

JUDGE'S POWER TO AMEND THE CONTRACT IN JORDAN LAW: A COMPARATIVE STUDY

Dr. IMAN ABDULJALEEL ABDULHAMEED ALAWABDEH

PhD in Civil Law, Ain Shams University - Arab Republic of Egypt.

Abstract

The aims of the study are to determine the judge's power to amend the contract in Jordan law: A comparative study. The problem with the study arose as to whether the judge's power to amend the contract constituted a breach of the established legal principle of contract, namely, "pacta sunt servanda", in order to be able to adjudicate fairly the dispute before it. Given the importance of the contracts not only to individuals but to society as a whole, we felt that this study should be divided into an introduction and researchers. The first was on the concept of the judge's discretion, and the second was on the discretion of the judge to amend the contract at the stage of its formation. The study reached a number of conclusions, the most important of which is: the Jordanian legislature has adopted the principle of nodal freedom, the principle of pacta sunt servanda and the principle of will in the contract, within the framework of article 87 of the Civil Code. However, we believe it also derogates from the principle of will in the contract. The Jordanian Civil Code is free from the general theory of the lack of exploitation, which is incompatible with the nature of this law based on justice, especially if the contract suffers from the disadvantage of exploitation. The Jordanian legislature restricts judicial protection to the exploitation of its needs. The exploitation results in the values of one party by exploiting the other party's needs, as a result of the vulnerability in which the other contractor is located to obtain benefits that are not of benefit to the latter.

Keywords: Judge's power, Contract, Jordan law

INTRODUCTION

The contract is legally based on the principle of the authority of will, a principle which entails legal rules of great importance, including the "pacta sunt servanda" rule. This rule is intended to mean that once the contract conditions have been completed, the contract has become binding on the parties, and may be revoked, modified or cancelled only by the will of the parties or by law.

This rule is regarded as a general asset in consensual contracts. When a general asset is said, it comes to mind that there is an exception. By the notion of the breach, there may be interference in the contract under preconditions and regulations determined by law. This intervention is carried out by the judge by amending the content of the contract. The judge's discretion in amending the content of the contract is a recent topic resulting from the legal efforts led by a number of jurists in their respective fields, whether criminal, civil or administrative. Accordingly, the judge is responsible for enforcing the law on the facts before it and, in order to be able to resolve the dispute before it fairly, the law must give him the discretion to do so.

There for, the Jordan legislature and the comparator are therefore seeking appropriate considerations of the evolution of the rules of law in order to keep pace with economic and social changes. As it intervenes to amend legal rules only in cases where they are unable to keep pace with this development, and at the same time, it decides to grant the judge the power

to intervene in modifying the count in certain circumstances in order to achieve justice between contractors. Therefore, the judge's task does not stop the interpretation of the contract and the granting of reasonable legal adjustment, It extends to interference in the content of the contract to protect the weak side of the contract from arbitrariness and exploitation by the other party.

The judge's power to modify the substance of the contract may also constitute a breach of a legal principle established in contract dealings: "pacta sunt servanda", i.e., the judge must respect the contractor's agreement and the obligation to apply it, which obliges the judge to apply its provisions. Notwithstanding this rule established in all laws, including also comparison, the legislator authorized the judiciary to exclude this rule by intervening in the contract to repeal or amend certain of its provisions, in order to achieve the economic balance between the contractors.

Study Problem

The problem of the study is reflected in the inadequacy of national legislation governing the judge's power to modify the content of the contract and the problem of the study in the limited studies on this subject, In addition to the disproportionate judgements of the Jordanian courts regarding the extent of the limits of the judge's power, if required to give effect to that authority, and whether the judge's power to amend the contract constitutes a breach of an established legal principle in the area of contracting only: "pacta sunt servanda", in order to be able to adjudicate fairly the dispute before it. This prompted us to examine the legal details of the judge's power to modify the content of the contract.

The importance of the study

The importance of the study is the seriousness of the judge's intention to interfere with the will of the contractors or one of them as they enjoy broad powers. Counting is the means of living and fulfilling the desires of life. The importance of the study also arises by focusing on the practical aspect by citing court rulings and presenting some of the models during the study so that the comparison between practical and theoretical aspects, as well as focusing on the practical aspect, can be found in comparison with Arab legislation, such as Egyptian legislation so that there is a summary of proposals that will serve society.

Study Questions

The study comes to answer the following questions:

1. What is a judge's discretion?
2. What is the judge's discretion in amending the contract at the stage of its formation?
3. How much is the judge's discretion in amending the plaintiff's contract?
4. What discretion does the judge have in amending the contract because of forgery?

Objectives of the study

The main objective of the study is to disclose the judge's power to amend the contract in Jordanian law: a comparative study. The study also aims to achieve the following sub-objectives:

1. Statement of the meaning of the judge's discretion.
2. Determining the judge's discretion in amending the contract at the stage of its formation.
3. Determine the judge's discretion in amending the plaintiff's contract.
4. Determination of the judge's discretion to amend the contract due to forgery.

Limits of study

Spatial boundaries: Jordan Civil Code No. 43 of 1976 and Egyptian Civil Code No. 131 of 1948.

Time limits: The time limits are the Jordanian and Egyptian Civil Code and its amendments to 2023.

LITERATURE REVIEW

Al-Lahibi and Al-Ali (2021) ⁽¹⁾ study, which aimed to highlight the judge's authority and positive role to play in order to achieve justice in contracts and preventing damage to any of its limbs. The study found a number of conclusions, the most important of which was that insolvency was not limited to mere non-parity in contractual obligations. The study recommended that the Emirati legislator should provide for the disadvantage of exploitation within the scope of will defect in civil transactions.

Al-Aziman (2021) ⁽²⁾ study dealt with the issue of the judge's power to modify the effects of the contract under the emergency circumstances of Kuwaiti law (coronavirus as a model).. The study showed that the coronavirus pandemic could not be regarded as an exceptional circumstance for the contracting parties to uphold when they breach their obligations. The study proposed to the Kuwaiti legislator that article 198 of the Civil Code be amended in order to remove the uncertainty.

A Dawud study (2015) ⁽³⁾ sought to address the issue of the judge's power to modify the substance of the contract in which it discussed the concept of discretion and the scope of its work in the light of the provisions of comparative law and jurisprudence,. The study has produced a number of findings, the most important of which are: The freedom of the parties to conclude contracts is not absolute, but restricted, and the principle of the authority of will is one of the fundamental principles enshrined in the Civil Transactions Act 1984 through article 113, and the judge's discretion means his or her power under the Act. The study recommended that the controls governing the judge's discretion be more clearly defined.

Barham (2019) ⁽⁴⁾ conducted a study aimed at determining the role of judges in civil and commercial contracts: a comparative analysis. This study was divided into an introductory

chapter and two chapters. The study found that the judge's role was concentrated in two phases, the first being the convening and conclusion of the contract, The second is the implementation phase of the contract, in which the judge's role is reflected in order to cope with the changing economic circumstances and volatility that give rise to an imbalance in the contract, The study recommended that the Palestinian legislator amend article 128/1 of the Civil Code.

Hamdan (2016)⁽⁵⁾ conducted a study aimed at discussing an important subject of Jordanian law s discretion to derogate from the pacta sunt servanda rule, A comparative study. The problem with the study is how suited the principle of the sovereignty of will is to nodal bonds.. The study found that the judge's discretion was broadened or narrowed depending on the type of legal rule dealt with by the judge in application, that the pacta sunt servanda rule was no longer binding on the judge, that his role was no longer negative in transactions but that his role in the area of contract had become absent, and recommended that the judge's discretion to derogate from the rule should be strengthened if the contract clauses violated from legal rules.

Commentary on Literature Review

Previous studies varied in their objectives, such as the Al-Lahibi and Al-Ali studies (2021) and Al-Aziman 2021 study, and Dawud Study (2015), and Barham Study (2019), and a Hamdan study (2016).

The present study deals with the judge's power to amend the contract in Jordanian law: a comparative study.

The current study on previous studies had the advantage of dealing with the issue of the judge's power to amend the contract in Jordanian law: a comparative study, which had not been dealt with in a previous study. This makes it an addition to the Arab Legal Library.

Study methodology

The study used the analytical descriptive curriculum by analyzing the jurisprudence and legal texts contained in the Jordanian Civil Code, presenting them, matching them and comparing them with the Egyptian Civil Code. In order to highlight the differences between the Jordanian Civil Code and the Egyptian Civil Code, in addition to addressing the decisions of the Jordanian Court of Cassation in the judge's power to amend the contract.

First Tepic. Concept of the judge's discretion

In order to facilitate knowledge of the subject matter of the judge's discretion in language and terminology, and to determine the legality and scope of the discretion. This research is divided into the following requirements:

First Requirement: Definition of a judge's discretion in language, terminology and law

Linguists have defined authority in the language as an authority, which sheds authority, and their authority means: Oppression and Al-Qa 'idah, Al-Sultan fired, from whom he said God's power over his power, power means domination, domination, domination and control. Sultan means the proof argument. And the power to own, including the sultan's name as a sultan, either for his domination or because he is an argument of God in his land, Princes are said to be

sultans because they are the ones with whom the argument is made and the rights are safeguarded ⁽⁶⁾.

The Sultan was told of the ability of the King and the ability to make this for Him, even though He is not King, such as saying: "I have made Him the authority to take my right from so and so on, and the night in the Sultan is superfluous because the origin of his construction is from bullying, as He said:" We have sent Musa with our live s and a clear sultan " ⁽⁷⁾. It is said that the power-bearer State is the sovereign State ⁽⁸⁾.

The discretion in the language is attributed to the appreciation, and it is called the consideration and measurement of the qualities of God Almighty, who says: "Flasks of silver they appreciated"⁽⁹⁾. That is to say, God Almighty is a judge of everything, and the appreciation is meant to measure. Appreciation in the language is of an appreciation of the magnitude and the name of the victory and the multiplication of the destiny, the ability and the amount and the value thereof in a harsh sense. "⁽¹⁰⁾.

The judge's consideration and discretion are not limited to the type of dispute but to the gender of disputes, matters of fact or duty. The duty is to govern legislation, both procedurally and objectively. The judge's authority encompasses all his or her activities on the facts in question ⁽¹¹⁾. The discretion means: "The mental activity of the judge in understanding the reality before him and devising the elements within this reality within the scope of a particular rule of law which is estimated to govern the dispute before him and its relationship to the reality and the law"⁽¹²⁾.

According to the researcher, although the above definitions differ, they generally do not affect the substance of the judge's discretion, all of which have agreed that the judge's discretion is conferred on the judge by law, that the judge is a master himself in his decisions, and that his strength is his mental activity and proper mental and logical thinking.

The Jordanian Civil Code does not define the judge's discretion, since the judge's task is not to define the concepts and terminology contained in the Code, leaving that task to jurisprudence and the judiciary, but only to define the contract through article 99, which defines him as: The contract provision shall be established in the contract and its substitution as soon as it is contracted without interruption to arrest or anything else unless otherwise provided by law. ⁽¹³⁾"

The Egyptian legislator, who did not know the judge's discretion and left this task to jurisprudence and the judiciary, merely refers to it in the Civil Code of 1948: "The contract shall take place as soon as the parties exchange the expression of two compatible wishes, taking into account the specific conditions established by law above for the conclusion of the contract" ⁽¹⁴⁾ ⁽¹⁵⁾.

On the basis of the information before him, the judge assesses whether or not the will was made by the author with the intention of producing a legal effect. The judge's power to determine the moment at which an affirmative is considered to have been issued is clearly demonstrated.

Second requirement: the principle of the authority of will in Jordanian and Egyptian civil law.

The evolution of the theory of the contract and its course of development of social and economic life and the intervention of the legislator in protecting the parties to the contract sometimes and limiting them in their will sometimes showed several contradictions in the opinions of the jurisprudence and raised several exceptions about each principle established in the contract, prompting some jurisprudence to ask the question of the sincerity of the contract theory in its legal existence or is a mere illusion?.

Thus, under article 87 of the Civil Code, the Jordanian legislature has adopted the principle of "nodal freedom" and the principle of pacta sunt servanda and the will to contract. However, we believe that this principle is also derogated from. In this requirement, therefore, we will devote two sections, the first of which will be considered by Jordanian legislators.

Section I. Realizing the will of the Decade

The will of the contract is one of its foundations. The contract is based on Hanafi jurisprudence, which influenced the Jordanian Civil Code. Article 87 affirms the need for acceptance and consent. ⁽¹⁵⁾Speaking of the will and satisfaction of the contract, it is necessary to examine both the principle of nodal freedom and the principle of a sharia law, and to ascertain whether they have already been adopted by Jordanian legislators.

First, the principle of freedom of contract: Jordanians affirmed in article 87 of the Civil Code, which stipulates that: "There must be compatibility between the acceptance and the acceptance by the parties to the contractual relationship." The introduction of the principle of nodal freedom has direct implications; Contractors are free to contract or not, they are free to determine the terms of their contract, they are free to contract, we can add that they are also free to terminate their contract by choosing the other contractor ⁽¹⁶⁾.

The subsequent legal texts of article 87 also affirm the principle of freedom of contract, as in article 96 of the Jordanian Civil Code, for example, by affirming that a party to whom an offer is directed in the event of contracting between a present may accept or reject it. Perhaps the best applications of the principle of nodal freedom are related to complacency's disadvantages, coercion, arrogance, invisibility and error, which affect this principle.

However, the principle of freedom of contract has never come, but has been restricted by article 167 of the Civil Code, formerly referred to as " According to article 88/4 of the Civil Code, the Jordanian legislature states that the contract is valid to respond "to anything other than is not prohibited by law or contrary to public order or morals"⁽¹⁷⁾.

If we believe that legality here represents the legal cover of legal conduct and provides it with legal protection, it is achieved by respecting the will of the contracting parties to public order, which is the body of jus cogens norms whose breach cannot be agreed upon ⁽¹⁸⁾.

So, it can be said; The Jordan legislature, in defining the contract in article 167 and restricting this principle to legality, that is, by not agreeing between the parties to infringe public order,

has defined the correct contract as a limitation on the definition of the contract in accordance with the provisions of the Jordanian Civil Code.

The Egyptian legislator listed some applications of the notion of public order, the focus of which is private law. Civil status ", which may include ties of personal status in kind, and which the legislature considers the civil status of a person and the public order of his civil capacity as the rules governing this situation are not intended solely to protect an individual. s nationality or change of name is null and void⁽¹⁹⁾.

We believe that both Jordanian and Egyptian legislators have regulated the principle of freedom of contract so that the contractor seeks to determine the terms of the contract and the obligations it approves therein, which it targets from the contract so that it is the place of the contract and its cause is legitimate. In terms of public origin, the contractor is not obliged to guarantee the contract as he does not wish.

Second: the principle of pacta sunt servanda: the Jordanian legislature links the principle of pacta sunt servanda with the implementation of the contract with the principle of good faith, as stated in article 202/1 of the Civil Code: "The contract must be executed in accordance with its provisions and in a manner consistent with the requirements of good faith." This is corroborated by the fact that the Jordanian legislature considers this principle not only as the basis of the obligation and the contract, but also as the obligation to perform the contract as agreed between the parties. The legislature adds the principle of good faith in implementation. ⁽²⁰⁾.

The Egyptian legislator, through article 147, embodied the notion of the sharia rule so that the contract could not be set aside or amended as a public asset. Unless the contractors agree that it may be amended, or for reasons determined by law in which the judge is permitted to intervene, unforeseen general extraordinary incidents resulting from the implementation of the contractual obligation If not made impossible only for the debtor, but also burdensome by a heavy loss, the legislator authorized the judge to restore the burdensome obligation to a reasonable extent after balancing the contractor's interest.

Section II: Departing from the role of will in the Decade.

It is understood that will have an important role to play in the convening of the Decade and reflects its importance in the phases of its implementation. However, the question is whether the role of will is released. Is the will binding and restrictive, which does not have to be modified regardless of the circumstance?

First: The theory of emergency circumstances: Jordanian legislators have sought to adopt the theory of emergency circumstances in the text of article 205 of the Civil Code. Since article 205 of the Jordanian Civil Code provides that "If there are general extraordinary incidents which are not foreseeable and which result in the fact that the performance of the contractual obligation is not rendered impossible, the debtor becomes so burdensome as to threaten him with a substantial loss that, depending on the circumstances and after balancing the interests of the parties, the burdensome obligation may be restored to a reasonable extent if justice so requires. Any agreement to the contrary shall be null and void. ".

In the application by the Jordanian Court of Cassation of the text of article 205, we do not show a criterion in the text that determines how to ensure that the parties interests are balanced in the restitution of burdensome obligation. We believe that in this text we can see in article 205 of the Jordanian Civil Code various issues that we may raise as hypotheses under our subject: First, in our view, this provision departs from the definition of contract contained in article 87, which requires that the effect of the contract be arranged as soon as the affirmative is linked to the acceptance and their compatibility. Where a judge intervenes under a state of emergency, it changes and modifies the legal effects of obligations under the contract as intended by the parties to the ⁽²¹⁾. It also carries a derogation from the disability of article 87, which defines the contract as "and entails the obligation of each other to do so". As set out in article 87, the asset is to establish obligations between the parties, as they have intended, as soon as their wishes are linked and compatible. The second order; is the legislator's concern to keep the contract in place and binding between the parties. In our view, the judge here intervenes both in the conclusion of the contract and in its implementation, which undermines the contractors' will and reflects an understanding of the source of the binding force of the contract.

In light of these findings, we believe that it would be desirable to amend the text of article 205 of the Jordanian Civil Code relating to emergency circumstances to make it a supplementary rather than a peremptory norm since this has an impact on respect for the contractors' will and respect for both the principle of contractual freedom and the sharia contract.

Second: Contractual obligations derived from the law: article 202/2 of the Jordanian Civil Code stipulates the contractual obligations derived from the law: "The contract shall not be limited to the obligation of the contractor as contained therein, but shall also deal with the requirements of the contractor in accordance with the law, custom and the nature of the conduct." It is clear from this text that the law, custom and nature of the conduct may entail a contractual obligation to be added to the contractors' will as long as it is a requirement of the contract.

The legislator does not stop at the limits of the contract; and invokes it - by will - as a source of binding force for the Decade. It goes beyond them and creates contractual obligations emanating from law or custom. This is a departure from the role of will in the contract and a restriction added to public order on the principle of the authority of will, the principle of freedom of contract and the law of the contractor. Derogation from the definition of contract contained in article 87 of the Jordanian Civil Code ⁽²²⁾.

In its judgement No. 7594 of 2019, the Jordanian Court of Cassation affirmed this principle by stating: "The Court of Appeal erred in its decision in a doctrine contrary to the principle of the authority of will in contracts adopted by the Jordanian legislature, since the relationship between the parties in the proceedings is governed by the contract and the company's statute, in addition to the partnership agreement between the founders." Another provision further stated: "The interpretation and characterization of contracts are due to the legal description of the court and not to the will of persons. True will under article 239/2 of the Civil Code, the expression in contracts of purposes and meanings, not of words and buildings, under article 213 of the Civil Code and of speech, is first of all negligent under article 216 of the same law.

"⁽²³⁾In its appeal, the Egyptian Court of Cassation held that: "The decision of the Court of Cassation that the origin of the will is lawful shall be invalid only if the obligation arising therefrom is contrary to public order or morals or is a matter of reason or contrary to the provision of a warrant or law." ⁽²⁴⁾

Second Topic: Judge's discretion in amending the contract at the stage of its formation

The pacta sunt servanda rule is an effect of the principle of the authority of will. Decade is like the law in terms of binding effect, and since the beginning of the twentieth century the State represented by the judiciary and legislation has begun to intervene in the amendment of contractors' contracts. Due to political, economic and social considerations, and in terms of the year's origin, contractors enter into the contract only after confirming that it has an interest in contracting ⁽²⁵⁾.

First Requirement: Judge's discretion in amending the plaintiff's contract

Legal systems have defined contract of acquiescence because of the enormous economic developments in modern societies through model contracts, in order to save time and effort in the drafting of contracts, the parties to the contract resort to drafting it in accordance with their practical need, and in a manner that is not contrary to public order and morality. ⁽²⁶⁾ Article 204 of the Egyptian Civil Code stipulates that: "If the contract is made by way of acquiescence, and it contains arbitrary conditions, the court may modify those conditions or exempt the defendant from them as required by justice, and any agreement to the contrary shall be null and void." This is also confirmed by the Egyptian legislature. Article 149 of the Civil Code stipulates that: "If the contract is concluded by acquiescence, and it contains arbitrary conditions, the judge may amend these conditions or exempt the defendant from them, as required by justice. Any agreement to the contrary shall be null and void." ⁽²⁷⁾

Accordingly, one practical application of the arbitrary conditions contained in the employment contract that would waive any of the rights conferred upon him by the Jordanian Labour Code is that article 4/b of the Labour Code states: "Any condition in a contract or agreement concluded before or after this Act under which any worker waives any of his rights conferred by law shall be deemed null and void." ⁽²⁸⁾ The Jordanian legislature, therefore, stipulates in article 397 of the Civil Code: "Conduct shall be invalidated if it suspends its existence on an impossible or immoral condition or public order." ⁽²⁹⁾ It is compatible with article 266 of the Egyptian Civil Code, which stipulates that: "1. the obligation shall not be based on a condition which is not feasible or on a requirement which is contrary to morality or public order if the requirement is suspended. If it is corrupt, it is the same one which is considered incomprehensible" ⁽³⁰⁾

The rule does not apply if the contract is a compliance contract, especially if the contract includes arbitrary conditions harmful to the compliant party - that is, the debtor, the contractor on whom the condition places a burden, so both the Jordanian and Egyptian legislators considered the compliance contracts real contracts in support of Article 104 Jordanian civil and Article 100 Egyptian civil.

Second Requirement: Judge's discretion to amend contract due to forgery.

In article 143 of the Civil Code, the Jordanian legislature defines the enticement as: "One contractor shall deceive the other by fraudulent means, reasonable or actual, which may give him consent to what would not have been satisfied". The Jordanian Civil Code considers coercion, wrongdoing and incompetence, together with a defect in the validity of the will ⁽³¹⁾, as confirmed by the Jordanian Court of Cassation in one of its jurisprudences ⁽³²⁾ Egypt's legislature regulated the defects of consent by articles 120, 125, 127 and 129. As his Jordanian counterpart in articles 142, 145 and 152, required that each be coupled with the other, that is, a coupling of fornication with an idiot and a coupling of an idiot with a so that the fundamental difference between a flawed will and non-existent will is that a contract based on non-existent will does not have a legal existence, ;while a contract based on a flawed will exists, because the will of its contractors exists,⁽³³⁾. The Jordanian legislature has ensured that the contractors' will is sound and free of any defects they may suffer. Rights ". However, remains flawed, as it was issued under exploitation pressure ⁽³⁴⁾. Thus, the Jordanian legislature regulates the situation of easy invisibility in article 147 of the Civil Code by stating: "If the stupid, even if he makes money forbidden to the religion or the sick, suffer from death sickness, and their religion is consumed by their money, the contract shall be suspended for lifting the stupidity or his leave from creditors or a void."⁽³⁵⁾

As his Jordanian counterpart, the Egyptian legislature regulated the shortcomings of the will of error, fraud, coercion, exploitation and regulations governing them. Article 129/1 of the Egyptian Civil Code stipulates that: "1. If the obligations of one contractor are totally incompatible with the interest earned by that contractor under the contract or with the obligations of the other contractor, and it is established that the contractor in absentee, entered into the contract only because the contractor has exploited a clear spectrum or wild air in which a judge may, at the request of the absent contractor, render the contract null and void."

In the researcher's view, the Jordanian Civil Code has deviated from the general theory of the defect of exploitation, this is contrary to the nature of this law based on justice, especially if the contract suffers the disadvantage of exploitation. The Jordanian legislature restricts judicial protection to the exploitation of one's needs. The exploitation results in the values of one party by exploiting the other's needs. The result of the other contractor's vulnerability to receive benefits that are not of interest to the latter. Free will engenders exploitation and non-achievement of the nodal balance set out in the general principles of civil law within the framework of the doctrine of inviolability. The sale of property and abuse of the right impose an excessive penal requirement

CONCLUSION

The subject matter of the judge's power to amend the contract is a departure from the most important legal principle governing the contract, namely: "Pacta sunt servanda", which does not possess any prejudice to its binding force. Therefore, the judge's power to amend the contract in Jordanian law was addressed: a comparative study and the study concluded with conclusions and recommendations.

RESULTS

At the end of the research, the following results were reached:

1. The Jordanian legislature has adopted the principle of freedom of contract, the principle of pacta sunt servanda and the principle of will in the contract, within the framework of article 87 of the Civil Code. However, in our view, it also derogates from the principle of will in the contract.
2. The rule of the contract does not apply Shari'a contractors in the event that the contract is a compliance contract, especially if the contract includes arbitrary conditions harmful to the compliant party-i.e. the debtor, so both the Jordanian and Egyptian legislators considered compliance contracts real contracts in support of Article 104 Jordanian civil and Article 100 Egyptian civil..
3. The Jordanian Civil Code is free from the general theory of the lack of exploitation, which is incompatible with the nature of this law based on justice, especially if the contract suffers from the disadvantage of exploitation.
4. The principle of the sovereignty of will is absolute but is restricted by the legislature with a sense of public order.
5. The Jordanian legislature restricts judicial protection to the exploitation of its needs. The exploitation results in the values of one party by exploiting the other party's needs, as a result of the vulnerability in which the other contractor is located to obtain benefits that are not of benefit to the latter.

RECOMMENDATIONS

In light of the findings, the research recommends the following:

1. We wish the lower legislator to amend the text of article 365 of the Civil Code, specifying the cases in which the judge can amend the amount of the penal clause to read: "1. Contractors may not determine in advance the amount of compensation as provided for in the contract or a subsequent agreement subject to the provisions of the law....."
2. We wish the Jordanian legislature a general theory of the disadvantage of exploitation. We also wish the Egyptian legislator to extend the application of the theory of exploitation in accordance with article 129 of the Egyptian Civil Code.
3. We recommend that the Jordanian legislature amend the text of article 205 of the Jordanian Civil Code to make it reasonable according to the nature of the obligation.
4. We wish the Jordanian legislature to amend the text of article 104 of the Jordan Civil Code by establishing a specific definition of "subordinate contracts" and retaining the provisions of the preceding article with regard to admission as a second paragraph. In addition to determining what the necklace is.

Reference List

1. The Holy Quran.
2. Allahibi, Saleh, Al Ali, Ahmad (2021). Judge's power to modify the content of the contract due to exploitation accompanied by obscene stupidity, Sharjah University of Legal Sciences Journal, vol. 18, No. 2.
3. Al-Aziman, Abdelmohsen Mubarak Abdelmohsen (2021). Judge's Power to Modify the Effects of the Contract under Emergency Circumstances, Journal of Arts, Literature, Humanities and Social Sciences, No. 53.
4. Dawud, Mona Dawud Ahmad (2015). Judge's authority to modify the content of the contract: comparative study, master's thesis, University of the Nile, Sudan.
5. Hamdan, Bassam Ahmad Muslim (2016). Scope of the judge's discretion in departing from the pacta sunt servanda rule, comparative study, unpublished doctoral thesis, University of International Islamic Sciences, Amman, Jordan.
6. Ibn Manthour, Muhammad Abu Fazal (D. t). Arabes Tong, Cairo: Consensus Library, vol. VI.
7. Bakar, Khatam Hassan Musa (2002). Criminal Judge's Power to Evaluate Punishment and Precautionary Measures. Alexandria: Arab Thought House.
8. Sharafi, Abd al-Rahman Mohammad (2009). The judge's discretion in Islamic jurisprudence, a comparative jurisprudence, Al-Sadwan: Sudan Printing Company.
9. Aqkal, Dayab and Omari, Mohammad (2008). The judge's discretion in judicial legislation and its application in sharia courts. A paper published in the Journal of Sharia and Law Sciences, vol. No. 35, No. 2, University of Jordan.
10. Omar, Nabil Ismail (2008). Judge's discretion, applied analytical study, New University House.
11. Sultan, Anwar (1987) Sources of Commitment in Jordanian Civil Law, Comparative Study of Islamic Jurisprudence., Publications of the University of Jordan, T1, Amman.
12. Sawar, Mohammad Wahid (2001). General Trends in London Law, Oman: Culture House for Publishing and Distribution.
13. Malkawi, Bashar Adnan (2008). Evaluation of the Definition of Contract in Jordanian Civil Law, Studies, Shari 'a Sciences and Law, vol. 35, No. 2
14. Malkawi, Bashar (2001). The principles of the Decade have been affected by a political crisis, such as the Middle Condition since 1945, an unpublished doctoral thesis, New Press, Amman, Jordan.
15. Mughamsh, Jamal (2000). Civil Code commentary, contract, without publishing house.
16. Al-Sabatin, Khaled Ahmad (2002). Legal Protection of the Defendant in Contracts of Acquiescence, Master's Thesis, Faculty of Law, University of Jerusalem, Palestine.
17. Jamal, Mustafa Mohammad (1987), seeking to contract in comparative law, without print, without publishing house, Halabi publications.
18. Haddad, Hamza (2002). Submission of a working paper for the Amman (Judiciary and Insurance) Conference, Jordan.
19. Al-Hissa, Ali Mosbah Saleh (2011). Judge's power to modify the content of the contract of acquiescence, Master's thesis, Middle East University, Amman.
20. Al-Aznun, Hassan Ali Walrahu, Mohammad Said (2002). Summary in General Theory of Commitment, Sources of Commitment, Comparative Study of Islamic and Comparative Jurisprudence, T1, Amman: Wa 'el Dar for Publication and Distribution.

21. Al-Haysat, Hamdi Mohammad (2015). The discretion and judicial oversight of the civil judge, doctoral thesis, University of International Islamic Sciences, Amman, Jordan.
22. Abu al-Saud, Ramadan Mohammad (1985). Principles of commitment in the Egyptian and Lebanese Civil Code, Beirut.
23. Faraj, Tawfiq (d. t). The general theory of obligation, theory of contract, without place of publication, without city of publication.

Laws

1. Jordanian Civil Code No. 43 of 1976.
2. Egypt's Civil Code promulgated by Act No. 131 of 1948.
3. Explanatory Notes of Jordanian Law, Part I, Bar Association, Amman, 1985, pp. 229-230.
4. Jordanian Labour Code No. 8 of 1996.
5. Decisions of the Jordanian Court of Cassation.
6. Decisions of the Egyptian Court of Cassation.