

## LEGAL RULES GOVERNING THE DURATION OF THE CONTRACT IN ITS PERIOD OF FORMATION (COMPARATIVE LEGAL STUDY)

<sup>1</sup>MALEK RAHIM HUMADI <sup>2</sup>DR. HAIDER FALIH HASSAN

<sup>1</sup>Master's Student: University of Baghdad/College of Law

[malek.raheem1201a@colaw.uobaghdad.edu](mailto:malek.raheem1201a@colaw.uobaghdad.edu)

<sup>2</sup>Professor of Civil Law:

University of Baghdad/College of Law

[dr.haider@colaw.uobaghdad.edu](mailto:dr.haider@colaw.uobaghdad.edu)

### Introduction

*The duration of the contract is a legal term first provided for in French Amendment Decree No. 131/2016, and given the increasing importance of time in contracts, we have chosen to study the legal rules governing time at the formative stage by drawing on changes in French law compared to both Iraqi and Egyptian laws.*

*Article 1102 of French Amendment Decree No. 131/2016 stipulates that: "Everyone is free to contract or not to contract, to choose the person with whom he contracts, and to determine the content and form of the contract within the limits established by law."*

*Contractual freedom does not permit a breach of the rules relating to public order), as well as article 1104, which provides for (contracts must be negotiated, concluded and executed in good faith) and combined with article 1210 of the same decree, in which the provision was opened (prohibition of life-long obligations), the legal principles controlling the contract are the principle of contractual freedom<sup>1</sup>, which is limited by public order<sup>2</sup>, as well as the principle of good faith<sup>3</sup> and the principle of prohibition of life-long obligations. Since the principle of contractual freedom and the principle of good faith do not attach to the duration of the contract, there was no room for their consideration in the study other than the principle of prohibition of life-long obligations.*

**Keywords:** *contract duration, prohibition of perpetual obligations, contract formation.*

### THE FIRST REQUIREMENT

**What is the principle of prohibition of perpetual obligations?**


**(Personal commitments do not perpetuate)<sup>4</sup>**

The most relevant principle for the duration of a contract is the prohibition of life-long obligations because it is a restriction related to time and not to the will as in contractual freedom or to act as in good faith, this is on the one hand and the other hand, the issue of perpetuation and timeliness<sup>5</sup>, was the subject of discussion and doctrinal disagreement that extended for long periods, and even when the agreement is reached, it is sometimes not possible to make clear decisions on certain issues. In Islamic jurisprudence, which is a source of the Egyptian and Iraqi rationing in question, it has not been settled. Equally unclear are the French jurisprudence and legislation, after ups and downs that lasted for a long period, general rules began to crystallize in legislation and in judicial rulings, the most recent of which was what was stipulated in Article 1210 of the French Amendment Decree 131/2016, which established a general rule formulated for the first time within the texts of the French Civil Code.

### SECTION ONE

**The concept of the principle of prohibition of perpetual obligations**

In reviewing the historical origins of this principle, we find that French legislation and jurisprudence had no effect before the eighteenth century. Indeed, its first intellectual appearance was in the Age of Enlightenment, and it first took place after the French Revolution, implying, as interpreted by the French Constitutional Council<sup>6</sup>, Article IV<sup>7</sup> of the Declaration of the Rights of Man and French Citizen of 1789.



The notion of the principle derives from the meaning of the obligation as a general rule and from the preservation of the freedom of the contractor to establish and terminate it without prejudice to the other party as an axiom of law<sup>8</sup>. This is adapted to the fact that the obligation is a special bond, and this link includes the meaning of the assignment, and the assignment may not be established forever, because in this sense it is a kind of slavery, and the contractual bond, in general, is an accident, and the logical rule states (the accidental transience), on the social side, the instability of economic conditions, the constant currency change, and price volatility make the survival of the contractual relationship certainly economically unbalanced.

As to the definition of the principle, the clearest definition is (that no person can be indefinitely involved in perpetual contractual relationships).<sup>9</sup>

However, there is an opinion in French jurisprudence<sup>10</sup> that goes to say that certain obligations are arising from some types of contracts that it is difficult to specify a time for them (at least explicitly), and therefore continue even after the end of those contracts as long as they are necessary and the reasons for their existence remain, such as the obligation to confidentiality and the obligation not to compete.

## SECTION TWO

### **The principle of prohibition of perpetual obligations in comparative legislation**

The principle of prohibition of life-long obligations was first provided for directly by the French legislator, as we have already indicated. No similar provision has been found in both Iraqi and Egyptian legislation, but many legislative texts are available in comparative laws that implicitly refer to the principle of prohibition of life-long obligations, including but not limited to the following articles:

First: Article 1709, a French citizen, which states: (Rental of objects is a contract whereby one contractor commits the other contractor to give the right of use of something for a certain period, as opposed to an allowance to which it is bound to perform), corresponding to Article 722 of an Iraqi civil (Rent is a known benefit in exchange for a known period, in which the landlord is obligated to enable the tenant to benefit from the rent), and Article 558 of the Egyptian civil (the rent is a contract whereby the landlord is obligated to enable the tenant to benefit from a certain thing for a certain period in return for a known wage).

Accordingly, the French legislator has prohibited permanent leases, this is confirmed by the phrase “for a certain period”, and this is the same behavior of the Iraqi legislator, as a text was mentioned in the Iraqi Civil Code that was not matched by a similar text in the Egyptian Civil Code, as Article 740/1 of the Iraqi Civil Code stipulates: (If the lease is for more than 30 years or perpetual, (it may be terminated after 30 years at the request of a contractor, subject to the statutory deadlines provided for in the following article, and shall be null and void of any agreement required), this is in line with Islamic jurisprudence’s view regarding the inadmissibility of perpetuating the lease contract.<sup>11</sup>

Second: Article 1780 of the French civilian, which states (services can only be leased for a specific time or a specific project), corresponding to the Article 902/1 of an Iraqi civilian (The work contract may be concluded for a specific service or a specified or indefinite period). Although the Iraqi legislator in this text did not prohibit the perpetuation of the obligation, it set a way to terminate the long-term contract, as stated in the second paragraph of the same article, as it stipulated ((If the contract is for the life of the employee or employer, or more than five years, the employee may, after five years, terminate the contract without compensation, provided that the employer gives the employee six months), and another way to terminate the contract is for an unlimited period, as stipulated in Article 917/1 (If the duration of the contract is not specified, neither by agreement nor by type of work, each of the contracting parties may end his relationship with the other contracting party with a warning indicating its term by special laws, agreement or custom). and the same applies to the Egyptian legislator, as he permitted not specifying the term of the work contract in Article 678/1 of an Egyptian civilian (The work contract may be concluded for a specific service or for a specific period, and it may also be for an indefinite period), and the



same rules of termination are established in Article 678/2 ((If the work contract is for the life of the worker or the employer or for more than five years, the worker may, after the expiration of five years, terminate the contract without compensation, provided that the employer is warned for up to six months) and Article 694 of the Egyptian civil which states (The work contract ends with the expiry of its term or the completion of the work for which it was concluded, without prejudice to the provisions of Articles 678 and 679 (2), if the term of the contract is not specified by agreement or by the type of work or its purpose, each contractor may terminate its relationship with the other contractor, and the use of this right must be preceded by notification, and the method and duration of the notification shall be specified by special laws).

Thus, the French legislature allows it to be ended by unilateral will without a deadline of excuses<sup>12</sup>, unlike both Iraqi and Egyptian legislators, who have stipulated the time limit of excuses.<sup>13</sup>

Third: Article 1888, a French civilian, which states (the lender is not entitled to take back the property except after the agreed-upon term, and in the absence of any agreement after the borrowed thing has been used for the purpose for which it was borrowed), contrasts with the difference in Article 861 Iraqi civilians, which states (The loan ends with the expiration of the agreed time limit. If no time limit is set, it ends with the use of the object for which it is loaned if the loan is not specified in any way the loaner may request its termination at any time), article 643 Egyptian civilians ((1- The loan is terminated by the expiry of the agreed-upon term, and if it is not given a time limit, it shall end up using the object for which it is loaned. 2- If there is no way to specify the term of the loan, the lender may request its termination at any time). Here again, Iraqi and Egyptian legislators have painted a way to terminate the loan contract, which may be requested to be terminated by the loaner at any time, unlike the French legislator, who kept only the term and the end of the purpose to terminate the contract. This is unacceptable, since the loaner may not recover the loan as long as it is exploitable, and this deficiency in the text has been dealt with by the courts as will be shown in due course.

### SECTION THREE

#### **The principle of prohibition of perpetual obligations in judicial rulings**

The French Court of Cassation declared its 2014<sup>14</sup> annual report on the principle of prohibiting perpetual obligations by emphasizing (that the freedom of the contractual parties to determine the duration of the contract should not intersect with the maximum term of the contract, which the law determines in some cases, such as setting the term of the advertising lease contract to six years, Article 581-25 of the Environmental Law<sup>15</sup> and a period of ninety-nine years for civil and commercial company contracts, Article 1838 of the French Civil Code<sup>16</sup>, and Article 210-2 of the Commercial Code.<sup>17</sup>

The position of the French legislator in the text of article 1780 may seem uncertain in the prohibition of life-long obligations<sup>18</sup>. However, the decisive position came from the judiciary, where this principle was affirmed by the French Court of Cassation stated (The undertaking to use the services of an agricultural cooperative society for the duration of the cooperative's work<sup>19</sup>, that is, at least for a period of 36 years at the date of joining, does not respect the individual freedom of the person who made it, as the time mentioned is equal to or greater than the average period of the professional activity of the agricultural investor).

As the above-mentioned Court of Cassation report points out, the purpose of the principle is to extend legal protections to the parties to the contract by establishing a maximum period after which the contract may not continue, as this is an unjustified violation of the rights of individuals.<sup>20</sup> We have previously submitted that the French legislature did not provide for the ability of the lender to restore the loan when the time limit was not fixed or the purpose of borrowing it expired. This legislative void was avoided by the French judiciary, as the Court of Cassation amended its previous decision issued in 1996<sup>21</sup>, in a later decision<sup>22</sup>, issued in 2004 AD, which stated (When there is no agreed term for lending something for permanent use, and without a normal and predictable time limit, the loaner may terminate it at any time, while respecting a reasonable period of warning. This provision was enshrined in Act No. 526 of 2009. The legal article governing

the loan is article 1875<sup>23</sup>, which was repealed by Act No. 526, and replaced by the amended article 1875<sup>24</sup>, which imposed contrary to the original (that the loan is free)<sup>25</sup> fees to return the loan after use to restrict the borrower from abuse by using his right to keep the thing loaned under his hand for long periods.

In general, all of these provisions require that a contract be terminated, regardless of its duration, whether it is a contract for the use of items such as rent and loan, or a contract for the services of persons such as a contract of employment and an agency contract. The expiration of the contracts referred to in the above-mentioned provisions is known and unknown, as in the case of the Agency's termination of natural death.<sup>26</sup>

## THE SECOND REQUIREMENT

### Methods for determining the duration of the contract and the standard for perpetuating the obligation

The duration of the contract is generally affected by the fact that it is fixed-term or not. The consequences of such a determination are important practical results, including those relating to the invalidity of the contract in the event of perpetuation, including the ability of the parties to terminate the contract of indefinite duration by unilateral will, unlike the fixed-term contract. It was, therefore, necessary to address the possibility of knowing whether a contract was fixed-term or not when a dispute arose between the parties, on the one hand, and the other hand, the possibility of knowing whether a contract is perpetual or not, which we would consider in the subsequent paragraphs.

#### Section one

##### Methods for determining the duration of the contract

The distinction between a fixed-term and indefinite contract has an important practical effect, which is the possibility of unilaterally terminating the unlimited-term contract, the general rule of proof is that the defendant in the dispute bears the burden of proof<sup>27</sup>, but the French judiciary deviated from this rule<sup>28</sup> and established a presumption to protect the apparent, represented by the consideration of the continuous contract with an indefinite duration in the first place unless the will of the parties or the nature of the contract indicated otherwise. This trend is well-founded on the fact that the limitation of the duration of the contract is not based on the presumption unless it is stated that the existence of the contract cannot be recognized, and it follows that the burden of proof does not fall on the plaintiff, but rather on those who claim that the contract is for a fixed term, whether he is a plaintiff or a defendant. Here, the role of the duration of the contract is highlighted, since the effect is different if the latter is defined or not. Its practical application begins with the establishment of evidence or the burden of proof and ends with the power to terminate the contract with the sole will. From this presentation, the dispute over a fixed-term contract is easily adapted by the judiciary. The limitation of duration is either explicit in the contract, or implicitly in the absence of such explicit provision.

##### First: Explicit duration of the contract

The limitation of the duration of the contract shall be explicit when the parties declare its duration with the clear, unequivocal, and unambiguous will, either in a direct manner consisting of a certain period, such as one or two years, or any period agreed between the parties, or by determining a particular date by which the contract expires<sup>29</sup> indirectly through an assignment to an external element of the contract in which case two conditions are required:

The first condition: that one of the parties does not unilaterally determine the term of the contract, because suspending the term by the will of one of the unilateral parties allows him to terminate the contract whenever he wants.

The second condition: that the term of the contract is certain to occur, and what is meant here is that the occurrence of the term in the future is inevitably certain, regardless of the date of its occurrence, such as adding the obligation to the period of someone's survival, as in the life

insurance contract<sup>30</sup>, the contract here is a fixed-term explicitly, but indirectly, if the duration of the contract is the life of the insured, and it is a certain term of occurrence, the date is not fixed, but the question arises about the specific period if the determination of the term is focused on a specific work<sup>31</sup>. Here, the contract is considered for a fixed term if the work will inevitably be completed and the contract will end in a period that does not take the contracting parties' lives. According to the nature of the contract, if the work period is long and exceeds the reasonableness of the contracting parties' lives, then the contract is then unlimited.<sup>32</sup>

### **Second: The term of the contract specified implicitly**

If the term is not directly specified (specifying a specific period or a specific date), nor is it explicitly specified indirectly (determining work or a time that is certain to happen), then it is logical to consider the contract for an unlimited period. This is an assumption based on the apparent, so whoever claims that the contract is for a fixed term must establish evidence for that. This evidence is the implicit determination of the specified contract period, and finding this evidence or the way to find the implicit determination of the specified contract period requires taking into account the following:

First: According to the general rules of proof, written evidence requires a certain financial value<sup>33</sup>.

Second: Reliance on research in the contractual association: The parties intend to draw from the elements of the contract, and therefore to analyze these elements (satisfaction, place, and reason):

1. Concerning the element of satisfaction, it is related to the method of explicitly determining the term of the contract, whether this explicit determination is directly or indirectly.
2. As for the place, it is related to the method of explicitly specifying the indirectly specified contract period.
3. It is the reason from which the time limit can be implicitly derived. For example, if the reason a person's car is loaned to another person to make a certain journey, the duration here is measured by the reason for the loan, i.e., to make the journey. Another example, as in the case of renting land for an exhibition, is that the duration of the exhibition is determined by the duration of the exhibition, i.e. the reason for the contract, or the appointment of an assistant to a person charged with a specific work.

Third: In the search for determining the term outside the contract, the contract term may be implicitly determined according to the law. This research is divided into two directions, so that the first direction originally is the law, in the case of a legal text that specifies an element on which time is measured<sup>34</sup>. The second direction is to be determined by the law on a secondary basis and by reference to custom, based on the general text of civil laws, the obligation of the contractor to the contract, the requirements of the contract under law, custom, justice, and the nature of the obligation<sup>35</sup>. To confirm this, the laws stipulate limiting the term of the contract by referring it to customers in more than one place, such as the Mugharsa contract in Iraqi law<sup>36</sup>, and some lease contracts in French law<sup>37</sup>.

## **SECTION TWO**

### **The standard for the perpetuation of obligations**

In general, the obligation is perpetual in two cases, the first is that the contract has been concluded for an indefinite period, including a condition that does not allow the unilateral exercise of the right of termination, and the second case is that the contract has a fixed term, but it is an abnormally long period<sup>38</sup>. However, the matter is not always this clear. Each of the two cases has its problems and details that make it difficult to distinguish between legal validity at times, and at other times it is difficult to adapt them as perpetual obligations. Therefore, it was necessary to find two criteria, one material and the other personal<sup>39</sup> to perpetuate the contract, and accordingly, we will discuss each of these criteria as follows:

**First: the material standard of perpetual commitment**



This criterion is based on an arithmetic scale by specifying a period as a certain number of years, if the contract exceeds it, then the obligation is considered permanent. Supporters of this criterion<sup>40</sup> are based on limiting the term of the lease contract in France to ninety-nine years, given that this text is prescriptive, so it is generalized to all-time contracts and is not limited to the lease contract, meaning that every contract with a period exceeding 99 years is perpetual and therefore is a void contract.

However, not in all cases, the duration is specified with this clarity. Rather, there are two cases, each of which is detailed:

The first case: An ongoing contract is concluded for a specified period and within the terms of the law, such as a three-year lease, and no other form thereof, but if there is a condition in the contract that gives a contractor the right to renew it on its own will, the question arises as to whether it is a fixed-term contract and is, therefore, a valid contract, or is it a perpetual contract and therefore it is invalid? The answer to this question includes specifying the possibility of transferring the condition to the successor, whether it is general or private. If the condition is related to the contracting party alone without the possibility of transferring it to another party, the contract shall be terminated by its death or at the latest three years later<sup>41</sup>. If, however, the condition is transferable to the successor of the private or public contractor, i.e., the will to renew is transferred to a third party, then the contract is perpetual and all of it is invalidated.

**The second case:** Is related to the arrangement of a right of easement. If the right of easement arises from a contract and the two parties do not specify a term for it, is the easement in this case considered permanent? The answer to that is that the right of easement is a right in kind and not a personal right<sup>42</sup>. The contract that establishes the right of easement is not continuous, but rather it is an immediate contract in the first place that creates a perpetual right in kind similar to the contract of sale, but this case is linked to what can be stipulated for the owner of the servitude property to perform some of the necessary actions for the easement right such as its use and preservation under Article 699 French Civil which states In the same case in which the property owner is charged under the bond to carry out the necessary works to use the easement and maintain it at his expense, he can always get rid of this burden by leaving the property burdened by the easement to the owner of the property in whose favor the easement is incurred<sup>43</sup>, noting that the way to get rid of these actions was mentioned in the text of the same article, and in the same vein, both Egyptian and Iraqi legislators followed suit.

#### **Second: the personal standard of perpetual commitment**

Proponents of this criterion are based on the text of article 1780, French civilians (services can only be rented for a certain time or a specific project)<sup>44</sup>, the meaning of this text is that the French legislator wanted to protect domestic servants in particular and the procedure in general because the adoption of the material standard makes the work contract extend up to 99 years without being permanent, and this limit is unreasonable, and when the wage-earner concludes a contract stipulating that he will continue to work for his life, this is slavery and a lifelong contract that is void, as the judgments of the judiciary went to for a century ago<sup>45</sup>. Some point out that the criterion here should take into consideration the age and health of the parties to the contract. If (the master) is old or seriously ill, and the employee is young, then the obligation for the life of the master is not considered permanent, and the opposite of the case, the commitment is permanent and invalidates the contract<sup>46</sup>. Considering both criteria, we find that the continuous execution contract, whenever it is perpetual, is not valid, as it must have a specified or indefinite period, provided that it does not exceed the maximum period determined by law for each class of contracts.

### **THE THIRD REQUIREMENT**

#### **Penalty for violating the principle of prohibition of perpetual obligations**

In the absence of the previous legislative text, the French judiciary has devised three different types of sanctions for violation of the principle of prohibition of life-long obligations, namely total



annulment of the contract, partial annulment as a second solution, and termination by unilateral will as a third solution. These are the following:

**First: the total invalidation of the contract**

One of the legal provisions established in the legislation is the invalidity of a contract when it violates public order, as invalidity is (invalidity or non-enforcement that causes an action to violate an order or prohibition in the law)<sup>47</sup>, or (it is a legal system that considers the contract or the legal act in general, to be non-existent and that it has never been established, due to the imbalance of its formation)<sup>48</sup>, it is also known as (the penalty established by the legislator for the failure of one of the elements of the contract, or a condition of the contract, entails the retroactive demise of the contract, both for contractors and for third parties)<sup>49</sup>. The Egyptian Court of Cassation defined it (the decision - in the Court of Cassation - that invalidity is a description attached to a defective legal act, due to its violation of the provisions of the law regulating its establishment, making it unfit to produce its intended legal effects)<sup>50</sup>.

This penalty, which was adopted by the French Court of Cassation in many of its rulings<sup>51</sup> is strict (its advantage lies in the fact that it contains sufficient force to discourage the parties to the contract from violating the principle of prohibition of perpetual obligations, considering this principle of public order, therefore, the effect of its breach is that the contract is completely invalid)<sup>52</sup>. However, this provision conflicts with the overall effect of avoidance in practice, since avoidance is retroactive, i.e. by bringing the parties back to where they were before the contract was concluded, however, the period between the conclusion of the contract and the existence of the dispute over it may take a period during which the parties to the contract acquire certain rights in such a way that the effects of the contract will not be achieved so that the contract sought to be annulled will remain and will always be irreversible.<sup>53</sup>

**Second: Partial invalidation of the contract**

The French courts adopted this penalty<sup>54</sup>, and it is represented in reducing the contract period to the maximum limit determined in accordance with the law, to get rid of the defect that we referred to in the previous penalty<sup>55</sup> or reducing the period by another ruling<sup>56</sup>. The French legislator faces two obstacles, the first of which is that it requires the implementation of this application to have a maximum legal period for each contract, and this is impossible because it is impossible to determine the duration of all types of contracts in the original, which means indirectly the limitation of this penalty and it is limited to only legally defined-term contracts, and the second obstacle is that if the perpetuation condition is what motivates the contract, then the contract must be completely annulled in accordance with the law.<sup>57</sup>

**Third: Termination by unilateral will**

Given the flaws of the previous two directions, the French courts have carved out another solution, namely, the possibility of termination by the unilateral or indefinite will of the contract provided that the termination is not in bad faith<sup>58</sup>. This is what was adopted by the French amendment decree, adding to it the condition of the notification period, in Article 1210<sup>59</sup> the termination of any of the parties was permitted in accordance with the conditions referred to Article 1211<sup>60</sup> which referred to the agreed period of notification, and when there was no agreement on the duration of the notification, the reasonable period, and the good faith condition was established - after it abolished Article 1134<sup>61</sup> containing the good faith clause in execution - in Article 1104<sup>62</sup> which explicitly imposed the principle of good faith on all stages of the contract.

<sup>1</sup> The principle of contractual freedom dominates the stage of contract formation, rather it is the cornerstone of the law of obligations, (Lauriane Hauchard) <https://www.lepetitjuriste.fr/l'affirmation-de-liberte-contractuelle> the will alone has the power to create the contract and determine its effects. The tendency of the will to create a legal effect is called a legal act, which is either the union of two wills - or more - and this is the contract, or it is a single will, and this is the singular will like a binding offer and a will. Dr. Hammad Shield, *The General Theory of Obligations - Part One Sources of Commitment*, Dar Al-Sanhoury, Beirut, 2016, p. 32.

<sup>2</sup> (The consequences of implementing the idea of public order within the framework of contractual relations concluded within the scope of civil law are the invalidity of legal actions violating the rules of public order) dr. Hussein Abdullah Al-Kalabi, *Public order as an obstacle to the application of foreign law*, a collection of



unpublished lectures delivered to master's students for the academic year 2019-2020, College of Law, University of Baghdad, and paraphrases the idea by saying (the idea of public order is the effective tool for curbing the power of will and preserving the higher interests of society), Dr. Hussein Abdullah Al-Kalabi, The Decadal Public System, a comparative study, Dar Al-Sanhouri, Edition 1, Beirut, 2016, p.9.

<sup>3</sup> Good faith is a general legal presumption, so the judiciary presupposes good faith always, although the legislator did not presuppose good faith except in certain places. Dr. Abdul Razzaq Al-Sanhouri, Al-Wasit, Volume 2, Margin pg 600.

<sup>4</sup> Dr. Abdul Razzaq Al Sanhouri, Al Waseet, Volume 9, p. 1319.

<sup>5</sup> The dispute is manifested in Islamic jurisprudence in its clearest form with regard to the issue of temporary marriage (temporary marriage), and since the issue has been resolved by Arab legislation by isolating the personal status law from the civil law, entering into it is a departure from the topic of research first, and secondly it is a doctrinal contentious issue that has no place in our study, and the law has stipulated its prohibition. Thirdly, this issue essentially constitutes a dilemma because the origin in it is perpetuation, which contradicts the principle we are dealing with in several ways, so we decided to avoid it altogether and in detail.

<sup>6</sup> See the notebooks of the French Constitutional Council, Notebook No. 8, dated November 9, 1999, commenting on Resolution No. 99-419, Charter of Civil Solidarity, published on the Constitutional Council page at the link: <https://www.doctrine.fr/d/CONSTIT/1999/CONSTEXT000017667969>

<sup>7</sup> States: (Freedom is for an individual to practice whatever he likes, provided that this does not harm others. Hence, the exercise of every human's natural rights has no limit unless it hinders other members of society from enjoying the same rights, and hence these limits It is only prescribed by law)

<sup>8</sup> Dr. Hassan Ali Al-Zhanun, The Role of Duration in Continuing Contracts, Ministry of Higher Education and Scientific Research - University of Baghdad, Baghdad, 1988, p. 24.

<sup>9</sup> Aurélien Bamdé, La Durée du Contrat: Régime Juridique, 2018, available on the

website: <https://aurelienbamde.com/2018/03/06/la-duree-du-contrat-regime-juridique/>

<sup>10</sup> Franck Beaudoin- Clauses Contractuelles – Duree– Securiser Le Contrat Au Regard De La Prohibition Des Engagements Perpetuels– Guide Et Modeles- 2018- Available on the website <https://idroit.co/contrats>.

<sup>11</sup> or more about the term in the lease contract in the Iraqi civil law, see: Jamal Hajj Yassin, The term in the lease contract, Journal of Ahl al-Bayt University, peace be upon them - Issue 13 - year 2012 AD, p. 192 and beyond. As the lease contract is not valid in jurisprudence except temporarily for a term, for more on the views of Islamic jurisprudence see Dr. Abdul Basit Muhammad Khalaf, Duration and its Impact on Benefit Ownership Contracts, Al-Azhar University, Cairo, 2010, p. 19.

<sup>12</sup> In the law of December 27, 1890, a paragraph was added to Article 1780, a French civil, which reads: "The lease of services that take place can be stopped without specifying a period at the will of one of the contracting parties." From the text of the article, we find that the legislator did not stipulate a period of excuses.

<sup>13</sup> Where Article 917/1 of an Iraqi civil stipulates (if the term of the contract is not specified, neither by agreement nor by type of work, each of the contracting parties may terminate his relationship with the other contracting party with a warning indicating its duration by special laws, agreement or custom), Article 694/2 Egyptian civil, which states: "If the term of the contract is not specified by agreement or by the type of work or its purpose, each of the contracting parties may put an end to his relationship with the other contracting party, and in the use of this right must be preceded by a notice, and the method and duration of the notification shall be specified by special laws ).

<sup>14</sup> See p. 209 of the report under the contract term section, available on the website of the French Court of Cassation: [https://www.courdecassation.fr/publications\\_26/rapport\\_annuel\\_36](https://www.courdecassation.fr/publications_26/rapport_annuel_36)

<sup>15</sup>It states (Article 581-25) of the French Environmental Code as amended by decree: 2004-1199 2004-11-12 art. 1 1° JORF 14 November 2004. However, it is not permissible to conclude a contract for renting private sites for the purposes of advertising or fixing written information for a period exceeding six years from the date of its signing. The contract may be renewed by tacit agreement for a period not exceeding one year unless it is terminated by one of the parties at least three months before expiration date).

<sup>16</sup> Article 1838 of the French Civil Code states: "The period of the company's contract cannot exceed ninety-nine years." Neither the Iraqi Companies Law No. 21 of 1997 nor the Egyptian Companies Law No. 159 of 1981 AD has a text corresponding to the French text.

<sup>17</sup> Article 210-2 of the French Commercial Code states: (The form of the company, its term, which may not exceed ninety-nine years, and the name of the company... are determined by its articles of association)

<sup>18</sup> Article 1780 French civilian (services may only be rented for a specific time or for a specific project).





<sup>19</sup> That is, the period of existence of the association, which is determined by law, as a minimum of thirty-six years.

<sup>20</sup> This is what was stated in the report on the purpose of the principle, see p. 209.

<sup>21</sup> A decision was issued by the Court of Cassation on November 19, 1996, in favor of a housing borrower, stipulating (in the event that a term for the aforementioned contract is not specified, the lender is not allowed to demand the return of what he lent whenever he wants, but rather he must wait until the borrower no longer needs it) and with this In this regard, Dr. Haider Falih Hassan goes to say that this *ijtihad* is clearly unfair and unfair to the lender, as the borrower's need for housing may not be eliminated until after a long period of time, or it may continue indefinitely. This contradicts the nature of loan use contract, in two respects, the first is that it sacrificed the interest of the lender unjustifiably, and the second is that it provided more protection to the borrower than it provided to his tenant when he was late in paying the rent. Dr. Haider Falih Hassan, *Restrictions on the Judge's Authority in Judicial Jurisprudence* (France as a model), research published in the *Journal of Legal and Social Sciences*, Volume 6, Number One, Ziane Ashour University in Djelfa, Algeria, 2021, p. 298.

<sup>22</sup> Quoted from the French Civil Code in Arabic, Dalous 2008, p. 1840.

<sup>23</sup> The repealed Article 1875 stipulates: "Non-use is a contract in which one of the parties delivers something to the other party for use, provided that the same thing is returned to him after use."

<sup>24</sup> The amended Article 1875 stipulates that (a free-use contract is a contract under which one party delivers something to the other party for use, provided that the lender charges a fee to return it after its use)

<sup>25</sup> Article 1876 of the French Civil Code stipulated (this loan is originally free of charge).

<sup>26</sup> Dr. Haider Falih Hassan, *Contract Duration: A Study in the Light of French Legislative Decree No. 131-2016* issued on February 10, 2016, *Journal of the Kuwait International Law School*, No. 2, June 2020, p. 280.

<sup>27</sup> Article 1353 of Decree No. 313/2016 stipulates that (whoever requests the implementation of the obligation must prove this obligation) is a text identical to the repealed Article 1315, as stipulated in the same meaning as Article 9 of the French Civil Procedure Code of 1976 in force states (it is the responsibility of each party to establish the necessary facts, according to the law, for the success of his claim), as for the Iraqi Civil Code, the articles of proof were abolished by the issuance of the Iraqi Evidence Law No. Whoever denies), and the same is the case with the Egyptian Civil Code, for the articles of evidence in it were abolished by Law No. 25 of 1968 promulgated by the Law of Evidence in Civil and Commercial Matters, the first article of which stipulated (the creditor must prove the obligation and the debtor must prove his disposal).

<sup>28</sup> In detailing this trend from the French judiciary, see Dr. Hassan Ali Al-Thnoon, previous source, p. 68.

<sup>29</sup> Dr. Abdul Razzaq Al-Sanhoury, *Al-Wasit*, Part 3, p. 7. It is noted that in the direct method for determining the duration of the contract, no dispute arises other than adherence to the limits set by law from a minimum or maximum period.

<sup>30</sup> In the insurance contract, there is a specificity, as the contract lasts for the life of the insured. The contract is essentially concluded with the insurance applicant and the insurance rights devolve to the person of the beneficiary. In fact, we are in front of three people as one party, knowing that the combination of the three qualities in one person is not a problem, as long as the amount of insurance goes to the heirs.

<sup>31</sup> This is what the comparative laws indicated with regard to the work contract for a specific period or for a specific (project) work, Articles 1780 French civilian, 902/1 Iraqi civilian, 1/678 Egyptian civilian.

<sup>32</sup> Dr. Hassan Ali Al-Zanoun conveys to us the facts of a judgment presented before the French Court of Cassation, the facts of which are summarized as follows: The French government granted a simple company the concession to exploit a mine for a period of 75 years, and a dispute arose between the members of the company about the nature of the contract, whether it was a fixed-term or an unlimited-term contract. The French Court of Cassation ruled that it was an indefinite contract (although it was limited to 75 years) and justified its ruling that the term of the concession is too long and may take the life of the members of this private company, and this adaptation changes the validity of the contract as it becomes perpetual, and therefore void as we shall show in the personal criterion of perpetuation of the contract in the subsequent section.

<sup>33</sup> Article 1359 of the amendment decree stipulates that (the legal act that exceeds a specified amount or value by virtue of a decree must be proven in customary or official writing), and it is an alternative to the repealed Article 1341 with almost the same meaning.

<sup>34</sup> As in the text of Article 741 of an Iraqi civil (if the lease contract without an agreement on a term or a contract for an indefinite period, or if it is not possible to prove the alleged period, then the lease is deemed to have been concluded for the specified period for the payment of the rent...), Article 563 of the Egyptian civil.



<sup>35</sup> Article 1194 of the amendment decree stipulates (contracts are not only bound by what is stipulated therein, but also with all that are considered their dependencies in accordance with justice, custom and law), which came as an alternative to Article 1135, a French civil with the same meaning, corresponding to the Iraqi law, Article 150/2 Iraqi civilian (The contract is not limited to obligating the contracting party to what is stated in it, but also deals with its requirements in accordance with the law, custom and justice according to the nature of the obligation) and from the Egyptian Civil Code Article 148/2.

<sup>36</sup> Article 825 of the Iraqi civilian states: (If a period is not specified for the practice, it is estimated that it is based on custom, and the period may not be less than fifteen years in all cases).

<sup>37</sup> Article 1757 of the French Civil states: (The rent of movables provided for the purpose of furnishing an entire house, or the entire main building, store, or any other apartments shall be deemed to have been obtained for the normal period of the rental of houses or the entire main building, stores or other apartments, according to local custom). Article 1759 of the French civil states: "If the tenant of the house or apartment continues to use it after the expiry of the written lease contract without opposition from the landlord, he is considered an occupant of the place under the same conditions and for the period specified in local custom."

<sup>38</sup> Aurélien Bamde, *La Durée du Contrat: Régime Juridique*, 2018,

available on the website: <https://aurelienbamde.com/2018/03/06/la-duree-du-contrat-regime-juridique/>

<sup>39</sup> Dr. Hassan Al-Zanoun, the previous source, p. 25.

<sup>40</sup> Dr. Hassan Al-Zanoun, the previous source, p. 25.

<sup>41</sup> It should be noted that the amendment decree has taken care of this case, stipulating in Article 1212 that (If the contract is concluded for a specific period, each party must implement it until the expiry of its term. No one may demand the renewal of the contract). As it is clear from the text that the impermissibility mentioned is a prohibition text that violates the aforementioned condition and nullifies its effect.

<sup>42</sup> (The content of the easement right may not be a personal obligation owed by the owner of the servitude to the property, but rather the content of the easement must be a specific obligation arising from the servient property) Dr. Abdul Razzaq Al-Sanhoury, *Al-Wasit*, Volume 9, pg. 1348.

<sup>43</sup> Corresponding to Article 1277/1 of an Iraqi civilian, as it states: "The expense of the works necessary to use and maintain the right of easement shall be on the owner of the servitude property, unless otherwise stipulated. This obligation shall be disposed of by relinquishing all or part of the servient property to the owner of the servient property. Article 1022/2, an Egyptian civil (if the owner of the servient property is charged with carrying out these works at his expense, he may always get rid of this obligation by giving up all or part of the servient property to the owner of the servient property).

<sup>44</sup> Corresponding to the difference Article 902/1 Iraqi civilian (the work contract may be concluded for a specific service or for a specified or indefinite period), Article 678/1 of an Egyptian civilian (the work contract may be concluded for a specific service or for a specific period, as it may be for an indefinite period), and it is noted in the two texts that they permitted the term to be indefinite here, unlike the French legislator.

<sup>45</sup> Quoted from Dr. Hassan Al-Zanoun, previous source, p. 29.

<sup>46</sup> The previous source, p. 29.

<sup>47</sup> AUBRY ET RAU, *Cours de Droit Civil Français*, 4<sup>o</sup> édition, t 1et 6, par BARTIN, Paris, 1952, p.179 : ( la nullité est l'invalidité ou l'inefficacité dont un acte est frappé comme contrevenant a un commandement ou a une défense de la loi ).

<sup>48</sup> r. Abdel-Fattah Abdel-Baqi, *Theory of Contract and Single Will*, Encyclopedia of Egyptian Civil Law, Cairo, 1984, pg. 463.

<sup>49</sup> Dr. Muhammad Hassan Qassem, *Civil Law (Obligations - Sources)*, Volume One, Second Edition, Al-Halabi Human Rights Publications, Beirut, 2018, p. 352.

<sup>50</sup> Appeal No. 5107 of Judicial Year 86 issued on 5/8/2018 session, available on the electronic link: [https://www.cc.gov.eg/judgment\\_single?id=111388818&&ja=261756](https://www.cc.gov.eg/judgment_single?id=111388818&&ja=261756).

<sup>51</sup> Among these provisions is the decision of the Civil Chamber of the French Court of Cassation issued in 1991, in which it considered: "The lease of agricultural land concluded for a period of 12 years, and it can be renewed indefinitely, is void because it violates the principle of prohibiting lifelong obligations." civ. 20 Fevr. 1991. Available on the website <https://juricaf.org>.

<sup>52</sup> Dr. Haider Falih Hassan, *Contract Duration*, previous source, p. 284.

<sup>53</sup> The previous source, pg. 284.

<sup>54</sup> The decision of the Civil Chamber of the French Court of Cassation issued in 2006, which stipulated that: "The guarantee clause is not of limited duration, which makes the right to terminate the contract conditional on the approval of the creditor, is void, and the effect of this nullity is limited to the condition alone, without the rest of the contract." civ. 7 Mars. 2006. Available on the website <https://www.legifrance.gouv.fr>



<sup>55</sup> This penalty is what has been settled in Iraqi legislation and jurisprudence, as Article 139 of the Iraqi civilian states: (If the contract in part of it is void, then this part alone is invalid. As for the rest of the contract, it remains valid as an independent contract, unless it becomes clear that the contract would not have been completed without the part that was signed void). For more see Dr. Abd al-Majid al-Hakim, Summary in Explanation of Civil Law, Part One in Sources of Obligation with Comparison with Islamic Jurisprudence, Second Edition, National Printing and Publishing Company, Baghdad, 1963, p. 244 and beyond. Dr.. Iman Tariq Al Shukri, d. Mansour Hatem Mohsen, Correction of the Defective Contract in the Iraqi Civil Law, Journal of Babylon University for Administrative and Legal Sciences, Volume Ten, Issue Six, 2005 AD, p. 1055 and beyond. Dr.. Wassan Qassem Al-Khafaji, The Susceptibility of the Contract to Separation, Al-Mohaqqiq Al-Hilli Journal for Legal and Political Sciences, Issue One, Fourth Year, 2012, p. 243. This is the same position taken by the Egyptian legislator, as Article 143 of the Egyptian civil stipulates: (If the contract in part of it is null or voidable, then this part alone will be nullified, unless it becomes clear that the contract would not have been completed without this part that was signed void or voidable, then the whole contract is void).

<sup>56</sup> A decision issued by the First Civil Chamber of the French Court of Cassation in 2002, this chamber ruled that: "The lease contract for an advertising space cannot be concluded for a period of more than six years from the date of its signing, and in the event that a longer period is agreed upon, that period shall be reduced to the maximum legally determined." civ. 13 nov. 2002. Available on the website <https://www.legifrance.gouv.fr>

<sup>57</sup> French Civil Canceled Article 1172 stipulates that (every condition for something that is impossible, contrary to public morals, or prohibited by law is null and voids the contract to which it is connected). Article 1184 of the amendment decree stipulates that (when the reason for nullity does not affect only a condition, or several conditions, in the contract, this does not lead to the invalidity of the entire contract unless this condition, or these conditions, constituted the motive element for the undertaking of the parties or one of them). This is what the French Court of Cassation went to by the decision of the Civil Chamber of the French Court of Cassation issued in 1971, which stipulated "Based on Article 1172 of the Civil Code, any prohibited clause or condition included in the contract will be invalidated, and the rest of the contract with him may be invalidated whenever it is." That prohibited (unlawful) clause is the basis of the contract." civ. 24 Juin. 1971. Available on the website <https://www.legifrance.gouv.fr>

<sup>58</sup> The decision of the French Chamber of Commerce of the Court of Cassation, issued in 1969, stipulates that (The assignor in an exclusive concession contract of unlimited duration may terminate it freely provided that he does not do so in bad faith, and the reason for termination and whether it involves bad faith or not is estimated through the assistance of experts). Com. 15 dec. 1969. Available on the website <https://www.doctrine.fr>. As well as the decision of the Civil Chamber of the French Court of Cassation, issued in 1985, which stipulated that (In contracts that include successive performances and in which no term is stipulated, unilateral termination is available to both parties, the only exception to this is the bad faith termination, which is punishable under paragraph 3 of Article 1134). civ. 5 fevri. 1985. Available on the website <https://www.ladissertation.com>

<sup>59</sup> Article 1210 of the amendment decree stipulates that (Permanent obligations are prohibited. Each contracting party may terminate these obligations in accordance with the conditions stipulated for contracts of unlimited duration).

<sup>60</sup> Article 1211 of the amendment decree stipulates that (If the contract is concluded for an indefinite period, each party may terminate it at any time, taking into account the period of notice agreed upon under the contract, or a reasonable period in the absence of such a period)

<sup>61</sup> The third paragraph of the repealed Article 1134 of the French Civil Code stipulates that (the execution must be carried out in good faith).

<sup>62</sup> Article 1104 of the amendment decree stipulates that (contracts must be negotiated, concluded and implemented in good faith. This provision is considered public order).