptional general circumstance that implemented the obligation burdensome, to request the court to mitigate the burdensome.

After reviewing the relevant legal texts, it can be said that there is no duplication in addressing the issue of implementing contractual obligations in *Iraqi* legislation during the Corona pandemic. What has been reached can be summarized as follows:

- 1) The principle is to implement the contractual obligations resulting from the correct contract whenever possible during the Corona pandemic, and that the goal of endorsing the theories of force majeure and emergency circumstances can in no way be a justification for disavowing contractual obligations if they are feasible.
- 2) The JDL and Article 11 explicitly stated that in the event that the performance of contractual obligations is suspended as a result of the work of the JDL, this will not affect the principle of the obligation to implement those obligations whenever this is possible after stopping the work of the JDL, that is, the suspension of the implementation of the contract is a temporary legal remedy included in the Effective Law to maintain the stability of the contractual relationship.
- 3) The contract shall be terminated by force of law if the debtor is able to prove the total impossibility of carrying out the contract because of the actions of the JDL and/or as a result of the Corona pandemic. Where both laws and administrative orders are considered force majeure beyond the control of the parties to the contractual relationship. As for the Corona pandemic, it is agreed that it is an exceptional external general emergency condition that could not be foreseen, but it is not possible to always apply the doctrine of emergency or force majeure, but the evaluation of the situation is due to the judge of the matter.
- 4) Adherence to the theories of force majeure and emergency conditions require the fulfillment of the conditions stipulated in the JCC, the most important of which is that we are in front of a valid and fixed-term contract that has arisen and arranged contractual obligations before the announcement of the JDL and/or before the declaration of Covid-19 as a global epidemic. Stressing that the reason behind non-implementation of contractual obligations is either due to the actions of the JDL or attributed to the Corona pandemic and the disruption of life that accompanied it, provided that the plaintiff proves this.
- 5) There is a confusion between the suspended contract in the JCC, and considering the contract suspended as stated in the JDL, so it is necessary to mention that the contract mentioned in Article 11 of the JDL is the correct binding contract that is enforceable in terms of origin unless it becomes suspended in force after the application of the JDL and the commencement of work. It does not mean the suspended contract according to Article 171 of the JCC.

Recommendations

- a) An amendment to Article 11 of the JDL is required to be as follows: "Subject to what is stated in the special laws, if it is not possible to implement any valid contract or commitment due to adherence to the provisions of this law or any order, or instructions issued according to it, or because of compliance with these provisions, the person bound to this contract is not considered to violate its terms, but the contract is considered suspended for the term. Where the implementation of the contract is impossible and the burden of proof falls on the claimant."
- b) Emphasizing that adherence to the application of the doctrines of emergency and force majeure must not contradict the general principles governing contracts and the obligation of implementation, and therefore, adherence to them must be adhered to dissolve contractual obligations fully or partially in the narrowest limits.
- c) Stress that the burden of proof falls on the plaintiff in his inability to implement his obligations temporarily or permanently, whether the reason is due to the acts of the JDL- which until the moment of writing the research is still in force and applied in *Iraq* and because of the consequences of the Corona pandemic has entirely or partially impacted all life aspects in *Iraq*.
- d) Amending the text of Article 247 of the JCC to grant the judge in exceptional circumstances, in addition to his authority to mitigate the burdens obligation to a reasonable extent, and when weighing the interests of the parties to the contract, grants him the right to increase the creditor's obligations or to suspend the contract as the judge deems appropriate.

REFERENCES

Books and articles

1. Alfar, A (2011). Sources of Commitment: Sources of Right in Civil Law (third edition). Amman, Dar Althaqafa.
2. Al-Iftihat, Y(2020). Coronavirus pandemic and its impact on the implementation of contractual obligations. *Journal of the Kuwaiti International Law College* 6, 769-801.

3. Aljborie, Y (2006). *Almabsout in the Explanation of the Civil Code(First Edition- Part One)*. Amman, Dar Althaqafa.
4. Aljborie, Y (2006). *Almabsout in the Explanation of the Civil Code(First Edition- Part two)*. Amman, Dar Althaqafa.
5. Alsanhuri , A(1968). *Alwaseet in the Explanation of the Civil Code*. Eygpet, Dar Al-Nahdah Al-Arabiya.
6. Brahimi, T (2020) Implementing the Contractual Obligation Considering the Corona Virus-Covid 19, The Newcomer-Force Majeure, According to The Algerian Civil. *Books of Politics and Law Journal* 13 (1).18-28.
7. Daoud, I (2020). Implementation of Electronic Contracts Under The Corona Virus : An Analytical Study In The Light Of Iraqi Law. *Kufa Journal of Legal and Political Sciences* 13 (46). 79-90
8. Hassan , H (2020).The impact of the Corona pandemic on the implementation of contractual obligations. *Journal of Legal Science* 35(1)429-444.

Legislations

1. The *Iraqi* Covil Code (JCC) n. 43 of 1976 , published in the official gazette n 2645 year 1976.
2. The *Iraqi* Defense law (JDL) n 13 of 1992 published in the official gazette n 3815 year 1992.
3. The *Iraqi* constitution of 1952 published in the official gazette n 1093 year 1952.
4. The *Iraqi* Trade Law (Law No. 12 of 1966) published in the official gazette n 1910 year 1966
5. The *Iraqi* Landlords and Tenants Law of 1994 published in the official gazette n 472 year 1994
6. The *Iraqi* Maritime Trade Law (Law No. 12 of 1972) published in the official gazette n 2357 year 1972
7. The *Iraqi* Labor Law (Law No. 8 of 1996) published in the official gazette n 4113 year 1996
8. The *Iraqi* Road Transport Law (Law No. 21 of 2006) published in the official gazette n 4751 year 2006
9. The *Iraqi* Civil Aviation Law of 2007 (Law No. 41 of 2007) published in the official gazette n 4828 year 2007
10. The *Iraqi* International Multimodal Transport Law of 2018 (Law No. 29 of 2018) published in the official gazette n 5520 year 2018 .

Caselaw

1. Resolution of the *Iraqi* Court of Cassation Resolution No.120/1987.
2. Resolution of the *Iraqi* Court of Cassation Resolution No.245/1990.
3. Resolution of the *Iraqi* Court of Cassation Resolution No. 1013/1992.
4. Resolution of the *Iraqi* Court of Cassation Resolution No 1969/1997
5. Resolution of the *Iraqi* Court of Cassation Resolution No. 2538/1998.
6. Resolution of the *Iraqi* Court of Cassation Resolution No. 3950/2005.
7. Resolution of the *Iraqi* Court of Cassation Resolution No.1565/2005 .
8. Resolution of the *Iraqi* Court of Cassation Resolution No.3534/2005.
9. Resolution of the *Iraqi* Court of Cassation Resolution No.1671/2007.
10. Resolution of the *Iraqi* Court of Cassation Resolution No.1671/2007.
11. Resolution of the *Iraqi* Court of Cassation Resolution No. 888/2007.
12. Resolution of the *Iraqi* Court of Cassation Resolution No. 3377/2014.
13. Resolution of the *Iraqi* Court of Cassation Resolution No. 1303/2008.
14. Resolution of the *Iraqi* Court of Cassation Resolution No. 3660/2016 .
15. Resolution of the *Iraqi* Court of Cassation Resolution No.1473/2016.
16. Resolution of the *Iraqi* Court of Cassation Resolution No. 251/2018.
17. Resolution of the *Iraqi* Court of Cassation Resolution No. 6143/2018.
18. Resolution of the *Iraqi* Court of Cassation Resolution No. 3104/2019.
19. Resolution of the *Iraqi* Court of Cassation Resolution No.964/2019.
20. Resolution of the *Iraqi* Court of Cassation Resolution No 805 / 2019
21. Resolution of the *Iraqi* Court of Cassation Resolution No 5282/2020
22. Resolution of the *Iraqi* Court of Cassation Resolution No. 2254/2020.
23. Resolution of the *Iraqi* Court of Cassation Resolution No. 2672/202.
24. Resolution of the *Iraqi* Court of Cassation Resolution No. .4714/2020.
25. Resolution of the *Iraqi* Court of Cassation Resolution No.156 of 2015
26. Resolution of the *Iraqi* Court of Cassation Resolution No. 738 of 2016

27. Resolution of the *Iraqi* Court of First Instance Resolution. NO. 26/2020

An Internet Source

1. World Health Organization, *Timeline: WHO's COVID-19* Retrieved February 10, 2020, from <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline>.
2. Pan American Health Organization World health organization, *Epidemiological Alert Novel coronavirus (nCoV)* Retrieved January 6,2020 from: [https://www.paho.org/hq/index.php?option=com_docman &view=download&category_slug=coronavirus-epidemiological-alerts-and-updates&alias=51348-16-january-2020-novel-coronavirus-ncov-epidemiological-alert&Itemid=270&lang=en](https://www.paho.org/hq/index.php?option=com_docman&view=download&category_slug=coronavirus-epidemiological-alerts-and-updates&alias=51348-16-january-2020-novel-coronavirus-ncov-epidemiological-alert&Itemid=270&lang=en)
3. World Health Organization, *Live Declaration posted on Twitter*, retrieved February 10, 2020, from <https://twitter.com/who/status/123777021742338049>.