

## *Application of the Theory of Emergency Circumstances to Labor Relations in Light of the Coronavirus Pandemic*

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### **Abstract:**

*This research paper seeks to explore the extent to which the Algerian state has implemented the theory of emergency circumstances in the context of labor relations during the coronavirus pandemic. The study focuses on incidents where unforeseen circumstances, beyond the control of both workers and employers, have arisen due to the pandemic. These circumstances disrupted normal work conditions, prompting the state to adopt alternative solutions, such as reducing working hours and implementing a partial timing system, instead of resorting to the complete termination of labor relationships. These measures reflect a practical application of the theory of emergency circumstances, ensuring the continuity of labor relations while balancing the needs of both employees and employers during times of crisis.*

*The analysis underscores the critical role that the theory of emergency circumstances plays in preserving labor relations under extraordinary conditions, such as a pandemic. By employing these legal principles, the state sought to mitigate the adverse effects on workers and maintain a degree of economic stability. However, this research also emphasizes the need for legislative reform in Algeria. It argues that the current legal framework should be updated to include explicit provisions within the Labor Law that address the fate of labor relations during emergency circumstances. Such amendments would provide greater clarity and legal security for all parties involved, ensuring that labor relations can adapt to unexpected crises in a structured and legally sound manner.*

*In conclusion, the research highlights the importance of proactive legal measures in safeguarding labor rights and maintaining economic continuity in the face of global challenges like the coronavirus pandemic. The study advocates for legislative reforms that clearly define the application of emergency circumstances in labor relations, providing a robust legal foundation for future crises.*

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**Keywords:** *Employment Contract; Unforeseen Event; Worker; Emergency Circumstances; Part-Time Work.*

## **Introduction:**

The employment contract is one of the most prominent and common contracts in society, where everyone seeks to provide a living by doing work, and the labor law has known a great development at the level of various countries, especially since in previous decades there were no laws governing the employment relationship between the worker and the employer except for some customs and habits in force.

Since work is the basis of the economy of any country, the Algerian legislator had to regulate this relationship between the parties to the employment contract, after the emergence of the principle of the authority of the will, which caused many disputes in this field. After independence, the French law continued to operate except for what is contrary to national sovereignty until the issuance of Order ordinance N° 66-133 dated on 02 June 1966 containing the Basic Law of the Public Service.

Ordinance N° 71-74 of November 16, 1971, containing the socialist management of enterprises, was issued as a first stage, followed by the Basic Law for the Worker N° 78-12 of August 05, 1978, containing the General Basic Law for the Worker, followed by Law N° 88-01 of January 12, 1988, containing the Directive Law for Public Economic Enterprises, until the crucial stage came with the promulgation of Law 90-11 of April 21, 1990, containing the regulation of amended and supplementary labor relations, followed by Law N° 90-02 of February 06, 1990 on the prevention and settlement of collective labor disputes and the exercise of the right to strike, Law N° 90-03 of February 06, 1990 on the Labor Inspectorate, Law 90-04 of February 06, 1990 on the settlement of individual labor disputes, and other successive laws.

It is noted that in most of these laws issued, the Algerian legislator did not address the termination or modification of the employment relationship based on the emergency circumstances, which make the implementation of the contract burdensome for one of its parties, especially for the employer, because he will incur unbearable

losses that may lead to the declaration of bankruptcy and the termination of its economic activity.

Since Algeria, like the countries of the entire world, has been exposed to what is known as the Corona pandemic, the latter has had a great impact on the economies of countries and thus on labor relations, as the International Labor Organization warned of the frightening rise in unemployment rates after the end of the pandemic, following the layoffs of many workers to preserve economic entities.

The problematic of the study: Through what is mentioned above, the following problematic can be raised: **To what extent does the application of the theory of emergency circumstances contribute to the stability of the labor relationship in light of the outbreak of the Corona pandemic?**

Objectives of the study: This study aims to highlight the importance of applying the theory of emergency conditions in the employment contract to preserve jobs and reduce the economic effects of the pandemic, which was described as catastrophic.

The importance of the study: The importance of the subject lies in the need to highlight the most important mechanisms that the legislator must rely on and include in his laws to preserve the sanctity of the labor relationship when any emergency occurs, as happened with the Corona pandemic.

Study Approach: To achieve the objectives of the study, we relied on the analytical approach by analyzing and discussing various laws related to the world of work and labor law, as well as the descriptive approach by dropping the theory of emergency circumstances applied in the civil law to employment contracts.

Elements of the study: we decided to divide our study into two axes:

The first axis: The general framework of the theory of emergency conditions and its relationship to the Corona pandemic.

The second axis: The impact of applying the theory of emergency circumstances on the employment contract.

## **1. The general framework of the theory of emergency circumstances and its relationship to the Corona pandemic**

The conditions for concluding the contract are subject to modification and renewal , by respecting the principle of the authority of the contractual will, and in the face of the difficulty of implementing contracts when emergency incidents occur, it was necessary to search for the possibility of finding legal solutions so that there is a balance between the emerging circumstances and the interests of the contractors<sup>1</sup>, and since the Corona pandemic or epidemic is an emerging and emergency circumstance, it was necessary to find a balance in the employment contracts, to not ended the employment Relationship, therefore we will deal in the first element with the theory of emergency circumstances and their emergence, and in the second element we will address the adaptation of the Corona pandemic within emergency circumstances.

### **1.1 The theory of emergency circumstances and its emergence:**

Since the general rule in contract theory stipulates that the contract is the law of the contracting parties, the exception to this rule is the theory of emergency circumstances, which has gone through many stages to become an integrated theory of construction and public in application , not to mention the many different jurisprudential currents between supporters and opponents to adopt this theory<sup>2</sup>, and since the theory of emergency circumstances is an exception and a departure from the principle of the authority of the will and the binding force of the contract, its supporters have presented their arguments and evidences in order to justify the theory, especially as it contributes to achieving the Contractual Equilibrium<sup>3</sup> .

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<sup>1</sup>-Abdul Wahab Mohammed Abdul Wahab Al-Atta, *Emergency Circumstances and their Impact on the Implementation of the Contractual Obligation*, Master's Memorandum, Faculty of Law , University of Khartoum , 2005,p16.

2- Article 106 of the Algerian Civil Code states that: " The contract is the law of the contracting parties. It may not be revoked or amended except by agreement of both parties, or for reasons established by law."

3-Heba Mohammed Mahmoud Al-Deeb, *The Impact of Emergency Circumstances on Civil Contracts*, Master's Memorandum, Faculty of Law, Al-Azhar University Gaza, 2012,p02.

Because the Disruption of Contractual Equilibrium occurs after its conclusion due to unforeseen circumstances, and in order to maintain that balance and remove the imbalance, it is necessary to resort to the provisions of the theory of emergency circumstances<sup>1</sup>

Accordingly, the theory of emergency circumstances can be defined as the exceptional case in which – after the conclusion of the contract and before its implementation - an unexpected incident occurs that would lead to a serious imbalance between the obligations of the two parties as a Major disequilibrium, When the obligation imposed on the debtor becomes extremely burdensome to him and its implementation<sup>2</sup> results in a significant loss for him.

The origins of the theory of emergency circumstances are due to the Islamic Sharia, where the scholars of the Islamic Sharia warn of the impact of economic conditions and the lack of their effects on the rules of justice. They spoke of the inadmissibility of Inequity and making it one of the reasons for the termination of contracts<sup>3</sup>. The theory of emergency circumstances is also based in fact on the theory of necessity, the theory of excuse and the theory of needs<sup>4</sup>, all of which are Islamic theories that are in line with the latest legal theories<sup>5</sup>.

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1- Khamis Saleh Nasser Abdullah Al-Mansouri, *Theory of Emergency Circumstances and Their Impact on the Economic Balance of the Contract* , Master's Memorandum, Faculty of Law, United Arab Emirates University,2017,p03.

<sup>2</sup> Yasser Thannoun, Rua Ibrahim, “Theory of Emergency Circumstances and their Impact on Judicial Rulings”, *Journal of Sharia and Law* , Faculty of Law , United Arab Emirates University, “Year 28, Issue 57”, 2014, p. 09, see also Darbal Abdel Razzaq ,*Brief in the General Theory of Commitment* , (Dar Al oloum for Publishing and Distribution, Algeria,2004),p. 55.

3- Belaour Abdelkrim, *Theory of Contract Termination in the Comparative Algerian Civil Code*,( National Institute of Writers Algeria,1986),p115.

<sup>4</sup>-Hugues Bouthinon-Dumas,*Relational Contracts and the Theory of Unforeseeability, International Review of Economic Law*,( 2001/xv, 3),p340.

5-Elaraby Belhadj, *The General Theory of Commitment in the Algerian Civil Code,C01*,(Diwan of University Publications Algeria ,1999),pp.252,253.

In order to apply the theory of emergency circumstances, the obligation must arise from a contract<sup>1</sup>, and the contract must be a lax or Delayed contract in implementation, and it must be of a period or continuous contract such as an employment contract where the worker performs work for the employer, and the amount of services performed by the worker is determined in time<sup>2</sup>.

## **1.2 Adapting the Corona Pandemic to Emergency circumstances:**

The world was going quietly until the emergence of what is known as the novel corona virus (Covid-19), but this pandemic is not the first, but many epidemics has passed by humanity and deadly diseases such as plague, cholera, SARS, swine flu, bird flu and corona virus until the emergence of the new version of the corona virus, and all these viruses are viruses that infect the respiratory system<sup>3</sup>.

The first announcement of the emergence of this virus was made during the month of December 2019 in the Chinese city of Wuhan, and it spread rapidly and dangerously in most countries of the world, as the World Health Organization announced that the infection with this virus constituted a health emergency of international concern, and called for emergency measures to be taken.

Corona viruses are a broad strain of viruses that infect humans and animals with diseases. Many corona viruses are known to cause respiratory diseases, whose severity varies from common colds to more severe diseases such as Middle East Respiratory Syndrome (MERs) and “Severe Acute Respiratory Syndrome” (SARS) to COVID-19, which is

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1-Ayman Al-Dabbagh, “The Approach of Contemporary Jurists in Addressing the Theory of Emergency Circumstances (Analysis and Criticism)”, *Al-Najah Journal of Research (Humanities) Palestine*, Volume 28/7, 2014.

2- Ahmed Al-Suwaie Al-Shalibek, “Theory of Emergency Circumstances:Its Pillars and Conditions, on the following”, ([https://www.aliftaa.jo/Research.aspx?ResearchId=72#.XutCMGo6\\_IU](https://www.aliftaa.jo/Research.aspx?ResearchId=72#.XutCMGo6_IU)), accessed 16/06/2020 at 10.00

3- Mustafa Al-Ghasham Al-Shuaibi, “Legal adaptation of the health emergency between the theories of force majeure and emergency circumstances”, *Adalah Journal of Legal and Judicial Studies, Rabat Morocco*, Issue 04, (June 2020),p89.

an infectious disease caused by the novel corona virus. The World Health Organization has recognized that it is a dangerous and deadly virus due to the large percentage of deaths that approached half a million worldwide<sup>1</sup>. Accordingly, all countries of the world have resorted to imposing quarantine measures as a preventive measure to protect against the outbreak of this epidemic. In addition, the effects of this pandemic have affected the social and economic life of countries, including labor relations, due to the closure of many companies and institutions, which led to a Disruption of Contractual Equilibrium in employment contracts<sup>2</sup>.

The Algerian state has dealt with the Corona pandemic as an emergency, by maintaining the continuity of the business relationship and not ending it, although the implementation of the contract has become burdensome for one of the parties, that is, the implementation of the contract is not impossible, and therefore it can be said that the Corona pandemic was considered within the emergency circumstances, and in order to apply this theory to the pandemic, it is necessary to ensure that the conditions for its application are available, which are:

The contract should be lax in its implementation, which applies to the employment contract, and the second condition is that there is an exceptional general and sudden accident that could not have been expected<sup>3</sup>, and the meaning of the exceptional accident, which is rare, such as epidemic and war ...Etc., As for what is meant by the general accident, that is, the exceptional accident is not specific to the debtor, and the accident must be sudden, that is, out of the ordinary and unexpected, that is, it is not possible for the ordinary man to expect it when concluding the contract. As for the third condition, the implementation of the obligation must become burdensome for the debtor and not impossible in the sense that the sudden accident leads to making the obligation burdensome for the debtor without the matter reaching the point of impossibility to implement it<sup>4</sup>.

If we projected these conditions and characteristics, on the Corona pandemic, it is an exceptional general and sudden accident that

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1-World Health Organization (Who) website, (<https://www.who.int/ar/emergencies/diseases/novel-coronavirus-2019/advice-for-public/q-a-coronaviruses>), accessed 18/06/2020 at 20.00

2- Al-Mustafa Al-Ghasham Al-Shuaibi, previous article, p. 89.

3- Hugues Bouthinon-Dumas, Op. Cit, p 343.

4- Elaraby Belhadj, op. Cit., P. P. ,256,257.

could not have been expected when the employment contract was concluded, and thus adapting the Corona pandemic as an emergency circumstance is closer to the truth because it did not make employment contracts impossible to implement.

## **2. Impact of application of the theory of emergency circumstances on the employment contract:**

The labor law is one of the most important branches of private law, so the Algerian legislator has singled it out with a set of legal texts governing the labor relationship between the employer and the worker. Many guarantees were granted before the termination of the labor relationship between the two parties, so we will address in the first element the cases of termination of the labor relationship and in the second element the procedures followed before the termination of the labor relationship, in application of the theory of emergency circumstances.

### **1.2 Cases of Termination of the Employment Relationship:**

The law regulating labor relations included Law N° 90/11 amended and supplemented<sup>1</sup>, the methods of ending the labor relationship, which consisted of nullity or legal cancellation, expiry of the employment contract of limited duration, resignation, dismissal, complete incapacity to work, layoffs to reduce the number of workers, termination of the legal activity of the employing body, retirement and death<sup>2</sup>.

**-The labor relationship ends with nullity:** Nullity is the penalty imposed by law for the absence of one of the elements of the contract, which is the non-existence of the contract effect for the contracting parties and for others, and does not result a right or obligation<sup>3</sup>, such as the conclusion of the contract by a person without capacity<sup>4</sup>.

<sup>1</sup> - Law 90/11 of 21/04/1990 on labor relations, Official journal No. 17.

<sup>2</sup> - See the text of Article 66 of Law 90/11 on Labor Relations, as amended and supplemented.

<sup>3</sup> - Elaraby Belhadj, op. Cit., P. 171.

<sup>4</sup> - Derbal Abdul Razzaq, op. Cit., P. 49, Ben Baalash Khaleda, "Nullity of the Employment Contract under Law 90/11", *Journal of Labor and Employment Law*,



If the contract is voided before its implementation, it does not pose a problem, but the problem in the case of implementation and submission of work by the worker, Law N° 90/11 has guaranteed the worker his right to pay despite the nullity of the contract<sup>1</sup>.

**-The employment relationship also ends at the end of the contract term:** At the end of the employment contract period, the employer can terminate the contractual relationship, as it is required to inform the other party and notify him in advance, which is determined by the regulations and collective agreements, with the worker retaining all his rights , if this act is unilateral from the employer without the worker's fault<sup>2</sup>.

**- Resignation** as another reason for ending the employment relationship with the sole will of the worker is a fundamental right recognized to him, but the Algerian legislator did not define it and left it to jurisprudence, which defined it as a legal act of the sole will of the worker who expresses his serious and unambiguous desire to put an end or stop to the employment contract<sup>3</sup>, and the resignation results in the worker benefiting from his right to grants, compensation and work certificate.

**- Dismissal or disciplinary Layoff:** it is a procedure imposed on the worker who committed a disciplinary error during the performance of his work, which makes the continuation of the labor relationship impossible, as dismissal is carried out in the event that the worker commits serious errors in accordance with the conditions specified in the bylaws, and the latter determines the conditions that allow the worker concerned to benefit from compensation for dismissal<sup>4</sup>.

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*Faculty of Law and Political Science, Mostaganem University, Volume 4 , No. 02, (December 2019),p. 258.*

1- Bin Baalash Khalida, *ibid*, p. 265.

2- Gharib Mounia, *Labor Relations and Cultural Learning at the Algerian Industrial Corporation*, (PhD Thesis, Faculty of Humanities and Social Sciences, University of Menturi, Constantine),2007.

3- Benazouz Ben Saber , “Resignation is a case of termination of the employment relationship in Algerian legislation”, *Journal of Labor and Employment Law, Faculty of Law and Political Science, Mostaganem University*, Issue 04,( June 2017),p02.

4- Article 73 of Law 90/11 amended by Article 02 of Law 91/29 of 21/12/1991 amending and supplementing Law 90/11 on Labor Relations.

**-Total incapacity to work:** The employment relationship can end due to complete incapacity for health reasons, as the contract becomes impossible to perform, because the worker will not fulfill his obligations to the employer.

**-Layoffs to reduce the number of workers:** The employer may reduce the number of workers if economic reasons justified by him , such as the exposure of the user institution to economic and financial difficulties, and in order to maintain the existence of its economic entity, it deliberately dispenses with a certain number of workers who cannot pay their wages and financial dues in order to reduce its expenses<sup>1</sup> .

**-Termination of the legal activity of the employing body:** Some involuntary circumstances may arise for the owner of the institution that lead him to terminate its activity, such as the bankruptcy of the company or institution, but if he sells it to a new user, the labor relationship does not ended but remains continuous with the new employer, as it is stipulated in Article 74 of Law 90/11 .

**-Retirement:** The provisions of the retirement system are subject to Law N° 90/11 and many other laws, as it is one of reasons of ending of the employment relationship<sup>2</sup> Retirement is the natural ending of the employment relationship life.

**-Death:** It is normal for the employment relationship to ended with the death of the worker not with the death of the employer.

## **2.2 Procedures followed before the termination of the labor relationship in applying the emergency circumstances theory:**

As it is mentioned above, it is possible to ended the employment relationship through layoffs, but the Algerian state did not resort to this procedure, but rather applied the theory of emergency circumstances and entrusted to alternative measures to reduce the burden on employers , and

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1- Article 69 of Law 90/11 states: " The user may reduce the number of users if justified by economic reasons...".

2- Layeb Samia,"The pension system in Algeria between the equation of social protection and the financial crisis", *Journal of Labor and Employment Law, Faculty of Law and Political Science, University of Mostaganem*, Volume 04, Number 02 , (December 2019),p70 .

in return to keep the employment ongoing contracts , as it resorted to activating the mechanism of remote work in some sectors where work does not require the personal presence of the worker , as well as the system of exceptional paid holidays and part-time work.

**-Remote work:** After the economy turned to globalization, work began to move towards independence in light of the emergence of huge digital platforms. For example, in France, the number of self-employed workers increased by establishing their own businesses through digital platforms. However, this type of work lacks some of the rights enjoyed by ordinary workers such as holidays, wages, union representation, and other rights <sup>1</sup>.

Remote work is a business model that provides companies and workers with the freedom to work away from the company's headquarters. It is suitable for work areas that do not need the person to be physically present at the company's headquarters, such as programming, design, content writing, marketing, management and customer service online. Remote work requires the availability of a computer and a stable Internet network<sup>2</sup>. The activation of the remote work mechanism may be embodied through quarantine measures taken by the Algerian state to reduce physical proximity between individuals in workplaces and public places<sup>3</sup>.

Many institutions have resorted to holding meetings through modern technologies such as “Zoom” and “Google Meet”, but working remotely faces many difficulties, especially in light of the weak Internet flow, which hinders the speed required to work.

**-The system of exceptional paid holidays:** Instead of ending the employment relationship in some sectors, the state resorted to the system of exceptional paid holidays for 50 employees and workers, especially for pregnant women and mothers whose children are not older than 14 years<sup>4</sup>, and the exceptional holidays in the public and economic sector

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1-Margot Fort Claisse and Sabine Sépari, “Management of New Forms of Work Organization, Economics and Management”, N° 167, (avril 2018),p30.

2-<https://go.baaeed.com/introduction/remote-work.html> accessed 19/06/2020, at 12.00

<sup>3</sup>-Executive Decree 69/20 dated on 21/03/2020 concerning the measures to prevent the spread of the corona virus pandemic.

4- Executive Decree No. 20/69 dated 21/03/2020 and Executive Decree No. 20/70 dated 24/03/2020 related to measures to prevent the Corona pandemic.

were lifted on the condition of providing transportation and health protection conditions<sup>1</sup>.

**-Part-time work system:** The Labor Law grants institutions the possibility of resorting to employment policy through part-time system, in condition of the interest of the institution is the justification, in normal cases, as stipulated in Article 13 of Law 90/11. It also allows the employer to resort to this system in cases justified by economic conditions and the low workload due to the institution's passage through a financial crisis<sup>2</sup>, so that the weekly legal period of work is reduced from the legal limit of 40 hours per week divided into 05 days<sup>3</sup>, and all of what it is mentioned above, is justified by the situation the country is experiencing in light of the outbreak of the new Corona epidemic.

## **Conclusion:**

Algeria suffered severe damage as a result of the spread of the Corona pandemic, like the rest of the world, especially in the economic field, which prompted the state to take a number of measures that would maintain the continuity of labor relations, and not to resort to the termination of employment contracts.

Through this study, we have reached the following results:

-Applying the theory of emergency circumstances to the employment contract led to burden sharing between the two parties, the worker and the employer to relieve the party for whom the obligation became burdensome.

- Adapting the Corona pandemic as a case of emergency circumstances, on the basis that it does not make the implementation of the contractual obligation impossible.

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1- Executive Decree No. 20/159 of 13/06/2020 on measures to prevent the corona virus pandemic.

2 Fathi Wardia, Part-Time Employment Contract, Flexibility or Protection, Academic Journal of Legal Research, Faculty of Law, Bejaia University, Volume 10, Issue 03, 2019

3- Article 02 of Order 97/03 dated 11/01/1997 defining the legal period of work, Official journal 03, 1997.

- Maintaining the binding force of the employment contract through the measures resorted to by the Algerian state, such as remote work, part-time work, reduction of working hours and other measures.

Based on the above results, we can put the following suggestions:

- The need of laws amendment related to work and to explicitly include the theory of emergency circumstances in its texts to avoid disputes and legal problems that may occur in the future.

- Enhancing the digitization of most sectors, especially the economic ones, because Algeria is still in the early stages of using modern technologies at work.

- Enhancing remote work technology because it provides effort and facilitates communication during meetings.

- Finding effective mechanisms to reduce the economic effects of the pandemic, with the need for the state to accompany the economic institutions and sectors in order to get out of the crisis, and at the same time to maintain the process of labor relations until it does not end, and thus we are in front of a terrible rise in unemployment rates, which would turn the state back.

- The need of reviewing the entire legal frameworks in order to be in line with the measures taken in this period, and to take into account these exceptional circumstances that cannot be foreseen or paid.