

**THE LEGAL BASIS FOR CHOOSING PROVISIONS THAT FAVOR  
THE PROTECTION OF CONTRACTUAL RELATIONS THAT  
PERFORM AN ECONOMIC FUNCTION FOLLOWING A  
DEPRECIATION OF THE CURRENCY**

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*Summary.* The devaluation of the currency that countries have been exposed to has proven to have an impact on the law, especially contractual relations, as every economic change is followed by a legal change, and it falls on the judge to protect the contractual relations as they perform an economic function and to find solutions to confront the devaluation of the currency in order to protect the economic function of the contract. Perhaps the continued decline in the value of the currency in Iraq is one of the reasons that the judge must address, even if it is after issuing the ruling for compensation for the breach of the contractual relationship. Otherwise, it will lead to the loss of the economic value of the contract, and this is a departure from the legal rule with a ruling that has the force of the *res judicata*, so it is no longer permissible to appeal the ruling or Modify it in any way. In an attempt to find a solution to this problem, we chose to title this article with this study.

*Keywords:* new damage, value of damage, fixed damage, variable damage, judicial jurisprudence, delayed implementation of the judgment, depreciation of the currency, bad faith of the debtor, final judicial decision.

**Introduction:**

The judge uses all his knowledge, judgment, and impartiality to make the compensation he awards to the plaintiff equal to the damage suffered, neither more nor less than it. On this basis, the Court of Cassation in Iraq ruled that the compensation awarded to the injured person cannot be considered a punishment for the opponent. The other or a source of profit, but it justifies the harm. [1, p. 272] This is the result that the legislator aimed for through compensation, which is eliminating the damage and erasing its effects.

However, depreciation of the currency has a direct impact on obligations denominated in money and arising earlier.

As it may happen that the value of the national currency in which compensation is determined decreases, after the judge issues the final ruling determining the value of compensation, which assumes an equation to the value of the damage on the date of the ruling. The question then arises as to whether the creditor has the right to demand that the value of compensation be adjusted by making it equal to the value of the damage on the date of implementation or payment after this value changed with the

change in economic and monetary conditions. Therefore, the judge must balance this. Perhaps the judge's obligation to rule to mitigate the damage with the decline in the purchasing value of the currency responds to the economic function of the contract. The contract is only valid through the economic interest that it represents as a tool for creating wealth. Thus, the law requires the cessation of the contract that no longer performs its function in creating wealth, but it guarantees through the rule of mitigation that there is no Loser This means choosing provisions that favor the protection of contractual relations that perform an economic function.[2, p. 179]

It happens that prices rise as a result of the decline in the value of the currency, and the debtor bears the consequences of his delay in implementation and the resulting decrease in the value of the compensation awarded before he fulfills it. [3, p. 197] . In this case, the creditor has the right to demand additional compensation from the debtor for the damage he caused resulting from the decrease in the value of the aforementioned compensation as a result of the rise in prices. Saying otherwise leads to the collapse of the economic function of the contract. There is no text in the Iraqi Civil Code that addresses this, unlike the Lebanese Law of Obligations and Contracts. (Article 265, paragraph 2, stipulates: However, if the debtor is in bad faith, additional compensation may be given to the creditor who was harmed by an unlawful omission).

However, the judge may not refrain from ruling on the pretext of missing the text (Article 30 of the Iraqi Civil Procedure Law), and the judge must follow the developed interpretation of the law and take into account the wisdom of the legislation when applying it (Article 3 of the Iraqi Evidence Law). The judge must find a fair solution to the dispute, and search for the basis of this lawsuit. Can the new damage be considered a basis for this judicial claim, since the new damage was caused by the debtor (the defendant) who delayed implementing the compensation ruling on the grounds that the debtor was in bad faith as a result of an unlawful refusal to pay compensation?

Law and jurisprudence have differed in granting the judge the authority to exercise judgment in financial crises, between a trend that refuses to compensate for damage arising from contractual liability as a result of the depreciation of the currency and a trend that supports compensation for damage arising from contractual liability as a result of the decline in the value of the currency. We will explain this in two paragraphs:

1- The trend that refuses to compensate for the damage arising from contractual liability as a result of the decline in the value of the currency.

Some Arab civil legislation was influenced by the concept of the text of Article 1895 of the French Civil Code, rejecting the ruling to compensate for the damage arising from contractual liability as a result of the devaluation of the currency, and they tended to adopt it even in their judicial rulings, stipulating that payment must be completed with the same number of money specified in the ruling decision, without relying on what is. There has been a change in its real value, and this is what the French judiciary followed, refusing to rule to compensate for the damage arising from the contractual liability as a result of the depreciation of the currency. Their legal basis was the text of Article 1895 of the French Civil Code, which came to mean the following (that the repayment of the loan or specific obligation is made in money. The number of

money mentioned therein, regardless of whether this money has increased or decreased in value at the time of payment. (Articles 134 Egyptian law, 135 Syrian law, 299 Lebanese law, 162 Algerian law, 162 Jordanian law, 82 Sudanese law, 204 United Arab Emirates law, 119 Sultanate of Oman law, 134 Libyan law, 133 Palestinian law).

While the Iraqi Civil Code did not provide for a provision similar to what was stipulated in the French Civil Code.

Therefore, the thing owed itself must be kept without the increase or decrease in the value of this money at the time of fulfillment having any effect. This means that the proponents of this trend have denied containing the effect resulting from the breach of contractual liability to the theory of damage arising when the value of the currency decreases, and thus the function is preserved. The economic contract is achieved by balancing the obligations of the parties and not enriching one party over another party, meaning the balance of the economic interests of the parties to the contract, by applying the mitigation rule that there is no loser because the decline in the value of the currency is a foreign cause that was not due to the fault of the debtor, and one of the conditions for damage in contractual liability is that it be Expectedly, if this condition is not met, the debtor will not be liable for compensation for the new damage. This is what Article (169-3) of the Iraqi Civil Code stipulates: "If the debtor has not committed fraud or a grave error, the compensation shall not exceed what would normally be expected at the time." Contracting against a loss that is lost or a gain that is lost) is the same provision as Article (1231-3) of the amended French Civil Code, which states: "The debtor is only liable for damages that were expected, or that could have been expected, at the time of concluding the contract, unless the failure to Implementation is due to a serious error or fraud. (The latest amendment to the French Civil Code, published in the French Official Gazette, issue (0035) on 2/11/2016. It became effective on 10/1/2016).

However, the legal rule in Articles (169 and 171) of the Iraqi Civil Code obliges the judge to award compensation for the delay in implementing the contract or the debtor's late payment, when the creditor requests the judge to award compensation.

Also, the direction of the Iraqi legislator in Article (105) of the Evidence Law constitutes an obstacle to ruling on compensation for new damage, as the rulings issued by the Iraqi courts that have obtained a degree are considered as evidence for the rights decided upon in them if the parties to the case are united and their qualities do not change and the dispute is related to the same right in terms of location and cause..

2- The trend in favor of compensating for damage resulting from contractual liability as a result of the depreciation of the currency.

There is no crime that the judge is faced with getting rid of the principle of the validity of judgments (Article 105 of the Iraqi Evidence Law) due to the difference in cause and subject matter from the previous lawsuit, by implementing the principle of compensation for damage arising from the bad faith of the debtor who delayed implementing the compensation judgment, because the right differs in substance and cause from the judgment. The previous compensation is made despite the unification of the parties to the lawsuit without changing their qualities.

However, within the scope of contractual liability, compensation does not include anything other than expected direct damage, unless the debtor's breach of his

obligation is the result of fraud or a serious error, and this is what is stipulated in Article (169-3) of the Iraqi Civil Code. The expectation of harm is the possibility of predicting it or its occurrence. Harm is expected if the prediction focuses on its cause and its amount. Prediction or non-prediction is measured by an abstract objective standard and not by a personal standard. Meaning, if I want to know the nature of the damage that actually occurred and whether it is expected or unexpected damage, then it is One should look not at a particular debtor, but rather at an ordinary debtor or an ordinary person who was surrounded by the same circumstances that surrounded the debtor.[1, p. 241]

It follows from this that a decline in the value of the currency is expected because the average debtor expects such a sudden change in the value of the currency as long as conditions remain abnormal in the country's economy.

Taking the objective, abstract standard to estimate the nature of the damage and whether it is expected or unexpected damage is required by the operative part of Article (169) referred to, because it determines the compensation due to what (exceeds what would normally be expected...) and referring to (usually) to know the nature of the damage is an explicit adoption of the objective standard. Abstract.

However, this opinion was not free from criticism, given that the creditor cannot submit a request to reconsider the ruling that determined the amount of compensation under the pretext of increasing prices, since in this case we are not dealing with (variable damage), it is (fixed damage) that has not changed, but what has changed It is (the value of this damage), and the judge decided on this (value) with a ruling that had the force of a *res judicata*, so it is no longer permissible to appeal this ruling or amend it in any way. [1, p. 312]

Our opinion on the matter:

We adopt an opinion in this article for the purpose of protecting pension relationships that perform an economic function, and that saying otherwise leads to the demise of the contract due to the collapse of its economic function. Therefore, the judge must search, by means of logic, for fair and equitable solutions that are consistent with the rules of justice, and that the basic principle that should govern The process (the legal basis for choosing provisions that favor the protection of contractual relations that perform an economic function as a result of the decline in the value of the currency) is compensation for the damage caused by the action of the debtor who delayed implementing the compensation ruling on the grounds that the debtor is in bad faith as a result of an unlawful abstention from performing compensation in the sense of complete equality between individuals. The contractual balance is not clearly disturbed between financial receivables.

This means seeking to establish a special system for compensation for damages, related to the legal security of the parties in contractual relations. However, determining the amount of compensation for new damage is the discretion of the judge after consulting experts. The judge must issue the appropriate decision to preserve the economic function of the contract and not pay attention to the behavior of the debtor in delaying the payment of the compensation awarded as a penalty for his breach of the

contractual relationship, in order to accommodate the decline in the value of the currency, as part of implementing the idea of the contract is better than wasting it.

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