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# **The Extent To Which The Parties To The Tourist Trip Contract Have The Authority To Amend And Repeal Its Provisions And Waiver To Others: A Comparative Study In Bahraini, Jordanian And French Law**

**Dr. Abdulkareem Salem Alalwan, Dr. Qais Khaleel Maaitah**

<sup>1</sup>*Assistant Professor of Civil Law, Faculty of Law, Applied Science University, Kingdom of Bahrain*

<sup>2</sup>*Associate Professor of Commercial Law, Faculty of Law, Applied Science University, Kingdom of Bahrain*

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## **Abstract**

This research dealt with the study of the extent of the authority of the parties to the tourist trip contract to amend, cancel its provisions or assign it to others, and the comparative analytical approach has been followed, by analyzing the texts of Bahraini law, Jordanian law and French law and then comparing them to identify the legal texts that relate to this subject and their adequacy, and this research has been divided into three sections. The first section dealt with the statement of what is the cancellation or amendment of the tourist trip contract, the second section dealt with the cancellation of the tourist trip contract or its amendment by the tourism contractor, while the third section dealt with the cancellation of the tourist trip contract or its amendment or assignment to others by the tourist. The study showed that the French legislator had regulated this issue, but the legislator in Bahrain and Jordan did not regulate the tourist trip contract and therefore it is an indefinite contract in both countries, and therefore its provisions are subject to the general rules of the law, especially the rule of the pacta sunt servanda (pacta sunt servanda) and may not be revoked or amended except by agreement of the parties, and for reasons recognized by law, such as the occurrence of an emergency circumstance justifying the amendment of the contract. The research has recommended that the Bahraini legislator and the Jordanian legislator regulate the tourist trip contract either in the civil or commercial law or an independent law, provided that this regulation includes determining the extent of the authority of the parties to the tourist trip contract to amend, cancel or assign it to others, and to benefit in this regard from the legislation of other countries that regulated the tourist trip contract, especially Decree 1229/6 of 2006 issued in France.

**Keywords:** Tourist trip contract, responsibility, amendment of the tourist trip contract, cancellation of the tourist trip contract.

## **Introduction**

Tourism nowadays has become one of the important activities that have a great impact on the national economy of the state, and it constitutes an important resource for the state in the provision of hard currency, as well as its importance in social, cultural, religious and media aspects, being a tool for acquaintance between peoples and the dissemination of a culture of love and peace.

It is therefore of paramount importance that the legislator in the State regulates the contract of the tourist trip in all its aspects, in particular specifying the rights and obligations of the parties to it, and indicating the extent of their authority to amend, cancel and assign it to others.

It is clear from reading the position of the Bahraini and Jordanian legislators, that it did not mention any special legislation regulating the relationship between the tourist and between tourism and travel companies and agencies, and it did not show us what the tourist trip contract is or its characteristics either from near or far, but all the legislation they have mentioned related to the establishment and organization of tourism-based institutions and their councils, supervision and control and regulation of the institutions that encourage them, and therefore the contract of the tourist trip is an indefinite contract in the Bahraini and Jordanian laws, while it was regulated by the French legislator in Decree No. 1229/6 of October 6, 2006.

It is no secret to anyone that the absence of laws protecting the tourist in his contractual transactions, especially from tourism and travel agencies and companies, which are responsible for organizing and implementing tourist trips with all their services, is considered a legislative shortage, and this deficiency reflects negatively on the course of economic life, and it can lead to the reluctance of tourists to visit the country free of legislation regulating its relationship with tourism agencies and companies, as it usually avoids falling into the clutches of laws that do not do him justice in the event of disputes between him and agencies Tourism and travel.

## **The Importance of the Research Topic and the Motives for Choosing It**

Tourism and travel companies are commercial institutions, which organize travel and individual and group tourist stays, and all the services associated with them, which will meet the needs of tourists growing continuously, and despite the commercial nature of the business of these institutions, they are of a special kind so that they do not offer in the market a tangible physical product that can be touched and previewed, but the tourist contracts on the basis of advertising and advertising, a tourist service or product that usually pays its price in advance, and does not recognize its components except at a date and place. Therefore, the relations and commercial transactions that bind the tourist to the tourist agent depend primarily on mutual trust, credibility, experience and the ability of the agency to fulfill its obligations, rather than on the product itself.

Hence, in order to avoid disputes that may occur due to non-fulfilment of obligations or failure to provide services according to the agreed quality, - in the absence of legislation regulating these relations as we have already mentioned - the importance of the study that aims primarily at developing a clear legal attempt that will guide the legislator in its footsteps, in order to protect the tourist from the manipulation and fraud of some persons practicing this craft from the amendment or cancellation of the tourism contract, and to protect tourism and travel agencies as well. From the tourist cancelling or amending the contract.

In addition to the practical importance of the cancellation and amendment of the tourist trip contract, it also has jurisprudential significance, as the jurisprudential debate on its nature and extent continues, which requires addressing this issue.

## **Research Problem and Questions**

The main problem of the research lies in the non-compliance of the contracting parties with the terms of the tourist trip contract and their deviation from its provisions, and therefore we will take over through this research to answer several questions according to the following detail:

- What is meant by cancelling and amending the tourist trip contract?
- Can the travel and tourism agency cancel or amend the tour contract?
- Does the tourist, as the second party to the contract, have the right to amend or cancel the tourist trip contract?
- Is the travel and tourism agency entitled to compensation if the reason for it is achieved?

## **Research Methodology**

In the study of this research, I will follow the comparative analytical approach of French, Bahraini and Jordanian legislation, especially Decree No. 1229/06 of 6 October 2006 in France (I), and the various jurisprudential opinions that dealt with this subject by studying, explaining what these legislations and opinions are, and what they are likely to be assured of, to be ultimately a help to Bahraini and Jordanian legislators in organizing the issue.

## **Research Plan**

In light of the above, I will divide this research into three investigations according to the following detail:

The first section: What is the cancellation or amendment of the tourist trip contract?

Second Section: Cancellation or amendment of the tourist trip contract by the tourism contractor.

**Third Section:** Cancellation, amendment or assignment of the tourist trip contract to others by the tourist. Conclusion: Includes findings and recommendations.

### **First Section: What Is The Cancellation Or Amendment Of The Tourist Trip Contract?**

We can define a tourist trip contract as: "the contract under which the Travel and Tourism Agency is obliged to provide tourism services to the customer -the tourist -for a known fee"

Talking about this topic requires shedding light on what is meant by cancelling the tourist trip or modifying it by unilateral will, first, and secondly, we will determine who is the holder of the right to such cancellation or modification, in the following detail

- 1) The first requirement: The cancellation and amendment of the tourist trip contract means

- 2) First: The cancellation of the contract means its dissolution and the disappearance of its effects for the future, as the repudiation of the contract by the tourist or the travel and tourism agency does not lead to the disappearance of its effects from the time of its inception, but only to the future<sup>C3</sup>). It does not apply retroactively, but with immediate effect.
- 3) Second, the modification of the contract by unilateral will is the one that belongs to a party or a single contractor, thus implying a change in any element of the contract during execution, which has its origin in only one of the contractors, either the travel and tourism agency or the tourist
- 4) Second Requirement: The holder of the right to modify the contract by unilateral will:

In fact, the power to amend the contract that binds the tourist to the travel and tourism agency - that is, the tourist trip contract - is the right of the tourism and travel agency and the right of the tourist as well, which we will explain as follows:

The Travel and Tourism Agency, due to certain new circumstances, usually resorts, -under an express or implied clause in the contract - to cancel its contract with the tourist, the earliest example of which is the lack of a minimum number of tourists, as the Agency's execution of the contract with such perseverance, exposes it to a huge loss, and also the Agency may resort to canceling the contract before the start of its implementation, If there are force majeure circumstances beyond its control, such as a war or a military coup, for example, in the country where the contract was to be executed, and the travel and tourism agency may be able to cancel its contract with the tourist if it acts as an intermediary and fails to reserve a seat for him on the trip with the organizing agency, here, according to some, the contract is suspended on a standing condition that: The contract was concluded only if the travel and tourism agency was able to actually book or found a place for the client, and the proponents of this view even went on to say that if such an implicit condition did not exist, it must be presumed to exist<sup>(5)</sup>, Thus, if the condition is met, the contract shall be deemed to have been concluded and its effects have been arranged since its conclusion and retroactively , but if the condition is defaulted , then the contract is not concluded and becomes as if it were not retroactively, and the client is entitled to a refund (6).

Some have denied - which we are inclined to - the idea of a fully implicit standing clause, because the standing clause must be expressly stated in the contract, the standing clause cannot be assumed, because the travel and tourism agency has an obligation to the customers to provide adequate information , and therefore if it is the duty of the customer to request information from the tourism agency he is referring to, this agency in turn has an obligation to provide the necessary information and data regarding the services it provides, and in particular it must inform the customer The presence of a standing condition(?).

This is confirmed by the fact that the French legislator has stipulated that if the travel and tourism agency acts as an intermediary and there is an agreement to the effect that the execution of the tour contract is contingent on the availability of a certain limit of participants in the trip, this condition must be clearly indicated, since it is not enough to assume the standing clause, but it must be expressly stipulated

## **Second: Cancellation and Amendment of the Tourist Trip Contract through the Customer - The Tourist:**

Based on the existence of a clause in the agreement, the customer can amend his contract with the tourism and travel agency, special circumstances may occur that make him unable to travel on the date specified by the tourism agency in his contract with it, such as his poor health, or the death of a relative, for example: here he resorts to canceling or amending the contract, but the authority to amend the contract on the part of the customer according to

what part of the jurisprudence says is as close as the authority to "offer amendment " More than an amendment by unilateral will, since the client accordingly has the right to direct the request for amendment , and does not alone have the authority to make this decision to amend, but the consent of the other party to the contract is required , the amendments in order to be considered by him must be approved by the tourism and travel agency , if the latter does not agree to it, the tourist shall have the right to terminate the contract with it of his own volition, and shall bear the legal consequences accordingly.

In commenting on this, we say that the amendment is under a previous clause in the contract and therefore cannot be considered an offer of amendment, but is pursuant to the express or implied will of the parties to the contract. This was confirmed by the French legislature in Decree No. 1229/06 of 6 October 2006, which stipulated that the contract between the Tourism, Travel and Tourist Agency should be written and signed in two copies, one of which should be handed over to the tourist, and that the contract must include the conditions that must be met for the termination of the contract (IO).

## **Second Section: Cancellation or Amendment of the Tourist Trip Contract by the Tourism Contractor.**

A tourist trip contract, such as contracts that create opposite obligations on the shoulders of its parties - the tourism agency and the tourist - in other words, is a contract binding on both sides.

Therefore, the tourism and travel agency is obliged to execute the provisions of the contract, i.e. the execution of the trip or accommodation agreed upon in the contract, and if it breaches the performance of its obligation, by cancelling the trip on its part, the customer whose rights have been breached may file an action for avoidance with compensation if he has a requirement. The request for avoidance is accepted only if the tourist, as the creditor, proves that he has excused the tourism and travel agency, as the debtor, demanding that it perform the contract. The judge to whom the application for avoidance was made has the discretion, as he has the choice between avoidance of the contract and its performance, and if he finds that the debtor, the travel and tourism agency herein, has implemented most of the agreed contract programs and has condoned the implementation of some secondary programs, the latter of which are of little importance to the programs of the tourist trip contract as a whole, the judge does not rule on avoidance but rather awards compensation, and if found otherwise, he awards avoidance and may give the debtor a period of time. Judicial, if circumstances so require, so that he may perform his obligations.

The contractors may agree that the contract is avoided on its own initiative - without the need for a court judgment - when one of them fails to perform the obligations arising from it: "Agreement on the condition that avoidance occurs without the need for a judgment does not exempt the creditor from the debtor's excuse, unless it is expressly

If the cancellation is signed by the travel and tourism agency, the tourist often has the right to demand, in addition to the avoidance of the contract, compensation for the damage suffered as a result of the non-performance of the contract, such damages are the loss of his days off or the increase in the value of the trip after the termination of the contract of his first trip, he is entitled to compensation in the amount of this increase, and the legal basis for compensation in these cases is based on the contractual liability, which is the breach of the performance of the obligation arranged by the contract, and this breach requires a claim for avoidance of the contract and compensation for this Breach.

After the conclusion of the contract, it may happen that its performance becomes impossible for a foreign reason in which the contractors have no control, and the contract is terminated by force of law without the need for an excuse, since the excuse is only in the event that the performance of the obligation is possible. For example, a sudden state of war arises in the territory to be visited, the contract between the tourism and travel agency and the client is executed immediately after they have concluded the contract, and if the travel and tourism agency executes the contract and some aspects of it are impossible to perform for a foreign reason in which it has no control, it is The tourist has the option to hold on to the execution of what is possible, or to request the avoidance of the contract.

It should be noted in this regard that the termination of the tourist trip contract by force of law for a foreign reason in which the tourism and travel agency has no hand does not entitle the creditor to claim compensation for the damage suffered by him due to the loss of the trip on him, or the expiry of the vacation without benefiting from it, because of the absence of a fault of the tourism and travel agency, and therefore if the tourism contract is cancelled in part because of force majeure in which the agency has no hand, the tourist is refunded only for the part that has not been performed, The Agency retains a portion equivalent to the services it has rendered to the tourist, since the cancellation of the tourism contract is only directed to the future - that is, with immediate effect - since it is impossible to reimburse the part of the obligations of the trip that has been carried out and therefore should be compensated, and it is best compensated that the Tourism Agency retains a part of the commission equivalent to what the tourist benefited from the trip.

If the impossibility of carrying out the tourist trip contract was realized prior to the conclusion of the contract, the tourist trip contract does not arise at all, because of the backwardness of the corner of the shop, and the tourism contract is considered invalid.

The question arises as to the extent to which the travel agency has the right to cancel the tour contract? Or modification in the condition of the trip or accommodation or in its circumstances such as shortening the duration of the trip, changing the places of accommodation intended for tourists or canceling some of the tourist trip programs?

We will try to clarify this by distinguishing between Bahraini and Jordanian legislators' positions on one side and that of French legislators on the other, in two requests:

### **First Demand: The Position of the Bahraini Legislator and the Jordanian Legislator**

Article 128 of the Bahraini Civil Code states that "the contract is *pacta sunt servanda*, and neither of them may be independent by revoking it or amending its provisions except to the extent permitted by the agreement or required by law."

Article 241 of the Jordanian Civil Code also stipulates that "if the contract is valid and necessary, no one of the intending parties may revoke it, amend it, or terminate it except by mutual consent, litigation or under the contract." Accordingly, the Travel and Tourism Agency may not cancel or modify the itinerary of its own will, but must take the consent of the tourist to it, and the tourist is entitled to a refund of the amounts paid, in addition to his right to compensation for the damages suffered by him as a result of the cancellation or amendment.

It is worth mentioning that the previous provisions usually arise if there is no clause in the contract that allows its cancellation by unilateral will, but it is noted that tourism and travel agencies usually guarantee their contracts with tourists conditions that allow them to derogate from the contract, and usually regulate all the effects that may result, without resorting to the general rules of civil law, which in turn give the parties the ability to regulate the effects of contracts outside their Sharia of cancellation of the contract, without the tourist having the right to a refund of what he has paid, Whether there is force majeure, or another reason, there is no doubt that this is intended to achieve the interest of the tourism and travel agency, and therefore should not be applied, here if the impediment to the performance of the obligation is due to exceptional incidents, the judge may modify the obligations of the parties and any agreement to the contrary is invalid, as stipulated in article 130 of the Bahraini Civil Code and article 205 of the Jordanian Civil Code<sup>(21)</sup>.

### **Second Requirement: French Legislator's Position**

We present the position of the French legislator on the repeal and then his position on the amendment, in the following two sections:

#### **Section 1: The Position of the French Legislator on the Cancellation of the Tourist Trip Contract**

The contract for a tourist trip in accordance with the provisions of French law is one of the named contracts that have its own provisions and which regulate it in addition to the general rules of the contract.

Article 6/7 of Decree No. 1229-2006 of 6 October 2006 stipulates that if the contract contains a provision that the execution of a trip or residence is suspended on the condition of a minimum of participants in such a trip or residence, this requirement must be clearly defined, it is not sufficient to presume this requirement, but must be expressly stipulated.

The same article of the same decree also specified the date on which the trip or stay may not be cancelled after being missed because of the lack of a minimum number of participants if the contract includes such a clause. Article 11 of the same decree stipulates that if the travel and tourism agency cancels the trip or accommodation, the client is entitled to the amounts paid by him with compensation equivalent to the value of what the customer would have paid had he cancelled the trip, unless the cancellation was due to force majeure, with the injured person Article 130 of the Bahraini Civil Code stipulates that "if, after the contract and before the completion of its execution, general exceptional circumstances arise which could not have been foreseen at the time of its conclusion, and as a result of their occurrence the performance of the obligation arising from it, even if it does not become

impossible, becomes onerous for the debtor, threatening it with a serious loss, the judge may, after balancing the interests of the parties, return the cumbersome obligation to a reasonable extent, by narrowing its scope or increasing its reversal, Any agreement to the contrary shall be null and void", as Article 205 of the Jordanian Civil Code stipulates that "if there are general exceptional incidents that could not have been foreseen and their occurrence results in the performance of the contractual obligation, even if it does not become impossible, becomes so onerous for the debtor that it threatens it with a serious loss, the court may, depending on the circumstances and after balancing the interests of the parties, return the burdensome obligation to the reasonable extent if justice so requires, and any agreement to the contrary shall be null and void. That's it ". These are the same provisions as those introduced by Decree No. 190/94 of June 15, 1994 in Articles (96/7, 13). And repealed under the provisions of this Decree.

Force majeure is not considered to be the aircraft's fault and entails flight cancellation. See Paris 12 Jun,

## **Section II: The Position of the French Legislator on the Amendment of the Tourist Trip Contract:**

The French legislator distinguishes between the amendment made prior to the performance of the contract, and the amendment made after the commencement of the contract, which we will clarify as follows:

### **1) Modification Ma De Prior to the Execution of the Contract**

Here we differentiate between several assumptions, where we will deal with the amendment that responds to a substantive and essential element of the contract, the amendment that deals with an incidental or marginal element of the contract, and finally the effect of force majeure, as follows:

First: The amendment contained to an essential element of the contract :<sup>(26)</sup>

According to the text of Article 11 of Decree No. 1229/06 of October 6, 2006, in the event of a pre-departure amendment to one of the essential elements of the contract by the Travel and Tourism Agency, without prejudice to his right to compensation, the tourist shall have the choice between:

- 1) Termination of the contract, i.e. non-participation in the revised trip or residence, without prejudice to his right to prompt payment to the Tourism and Travel Agency.
- 2) The proposed amendment to the trip or accommodation shall be accepted by the organizer of the trip, and an annex to the contract shall be drawn up in which the proposed amendments shall be recorded and signed by the parties.

In this case, if the price of the modified flight is less than the price of the original flight, the difference is deducted from the amount owed by the tourist, but if the tourist has accelerated the return and this consideration is in excess of the fee for the proposed trip or accommodation, he shall be entitled to recover the difference between the proposed and original flights before the date fixed for the commencement of the proposed trip or stay.

According to some of the jurisprudence, this right conferred on the client by the text - The tourist - is to establish and establish a fair and logical balance between the possibility of allowing the tourism and travel agency to amend the contract with the customer to certain circumstances, and allowing the customer - the tourist - to express his dissatisfaction with these amendments, by requesting his cancellation of the contract he has with the tourism and travel agency, and to recover all the amounts paid by him.

### **Second: Amendment to a Secondary Element in the Contract**

The text of article 11 of the decree of October 6, 2006 in France does not address the secondary amendments that the travel and tourism agency can make to the - Either accepts the proposed amendment, thereby signing an agreement with the Tourism and Travel Agency on these amendments contract of its own will.

In application of the general rules and as some decide, the travel and tourism agency can make such an amendment, unless there is an express clause in the contract authorizing it to make such an amendment.

These are the same provisions as those introduced by the previous decree in Article ( 102), and the same

Provisions as Law 645/92 of July 13, 1992 in Article (2 1).

The Tourism and Travel Agency has an obligation to inform the customer - the tourist - of the modification program before (2 1 days) of the flight, without committing to compensation to the customer, to determine his position thereon.

The provisions of Act No . 645/92 of 13 July 1992 are increased by the legal protection of tourists in the light of the tourism contract (p. 135).

Matters of substance at the stage of the conclusion of the contract are considered to be those that prevent the conclusion of the contract in the absence of agreement on them, as they represent the elements of the contract that must be available for its performance, and some of those fundamental issues are identified from meeting the purpose of the parties. According to the general theory of the contract, the element is considered to be a key element, if it is considered to be one of the distinctive characteristics of the contract, and in application of this, the price, duration of stay and direction are key elements of the tourism contract, as well as the conditions of carriage, as with regard to the rest of the elements of the trip such as the place of residence in the hotel and the quality of food, clothing and ironing services, they are not key elements by nature, but need to be due to the will of the parties to the contract. See, in this sense, Saleh Nasser al-Otaibi, *The Idea of Intrinsic Relationship in the Nodal Relationship*, (p.3 11).

### **Third: The Effect of Force Majeure**

This is provided for in article 12 of the Decree of 6 October 2006 in France. If, prior to departure, an essential element of the contract has become impossible, the Tourism and Travel Agency shall notify the customer of a letter of the knowledge of arrival and promptly in order to determine its position on the amendment, which is usually one of two positions:

Either he chooses to terminate the contract, here he has to recover his payment without deducting any amount from it, or he bears any expenses.

Accordingly, in the sense of contravention of the provision, if the Tourism and Travel Agency amends the contract without external circumstances justifying it, it will be liable and will be obliged to compensate the customer - the tourist - for the damages suffered as a result of the amendment.

### **(2) Amendment Made After the Commencement of the Performance of the Contract**

Article 13 of Decree No. 1229/06 of 6 October 2006 stipulates that: "If the Tourism and Travel Agency substantially modifies one of the terms of the contract after the commencement of the journey, the Tourism and Travel Agency shall take one of the following two ways:

#### **First Route**

To propose to the tourist to provide alternative services to the modified services And here if the tourist agrees, it is the tourism and travel agency that bears the increase in the cost of the trip if this adjustment results in an increase in costs the tourist is not obliged to pay the difference in costs between the original cancelled services and alternative services, The Paris Court of Appeal held that if the Tourism and Travel Agency breaches its obligation to provide the agreed room for the inmate to reside in and insists on going to another higher-priced hotel, the Tourism and Travel Agency is obliged to compensate the customer for the damage suffered, which is the difference in the price incurred in the new hotel<sup>09</sup>).

Part of the jurisprudence justifies the wisdom of not paying the tourist the difference in costs, if it is in excess, by the fact that the legislator has taken into account that the tourist did not request the modification of the trip, but rather the tourism and travel agency that amended it, and must bear the consequences of this amendment<sup>01</sup>). If the services proposed by the Travel and Tourism Agency are less than the quality of the original cancelled services, it is obliged to refund the tourist upon his return the difference between the cancelled services and the original services, if the tourist accepts their proposal. The second route: That the tourism and travel agency does not provide any alternative services, or has offered alternative services and rejected them by the tourist for legitimate reasons such as his pretext to visit those proposed places a year earlier, here the tourism and travel agency is obliged to provide him with the necessary transport tickets for his return to the country of departure, or to any other place

agreed upon by the parties, without prejudice to his right to compensation for damages that occur to him as a result of this fundamental amendment in his contract with the tourism and travel agency.

In this regard, the Tourism and Travel Agency was held liable to compensate the tourist for the damage caused by the cancellation of the tourist trip due to his refusal to stay in a hotel other than the one described in the contract.

### **Third Section: Cancellation, Modification or Waiver of the Tour Contract by the Tourist**

We have previously been exposed to the situation in which the tourism and travel agency voluntarily, unilaterally cancelled and amended the contract that binds it to the tourist, and here within the framework of this section, we will address the reverse assumption, which is the extent to which it is permissible to terminate or amend the contract of the tourist trip or assign to others, on the part of the customer - the tourist - and of his own will. Therefore, we will address through two demands, where we address in the first requirement the cancellation or amendment of the tourist trip contract, and in the second requirement the extent to which the customer - the tourist

#### **First Requirement: Cancellation or Amendment of the Tourist Trip Contra CT**

We will address the organization of this issue by first identifying the position of the Bahraini and Jordanian legislators, and then the position of the French legislator in the following two sections:

##### **Section 1: Bahraini and Jordanian Legislators' Position**

The amendment of the contract by the client is governed by general rules. Article 128 of the Bahraini Civil Code stipulates that: "A contract shall be pacta sunt servanda. No one may resign by cassation or amendment of its provisions except to the extent permitted or required by law."

Article 24 1 of the Jordanian Civil Code stipulates that: "If the contract is valid, no contractor may resume, modify or terminate it except by consent, litigation or by virtue of the contract."

In the event of a requirement that the customer - a tourist - may terminate the tour contract and amend it individually, the tourist has an obligation not to abuse this right. s desire to terminate the contract in a timely manner, If he notifies the tourist, the tourism agency in a timely manner of his wish to terminate the contract, It is not liable, and therefore no compensation is available, and vice versa<sup>(33)</sup>.

The question arises as to whether the customer - the tourist - can recover the amounts paid to the tourism and travel agency? Could he refrain from paying the rest of the flight? Or does he remain committed to paying that amount? Answering this question, if these amounts paid by the customer to the Tourism and Travel Agency are not agreed upon, the amount paid by the customer is in accordance with the general rules of Bahrain's Civil Code and Jordanian Civil Code. and thus adjusts to be the price of retrenchment<sup>(34)</sup>, and, therefore, if the client has not contracted, He loses his right to a deposit and cannot recover these sums. Article 52 of Bahrain's Civil Code states: "1. The payment of the deposit at the time of conclusion of the contract indicates that each contractor has the option to renounce it unless it appears that they intended otherwise, or that the custom was to the contrary. Article 107 of the Jordanian Civil Code stipulates that: "1. the payment of the deposit at the time of the conclusion of the contract states that each contractor has the right to renounce it unless otherwise provided in the agreement. If the payment of the deposit is modified, it shall be lost and its return and its likeness modified." (3S).

If the customer's payment - the tourist- is deemed to be in Arabic and the contract is not modified during the period of return, the contract shall be terminated and the deposit shall be deemed partial execution and execution shall be completed.

In accordance with article 52 of the Bahraini Civil Code and article 107 of the Jordanian Civil Code, the customer is not obliged to pay for the rest of the tourism service agreed upon in the contract with the Tourism and Travel Agency, If the contract is modified, it is not bound by more than it paid and lost, Accordingly, he is not obliged to pay the remainder of the agreed price of the flight unless there is a requirement to the contrary.

##### **Section II: French Legislator's Position**

The question arises as to the entitlement of the customer - tourist - to cancel the trip or stay any cancellation of the tour contract in French law?



According to part of the jurisprudence<sup>7</sup>, the statement of the position of the French legislator on the issue of cancellation and amendment of the contract by the individual will of the client requires a distinction between two imposition:

The conditions of cancellation are express and written in the tourist trip contract itself, and the contract itself does not include any provisions related to the terms and rules of cancellation of the trip but are contained in the so-called trip catalog delivered to the tourist, and here we are required to differentiate between them as follows:

### **First Imposition: Cancellation Clauses Are Explicit and Written In the Tour Contract Itself**

In accordance with article 8, paragraph 14, of Decree No. 1229/06 of 6 October 2000 if the cancellation clauses are explicit and written in the contract between the tourist and the tourism and travel agency, They are binding on customers as well as on the Tourism and Travel Agency, and consequently their breach by the customer results in their contractual liability vis-a-vis the Tourism and Travel Agency, and is therefore obliged to compensate. Accordingly, the French Court of Cassation awarded the voyage regulator the right to deduct an amount of CFAF 1000 out of CFAF 8500 for the total price of the voyage, in exchange for food and tours of the voyage cancelled by the client for the death of his father just before departure.

### **Second Assumption: The Tourist Trip Contract Itself Does Not Contain Any Provisions Relating To The Terms And Conditions For Its Cancellation:**

These terms and conditions relating to the cancellation or modification of the tour contract may be included in the catalogue of the trip delivered to the tourist before contracting, or in other advertising documents of the Tourism and Travel Agency received by the tourist. If the tourist breaches the terms of the trip and cancels the trip, will his or her liability for the violation of these conditions be fulfilled? Is he therefore obliged to compensate if his cause is achieved?

This question was answered by the French Court of Cassation in the facts of a case brought before it that Ms. "Rut " has booked her and her daughter a ticket to travel to Noueak and forth at the so-called tourism agency "Haves" and paid for the total price of the ticket, and this lady had a health crisis several days before leaving. Obliging her to cancel the trip, the Tourism and Travel Agency sued the Paris Court of First Instance claiming her entitlement to the price paid by Ms Rut in addition to her right to complete the full ticket, The Court of First Instance of the Plaintiff - Tourism and Travel Agency - agreed with the request and when Ms. Rut appealed the Paris Court of Appeal's ruling to the contrary, The Tourism and Travel Agency was forced to appeal to the French Court of Cassation and maintained a contractual relationship between it and Ms. Rut. This contractual relationship generated the payment of part of the ticket price to the Tourism and Travel Agency. And consequently, the customer is bound by all terms of the contract, including the terms and rules of the cancellation of the flight as provided in the catalogue handed over to the respondent prior to the booking. However, the French Court of Cassation did not heed this argument made by the Tourism and Travel Agency, She said there was no pledge or obligation on the part of customers to pay for the ticket when the flight was cancelled by them if these cancellation clauses are contained in the catalogue" .

We agree with the jurisprudence that the judgement of the French Court of Cassation is within the framework of general rules. inventory ", the portion of the total price of the ticket that has been paid is a price for the revocation of the contract by the tourist - the client - if he or she wishes to cancel the trip here and therefore the tourist does not commit more than that price if his or her enemy is at a convenient time with an acceptable excuse.

A part of the doctrine - which we tend to be - considers that the catalogue is binding on the tourism and travel agency with its data. Tourism and Travel Agency as a professional to ensure that all flight data, program and cancellation provisions of the same contract are known to it, so that the contract can be entered into only with sufficient knowledge of all these elements. This is not being achieved for the client, who is supposed to be a private person and must therefore be protected from these conditions.

It is worth mentioning that article 11 of Decree No. 1229/06 gives the customer the right to terminate the contract

Ibid., pp. 233/Mohammed Abdulshaha Hussein, Legal Aspects of the Pre-Contracting Phase (p. 17).

of his own volition, in the event that the travel and tourism agency works to increase the price for the trip before it begins, or to modify the itinerary and the duration of the days of stay, and notifies the client thereof by a letter recommended with the knowledge of arrival, where he may terminate the contract on his part without committing to any compensation, and even while retaining his right to recover the amounts paid to the tourism and travel agency.

The question arises regarding the right of the customer - the tourist - to amend the contract that binds him to the travel and tourism agency?

It is worth mentioning that Decree No. 1229/06 has not regulated such an imposition, thus implicitly preventing the customer from the right to modify the itinerary or accommodation of his own will, as it required the approval of the Tourism and Travel Agency to request the amendment, and therefore the amendment not approved by the Tourism and Travel Agency after the start of the trip is the responsibility of the customer alone, without having the right to demand the Tourism Agency to recover the expenses of services that he did not benefit from due to Remixing.

According to some of the jurisprudence<sup>(44)</sup>, which we tend to do, the reason for the different attitude of the French legislature between the state of modification by the tourism and travel agency and the state of modification by the client is that the latter is usually a member of a group tourist trip's request to amend the contract, colliding with the collective organization of the program to be implemented according to the contract.

### **Third Requirement: The Extent To Which A Customer May Waive A Third Party's Tour Contract**

We will address the position of both Bahraini and Jordanian legislators on the one hand, and the position of French legislators on the other, in the statement of the entitlement of the client - tourist - to waive the tourism contract for the benefit of others, in the following detail:

#### **Section 1: Bahraini and Jordanian Legislators' Position**

Bahrain's Civil Code Regulates the Right and Religion within Articles "287-313", as regulated by the Jordanian Civil Code in articles "993- 1017", and therefore in the presence of both transfers, one of the parties to the contract may transfer the entire contract to others. The tourist may transfer his rights arising from the tour contract in accordance with the terms of the transfer of the right and transfer his debts arising from the contract in accordance with the terms of the debt transfer, known as the transfer of the set of rights and obligations arising from the contract. The relinquishment of a tourist's tour contract is a right transfer for his rights arising out of the contract and a debt transfer for his obligations arising from the contract, which in general must be subject to the procedures governing the right and religion. The assignment to third parties of the tour contract as a transfer of right applies to the tourism and travel agency as a debtor only from the time of its acceptance thereof, or once it has declared a waiver. As the waiver of the tour contract is a debt transfer, the creditor's right, here the Tourism and Travel Agency, is enforced only if it is approved, and if the customer appoints a term for the Tourism and Travel Agency, during which it issues its position, which expires without confirmation, the silence of the agency is deemed to be a refusal of the transfer.

#### **Section: Position Of The French Legislator**

The customer has the right as stipulated in Article 8/ Decree No. 1229/06, Waiver of the contract of the tourist trip,

i.e. its transfer to another person who accepts it as long as its implementation has not yet begun, after notifying the travel and tourism agency of his desire to disembark from the contract, within the period prescribed by law for that purpose, and also asks both the assignor and the assignee, in solidarity with the tourism and travel agency, to bear the possible expenses and expenses that may arise from such a transfer.

### **Conclusion**

#### **First: Results**

1. Neither Bahraini nor Jordanian legislators regulated the tour contract nor therefore is it an indefinite contract in both countries. In the light of this, the courts in both countries apply only

the general provisions of the Civil Code and of the Commercial Code, However, these rules are not sufficient to take note of all the rules relating to the tour contract and its obligations and liability in case of breach of these obligations and to determine the extent of the parties' power to modify, cancel and waive the contract to others.

2. The provisions of the relationship between tourism and travel agencies and customers in Bahrain and Jordan shall be subject to the general rules, in accordance with the rule of the *pacta sunt servanda* and may not be revoked or amended except by agreement of the parties and for reasons recognized by law, such as the occurrence of a force majeure circumstance justifying the amendment or cancellation of the contract.

In the light of the failure of Bahraini and Jordanian legislators to organize the tour contract, the waiver of the contract to a third party is subject to the provisions of the Civil Code on the transfer of the right and the transfer of religion.

### **Second: Recommendations**

- [1] The researcher recommends that Bahraini and Jordanian legislators organize the tour contract either in civil or commercial law or in an independent law to determine the extent of the power of the parties to the tour contract to modify, cancel or waive it to others, to take advantage of the legislation of other States that have regulated the tour contract, in particular Decree No. 1229/6 of 2006 of France.
- [2] Conduct further studies on the tourist trip contract and the legal obligations arising from it, the civil liability resulting from the breach of these obligations, liability modification agreements, as well as insurance against civil liability arising from it.

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