

A REGULAMENTAÇÃO LEGAL DA PAUSA NO PAGAMENTO NA LEGISLAÇÃO JORDANIANA

THE LEGAL REGULATION OF THE PAYMENT RESPITE IN THE JORDANIAN LEGISLATION

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ABSTRACT

This study aimed to highlight The Legal Regulation of the Payment Respite in the Jordanian Legislation. It also aimed to reveal the legal regulation of the payment respite in the Jordanian legislation by explaining its nature and the implications of granting it. Besides, the legal controls for granting a payment respite were addressed mainly to reveal the deficiencies in the legal regulation of this important concept in the Jordanian legislation. The descriptive analytical approach was used to describe and analyze the legal texts related to this phenomenon. The findings reflected that, deviating from the general rule in contracts, which stipulates that the contract is the law of the contracting parties and for considerations based on justice and the interest of society, the legislator granted the judge the authority to amend the contract and grant the debtor a payment respite, that is, a judicial period and deadline. The study concluded with a set of findings and recommendations, most notably the necessity of setting a time limit for the payment respite granted by the judge to the debtor, taking into account the interest of the creditor as well, not harming him, and expanding the application of the payment respite in commercial disputes.

Keyword: payment respite, judicial deadline, judge's authority

RESUMO

Este estudo teve como objetivo destacar a regulamentação legal da pausa no pagamento na legislação jordaniana. Pretendeu também revelar a regulamentação legal da suspensão de pagamento na legislação jordana, explicando a sua natureza e as implicações da sua concessão. Além disso, os controles legais para a concessão de uma prorrogação de pagamento foram abordados principalmente para revelar as deficiências na regulamentação legal deste importante conceito na legislação jordaniana. A abordagem analítica descritiva foi utilizada para descrever e analisar os textos legais relacionados a esse fenômeno. As conclusões refletiram que, divergindo da regra geral dos contratos, que estipula que o contrato é a lei das partes contratantes e por considerações baseadas na justiça e no interesse da sociedade, o legislador concedeu ao juiz autoridade para alterar o contrato e conceder ao devedor uma trégua no pagamento, ou seja, prazo e prazo judicial. O estudo concluiu com um conjunto de constatações e recomendações, destacando-se a necessidade de fixar um prazo para a prorrogação do pagamento concedida pelo juiz ao devedor, levando em consideração também o interesse do credor, não o prejudicando, e ampliando o aplicação da isenção de pagamento em disputas comerciais.



1 INTRODUCTION

Relationships between individuals are reciprocal based on the achievement of each party's interest. Moreover, man is a social being by nature and is characterized by a tendency to make relationships with others. Those relationships are regulated by law. In this regard, the contract is one of the most important sources of commitment because it guarantees the rights and obligations of its parties, as it is done with consent and the free will of the contracting parties.

Therefore, the will is the greatest authority and an important principle in the formation of the contract based on the offer and acceptance of its parties. However, this will was restricted after abandoning the individual doctrine. Therefore, it is no longer an absolute will, but rather it is restricted by controls related to public order and morals, or in a sense, it adheres to the forms specified by law for certain legal actions.

In this respect, we find that the authority of the will is not absolute. Rather, it has become restricted as a result of recent developments at the economic, social and scientific levels. The emergence of the industrial revolutions contributed to the doctrinal imbalance between the parties. Therefore, we find that a number of legislations intervened and placed restrictions on the freedom and formation of the contract, so the legislator intervened and authorized the judge to intervene to restore the contractual balance between the contracting parties. This happened for the purpose of implementing the contract, because it was established to be implemented, and with the aim of achieving the interests of the parties and achieving justice.

One of these cases is when the parties to the contract are of varying strength; one of whom has a legal monopoly on a service or a necessary commodity, so the other party acquiesces to the terms of the contract. In order to restore balance, the legislator gives the judge the right to amend or mitigate these conditions, or exempt the compliant party from them. The parties may not agree to exclude the application of this provision in support of the provisions of Article 204 of the Jordanian Civil Code.

Another example of a judge's intervention is the association of a contract with a penalty clause. Here, the judge has the authority to amend it if it is arbitrary or excessive on the part of one of the parties. Besides, the judge has the right to



intervene and give the debtor a period of time to pay off, i.e. a deadline or judicial deadlines or the consideration of the payment respite, as the name came in the Jordanian civil law. The judge has the right to grant this period if the debtor's situation is difficult, and the creditor does not suffer serious harm from that. This is an exception to the principle of the power of the will.

The payment respite, which is the subject of the research, was dealt with by most of the civil legislations, but significantly the Islamic Sharia has known it for more than fourteen centuries. Almighty said: "If the debtor is in a difficulty, grant him time Till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.")Quran, 1:280).

Significantly, the payment respite is an exception to the general rule of fulfillment, because the obligation must be fulfilled as soon as it arises. It is an exception to the contract, the law of the contracting parties, and it is not permissible to terminate it or amend it except with the agreement of its parties. However, the legislator, for considerations based on justice and the interest of society, granted the judge the authority to amend the contract and grant the debtor a payment respite, i.e. a grace period and a judicial deadline.

Therefore, we discuss below the legal regulation of granting a payment respite, in terms of its legal nature, the controls for granting the judge this authority, the extent of his authority to grant a payment respite, and the legal problems that may result from granting a payment respite.

1.1. Research Objectives:

This research aims to:

1. Know the legal concept of the payment respite in the Jordanian legislation.
2. Show the conditions the judge considers for granting a judicial period to the debtor.
3. Know the extent of the judge's authority in granting a payment respite of the debtor and the legal implications of that.
4. Know the legal problems that may appear in the application of the payment respite theory.
5. Shed light on the legal problems arising from granting a payment respite.



1.2. Research Problem:

The problem in this research revolves around the following questions:

1. What is the extent of the judge's authority to amend the deadline for payment, granting a payment respite, and violating the rule of the contract, the law of the contracting parties, and the principle of the authority of the will in the formation and implementation of the contract?
2. What are the legal controls considered by the judge in giving a payment respite to the debtor, and what are the legal problems that arise from that?
3. Why is not a judicial reprieve granted to merchants in light of their stumbling and deteriorating financial conditions for them, when they are the most in need of that?

1.3. Research Significance:

The importance of the current research is represented in its attempt to know the concept of the payment respite in the Jordanian legislation, as it is an exception to the general rule in fulfilling the creditor. It is also done forcibly, and its importance stands out for being an exception to important principles and rules in contracts, such as the principle of the contract, the law of the contracting parties. This exception may not be extended in order to preserve and protect the interests of the other party.

The importance of the research also stems from highlighting the legal aspect of the payment respite, as it may cause an imbalance in the contractual balance and other problems related to the legal texts and their comprehensiveness and adequacy for the study of the judicial term. It also emerges from the fact that it is a new addition to the legal library and an attempt to benefit jurists, the judiciary and lawyers, especially due to the lack of research on the subject of the research.

2 METHODOLOGY

The descriptive analytical approach was adopted to describe and analyze the texts of the Jordanian civil law, analyze these texts, and address comparative laws such as the Egyptian civil law as a matter of addition and benefit.



3 THE CONCEPT OF PAYMENT RESPITE

The Jordanian legislator did not set a definition for the payment respite, although it stipulated it in the provisions of the Jordanian civil law and left that to jurisprudence. Significantly, the basis of the payment respite is found in Islamic law. In this regard, the four schools of thought agreed on the permissibility of granting a judicial respite (a payment respite) to the debtor in appreciation of his insolvent circumstances and in order to ward off the harm that might be caused to him.

The payment respite took a general form and it did not specify a specific debt, as it made the debtor insolvent or bankrupt deserving to be granted a soft payment respite, because the payment respite in Islamic law combined morals, principles, and the interests of the parties. The following will define the payment respite, and then mention the legal controls for granting the payment respite to the debtor.

3.1. Definition of a payment respite:

It was mentioned at the beginning of this study that the Jordanian legislator did not refer to the payment respite in the text of Article (403) of the Jordanian Civil Code. It is clear from what the legislator stated that the court may grant any judicial grace period to the debtor, taking into account his circumstances and economic condition, because resorting to the court is in order to fulfill the right. This is done through a set of actions that determine the path to be followed by the parties and guide judges on how to adjudicate disputes (Al-Taani, 2009, p. 14).

The concept of payment respite was defined by a jurist as “a reasonable term granted by the judge to the debtor whose financial condition calls for that, when there is nothing legally preventing it, and granting this respite does not lead to serious harm to the creditor” (Nouriya, 2015, pg. 9).

Jurists Marty and Reno believe that the payment respite means “the term granted by the judge to the debtor, in violation of the contractual agreements and the regular order of commitment and without the will of the creditor, taking into account the difficulties faced by the debtor” (Nouriya, 2015, pg. 10).

Significantly, the payment respite can be defined as an additional period of time granted to the debtor or the person obligated to implement a financial obligation



in order to give him the opportunity to fulfill his obligation or pay his dues without burdening him with legal consequences. Its purpose is to achieve balance and justice between the interests of the different parties in cases of financial obligations. The term granted at the discretion of the respite is granted by the judge based on his assessment of the circumstances and conditions of the debtor.

It is worth noting that the payment respite violates two principles of fulfillment. The first is the fulfillment of the obligation as soon as it is created, since as long as there is no agreement between the parties to the contract to postpone the obligation or they did not agree to add it to a deadline and it was due for performance, it must be fulfilled directly. The reason for this is that postponing the debt may result in damage to the creditor that requires compensation for this lease to the creditor.

Although the contract is the law of the contracting parties and this principle is adopted by the Jordanian legislator, and it is not permissible to revoke or amend the contract except with the agreement of the parties or the existence of a provision in the law that permits this, the legislator granted the judge the authority to amend the contract and grant the debtor a deadline instead of immediate fulfillment. Thus, it violated the text of Article 334 of the Jordanian Civil Code related to the immediate settlement of the creditor.

The second rule in payment is the indivisibility of the debt, as it is not for the debtor to compel the creditor to accept the partial payment of his right unless there is an agreement or text permitting that (Al-Far, 2020, p. 46), based on the text of Article 330 of the Jordanian Civil Code.

Therefore, the payment respite violated the rule of indivisibility of fulfillment and gave the debtor judicial deadlines for payment if good intent was available. With this fragmentation, the payment of this obligation in installments that suits the debtor's current circumstances makes it an attempt by the legislator to save the contract from termination in the event of the debtor's inability, conditioned on not causing serious harm to the creditor, and an attempt by him to save the contract and its implementation.

The advantage of the payment respite is that it is granted to the debtor without him presenting himself to the judge and requesting that he be granted a judicial delay. This is due to the judge if he considers that there are force majeure circumstances that the debtor is going through and prevented him from executing his



obligation on the date agreed upon. He has a discretionary power to grant it, especially if it appears to him that the creditor has been arbitrary in refusing to grant the payment respite, despite the fact that he was not harmed as a result of giving the debtor a judicial deadline, due to his desire to annul the contract. The Court of Cassation has no control over the judge's decision to grant or refuse to grant a judicial delay to the debtor.

However, the researcher believes that it is necessary to restrict the judge's granting of a payment respite to the debtor at his request, because the judge may not rule by what the litigants do not demand, or more than what they demand.

On the other hand, the payment respite is similar and divergent with other legal systems, as it converges with the term that is determined by the law, and the term is a matter of future occurrence that depends on its occurrence, the enforcement of the obligation or its expiration (Al-Far, 2020, p. 158).

The two systems agree that they are granted to the debtor because he is going through a difficult crisis, but the payment respite is granted by the judge to one debtor and not to another, taking into account the difficult circumstances that the debtor is going through. The term is granted to all debtors, and it is imposed according to a legal text, while the payment respite is granted according to a judicial ruling. In this respect, the payment respite does not preclude the validity of legal benefits and litigation, contrary to the deadline set by law.

The other system, which approaches the payment respite, is the theory of emergency conditions based on the idea of economic imbalance as a result of unexpected general exceptional incidents during the implementation of the obligation, which makes the implementation of the obligation stressful for the debtor. Its field of application is shown in continuous contracts.

The Jordanian legislator stipulated, in the text of Article 205 of the Jordanian Civil Code, conditions for their implementation. In this context, it stipulated the existence of a valid contract that continues execution or its implementation is deferred and the existence of a general exceptional event, otherwise it makes the implementation of the obligation impossible. When these conditions are met, the judge has the right to reduce the debtor's obligation or increase the creditor's obligation.

As a matter of addition, not comparison, we point out that the Iraqi legislator



followed the theory of emergency circumstances in Article (146) of the Iraqi Civil Code. The same is the case for the Egyptian legislator that addressed the same concept in Article (147) of the Egyptian Civil Code).

Both laws take into account the circumstances of the debtor in order to achieve his interest and justice while granting him a payment respite. They are from the public system, since the theory of emergency circumstances is from the public system, and it is not permissible to agree to exclude its provisions (Al-Fadl, 2010, p. 283).

However, it differs from the payment respite, as the intervention of the judge does not reduce the burden of the obligation, but rather gives the debtor a deadline. In this respect, the payment respite is granted by the judge to the debtor for personal considerations; because of an intractable circumstance he is going through, while in the theory of emergency circumstances, the exceptional circumstance is general and the debtor did not expect it, and because of it, the implementation of the obligation became burdensome for the debtor.

In this context, it was stated in the Jordanian Court of Cassation Decision No. 2937/1967 that "the Agrarian Reform Law is considered one of the urgent circumstances, as this led to the decline of agricultural lands, and this emergency circumstance requires the intervention of the judiciary...".

The researcher believes that the implementation of the contract is based on the good will of its parties, with the intention of paying the debt and implementing the contract as agreed between its parties, and that the existence of an exception to this should be done without expanding on it, but rather taking it to the narrowest extent because it is based on mutual interests and rights for both parties and is subject to the discretion of the special circumstance of the court and its discretion.

4 LEGAL CONTROLS FOR GRANTING A PAYMENT RESPITE

The adoption of the principle of good faith plays a role in regulating the contract, and in the event that one of the parties violates it, the principle of good faith is ultimately violated. Therefore, there must be no bad faith or fraud on the part of the debtor in executing his obligation for the purposes of procrastination and not reaching



the implementation of the contract properly and legally. However, the principle of good faith prevents the contractor from sticking to the craftsmanship of implementation (Yahya, 2007, p. 112).

In spite of that, and in order to protect the parties to the legal relationship and the legislator's keenness to protect the interest of the creditor, the legislator set conditions through which the judge is allowed to grant a payment respite to the debtor. These conditions are:

The first condition: That there is no legal text that prevents the judge from granting it to the debtor and in this case the debtor fulfills the obligation within the specified and agreed upon term. Likewise, the judge does not go beyond the legal text and the will of the legislator, as if the parties agree on the existence of a nullifying condition for the termination of the contract when the obligations arising from it are not fulfilled. In this case, the judge may not give a judicial delay to the debtor.

Another example is that the judge is not entitled to grant time-limit and judicial delay in cases of a commercial nature, except in exceptional circumstances.

The second condition: That the debtor is insolvent and his condition requires giving him a respite to pay his obligation to the creditor. This means that the debtor has good faith in his delay in fulfilling his debt.

However, unfortunately, he became stumbling, not deliberately not fulfilling, or that non-fulfillment is not his fault. And he must not be insolvent, that is, he has sufficient funds to pay his obligation, but he is not able to fulfill his obligation to sell these funds temporarily. Therefore, he resorts to requesting a judicial deadline for this purpose.

The third condition: That the creditor should not suffer serious harm from this delay, as according to the text of Article 334 of the Jordanian Civil Code, it expressly stipulated that the creditor should not suffer serious harm from this postponement. This condition was agreed upon by the legislation that took adopted the payment respite, such as the Egyptian civil legislation (Article (364) of the Egyptian Civil Code; Article (281) of the Algerian Civil Code).

The judge takes into account the circumstances surrounding the debtor, such as if he fulfilled part of his obligations, or to the guarantees he provided to the creditor to guarantee his right. The judge should also take into account the harm that may befall the debtor if he is subjected to an immediate forced execution (Nouriya, 2015,



p. 41) before issuing his judgment regarding granting or refusing the payment respite. In addition, the magnitude of the harm to the creditor is up to the judge to estimate, and it is not intended to be a minor harm. It is not reasonable and fair to rescue the debtor at the expense and interest of the creditor. Therefore, the condition of the creditor must be taken into account and not harmed. The researcher believes that this condition is very important, and it is estimated in the interest of the creditor, and it is not fair to harm the creditor in order to provide relief to the debtor.

The fourth condition: That the period granted by the judge is reasonable, that is, it is not too long to harm the creditor's interest, but rather a reasonable period during which the debtor can fulfill his obligation and overcome the circumstance that prevents him from fulfilling it. After the reasonable period expires, the debt becomes payable.

The researcher believes that not specifying the period during which the judicial deadline is granted is not correct, and that specifying it is a guarantee of the creditor's right. The debtor remains informed in advance so that he can pay on the date specified by the judge. Significantly, the Jordanian legislator did not specify a specific period, but rather used the words "reasonable period." In this regard, the Egyptian legislator adopted this approach, while we find that the Algerian legislator, through the text of Article (281) of its civil legislation, specified the period of concessionary consideration to no more than one year, and this is appreciated.

Because the creditor is waiting to take his right from the debtor, and if he does not obtain this right after the expiration of the period, he has the right to demand compulsory execution from him. In this respect, it is noted that the French legislator does not give the judge the possibility to amend the contract except through the text of Article (1244) of the French Civil Code, which allows the judge to rule to delay the prosecution of the debtor (Daghman, 2010, p. 134).

It becomes clear to the researcher that the court's intervention in the contract by imposing a judicial deadline in favor of the debtor has importance at the time of maturity of this debt and implementation. Therefore, the period must be determined by the legal text.

The researcher, commenting on the first condition and excluding merchants from giving them a judicial grace period (the payment respite), believes that it is wise to include the payment respite of the category of merchants, and for the merchant to



benefit from it, although the goal of the legislator is that trade works are based on trust and speed.

However, on the other hand, it granted the creditor a grace period and a judicial deadline that would, through his trade in other aspects, pay his obligation or imprison him. This would disrupt and extend the implementation of the commitment. Therefore, we recommend that the legislator allow the judge to grant the debtor, the merchant, a payment respite, but that the period is short to suit the nature of the business. In addition, the French legislator extended the judicial period for merchants and legal persons for two years, according to Law No. 1097/85. It is clear that the French legislator included the category of merchants by allowing the granting of concessionary compensation.

In short, if these conditions are met, the judge is entitled to grant a payment respite to the debtor. This is left to his discretion and final decision, and there is no oversight by the Court of Cassation.

4.1. Legal provisions related to the facilitation view in Jordanian legislation:

The right to litigation is a general right for every individual in society, and litigation is a means of obtaining judicial protection in order to protect a legal right or interest (Al-Taani, p. 14).

Therefore, the court is resorted to in order to obtain the right. In this regard, if the judge deems it necessary to grant a concessionary view, this entails rights and obligations on the parties to the legal relationship and results from granting a concessional view to the debtor. Accordingly, the legal implications of granting the soft look in the Jordanian civil law will be studied, followed by the extent of the judge's authority to grant the soft look.

4.2. Legal consequences of granting the payment respite (judicial period):

The legal effects of giving the debtor a judicial grace period are summarized as follows:

- The effect of the payment respite is limited to the debtor himself and does not



include other debtors, even if they are jointly liable. This means that granting the payment respite naturally benefits the debtor's guarantor, because by returning the creditor to the guarantor, he has fulfilled his right, and there is no end here from the payment respite and the debtor's respite (Bakr, 2012). This is mentioned in Article (967) of the Jordanian Civil Code.

- The influence of the payment respite is limited to the creditor, even if there are joint creditors. This requires the debtor to include the rest of the creditors in order to obtain a judgment against them as well. Likewise, if the creditor dies after giving the debtor a judicial respite, the creditor's heirs are bound by it.

- The next effect is that the debtor asks the judge to grant him a judicial grace period during the course of the dispute or during implementation procedures, but without issuing a final ruling on the dispute.

This brings about the cessation of implementation procedures, as the creditor's continuation of implementation procedures subsequently results in its procedures being invalid. However, if the deadline passes and the debtor does not fulfill his obligation towards the creditor, the creditor has the right to pursue implementation procedures without the creditor returning to the judge, but rather taking the initiative to implement the ruling (Al-Jubouri, 2005, p. 40).

However, the researcher believes that, for the sake of justice, the debtor should be given another opportunity if there are reasonable circumstances and justifications that require it and there is an urgent need to grant him a judicial deadline again without extending the judicial period.

Likewise, among the effects that result from the judge granting a judicial deadline over multiple and successive periods to pay the debt in installments, delay in one of these installments makes the rest of the installments due immediately.

Granting a concessionary view does not mean delaying the maturity of the obligation, but rather confirms that it has come due, and the effect of granting a concessional view is limited to stopping the implementation procedures.

Likewise, although the debt was originally deferred and legal litigation is not permissible, the view of the facilitator does not prevent litigation from taking place. There is no justification for the legal prosecution not taking place as long as this debtor has become a creditor and the justifications that required a concessionary view of the debtor no longer exist.



The creditor does not require the debtor to pay before the legal deadline. But if the payment is made before the deadline, the debtor is not entitled to ask the creditor to recover the payment amount because he has fulfilled a due debt.

- With regard to the statute of limitations, rights do not expire with the passage of time, according to the text of Article (449) of the Jordanian Civil Code, and the statute of limitations runs from the time the debt is due. Accordingly, the statute of limitations runs from the date the right arises, that is, from the date the debt becomes due, and not from the judicial deadline that the judge sets for the debtor.

The researcher recommends that the legislator do this. This will be an important guarantee for the creditor, because the debt has come due and the respite has stopped execution.

- The creditor has the right to follow the precautionary measures in order to protect his right, such as the mortgage, despite the granting of the payment respite, and to follow the precautionary measures until the statute of limitations is cut off.

- The Jordanian legislator did not stipulate this directly, but it was indirectly stipulated, as the creditor of an unworthy debt to take precautionary measures to guarantee his right. It is a fortiori that the creditor may pursue precautionary measures, given that the debt is due when the judge grants a judicial time to the debtor.

- The creditor has the right to file an indirect lawsuit in order to preserve his right to the general guarantee. In this regard, Article 366 of the Jordanian Civil Code stipulates that even if the right is not due for payment, and in the event of a judicial deadline, the debt is due. Accordingly, the creditor has the right to file this lawsuit.

- The creditor has the right to file a mock lawsuit in order to preserve his general guarantee, as he seeks to prove the truth of the debtor's behavior as long as the creditor's right exists and is irrefutable even if it is not due for payment, as it is stipulated in Article (368) and Article (369) of the Jordanian Civil Code. However, the creditor does not have the right to file a direct lawsuit or request the debtor's imprisonment, because there are judicial grace periods for fulfillment. Thus, it does not apply to granting a payment respite.

- The issuance of excuses by the creditor to the debtor is a condition for the annulment lawsuit, but it does not prevent the judge from granting a payment respite, given that the law requires this procedure.



The creditor is not entitled to sign the precautionary seizure because it is a preventive measure and it is considered a preliminary stage for implementation. In the payment respite, implementation will be halted. Accordingly, the creditor may not impose a precautionary seizure.

With regard to the effect of payment respite on the general successor, we find that, in support of the text of Article 206 of the Jordanian Civil Law, the contract extends to the parties to the contract and the general successor, taking into account what is stated in the rules related to inheritance, unless the law stipulates otherwise or the parties do not agree otherwise or the nature of the transaction.

Therefore, it is in the nature of the transaction that the debtor's personality is taken into consideration. So the judge gave him a payment respite. Accordingly, the legal effect of the payment respite does not extend to the general successor. As for the private successor, since the payment respite is connected to the right in order to ward off harm to him, and so that the contract is not annulled, it is transferred to the private successor, taking into account the conditions stipulated in Article 207 of the Jordanian Civil Code.

The term is extinguished by the bankruptcy and inability of the debtor, because the creditor gave the debtor a grace period based on complete confidence that he will repay the debt when the money becomes available. In this regard, Article 404/1 of the Jordanian Civil Law stipulates that "the debtor's right to a deadline shall be forfeited if his bankruptcy or inability is ruled...", as it is stated in the Decision of the Jordanian Court of Cassation (Rights) No. 6/1991 dated 10/20/199.

The researcher believes that the bankruptcy and inability of the debtor does not prevent him from submitting a request to the judge to maintain the judicial deadline, because assessing the presence or absence of justification for granting the payment respite is left to the discretionary authority of the judge. There may be a convincing basis and consideration for maintaining the judicial deadline.

Significantly, the term itself is forfeited if the debtor does not provide the agreed-upon guarantees, because the presence of guarantees gives security and reassurance to the creditor and guarantees the implementation of the obligation, while reducing the guarantees affects the debt itself.

But if the reduction and weakening of the guarantees is due to the plaintiff's actions, whether it was intentional or negligent, then the choice is for the creditor, and



the debt is not forfeited if he wants to complete the guarantee. If the decrease in the insurance is due to a reason beyond the control of the debtor, then the debtor has the option to complete the insurance or pay the debt, because the weakening of the guarantee is due to a reason beyond his control. As for the debt that has fallen due to the fall of the term, the benefits are deducted from it for the period between the debt's due and the date of its payment (Al-Jubouri, 2005, p. 134).

Thus, the researcher believes that there is a legislative vacuum regarding the effects of the payment respite that the judge gives to the debtor, as what came in the Jordanian Civil Law was limited to the conditions the judge considers for granting the payment respite (judicial time limit) and was general. Besides, the effects of the payment respite were based on some of the articles of the Jordanian civil law, analogy to them, and a conclusion from them. There is no specific text on the legal effects of granting the payment respite, which requires intervention from the Jordanian legislator.

4.3. The authority of the judge to grant a payment respite:

Termination of the contract leads to the termination of the contractual relationship, and thus the collapse of the contract. However, in an attempt by the legislator to limit the termination of contracts, he surrounded the implementation stage of the contract with guarantees that guarantee limiting the termination of the contract, and obligated the contracting parties to implement the obligations arising from the contract in accordance with the requirements of good faith (Al-Zagard, 2007, p. 15), or if there is a temporary circumstance that prevents one of the parties from carrying out his obligation, by granting the debtor a payment respite (judicial deadline).

The granting of a payment respite is subject to the discretion of the judge, who in either case shall reason his judgment. In this respect, the discretionary power of the judge is affected and varies according to the lawsuit filed by the creditor, whether it is an annulment lawsuit or an execution lawsuit.

In the execution lawsuit filed by one of the parties, asking him to fulfill his obligation, the law allows the judge to intervene and grant the debtor a deadline due to his inability. It is also permissible for the judge to grant him the payment respite



which implies multiple and successive deadlines for payment. In this regard, the judge obliges the parties to implement the contract as required by good faith, and thus gives the debtor in good faith a payment respite if he is not executing the contract in good faith (Ibrahim, 2006, p.118).

The judge also has the power and authority to grant a discretionary review in the annulment case, since, according to Article (246) of the Jordanian Civil Code, in a contract binding on two sides, if one party does not fulfill its obligation, the other party has the right to request annulment or implementation of the contract. The court has the right to grant it another period, as annulment only occurs if one of the contracting parties does not fulfill his obligation. It is also required that the non-execution is not due to a foreign reason (Abdel Qader, 2019, p. 159).

However, the judge has the right, in accordance with the text of Article 246 of the Jordanian Civil Code, to grant a deadline to the debtor in the annulment lawsuit before issuing his ruling on the annulment lawsuit. He has the authority to grant a judicial deadline in cases of annulment of all contracts unless there is a legal text that does not permit this. However, if the debtor breaches his obligation after that, the creditor has the right to file a rescission lawsuit and sue the debtor accordingly as a result of the debtor's failure to fulfill his obligation and pay the debt. In this case, the judge relies on an objective standard to issue his ruling to assess the gravity and importance of non-performance, without ignoring the intention of the contracting parties. The matter is left to the discretion of the trial judge.

In the case of partial fulfillment, the judge has the choice either to annul the contract or to keep it in place with compensation for the part that was not fulfilled. However, if it becomes clear that there is bad faith on the part of the debtor, the termination shall be ruled.

An important question arises in this regard: what is the extent of the authority of the urgent matters judge to grant the payment respite in case of urgency?

In order for the judge of urgent matters to be competent, a state of urgency must exist, that is, the presence of definite danger and harm to the right to be protected. It needs to be dealt with quickly to prevent harm that could affect that right. In this regard, the legislator stipulated that there be no prejudice to the origin of the right, as it prevents the judge of urgent matters from deciding on the origin of the right, but rather leaves it to the subject judge, as it is stipulated in Article (32) of the



Jordanian Code of Civil Procedure.

With regard to the authority of the judge of urgent matters to grant the payment respite, several opinions emerged. In this respect, a group of jurists did not allow the judge of urgent matters to grant a payment respite because it is outside his jurisdiction, while other jurists allowed him to grant a payment respite if the debtor showed good faith in paying and not procrastinating (Nouriya, 2015, p. 50).

Another opinion gave the authority to the judge of urgent matters to suspend execution if he finds sufficient guarantees with the creditor to safeguard and preserve his right, because by doing so he will not be harmed. In this respect, the researcher believes, and through the foregoing, that the judge of urgent matters does not have the authority to consider the claim of rescission or execution because they relate to the origin of the right. Therefore, he has the right to grant a favorable view to the debtor when the creditor initiates implementation procedures with an executive document. However, if the execution is initiated pursuant to an enforceable ruling, the debtor does not have the right to request a favorable review from the urgent matters judge.

Much importantly, the judge who is looking into cases of implementation problems is not entitled to grant the payment respite because that affects the power of execution of judgments, as he was supposed to request it during the course of the case. Therefore, the judgment is executed and cannot be amended by another judge except by appealing it according to the rules.

It is clear that the payment respite and the authority of the judge to grant it is considered a transgression of the judge's job, as his job is to resolve the dispute without interfering and transgression to amending the effects of the contract and giving a judicial respite to the debtor.

The payment respite is allowed by the majority of civil legislations, but the Islamic Sharia allowed its application in all debts. In this regard, the laws were limited to allowing the discretionary approach in specific cases, as the judge does not have the right to give a judicial deadline to the debtor in the event of a rescinding condition, which allows an agreement that the contract will be considered invalid on its own without the need for a judicial ruling in the event of non-fulfillment (Ibrahim, 2006, p.121).

Regarding the judge's authority to grant the payment respite, and from what



has been researched, the researcher believes that the judge bases his ruling to grant or reject it on multiple elements represented by the circumstances of the debtor, whenever his condition requires it. The creditor's circumstances should also be taken into account, as he may not suffer serious harm as a result of granting a payment respite to the debtor. In doing so, the judge takes into account the economic situation and how it contributed to the decline in the debtor's financial situation.

5 CONCLUSION

At the conclusion of this study which addressed the legal organization of the payment respite in the Jordanian legislation, a number of findings and recommendations are listed.

5.1. Findings:

1. The payment respite means the grace period granted by the judge to the unlucky debtor who owes a debt due for payment. It is considered a discretionary authority for the judge to assist the debtor by postponing the payment of the debt. In this respect, the payment respite was approved by most legislation, and Islamic law was the first to allow its granting.
2. The payment respite is a violation of the rule of will power, as the contract rule is the law of the contracting parties and the rules of fulfillment contained in the Jordanian Civil Code. Thus, it exceeds the binding force of the contract.
3. The giving of a judicial grace period (payment respite) is left to the discretion of the judge, who has the right to grant or refuse to grant a judicial grace period to the debtor without supervision by the Court of Cassation, based on the debtor's circumstances and economic condition.
4. The Jordanian legislator stipulated that there is no legal provision preventing the judge from granting the debtor a payment respite until he is able to pay, that the debtor is unable and that the judge grants him a reasonable time and that he does not cause serious harm to the creditor.
5. One of the legal effects of granting the debtor a judicial reprieve is that this effect is limited to the creditor and the debtor only, and does not prevent the occurrence of



legal litigation, as there is no justification for its non-occurrence.

6. The debtor asks the judge to grant a payment respite during the course of the litigation or during the execution procedures, and its effect is limited to stopping the execution procedures.

7. The statute of limitations runs from the debt maturity date, and the creditor has the right to pursue precautionary measures to preserve his right if he gives the debtor a payment respite.

8. The judicial term lapses in the event of the debtor's bankruptcy and inability, and if he does not provide the agreed-upon securities, or in the event that these insurances are reduced by the debtor's action, as it is stipulated in the text of Article 404 of the Jordanian Civil Code.

9. The judge's authority to grant a judicial deadline is left to his discretion in the enforcement lawsuit and the annulment lawsuit as long as the debtor is in good faith. He has the right to grant a payment respite to the debtor. However, in the case of urgent matters, the urgent matters judge has the right to grant a payment respite when the creditor initiates implementation procedures with an executive document. The judge may not grant a payment respite if the implementation is pursuant to an enforceable ruling.

5.2. Recommendations:

1. The Jordanian legislator should add legal texts related to all legal aspects of the payment respite in terms of its connection to public order and the extent of its permissibility to transfer it to the public and private successors, as the provisions of the Jordanian Civil Code regarding the payment respite are not sufficient to encompass its legal organization.

2. The Jordanian legislator should add to the text of Article 403 of the Jordanian Civil Code that the period of the judicial grace period not exceed one year.

3. The legislator should allow granting a payment respite in commercial disputes and giving the debtor a payment respite to fulfill his obligation.

4. The Jordanian legislator should specify the deadlines that the judge can grant to the debtor so that the creditor is not harmed by them.

5. The Jordanian legislator must specify the entry into force of the judicial deadline, to



indicate whether it takes effect from the date of notification of the parties or the issuance of the decision to grant the payment respite, because specifying the entry into force of the judicial deadline has legal implications.

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