

The Legal Basis for Temporary Force Majeure

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Abstract

Circumstances may affect the implementation of contracts that were not expected by the contracting parties. There is nothing preventing the suspension of contract implementation for a reasonable period acceptable to both parties if it becomes apparent that the circumstance may disappear. temporary force majeure and the possibility of resuming the implementation of the contract again.

Keywords: Legal Basis, Temporary Force Majeure

INTRODUCTION

The contract creates mutual obligations between its parties, and these obligations may be implemented at a future time, and the nature of the performance in the contract may be lax in their implementation, even if they are immediate. However, there are circumstances and events beyond the control of the contracting parties that make the implementation of the obligation impossible for a certain period of time and represents temporary force majeure. The main axis on which the parties' disputes revolve, and although there are general rules that we can rely on in Iraqi and comparative civil law, it has become necessary to reconsider the laws that govern contracts and adapt them in the event that there is a temporary obstacle to their implementation, which are circumstances. Force majeure beyond the control of the contractors, which causes legal confusion and leads to destabilization and instability in the implementation of contracts, which requires the existence of legal rules that address these issues, including suspending the implementation of the obligation until the temporary force majeure disappears.

The Importance of the Research

The importance of the research is evident in the fact that temporary force majeure affects contracts for a specific period, which raises the question about the legal texts and judicial applications that are applied and have a significant impact on preserving the contract and mitigating the damage to the creditor from not implementing the obligation and stopping its implementation until it ceases. The inhibitor.

Research Problem

The research problem is the extent of the importance of having legal texts for temporary force majeure acts in the face of changing the circumstances of contract implementation, which raises the following questions: Are there legal texts that address temporary force majeure in the Iraqi civil law? Does the period of implementation of the obligation have a role in suspending the implementation of the contract due to a Temporary force majeure circumstance?

RESEARCH METHODOLOGY

The research follows the analytical approach to legal rules, international and national judicial trends, and the inclusion of French arbitration decisions. Comparison is also made in explaining the positions of the different legal systems, taking the Iraqi civil law as a basis for the research and comparing it with both Jordanian and French law until we reach the conclusion of the research.

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The Structure of Search

Based on the above, we divide our research into three sections. In the first section, we discussed the nature of temporary force majeure, and in the second section, what distinguishes temporary force majeure from similar situations. In the third section, we discussed the legal basis of temporary force majeure.

The Concept of Temporary Force Majeure

The implementation of the contract must be carried out as agreed upon, as it is conditional on the conditions of the contract remaining as they are. However, temporary force majeure leads to the suspension of the implementation of the contract for a period of time, and then the disappearance of this temporary force majeure leads to the resumption of implementation of the contract. Therefore, we must Define of temporary force majeure

THE FIRST REQUIREMENT

Definition of Temporary Force Majeure

Despite the importance of temporary force majeure, the effect of which requires stopping the implementation of the contract to preserve the contractual bond and resuming its implementation after its termination, most of the comparative legislation does not provide a definition of temporary force majeure, as in the Iraqi Civil Law, where the Iraqi legislator contented himself with stipulating permanent force majeure as a form of Examples of foreign causes exempt from civil liability. However, many jurists and writers have defined temporary force majeure as one of the forms of temporary suspension of implementation that affects a contract.

It has been defined as (the suspension of the implementation of the main mutual obligations imposed by the contract on its two parties when a force majeure occurs that leads to the temporary impossibility of implementation, and the implementation of the contract resumes when that impossibility disappears). This definition indicates its focus on force majeure.

Temporary, which in turn leads to a reason for stopping the implementation of the main obligations imposed by the contract on the contractors.

It is defined as: (Suspension of the contract due to temporary impossibility due to force majeure, which does not lead to the expiration of the contract or release its parties from their obligations. Rather, it means stopping the implementation of the terms of the contract temporarily until the foreign cause disappears), and it is noted from this definition that Temporary force majeure does not lead to the termination of the contractual bond nor does it release the parties to the contract from their contractual obligations imposed on them by the contract. Rather, its role is limited to suspending the implementation of the terms of the contract until the disappearance of that temporary force majeure.

Accordingly, we can define temporary force majeure as: (A temporary incident beyond the control of the parties to the contract, which affects the implementation of the obligation for a certain period of time without affecting the contract, which leads to the suspension of the implementation of the main obligations, and does not lead to the loss of the feasibility of implementing the obligation after its demise, otherwise the contract will be terminated).

Temporary force majeure is characterized by a temporary nature. There is nothing preventing it, if it occurs, from leading to the cessation of the contract, and it does not lead to the termination of the contractual relationship between the two parties in most cases. Rather, the point is that there is a period during which the implementation of the contract can be suspended due to the emergence of circumstances that the parties believe are of a nature that can be eliminated. After a certain period, which may be longer or shorter, therefore, the contracting parties believe that it is better to wait until these circumstances disappear, which may take some time

THE THIRD REQUIREMENT

Conditions for Applying Temporary Force Majeure

Temporary force majeure requires several conditions if there is evidence that it may disappear and contract implementation resume, and they can be stated as follows:

Section One

Temporary Impossibility of Implementing the Contract

In this condition, temporary force majeure cannot be permanent and continuous, even if the time of its disappearance and end is unknown, meaning that there are signs and possible possibilities for the continuation of the implementation of the obligation after its disappearance and the end of the obstacle that led to the suspension of implementation.

As in the case of a flood or earthquake, when it is not known when it will end, such that it is difficult to ascertain its temporary duration and it is not known when it will end or the end of its effects on the obligations of the contractors.

Section Two

Irrelevance of the Implementation Period

To apply the temporary force majeure clause, it is required that the implementation period in the contract does not play an essential role. However, if it is of this nature and specificity, the occurrence of force majeure, even if it is temporary, leads to the cancellation of the contract and not to the suspension of the implementation of the obligation. Thus, it becomes clear that stopping the contract due to temporary impossibility is not possible. Its application unless the contract implementation period has only a secondary role in relation to the conditions that were agreed upon between the two parties to the contract. In this case, if the contract implementation period is not essential, it is possible to resort to suspending the implementation of the obligation.

Section Three

Continuation of the Benefit Expected from the Contract

The period after the removal of the temporary impediment of temporary force majeure must be beneficial for both parties in implementing their obligation, which achieves the desired interest of the contract. When the suspension is decided, it is only to preserve the contract and achieve the interests of both parties. One of the advantages of suspending the contract over its termination is that concluding a new contract will require Also, a period of time may be long until it is implemented, and it may be difficult to obtain the quality of the item sold at the appropriate price, as it may be more expensive and create new financial burdens. This assumption is valid with regard to the seller, as he must take into account the preference of suspending the implementation of the contract over its cancellation when he assesses that a case of force majeure Temporary, especially when he knows that the other party has good intentions in dealing with him, but is currently unlucky due to the forced accident.

THE SECOND TOPIC

Distinguishing Temporary Force Majeure From Similar Legal Situations

Temporary force majeure is characterized by characteristics that distinguish it from other legal situations that may be suspicious in some matters, but differ in other matters.

The First Requirement

Distinguishing temporary force majeure from permanent force majeure

The similarities between the two theories lie in the similar circumstances and facts from which the two theories arise. They both stipulate that the will of the parties should not have anything to do with their occurrence, and

that each of them must be unexpected and impossible to prevent and avoid its consequences . Despite the similarity between the two impossibilities, however, there is a difference between them

First: The Differences Between Them in Terms of Conditions

The permanent impossibility that leads to the expiration of the obligation must have basic conditions for it, namely that the obligation is completely impossible to implement, in which performance becomes permanently impossible, as it affects the implementation itself. As for the impossibility of performance in temporary force majeure, it is characterized by a temporary nature meaning that the impossibility of performance in temporary force majeure is characterized by a temporary nature. Suspension of the implementation of the obligation is removed by the removal of the temporary impediment that in turn led to the suspension of the implementation of the contract, as it affects the implementation date, but the impediment to implementation must not be due to the error of one of the contracting parties, in addition to the extent of the role of the period in suspending the implementation of the contract.

Second: The Differences Between Them in Terms of the Nature of the Obstacle and the Timing of Its Removal

When looking at the impediment to executing the obligation, if it is by its nature absolute and irremovable, as in the case of the complete destruction of the sold item before delivery, then the destruction has made the implementation of the object of the obligation impossible, which in turn leads to cancellation of the contract, and the impediment that led to the impossibility is, by its nature, irreversible. It affects the implementation itself, but if there are signs and indications that the impediment is temporary and may be eliminated in the future after a period that may be longer or shorter, then the impossibility is temporary.

Third: The Differences in Terms of Their Impact

The effect of permanent force majeure is embodied in the termination of the contract, the absence of responsibility from the debtor and the failure to award compensation to him due to force majeure, which exempts the debtor from implementing his obligation. In return, the obligation of the other contracting party is terminated and the contract is annulled by force of law on its own without the need for a judicial ruling. As for the temporary force majeure, it does not exempt the debtor from fulfilling his obligation, but it allows him to suspend the implementation of the obligation until the effect of the temporary force majeure disappears. Or on the relations arising between the parties to the contract

The Second Requirement: Distinguishing Temporary Force Majeure from Partial Force Majeure

The similarity between partial impossibility and temporary impossibility of contractual obligations is that the foreign cause that led to the creation of the impossibility is that it is something that cannot be expected or prevented and its consequences avoided, which makes the implementation of the obligation impossible in addition to the absence of the element external to the will of the debtor, and that the effect is focused on The stage of implementing the commitment, which represents an obstacle to implementation. The difference is as follows

The Differences Between Them in Terms of Conditions

First:

The conditions that may distinguish partial impossibility from temporary impossibility are that partial impossibility must hinder or prevent the implementation of part of the obligation. Also, impossibility cannot be considered partial unless the multiple obligations are, by their nature, divisible, such that the impossibility of implementing some of them does not result in the impossibility of implementing the . All and thus differs from temporary impossibility, in which the impossibility of implementing one of the obligations results in the impossibility of implementing the contract as a whole for a temporary period.

Second

The Differences Between Them in Terms of the Occurrence of the Obstacle

If the impediment occurs on part of the obligation, the impossibility is considered partial, such that the impossibility applies to part of it and not the rest of the other parts, so the part on which it occurred is the impediment is only the impossible, while the other parts are enforceable. However, if the impediment applies to the entire obligation and for a specific period that may be longer or shorter, and there is evidence that this impediment is, by nature, subject to removal, and after that the obligation is implemented, then the impossibility is temporary.

Third:

The Differences in Terms of the Impact of Each of Them

The debtor's responsibility is not extinguished except to the extent that implementation is impossible if the impossibility is partial, as the debtor remains in the case of partial impossibility committed to fulfilling the remainder of his obligation that has not occurred, and this obligation is not extinguished from him unless the creditor will be harmed by implementing it. As for temporary force majeure, The debtor's responsibility is eliminated to the extent that the matter relates to the period during which the implementation of the obligation is suspended, and in return the implementation of the corresponding obligation is suspended, as long as this temporary impossibility remains, and thus the debtor is not exempted from implementing his obligation, but rather the fulfillment is delayed until its effect expires. In partial impossibility, the consequent effect It is necessary to reduce the corresponding obligation to the extent of the part that was impossible to implement, if this performance is not essential, or to cancel the entire contract if the obligation that was not implemented is essential or does not achieve what the creditor intended from the contract, but if the debtor is unable to implement the obligations within the agreed upon period. Due to temporary force majeure, the creditor, unlike partial force majeure, has the choice of subsequent fulfillment or cancellation of the contract

When many contracts were subject to termination due to the war as a result of the application of the force majeure theory, which leads to the termination of the contract in the event of absolute impossibility, the French Court of Cassation rejected the lawsuits submitted to it during that period, and the court noted from the facts of those lawsuits that the goal of the owners of these lawsuits was It is evading the implementation of their obligations under the pretext of the presence of a force majeure that leads to the impossibility of implementing the contract, and the court saw that these cases can qualify the impossibility as a temporary force majeure.

Law practitioners have been calling for a long time to amend the French Civil Code for the purpose of modernizing the laws, and Resolution No. 131 - 2016 was recently issued on February 10, 2016 regarding amending the Contract Law so that its contents are compatible with the new economic realities and to restore its standards so that it becomes clearer, more understandable, and easier. Reaching it, and thus the amended French law of the year (1804) became the basis for temporary force majeure, as Article (1218) was specified in its new form, which states that (in contractual matters, there is an event outside the control of the injured party that could not have been reasonably expected in At the time of concluding the contract and its effects could not be avoided through appropriate measures unless the parties agree otherwise, if the impediment is temporary, performance shall be suspended unless the delay that results in termination of the contract is justified...)

This article distinguishes between the temporary impediment that leads to stopping the implementation of the obligation, and the final impediment that justifies termination of the contract. Thus, we find that temporary force majeure has a legal basis in French civil law, where the parties to the contract can suspend the implementation of the obligation until the temporary impediment disappears, and if the impediment is final. Fulfillment of the obligation, this justifies termination of the contract, and it should be noted that the new Article (1218) of the French Civil Code is a recent establishment to reform the law of obligations.

THE SECOND REQUIREMENT

The Legal Rooting of Temporary Force Majeure In Jordanian Legislation

The Jordanian legislator explicitly stipulates temporary force majeure in Article (247) of the Jordanian Civil Law No. (43) of (1976) (in contracts binding on both sides, if a force majeure occurs that makes the implementation of the obligation impossible, the corresponding obligation shall expire and the contract shall be annulled automatically. The same, if the impossibility is partial, what corresponds to the part has elapsed

Impossibility and, like partial impossibility, temporary impossibility in continuous contracts, and in both cases the creditor may cancel the contract provided that the debtor knows.

Although the Jordanian legislator mentioned temporary impossibility, unlike most Arab laws, in the ruling he mixed it with partial impossibility and gave the creditor the right to cancel the contract after informing the debtor when one of the two impossibility exists, although the effect resulting from partial impossibility is completely different from the effect of impossibility. Temporary force majeure, in which the effect is the cancellation of part of the contract that cannot be implemented by one of the contracting parties, and it remains for him to implement the other part of the contract, while the effects of temporary force majeure are the suspension of the implementation of the contract, and the resumption of the implementation of the entire contract after the temporary impediment that led to the disappearance of pause.

THE THIRD REQUIREMENT

The Legal Rooting of Temporary Force Majeure In Iraqi Legislation

If the temporary force majeure that results in the cessation of the contract is an exceptional case within the scope of civil law, then it is quite the opposite with regard to the labor law, as it is considered a common situation because the texts of the labor law in particular expand by taking them into account for practical considerations, including that what results from temporary force majeure Suspending the contract enables the parties to keep the employment relationship in place so that it can resume its effectiveness again after the reasons for the suspension have disappeared, which brings benefit to both the employer and the worker at the same time.

Article (72/First) of the Iraqi Labor Law No. (37) of (2015) stipulates the following: (If work stops completely or partially as a result of exceptional circumstances or force majeure, the employer must pay the workers' wages for the period of suspension until (30 (Thirty days, and the employer may assign the worker another similar job or unpaid additional work as compensation for the lost time, provided that the unpaid overtime does not exceed (2) two hours a day and (30) thirty days a year).

Although the Iraqi legislator in the Labor Law did not mention temporary force majeure directly, it is what is intended in the above article, and this is indicative of the consequential effect that this article began with, which is the cessation of the contract, so the law in Article (72) implicitly specified the condition of temporary force majeure if Work has been completely or partially suspended as a result of the temporary impediment. It becomes impossible for one or both parties to the contract to carry out its obligations due to temporary force majeure, this impossibility of a temporary nature does not lead to the termination of the contract, but rather to its cessation. The cessation in the framework of the labor law is due to the special character of the employment contract as it is a contract. It responds to undertaking an effort related to the person of the worker himself, and then to his psychological state and social circumstances. Therefore, undertaking this effort may be hindered by difficulties related to the worker's person, due to his health or social condition, leading to a decrease in the amount of this effort, or to the complete impossibility of providing it.

THE FORTH REQUIREMENT

Temporary Force Majeure Applications

The reasons that lead to temporary force majeure are many, including war, acts of aggression, terrorism, closures, epidemics, natural disasters, and these are examples that are not limited to them.

The First Requirement

Judicial Applications of Temporary Force Majeure In the French Judiciary

The French courts were the first to establish the theory of temporary force majeure when they ruled to halt the implementation of some ongoing contracts, which were mostly supply contracts whose implementation had been suspended due to the war, after it became clear to them that the impossibility resulting from the grave events that France went through during The War of 1870, and in the wake of World War I in 1914, is a temporary force majeure, not a permanent one. The French Court of Cassation established the principle that “in the event of a temporary force majeure, the debtor is not freed from implementing his obligation, but rather this implementation is suspended only until the moment this period disappears.” Temporary impossibility”

The French judiciary has applied the theory of temporary force majeure in the sales contract that includes the condition of the seller’s delivery. If a force majeure intervenes that temporarily prevents the implementation of the contract, the contract is suspended until the impediment is removed. The moratorium system has also been applied to the lease contract in multiple judicial applications. This judiciary has come out of During these applications, a rule stipulates that every temporary disruption of the use of the rented property results in the possibility of reducing the rent, or even canceling it until the end of the period during which it is impossible to occupy the rented property.

This is without the need to cancel the lease contract or close the commercial store for several weeks due to a violation of the legal use of the temporarily rented property.

The Second Requirement

Judicial applications of temporary force majeure in the Arab judiciary.

The Jordanian Court of Cassation () in its legal capacity applied temporary force majeure in its decision, which stated: “What is learned from the text of Article (448) of the Civil Code is that if it is impossible for the debtor to implement his obligation due to a reason other than him, such as force majeure or otherwise, the obligation has expired and cannot be claimed, as there is no Forced to implement an impossible, and the impossibility of implementation must be final and not temporary in nature, because if it is temporary, it results in non-performance only temporarily, meaning that the obligation does not expire, but rather stops only during that impossibility, and its implementation is resumed as soon as the temporary impossibility disappears and that foreign cause does not have an impact on the obligation. The establishment of the contract during the period of impossibility, and since the defendants are obligated to the plaintiff to pay a certain amount of money in Kuwaiti currency, and it has not been proven that fulfilling it has become impossible due to the circumstances that occurred, the obligation does not expire and remains in place and must be fulfilled.

The Third Requirement

Judicial Applications of Temporary Force Majeure in the Iraqi Judiciary

The Iraq Court of Cassation tended to allow the suspension of the contract, if the impossibility of implementing the obligations arising from it was of a temporary nature, and it stated in one of its rulings (108) that: “The plaintiffs based their initial claim by demanding cancellation of the contracting contract and compensation for the value of the work completed due to the impossibility of implementing the contracting contract due to the circumstance.” The security situation that Nineveh Governorate is going through, which prevents the continuation of the implementation of the contract, and since the plaintiffs’ representative limited his claim before the Court of Appeal to terminate the contract, and reserved the filing of an independent lawsuit for the dues, and since the request to terminate the contract requires a breach by the other contracting party in accordance with the provisions of Article (177/1) of The Iraqi Civil Code, whereby

The defendant did not breach his contractual obligation, and the cessation of work was beyond his control for a foreign reason, which makes the claim to terminate the contract baseless in law.

Fourth Requirement

Applications Of Temporary Force Majeure In Epidemics

When the Corona epidemic swept the world and the spread of this virus affected all aspects of political, economic and social life, a state of emergency was declared in many countries of the world, and economic and social conditions were also affected by the emergence and spread of this virus

The French Minister of Economy and Finance issued a statement on February 28, 2020, stating that “the Corona epidemic is considered a force majeure, and therefore the delay in delivering obligations according to the dates contained in the contracts concluded by the state with small and medium-sized companies resulting from the invasion of this epidemic will not result in the imposition of penalties.”

Iraq has been affected by the epidemic, which called for the formation of a crisis cell to take all preventive measures in order to preserve public safety from the dangers of the disease. The cell issued Diwaniyah Order No. (55) of the year (2020), which considered the Corona virus a force majeure for all projects and contracts starting from the 20th. /2/2020 until the Ministry of Health announced the end of the Corona epidemic, which considered the situation to be one of the main reasons for granting a pause in contracts as long as they were affected by the curfew and holidays granted as a result of the Corona epidemic, and its decision issued to continue the curfew until (11) at night and the date approved by the authority The Executive Committee considers the period of the Corona virus crisis as a force majeure, which is the approved date on which the temporary impossibility of implementing contracts begins, and the situation continues until a subsequent decision is issued by the Ministry of Health regarding the end of that force majeure in a way that allows individuals to resume the implementation of their contractual obligations.

CONCLUSION

At the end of our research, we reached several results and proposals, which we mention as follows:

RESULTS

Temporary force majeure is considered a legal idea that addresses an important aspect of the contract. Although most legislation does not mention temporary force majeure, it is limited to addressing the absolute impossibility of implementing the obligation and then the termination of the contract. However, the contractual relationship between the parties is not hindered by incidents that often lead to It is absolutely impossible to terminate the contract. Rather, it may be interrupted by temporary incidents that do not lead to its cessation, but rather constitute a temporary obstacle to re-implementing the suspended obligation and making the contract enter into force again after the obstacle that obstructed its implementation is removed.

One of the advantages of suspending the implementation of an obligation is adding a kind of flexibility to the absolute impossibility, as it is a reality that contradicts the cancellation of the contract and imposes obligations on its parties in order to cooperate and strive in good faith to remove the obstacle and resume implementation of the contract again.

Temporary force majeure is considered a legal situation imposed by reality and the interest of the parties. It is not considered a strange system, but rather it is implemented in several cases, such as the case when the contracting parties agree to implement it by including it in the terms of the contract. Therefore, the importance of temporary force majeure appears in the positive role it plays in economic transactions. And commercial.

SUGGESTIONS

We suggest that the Iraqi legislator include temporary force majeure among the legal articles in the Iraqi Civil Code in order to provide relief to contractors whose contract is about to be terminated and to preserve the contractual bond.

We propose to amend the legal text in Article (425) to become as follows: (In contracts binding on both sides, the obligation is extinguished if the debtor proves that fulfilling it has become impossible due to force majeure

beyond his control. However, if the impediment to implementation is temporary, the obligation is suspended unless it results in Comment: Termination of contract).

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