

The Impact corona pandemic on the Authorization contract: (A comparative study)

By

Thamer Jasim Muhammad
Al-Esraa University College, Iraq, Baghdad
Email: dr.thamerjasem@esraa.edu.iq

Abstract

It is well known that the Corona pandemic is a global pandemic, as declared by the World Health Organization, as it disrupted all life facilities and made the world in a state of anxiety and alertness, Therefore, the authorization contract in the civil law, which is one of the so-called contracts, and it is of great significance in various areas of life and is considered a contract in which a person resides in his place in a permissible behavior according to what is stated in the definition of the Iraqi civil law in the text of Article 927. The Iraqi legislator has divided the authorization into types, including the public authorization, the private authorization, the penal authorization and the authorization of vehicles, The legislator mentioned several characteristics that distinguished the authorization contract. Among the most prominent obligations that the legislator mentioned to the agent is to preserve the funds of his client, in addition to an obligation not to exceed the limits of his client, and to exert the necessary care in implementing the authorization. The authorization contract may be terminated by law, in the event of the death of the agent or the client, or if one of them departs from the eligibility, or the authorization ends with voluntary reasons represented by the principal dismissing his agent or the right of the agent to retire the authorization.

Keywords: authorization, contract, obligations, covid-19 pandemic, majeure power

Introduction

The authorization has a great significance in different aspects of life. The authorization is considered one of the so-called contracts, and the Iraqi Civil Code has singled it out in Articles 927 to 949 thence. The significance of the authorization is that the person concerned with the legal act may not be able to conclude this act himself due to certain circumstances that prevent his presence in the contract council or for lack of eligibility or for any other reason, and then another person acts on his behalf in concluding the legal act, and the authorization is considered a form of the hearing and the most important practical application of it, but it must be distinguished between them for the independence of each of them from the other, as the prosecution may exist without the authorization , as in the case of the curious, guardian or trustee, then Each of them is considered a representative by law without a proxy contract.

On the other hand, the authorization may be held in which it is agreed that the agent enters into contracts in his name and not in the name of the principal, provided that he transfers the effects of these contracts to the principal later.

First: the significance of research

The significance of the authorization is highlighted in the prevalence of dealing with it among people in many legal actions such as buying and selling and other actions. Regarding the client in concluding and implementing a legal act that the client is unable to do for some reasons, it is considered one of the scientific solutions for the completion and management of

special transactions in the field of commercial transactions based on speed and credit.

Secondly: The Research Problem

The problem revolves what the authorization contract is and what the obligations that it may contain, in addition to the legal adaptation of the aforementioned contract in light of the Corona pandemic, so that this contract be affected by the occurrence of the pandemic, and can the obligations involved in it be changed?

Third: The Outline of the Research

We will divide the research as follows:

The first topic: the definition of the authorization contract.

The first requirement: the definition of the authorization contract.

The second requirement: distinguishing the authorization contract from similar legal situations.

The second topic: the obligations involved in the authorization contract.

The first requirement: the obligation of the agent towards the principal.

The third topic: Authorization contract in light of the Corona pandemic.

The first requirement: the extent to which the authorization contract is affected by the pandemic as a force majeure.

The second requirement: the extent to which the authorization contract is affected by the pandemic, as it is an emergency.

Introducing the authorization contract

The investigation into the responsibility of the agent arising from the authorization contract, which arises due to the agent's breaching of what was entrusted to him, either because he exceeded the limits of the authorization in terms of persons or where the subject matter, or because he did not take the necessary care in implementing this authorization, or because he did not provide an account to the principal on behalf of the authorization. He shall be liable in the event that he fails to protect the funds of his client.

Therefore, we will divide this study into two parts:

The first requirement: the definition of the authorization contract

The second requirement: distinguishing the authorization contract from similar legal situations

The first requirement

Definition of authorization contract

Article 927 of the Iraqi Civil Code states that the authorization is (a contract in which a person other than himself takes his place in a known permissible behavior).()

The Iraqi civil law did not set a general theory for the prosecution, but rather it included some applications for it in the authorization contract and in the sales contract, such as the guardian, trustee and trustee selling their money to the minor or buying the minor's money for themselves. However, the Iraqi draft civil law issued in 1986 (distinguished between the prosecution and authorization, the authorization's right is in the named contracts received on the work, it is a contract between the principal and the agent, contained on the work of the agent, then he singled it out with the provisions of the prosecution on the part of its source. Prosecution if Article 878 of it stipulates that (the provisions of the prosecution shall apply to the authorization unless a special provision is provided for it.)(

The Iraqi Civil Code draft issued in 1986 defined authorization in Article (859) of it as

“a contract in which the principal establishes another in the place of himself in undertaking a specific legal act”.

As for the types of agencies in Iraq, they are divided into public, private, penal and vehicle agencies.

Absolute general authorization: the authorization that bears a phosphoric stamp at the top that the client takes exclusively from the notary public department. This authorization gives the agent the right to dispose of all movable (represented by money, cars, etc.) and immovable (real estate) funds that belong to the principal, such as selling, buying, renting, mortgaging and any other disposal as if the agent is the same as the principal. Power of attorney for arrest, payment - opening bank accounts. (...)

General authorization or attorney's authorization: There are two types of attorney authorization, where the principal gives it to the attorney for the purpose of conducting all that concerns his principal, including reviewing governmental and non-governmental departments, conducting legal procedures, and sometimes writing the right of power of attorney to others, buying and selling, and some concepts that the attorney sometimes needs from his client (Akanle & Shadare, 2020).

The other type is given by the client to an ordinary person and not a lawyer. The same conditions are also deleted, so the word “lawyer” is deleted, and the name of the ordinary person is written.

As for **the special authorization:** it is one type, and its paper is distinct and bears a special phrase at the top. This type of authorization is more specific for the agent to perform the legal act on behalf of his client in a timely manner, in a specific manner. For example, it mentions the name of the department that the agent is referring to and the type of review. For example, the agent (lawyer) reviews the real estate registration department for the purpose of conducting legal procedures in property No. such and such and in the county so and in the folder so and so. Here, it is a precise allocation. After the agent has completed the legal act in its intended form, it means that the special authorization has expired and is of no use for the agent to perform any other obligation on behalf of the same principal.

As for **the penal authorization**, this type of authorization is similar to the private authorization, if not more specific than it. The penal authorization can be organized between the client and the agent before the judge and ends with the expiry of its reasons, meaning that the agent according to it is not entitled to use it in the performance of any other obligation of the client himself, given that the place of the authorization has been eliminated.

Finally, **the vehicle authorization** is done for the purpose of documenting the authorization of selling or using the vehicle on behalf of its legal owner, which requires that its number, year of manufacture, color, chassis and engine number be proven, provided that the authorization is stamped by the relevant Traffic Directorate in order to become valid. On the other, according to the purpose of the authorization, as follows: (Arab, 2020)

Some of them are used to sell and drive vehicles, others are used to drive vehicles, and some are for the purchase and numbering of the vehicle, and it is possible to combine the above three phrases into one authorization.

(1) **As for foreign agencies**, which are agencies that are issued by Iraqi or non-Iraqi clients outside Iraq to an Iraqi agent with various legal procedures and works that the client needs from the agent to carry out the procedure or work, the agent must certify them at the Iraqi Ministry of Foreign Affairs and with the notary of his city and enter it into the tax and after

passing through the departments All three, the client can then carry out the procedure or legal work of the client.

(2) The second requirement

(3) Distinguishing the authorization contract from suspected legal situations

(4) The authorization contract is distinguished from all other contracts in that its subject is a legal act and not a material act. What distinguishes the prosecution, or the representative authorization is that the effect of the prosecution is directly related to the trust of the principal and does not affect the agent's liability in any of it, and this feature can be used as a criterion to distinguish the authorization from a trigger of the legal situations in which it is mixed

(5) Distinguishing the representative authorization from the authorization by commission and the labor contract

(6) In the authorization by commission, a contract under which the agent pledges that he performs in his name a legal act for the account of the principal (). Thus, the commission agent (he is an agent who proceeds to act on behalf of his client, but in his name, not in the name of the client, so the effects go to him or not to transfer them in turn to the client, and from here he is an agent not a representative)

(7) In the pseudonym or mocked, the agent acts on behalf of his client and his relationship with his client is subject to the provisions of the authorization contract, but he hides his authorization from others and acts in his name, not in the name of the client.

(8) So, what distinguishes a representative authorization from a commission authorization contract and a pseudonym is that the agent under the representative authorization is a representative agent, while the agent in the commission authorization contract and the pseudonym is a non-representative agent.

(9) Distinguishing the authorization from the pledge from others

(10) Article (151) of the Iraqi Civil Code states that:

(11) If a person promises to make a third party abide by an order, he does not bind others to his promise, but binds himself, and he must compensate whoever contracted with him if others refuse to abide, and he may, however, get rid of Compensation by himself carrying out the obligation he promised if he is able to do so without harming the creditor.

(12) 2- But if a third party acknowledges this promise, his acknowledgment does not produce an effect except from the time of its issuance to show him the intention expressly or implicitly that the acknowledgment is based on the day on which the acknowledgment is made. The promise was made.

(13) If what distinguishes the pledge from others from the representative authorization is that the pledgee contracts in his name and not in the name of others (), while the representative in the representative authorization concludes the act in the name of the principal and not in his own name.

Distinguishing authorization from subscribing for the benefit of others

The stipulation in the interest of others is a legal act in which a person called the conditional on another person called the undertaker to perform a specific performance for the benefit of another person called the beneficiary () and that the condition is in the interest of others in order to be fulfilled, the following three elements must be met:

1. The stipulator stipulates that the contractor has a direct right to the beneficiary
2. That the stipulator contracts in his name and not in the name of the beneficiary.
3. That the stipulation behind this condition has a personal interest.()

So what distinguishes the representative authorization from the requirement for the benefit of others is that the agent in the representative authorization acts in the name of the principal and for his account, while the stipulated contracts in his personal name, not in the name of the beneficiary, meaning that (the stipulated contracts on his own behalf and not on behalf of the beneficiary, he proceeds to act in his personal name with the contractor And it remains, as an original party, that it is related to the relationship of that disposition that created a direct right to the beneficiary. As for this beneficiary, he is a foreigner who does not enter into a party to the disposition in the name of the original, so the latter is a party to that disposition without the representative's representative, because this agent is not related to others with the behavior concluded with him).

Distinguishing authorization from indirect action

Article 261 of the Iraqi Civil Code states that (every creditor, even if his right is not due for payment, may use in the name of his debtor the rights of this debtor except what relates to him personally or what is not subject to attachment. He did not use those rights, and his neglect of that would cause his insolvency and increase this insolvency, and it is not a requirement to notify the debtor, but he must be included in the case (De La Hoz, 2021)).

Article 262 of the Iraqi Civil Code states that (the person who always uses the rights of a debtor is considered a representative of this debtor, and every interest that results from the use of those rights is included in the debtor's money and is a guarantee for all his creditors).()

It is clear from the above texts that the indirect lawsuit is (a means invoked by the creditor to preserve the debtor's financial liability, which is a general guarantee for the fulfillment of his obligations).()

The court, then, from giving the creditor the invitation is that the debtor has something intentional or negligent may refrain from claiming his right out of neglect from him or to the detriment of the creditors. Which the debtor stands by, and this positive method is nothing but an indirect lawsuit.()

The commentators of the Iraqi civil law believe that the indirect lawsuit is a legal prosecution of a special kind, as it is a legal prosecution because the law imposed it on the debtor for the permanent interest, and it is of a special kind because the prosecution here is decided in the interest of the representative, not in the interest of the original This represents a departure from the general rules established in the prosecution.()

However, an opposite trend in Iraqi jurisprudence views the indirect lawsuit (as the parties to it are the creditor and the debtor of the debtor, and these three parties are like the parties to the representative authorization (the representative's agent and the principal – the principal – and others) and that it is initiated by the permanent in the name of a city just as the

representative agent acts in the name of the client. This lawsuit was seen as if it was a prosecution, but in fact this indirect lawsuit is not a prosecution in the strict sense of the word, the basis of the prosecution system in general and the legal prosecution, in particular, is that the representative's activity returns economic benefits that the principal gets. The prosecution does not exercise for his own interest, but for the interest of the principal. Rather, the attorney directly assumes the disposal of the legal prosecution specifically, but there is no doubt in order to achieve the interest of the principal, and this is unlike the case in the indirect lawsuit, for this lawsuit is decided in the interest of the creditor and not in the interest of the debtor on the assumption that the creditor (A representative agent) and the debtor (a principal). The creditor uses this lawsuit to achieve his personal interest, not to achieve a civil interest. This difference between the two concepts has led to the fact that the speech in this lawsuit is not devoid of the expression that it is a representation of a special kind, this besides, what this lawsuit requires is that the debtor enters, which appears to be a party to the lawsuit, while the client has no income according to the prosecution theory in what was entrusted to his deputy attorney.

The second topic

Obligations involved in the authorization contract

When the authorization contract is concluded in a valid legal manner, it will produce its legal effects for its two parties, resulting in various obligations that must be implemented, and the offender will not be exposed to liability, so we will divide this topic into two demands:

The first requirement: the obligation of the agent towards the principal

The second requirement: the obligation of the agent towards others

The first requirement

The obligation of the agent to the principal

The agent's commitment to the authorization limits when executing the work entrusted to him is one of the very important funds that the law imposes on the agent (), as he is supposed to abide by these limits that the principal undertakes to pay for him. Which are limits in terms of subject matter or persons, and here the agent must not exceed those limits, but rather he must apply them so as not to expose himself to responsibility.

Since the most prominent manifestations of authorization restriction is what is related to the subject, and what is related to persons, we will divide the request into two branches: we devote the first to examining the limits of authorization in terms of the subject and the second we allocate it to the limits of authorization in terms of persons.

Article 931 of the Iraqi Civil Code states (It is valid to allocate the authorization by specifying and circulating the entrusted with it, by circulating it, and from everyone else an absolute power of attorney authorizing every right he has and litigation in every right he has, the validity of the authorization, even if the litigant and the litigant are not appointed). Similarly, Article 932 of the Iraqi Civil Code stipulates that (it is valid to delegate an opinion to an agent and he disposes of what he is entrusted with as he wants, and it is valid to restrict it to a specific disposal)

If the foregoing texts of the Iraqi civil law, it is clear that this law allows the generalization and allocation of the authorization and permits the absolute general authorization so that it includes all the work of administration and disposal, which means that the authorization under Iraqi law is not special except for the specialization of the person assigned to it and that the authorization in work does not require donation that the donation is

received on a specific store. And that the Iraqi law here differs from the Egyptian civil law, which limits the general authorization to management actions only without acts of disposition, as Al-Sanhouri thinks.)

It is worth mentioning that the Iraqi Code of Pleadings has restricted Article 931/Civil by stating that “the absolute general authorization does not authorize the agent without a special authorization to acknowledge a right, waive it, conciliation, arbitration, sale, mortgage, lease, or other contracts of exchange, nor cash, nor donation, nor directing the oath, nor rejecting it, accepting it, rejecting the rulers or complaining about them, exercising purely personal rights, or any other act for which the law requires a special authorization .

Some researchers thinks that this paragraph has been legislated to limit the powers of the agent, which are not limited. The agent must abide by the limits set for him by the principal in the implementation of the authorization, which are required by the nature of the work in which he is entrusted (). And he must not deviate from these limits, neither in terms of the method of implementation nor in terms of the extent of the authorization capacity and the legal actions it includes. From the Iraqi Civil Code by saying (the rights of the contract belong to the contracting party, so if the agent contracts with others in the name of the principal and within the limits of the authorization, the contract falls to the principal and all his rights return to him)(

The authorization may not be restricted by the persons who contribute to the conclusion of the disposition entrusted to it, and it may be restricted by the agent's dealings with a specific person or by not dealing with a particular person or other restrictions. However, the most prominent aspect of this adherence to the authority of the agent is what is mentioned in the agent's contract with himself and that there are two other prominent aspects beside him, one of them responds to the multiplicity of agents and the second is to delegate the agent to another .()

First: the agent contracted with himself

The agent may contract with himself on behalf of one of the parties to the contract, and he may contract with himself on behalf of each of the two parties to the contract. The important question is, is this contract valid?

In order to answer this question, we must first look at the legal adaptation of the agent's contract with himself, because this topic is extremely important (it has been said on the scientific level that it does not meet what the contract should entail in terms of reconciling the interests of the contracting parties, and it is a cause for suspicion in favoring private interest or Favorability of one of the parties On the theoretical level, it was said that such a contract is logically impossible to accept because it contradicts the idea of a contract based on the compatibility of two wills issued with two different persons.

Therefore, regarding the legal conditioning of the agent's contract with himself, two theories have emerged:

The actual contract theory

It requires that the agent's contract with himself in both forms is a real contract based on the plurality of the will, but all that is in the matter is that the expression of each of these two wills is issued by one person who is the agent.

The individual will theory: which states that the agent's contract with himself is an act of a unilateral will that produces the effects of the contract, that it is done by the unilateral will

of the agent, on which the law has an effect that extends to the parties to the contract.

We believe that the theory of the unilateral will is the most correct among the theories that have been accepted regarding determining the legal basis for the agent's contract with himself because it is consistent with the idea of representation.

As for the position of the Iraqi law, Article 592 of the Iraqi Civil Code stipulates that (1) Agents may not buy the money they are entrusted with selling it, and it is not for the managers of companies and those who are in their position, nor the employees to buy the money they are charged with selling or that is sold by them, not for bankruptcy agents or for guards Liquidators may buy the funds of the bankruptcy or the funds of the insolvent debtor. The liquidators of companies and estates may not buy the funds they describe. The brokers or experts may not buy the funds entrusted to them by selling it or assessing its value. And none of these may buy, even by public auction, neither by himself nor under a pseudonym, what is prohibited. 2- He must buy it 2- Provided that the purchase with the funds stipulated in the previous paragraph is valid if the person for whom the sale was made is authorized, when the time of the license has acquired the legal capacity, but if he does not allow it and sell the money again, the first purchaser shall bear the expenses of the second sale and what may have been reduced from sales value.(

It is also familiar that there is a third obligation of the agent, which is his preservation of the money of the principal, and this matter requires us to look into two issues:

The first: the issue of adjusting the hand of the agent to the money of the principal. The second: the issue of whether or not the agent may use the principal's money for his personal benefit.

The Iraqi law stipulates that (the money that the agent received on behalf of his client is a trust in his possession.

If from the above text it becomes clear to us that the Iraqi legalization considered the agent to be dependable, and therefore all the money of the principal in his possession is considered a trust with him, and the provisions of the trust shall apply to it from the necessity of care to preserve it and the obligation to return it to its owner upon its request and not to guarantee the agent when it is damaged unintentionally or violation, just as the principal He may ask the agent to prove the loss of his money, and the Court of Cassation came in one of its decisions in agreement with that by stipulating in one of its decisions (since the agent is trustworthy and certified by his oath)

Also, the Lebanese Law of Obligations and Contracts confirmed that the agent is responsible for the things he received through the authorization in accordance with the conditions stipulated in the articles regarding the deposit (). The commentators of the Lebanese law believe that the legislator considers the agent to be trustworthy, and therefore the agent, under the Lebanese legalization, must ensure the maintenance of the things and the sums handed to him by the principal, such as his watch over the maintenance of his private things, if he is not allowed to hand these things to another person as a deposit unless he permits the principal explicitly or decreed that it is a very urgent necessity

It is clear from this that the Lebanese law agrees with the Iraqi law on this issue. It is worth noting that the agent who receives funds for the benefit of the principal and those funds are described as unpreserved or disposed to decrease, he must here in that case ask for

instructions from the principal in order to get rid of liability. Otherwise, he is considered responsible in accordance with his obligation to preserve the funds His principal, because the agent is obliged to pay the damage on behalf of his principal's money by taking the necessary measures to ensure that the damage and corruption are removed from the principal's money, even if the principal is not aware of this.

The second requirement

The agent's obligation to others

The responsibility of the agent towards others may arise as a result of his personal act or due to the act of others, and that the Iraqi Civil Code stipulates responsibility for the work of others in specific cases in Articles 218 and 219. Therefore, we will divide this requirement into two sections. In the first, we will deal with the agent's relationship with others in the event that the agent adheres to the limits of the authorization in the second we deal with this relationship in the event that the agent departs from the limits of the authorization.

The most important characteristic of the prosecution system is that the effects that result from the legal action concluded by the agent on behalf of the principal pass directly to the principal without going through the agent's protection, and therefore the departure of these effects directly to the trust of the principal is not achieved unless the agent did not exceed the limits of his authorization established.). To sum up, the agent is not responsible towards others unless he commits a mistake that requires his responsibility, but if he does not commit a mistake, he is not responsible towards others even if the latter suffers damage from the implementation of the authorization.

It should be noted that the agent and the principal have the right of each of them to refer to the other and ask him to implement the obligations arising from the legal disposal of the authorization, if the authorization included the implementation of the act in addition to its conclusion. The agent shall be responsible towards third parties if he has guaranteed the principal's implementation of his obligations. The third party here can have recourse against the agent if the principal does not do so. The agent shall also be liable toward third parties if he was bound by an additional accessory contract with special conditions. In this case, a third party may have recourse against the agent. According to what was included in that contract, bearing in mind that the agent is not liable if the agent's formula bears two interpretations in connection with its limits, and the third party took one of them, then this interpretation was found to be incorrect, because the ambiguity of the matter on the third party within the scope of the agent's authority is not attributable here to the agent, but to the third party himself. As a result of avoiding the correct interpretation.()

Thus, to conclude, the agent is responsible towards a third party or towards the principal or the like together if he commits a mistake. However, some writers believe that the establishment of a direct relationship between the agent and third parties does not come as a result of the behavior that takes place in the manner of representation, but rather comes on the occasion of the conclusion of that act and this is what makes that legal relationship It is distinct and not related to the effects of the prosecution, that is, the basis for a third party's recourse to the agent to compensate for the damage arising as a result of the error occurred from him is the tort responsibility and not the attorney's inclusion in the effects of the act concluded in the name of the principal and for his account, so the agent's responsibility towards others here is nothing to the effects of the prosecution.()

The character of the agent is negated by the person in the actions that take place outside

the limits of his authorization, and that the effects of such actions are provisions that result from going beyond the limits of the representation and not on the representation itself.

It is worth noting that the agent is not responsible towards others if he exceeds the limits of what he has been entrusted with or works without a power of attorney at all if the third party dealing with him is informed of this, as if the agent, for example, had been authorized to rent a specific house, so the agent sold the house and took possession of its price instead of renting it but the buyer of the house knew before buying that the agent is only allowed to rent the house and not sell it because the agent told him so, but with this he bought the house and paid the price to the agent a ton of it that the principal will inevitably approve this sale, in this example the agent is not responsible to the buyer for Exceeding the limits of his authorization , because he informed this buyer that he exceeded the limits of what he was entrusted with, so the buyer in that case had contributed with the agent in the mistake committed, which is to go beyond the limits of the authorization . His acceptance of such work cannot be justified by the fact that he hoped the principal would perform by approving this sale because this act is outside the agent's control, and therefore the agent is not questioned about its non-realization as long as he did not undertake to do so, and according to the agent, he disclosed to others the capacity of his authorization to be protected from liability in the event that the principal did not authorize his action.()

It should be noted that if a third party contracts with the agent knowing that the agent has exceeded the limits of his authorization , the third party in that case cannot withdraw his offer until the principal announces his intention to ratify or not what the agent has done because the knowledge of the third party that the agent has exceeded the limits of the authorization makes him obligated to remain The positive shall take a reasonable period until the principal discloses his intention to ratify or not to ratify.

However, sometimes the agent informs the third party with whom he contracts that he exceeds the limits of his authorization, but he undertakes to make the principal authorize that contract.

The absence of the capacity of the representative while the third party is not aware of the truth or extent of the authorization does not make the agent responsible towards third parties on the basis of the contract concluded between them, because the effects of this behavior do not go to the principal, and this does not mean that it leaves the agent. These effects are not realized in his responsibility based on the contract The source of his responsibility towards others is the tort liability on the basis of what was made by him of the error represented in what was hidden from this expression of the reality of the authorization, presence or capacity, which entails the obligation to pay compensation() . Or the agent is liable towards others if he guarantees the principal's declaration to act beyond the limits of the authorization only and does not guarantee him the principal's implementation of the obligations. The agent asks the third party here the responsibility of the guarantor, because the recourse to him in these two guarantees does not, in fact, extend to the effects of the representation in an absolute sense, as it follows from what arises from the conduct of the agent in the name of the principal with others.

If it can be said that the agent's responsibility towards third parties in the event of exceeding the limits of his authorization does not fall within the effects of the prosecution, because the authorization did not represent in this case in the first place, just as the agent is responsible toward others if he ensures that the disposition takes place within the limits of his

mandate, then it turns out otherwise. As for the legal basis upon which the agent's responsibility towards others is based in case he exceeds the limits of the authorization, the legislation has been divided into two directions:

The first direction: what is stipulated in Articles 1382 and 1383 of the French Civil Code, which stipulates that the basis of the agent's responsibility towards others is tort liability.

The second trend: what the Swiss civil legalization and the civil and Italian legalization went to, where this trend says the idea of error when forming the contract as a basis for the responsibility of the agent towards others, and this direction approaches the English law.()

The third topic

Authorization contract at the time of Corona pandemic

The Corona epidemic has spread rapidly in the countries all over the world, announcing its beginning from the Chinese city of Wuhan, to move within a few days to various parts of the world, and since this virus is rapidly transmitting, according to what was reported by the World Health Organization, which necessitated strict preventive measures from all countries to limit its spread. The measures are to disrupt working hours in all public and private facilities, declare a state of emergency and ban curfews in most countries of the world for the purpose of preventing the spread of the epidemic, which is transmitted quickly from a sick person to a healthy person.

Since most countries of the world have disrupted most areas of life for the purpose of preserving the lives of citizens, there is no doubt that this has an impact on all aspects of life within one country and between these countries and other countries, contracts were not immune from this influence, especially international contracts such as contracts for the sale of goods International contracts and services, such as technology transfer contracts, communications contracts, consumption and insurance contracts, and others.

The research is of great importance at the present time because of the declaration of a state of emergency in the country, which led to the suspension or obstruction of most civil contracts without knowing what the obligations and rights of their parties will lead to.

Therefore, we will divide the study into two parts

The first requirement: the extent to which the authorization is affected by the pandemic as a force majeure.

The second requirement: the extent to which the authorization contract is affected by the pandemic, as it is an emergency condition

The first requirement

The extent to which the authorization contract was affected by the pandemic as a force majeure

Corona virus (Covid-19) is a global pandemic according to the declaration of the World Health Organization (WHO) on March 11, 2020, and accordingly strict measures were taken to contain the outbreak of this epidemic (). A state of public emergency was declared in most countries, curfews were imposed, official working hours were suspended in all institutions, and human gatherings were prohibited in all their forms to limit its spread. This affected all areas of life, especially the impact this epidemic had on contracts, agreements and obligations concluded and signed between individuals and international companies, which Leaving the

parties to the relationship on the one hand and the jurists on the other hand in confusion, the contracting parties questioned the fate of their obligations and rights arranged by the contracts concluded between them! What is known is that (the contract is the law of the contracting parties), so the contracting parties can agree on whatever terms and conditions they want, but neither party to the contract can modify it in a unilateral way, so no party can independently cancel, modify, or rescind the contract if there is no agreement on that.

But if a foreign reason arises on the contract, such as this epidemic, it will make the implementation of the obligations cumbersome or impossible, and the two parties or one of them may resort to requesting its annulment, expiry or amendment to restore the contractual balance and raise the damage to a reasonable limit.

Here, this pandemic must be legally adapted to know its effects on the obligations of the contractors in the authorization contract, so the question is, is the Corona pandemic a force majeure, that it is an emergency circumstance?

The legal jurists defined force majeure as every act that has nothing to do with the will of the debtor and cannot be foreseen or prevented, as it makes the implementation of the obligation impossible to absolve the debtor from any responsibility, whether contractual or neglecting (). The conditions of force majeure are as follows:

- 1- The debtor should not have caused that accident, and if he had been involved in it, he is considered to be in default and must be guaranteed.
- 2- That the accident is something that cannot be foreseen at all at the time of the conclusion of the contract. If the matter is something that can be foreseen, it is not considered a force majeure, and the judiciary usually goes to adopting the objective criterion (the standard of the usual person) to determine whether the thing that happened can be foreseen or not.

3- The impossibility of pushing the event upon its occurrence or its realization, as the element of surprise and surprise did not leave an opportunity to confront it. Epidemics, wars, economic crises, and natural disasters, if they are unexpected things, are all force majeure.()

We can adapt the Corona pandemic as a force majeure that affects the authorization contract as it is a foreign cause outside the will of the parties and the latter makes the implementation of the commitment impossible in addition to the fulfillment of the other conditions mentioned above.

However, what happened in most legislation, jurisprudence and the judiciary is the use of the term force majeure in internal and external obligations to denote the singularity and its clarity (). Most of the legislations referred to the term force majeure, including the Iraqi legislator on several occasions, including what came in Article 211 of the Iraqi Civil Code No. 40 of 1951 in force, which states: A sudden, force majeure, act of a third party, or the wrongful act of the aggrieved party shall not be bound by the guarantee unless there is a text or agreement to the contrary

The Corona pandemic is one of the exceptional and sudden incidents in which neither party to the contract has a hand, and no one could have predicted its occurrence or occurrence. It is a quick and sudden pandemic that moved from China to the world within a few days. As long as we are about the impact of this epidemic on contracts in general and on the authorization contract in particular, it is no secret to anyone that the debtor may also be a creditor at the same time, and this matter is recognized in contracts binding on both sides, so every creditor is a debtor, and every debtor is a creditor. This epidemic is a force majeure, so the content of this

adaptation will go to both contracting parties.

The second requirement

The extent to which the authorization contract is affected by the pandemic as it is an emergency

The theory of emergency circumstances is defined in jurisprudence as a set of rules and provisions that deal with the harmful effects of one of the contracting parties resulting from changing the circumstances under which the contract was established. The contract was concluded, it was necessary, and one of the contracting parties may not withdraw from it or amend it except by virtue of a provision in the law or by mutual consent). At a loss, and the direct effect of the theory of emergency conditions is to respond to the obligation of the party who was affected by the occurrence of the emergency circumstance and became burdensome to a reasonable extent, and fatigue is an objective criterion that looks at the same quality and not at the person "It does not prevent its application that he is financially capable, but it is sufficient that the implementation of his contractual obligation himself has become stressful, and the law The Iraqi civil authority mentioned that we reduce the obligation to a reasonable extent and the reduction of the quantity pledged to supply it, and this occurs with the intervention of the judge, and the authority of the judge's intervention in the intervention is within the limits of the ruling for compensation only (), without modifying the terms of the contract. It is the binding contracts for both sides. The purpose of the amendment is to restore the balance to the contract that has been disrupted due to the emergency circumstance. To apply this theory, there are conditions, which are the occurrence of an exceptional event, and the exceptional event is the one that rarely occurs so that it appears abnormal according to the usual affairs of life, so the ordinary man does not depend on it and does not enter it in His calculations are such as wars, the spread of epidemics and the imposition of forced pricing, as the measures taken provide reasons for reconsidering contracts and obligations that have been affected by the presence of that force, which causes losses to the owners of goods, especially that the value of the authority in the market becomes equal to the value of import, as happens in this period, and the precautionary measures taken at the time The current "such as the health ban measures come at the forefront of the legitimate and legally acceptable reasons to reconsider the contracts and obligations that have been affected by the presence of that force, and this is measured according to the impact of these restrictions on the contractual bond and commitment, such as the inability of the borrower from banks to guarantee business or even personal loans as a result of being prevented from entering the state to practice his trade or preventing those in charge of managing and implementing his business or the inability of the employee with a monthly salary who obtained a personal loan with the guarantee of his salary to work and because of linked to the theory of emergency conditions,() "

Examples include (Hollywood website stated that if actors or production companies decide to terminate their contracts and refuse to continue their work due to the Corona pandemic and they are forced to cancel gatherings and their obligations not to gather, then they have three options, the first option is to pay the fines if the contracts do not take force majeure as a justification for the termination The contract and the second option is to resort to the argument of inability to perform, which explains the process of rescission, and likewise does the third option works under emergency conditions that prevent the implementation of the obligation (), and that the exceptional event occurred as a result of nature or any material fact and is a reason for applying the theory of emergency conditions, as it happens at the present time when new legislation is issued or a state of emergency is imposed and other legal facts must be made, the accident must be general and comprehensive, as the Corona pandemic is

general and comprehensive, so that it is not limited to the debtor, as the theory of emergency conditions is similar in this capacity with force majeure, as for force majeure which results in the impossibility of implementing contractual obligations, the contract may be terminated by itself, but in the case of applying the theory of emergency conditions, the contract should be modified to the extent that the For damage or termination of the contract according to its nature and the circumstances that have changed according to the interests of the contracting parties, as the theory of emergency circumstances is applied when the implementation of the obligation is burdensome to one of the parties and the penalty, as we have previously explained, is to restore the burdensome obligation to a reasonable extent and to distribute the loss to both parties. But if it is impossible to implement the obligation, then we apply the other theory, the force majeure theory

The penalty in it, is the termination of the contract and the expiration of the obligation, but if the loss does not exceed the usual limit, there is no room for force majeure () and there are two observations that must be paid attention to, the first is that it is not sufficient to invoke the occurrence of the accident to evade contractual responsibility, but rather the impact of that accident must be on the implementation of the obligations that The two parties to the contract agree to it, making the implementation of the contract impossible or burdensome, and the second is that in contracts binding on both sides, one of its parties is not allowed to retract, amend or rescind it except with the consent of the two parties or the judge's ruling or the text of the law if it is impossible for one of the contracting parties to implement his obligation because of the corona, he must prove That is after submitting the matter to the judiciary and research and scrutiny in each case to decide objectively, taking into account the interests of both parties, based on the principle of neither harm nor harm. The theory of inability to perform the contract that explains the process of cancelation, with the cases shown on the basis of restrictions related to force majeure, on the other hand, the major economic countries such as America and China began to issuance of the so-called force majeure certificate, which requires the parties to be exempted from their contractual responsibilities that are difficult to fulfill due to exceptional circumstances outside the scope of their control that must be fulfilled. Compensation for the delay in implementation and its impossibility. The above governments agreed that in order to obtain such certificates, companies must submit signed documents to prove the delay or obstruction.

Conclusion

First: the results

- 1-The Corona pandemic poses a threat to human societies in all health, industrial and commercial aspects, and therefore the authorization contract is one of the contracts that can be affected in this field.
- 2- If the authorization contract was concluded during the period of the crisis of the spread of Corona and after announcing the official government position regarding decision-making and preventive measures, the authorization contract cannot be adapted as being affected by force majeure or the emergency circumstance, because the parties to the contract are aware of the circumstances the world is going through due to the spread of the pandemic.
- 3- The decisions taken by the Higher Committee for Health and Safety are an unreliable discretion to adapt the authorization contract by taking into account the force majeure or the emergency circumstance and their conditions.

Second, the suggestions

- 1-We suggest that a special law for the spread of epidemics be enacted that addresses all the problems in this field, including the authorization contract and its legal adaptation.
- 2-We recommend the Higher Committee for Health and Safety not to issue decisions bearing a specific legal adaptation that may cause harm to the contracting parties without referring to the legislative authority as it is the competent authority to issue laws.
- 3- We propose during this period to give the judiciary more discretion in the field of settling disputes arising from contracts in general and authorization contracts in particular.

Bibliography

1. Ahmed Abdel-Razzaq Al-Sanhouri, Sources of Truth in Islamic Jurisprudence, Arab Islamic Scientific Academy, Publications of Muhammad Al-Raya, Beirut, Vol.
2. Basem Muhammad Salih, Commercial Law, Section One.
3. Akanle, O., & Shadare, B. R. (2020). Why has it been so difficult to Counteract Cyber Crime in Nigeria? Evidence from an Ethnographic Study. *International Journal of Cyber Criminology*, 14(1), 29-43. <https://www.cybercrimejournal.com/pdf/AkanleShadarevol14issue1IJCC2020.pdf>
4. Jassem Al-Aboudi / Explanation of the Civil Law, 2nd Edition.
5. Hamid Mustafa, Obligations and Contract in Islamic Law, Al-Ahali Press, Baghdad, 1943.
6. Hassan Ali Thanoun / Explanation of the Iraqi Civil Law, Provisions of Commitment, Al-Rabita Press and Publishing Company Ltd., Baghdad 1954.
7. Hussein Al-Farari, The Impact of Emergency Circumstances on Doctrinal Compliance, PhD thesis, Giza, Egypt, 1979.
8. Sultan Anwar, Sources of Obligation in the Jordanian Civil Law, University of Jordan Publications, Amman, 1987.
9. Al-Sanhouri/ Sources of Truth in Islamic Jurisprudence, Part 5.
10. Arab, M. S. (2020). Global Surge in Cybercrimes-Indian Response and Empirical Evidence on Need for a Robust Crime Prevention System. *International Journal of Cyber Criminology*, 14(2), 497-507. <https://www.cybercrimejournal.com/pdf/ShamiullaVol14Issue2IJCC2020.pdf>
11. Sherif Ghanem, The Impact of Changing Circumstances in International Trade Contracts, Dubai Police General Command, Dubai Police Academy, Graduate Studies Department, 2010.
12. De La Hoz, G. T. (2021). New Trends in Online Crime Using Social Networking Sites and Apps against Children and Adolescents: Police-Based Longitudinal Research. *International Journal of Cyber Criminology*, 15(1), 31-49. <https://www.cybercrimejournal.com/pdf/IJCC-3-2021.pdf>
13. Abdul Majeed Al-Hakim/ The Brief in Explanation of the Civil Legal, Part 2, Provisions of Commitment, Third Edition, Dar Al-Hurriya for Printing, Baghdad 1977 . Muhammad Saeed Abdel Rahman, Force Majeure in the Procedure Code, Dar Al-Fikr Al-Jamii, Alexandria, 2007.

Second: Laws and Decisions

- 1-Egyptian Civil Code (131) 1948
- 2-Iraqi Civil Law No. (40) of 1951
- 3- Civil Procedures Law No. 83 of 1969.
- 4-Court of Cassation Decision No. 448/H/56 dated 16/5/1956.

Third: Research and websites

- 1- Corona between emergency conditions and force majeure, published on the website
<https://www.youm7.com/>
- 2- Khaled Saleh, Investors and the Corona Virus, <http://www.youm7.com>
- 3-Hussein Kazem Al-Mustafi/ Authorization contract and types of agencies in Iraq, article on the Internet <http://www.kitabat.info/subject.php?id=79525>
- 4- Report of the WHO-China joint Misson on Coronavirus Disease 2019 (covid-19) 16-24 February 2020, p16, available at <http://www.who.int/docs/default-source/coronaviruse/who-china -joint-mission-on-covid-19-final-report.pdf>
- 5- Issa Owaidat, The Impact of the Pandemic and the Excuse in the Sale and Leave Contracts, research published in the Jordanian Journal, Islamic Studies, Ahl al-Bayt University, Volume Three, Number Two, 1428 AH, 2007 AD.