The Legal Characterization of the COVID-19 Pandemic and Its Impact on the Liability of the Maritime Carrier of Goods in Algerian Legislation and International Conventions

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Abstract:
This study examines the impact of the COVID-19 pandemic on the liability of the maritime carrier, focusing on the issue of the legal characterization of the pandemic as a force majeure event or an emergency circumstance for exemption from liability. The study concluded that the divergence of judicial interpretations and the disruption of contractual balance during the crisis revealed shortcomings in the current legislative provisions, which requires updating legal frameworks and incorporating "epidemic clauses" into transport contracts to ensure legal stability in the face of future global emergencies.
Keywords: COVID-19 pandemic, maritime carrier, maritime carrier's liability, carriage of goods, force majeure.

Introduction:

The COVID-19 pandemic constitutes an exceptional and unprecedented event in the history of contemporary economic relations, as its effects have gone beyond the health framework to bring about profound transformations in the legal and regulatory structures governing international transactions, particularly the maritime carriage of goods sector, as it is considered the primary means of global trade flows. The precautionary measures adopted by states to confront the spread of the pandemic, including the closure of ports, suspension of navigation, and imposition of quarantine measures on ships and their crews, have led to the disruption of the performance of many maritime transport contracts and an increase in cases of delay in loading, unloading, and delivery.

These exceptional circumstances have generated complex legal issues related to determining the scope of the maritime carrier's liability, particularly whether the COVID-19 pandemic constitutes a force majeure event or an emergency circumstance justifying exemption from liability or mitigation thereof. The pandemic has also brought back to the forefront the issue of balancing the contractual obligations imposed on the maritime carrier, on the one hand, and the requirements of health safety and the protection of human lives, on the other hand. Practical experiences and the divergence of judicial interpretations have revealed differences in the interpretation of relevant legal provisions and international conventions, which has increased the importance of specific contractual clauses relating to epidemics and health emergencies.

In this context, the importance of studying the effects of the COVID-19 pandemic on the liability of the maritime carrier of goods emerges through analyzing the general rules of liability, the position of international conventions governing maritime transport, and the extent to which the current legal framework is adequate to address global crises. This study aims to highlight legislative shortcomings and propose ways to develop the legal system in order to achieve greater legal stability and contractual balance in light of exceptional circumstances that may affect international maritime trade in the future.

To what extent can the COVID-19 pandemic be considered an event constituting force majeure within the framework of the contract of carriage of goods by sea? What is its impact on the carrier's obligations and legal liability under international legislation and Algerian legislation, particularly with regard to the distinction between force majeure and emergency circumstances, and the determination of the limits of exemption from liability and the burden of proof?

First: The Legal Framework of the Coronavirus Pandemic within the Contract of Carriage of Goods by Sea

The legal framework of the COVID-19 pandemic (Coronavirus) within the contract of carriage of goods by sea consists of a set of international and national rules that have redefined the responsibilities of the maritime carrier under the exceptional circumstances imposed by the pandemic. Legal issues have emerged concerning force majeure and emergency circumstances, as well as the impact of health restrictions, port closures, and voyage delays on the carrier's obligations, particularly in light of the rules of conventions such as the Hague-Visby Rules and the Hamburg Rules, in addition to national legislation governing maritime transport. Consequently, the assessment of the extent of the carrier's liability has become linked to proving the relationship between the pandemic and the impossibility of performing the carriage obligation, and whether such circumstances justify exempting the carrier from liability or mitigating it in accordance with the applicable legal principles.

1. Characterization of the Coronavirus Pandemic as a Force Majeure Event:

The characterization of the Coronavirus pandemic as a force majeure event is considered one of the most prominent legal issues arising from the exceptional circumstances experienced by the world. The pandemic was regarded as a sudden, general event beyond the control of the parties, which led to the disruption of supply chains, the closure of ports, and the imposition of strict health restrictions. Accordingly, legal systems and international conventions, particularly in the field of transport, have sought to determine whether the pandemic meets the conditions of force majeure, namely unpredictability and impossibility of avoidance, and the extent of its direct impact on the performance of contractual obligations. On March 12, 2020, a set of legal and regulatory texts were issued, the most important of which was Executive Decree No. 20/69, which included preventive measures to limit and combat the spread of the Coronavirus. [1]

This made it a basis for exempting the debtor from liability or mitigating it whenever a direct link between the damage and the circumstances of the pandemic was established.

1.1. The Concept of Force Majeure in the Field of Maritime Transport

1.1.1. The Concept of Force Majeure

The maritime carrier is exempted from liability whenever it proves that the damage suffered by the goods resulted from force majeure or a sudden accident. However, the Algerian legislator did not provide a precise and direct definition of force majeure or the sudden accident within the provisions of the Maritime Law, which has created a partial legislative gap in this regard. Accordingly, reference is automatically made to the general rules provided for in the Civil Code in order to determine the content of this concept and define its legal effects. The legislator expressly referred to this in Article 127 of Order No. 75-58 dated September 26, 1975
[2], containing the Civil Code, which stipulates the exemption of the debtor from compensation when it proves that the damage resulted from a cause beyond its control, such as force majeure, a sudden accident, or the fault of the injured party or the fault of a third party, unless there is a legal provision or agreement to the contrary.

The concept of force majeure in legal doctrine and jurisprudence is based on a set of fundamental elements, the most important of which are unpredictability and the impossibility of avoidance. An event constitutes force majeure if it is exceptional and unusual, such that a person cannot reasonably foresee its occurrence under normal circumstances. It must also be impossible to prevent its consequences or avoid its effects despite taking reasonable precautions and exercising the diligence of a prudent person. Therefore, legal doctrine has emphasized that force majeure is not merely an incidental event, but rather a coercive event of such a nature that makes the performance of the obligation absolutely impossible, and not merely relatively impossible.[3]

In the field of maritime carriage of goods, force majeure holds particular importance due to the nature of this activity and the risks associated with it, including maritime hazards, climatic fluctuations, and changing international circumstances that may hinder the performance of a maritime voyage or cause damage to the goods. Therefore, when the maritime carrier proves that the damage resulted from an unforeseeable and unavoidable event, such as major natural disasters, global emergency events, or coercive measures imposed by authorities, the carrier is exempted from contractual liability. However, this exemption is not automatic; rather, it requires proving the causal relationship between the force majeure event and the damage, as well as demonstrating that the carrier did not commit any fault and that it took all possible measures to preserve the safety of the goods.[4]

Accordingly, it can be said that the essence of force majeure lies in its being an unforeseeable and unavoidable event that inevitably leads to the impossibility of performing the obligation. Once established, the legal liability of the maritime carrier is excluded, while the determination of the existence or absence of force majeure remains subject to the discretion of the judiciary in light of the circumstances of each case individually, taking into consideration the nature of maritime activity and its technical and legal standards.[5]

2. Force Majeure and Sudden Accident

The Algerian legislator used the terms sudden accident and force majeure interchangeably in the Civil Code under the provisions of Article 127. However, part of legal doctrine has sought to distinguish between the two concepts in the field of the contract of maritime carriage. It considers that force majeure should be an external event unrelated to the carrier's activity, such as maritime storms and natural disasters affecting the vessel without any intervention from the carrier. As for the sudden accident, it is considered an internal event related to the carrier's own activity and arising from the maritime operating environment or the equipment used, such as the explosion of the vessel's tanks or technical failures resulting from operation.[6]

Based on this distinction, if the damage results from force majeure in its purely external sense, the maritime carrier is exempted from liability. However, if it results from an internal sudden accident considered among the ordinary risks of navigation activity, the carrier remains liable for it, as it constitutes part of the foreseeable risks of maritime exploitation and does not constitute a sufficient foreign cause to exempt the carrier from liability.[7]

In the doctrinal and legislative practice of commercial law, courts have, for a considerable period, adopted the principle of distinction between force majeure and sudden accident within the scope of transport contracts, while maintaining the practical application of this distinction to obligations in general. Consequently, when the occurrence of one of these two causes is established, the maritime carrier is exempted from liability in accordance with the legal rules provided for, as the two expressions are sometimes used interchangeably to refer to an external cause that interrupts the causal relationship between the carrier's act and the resulting damage. Force majeure and sudden accident are considered external events that cannot be prevented and that directly lead to damage to the goods, while they are generally difficult to avoid or control in terms of their effects. Some legal scholars refer to this type of event as an unexpected or unavoidable event, due to its practical impossibility of preventing its consequences despite taking the necessary precautions.[8]

The mere distinction between force majeure and sudden accident is not sufficient as a basis for exempting the carrier or others from liability. Rather, the existence of this foreign cause is required within the framework of liability for acts of things, as is generally the case under Algerian maritime law. Force majeure or sudden accident are considered foreign causes that exempt from liability if they meet the elements of the foreign cause in general, since the fundamental consideration for exemption is not based on the nature of the cause itself, but rather on the fulfilment of the characteristics of the foreign cause, such as being external to the debtor's will and being impossible to prevent or foresee.[9]

2. Conditions for Considering the Coronavirus Pandemic as a Force Majeure Event

2.1.1. Unforeseeability of the Event

For an event to be considered force majeure or a sudden accident, it must be unforeseeable or unavoidable. If the event could have been prevented or its consequences controlled, it cannot be regarded as force majeure or a sudden accident. This condition is assessed according to an objective standard, whereby the event is evaluated based on what could reasonably have been foreseen even by the most prudent and vigilant person, rather than solely from the perspective of the defendant.[10]

Nevertheless, exceptions exist in the application of this standard, particularly in cases involving serious and widespread events that exceed the ordinary capacity for anticipation, such as natural disasters or major epidemics. For example, the COVID-19 (Coronavirus) pandemic constitutes an exceptional event that could neither be foreseen nor controlled due to its rapid spread across continents, even with the highest degree of caution. This satisfies the requirement of unavoidability to a sufficient extent for its classification as a force majeure event.[11]

Accordingly, within the framework of contractual liability, it is sufficient for an event to be regarded as force majeure or a sudden accident that it be unforeseeable even after the conclusion of the contract. It is not necessary that the event be impossible to anticipate before the contract was concluded. In other words, it is sufficient that the impossibility of preventing or controlling the event arises after the contract has been concluded or during the performance of the obligation for it to be recognized as a foreign cause exempting the affected party from liability.[12]

2.1.2. Impossibility of Avoiding the Event

This means that the consequences resulting from the event cannot be avoided or prevented, regardless of the efforts or diligence exercised by the debtor. In other words, the performance of the obligation, the protection of the goods, or the prevention of the damage becomes practically impossible, and no person, however prudent and vigilant, can control the consequences of the event. An example of this is the outbreak of a global pandemic such as COVID-19 (Coronavirus), which results in the closure of ports and the suspension of voyages.[13]

2.1.3. The Event Must Be External

The event must be external to the will of the contracting party, meaning that it must not result from its conduct, activity, or negligence. This includes natural events (such as storms and earthquakes) or unforeseen emergency events arising from external factors beyond human control, so that the cause is entirely foreign to the injured party or the maritime carrier.[14]

2.2. Distinction Between Force Majeure and Emergency Circumstances

The distinction between force majeure and emergency circumstances constitutes one of the fundamental concepts in civil law and transport contracts because of its direct impact on determining the liability of the parties. While force majeure is defined as an external, sudden, and unforeseeable or unavoidable event that renders the performance of the obligation wholly or partially impossible, an emergency circumstance is regarded as an unforeseen event or one that is difficult to control but does not necessarily make performance impossible. Rather, it may only justify the modification or postponement of the obligation without granting a complete exemption from liability. This distinction is of particular importance in commercial contracts and contracts for the carriage of goods by sea, as it determines the scope of the application of legal exemptions or mitigations according to the nature of each event.[15]

2.1. Distinction Within the Framework of International Legislation

The distinction between force majeure and emergency circumstances within the framework of international legislation and standards is based on the nature of their impact on the obligation and the possibility of its performance. Force majeure is regarded as an exceptional and unforeseeable event beyond the debtor's control that renders the performance of the obligation absolutely impossible, generally resulting in exemption from liability or termination of the contract without fault. This approach was adopted by the French Civil Code following the 2016 reform and is consistent with Article 79 of the United Nations Convention on Contracts for the International Sale of Goods (CISG), which recognizes exemption where an impediment is beyond the party's control, unforeseeable, and impossible to overcome.[16]

By contrast, an emergency circumstance is likewise an exceptional event, but it does not render performance impossible; rather, it makes performance excessively onerous for the debtor, thereby disrupting the economic equilibrium of the contract. Consequently, it does not result in exemption from liability but instead opens the way for the renegotiation or modification of contractual obligations, or even the orderly termination of the contract. This approach is reflected in the UNIDROIT Principles of International Commercial Contracts, as well as in the model clauses of the International Chamber of Commerce (ICC), which grant judges or arbitrators the authority to restore the contractual balance. Accordingly, the contemporary international approach recognizes that force majeure results in the impossibility of performance and exempts the debtor from liability, whereas emergency circumstances render performance excessively burdensome and require intervention to achieve contractual fairness without automatically terminating the obligation.[17]

2.2. The Position of the Algerian Legislator Regarding the Criterion of Distinction

Under Algerian legislation, the legal distinction between force majeure and emergency circumstances is based on the effect of the event on the performance of the obligation and the possibility of continuing such performance. Force majeure is regarded as a foreign cause exempting the debtor from liability when an external, unforeseeable, and unavoidable event renders the performance of the obligation wholly or partially impossible. This generally results in the exemption of the debtor from liability or the extinction of the obligation within the framework of contractual or tort liability. The various provisions of the Algerian Civil Code are based on this understanding, recognizing force majeure as a ground for exempting the debtor from compensation when its legal conditions are fulfilled.[18]

Emergency circumstances, on the other hand, are governed by Article 107 of the Algerian Civil Code as a general exceptional circumstance that was unforeseeable at the time of the conclusion of the contract. Unlike force majeure, it does not make performance impossible but renders it excessively burdensome to the extent that it exposes the debtor to substantial loss. In such a case, performance remains possible but becomes so onerous that judicial intervention is required to restore the contractual balance by reducing or modifying the obligation in accordance with the new circumstances. The regulation of emergency circumstances is considered a matter of public policy, and the parties may not agree to exclude its application. This distinguishes it from force majeure and confirms the necessity of judicial intervention under Algerian civil law to regulate its effects.[19]

The fundamental criterion adopted by the Algerian legislator is therefore the distinction between the impossibility of performance and excessive hardship. In cases of force majeure, performance is genuinely impossible, whereas in cases of emergency circumstances, performance remains possible but becomes excessively burdensome. This justifies the judge's authority to modify the obligation rather than granting a complete exemption from liability. This criterion reflects a modern approach in Algerian civil law that is consistent with and informed by comparative legal doctrine, while maintaining a clear distinction between the doctrines of force majeure and emergency circumstances.[20]

Second: The Impact of the COVID-19 Pandemic on the Liability of the Maritime Carrier of Goods

The COVID-19 (Coronavirus) pandemic caused unprecedented disruptions to international maritime transport chains, directly affecting the liability of maritime carriers with respect to shipped goods. Carriers faced delays at ports, interruptions in logistics operations, and shortages of crews and resources, making the performance of contractual obligations difficult or, in some cases, impossible. This gave rise to legal questions regarding the extent of the carrier's liability for the loss of or damage to goods and the possibility of relying on grounds such as force majeure or emergency circumstances to justify the non-performance of contractual obligations.

This issue highlights the importance of examining the impact of pandemics on the contractual obligations arising from maritime transport and determining the scope of the legal exemptions granted to carriers in cases of force majeure, in a manner that balances the interests of both the shipper and the carrier within the framework of international legislation and maritime standards.

1. The Impact on the Carrier's Obligations and Exemption from Liability

The COVID-19 (Coronavirus) pandemic caused significant disruptions to maritime transport, including voyage delays, port closures, and shortages of crews and resources, which affected carriers' ability to perform their contractual obligations with respect to the goods. Under these circumstances, the carrier may invoke force majeure where the event renders the performance of the obligation practically impossible, or emergency circumstances where performance becomes excessively burdensome. This may entitle the carrier to a complete exemption from liability or to the legal adjustment of its obligations without being held liable for damages resulting from events beyond its control, in accordance with international laws and maritime standards.

1.1. Determination of the Maritime Carrier's Obligations in Light of the Pandemic as a Force Majeure Event

For an event or circumstance to be characterized as force majeure and thereby constitute a legal ground for exempting the maritime carrier of goods from liability arising out of the contract of carriage by sea, the various international conventions governing this field, in addition to the Algerian maritime legislation, require the fulfilment of a number of cumulative conditions. These conditions consist primarily in the event being unforeseeable, impossible to prevent or control, resulting in the impossibility of performing the obligation, and occurring without any fault or intervention on the part of the maritime carrier.

Applying these conditions to the COVID-19 (Coronavirus) pandemic demonstrates that it constituted an exceptional circumstance that could not have been foreseen by the parties to the contract of carriage at the time of its conclusion. Furthermore, it was beyond the maritime carrier's ability to resist or avoid its consequences, particularly after most countries around the world, including Algeria, adopted strict measures involving the suspension of numerous economic activities and the restriction of trade and transport between states. These measures resulted in the impossibility of performing contractual obligations within the agreed time limits, especially since the contract had been concluded under normal circumstances that differed entirely from those created by the pandemic. Moreover, this circumstance was wholly external to the will of the contracting parties, and the maritime carrier had no role in its occurrence.[21]

There is no doubt that the measures and actions adopted by many countries around the world to combat the spread of the Coronavirus constitute a foreign cause beyond the control of the maritime carrier, as they represent an external factual circumstance that lies outside the will of both parties to the contractual relationship, namely the carrier and the shipper. Moreover, these measures constituted an unforeseeable circumstance whose consequences could neither be prevented nor controlled, in the absence of any negligence or fault on the part of the carrier. Accordingly, the application of the doctrine of force majeure becomes inevitable, since it was the cause that rendered the performance of the carriage obligation impossible. This justifies exempting the maritime carrier from the obligations arising under a contract concluded under normal circumstances prior to the outbreak of the pandemic. These exceptional circumstances resulted in the near-total paralysis of economic and commercial activities across various countries worldwide, leading to the inability of contracting parties to perform their contractual obligations, which were consequently brought within the scope of force majeure, given that the event was entirely beyond their control and could neither be foreseen nor prevented, particularly in the absence of an effective treatment or vaccine at that stage.[22]

This approach was affirmed by the Colmar Court of Appeal in France in Decision No. 20/01098, issued on 12 March 2020, in which the court held that the COVID-19 (Coronavirus) pandemic constituted an unforeseeable circumstance involving the risk of rapid and widespread global transmission. This prompted the World Health Organization to classify it as a global pandemic. Furthermore, the absence of an available vaccine at that time was regarded as one of the factors supporting its characterization as a force majeure event in the legal sense.[23]

2.1. Exemption from Liability for Loss, Damage, or Delay in Delivery Due to Quarantine Measures

In the law governing contractual relations, exemption from liability for loss, damage, or delay in delivery resulting from quarantine measures is generally based on the doctrine of force majeure or, in some legal systems, the doctrine of emergency circumstances. This principle allows a contracting party whose performance of an obligation has become impossible or has exceeded its capacity due to unforeseeable events beyond its control to be exempted from legal liability for delay or non-performance, including cases of loss, damage, or delay in delivery resulting from quarantine measures imposed by public authorities to prevent the spread of diseases such as the COVID-19 (Coronavirus) pandemic.[24]

According to the applicable legal rules, quarantine is considered an external, unforeseeable, and unavoidable circumstance if it substantially affects the performance of contractual obligations, such as the failure to deliver goods on time or their deterioration while stored in quarantined warehouses or during transportation affected by isolation restrictions. In such cases, a causal relationship between the quarantine measures and the delay in delivery or the damage to the goods may be established in order to claim exemption from liability, provided that the affected party proves that the performance of the obligation became impossible or excessively burdensome as a result of these circumstances and that it notified the other party in accordance with the conditions prescribed by the contract or the applicable law.

As recognized by legal doctrine and international instruments, force majeure encompasses unforeseeable events that render the performance of contractual obligations impossible, such as natural disasters or official quarantine measures. This entitles the contracting party to be exempted from liability for compensation arising from the resulting damage, including loss or delay, provided that the conditions of force majeure under the applicable legal system are satisfied, namely the unforeseeability of the event, the impossibility of avoiding it, and the absence of any fault on the part of the debtor.[25]

3. Burden of Proof for Exemption from Liability and the Limits of Invoking the COVID-19 Pandemic

The burden of proving exemption from liability in cases of loss, damage, or delay caused by the COVID-19 pandemic constitutes a fundamental legal issue. It rests upon the debtor (the carrier or the contracting party bound by the obligation) to establish that the conditions of force majeure or emergency circumstances are satisfied by demonstrating that the pandemic and the quarantine measures constituted an external event beyond its control, which was unforeseeable and unavoidable, and that they were the direct cause rendering the performance of the obligation impossible or excessively burdensome, without any fault or negligence on its part. However, invoking the COVID-19 pandemic is not absolute. Its scope is limited by the requirement to establish a direct causal relationship between the pandemic and the damage or delay, while taking into account the nature of the activity, the possibility of adopting alternative measures for performance, and compliance with the legal and contractual obligations relating to notification and proof of the actual impact of the event. Accordingly, the mere occurrence of the pandemic does not automatically exempt the debtor from liability; rather, the debtor must legally establish, with precision, that the conditions and limits for the application of the exemption have been satisfied.

3.1. Definition of the Burden of Proof

The burden of proof constitutes one of the fundamental pillars of the justice system. It represents the procedural and legal obligation imposed on one of the parties to a dispute to produce evidence establishing the truth of the facts or allegations upon which its claims or defenses are based before a court or arbitral tribunal. This burden is of great importance because a judge does not render judgment based on personal knowledge or presumptions, but rather resolves the dispute on the basis of the lawful and convincing evidence presented in accordance with the applicable legal rules. The burden of proof arises whenever one of the parties asserts the existence of a right or a legal fact to which the law attaches a specific legal effect, whether in the form of an original claim or as a defense intended to negate or exempt liability. In this context, the party relying on a legal defense such as force majeure, the absence of fault, or the extinction of the obligation is considered the claimant for evidentiary purposes and therefore bears the burden of proving that the legal conditions for such a defense have been fulfilled.[26]

This principle is based on the well-established rule in legal doctrine and jurisprudence expressed by the maxim: "The burden of proof rests upon the claimant." This rule aims to ensure fairness between the parties and promote the stability of legal transactions, since the opposing party cannot be required to disprove an allegation that has not first been substantiated. Accordingly, exemption from liability or the discharge of an obligation is not presumed merely because it is alleged. Rather, the party invoking such a defense must establish, through legally admissible evidence, the facts on which it relies; otherwise, it remains bound by the legal consequences resulting from the failure to discharge the burden of proof.[27]

Accordingly, the burden of proof is not limited to the mere production of any evidence; rather, it requires the submission of sufficient and relevant evidence capable of convincing the judicial authority of the existence of the alleged fact and of its direct connection to the legal effect sought. Consequently, the burden of proof constitutes a decisive instrument in directing the course of legal proceedings and determining their outcome.

3.1.2. Criteria for Determining When Exemption Is Permissible

In light of the exceptional circumstances resulting from the spread of the COVID-19 pandemic, the legal question arises as to when exemption from liability, such as on the basis of force majeure, is permissible. This is determined through the burden of proof, which rests upon the party claiming that the pandemic exempts it from performing its contractual obligation. Legal studies generally agree that a number of objective and legal criteria must be satisfied before such a defense is accepted and exemption from liability is granted.

The occurrence of the event (the pandemic) as an external cause beyond the control of the party invoking the defense:

The effects of COVID-19 (Coronavirus) must be entirely external to the will of the debtor. In other words, they must not result from the debtor's negligence or poor judgment in the performance of the obligation, but rather from compelling global circumstances that affected its ability to perform.[28]

The event must have been unforeseeable at the time the contract was concluded:

One of the essential requirements of force majeure, justifying exemption from liability, is that the event must have been unforeseeable at the time the contract was signed. The mere occurrence of an exceptional circumstance is not sufficient; rather, it must be one that could not reasonably have been foreseen at the time of the conclusion of the contract. (Taitous Fethi, 2020)

Impossibility of Performance or Performance Becoming Equivalent to Impossibility:

It is not sufficient that the event be merely external and unforeseeable. It is also required that its effects on the performance of the contractual obligations be such that the available evidence establishes the impossibility of performance, or at least demonstrates that performance has become so excessively burdensome as to make the fulfilment of the contract practically impossible.[29]

Inability to Avoid or Mitigate the Effects of the Event Through Reasonable Diligence:

The party invoking exemption from liability must prove that it was not reasonably possible to take measures to prevent or mitigate the effects of the pandemic on the performance of the contractual obligation, and that all reasonable means available to avoid or lessen its consequences had been exhausted without success.[30]

3.2. Causal Relationship Between the Pandemic and the Non-Performance of the Obligation

With respect to the causal relationship between the COVID-19 pandemic and the non-performance of contractual obligations, the mere occurrence of the pandemic or its declaration as a global epidemic is not, from a legal standpoint, sufficient. Rather, it is necessary to establish a direct and clear causal link between the spread of the virus and the measures adopted in response to it such as quarantine, border closures, and the suspension of economic activities and the inability of the party invoking the defense to perform the contractual obligations. This causal relationship constitutes one of the decisive criteria for accepting a defense based on exemption from liability, since the law distinguishes between general circumstances affecting society as a whole and internal or organizational factor attributable to the debtor. Accordingly, if the actual cause of the non-performance is due to internal reasons, such as poor organization, inadequate management, or the failure to adopt appropriate preventive measures, the mere invocation of the pandemic is insufficient to justify exemption, because the required causal relationship between the external event and the non-performance of the obligation is either interrupted or indirect.

To establish this causal relationship, the party invoking the defense must demonstrate, whether before a court or an arbitral tribunal, that the official measures adopted to limit the spread of

COVID-19 (Coronavirus), such as lockdowns and government-imposed restrictions, were the actual cause of the impossibility or disruption of performance, and that the non-performance cannot reasonably be attributed to causes other than the pandemic, including factors that were within the debtor's own control. Legal studies have confirmed that the COVID-19 (Coronavirus) pandemic is not merely a general circumstance but may constitute a foreign cause affecting the performance of contractual obligations and, in certain cases, leading to a disruption of the contractual equilibrium or to the impossibility of performance. This underscores the importance of establishing the causal relationship between the external event and its impact on contractual performance.[31]

3.3. Limits of Invoking the COVID-19 Pandemic as a Defense

In contract law, the invocation of the COVID-19 pandemic as a ground for exemption from liability is not absolute but is governed by a number of legal and contractual considerations. Although the COVID-19 (Coronavirus) pandemic is recognized as an exceptional event that may amount to force majeure or an emergency circumstance, its mere occurrence is not, in itself, sufficient to justify exemption from liability. The party relying on this defense must establish that the pandemic, or the quarantine measures and government restrictions adopted in response to it, had a direct and inevitable impact on the performance of its obligation, rendering such performance impossible or excessively burdensome in an unforeseeable manner. It must also prove the absence of any fault or negligence on its part and demonstrate that it exercised due diligence by taking all reasonable alternative measures to perform the obligation. Moreover, both legal doctrine and judicial practice emphasize that the impossibility must be objective and general rather than merely personal or economic; otherwise, exemption from liability cannot be granted.

The limits of invoking the pandemic are also determined by the provisions of the contract itself. Many contracts contain express force majeure clauses that include epidemics and public health emergencies among the grounds for exemption, whereas in other contracts the matter is left to the interpretation of the general legal rules. In addition, compliance with contractual requirements such as providing notice within the prescribed time limits and proving the direct causal relationship between the event and the non-performance of the obligation is generally required. Consequently, the invocation of the COVID-19 (Coronavirus) pandemic is subject to careful judicial assessment that seeks to balance the stability of contractual relations with contractual fairness, and it is accepted only within a limited and well-defined scope.[32]

Conclusion

It is evident that the liability of the maritime carrier of goods constitutes a fundamental pillar in the regulation of contracts of carriage by sea. This liability is based on the legal obligation to transport the goods and deliver them to the consignee in sound condition. Its legal nature has been defined by the Algerian legislator, the Brussels Convention, the Hague-Visby Rules, and the Hamburg Convention. Both Algerian law and the international conventions affirm the contractual basis of the carrier's liability and the necessity of fulfilling obligations toward the cargo and the vessel. This is reflected in the carrier's obligations to load, transport, stow, and protect the goods, as well as to ensure the seaworthiness of the vessel for the maritime voyage, thereby demonstrating the legal system's concern for protecting the interests of the shipper and ensuring the performance of the contract of carriage in accordance with precise technical and legal standards.

However, the emergence of the COVID-19 pandemic constituted an exceptional circumstance that affected the establishment of this liability, both in terms of the element of fault and the element of causation, while introducing new challenges regarding the possibility of invoking force majeure or a foreign cause as grounds for exemption from liability. The circumstances imposed by the pandemic demonstrated the difficulty of performing contractual obligations with precision and led to damage to the goods beyond the carrier's control, prompting a reconsideration of the existence and legal limits of liability. Accordingly, the impact of the COVID-19 pandemic on the liability of the maritime carrier of goods represents a practical example of the interaction between contractual obligations and exceptional circumstances that may exempt the carrier from liability or determine the extent of its responsibilities, reflecting the flexibility of maritime law in addressing unforeseen events while safeguarding the interests of all parties.

Recommendations

- Encourage the Algerian judiciary to adopt a flexible interpretation of the concept of force majeure in cases involving pandemics.
- Include in contracts an automatic renegotiation mechanism to be triggered upon the occurrence of global events affecting maritime transport.
- Establish mechanisms for international legal cooperation to unify the interpretation of force majeure in maritime transport.
- Regulate the allocation of risks between the shipper and the carrier under exceptional circumstances.
- Develop standardized health emergency clauses for inclusion in international bills of lading.

[1] Executive Decree No. 20-69 of 21 March 2020, relating to measures for the prevention and control of the spread of the COVID-19 (Coronavirus) pandemic, Official Gazette of the People's Democratic Republic of Algeria (O.G.), No. 15, issued on 21 March 2020.

[2] Article 127: Order No. 75-58 of 26 September 1975, containing the Algerian Civil Code, as amended and supplemented.

[3] Mohamed Zehdour: Liability for Damage Caused by Inanimate Objects and the Shipowner's Liability in Algerian Maritime Law, Dar Al-Hadatha, Algeria, 1st ed., 1990, p. 230.

[4] Mohamed Zehdour: Ibid.

[5] Mohamed Zehdour: Ibid.

[6] Mostafa Kamel Taha: Commercial Contracts, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2005, p. 1.

[7] Abdel Razzaq Al-Sanhouri: Al-Wasit fi Sharh al-Qanun al-Madani (The Intermediate Treatise on the Explanation of Civil Law): Sources of Obligations, Vol. 1, Egypt, 1952, p. 877.

[8] Abdel Razzaq Al-Sanhouri: Ibid.

[9] Mohamed Zehdour: Op. cit.

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