

RESPECTING LEGITIMATE EXPECTATIONS IN CIVIL CONTRACTS

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ABSTRACT

Objective: This research aimed to examine the principle of respecting legitimate expectations in civil contracts.

Method: The analytical approach is used to analyze the selected legal texts.

Result The findings reflect that legitimate expectations are one of the basic constituent elements of contractual justice, and the principle of legitimate expectations cannot perform its desired function unless the contract is valid and these expectations are reasonable and legitimate.

Conclusion: It was revealed that the principle of legitimate expectations in civil contracts leads to achieving contractual equilibrium and contractual justice through the economy in terminating contracts. Furthermore, the judge plays the primary and important role in evaluating the contractual interests that must be protected.

Originality/value: Achieving the principle of legitimate expectations leads to attaining contractual balance and contractual justice through the main and effective role played by the judge in assessing contractual interests in civil contracts.

Keywords: civil contracts, legitimate expectations, legitimate trust, contractual balance, evaluation of interests.

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RESPEITO DAS EXPECTATIVAS LEGÍTIMAS NOS CONTRATOS CIVIS

RESUMO

Objetivo: Esta investigação teve por objetivo examinar o princípio do respeito das expectativas legítimas nos contratos de direito civil.

Método: A abordagem analítica é usada para analisar os textos legais selecionados.

Resultado As conclusões refletem que as expectativas legítimas são um dos elementos constitutivos básicos da justiça contratual, e o princípio das expectativas legítimas não pode

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desempenhar a função desejada a menos que o contrato seja válido e essas expectativas sejam razoáveis e legítimas.

Conclusão: Revelou-se que o princípio da confiança legítima nos contratos civis conduz à obtenção de um equilíbrio contratual e de justiça contratual através da economia na rescisão dos contratos. Além disso, o juiz desempenha o papel principal e importante na avaliação dos interesses contratuais que devem ser protegidos.

Originalidade/valor: a consecução do princípio das expectativas legítimas conduz à obtenção de um equilíbrio contratual e de justiça contratual através do papel principal e efetivo desempenhado pelo juiz na avaliação dos interesses contratuais nos contratos civis.

Palavras-chave: contratos civis, expectativas legítimas, confiança legítima, equilíbrio contratual, avaliação de interesses.

1 INTRODUCTION

In order for the contract to be effective, it must be structured according to what the contracting parties expect. The point is that they should not be exposed to a surprise that would shake their peace of mind. In this respect, the idea of legitimate expectation is introduced as a contractual principle. It is also called a (legitimate trust). Legitimate expectation is what the contract is based on and it means confidence and expectation generated by the contractor. Therefore, individuals organize their contractual relations according to legitimate, stable, and harmonious expectations, and they should not be shocked by the change in contractual conditions that were not taken into account without taking measures to protect these expectations.

Therefore, legitimate expectations are one of the basic components of the fair and equitable treatment standard. The main objective of this concept is to protect the confidence that individuals have in the contract in the face of changing contractual conditions, which would violate this trust and push the contracting parties to evade its implementation. In order for the contract to be effective, it must be accepted by its parties and those charged with implementing it; those who will be affected by its provisions, and the consequent possibility of amending these contracts in the event that they were otherwise (Mammadov, 2023).

Predicting the effects of the contract is one of the main pillars on which the legal system of contracts is based. A person does not become a part of a contract except by defining his expectations in the light of the legal system. In this context, expectations and aspirations require stable and high-quality laws that are not shrouded in ambiguity or emptiness, and the preparation of a legal system governing contracts requires that it take



place on the basis of a certain perception of society, in a way that is represented by a set of stable legal principles that achieve contractual security (Al-Filali & Boulifa, 2016: 8).

The evolution of society requires the adoption of legal mechanisms that have to be put in place to protect legal expectations and thus fortify contractual security. Among these mechanisms is the principle of the binding force of the contract, which works in all stages of the contract. However, the work of these mechanisms is not free from shortcomings, especially when it comes to the method of application, which is reflected in respect for legal expectations. Consequently, the legal security may decline, as what is abided by is represented in the legal expectations without the personal expectations that the person wishes to achieve through the contract.

When a person submits a contract, the legal expectations that must be respected are represented in the implementation of the contract. Moreover, the personal reasons that prompted him to conclude the contract are not taken into account, as the personal desires of the contracting parties are not included in the legal expectations and do not deserve protection within the scope of the contract unless they are explicitly included among the reasons that prompted them to contract (Al-Filali, 2016).

The expected legal expectations and legitimate trust in the legal system of contracts are generally embodied through legal texts. In this respect, the legislator finds himself moving between two opposite obligations to satisfy the desires of two contradictory interests. The first is preserving the interest of the contracting creditor by commitment, and preserving the interest of the contracting debtor by commitment, while the second, in return, is preserving the public interest and its suitability for a large number of members of society, on the basis of which they formed legitimate trust (Hassani, 2016).

The basis for rebalancing dysfunctional contracts is often dealt with based on two things. The first is represented in preserving the contract for economic, social, and political purposes. This necessitates that the results of the change in the contracting conditions that afflicted the implementation of the contract, which made it more costly and stressful for the contracting parties, must be taken into account, in order to complete the implementation of the contract. The second of these two bases is the principle of contractual justice. It is based on the contracting parties to decide the economic rebalancing of the dysfunctional contract, despite the fact that these circumstances were not expected when the contract was concluded. It can be said that there is a third basis that can be relied upon to rebalance the dysfunctional contract. It is the principle of



protecting legitimate expectations, which has become a general principle of law, especially for the contract, as it prompts the necessity of recognizing it for its usefulness in the contractual field.

The idea of legitimate expectation represents an acceptable and dual basis for realizing the contractual equilibrium, both with regard to the intervention of the legislator in amending contracts; directly through legislation or indirectly by granting the authority to the judiciary to intervene in the amendment of contracts, or for the contractors. This indicates that the idea of legitimate expectation includes the true meaning of the two previous bases, justice, and maintaining the contract at the same time.

Thus, the contractor achieves the principle of justice as protection from the risks of changing the conditions of the contract, not in blaming the other party for the consequences of these circumstances, but rather protecting his reasonable expectation of legitimate and appropriate gain at the same time, in a way that achieves justice in its highest sense.

The main goal of the legislator is achieved in preserve contracts and their role as a tool for economic and social exchange, taking into account the conditions of political stability by satisfying the needs of the contracting parties and society at the same time. This is done in an atmosphere of stability and lack of concern about contractual imbalance and instability. It also leads to reassurance and stability in the hearts of the contracting parties and society, and the consequent legal and contractual security, in that contracting parties will find fair support from the legislator if unexpected circumstances arise.

This is reflected in the contracting parties' keenness to conclude their contracts while they are reassured. It also leads to their endeavor to complete their contracts in an optimal way, in addition to the contractors' keenness to gain the trust of future contractors, as they are safe and stable contracts. These points indicate the continuity of contracts and the endeavor to implement them by the contracting parties, in a way that will lead to preserving their role in the exchange of funds and services. This means that the idea of legitimate expectation, with what it achieves of contractual legal security, is fit to be a double basis for each of the parties to the contract.

The problem of the study lies in showing the role played by the principle of legitimate expectations in civil contracts. It is mainly represented in explaining the role of this principle in these contracts, by stating its concept and the basis on which it is based. This can only be achieved by showing the conditions of this principle and the



impact of its application in the field of civil contracts, which will inevitably lead to achieving contractual balance and contractual justice through the main and effective role played by the judge in assessing contractual interests in civil contracts.

These research questions need to be answered at the end of this paper:

1. What is the concept of legitimate expectations?
2. What is the basis for the principle of abiding by legitimate expectations in civil contracts?
3. What are the conditions for applying the principle of legitimate expectations in civil contracts?
4. What are the effects of legitimate expectations in civil contracts?
5. What role does the judge play in evaluating interests in civil contracts?

Also, these research objectives will be clarified as a discussion between the literature and research findings:

1. To clarify the concept of the principle of respecting legitimate expectations in civil contracts and in achieving contractual equilibrium and contractual justice.
2. To know the impact of the principle of respecting legitimate expectations in civil contracts and in achieving contractual equilibrium and contractual justice.

2 THEORETICAL FRAMEWORK

2.1 THE PRINCIPLE OF RESPECTING LEGITIMATE EXPECTATIONS

Studying the concept of the principle of respecting legitimate expectations requires clarifying what is meant by legitimate expectations in a dedicated section, and then stating the basis for the principle of legitimate expectations. Then the terms of the legitimate expectations principle are stated to show the objective of the legitimate contractual expectations.

2.2 DEFINING THE PRINCIPLE OF RESPECTING LEGITIMATE EXPECTATIONS

Previous research reflects that Emmanuel Levy is an early adopter of this principle. In this regard, Fabric Melleray said that the principle of protecting legitimate expectations is one of the most controversial principles between private jurisprudence and public jurisprudence. Each branch has endeavored to establish legitimate expectations according to the theories that belong to its legal branch (Melleray, 2004:56).



The French Council of State explicitly recognized legitimate trust as a legal principle in a decision (KPMG) in 2006, considering that the principle of legitimate trust constitutes the personal proposition of the principle of legal security, in the sense that citizens have an acquired right to maintain their status. The French Constitutional Council recognized the protection of legitimate trust as a general principle of law in its decision on the constitutionality of the Social Security Financing Act in 2013.

In the legislative or administrative field, the idea of legitimate expectation is one of the most important applications of the principle of legal security. It implies that the legislative rules should not be issued in a way that shocks individuals and collides with their legitimate expectations that they made on objective grounds, based on existing legislation announced by the public authorities. In this respect, legitimate trust aims to protect the trust of addressees in the rules or decisions of the state. This is done by granting them the right to establish existing legal positions based on these rules.

The Supreme Constitutional Court in Egypt has adopted the idea of legitimate expectation in many of its rulings, which paved the way for it to be considered in all legal and judicial actions and in the contractual field (Santrisi, 2017: 31). Significantly, legitimate expectation is the essence of contractual security, as contractual security is the facilitation and protection of pre-built expectations of contracting persons.

The term legitimate expectation consists of two words; expectation and legitimate, and we will examine each term separately and then know the idea of legitimate expectation (BuZaid, 2018:60). The legitimate is what we can naturally plan for, which must be logical and anticipated. A person expects what suits his interest according to strong, unchanging, and understandable evidence. Accordingly, legitimate expectations are considered one of the basic components of contractual justice. The main objective of this concept is to protect the trust that has been generated by individuals in the face of changing contractual conditions.

As long as the contract is the means by which individuals organize their legal exchanges and actions and build their expectations through it, their expectations must not be shattered so as to avoid the termination of the contract. Thus, it leads to a return to what was before the contract, in the sense of chaos and the absence of contractual security. Consequently, individuals lose the legitimate trust that is the highest requirement for contractual security.



The principle of legitimate trust is concerned with the persons to whom it is addressed. It takes into account the special view of the beneficiaries of this trust; the two parties to the contract, in this respect, it is the subjective and special image of the principle of contractual security or contractual stability. It also aims to protect the trust gained by the contractors and make it stable during the period of implementation of the contract.

2.3 THE BASIS OF RESPECTING LEGITIMATE EXPECTATIONS

The principle of protecting legitimate expectations is based on the concept of operational good faith: A judge can intervene to maintain a state of contractual equilibrium by imposing obligations on both parties to the contract. This is done by taking into account the balance of the rights and obligations of the parties to the contractual bond during the implementation of the terms and conditions of the contract.

The principle of good faith in contracts is the commitment of the parties to take into accounts the interests and expectations of the counterparty, in order to ensure the integrity of legal dealings and to represent the interests of the parties to the contractual relationship in a balanced manner (Fayyad, 2013: 225).

In this respect, the text of a decision made by the French Court of Cassation issued on March 11, 1997 states that “according to the provisions of the third paragraph of Article 1134 of the Civil Code, no one can have a conflicting behavior, in the face of others, that harms the legitimate expectations of the contracting party.” The contractual expectations of the other contractor are affected due to the fluctuations of the other party and the inconsistency of his behavior with his contractual obligation (Deis, 2006:366).

However, it is assumed that the establishment of the principle of protecting legitimate expectations on the basis of the principle of good faith is a limitation of this principle in contractual relations, based on the fact that the principle of good faith is nothing but a contractual principle. Therefore, protecting legitimate expectations has a general concept and application that seeks to protect all those addressed by the law from sudden and contingent activity due to changing circumstances, not just contractual circumstances. Besides, if the principle of good faith finds its function in an act that reflects the expectation, then the contractor cannot act in a manner that reflects his expectation.



2.4 TERMS OF RESPECTING LEGITIMATE EXPECTATIONS

The function performed by the principle of legitimate expectations in civil contracts cannot be demonstrated except by showing the conditions of this principle, which are represented in the existence of a valid contract, the reasonableness of these expectations, and the legitimacy of these expectations according to the following.

2.4.1 Existence of a valid contract

The contract is considered valid if its content and description reflect that it is issued by a qualified person, has an established, correct, and legitimate purpose and its descriptions are correct. It must not include any condition that possibly spoils it. Besides, it must fulfill the necessary elements for the conclusion of the contract, which are mutual consent, the availability of a place for the contract, and a legitimate reason for the obligations. And it takes place as soon as the offer is linked to acceptance with complete consent which is free from defects that taint the will.

Significantly, the contract is not valid if there is no legitimate benefit for the contracting parties. And when the contract fulfills the conditions of its authenticity and legitimacy in origin and a description of its issuance, a place, an existing, valid and legitimate purpose, and its descriptions are correct and there is no corrupt condition attached to it, then the contract is considered a valid contract as per law. It is concluded immediately and its effects follow as soon as it is convened, unless it was conditionally suspended or added to a future time, or was invalid. The effect of the contract for the contracting parties is that the rule of the contract is achieved in the contract upon as soon as the contract is concluded. However the two contracting parties must fulfill their contractual obligations.

The contract is based on the existence of all its pillars; satisfaction, place and reason in addition to the form in formal contracts. If any of these previous pillars are left behind, the contract is rendered null and void. The contract must be valid in order to arrange its effects, as legitimate expectations are limited to valid contracts. And if the contract has something that prevents it from being a valid contract, then it is not permissible for it to be the subject of legitimate expectations. Contrastingly, the amendment of contractual obligations occurs only in the stage of its implementation, not in the stage of its creation. This requires that the contract be valid for the possibility of amending in order to preserve it from being invalidated.



2.4.2 Reasonable expectations

The idea of reasonableness is used legally as a tool for balancing the rights and obligations of the contract. This requires that the contracting parties must bear a reasonable amount of their behavior, in order to find the best solution for the presented incident, and in a way that achieves justice for the contractors, through a comprehensive perception of the expectations of the contractors. In this respect, reasonability is the tool that is used for the purpose of determining the reasonable amount of these expectations. Significantly, ignoring reasonableness as a criterion for balancing the expectations of the contracting parties leads to the demolition of the contractual relationship and the termination of the contract, which necessitates returning the contracting parties to the state they were in before the contract. This poses a threat to the contract, and in a broader view, the standard of reasonableness leads to balancing the expectations of the contractors. This ultimately leads to the balance of contractual performance and the stability of the contract.

The term reasonableness was mentioned in the theory of emergency circumstances by stipulating that contractual obligations be restored to a reasonable extent. It was mentioned indirectly as a specific definition of reasonableness was not addressed explicitly. Despite this, it is possible to indicate the criteria for determining them which is represented in the nature of reality and the nature and purposes of the contract in addition to the circumstances surrounding it.

In this respect, the decisions made by the Egyptian and Jordanian judiciary were not devoid of judgments related to reasonableness. For example, it was stated in a decision of the Jordanian Court of Cassation (the issue of restoring the burdensome obligation to a reasonable extent is included in Article 205 of the Civil Code) and in many successive decisions that touched on the concept of reasonableness. But such decisions did not specify the nature of reasonableness.

It was also stated by the Egyptian Court of Cassation that adopting the theory of emergency circumstances and their impact on the contract, as defined by Article 147/2 of the Civil Code, does not entail that the judge removes from the debtor all the burden that befell him and places it on the shoulders of the creditor alone. Rather, he has to restore the burdensome obligation to a reasonable extent, by charging the debtor with the normal loss that could have been normally expected at the time of contracting, and dividing what is in excess of that of an unfamiliar loss between the two contracting



parties, taking into account all the circumstances and balancing the interest of each of them. Hence, the debtor may not be completely exempted from his obligation (Egyptian Court of Cassation, 1973).

Therefore, reasonableness can be defined as a flexible general criterion that directs to finding a balance between conflicting legitimate expectations, taking into account the nature and purpose of those expectations in order to achieve the principles of good faith and contractual justice.

2.4.3 Legitimacy of expectations

The legitimacy of contractual expectations can be measured through the standard of reasonableness, through a measure of behavior described by law, which is a legal rule that the legislator has organized and determined its content. It may be represented in a rule that the legislator left the matter of organizing and defining its content to the general public. Therefore, the legislator gives them enough freedom in setting the legal rule that embodies the criterion of the legitimacy of reasonable expectations.

Accordingly, we can deduce the controls on which the legitimacy of the contracting parties' expectations of returning to the subject of the contract is based. These controls are represented in the potential of the expectations to be dealt with, and their consistency with the public order and morals. And the expectations can be dealt with if their nature permits that, and the law does not prevent them through obvious texts (Sultan, 1983:133). This is when expectations are out of the scope of dealing by nature or by virtue of the law. In this respect, the law defines things that are outside the scope of dealing by nature and that no one can monopolize. However, if the situation changes, the impossibility disappears and it becomes permissible to monopolize it, then it is permissible to deal with it and consider it as a legitimate expectation.

Everything that contravenes public order and morals is considered illegitimate expectations. This is considered a law outside the scope of dealing, even if it is not explicitly stipulated (Sultan, 135). On the contrary, everything that is considered to be in accordance with public order and morals is considered legitimate and included in dealing.



3 METHODOLOGY

This study is based on the analytical approach, as it is done by analyzing the jurisprudential opinions that dealt with part of this study, interpreting and explaining all the elements that are related to this study, and deducing the relationship between them.

4 RESULTS AND DISCUSSION

4.1 THE IMPLICATIONS OF RESPECTING THE PRINCIPLE OF LEGITIMATE EXPECTATIONS

The principle of legitimate expectations has two implications. The first is to achieve contractual equilibrium, while the second is to achieve contractual justice.

4.2 CONTRACTUAL EQUILIBRIUM

The contractual equilibrium appears in two stages. The first stage is the stage of the conclusion and wording of the contract, while the second stage is the implementation of the contract. What concerns us in this regard is the stage of contract implementation, represented in contractual obligations. Therefore, we will discuss the interests of the two contracting parties by finding an appropriate solution to the disputes resulting from the contractual imbalance, with the aim of avoiding the demise of the contractual bond.

This is done by finding out a solution that is more compatible with the interests of the contractors. In this respect, contractual justice requires knowing the real intention of the contracting parties and avoiding the ambiguity of contracts. Here, it is urging to highlight the concept of objective equilibrium of the contract which means that the rights and obligations of its parties are financially balanced. Financial balance does not mean arithmetical equality, but rather that equation between rights and obligations, which must be taken into consideration. Therefore, this should not be in the sense of an absolute arithmetic balance between the obligations and rights of the contracting parties, but rather a general guideline to be followed in estimating the appropriate amount due to the contractor in the event of a financial imbalance in the contract (Jumaie'i, 1998).

The content of the contract represents the sum of the rights and obligations that allow the realization of exchange in the economic process. But on the other hand, it represents the sum of the economic exchange itself between the performances. It includes several elements that overlap and interact with each other, which is more or less complex according to the importance of these contracts. In this context, French jurisprudence



believes that justice and parity between performances is one of the most important principles on which the contract is based, and that all contracts must prevail. The contracting party can only be obligated to give an amount equivalent to what the other contracting party has given or committed to give. If more than that is required, equality will disappear and contractual justice will disappear with it (Fin-langer, 2002:10).

The relationship between the contractual equilibrium and legitimate expectations is represented in the necessity of proportionality, which is the extent to which the contractual clauses are appropriate to the economic benefits envisaged from them (Shiaa, 2013:27). Therefore, it is assumed in the field of estimating legitimate expectations that the interests of both parties should be taken into account without giving priority to the interest of one party over another, thus achieving the intended purpose of the contract and obtaining the desired economic benefits from it.

4.3 ACHIEVING STABILITY IN DEALING

The stability of dealing in the economy is represented in the termination of contracts and the removal of anxious contractual positions.

4.4 ECONOMY IN TERMINATING CONTRACTS

This means mediating between the implementation of the contract and its termination, i.e. not exaggerating in the termination of the contract or negligence in its implementation. This is done by balancing between the request for annulment and termination of contracts, if there is a justification for that and the implementation of the contract because it achieves the purpose of concluding contracts, which is the general purpose of all contracts.

Some jurists believe that describing the termination and annulment of the contract is the most unreasonable solution that causes the deactivation of the contract and shakes up the legal centers established by it. This occurs by returning the contracting parties to their position before the contract.

The contractual benefit is achieved by maintaining the contract and completing its implementation, even with the occurrence of a breach that can be remedied by compensating the affected party. Much significantly, legitimate expectations find their scope in long-term contracts with extended implementation, which the parties to the contract often wish to continue to implement and maintain. Therefore, the



implementation of the contract for its parties not only achieves their common interests but also represents economic importance as a tool for exchanging money and services (Nasser, 2017:74).

4.5 ELIMINATING TENSION ASSOCIATED WITH CONTRACTUAL POSITIONS:

Trust between the two parties to the contract and reassurance of the ability of each of them to implement the obligation are some of the important foundations on which the contracts are based, as each of them depends on the goodwill of the other party and its prestige and economic position. If, during the implementation of the contract, something that undermines this trust occurs by causing an imbalance in the contractual performances that warns of the inability of one of the contracting parties to implement his obligations and fulfill his contractual obligations, then it would be better to take the initiative to get the other party out of the impasse by enabling him to suspend the implementation of his obligation or compensate him for the amount he lost during the performance of his contractual obligation.

4.6 THE ROLE OF THE JUDGE IN ASSESSING CONTRACTUAL INTERESTS:

In his search for the reasonableness of the trust and the extent of its legitimacy, and when determining the public interest in this trust and hopes, the judge deviates from his usual method of work when protecting the legitimate trust (Cartier, 1992). In this respect, reasonableness is evaluated according to a logical and objective basis that takes into account the balance between the public interest to be achieved and the value of the expectation or trust of the individual or the group. According to this equation, justice is achieved by the judge's intervention in estimating the appropriateness between the behavior of the contracting parties and the legitimate trust. Thus, the judge measures the extent to which the legitimate trust claimed is related to the behavior of the contracting parties, which is an objective and realistic relationship, and without it, the trust – if any – and its arrangement cannot be considered as the result of the behavior of the contracting parties. And through this relationship, he can estimate the reasonableness of trust according to what the law itself proposes in doing so. Significantly, this relationship exists practically based on the legislative texts regulating the subject of contracting.

The basic condition for the validity of the contract is that it cannot foresee in advance the possibility of a change in the contract without including any prior idea of its



possible disposition. The evaluation of legality is done in view of the unpredictability of change. The basic condition for the legality of expectations lies in the inability of the person concerned to predict in advance the possibility of change in the contracting conditions and not having any idea in advance of the possible behavior of these circumstances. Therefore, the expectation arising from the occurrence of a behavior by the contractor loses its legitimate character as soon as it is issued by him, or the possibility of predicting this behavior, and the other contractor must prove the opposite (Hassani, 2016).

The debtor contracting party who commenced the execution of the contract shall have proceeded with the execution based on this type of trust, which is evidence of his trust in the contract. This therefore obliges the legal system of the contract to move to protect the confirmation of this legitimate trust. In this respect, the debtor contractor may carry out the obligations on the basis of the conditions that existed at the time of the contract, and it became clear to him after a while that these conditions have changed and the contractual equilibrium has become imbalanced, due to the severe exhaustion that led to the unusual loss, which upset the economics of the contract (Hassani, 2016:34).

Protecting legitimate expectations has become a general principle of law, and a specific one of the contract. Therefore, it prompts the need to recognize it due to its usefulness in protecting contractual security and the legitimate expectations of contractors.

The principle of stable dealing requires the protection of contractual obligations acquired in a legal and legitimate manner, as it is the basis for building legitimate trust. Therefore, threatening these rights and obligations resulting from the contract to be taken away and remaining vulnerable, at any moment, to instability does not allow building legitimate expectations. And if it is established, the denial of these rights will demolish those expectations that were built on the basis of trust. In this case, there is no stability in dealing, as we only have expectations. Therefore, the principle of binding force of the contract is not sufficient to protect all legitimate expectations.

Significantly, the principle of legitimate trust is a product of the principle of contractual security based on the stability of the legal system of the contract, which aims to enable individuals to act with reassurance in order to preserve the existing legal positions. Therefore, it is one of the outputs of the principle of contractual security that protects the existing conditions, not to prejudice them, and to ensure the stability of the



actions of the contracting parties. This is done in a way that does not threaten the interests with modification during the implementation of the contract, and it is the same as the purpose of the idea of legitimate trust. Its goal is to protect the legitimate trust, which can only be achieved with the availability of contractual security.

The contract is amended in response to the practical and emerging needs that arise in it, but how can a unified legal system be built to amend the contract that does not collide with general legal principles despite the multiplicity of amendment mechanisms?

How can these mechanisms form a solid foundation for the idea of amendment from which to unify the legal basis for amending the contract in order to respond to practical and emerging needs?

The rights and obligations agreed upon by the contracting parties shall not be prejudiced in accordance with the principle of the binding force of the contract, whether contractual justice is achieved or not. As long as mutual consent is achieved, it does not matter whether the benefit and justice from the contract is achieved. This means that the legal bases are fixed, which consequently entails achieving the contractual balance and fulfilling the benefit of the contract.

Contracting parties, in accordance with Article / 146-1 of the Egyptian Civil Code, which corresponds to Article / 202 of the Jordanian Civil Code and Article / 1193 of the French Civil Code, are obligated to implement what was included in the contract as long as it was established properly and within the framework of the law, including the principle of will power. This includes the contractual freedom that enables the individual to contract or not to contract, to specify the terms of the contract, and to determine the effects of the contract.

The contract's acquisition of its binding force prevents the contract from being amended except for reasons approved by the law, and it may not be amended except by the will of the contracting parties. Therefore, the will is what determines the content of the contract, the obligations of its parties, and its effects. Every contractually obligated person is bound to implement what he accepts.

The contracting parties make the contract at their will, and the law does not guarantee contractual equilibrium, but only guarantees legal equality among the contracting parties. This means that every contractor is free to contract. If this freedom is available, the contractor may not complain about the contract by claiming an imbalance



between the obligations and rights of the contracting parties. In this regard, the general rule states that the objective imbalance does not affect the validity of the contract.

Adherents of the principle of will power do not require the occurrence of true equality between the two contracting parties, and they do not look at the economic balance of the contract except through satisfaction and the necessity of the presence of a valid reason. Since the reason is an element of the will, consent is the basis for the occurrence of the economic equilibrium of the contract. Therefore, the criterion of economic equilibrium in the contract is a personal criterion according to the will of the contracting parties, as the general rule is to achieve legal equality among the contracting parties. The economic balance of the contract is achieved accordingly, even if one contractor does not take what is equal to what he gave to the other party (Hejazi, 1998:195).

Therefore, it is obvious that the principle of legal equality and the principle of binding force of the contract are unable to achieve contractual justice between the contracting parties. The reason for this is to oblige the judge to refrain from amending the contract and restrict it to the will of the contracting parties and to abide by the content of what the two contracting parties have agreed upon. Therefore, the role of the judge is limited to urging the parties to implement their contractual obligations, and alternately obligating them to implement what has been agreed upon. Furthermore, the contracting parties must be assured that the agreed contract will be executed as a legal act that regulates their contractual relations during the implementation of the contract in accordance with the principle of legal security. In addition, the intervention of the judge in the implementation of the contract constitutes a serious violation of the principle of legal security, and the creditor cannot be compelled to accept anything other than what was agreed upon by the two contracting parties in the contract (Makki, 2011:267).

Achieving contractual equilibrium, following the achievement of contractual justice in obligations, requires a more developed concept; a new concept of the binding force of the contract commensurate with the legal, judicial and consensual amendment to amend the obligations. Therefore, due to the increase in the state's intervention in regulating economic and social life by issuing directive legislation, the legislator has become directly and indirectly involved in the legal system of the contract. This led to a shrinking of the role of the will and finding new foundations that complement the role of the will by giving the binding force to the contract a concept different from the traditional



concept in a way that serves the balance of the contract as a whole and protects it at the same time. Therefore, the principle of free will is no longer the only basis for the binding force of the contract, but rather other foundations represented in contractual justice and the benefit of the contract have intervened and become interfering and complementing the binding force of the contract (Al-Ashmawy, 2008:97). Thus, respect for the binding force of the contract stems from its benefit, which leads to justice. The contract derives its binding force from the substantive law. In this regard, “the pursuit of objective law to achieve what is beneficial and just is what justifies the binding force of contracts and sets their conditions and limits inspiring the contract system as a whole, as they are internal elements in the contract and not an external element in it. This strips the contract of its binding force if it is not socially beneficial or does not respect contractual justice.” Thus, the essential thing in the contract in the view of substantive law is the satisfaction of needs that allows its realization as well as compatibility with commutative justice. It is important that each team receives an equivalent of what they gave. Since each one is naturally capable of defending his own interests, it can be assumed that the agreement of the two wills made it possible to satisfy the needs of both parties according to mutual contractual justice. However, it is not just a matter of a presumption that must be excluded every time the will does not carry out its function, as the protection of consent is only a means of working to respect contractual justice (Gustan, 2008:230). Thus, the legal rule regulating contracts aims, by various means, to achieve contractual justice, since the binding force of the contract is deduced from the substantive law and not from the will of the contracting parties in order to achieve the benefit of the contract and its contractual justice. Accordingly, the interference in the contract is not contradictory to the principle of the binding force of the contract, but is compatible with the modern meaning of the contract represented by the benefit and justice of the contract.

Therefore, the balance of obligations is restored on the basis of contractual justice, so there is no contradiction between the change in one of the parts of the contract, by addition, reduction or exclusion, and the binding force of the contract. However, there is a relationship of integration between the benefit of the contract and its fairness, as they are internal elements in the contract and not external elements to it. This means that amending the contract achieves the obligation of the contract as it achieves contractual justice.



The concept of the binding force of the contract has evolved through the motive of economic and social development in a way that led to the development of a legal system to amend contractual obligations. Moreover, the stagnation that characterizes the concept of the binding force of the contract is considered a disregard for the development of contractual relations.

The legislative decree amending the French Civil Code issued on 10/2/2016, which became effective on 1/10/2016, followed the path of developing the binding force of the contract by restricting the contractual will to the requirements of achieving contractual justice in accordance with the limits drawn by the law.

Evidently, restricting the content of the contract agreed upon between the contracting parties by being within the limits drawn by the law in a way that leads to the conformity of the new concept of binding force with contractual justice can only be achieved by achieving the intended benefit of the contract for both parties with the existence of proportionality between the contractual performances, and in a way that achieves the goals set by the legislator from behind Contract (Gustan, 2008:24).

5 CONCLUSION

Legitimate expectations are one of the basic constituent elements of contractual justice and mainly aim to protect the trust generated by individuals in the face of changing contractual conditions. Moreover, the principle of legitimate trust is the subjectivity of the principle of contractual security. The principle of legitimate expectations cannot perform its desired function unless the contract is valid and these expectations are reasonable and legitimate. Also, the principle of legitimate expectations in civil contracts leads to achieving contractual balance and contractual justice through the economy in terminating contracts and removing anxious contractual positions. Furthermore, the principle of protection of legitimate expectations is a general principle of law, particularly a principle of a contract. This has led to the need to be recognized due to its usefulness in protecting contractual security and protecting the legitimate expectations of contractors. Furthermore, the judge plays the primary and important role in evaluating the contractual interests that must be protected.

It is suggested that the Jordanian legislator amend the text of Article / 205 to read as follows: “If general exceptional incidents, that could not be expected, occurred, and as a result of their occurrence, the implementation of the contractual obligation, even if it



did not become impossible, became burdensome for the debtor to the extent that it threatens him with a heavy loss, the court may, according to the circumstances and after balancing the interest of the two parties, restore the onerous obligation to a reasonable extent in accordance with the legitimate expectations of the contracting parties if justice so requires, and every agreement to the contrary is void".



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