

COVID-19 and its Impact on contractual and labour relations in Algeria and Turkey and The Kingdom of Saudi Arabia; Comparative studies

تأثير فيروس - كورونا كوفيد 19 - على العلاقة العمالية والتعاقدية في الجزائر وتركيا والسعودية:

دارسة مقارنة



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Abstract

After the global spread of the coronavirus COVID-19, the World Health Organization declared that COVID-19 is a pandemic, and countries of the world are already taking reactive and proactive measures to limit the spread of the disease in their countries, in Arab countries such as Algeria. The response of Algeria, Turkey and Saudi Arabia has led to governments that aim to Limiting the spread of the disease to imposing significant restrictions on the movement of people, work, universities, schools and mosques throughout the country, especially in the place of Algeria, Turkey and Saudi Arabia.

Many offices have been closed due to the inability of their employees to come to the office or their usual place of work. Although some companies have remained virtually open, as their employees continue to work from home, the volume of remote work has continued to decline even in cases where employees are available to work from home. However, employers are no longer in a position to work. By providing enough work to keep employees fully engaged. It is also true that not every type of work can be done effectively online, the corresponding negative pressure on business revenue will mean that the business may not be able to maintain current salary costs and, therefore, sooner or later will have to make decisions.

Hereafter on how to manage this challenge. In other hands due to this epidemic, all previous countries are taking precautions and preventive measures such as quarantine, social distance, washing hands every day, wearing masks and gloves ... Then Algeria took a number of preventive measures, according to the executive decrees issued recently in the Official Gazette, For example, Executive Decree No. 20-70 of 03/24/2020 that specifies complementary measures to prevent the Corona epidemic and its spread, and Executive Decree No. 20-20-20 related to measures to prevent the spread of the Corona epidemic.

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Key words:

work contract - force majeure theory - emergency conditions theory - impossibility to implement the obligation arising from the work contract - fees No. 20-70 dated March 24-2020 that specifies complementary measures to prevent the Corona epidemic - Executive Decree No. 20-69 of 21 - 02-2020 related to measures to prevent the spread of Coronavirus Covid-19.

ملخص:

بعد الانتشار العالمي للفيروس التاجي COVID-19 أعلنت منظمة الصحة العالمية أن COVID-19 وباء، وتتخذ دول العالم بالفعل إجراءات تفاعلية واستباقية للحد من انتشار المرض في بلدانها، في بلدان عربية مثل الجزائر وقد أدت استجابة الجزائر، تركيا والمملكة العربية السعودية للحكومات التي تهدف إلى الحد من انتشار المرض إلى فرض قيود كبيرة على حركة الأشخاص والعمل والجامعات والمدارس والمساجد في جميع أنحاء البلاد خاصة في مكان الجزائر تركيا والمملكة العربية السعودية.

تم إغلاق العديد من المكاتب بسبب عدم تمكن موظفيها من الحضور إلى المكتب أو حضور أماكن عملهم المعتادة. على الرغم من أن بعض الشركات ظلت مفتوحة فعليًا، حيث يستمر موظفوها في العمل من المنزل، إلا أن حجم الأعمال التي تتم عن بُعد استمر في الانخفاض حتى في الحالات التي يتوفر فيها الموظفون للعمل من المنزل، إلا أن أصحاب العمل لم يعودوا في وضع يسمح لهم بتقديم عمل كافٍ للحفاظ على مشاركة الموظفين بشكل كامل. ومن الصحيح أيضًا أنه ليس كل نوع من العمل الذي يمكن القيام به بشكل فعال على الخط، فإن الضغط السلبي المقابل على إيرادات الأعمال سيعني أن الأعمال التجارية قد لا تكون قادرة على الحفاظ على تكاليف الرواتب الحالية، وبالتالي، سيتعين على عاجلا أم آجلا من اتخاذ قرارات فيما بعد حول كيفية إدارة هذا التحدي. في أيدي أخرى بسبب هذا الوباء، تتخذ جميع البلدان السابقة الاحتياطات والتدابير الوقائية مثل الحجر الصحي، مسافة اجتماعية، غسل اليدين كل يوم، ارتداء الكمامات والقفازات ... ثم اتخذت الجزائر عددًا من الإجراءات الوقائية، وفقًا للمراسيم التنفيذية الصادرة مؤخرًا في الجريدة الرسمية، على سبيل المثال، المرسوم التنفيذي رقم 20-70 المؤرخ 2020/03/24 الذي يحدد التدابير التكميلية للوقاية من وباء كورونا وانتشاره والرسوم التنفيذية رقم 20-21-20 المتعلق بتدابير منع انتشار وباء كورونا نفس الشيء اتخذته كل من المملكة العربية السعودية وتركيا. COVID-19

كلمات مفتاحية:

عقد العمل- نظرية القوة القاهرة- نظرية الظروف الطارئة- استحالة تنفيذ الالتزام الناشئ من عقد العمل- الرسوم رقم 20-70 المؤرخ في 2020-03-24 الذي يحدد التدابير التكميلية للوقاية من وباء كورونا - المرسوم التنفيذي رقم 20-69 المؤرخ في 2020-02-21 المتعلق بتدابير الوقاية من انتشار فيروس كورونا كوفيد-19 .

Introduction:

The outbreak of COVID-19 is impacting businesses this includes effect on commercial and employment contracts, companies in Algiers and Kingdom of Saudi Arabia and Turkey are left questioning the validity of their contracts and possible application of the concept of force majeure likewise companies are assessing various human resource topics as a result of the current pandemic. This legal briefing will analyse the impact of COVID-19 under legislations of the pervious countries with special focus on commercial and labour relations **the legal problematic question is:” How does the corona virus affect the implementation of obligations arising from**

the employment contract? Can the Corona virus be considered an emergency or a force majeure?’’

In this scientific paper, we used the analytical method (illustration and analysis legal articles labour law, civil law) and comparison method between regulations and legislation of each country (Saudi Arabia, Algeria, Turkey) due the outbreak of COVID-19 and their negative impact on labour markets in these countries and particularly on labour contract, in the stage of formation and the implementation, in addition countries like Algeria and Saudi Arabia and Turkey where the labor market is transforming and the governments has already introduced numerous steps to support small and medium companies ,the sudden onset of COVID-19 has greatly upset the demographic and socioeconomic balance as most of the unskilled migrants, workers are leaving from their home countries either due to unemployment or skill mismatches¹as the result the job markets are becoming polarized and career plans are being primarily associated with job security instead of wages or future growth².

From the literature review it is evident that numerous studies have been carried out all over the world to determine the impact of COVID-19 on labour markets particularly in these countries mention previously, however most of them are context specific highlighting the need for similar research in a countries such as Algeria and Saudi Arabia and Turkey where the economy is already transforming from being oil dependent to rapidly industrializing under the vision 2030 program ³ under circumstances COVID-19 has created unique challenges for the both employers and the work force, the present study therefore aimed to explore the perceptions of both private and public sector employers the changing needs it is evident that a sustainable labor market can play a crucial role in reviving pandemic bitten economies however this sustainability cannot be achieved without involving the relevant stakeholders in this endeavor, acquiring important insights from employers.

The reason I choose Algeria and Saudi Arabia kingdom and finally Turkey is because a want foreshadowing light on the issues and difficulties and obstacle relating COVID-19 and their bad influence toward the employees and how each authorities handle and mitigate the spread of corona virus through laws and regulations.

Materials and Methods

Beside to legal framework concerning labour laws and their regulations in these previous countries, Gross countries data were collected from various categories of employers to inquire about their feedback in the after math of COVID-19 to this end,

¹Sawaya,T;Balloz,T;Zarket,H,Rizk;N, coronavirus, Disease COVID-19 in the middle east a call for unified response,Front, public health2020,8,209.

²GasnaJ,Sheb,M, coronavirus COVID-19,Handling challenges in Kuwait, Science 2020,2,40

³Jawad,F,Fitis,Z,oil price collapse and challenges to economic transformation of Saudi Arabia ,at time series analysis ,Energy economic,2019,12-19.

an on line questionnaire was distributed to employers in both public and private sector industries divided into the following 12 broad categories, retail, service, finance, irrigation, recreation, health care, hospitality, education, construction ,food services ,manufacturing and transportation, the first section of the questionnaire primarily focused on the requirement of new skill set from their respective workforces during and after the pandemic the second and third sections aimed to identify the importance of these skills for retention and hiring purposes a five point liker type scale was used to collect responses from these employers in which feedback of the respondents ranged from low one to five finally in the last section of the questionnaire employers were asked to rate their importance and satisfaction levels regard to these skills which were categorized into the following eight broad categories, creativity ,effective ,communication, emotional intelligence, virtual skills thinking ,skills technical skills team work and autonomous working.

Data is analyzed with the help of descriptive statistics in which the employer's demographic profiles are presented; bar graphs are used to show employers perceptions about working about workers new skill requirements their job retention and the chances of new hiring afterword's employers overall assessment of the labor market skills is presented with help of combined assessment matrix, regression analysis is used to see the impact of different predictor variables (workers skill) on the response variable employers satisfaction further more companion regression is done to compare the individual impact of each predictor variable along with their combined effects on employers satisfaction , the findings of the analysis are then discussed with the concerned stakeholders to get their input about the development of strategic guidelines finally we synthesize all relevant information coming from the present study literature review and stakeholders feedback to prepare a conceptual framework for mitigating the effects of COVID-19 on the labor market.

Results: the results of the current study indicate that the companies on this three countries need to be flexible enough in order to match the speed and severity of pandemics such as COVID-19 it is evident that a large number of migrant workers are returning to their home countries due to COVID-19¹but the situation is more challenging for countries such as Saudi Arabia and Algeria and Turkey where the private sector mostly depends on low cost foreign workers, this highlights the importance of introducing and implementing a succession planning system in current and post pandemic scenarios under these circumstances, on the other hand job sectors such irrigation, tourism, manufacturing and construction assigned less importance to the development of new skills in COVID-19 pandemic and instead emphasized conventional skills among workers this is mainly due to be in ability of

¹Ranhan ,R ,Bish ,M ,Novel, coronavirus and Indian overseas labor migrants, updates from Gulf cooperation council,countries,roots,2020,9,pp1-4.

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these sectors to switch to virtual working as all of these sectors require their workers to be present on site for their day to day operations¹.

In order to answer the previous legal question we suggested a plan:

Chapter one: Theory of force majeure and the circumstances emergency theory

In this chapter we are going to deal with theory of force majeure throughout law and doctrine and jurisprudence in (**Section one**) also we are going to deal with the definition of unexpected circumstance theory through doctrine and laws and jurisprudence in (**Section two**).

Section one: Definition of force majeure through doctrine and laws and jurisprudence

Black's Law Dictionary defines "force majeure" as "an event or effect that can be neither anticipated nor controlled." But what is such an event or effect, and what does it mean that it could neither be anticipated nor controlled?.

What about a hurricane, diseases, Wars, Earthquakes volcanoes or a flood if you live along or COVID-19, if you live anywhere in the world?.

And so a question now facing many employers is whether the COVID-19 pandemic is in fact a force majeure event which excuses an inability to perform a contractual obligation². And the answer is: It depends.

Doubt, many parties will end up litigating whether COVID-19 qualifies as a force majeure event under these more general clauses.

Others, however, may contain more general force majeure clauses that refer to acts of God or events that are outside of the parties' control. No doubt, many parties will end up litigating whether COVID-19 qualifies as a force majeure event under these more general clauses.

Force majeure is a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, epidemic or an event described by the legal term act of God, prevents one or both parties from fulfilling their obligations under the contract. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the force majeure³.

¹ For instance in Algeria legislator issued Executive Decree No. 20-69 of 21 - 02-2020 related to measures to prevent the spread of Coronavirus Covid-19 see article n 05 and 06 from it.

²Hugh Collins and Gillian Lester, Virginia mantouvalou, Philosophical foundation of labor law, Oxford Press edition2014,P64.

³ Gordon Anderson and Walters Kluwer, Labor law in New Zealand, law business edition2010,P36.

Force majeure

(a) If non-performance of a party is:

- i) due to an impediment which is beyond the reasonable control of that party and
- ii) could not have reasonably been foreseen by that party at the time of conclusion of the contract, and
- iii) neither the impediment nor its consequences could have been avoided or overcome by the non-performing party ("Acts of God", "Force Majeure", "höhere Gewalt"), and
- iv) the non-performing party did not assume, explicitly or implicitly, the risk of the occurrence of the impediment

that party's non-performance is excused.

(b) If non-performance is temporary, performance of the contract is suspended during that time and that party is not liable for damages to the other party. If the period of non-performance becomes unreasonable and amounts to a fundamental non-performance, the other party may claim damages and terminate the contract.

(c) Unless otherwise agreed by the parties expressly or impliedly, Force Majeure events under subsection (a) above are impediments such as

- i) war, whether declared or not, civil war or any other armed conflict, military or non-military interference by any third party state or states, acts of terrorism or serious threats of terrorist attacks, sabotage or piracy, strike or boycott, acts of governments or any other acts of authority whether lawful or unlawful, blockade, siege or sanctions, or
- ii) Accidents, fires, explosions, plagues, or
- iii) Natural disasters such as but not limited to storm, cyclone, hurricane, earthquake, landslide, flood, drought etc., or
- iv) Any event of a similar nature.

(d) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If such notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

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(e) Where the obligee has been prevented by a Force Majeure event as defined in (a) above from causing a limitation period to cease to run, the limitation period is suspended so as not to expire before one year after the relevant impediment has ceased to exist¹.

Any result of the negligence or malfeasance of a party, which has a materially adverse effect on the ability of such party to perform its obligations².

Any result of the usual and natural consequences of external forces.

To illuminate this distinction, take the example of an outdoor public event abruptly called off.

If the cause for cancellation is ordinary predictable rain, this is most probably not force majeure.

If the cause is a flash flood that damages the venue or makes the event hazardous to attend, then this almost certainly is force majeure, other than where the venue was on a known flood plain or the area of the venue was known to be subject to torrential rain³.

Some causes might be arguable borderline cases (for instance, if unusually heavy rain occurred, rendering the event significantly more difficult, but not impossible, to safely hold or attend); these must be assessed in light of the circumstances.

Certain events, beyond the control of the parties, may inhibit the parties from fulfilling their duties and obligations under the project agreements. To avoid the resultant breach of contract, parties may prefer to excuse contractual obligations to the extent that they have been so inhibited.

Different legal systems have developed different theories in response to this need, including the doctrines of impossibility and frustration in England and the United States and force majeure in France. Under French law force majeure is an event that is unforeseeable, unavoidable and external that makes execution impossible⁴.

¹ See https://www.trans-lex.org/944000/_/force-majeure/ hour13.10 date 21-06-2020.

² See PPP LRC PUBLICPRIVATE-PARTNERSHIP LEGAL RESSOURCE CENTER WORD BANK SITE <https://ppp.worldbank.org/public-private-partnership/ppp-overview/practical-tools/checklists-and-risk-matrices/force-majeure-checklist>.

³Trade and Transport Inc v Iino Kaiun Kasiha Ltd [1973] 1 WLR 210 at 224 to 227; cf Channel Island Ferries Ltd v Seal ink United Kingdom Ltd [1988] 1 Lloyd's Reports 323.

⁴"Impossibilité absolue de remplir ses obligations d'un à un événement imprévisible, irrésistible et extérieur" French Civil Code, arts 1147 and 11248 (30 August 1816, reprinted 1991).

In order to avoid the uncertainties and delays involved in relying on the applicable law, parties to contracts often prefer to provide for a specific regime for force majeure, along with a definition of which events shall qualify for special treatment.

The term force majeure used in drafting project documents comes originally from the Code Napoléon of France, but should not be confused with the French doctrine. Generally, force majeure means what the contract says it means.

Are force majeure clauses standardized?

No Force majeure is often treated as a standard clause that cannot be changed. However, as the clause excuses a party from carrying out its obligations, it needs to be carefully thought through and tailored for the project in question.

It may be appropriate for there to be different events that give rise to different contractual consequences. For example, see the 2013 EPEC publication by Allen & Over comparing termination clauses and force majeure clauses in PPP projects in a number of European countries.

It is important to note that Lenders do not like force majeure as it creates a level of uncertainty for them. Therefore, where external funding is to be called upon, thought should be given when drafting the underlying project agreements as to what Lenders are likely to accept.

Checklist of issues to consider as Force Majeure

Who should bear risk?

The risk of force majeure is generally allocated to the grantor. The theory goes that the grantor is best able to manage force majeure risk, as such risk relates partially to the activities of the host country government and its relations with other countries and/or its populace, and that the grantor is the only party able to bear such risk, given its size and the difficulty of obtaining adequate insurance.

However, in certain markets, such as the UK, the grantor may require the project company to bear a portion, or all, of the *force majeure* risk or may separate the risks between natural and political force majeure events, with different consequences (see below).

What are the consequences of force majeure event?

Should the affected party be relieved of its obligations to perform under the contract? In some projects a force majeure event is likely to have an impact on the whole project¹ such as lightning striking a power plant transmission substation and making it temporarily unusable. However, in other projects, such as a water concession over a

¹DimondAshiagbor, The European employment strategy labor market regulation and new governance, oxford monographs on labor law, 3rd edition, P45.

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whole network, even if force majeure has an impact on a specific treatment plant or pumping station, it may not affect the whole network.

The affected party should be under an express duty to minimize the disruption caused by force majeure.

Should some events constitute force majeure for one party but not the other? Care should be taken to ensure that force majeure events only relieve obligations to the extent that they prevent the party from performing them.

Liquidated damages

Is the contractor to pay liquidated damages¹ if completion or some other event does not occur by a specified date? If so, the contract should stipulate that the date in question is extended by any period during which the contractor is prevented from carrying out the activity in question.

Continued payment?

To what extent (if any) should the contractor continue to be paid even where it is unable to perform its obligations? This should be expressly stated.

Other project documents

Is there a linked project agreement that may be affected also? Are the provisions in related project agreements “back-to-back”? For example, if a project company is to receive no revenues during a majeure force event under a power purchase agreement, will it still be liable under the take or pay provisions in the fuel supply contract? Lenders will want to ensure that the definition and treatment of force majeure is identical in each of the project contracts. However, it should be remembered that force majeure only excuses a party from performing under a contract to the extent that performance under that contract is hindered or prevented. Therefore, it may be necessary to include a provision specifically referring to circumstances where a party is prevented from performing its obligations under another agreement due to force majeure²

Termination for extended force majeure

Should there be termination in case of extended force majeure events? Should a maximum period be identified during which the effects of one single event or an aggregate duration of force majeure³ events over the period of the concession may last before one or both of the parties can act to either remove itself from the project or obtain compensation for damages incurred. watch out for wording which talks about

¹Tzehaineshtekle, Labour law and industrial relation in recessionary time, The Italian labor relation in global economy by Michel tiraboschir, ADAPT labor studies, e-book series ADAT university press ,P55

²Vinter – Project Finance (3rd Ed) para 6-004.

³H.L Kura, Labor laws, every body should know, Oxford edition 2010, P62

continuation of the force majeure event for a period – what is important is the duration of the inhibiting effects of force majeure. The theory is that parties will have insurance and other resources to tide them over for some period of force majeure, but eventually they should be entitled to terminate. Often if it agrees to continue with the project despite continuing force majeure, the project company's compensation during force majeure will increase accordingly to create an incentive to remain.

Definition of force majeure

The definition of "force majeure" will vary from project to project and in relation to the country in which the project is to be located. The definition of "force majeure" generally includes "risks beyond the reasonable control of a party, incurred not as a product or result of the negligence of the afflicted party, which have a materially adverse effect on the ability of such party to perform its obligations". Sometimes an even stricter requirement, requiring impossibility of fulfilment, is imposed. This is a very difficult fact to prove and could result in the operator bearing an unacceptable level of risk. Parties should also consider whether it is appropriate to exclude consequences which could reasonably be avoidable by either party.

It is important to ensure that force majeure events are events which are not reasonably foreseeable and unlikely to occur. Therefore, where supply of electricity is necessary for the operation of the facilities but is generally intermittent, then the parties should ensure that there is standby generation or some other solution. In other circumstances, however, intermittent supply will be unusual not reasonably foreseeable and it will be appropriate to include it as an event of force majeure.

Force Majeure¹ was defined as "every external act in which a person has no hand, such as natural accidents and wars, to other unexpected matters." And the Saudi organizer did not define force majeure but rather referred to it in some texts of the regulations, including what came in Article -74- of the work system, "the contract is terminated in the case of force majeure above the will of both parties," and that is what came in Article 28- of the system. Mining investment "means force majeure in the provisions of this article, events recognized as fundamental as a force majeure resulting from unforeseen circumstances at the time of issuing the license, which are not due to either party and make the licensee's implementation of his obligations specified in the license impossible", and that is what was stated in the articles of association of the Association The Saudi league is "the event or influence that is impossible to control or predict", as well as some provisions of force majeure in the civil aviation system, and making it one of the cases exempted from penalties in the separation of violations, and what came in the unified customs law of the Gulf Cooperation Council countries Which provided for some exceptions in cases of force

¹Saudi Arabia civil law.

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majeure. For more, please see Articles (154-21-20). Among the most important areas that deal with the issue of force majeure is the field of maritime and air law, which is one of the most important areas for deliberation and potential in reviewing the impact of force majeure and emergency conditions. The force majeure is dealt with in Islamic jurisprudence with "the theory of excuse and scandals" according to the words of God Almighty: "God does not cost a soul except its power." And God Almighty says: "Our Lord does not bear what we have no energy with."

Force majeure events

The parties will usually agree on a list, which may or may not be exhaustive, of examples of force majeure events. Force majeure events generally can be divided into two basic groups: natural events and political events.

(a) Natural events

These may include earthquakes, floods, fire, plague, Acts of God (as defined in the contract or in applicable law) and other natural disasters.

These are events which are not within the control of the Host Government.

The parties¹ will need to look at the availability and cost of insurance, the likelihood of the occurrence of such events and any mitigation measures which can be undertaken. For example, although the grantor will be best placed to appreciate the ramifications of common natural disasters, the contractor should be able to obtain insurance for the majority of this risk or otherwise mitigate the occurrence of the risk.

(b) Political and special events

These may include terrorism, riots or civil disturbances; war, whether declared or not; strikes (usually excluding strikes which are specific to the site or the project company or any of its subcontractors), change of law or regulation this is often dealt with separately from force majeure, nuclear or chemical contamination, pressure waves from devices travelling at supersonic speeds, failure of public infrastructure.

The grantor's willingness to protect the contractor from political risk will go a long way to reassure the contractor and the lenders that the project has host government support. In many developing countries, the risk of political upheaval or interference is of great concern. As a general proposition the grantor in a developing country should be willing to bear a certain amount of political force majeure risk. Special risks included in this list generally represent those risks which are uninsurable under normal commercial conditions, such as nuclear contamination. These risks are generally considered to be beyond the control of the contractor.

Political risk insurances may be available, either through private insurances, multilateral organisations such as the World Bank, MIGA or export credit agencies.

¹Ahmed el bajouri, Introduction in Saudi Arabia labor law, Hard back edition 2010, P102.

Theory of force majeure legal influence on the contract

the establishment of a force majeure event requires to assess if a case is subject to the definition of force majeure in the contract not individual contracts can differ widely on this point and can include or exclude natural disasters states of war...ext. In many cases obligations may be suspended only to the extent affected by force majeure once an obligation under force majeure is suspended it should be assessed what happens to an obligation in consideration to the suspended obligation example remuneration for the suspended obligation frequently such a suspension is only foreseen in the contract for limited period of time many contracts contain a termination as an option after a lasting period of force majeure and in some contracts termination is triggered automatically such periods typically range from 30 to 90 days but may extend beyond this timeframe in many cases an early announcement of force majeure case might lead to an early and undesired termination of the contract.

Section two: Definition of unexpected circumstance theory through doctrine and laws and jurisprudence

The theory of unexpected circumstances¹ assumes that a contract is concluded under normal circumstances. If the economic balance and obligations and rights that was basis of the contracts at the time of its conclusion changed because of unexpected circumstances or accidents, which cannot be removed or have not been taken into account at the time of the contract conclusion thus making the execution of the contract not almost impossible but burdensome to the debtor and may cause unusual loss in such case the contractor may ask the management to share his loss by being partially compensated².

Islamic law has preceded all human laws in effecting the theory of unexpected circumstances this is because Islamic law is based on justice and mercy. Although Islamic law does not contain a general the theory of unexpected circumstances as in human effective laws the Islamic law has various practical applications of this theory, including the theory of excuses in lease agreements and the theory of pandemics in fruits and plants and the theory of change in value of money. These theories are the

¹In Algerian legislation exact in civil law the article107state that The contract must be executed in accordance with what it contains and in good faith.

The contract is not limited to the contractor's commitment to what is contained in the contract, but also deals with its requirements in accordance with the law, custom and justice according to the nature of the obligation.

However, if there are exceptional public incidents that were not widely expected and their occurrence resulted in the implementation of the contractual commitment and if it becomes impossible it becomes exhausting for the debtor so that it threatens him with a profound loss.

Unlike that.

²Ahmed Yousef abed Arhmanbahari, The emergency circumstance theory and its effect on Administrative contract in Palestine, Thesis due to obtained magestaire degree in private law, University of Gaza,2017-2018,P02.

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legal basis of the theory of unexpected circumstances in Islamic law the purpose of this theory is to restore the obligations and rights and financial balance of the contract and protect the weak party who is placed in circumstances out of his control and in a difficult situation¹.

A contract once concluded, binds the parties and is intended to remain binding even if the circumstances change. For instance, if the financial position of one of the parties changes his or her need for the object of the contract alters or the value of the object goes up or down the validity of the contract itself will not be affected, However some occurrences that go beyond the reasonable expectations of the parties may raise serious doubts as to the binding nature of contracts for instance what about the effect of events such as nature of contracts for instance what about the effect of events such as natural disasters an oil crisis an armed conflict or pandemic diseases such as COVID-19....ext. Or to mention a quite recent significant event a fundamental financial crisis these similar issues have been dealt with by courts in all European legal systems at some point and the historical perspective reminds us that the issues of how to deal with unexpected circumstances has a long tradition in jurisprudence².

In this paper we will begin our comparative analysis with a survey of the central questions that dominate the issue of unexpected circumstances and prepare the ground for the more detailed the eventualities of life are infinite and therefore the legal issues referring to unexpected circumstances present a kaleidoscopic picture still it is possible to identify some categories of facts patterns that occur regularly and involve specific issues accordingly in the questionnaire that was drafted as starting point and that forms the back bone of our comparative analysis we have distinguished between four groups of unexpected circumstances that have proven to be of particular relevance in the context of private law:

Group A: the equivalence of exchange is substantially affected.

Group B: one party's use of contractual goods and services is substantially affected.

Group C: failure of specific purposes other than A and B.

Group D: mutual mistake concerning the calculation underlying the contract.

All jurisdiction dealt with this volume and most if not all other legal systems respecting individual liberties and the freedom of contract are based on the principle that contractual obligations should be observed as the basis of contract law in some jurisdictions with a statutory regime this principle has been codified in others like common law jurisdiction it is recognised on the basis of judicial tradition the binding nature of contracts is traditionally referred to by the nation of "Pacta Sunt Servanda"

¹Ahmed Yousef abed Arhmanbahari, op-cit, P03.

²Ewoud Hondius and christop Grigoleit, The common core of European private law, Unexpected circumstances in European contract law, University Cambridge press printing house shaftes UK, P01.

the Latin of which perhaps misleading suggests that this was already principle of Roman law as we shall from a more general point view pactasuntservanda¹ is one aspect of the notion of individual autonomy under this idea individuals determine the rules governing their transactions by consent it is a prerequisite of the freedom of contract that rules that are consent to are binding on the relevant parties as otherwise the agreement would be of little more than moral value and the functioning of contractual exchange would be endangered thus freedom of contract corresponds with responsibility.

The conditions of applying the theory of unexpected circumstances

The unexpected circumstances are characterized by three basic conditions that must be met in order to apply the theory so that no condition of these conditions can be separated from the other and then a third of these conditions:

- The circumstance is general.
- The circumstance must be exceptional.
- The sudden circumstance was unexpected
- That the implementation of the commitment in the presence of the emergency circumstance be exhausting.

theory legal influence on the contract

The judge has the power to amend the contract so that it works to return the tedious commitment to a reasonable extent as he works to increase or decrease the commitment for all contractors in order to reach a contractual balance Where, according to the circumstances of the case that surrounded the contract, the judge also decides, it remains for the contractors to either renegotiate the terms of the contract or terminate the contract.

Chapter two: The Impact covid-19 on the world of work

Beyond the urgent concerns about the health of workers and their families, the virus and subsequent economic shocks will impact the world across three key dimensions first the quantity of jobs both unemployment and employment, secondly the quality of work example wages and access to social protection, thirdly effect on specific groups who are more vulnerable to adverse labour market outcomes due the outbreak of COVID-19 virus countries in general are already responding and in particularly Algeria and Turkey and Arabia Saudi Kingdome let's saw How COVID-19 affected the labour market in these countries so we will deal with measures taken in response to covid-19 by Algerian authorities in (**Section one**) and measures taken in response to covid-19 by Saudi Arabia authorities in (**Section two**) and measures taken in response to covid-19 by Turkey authorities in (**Section three**)

¹Algerian legislation, Article 106 of the Algerian Civil Code, which stipulates the contract stipulates the law of the contractors, and it is not permissible to revoke it or amend it except with the agreement of the two parties.

Section one: Measures taken in response to covid-19 by Algerian authorities

The COVID-19 pandemic in Algiers and measures taken to combat its spread have created a number of difficulties and uncertainties for companies and employees¹ COVID-19 has resulted in many employment contracts being altered or modified due to the suspension of company activities or breakdown of the contract itself, within this framework the key issues to consider include force majeure² and government measures that have been put in place to support companies and employees during this exceptional situation in the covid-19 context questions have arisen including :

- can employers implement significant changes to the day to day working pattern of company or introduce medical testing?
- can employees refuse to work enter their work place or use public transport to get to work in order to maintain their health?
- Can the employer reduce the wage of the worker due to the outbreak of the Corona epidemic?
- Can an employer terminate an employment contract due to the outbreak of the Corona epidemic?
- Can the employer compel the worker to take an unpaid vacation without the prior written approval of the worker due to the outbreak of the Corona epidemic?

With regard to the normal performance of employment contracts and pursuant to article 24 of the labour code employers must ensure the health and physical security of employees as well as employees physical psychological and moral integrity particularly against the spread disease.

Thus employees should follow the Algerian health authorities recommendations and take all necessary measures as they see fit to combat the pandemic these necessary measures can include testing employees temperatures before they enter the workplace enforcing social distancing rules and supplying cleaning kits therefore under article 24 the labour code employers can take significant action including modifying employment contracts to protect their employees' health similarly employees must be able to request that these measures are put in place if their employer is not complying with article 24.

According to Executive Decree of 20-03-2020 related to measures to prevent the spread of the corona virus epidemic³ the article 06 from it stat that A minimum of

¹ For further details, please see ILO1st edition COVID-19 and the world impact and policy responses ,18 March 2020 consult the website: ilo.org/topics/coronavirus/government responses to COVID-19 impact on employment.

² The Algerian legislator does not define force majeure in civil law but he referred to her as a foreign cause in the article 127 of the Algerian Civil Code, where it stipulated that if the injured person proves that the damage has arisen from a cause in which he has no hand, such as a sudden accident, force majeure, error issued by the victim, or a mistake by others, he is not obligated to compensate for this damage unless there is a legal text or agreement contrary to that.

³ Official gazette N°15 date 21-03-2020

fifty present 50% of the employees of each institution and public administration shall be placed in a paid vacation during a paid vacation during the period stipulated in Article 20 above meaning 15 days renewable in addition to that Where Article 08 of this decree stipulates that priority be given to pregnant women and women in charge of raising their young children, as well as to people with chronic diseases and those suffering from healthy fragility.

Encouragement the teleworking from houses in order to protect workers' health ,staggered hours are being introduced in many countries especially Algeria at national or work place level in order to promote teleworking ,financial support and simpler procedures have been used in many countries.

Section two: Measures taken in response to covid-19 by Saudi Arabia authorities

Force Majeure is one of the most important reasons for the absence of responsibility in its two types, according to the legal text of the labour system: "The contract will be terminated in the case of force majeure above the will of both parties." And by implementing the conditions that we previously described on the pandemic situation the world is going through now, it becomes clear to us that it is an unexpected pandemic The will of the worker and the employer. Thousands of workers faced the risk of losing their jobs, or at least suffer an unknown fate in light of the pandemic and spreading outbreaks, which affected most sectors in Saudi Arabia. Some airlines around the world have tended to reduce the number of workers and even end their contracts in an attempt to stop financial bleeding and narrow the circle of losses in conjunction with the cancellation of many flights, for example, we find Norwegian Airlines, which announced that it is about to "lay off a large number of workers", after having been forced to Three thousand flights have been cancelled so far, and the British Airways Company has started offering "unpaid leave" to its employees, who number more than 45 thousand employees.

At the level of the United States of America, recent data showed that the private sector - non-agricultural - abolished 27 thousand jobs in the month of March, and observers estimate that 150 thousand jobs in the United States will be ended during the last month in the private sector, in addition to the abolition of 9 thousand jobs in the commodity production sector last month, while the services sector decreased during the same period by 18 thousand jobs.

As for the Kingdom of Saudi Arabia, and after it decided to impose a curfew for the public interest in most regions over a period of 24 hours a day, and decided to prohibit the practice of working in commercial activities, except for the work of some necessary activities, the government - may God bless it - issued a decision excluding Saudi workers in the private sector affected by the repercussions. The current, from articles (10-14-8) of the unemployment insurance system, so that the employer has the right, instead of terminating the contract of the Saudi worker, to apply for social

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insurance by requesting a monthly compensation payment for his employees at a rate of 60% of the wage for a period of three months, and a maximum Nine thousand riyals per month, with a total value of 9 billion riyals. Also, the decision to add Article (41) to the executive regulations of the work system is in the use of force majeure as a justification for the dismissal, and that is mentioned in paragraph (5) of Article (74) of the work system where the employer obliged to agree with the worker on the three options, which is an agreement to harmonize wage hours With the actual number of working hours, agreeing to use the balance of wages due for wages, agreeing to use leave without pay for no more than 20 days per month, and this decision put maximum protection for Saudi workers in a basic paragraph of it so that the employer does not allow the contract to be terminated if It has been proven that he has benefited from any subsidy from the government to face this situation, and therefore the establishment that applied for registration in the Sandi system and actually benefited from it did not have an excuse for dismissing Saudi employees according to the force majeure, because there was no force majeure in the worker's relationship with the employer.

the Kingdom of Saudi Arabia authorities have taken measures to ease administrative pressure with regard to labour and residency matters for instance residence permits of employees can be renewed even the concerned person remains abroad with particular regard to the work environment bundle of measures has been taken regarding the work place environment such as the limitation of presence in company headquarters companies have also been asked to grant a compulsory leave of 14 days not being deducted from the leave balance for all employees who fall into one of the following categories:

1-pregnant and lactating women. 2-people with respiratory chronic or immunodeficiency diseases. 3-users of immunosuppressive drugs tumour patients.4-workers over the age of 55year.

Does Saudi law consider force majeure in employment relations?

Labour relations are regulated by the Saudi labour law enacted by Royal Decree M/5123/08/1426H the labour law sets out the main requirements for labour relations and elaborates further on employment contract while force majeure clauses can be included in employment contracts the Saudi labour law contains several provisions related to force majeure the most prominent one is the possibility to terminate a labour relation due to force majeure in article 74 from the previous law the following needs to be considered:

1-Force majeure does not allow for extraordinary termination without notice period.
2-Moreover force majeure only considered as a valid reason for termination if the

employee is not able to exercise his or her obligations under the employment contract due to the force majeure.

Article 87 from labour law grants full end of service rights to employees leaving work due to force majeure other measures can employers in Saudi Arabia take employers can instruct employees who might not be able to work remotely to take their annual leave in this regard article 109para 02 from labour law allows employers to determine the start of annual leave of their employees. However, employers must notify their employees of the date specified for the leave within a period not less than thirty days however the aforementioned does not apply to unpaid leave this means that unpaid leave cannot be unilaterally instructed by employers instead it has to be agreed between employers and their employees this has recently been confirmed by a statement of the ministry of Human Resources and social development likewise salary cuts only possible with the consent of the employees.

Section three: measures taken in response to covid-19 by Turkey authorities

Having spread to most of the countries and identified as a pandemic by the world health organization COVID-19 is substantially the global market as well as Turkey extraordinary measures have been taken not only by governments and authorities but also by the private companies some of employers are obliged to close their work place due to governmental requirements and some of them closed their workplaces without any formal requirements the Turkish law considered COVID-19 as infectious disease and its effects on the employment contract herein.

1-Employer's obligations through Turkish laws.

1.1 Employer's obligation to inform infection diseases.

COVID-19 regarded as an infectious disease under infection diseases regulation dated 2007 according to the regulation the employers are obliged to notify health institutions if any employees infected with COVID-19.

1.2 Employers obligation to provide occupational health and safety.

Turkish code of obligation N 6098 Turkish code of obligation and occupational health and safety code N 3631 occupational health and safety code require the materials in order to ensure occupational health and safety at the work place in this vein employers are required to ensure hygiene of the work place and provide necessary equipment and materials such as masks cleaning cloths anti bacteria liquid..etc and take necessary measures in order to ensure health and safety of the employees by taking COVID-19 into consideration in terms of its dangers and infectiousness.

2-Termination of employment contracts.

2.1-Termination by the employee

Case one: Termination of the employment contract based on justified by the employee due to employer's other employee's infection with covid-19.

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Depending on the particulars of the matter employees would have the right to terminate their employment contract immediately as per Turkish labour law article 24/I/b if an employee or the immediate termination of the contract based on justified ground if the employee is working closely with the employer or employee who is infected with covid-19, employees will not have the right to terminate their employment contracts based on under Turkish labour act merely because the employee he or she is infected with covid-19 according to the precedents¹.

Case two: Termination of the employment contracts based on justified grounds by the employee due to compelling circumstances under labour act

Compelling circumstances may define as external occurrences that are unforeseeable by the parties to an employment contract according to labour act in the event of compelling circumstances the employee may terminate the employment contract based on justified grounds according to labour law article N 24/III², quarantine restriction or entry prohibition on the work place for more than one week due to covid-19 epidemic may be regarded as a compelling circumstance it should also be noted that employers are obliged to pay half wages of the employees for the one week period according to labour act article 41.

2.1.3 Termination of the employment contracts due to failure of the employer to take necessary measures with respect to covid-19.

Employees may request the employer to take necessary measures in terms of occupational and safety code with respect to covid-19 if the employer does not address the health and safety requests of the employees the employees may refrain from working until health and safety measures are fulfilled by the employee subject to occupational health and safety code article 13 from the protection health law the employer may choose to offer the employee another job which is complying with

¹The Turkish Labor Law includes two separate systems that regulate termination of employment contracts and dismissal from employment by institutions and companies operating in Turkey. The first system relies on the "freedom to terminate services" which gives the employer the right to terminate employment contracts whenever it deems it appropriate, without the need to justify the action it took or the existence of a legal justification for that. The matter is limited to merely paying termination compensation.

As for the second system in the Turkish labor law, it is a parallel system called "job security," which is the opposite of the first system and obliges employers to provide valid and legal reasons for terminating their employees' contracts. Termination of services cannot be considered valid without providing those reasons.

² Article 24/III state that If compelling circumstances arise which cause suspension of works for more than one week at the workplace the employee may terminate the employment contract based on justified grounds without complying with the term of the contract and notice period. From Turkish labour law

health and safety requests of the employee if the employee rejects this offer of the employer the employer may have the right to terminate the employment contract based on justified ground as per labor act article 25/II(e).

The employee may have the right to terminate the employment contract based on the employee's failure to take precautions despite employee's request according to labor article 24/II/ (f), labor act article 13/2 provides that statutory and contractual rights of the employee who refrains from work due to failure of the employer to take health and safety measures will continue to exist within the time period the employee refrains from work.

2.1.4-Termination by the employer

4-Termination of the employment contracts based on justified ground by the employer due to compelling circumstances under labor act

According to relevant legislation and precedents the employee may have the right to terminate the employment contract based on justified grounds immediately if quarantine period due to epidemic illnesses exceed one week and constitutes a compelling circumstance preventing the employee from performing its work subject to labor act article 25/III. In order to exercise this article the compelling circumstances must be related to the employee in the event of such termination the employee will be paid his/her severance payments if entitled.

The employers are obliged to pay half wages of the employees during the aforesaid one week period following the one week period if the compelling circumstances continue to exist the employer will have the discretion to decide on whether to terminate the respective employment contract or to pay the employee's wages.

We sum up there is a lot of cases such as termination of the employment contract due to failure of the employee to comply with the measures taken by the employer with respect to covid-19 also termination of employment contracts by the employer based on the restriction applied to the employee due to covid-19.

3-Closing the work places

3-1 closing the workplaces without any official Decision

The employer's obligation as payment of wages and additional payments to employees will continue if the workplace is closed by the employer without any administrative or governmental decision or notice or compelling circumstance.

3-2Closing the workplaces due to an official decision

If the employer is obliged to close the workplace due to a governmental or administrative decision warning or notice the employer may suspend the employment contract and pay half wages to employees for one week according to labor act article 40 this article addresses infectious diseases and quarantines according to the precedents, the employer may terminate the employment contract immediately if the time period which the compelling circumstances closing the work place due to

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governmental notice prevent the employee from working exceeds one week according to the labor act article 25/III.

4-Alternatives to termination of employment contracts

4-1 Home Office

Home office working concept is defined under the labor act article 14 as a written employment contract between the employee and the employer in which the employee performs its works at home or out of the office via technological means although the relevant article requires the home office working conditions to be agreed in writing we are of the opinion that requiring the employees to work at home due to COVID-19 epidemic is generally in favor of the employees therefore arguably home office requirement by the employees should not be regarded as a substantial amendment to the employment conditions prejudicing the rights of the employee.

Employers should apply and proceed with home office working without prejudicing employees' rights in this vein wages and additional payments meal cards..ext of the employees should be paid without Applying any deductions additionally the employers should also continue notifying and educating its employees with regards to occupational health and safety requirements.

4-2 unpaid leaves: The employer may request the employees to take unpaid due to COVID-19 epidemic which will be regarded as a substantial amendment to the employment conditions as per labor act article 22 in the event of acceptance by the employees the employment contract will be suspended during the term of agreed unpaid leave it should be noted by the employers that the employees do not have to accept such request employers may face with termination by employees if the employees are forced to take unpaid leaves without their written consent.

If the employer's request for unpaid leave is based on valid reason the employer may terminate the employment contract of the employee by complying with the notice periods and providing the reasons in written form subject to labor act article 22 in even of such termination the employee will be paid severance payment if entitled taking into consideration the economic impacts of COVID -19 pandemic across the global including interruption in business activities the employers closing their workplaces due to official notices or compelling reasons we are of the opinion that covid-19 pandemic would be regarded as a valid reason depending on the merit of each particular.

We sum up that the Turkish legislator mentions another options due the spared of COVID-19 such as requiring the employees to take their annual leaves and compensatory work and requiring all of the employees to their annual leave and short time working at last employees who travelled abroad.

Conclusion :

We sum up that each countries has their precautions and procedures in order to fight against covid-19 and maintain and control the situation in field of labor market in general and particularly in the implementation of obligations labor contract by enforcing laws and regulations and also by the helps of judges to considered whether covid19 is force majeure or emergency circumstances.

According to international labour organization they are three pillars mitigate the impact of COVID-19 on the world of work are:

1-Protecting workers in work place by using strengthen OSH meaning operation security health measures in other hand by adapt working arrangements such as teleworking also prevent discrimination and exclusion and provide health care for all and expand access to paid leave.

2-Stimulating the economy and labour demand by active fiscal policy in addition accommodative monetary policy and financial support to specific sectors for instance the health sector.

3-Supporting employment and incomes by extending social protection for all moreover employment retention and others subsidies and financial tax relief for MSMs.

4-Protect the worker inplace work to minimize the direct effects of coronavirus in the line with world health organization recommendation and guidance.

5-Improve OSH measures including social distancing provision of protective equipment especially for health and allied workers volunteers and others in permanent contact with people hygiene procedures and forms of work organization supported by information and awareness campaigns and through social dialogue between employers and workers and their representative using for example OSH committees.

6- Prevent discrimination and exclusion financed health service for all including uninsured workers and their families.

7-Enhance universal access to collectively financed health services

8-Expand access to collectively financed paid sick leave, sickness benefits and parent alone leave to ensure income security for those who are sick quarantined or caring for children elderly or other family members.

8-Stimulate the economy and labour demand through economic and employment policies to stabilize economic activity and active fiscal policies, particularly social protection measures including targeted transfers and automatic stabilizers such as unemployment benefits along with public investment and tax relief for low income earners and micro small and medium enterprises MSMEs.

9-Accomodative monetary policy (interest rate reduction reserve rate relaxation targeted liquidity provisions.

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All in all we saw that all the previous countries mention it above use the same way and measures and procedures in order to reducing the negative impact on labour relationship in public and private sectors.

10-Targeted lending and financial support for specific sector to protect enterprises especially MSMEs investing in health systems is crucial in building resilience against COVID-19 but also offers an opportunity to create decent jobs.

11-Protect employment and income for enterprises and workers negatively impacted by COVID-19 virus.

12--Expand access to collectively financed paid sick leave sickness benefits and parental care leave to ensure income security for those who are sick quarantined or caring for children elderly or other family members.

13-In the event of a dispute in the implementation of the obligations resulting from the employment contract, the contracting parties have the right to resort to the judiciary and the judge has the discretionary power to estimate compensation.

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