

The Impact of Pandemics on Deferred Performance Contracts: An Analytical Study of Jordan's Response to the COVID-19 Pandemic

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Abstract

Various legal mechanisms were adopted by the Hashemite Kingdom of Jordan during the COVID-19 pandemic and, in this article, I examine the effect of these mechanisms on deferred contracts, such as labour contracts. When sudden and disrupting events like pandemics occur, particular legal issues arise which interfere with the performance of such contracts. One pandemic measure adopted in Jordan was the initiation of the Defence Law and its related orders. In this study, an analytical approach is used to assess how far the theory of hardship (also known as the Doctrine of *Imprévision*) could have been deployed to respond to pandemic-created pressures on labour contracts, had the Defence Law not been initiated. In so doing, the success or failure of the invocation in balancing the obligations and rights of both employers and workers was determined. The study concludes by stressing the need to amend Art. 205 of the JCC, widening its scope to permit courts to act in collective cases without the need for an individual lawsuit from every relevant party, in particular during crises affecting many contract types.

Keywords: COVID-19, Labour Contracts; Theory of Hardship; Doctrine of *Imprévision*; Defence Law; Deferred Performance Contracts; Jordanian Law.

أثر الجوائح على عقود متراخية التنفيذ: دراسة تحليلية لاستجابة الأردن لجائحة كوفيد-19

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الملخص

يتناول هذه البحث الآليات القانونية التي اعتمدتها المملكة الأردنية الهاشمية للتعامل مع جائحة كوفيد-19، وتقيم أثرها على العقود متراخية التنفيذ من خلال استخدام عقود العمل كنموذج. إذ تطرح هذه العقود تحديات قانونية فريدة عند وقوع أحداث غير متوقعة وطارئة والتي تؤثر على تنفيذها. لهذه الغاية، تبنى الباحث منهجاً تحليلياً لدراسة مدى إمكانية تطبيق نظرية الظروف الطارئة في مواجهة آثار الجائحة على عقود العمل، لو لم تقم الحكومة الأردنية بتفعيل قانون الدفاع. كما أن البحث يسعى إلى تقييم فعالية قانون الدفاع والأوامر الصادرة بموجبه (بصفته الوسيلة القانونية التي اختارتها الحكومة الأردنية للتعامل مع الجائحة) في تحقيق التوازن بين حقوق وواجبات عقود العمل. خلصت الدراسة إلى التوصية بتعديل المادة 205 من القانون المدني الأردني لتوسيع نطاقها، بما يسمح للقضاء بالتدخل في الحالات الجماعية دون اشتراط إقامة دعوى فردية من كل طرف متضرر، لا سيما في حالات الكوارث أو الأزمات العامة التي تمس فئات واسعة من العقود ذات الطبيعة الواحدة.

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الكلمات المفتاحية: كوفيد-19، عقود العمل، نظرية الظروف الطارئة، مبدأ عدم توقع الظروف المستجدة، قانون الدفاع، العقود المؤجلة التنفيذ، القانون الأردني.

The World Health Organization (WHO) declared a Public Health Emergency of International Concern (PHEIC) (WHO, 2020, January 30) in January, 2020, following the global spread of COVID-19. The announcement was presaged by a steep rise in cases external to China, especially in border countries such as Thailand, Japan, and South Korea (World Health Organization, 2020, January 30). The WHO made its judgement following a review of the probable global spread of the disease and the likely impact on public health. In March, 2020, the WHO changed the status of the outbreak to pandemic (WHO, 2020, March 11), since by then it had spread across continents and was having an economic and social impact in most countries.

Jordan announced its first case of COVID-19 in March, 2020. This involved a 30-year-old Jordanian who had travelled to Italy, then suffering from a significant outbreak. The response of the Jordanian Ministry of Health was to implement an immediate set of measures to prevent and mitigate the spread of COVID-19, such as quarantine of the person and examination of his contacts. On 15 March, 2020, the government closed Jordan's borders, halted in- and outbound air traffic, and suspended public transportation. Additional restrictive measures included school and university closures and the shift to online teaching and learning. A nationwide curfew was also announced which limited public gatherings and effected social distancing.

Defence Law No. 13 of 1992 (Defence Law) was initiated on 17 March, 2020, followed by various defence orders which automatically suspend all laws conflicting with their provisions. Such extraordinary legislation became the main legal mechanism for managing the crisis and its economic impacts. Although it may be argued that the swift initiation of the Defence Law was key to limiting the spread of COVID-19, as the central objective at that time, invoking the Law had severe consequences. These include the fact that deferred contracts, especially labour contracts, were hard to fulfil because of the complex legal circumstances arising from the defence orders and the associated directives for its implementation.

To limit the transmission of COVID-19, a curfew was triggered ([Defence Order No. \(2\), 2020](#)), which prevented employees from attending work and thus production in many sectors ceased. The subsequent significant decline in revenue meant that many businesses could not meet their obligations to clients and suppliers. Clients cancelled or suspended contracts, leading to a vicious circle of economic distress for the affected business owners, for whom it became ever more impossible to cover costs, such as rent and salaries, and so some had to make employees redundant. The governmental response was to issue various defence orders to manage the economic effects of Defence Order No. (2). These orders therefore expanded their purpose from limiting the immediate effect of COVID-19 to managing the legal and economic outcomes of previous orders, with the result that the legal and regulatory framework became more complicated. The short-term solution of these orders also led to further orders being issued, all with the intent of addressing the additional challenges. As such, the government became caught in a reactive cycle which underlined the nature of the multi-factorial emergency being managed. The development of this multi-dimensional crisis led to the questioning of the suitability and efficacy of the national response.

One question concerned the legitimacy of initiating the Defence Law in terms of whether the pandemic situation did indeed justify such an exceptional legal step, or whether existing ordinary legislation would have been more apt and adequate. Additional questions concerned the ability of the successive defence orders to preserve the economic balance in deferred contracts. Did these orders succeed in protecting the economic and commercial rights of contracting parties? Or did they ultimately produce legal and economic repercussions more complex than the original issues they sought to resolve? Would existing legislation, in particular the theory of hardship, have been able to handle the pandemic more effectively in terms of

balancing public health imperatives with the principles of legal certainty and economic stability?

The theory of hardship (also known as the **doctrine of *imprévision***) is one of the most recognised international legal principles for addressing unexpected events affecting contracts (UNIDROIT Principles 2016, art. 6.2.2; Jordanian Civil Code, art. 205). It permits the modification or termination of contractual obligations when unexpected events make performance excessively onerous or fundamentally alter the balance of a contract. It is considered an exception to the general rule that the contract is the law between the parties (*pacta sunt servanda*) (Jordanian Civil Code, 1976, art. 213). In some other legal systems, the theory of hardship is referred to as “the doctrine of frustration” (Grey, 2024). Lord Radcliffe defined that, “frustration occurs when performance becomes ‘a thing radically different from that which was undertaken by the contract’” (*Davis Contractors Ltd v Fareham UDC* [1956] AC 696 (HL)).

In this article, I explore the potential of the theory of hardship under Jordanian Civil Code No. 43 of 1976 (JCC) to address the legal effects of COVID-19 on deferred contracts, in particular to modify or suspend contractual obligations. It also covers the reasons why the Jordanian Government chose not to apply this theory, despite its potential, and assess how far the Defence Law and its orders balanced the public interest with the protection of private contractual rights. As such, it may offer insights which help to promote more robust and flexible legal responses going forward.

1. A Conceptual Framework for Assessing the Legal Impact of COVID-19 on Jordanian Labour Contracts

The theoretical underpinnings of this article must be understood in relation to its conceptual framework, including the key concepts of: pandemic, deferred contract, and labour contract. Prior to defining these, a distinction needs to be made between the terms “employee” and “worker”, so that the article’s scope can be determined. Although these terms are regularly substituted for one another in legal and non-legal contexts, they are separate under Jordanian law. Under art. 2 of Jordanian Labour Law No. 8 of 1996 (Labour Law), a “worker” (*āmil* – العامل) can be defined as someone performing work under the supervision of an employer in exchange for remuneration. However, an “employee” (*muwazzaf* – الموظف) typically refers to persons employed in the public sector, which is governed by Civil Service Regulation No. 9 of 2020 and not the Labour Law. This is a key difference in terms of assessing the legal mechanisms used in the pandemic, as the government’s measures impacted the public and private sectors in different ways. In this article, the focus is on private sector workers, and so the legal distinction shaping the handling of employees in the public sector must be acknowledged.

Likewise, the above distinction is essential when assessing the ability of the theory of hardship to manage the consequences of COVID-19 for deferred contracts. Reportedly, the private sector economy was worst affected, including its workers (ILO, UNDP, & Fafo Institute, 2020), mainly due to private business being vulnerable to market fluctuation and governmental restrictions. In contrast, most public sector employees were less economically affected since their jobs and salaries were retained during the crisis, despite being subject to identical restrictions. For this reason, it is important to focus on the private sector when examining the legal effect of the pandemic on labour contracts as deferred contracts.

1.1. Defining Pandemics: Global Criteria and Legal Contexts

The term “pandemic”, which corresponds to the Arabic term (*ja’ihah*: جائحة), is not explicitly used in Jordanian law. However, since a pandemic may be characterised as a public crisis or an advanced stage of an epidemic, it falls within the scope of the Defence Law by implication. Indeed, legislation typically uses flexible terms that empower authorities to take exceptional measures to protect public safety and mitigate the impact of disease on individuals

and communities (Alayan, 2020). Article 2(1) of the Defence Law provides that the application of this law shall be declared by Royal Decree issued upon a decision of the Council of Ministers in the event of emergencies that threaten national security or public safety throughout the Kingdom or in any part thereof, including the spread of a plague or epidemic.

There is no single universal legal definition of pandemic, but the term is commonly linked to public health emergencies, *force majeure*, and emergency situations (UNIDROIT, 2016; Grey, 2024; Alshoubaki & Harris, 2021). The WHO uses the term “pandemic” to describe a widespread infectious disease that crosses geographical borders and affects large segments of the population in multiple regions of the world (WHO, 2005). Infectious diseases are typically classified into three main categories based on their scope of spread, namely: outbreak, epidemic and pandemic. The former can be defined as a sudden increase in the number of cases of a particular disease within a limited geographical area or community, exceeding the expected levels (Centers for Disease Control and Prevention [CDC], 2012). An example includes the outbreak of polio in Syria between 2013 and 2017 (Mbaeyi et al., 2017). An epidemic is a broader and more rapid spread of disease than an outbreak, affecting multiple countries or large regions with significantly higher infection rates (Centers for Disease Control and Prevention [CDC], 2012). The West African Ebola epidemic of 2014–2016 is an instance of such wide international transmission (WHO, 2016). In contrast, a pandemic, such as COVID-19, concerns a disease which is transmitted across continents to infect significant global populations.

Thus, a pandemic is not classified merely by rates of infection or mortality, as additional factors are considered, such as global spread and the severity of the disease’s consequences for public health systems, economies, and social and logistical disturbances. Since a pandemic, by definition, must affect multiple countries, it constitutes a state of emergency that can be declared only by a recognised international authority, such as the WHO. This may explain why Jordanian law does not explicitly use the term “pandemic” or its equivalent in Arabic or provide a formal legal definition for it.

1.2. The Legal Nature of the Labour Contract in Jordan: Concept and Implications of the Pandemic

Article 2 of the Labour Law defines a labour contract as a verbal or written, explicit or implied agreement in which the worker commits to work for the employer under his supervision or management in exchange for wages, and the contract may be for a fixed or indefinite period and for specific or non-specific work. From this definition, scholars have inferred several essential characteristics of the labour contract. Among the most prominent are those identified by Al-Fanatseh (2010), who highlights the following four characteristics of labour contracts: a consensus contract, synallagmatic contract, bilateral contract and a time-based contract. A consensus contract is concluded through the meeting of the wills of the parties without requiring any specific formalities unless stipulated by law. It is presumed that the consent of both parties is free from defects, such as error, fraud, or coercion, and the contract must be based on a lawful purpose. A synallagmatic contract (also known as a contract of exchange) aims to achieve mutual benefits. The worker provides their effort and expertise in exchange for the wages paid by the employer, displaying a balance of mutual interest. A bilateral contract embodies the general rule of neither party being able to modify the terms of the contract without the consent of the other party. However, the labour contract has a distinct legislative feature that allows the employer, in certain circumstances, to amend certain terms unilaterally, provided that such amendments benefit the worker (Maghribi, 2016). In other words, the employer may grant additional benefits that are not explicitly mentioned in the original contract or the law (Labour Law 1996, art. 4(a)), such as increasing the number of vacation days, adopting a more suitable internal system, or improving the method of calculating overtime. A time-based contract is

another name for a deferred contract. The labour contract is an ideal example of a deferred (performance) contract, as it establishes mutual obligations between the parties that are performed periodically over an extended period, rather than being fulfilled all at once, as is the case with immediate performance contracts (Nassif, 2017).

When considering contracts from the perspective of time required for its execution, there are two kinds of contracts: immediate performance contracts and deferred (performance) contracts (Abu Saud, 2002). The latter is known by several terms, including “contract of duration”, “extended contract”, and “time-based contract” (Al-Mahdi, 2002). Anwar Sultan defines this type of contract as a contract in which the obligation is performed through continuous or periodic actions, which may include an immediate contract when there is an agreement to repeat the obligations at specific time intervals, such as in a supply contract (Sultan, 2022). In such cases, the immediate contract is, essentially, transformed into a deferred contract.

In deferred contracts, time is the criterion for determining the subject matter of the contract, leading to legal consequences distinct from those of immediate performance contracts (Al-Sanhouri, 1998). There are six key differences between immediate performance contracts and deferred (performance) contracts, which may be summarised as follows. First, in contrast to immediate contracts, the obligations in deferred contracts are reciprocal and linked to time. For example, in a lease contract, the rent is calculated based on the duration of the usufruct (Nassif, 2017). Second, suspending the performance of an immediate contract does not affect the obligations, while suspending the performance of a deferred contract suspends or freezes the obligations. For example, suspending a lease contract due to flooding suspends the usufruct (Nassif, 2017). Third, immediate contracts end upon the performance of the obligations, whereas deferred contracts may be renewed implicitly if the performance of the obligations continues after the original term ends (Saleem, 1992). Fourth, termination of an immediate contract restores the parties to their prior positions, whereas it is impossible to revert to the pre-contractual state with a deferred contract, as partial performance of obligations would have occurred (Saleem, 1992). For example, in a lease contract, the enjoyed usufruct cannot be returned. Fifth, the theory of hardship applies only to deferred contracts where it finds its natural application, allowing the judge to modify an obligation if it becomes burdensome due to unexpected events (Nassif, 2017). Sixth and finally, in contracts with indefinite duration, either party may terminate the agreement unilaterally without the consent of the other party. As mentioned above, this constitutes an exception to the legal principle of *pacta sunt servanda* (“agreements must be kept”). An agency contract provides a typical example where either the principal or the agent may terminate the contract at any time unless otherwise agreed or if termination causes serious harm to the other party (JCC, art. 863, art. 865). Thus, deferred contracts exhibit distinct legal characteristics that set them apart from other types of contracts. These characteristics render such contracts particularly vulnerable to the effects of subsequent unexpected events, such as natural disasters.

In terms of duration, there are five different kinds of labour contracts under Jordanian labour law: fixed-term, indefinite-term, casual, temporary and seasonal contracts. This article focuses mainly on the first two kinds, as the remaining contracts were less impacted by the pandemic. Fixed-term contracts specify a clear start and end date. Indefinite-term contracts specify a start date but does not specify an end date, as it ends according to the reasons stipulated in the contract or by law.

1.3. A Conceptual Examination of Jordan’s Defence Law and its Tools of Implementation

The legal instruments which states employ during crises must be understood when assessing government reactions, institutional resilience, and the balance between public safety and civil liberties. In Jordan, a fundamental element of emergency governance is the Defence Law, which provides the lawful authority by which the state can initiate extraordinary measures

when faced with national emergencies, e.g., war, natural disasters, and public health crises. The conceptual framework shown in this section is used to examine the hierarchy and functionality of the key tools issued under this law: Defence Orders and Defence Notices. In combination, these instruments permit the regulation of public behaviour, management of resources, and implementation of health and safety measures; however, they also create challenges regarding legality, proportionality, and the protection of individual rights. This legal framework is required to comprehend how states manage crises and governance during exceptional situations, such as the COVID-19 pandemic.

The Defence Law, formally known as Defence Law No. 13 of 1992 (and its associated Defence Orders) is as a legal mechanism that permits the exercise of exceptional powers in times of national emergency, such as war, natural disasters, or public health crises. Activated by royal decree, the law permits the temporary suspension of ordinary legislation, granting the Prime Minister wide ranging powers to issue directives with the force of law, including curfews, limitations on public gatherings, the shutting of institutions, controls on goods and services, and enforced quarantine or evacuation, among other powers. The primary aim is to safeguard national security, public health, and the maintenance of necessary services during emergencies. Each defence order is officially issued and stays in effect unless amended or repealed by later orders, or until the Defence Law is ended. Significantly, although the Defence Law provides wide authority, it states that any measures adopted must be commensurate with the threat and not infringe fundamental citizen rights unnecessarily.

As an official announcement or explanatory document, a Defence Notice is published under the authority of a Defence Order, in accordance with Jordan's Defence Law No. 13 of 1992. Although defence orders determine legally binding rules and directives, they have a complementary capacity in that they also provide clarity, guidance for implementation, or the administration detail needed to enforce the orders. Notices tend to be issued by the appropriate ministry, public institution, or government body to make sure that the provisions of a Defence Order are accurately and evenly applied. They provide instructions to public sector employees, businesses, or the general public concerning compliance with fresh regulations set under the Defence Law. For example, an order may initiate a national curfew, whereas a following Defence Notice will specify its hours and exemptions, the manner of its enforcement, and non-compliance penalties. While not being legislative instruments, Defence Notices do remain binding since they clarify and make operational the legal content of defence orders. Upon issuance, they reflect the state's attempt to clearly communicate and coordinate action for the purposes of emergency management, especially during times of high uncertainty.

2. Jordan's Response to the COVID-19 Pandemic: A Legislative and Executive Approach

Responding to the unique issues arising from COVID-19, the Jordanian Government employed a wide ranging combination of exceptional legislative measures and rapid executive actions, the essence of which was the initiation of the Defence Law and defence orders to protect public health, ensure social stability, and maintaining the functionality of critical sectors. Several defence orders were issued, most notably Defence Order No. 6 of 2020 regulating labour relations during the pandemic, and Defence Orders No. 9, 11, and 19 concerning remote work, workplace safety, and financial aid for affected workers and businesses. These tools were intended to balance the interests of employers and employees at the same time as protecting constitutional rights and economic stability.

The response also covered institutional crisis coordination between the health authorities, Ministry of Labour, and the security forces to enforce compliance with the defence orders and public health measures (Alshoubaki & Harris, 2021). Notwithstanding the problematic nature of the enforcement and issues with prevailing social protection systems, the adopted legislative

and executive measures were a considerable legal experiment in crisis management which highlighted the need for flexibility, being legally prepared, and having inclusive policymaking during a national emergency.

In this section, two key issues are addressed. One is the introduction of the Defence Law and examination of the constitutional foundation of its initiation, to assess the legality of its invocation as a response to COVID-19. The other is an evaluation of the defence orders established under the Defence Law, particularly with regard to their effect on labour contracts and relations during the pandemic.

2.1. Invoking Jordan's Defence Law During COVID-19: Constitutional Necessity or Executive Overreach?

Jordan is one of the countries that has adopted a special law to address the emergency situations that a state may face, which in this case is the Defence Law. In the event of emergencies that threaten national security or public safety, the Government may invoke this law by Royal Decree issued upon a decision of the Council of Ministers without the need for parliamentary approval (Defence Law art. 2, art. 3). In other words, this law may be applied when the state faces an unexpected crisis. As a result, ordinary laws are suspended and replaced by the Defence Law, which requires the Government to implement exceptional measures to ensure the continuity of essential public services, protect public health, and maintain public order (Alshoubaki & Harris, 2021).

On 16 March 2020, the Jordanian Government invoked the Defence Law in response to the increasing threat posed by COVID-19 (*Official Gazette*, 2020 March 18). The Government then had the ability to exercise extraordinary powers, including: the establishment of emergency measures such as curfews, to restrict movement and stop large gatherings; the restriction of key supplies such as food, medical equipment, and other essential goods; and, the implementation of fines and penalties upon quarantine and curfew violators (Defence Law art. 3). To the same end, the Government was empowered to deploy the military to impose public health measures and restrict non-essential economic activities (Defence Law art. 2). The government response was generally seen as proactive, as it adjusted policies in line with the evolution of the pandemic. For instance, mandatory vaccination began in early 2021 to restrict the disease's spread and protect the population (Al-Azayzeh, 2022).

It is clear that the pandemic is a most controversial phase of recent history, with many of us witnessing global confusion and general scepticism, as well as a multitude of measures (Pew Research Centre, 2022) on the national and international levels. A number of us queried whether COVID-19 did in fact pose an actual threat to humanity, and multiple conspiracy theories were developed. The virus was not only claimed to be man-made; some rejected its seriousness and yet others cast aspersions on the legitimacy and efficacy of official pandemic management measures. Indeed, this global disorientation and lack of certainty are a critical point in modern human history. Likewise, commentators in Jordan critiqued the constitutional validity of initiating the Defence Law for lack of genuine need, pointing out that the Government may have overstepped constitutional boundaries (Tarawneh & Al-Adaiyleh, 2022). In this light, there is a need to determine whether this was in fact so, as examined in the next section.

2.2. Constitutional Framework and Safeguards for Activating Jordan's Defence Law: Balancing Emergency Powers and Legal Principles

The Jordanian Constitution is the legal foundation of the Defence Law. Article 124 of the Constitution, translated from Arabic, states that:

In a crisis requiring national defence, a Defence Law will be implemented. It shall provide the designated authority with all necessary powers, including the authority to suspend the ordinary laws of the State to ensure the country's defence. The Defence Law shall come into effect when it is proclaimed by Royal Decree as requested by a decision of the Council of Ministers.

The invocation of the Defence Law is contingent on the presence of three conditions: the existence of a real threat endangering national security, public order, or public safety, including war, disasters, or pandemics; a decision by the Council of Ministers to invoke the Defence Law; and, a Royal Decree approving the invocation of the Defence Law (Tarawneh & Al-Adaiyleh, 2022).

Although the Defence Law provides broad powers (art. 3(b)), these are not unlimited as their legal application contains multiple legal safeguards, such as **the principle of constitutional legality, respect for fundamental rights, and the principle of proportionality**. **The first principle determines** that orders and decisions issued under the Defence Law must be subject to judicial review (High Court of Justice [Jordan], 118/1987). **Fundamental rights**, including those to life, dignity, freedom of expression, and freedom of movement, are to be respected within the limits required by the emergency, and must not undermine the essence of these rights (High Court of Justice [Jordan], 118/1987). **The proportionality principle** demands that any measures taken are suitable and required to meet the intended aim and must not go beyond the actual necessity of the emergency (High Court of Justice [Jordan], 73/1977). The balancing of national security and these principles is the necessary standard for the correct implementation of such a law in a democratic nation governed by a constitutional framework.

Moreover, the implementation of the Defence Law is subject to at least three levels of oversight. First, the Defence Law is subject to judicial oversight whereby individuals may challenge the defence orders before the administrative or constitutional judiciary if they believe the orders are unlawful or unconstitutional (High Constitutional Court [Jordan], 1991). **Second, the Defence Law is subject to parliamentary oversight** through the power of the legislature to question and hold the government accountable for the measures taken under the defence orders (High Court of Justice [Jordan], 118/1987). Third, **the Defence Law is subject to oversight by the public and the media**, which serves as a moral and political check against arbitrary or excessive use of exceptional powers.

Considering the three conditions to invoking the Defence Law, it becomes evident that the Jordanian Government's decision to invoke it during the COVID-19 pandemic was constitutionally valid. On 16 March 2020, the Jordanian Government declared the pandemic an emergency requiring national defence and the Council of Ministers decided to invoke the Defence Law. The Constitution does not define or set criteria for determining what constitutes an emergency requiring national defence. According to the Higher Council for the Interpretation of the Constitution, the Government has absolute discretion to invoke the Defence Law and initiate its effect without being subject to the approval of any other authority, except for a Royal Decree (Decision No. 2/1991). This means that the Government has absolute discretion to determine what constitutes an emergency requiring national defence. However, considering that the WHO declared the COVID-19 outbreak a pandemic and Jordan was one of the affected countries, it seems indisputable that it constituted an emergency requiring national defence under art. 124 of the Constitution. On 17 March, 2020, invoking the Defence Law was approved by Royal Decree.

2.3. Assessing the Impact of Defence Orders on Labour Contracts During the Pandemic

Defence Orders No. 6, 9, 11, and 19 aimed to regulate the contractual relationship between employers and workers during the extraordinary conditions imposed by the pandemic. These orders varied in their content, ranging from protecting workers' rights, organising remote work arrangements, ensuring occupational safety standards, and providing economic support mechanisms for affected institutions and workers.

2.3.1 Defence Order No. 6

Defence Order No. 6 was announced on 8 April, 2020, due to the general economic lethargy and the part or total operational interruption being experienced by many institutions and businesses. This legislation was aimed at balancing the labour market, while also safeguarding workers from arbitrary dismissals and controlling wage cuts and contract suspensions under defined legal standards, as well as retaining minimum social safeguards and the human dignity of workers. In essence, the order was an attempt to create a short-term legal framework to manage labour relations in what legally qualifies as a situation of *force majeure*.

Clause 8(a) of Defence Order No. 6 stipulated that the employer shall not exert pressure on the worker to compel them to resign, terminate their contract, or dismiss them from work, except in accordance with the provisions of art. 21(c) and (d) and art. 28(a), (g), (h) and (i) of the Labour Law. Clause 8(b) stated that, for the purposes of implementing paragraph (a), the application of art. 23 and paragraphs (b), (c), (d), (e) and (f) of art. 28 of the Labour Law shall be suspended.

According to the provisions of Clause 8, a labour contract could only be terminated under limited circumstances. These include the worker's death or permanent incapacity due to illness or disability, as confirmed by a medical report issued by a medical authority (art. 21(c) of the Labour Law); or when the worker fulfils the conditions for old-age retirement under Social Security Law No. 1 of 2014, unless otherwise agreed by the parties (art. 21(c)). Clause 8(a) prohibited termination by mutual agreement in accordance with art. 21(a) or upon natural expiration of the contract or completion of the agreed upon work in accordance with art. 21(d)). The reason for suspending the latter paragraph is unclear.

In addition, the employer could terminate the worker under certain provisions of art. 28 of the Labour Law. This includes if the worker impersonates another person or submits forged certificates or documents to gain benefit or cause harm (art. 28(a)), the worker is convicted of a felony or a misdemeanour involving honour or public morals by a final judicial ruling (art. 28(g)), the worker is found to be under the influence of alcohol or narcotic substances during working hours or commits an act contrary to public morals in the workplace (art. 28(h)), or the worker assaults the employer, a manager, a colleague, or any other person at the workplace, either physically or verbally (art. 28(i)).

On the other hand, Defence Order No. 6 temporarily prohibited employers from terminating workers based on the reasons outlined in art. 28(b)-(f) of the Labour Law. These include failure to fulfil contractual obligations (art. 28(b)-(c)), violation of internal regulations, including occupational safety rules (art. 28(d)), unexcused absence exceeding twenty intermittent days within a year or more than ten consecutive days (art. 28(e)), or disclosure of confidential information (art. 28(f)). Nevertheless, the Minister of Labour was given the authority to announce temporary orders to initiate paragraph (e).

Although Defence Order No. 6 was in effect a short-term legal protection to prevent employers utilising exceptional circumstances as an excuse for unfair dismissal, the efficacy of this protection of course mainly relied upon the degree of its enforcement and monitoring. At the same time, it may be argued, the order inflicted extra financial costs on employers, especially given the serious disruption and downturn in production due to public health restrictions; moreover, employers could not decrease wage costs in proportion, leading to the concerns of the contracted parties being misaligned. This conflict between social safeguarding and maintaining the economy underlines the legal issue of appropriately balancing public interest with contractual rights in exceptional circumstances.

What the order did permit employers to do was to request the complete or partial suspension of labour contracts when the pandemic made business operations impossible, with prior approval from the Ministry of Labour (clause 5 of Defence Order No. 6). Given approval, employers still had to pay a minimum of half the worker's salary, without this amount falling

under the minimum wage (clause 4 of Defence Order No. 6). As such, workers retained basic financial security in spite of the temporary suspension of their work. Although the order was intended to lessen employers' financial costs, it also obliged employers to remunerate workers with half of their wages, without these falling beneath the statutory minimum wage. This double-edged condition, however, did not take into consideration how many workers were already being paid the minimum wage prior to the implementation of the Defence Law; as such, the order will have had less of an impact on small business proprietors, who were unable to decrease wages below the minimum statutory level already required.

Similarly, for larger businesses, the obligation to pay half the wage despite a halt in production meant that employers were required to bear half of their contractual obligation, even in situations where they could not receive a corresponding level of performance from the worker. This raises important questions about whether such arrangements strike a fair balance between the interests of the parties during exceptional circumstances, such as a pandemic.

Defence Order No. 6 recognised remote work as a legitimate means of conducting business operations, affirming that performing work obligations from home did not violate the contract (clause 3 of Defence Order No. 6). Employers were required, to the extent possible, to provide the necessary tools to enable remote work, a legislative development that considered the growing flexibility of digital labour markets (Suleiman, 2021). This measure introduced a new modality for performing work obligations where the physical presence of the worker at the workplace is no longer necessary, particularly when the nature of the work allows remote performance, such as programming, consulting, design, accounting, education, and similar professions (Suleiman, 2021).

Defence Order No. 6 granted certain businesses within affected sectors additional privileges in relation to wage reduction and work suspension. This list was updated periodically by the Minister of Labour, providing flexibility in the implementation of the order based on the evolving conditions of the pandemic. Concerning wage reduction, the order empowered employers to decrease wages with the written permission of the workers, again such that wages were not less than the minimum wage. Although these provisions were intended to mitigate the economic issues of the pandemic, they led to concerns about the authenticity of the consent under the economic and psychological stresses of the period. Moreover, a worker could be required by their employer to take paid annual leave during the cessation of a business, a legal tool designed to lessen financial pressure on business and maintain remuneration for workers.

Notwithstanding provisions designed to prevent arbitrary redundancies, the *de facto* application of the order proved to lack successful enforcement mechanisms, thus weakening its safeguarding impact. This weakness was compounded by a lack both of workers' legal knowledge and neutral and active monitoring bodies (ILO, 2021). There being insufficient protections for workers, employers could, with no valid consultation or permission from workers, suspend contracts and decrease wages. As such, the existing principles of labour law and international labour standards, especially those of "just and favourable remuneration" and "wages for work performed" were overridden (ILO, 2020). In this context, Defence Order No. 6 highlighted key legal issues. First, although the order may have reduced redundancies in some sectors, it did not protect the most at risk, for example day labourers, and casual or self-employed workers (also known as informal workers), who comprise more than 50% of the Jordanian workforce. Second, the implementation of the order differed significantly for large businesses, which often complied with it, and small/ medium enterprises (SMEs), for whom compliance was difficult because of a lack of resources or awareness.

2.3.2 Defence Order No. 9

Defence Order No. 9 was aimed at financial issues arising from earlier orders, such as Defence Order No. 6. Its five elements were “*Tadamun*” (1) and (2), and “*Mosanid*” (1) to (3), which represent five classes of enterprise. Along with the Social Security Corporation, these elements provided wage support to enterprises denoted in Social Security Law No. 1 of 2014 and its associated regulations, to preserve job and economic stability during the pandemic. As such, they represent a state-coordinated endeavour to offset social safeguards with economic sustainability via public-private efforts.

Also progressed was a digital transformation in the processes of wage and aid distribution using electronic platforms and mobile applications, marking a key step in the expansion of social protection to cover hitherto unsafeguarded labour sectors, in alignment with International Labour Organization (ILO) guidance on the inclusion of informal workers into support programmes at times of public health emergencies (ILO, 2021). Despite these progressive steps, their implementation was met with considerable barriers, such as the absence of a dependable database to identify and contact informal workers, as well as institutional weaknesses which hampered reasonable and reliable aid distribution.

2.3.3 Defence Order No. 11

The focus of Defence Order No. 11 was mainly to take proactive and safeguarding measures regarding the workplace, to coincide with the gradual reopening of different economic areas. For instance, employers had to supply personal protective equipment (PPE), e.g., masks and sanitizers, and to apply physical distancing regulations; otherwise, they faced a fine and being held accountable for a breach of public health standards. This order shifted the conventional interpretation of occupational health and safety to cover biological and pandemic-related dangers, broadening its range beyond physical and chemical hazards. Although laid down with good intentions, the implementation of the order was irregular, particularly for SMEs lacking the financial resources to put the measures into effect.

2.3.4 Defence Order No. 19

Later in the pandemic, in 2020, Defence Order No. 19 was announced to tackle the accumulated economic effect on employers; as such, it introduced various easing measures, for instance allowing instalments for social security contributions, deferred payment of taxes and fees, and renewed access to financial aid programmes aimed at the worst affected areas. Despite being aimed at alleviating businesses’ financial burden and preventing a multitude of bankruptcies, the order failed to require explicitly that employers keep workers, thus lessening its promotion of employment safeguards. As a result, the order tended to provide more support for economic stability than for social equity (Abu El-Haija, Al-Thunibat, & Alajarmeh, 2023).

As indicated in a study by the International Labour Organization (ILO) in 2021, COVID-19 had deep economic and social effects on Jordanian business, especially small ones (ILO, 2021). The research found that more than 40% of businesses had to scale back or dismiss workers; one in five businesses stated that they were unlikely to restore their pre-pandemic operational levels. Notwithstanding the seriousness of these impacts, around one in ten, generally medium and large enterprises, gained through government support programmes, highlighting how the most affected sectors were not reached by such support. The study also reported restricted digital transformation, as just 10% of businesses adopted e-commerce or technological solutions to mitigate the effect of the pandemic. The ILO recommended the expansion of social protection, development of selective support programmes, promotion of digitalization, and increasing the capacity of small enterprises to support a comprehensive and sustainable economic revival which augments the resistance of Jordanian businesses should future crises occur.

2.4. Overall Legal Evaluation of Defence Orders No. 6, 9, 11, and 19

The combined use of Defence Orders No. 6, 9, 11, and 19 were an attempt by the government to maintain a fine balance between the protection of public health, preservation of contractual labour relationships, and support for economic activity, insofar as far possible. The orders were mostly in alignment with international guidance, especially that of the ILO, such as promoting remote work, directing workplace safety protocols, and safeguarding a baseline income for affected workers (ILO, 2021; WHO, 2021). However, their application had limitations in terms of both structure and legal challenges, the most noteworthy of which are:

- a. Reduced institutional ability to monitor and ensure compliance;
- b. Insufficient structures for reaching and protecting informal workers; and
- c. Wide employer discretion with inadequate protections for employees.

During the pandemic, it was highlighted that selected areas of the workforce, particularly those which, during health crises, were the more informal or “risky” sectors, were in need of more legal recognition and protection. For instance, whereas the Jordanian Labour Law recognises “hazardous work”, this definition may require expansion to include pandemic-related occupational risks, thus protecting workers with improved safety protocols and compensation programmes. In addition, the initiation of the Defence Law and its defence orders altered the default provisions of the Labour Law by initiating short-term measures which reclassified the employer-employee relationship. An example of this can be seen in Defence Order No. 6, through which employers were banned from coercing resignations or implementing arbitrary dismissals, and were urged to embrace flexible working arrangements, such as remote work.

COVID-19 thus represents an extraordinary circumstance which required the initiation of Jordan’s Defence Law, leading to the short-term interruption or alteration of ordinary labour laws. Although the defence orders were key to alleviating the immediate impacts of the pandemic, they also highlighted significant gaps in legal readiness, particularly regarding inclusivity and compliance. In the future, Jordan’s labour and social protection systems would likely profit from the institutionalisation of certain positive practices initiated in the pandemic, especially those linked to remote work, financial aid for the vulnerable, and biohazard workplace safety, to guarantee a more resilient and fairer legal framework should future emergencies arise.

Defence Order No. 6 was the basis of the labour response as it was an attempt to provide a legal balance between safeguarding workers from arbitrary termination and giving businesses some flexibility in times of economic disruption. Its short-term protections against contract terminations, wage decreases, and unfounded dismissals frame the pandemic as a circumstance of *force majeure* which justified extraordinary regulatory intervention (Abu El-Haija, Al-Thunibat, & Alajarmeh, 2023). In recognising remote work and minimum wage safeguards, the order is a contemporary and reactive approach to changing work arrangements. Nevertheless, such measures tended to disadvantage employers’ capacity to make proportionate adjustments to their labour costs in non-operational periods, causing friction between social safeguards and business viability.

One important legal concern is the partial suspension or disregarding of the provisions in Jordan’s Labour Law which were in effect prior to the pandemic adjustments. For example, the banning of selected lawful grounds for dismissal under art. 28, and the interruption of mutual termination clauses, prompted legal uncertainty and constitutional issues concerning proportionality and due process. Moreover, the wage reduction measures alongside the so-called “consent” provided under economic duress was a challenge to the concept of genuine

free will, undermining domestic labour safeguards and international norms—especially those encouraging equitable pay and inclusivity.

In spite of their strict regulatory language, the defence orders were limited by inadequate enforcement capability and compliance monitoring. Several safeguarding provisions were not consistently monitored or enforced, particularly in SMEs, whose legal knowledge and institutional support was weak. The lack of an unbiased and proactive enforcement body lessened the real impact of these orders and enabled unwarranted employer discretion—tending to lead to exploitative practices.

One important legal and policy issue was the excluding of informal workers, comprising over 50% of Jordan's workforce, from the protective range of the defence orders, especially Order No. 6. While Defence Order No. 9 was intended to increase support for informal workers (through the "Tadamun" programme), its efficacy was restricted by the absence of a dependable database and infrastructure from which to access this group. As a consequence, the orders overly advantaged the formal sector, with the most at risk sections of the labour market left widely unprotected.

Defence Order No. 11's expansion of occupational health and safety content included pandemic-related risks and employer responsibility for lack of compliance. Despite being progressive in range, the implementation was irregular, particularly among SMEs lacking the financial capacity to meet compliance standards. Defence Order No. 19, moreover, was heavily weighted to economic support by delaying social security payments and taxes, and yet it did not link these measures to employee retention or worker safeguards, thus lessening its effect on job security.

From a governance viewpoint, the defence orders highlight the pros and cons of emergency legal instruments. Although rapidly and flexibly implemented, they tended to lack procedural safeguards, legal clarity, and mechanisms for accountability. The broad discretionary powers given to employers—particularly in Order No. 6—weakened the contractual balance and gave workers few means of recourse. The short-term suspension of existing labour laws without adequate justification or parliamentary oversight also raises rule-of-law concerns, particularly regarding the precedent set for future emergencies.

Although the defence orders were a required reaction to an exceptional crisis, they are nevertheless a top-down, pro-employer regulatory framework prioritising economic continuity over fair labour safeguards. The legal structure of these orders failed in terms of inclusivity, compliance, and total alignment with international labour standards, especially regarding the protection of informal workers and guaranteeing genuine consent in contractual alterations. In the future, Jordan's legal framework would profit from a more inclusive and balanced crisis response model that includes explicit compliance mechanisms, maintains contractual equity, and broadens protection to the most at-risk workers. Using a rights-based method to deal with future emergencies is key to repairing trust and equity in the labour market, as well as building its resilience.

According to the points assessed in this section, it is pertinent in the context of this study to note that defence orders have a clear legal nature that varies from what has previously been addressed. As indicated, these orders are announced in accord with the provisions of the Defence Law and have the force of law when issued, empowering them to interrupt or take precedence over the application of pre-existing legislation and thus making them both binding and enforceable. Given this, and alongside their restrictions, amendments to selected legal provisions, or the suspension of their application, it can be said that these orders represent an extraordinary situation, or *force majeure* in the legal sense. Therefore, contracting parties with obligations impacted by these orders can seek judicial relief to reinstate the contractual balance, or to be exempted from compliance, according to the general concepts of the doctrines of extraordinary circumstances or *force majeure*, as dependent upon the character and details of

each instance. This stance has been upheld by the Jordanian Court of Cassation in numerous decisions, such as that of Decision No. 3283/2021, in which the Court found that the implementation of defence orders may represent an extraordinary circumstance which affects the operation of contractual duties, thus permitting the alteration of such duties in accord with principles of justice and the actualities of the circumstance.

3. The Effectiveness of Existing Legislative Mechanisms in Addressing Pandemics and Similar Crises

The extraordinary and unpredicted situation created by the pandemic meant that its effect went beyond merely executory (or long-term) contracts, although such contracts are a key element of the economy. From this, an emerging question concerns whether ordinary legislation can be relied upon during crises; the answer to this needs not depend on a detailed enquiry since legal jurisprudence accepts that the legislature has, in fact, furnished specific implements to manage unexpected situations. The most essential of these is the theory of hardship, and this is the next area of examination. In this section, I seek to examine the hypothesis that it would have been possible, in practice and law, to deal with the impact of the pandemic if the Jordanian Government had chosen not to implement the Defence Law and rely only upon its ordinary legal provisions.

A notable and typical instance of the application of the theory of hardship is the *Bordeaux Gas Case*, which represents a historic decision by the French Council of State (Conseil d'État (1916, March 30)). In 1916, in the course of the First World War, there was a dramatic increase in the cost of lighting in Bordeaux because of a concomitant increase in coal prices. Although the company responsible for the lighting asked the government to share in this additional financial load, it declined, stating the principle that contracts are the law of the parties. The French Council of State, however, differed in its opinion and intervened to reinstate the economic balance of the contract, acknowledging that the war had led to an extraordinary situation that made the fulfilment of the contract exceptionally onerous (Fucci, 2006).

3.1. Hardship and Contractual Equilibrium: Article 205 of the Jordanian Civil Code in Context

When exceptional and unforeseen events arise during the performance of a contract, being events that fundamentally disrupt the contractual equilibrium and render performance excessively burdensome for the obligor, potentially exposing them to severe losses, the affected party may seek judicial intervention. The court, in such cases, is vested with the discretionary power to modify the contractual obligations to restore a fair financial balance between the parties. This constitutes an exception to the general rule that the contract is the law of the contracting parties (Al-Bayat & Abu Al-Ayal, 2004).

In legal doctrine, this is known as the theory of hardship. The Jordanian legislator has formally adopted this theory in art. 205 of the JCC, which, translated from Arabic, provides:

If exceptional and common events, which could not have been foreseen, occur after the formation of the contract, and their occurrence renders performance of the contractual obligation, while not impossible, excessively onerous for the obligor to the extent of threatening them with grave loss, the court may, in light of the circumstances and after weighing the interests of both parties, reduce the burdensome obligation to a reasonable level, if justice so requires.

Any contrary agreement will be regarded as invalid.

This provision makes clear that the theory is applicable to contracts written in conditions of economic steadiness, but whose performance is affected by an unexpected and extraordinary general event which interrupts the balance of the contract and renders its performance excessively onerous for the obligor, possibly causing insolvency.

Scholars have settled on a definition of unforeseen circumstances as: “an unforeseeable, common event occurring after the conclusion of an executory contract, which disturbs the economic basis of the contract such that performance becomes excessively onerous for the obligor and exposes them to grave loss, without reaching the level of impossibility” (Marqus, 1971).

In this context, some scholars have defined hardship as: “An unforeseeable and uncontrollable event that renders performance burdensome, without any fault on the part of the obligor” (Ghanem, 2000). Others have described it as: “An event not attributable to the obligor and beyond their control, such as war or earthquakes” (Marqus, 1971).

3.2. Cumulative Conditions for Invoking Article 205 of the Jordanian Civil Code

Scholars and judicial decisions have identified, at least, six cumulative conditions that must be met for a given situation to qualify as a case of hardship. Firstly, the event must be unexpected. This means that the event must not have been foreseeable by the contracting party, even with the utmost care, at the time the contract was concluded (Jordanian Court of Cassation. 4238/2018). Examples include earthquakes, global economic crises, internal security disturbances, or sovereign acts. However, total unpredictability is not required; it is sufficient that the event was not reasonably anticipated. Secondly, it must be beyond the control of the parties. This means that the theory only applies when the circumstances arise independently of the parties' will (Jordanian Court of Cassation. 357/1978). Thirdly, the event must be of a common and exceptional nature. the circumstance must be of a general character, arising from an extraordinary event not typically encountered in daily life (Al-Jaraisat, 2007). Personal circumstances, such as one party's illness or insolvency, do not suffice. However, the event need not affect the entire country to be general, it may impact a specific region or sector, provided it significantly influences the contract's economic foundation. Fourthly, it has to be unavoidable. Although this condition is not explicitly mentioned in art. 205 of the JCC, sound legal reasoning necessitates that the event must be inevitable. If it can be avoided through reasonable effort, then the obligor must do so. Failure to do so constitutes negligence, and the theory will not apply. The Jordanian Court of Cassation affirmed that the event “must be unforeseeable and unavoidable; if it is foreseeable or avoidable, hardship cannot be invoked” (Jordanian Court of Cassation. 4238/2018). Fifthly, the affected contract must be one that is performed over time. The theory does not apply to immediate contracts that are fully executed upon formation. Furthermore, the hardship must affect one of the reciprocal obligations, rendering it burdensome. Events occurring after full performance of the contract, even if resulting in unjust enrichment, do not justify re-evaluation of the contract (Jordanian Court of Cassation. 357/1978). Finally, the hardship must arise between the formation and execution of the contract. The Jordanian Court of Cassation ruled that economic deterioration and currency devaluation occurring prior to the formation of a contract did not justify invoking the theory, as these were known to the parties beforehand (Jordanian Court of 4238/2018).

As mentioned above, the hardship must also cause excessive burden to the obligor. This means that the event must render performance excessively onerous, threatening the obligor with substantial loss, potentially to the point of insolvency. However, the event need not make performance impossible, as such a situation is governed by a theory other than the theory of hardship (JCC art. 247). The Jordanian Court of Cassation has affirmed that the event must make performance burdensome, without reaching impossibility, leaving room for judicial discretion based on objective circumstances (Jordanian Court of Cassation 4781/2014).

By applying the above conditions to the COVID-19 pandemic and the defence orders issued in response, it becomes evident that the pandemic qualifies as a case of hardship under art. 205 of the JCC. The pandemic was, by all reasonable standards, unexpected at the time many contracts in force during the pandemic were formed, and its global spread and impact could not have been foreseen by the contracting parties, even with the exercise of due diligence.

Furthermore, it was clearly beyond the control of the parties, arising independently of their will and resulting from public health emergencies and governmental actions aimed at limiting the spread of the virus (e.g., lockdowns, curfews, and suspension of commercial activity).

The pandemic was also universal and extraordinary in character, impacting both individuals and whole economic sectors, such as tourism, education, hospitality, and retail. While the severity of its effect differed by region and industry, it still had an extensive and total impact on the economic bases of many contracts. Its effects, particularly in the earlier phases, were generally inescapable, since complying with defence orders was compulsory. Parties were unable to escape or lessen the impacts of enforced closures, movement limitations, and decreased commercial activity while also staying within the law.

It is assumed in the theory of hardship that a contract is executory. Although the pandemic mainly impacted long-term commitments, or contracts with continuing or deferred performance (such as lease, construction, and supply agreements), contracts which had already been fully performed before the pandemic are excluded from the scope of hardship, as per existing case law. Moreover, the pandemic and associated measures followed the establishment of many contracts, interrupting their operation during the execution stage, which is just the temporal condition necessitated by the hardship doctrine.

Indeed, the economic weight created by the pandemic crossed, in several instances, the threshold of extraordinary hardship. For many businesses, operations became both troublesome and financially disastrous, creating the threat of insolvency or significant financial damage, particularly when income streams were suddenly blocked by government orders. Still, the circumstances did not always mean that performance was not possible in the legal sense of art. 247 of the JCC, as the article differentiates between what is impossible and what is extraordinarily onerous. This difference affirms that the appropriate legal reaction is the judicial alteration of the contract instead of its dissolution, thus permitting the courts to renew the balance of obligations in line with the concepts of fairness and good faith.

3.3. The Court's Authority to Modify an Onerous Obligation

The judiciary is invested by the legislature with wide discretionary powers to apply the theory of hardship. In accord with art. 205 of the JCC, if the conditions for implementing the theory are available, the court has the power to balance the interests of the contracting parties by ascertaining if justice requires an alteration of obligations. By utilising this power, the court can legally: (a) alter the obligation such that a balance is restored between the contracting parties, lessening the impact on the party affected by the hardship, without terminating the contract; (b) modify operational conditions, including moving deadlines, restricting the performance range, and changing the method of execution, to mitigate the extraordinary hardship challenging one of the parties; (c) ensure the interests of each party are fairly balanced, taking into consideration the aim of the contract, the character and breadth of the unexpected occurrence, and the concept of good faith; and, (d) refuse to take action if the hardship is deemed not to be excessive, or the event might have been predicted or alleviated, or alteration could have prejudiced the other party inequitably. Notwithstanding this, the court cannot revoke the contract or alter obligations in favour of the *obligee*, since the range of the theory is restricted to safeguarding the over-burdened party (the *obligor*) from significant loss (Al-Sanhouri, n.d.).

3.4. Balancing Labour Rights and Contractual Obligations: The Impact of the Hardship Doctrine on Labour Contracts in Jordan

While most jurisprudential stances on the theory of hardship rest upon civil or commercial contracts, labour contracts are also distinct and in warrant of particular consideration. Labour

contracts are fundamentally ones of continuous performance, and come under the protective standards of the Jordanian Labour Law. Such principles enforce limitations on the alteration of contractual duties given unexpected circumstances. As regards the pandemic, the practicalities of the event highlighted the intersection between how the theory of hardship was applied and the Labour Law's provisions. Certain enterprises needed to decrease wages or suspend labour contracts in the short-term, depending on the defence orders issued by the government. This led to a legal overlap between general and specific legislation, i.e., the Civil Code and the Labour Law, respectively. Because of this, applying the theory of hardship to labour contracts is restricted and closely regulated, as it has to be governed by the public interest while at the same time also upholding the fundamental legal safeguards of workers. Judicial monitoring is thus key in disputes to avoid the misapplication of the theory in a manner which deteriorates existing labour rights.

The Labour Law provides an exception allowing employers to assign employees to perform exceptional work in situations of necessity or force majeure. This means that in the case of such events, the employer may require the employee to carry out tasks not stipulated in the labour contract, provided it is necessary to prevent or remedy a situation or due to force majeure. Article 17 of the law states, translated from Arabic, that:

The employee shall not be required to perform work that differs fundamentally from the nature of the work agreed upon in the labour contract unless necessity so demands in order to prevent fortuitous events, to repair damage resulting from it, or in the event of force majeure, and in other cases stipulated by law, provided that such work falls within the employee's capacity and is commensurate with the situation that necessitated it.

Many jurists do not distinguish between *force majeure* and *fortuitous events* as mentioned in art. 17; the terms are often used synonymously. If an event is assessed from the perspective of unpredictability, then it falls under the concept of a fortuitous event; if viewed in terms of irresistible impact, then it is deemed force majeure (Al-Sanhouri, 1998). Both are classified as types of external causes (Badawi, 1943). In addition to *force majeure* and fortuitous events, military orders issued during states of emergency or martial law qualify as external causes (Marqus, 1971). These concepts concern occurrences that are both unpredictable and impossible to avoid, forcing a party to breach their obligation. As such, each concept denotes an event which is autonomous of the debtor's will and outside their capacity to predict or withstand it (Al-Sanari, n.d.). No particular class of occurrence intrinsically typifies a *force majeure* or a fortuitous event, as such a categorisation relies upon individual circumstances and certain criteria being met (Al-Amiri, 1966).

Regarding labour contracts, courts can intervene in each case to repair the contractual balance by decreasing the burdensome obligation or raising the counter-obligation, thus spreading the loss more fairly between the parties. Instances include re-examining an employee's wage in the light of existing circumstances, and the respective quantity and nature of working hours and duties. The court's power to decrease the heavy obligation or raise the counter-obligation is only applicable to the existing scenario and not a future one. As soon as the effect of the unpredicted circumstance stops, the original terms of the contract have to be reinstated.

Judicial intervention may also include suspending the contract's execution until the temporary incident ceases. Some enterprises were forced to do so during the COVID-19 lockdowns under the Defence Law. However, this is conditional upon the suspension not causing serious harm to the employee. While some scholars oppose suspending labour contracts altogether, the prevailing view in both jurisprudence and case law supports such suspension in many cases.

In all situations, courts are not permitted to terminate the contract at the obligor's request, as the objective of the theory is to distribute loss between the contracting parties. If termination were granted at the obligor's sole request, the *obligee* would bear the entire loss. However, the obligor may request termination without compensation if they reject any contract modification, especially when full termination is preferable to accepting an altered contract, thereby relieving the obligor of the burden of the unforeseen event.

As mutual parties to a labour contract, either the employee or employer may request judicial intervention to alleviate the burden imposed, such as that of a pandemic. Such a request is legitimate when the conditions for invoking the theory are met, ensuring contractual equilibrium while safeguarding both labour security for the employee and economic security for the employer, which is the core objective of the theory of hardship.

It is worth noting that during the early stages of the pandemic, most authorised sectors were allowed to operate only to the extent necessary to meet essential needs. This significantly increased the burden on workers in such sectors in terms of reduced income, warranting judicial intervention to increase their wages or at least ensure that travel to and from work was covered by the employer.

The conditions for applying the theory of hardship to labour contracts differ from those of the Labour Law. Article 31 of the Labour Law provides that:

- A. If the employer's economic or technical conditions necessitate reducing the volume of work, replacing a production system with another, or permanently ceasing operations — leading to the termination or suspension of indefinite labour contracts, wholly or partially — then the employer must notify the Minister in writing, providing reasons, before taking any action.
- B. The Minister shall form a tripartite committee representing all stakeholders to verify the validity of the employer's procedures and submit recommendations within fifteen days from the notification date.
- C. The Minister shall announce a determination according to the recommendations within seven days, approving the employer's actions or asking for a re-examination.

In conclusion, these are the conditions which have to be met prior to the employer being able to end or suspend a labour contract, either as a whole or in part:

1. An official request must be made of the Minister of Labour, itemising the causes and claimed circumstances;
2. The causes must link to the employer's economic or technical situation;
3. The circumstances must warrant a reduction in operations, changes to the production system, or a permanent ceasing of operations;
4. The circumstances must be expected to cause the suspension or termination of contracts, as reliant upon on the type of the application and the employer's position;
5. The Minister must form a tripartite committee to examine the request and issue recommendations within fifteen days; and
6. A decision must be issued by the Minister approving or rejecting the employer's request.

The provision only applies to fixed-term labour contracts, it does not apply to indefinite labour contracts.

The Minister's decision is not final and may be appealed to the Court of Appeal by an aggrieved party within ten days of notification. The court must decide the matter within one month. Once the Court of Appeal affirms the Minister's decision or if no appeal is filed, the

decision becomes final, granting the employer the right to terminate contracts as of that date, particularly if the reason involves permanent cessation of operations.

In any case, the situation covered under art. 31 of the Labour Law does not qualify as an unforeseen circumstance. Therefore, the general provisions of the JCC governing the theory of hardship should apply when unforeseen circumstances affect labour contracts. The rationale is that hardship must be general in nature, not specific to the obligor or their tools. Since art. 31 clearly refers to “the employer’s conditions”, such employer-specific circumstances are not of a general nature and therefore do not warrant invoking the theory during a general event like the COVID-19 pandemic.

In conclusion, it is evident that the theory of hardship grants courts the authority to intervene in order to rebalance contractual obligations when exceptionally burdensome events occur. However, such authority may only be exercised upon the request of one of the contracting parties or within the context of an existing legal dispute.

Accordingly, the claim that there was no need to invoke the Defence Law on the grounds that the theory of hardship could adequately address the implications of the COVID-19 pandemic is practically untenable. This is particularly true given the vast number of labour contracts that would have required judicial review on a case-by-case basis.

It should also be noted that, while the theory of hardship permits courts to alter contractual obligations to repair the balance between the parties, it does not offer a legal foundation for measures of administration or regulation used by the Government during the pandemic, including national lockdowns, compulsory quarantines, and limitation on freedom of movement between regions. Such measures, required in the public interest, are legally only reasonable under the Defence Law, as this comprises a particular legislative framework intended to manage such extraordinary public crises. On this basis, the hypothesis that applying the theory of hardship might have substituted for activating the Defence Law can be seen to be impractical, notwithstanding its theoretical reasonableness in selected scenarios.

4. Conclusion

In Jordan, the legal reaction to the COVID-19 pandemic, in particular the initiation of Defence Law No. 13 of 1992 and its associated Defence Orders, can be seen as a convincing case of legal emergency governance in an exceptional situation. The Government’s invocation of constitutional provisions intended for national emergencies was an attempt to address the delicate balance between public health requirements and the safeguarding of individual rights, especially those of labour.

This examination of the constitutional framework for initiating the Defence Law has confirmed how the legal foundation of the Government’s acts was in alignment with the concepts of need, lawfulness, and proportion. Nonetheless, the extraordinary character of the law requires constant monitoring to guarantee that its application maintains long standing democratic norms and the division of powers.

Defence Order No. 6 of 2020 initiated a regulatory mechanism intended to lessen the negative impacts of the pandemic on labour contracts. Although the order did safeguard workers from arbitrary terminations and offered flexible solutions to employers, its initiation highlighted limitations in practice, such as issues with enforcement, legal uncertainties, and gaps in protection for informal workers.

In general, the Jordanian legislative and executive reaction to the COVID-19 emergency emphasised how there is a need for a more established emergency legal framework, combining constitutional protections, social safeguarding mechanisms, and transparent monitoring. Indeed, the pandemic challenged the resistance of legal systems and highlighted the significance of proactive, rights-based governance for future emergency events.

Based on this analysis, it is clear that, although the theory of hardship under art. 205 of the JCC is a robust legal mechanism for judicial intervention in cases of overly onerous obligations, its application continues to be fundamentally restricted in practice. The theory is inherently reactive and individual in nature, necessitating judicial examination of every contract, depending on the official request of the affected party. This procedural mechanism does not have the rapidity, uniformity, and breadth in its regulatory range to cope with the systemic and national disturbances set in motion by a pandemic such as COVID-19.

Despite the hardship theory notionally permitting the rebalancing of long-term contracts, such as labour contracts, its procedural limitations and limited solutions make it inadequate as a broad legal reaction to a public health crisis of this scale. Such inadequacy is particularly clear for labour relations, as the provisions of labour law and the character of labour contracts need both rapidity and sector-encompassing clarity; neither of these can be accomplished by normal judicial frameworks on their own.

Further, the unique breadth of the pandemic required broad public health and economic interventions, including lockdowns, curfews, and industry shutdowns, which it was not possible to ground only in the general provisions of civil or labour law. Such measures, key to protecting the public interest, necessitated a legal framework with wider constitutional and regulatory powers, as provided by the Defence Law and its associated executive orders.

As such, the hypothesis that the ordinary legislative remedies, especially the theory of hardship, might have sufficiently addressed the full range of the pandemic's effects, without recourse to the Defence Law's exceptional powers, does not withstand practical scrutiny. Although the theory potentially remains appropriate for individual disputes and certain contractual settings, it is unable to provide the broad and unified legislative response required to deal with a national crisis. Hence, the initiation of the Defence Law, in spite of its disadvantages, was both legally justified and practically necessary.

Having concluded this, and according to the legal and analytical results given here, two recommendations are suggested to improve Jordan's legal emergency framework and guarantee better safeguarding of labour rights in the event of future emergencies:

1. It is recommended to amend art. 205 of the JCC to expand its scope, allowing courts to intervene in collective cases without requiring an individual lawsuit from each affected party, particularly in the event of disasters or public crises that affect large categories of similar contracts; and
2. It is imperative to develop more effective oversight mechanisms and to update the Defence Law to reflect modern constitutional standards and the cumulative experience of the Jordanian legal system.

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