

*Judicial Remedies for Issues Arising from
Fixed-Term Employment Contract*

الحلول القضائية لإشكاليات عقد العمل محدد المدة

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Abstract:

This study examines judicial precedents concerning fixed-term employment contracts, with particular emphasis on the central legal issues in order to identify judicial trends and the mechanisms established to safeguard the rights of both employee and employer.

The findings indicate, most notably, that any request to reclassify a fixed-term employment contracts must be submitted during its period of validity. The study further established that arbitrary dismissal gives rise to a right of compensation, with contractual liability providing the legal foundation for such claims. Moreover, the research highlights a divergence in interpretation between lower courts and the Supreme Court, underscoring the need for harmonization of judicial approaches to ensure consistency and legal stability.

Keywords:

Employee; Fixed-term employment contract, Jurisprudence.

ملخص:

يهدف البحث الى تحليل الاجتهادات القضائية المتعلقة بأهم الإشكالات التي يثيرها عقد العمل محدد المدة، وذلك لمعرفة توجه القضاء وآليات حماية حقوق العامل والمستخدم.

وتوصل البحث الى نتائج مهمة، أبرزها يتعلق بإشكالية طلب العامل إعادة تكييف عقد العمل من عقد محدد المدة الى عقد دائم، حيث يجب عليه أن يقدم طلبه للقضاء خلال سريان العقد؛ كما توصل البحث الى أن التسريح التعسفي، ويكون أساسا عند إنهاء المستخدم لعلاقة العمل محدد المدة قبل انقضاء الأجل المتفق عليها، ودون اتفاق مع العامل، يستوجب حصول العامل على التعويض، وأساس التعويض هو المسؤولية العقدية، حيث يعرض عن أجر المدة

المتبقية من العقد دون أن يلزم بأداء العمل؛ وتوصل البحث أيضا لوجود تباين بين قرارات محاكم الموضوع وقرارات المحكمة العليا، مما يستدعي توحيد الرؤى لضمان الاستقرار القانوني.
كلمات مفتاحية:
عامل؛ عقد العمل محدد المدة؛ الاجتهادات القضائية.

INTRODUCTION

Labour is one of the most significant means by which individuals earn their livelihood. In this regard, it is a fundamental aspect of societal organization that individuals work fixed-term employment contracts under Algerian law, focusing on the issues of termination during the probationary period, early termination, and cases of unfair dismissal. The study seeks to clarify the rules governing these contracts and to identify the fundamental differences with indefinite-term contracts, particularly with regard to the basis for compensation and the mechanisms for protecting the rights of both the employee and the employer.

The research has yielded significant for others. Article 2 of Law No. 09-11 concerning Labour Relations defines workers as "any person who performs manual or intellectual work in return for remuneration within the organization and on behalf of another natural or legal person, whether public or private." This definition establishes that labour constitutes a physical or intellectual effort, or both, performed by one person for the benefit of another in exchange for remuneration for the services rendered.

As a matter of principle, employment contracts are of an indefinite duration, wherein the employee performs their duties until retirement. However, specific circumstances may necessitate that the work be limited to a defined period. For instance, a building contractor may enter into contracts with workers—for the construction of a building, for example—and it is agreed with them that the contract will terminate upon the completion of the construction work. Similarly, a school principal may be required to replace a teacher who, due to health issues, must take a leave of absence for the remainder of the academic year. In such a case, the principal would enter into a replacement contract for the duration of the teacher's absence. Therefore, these situations lead to the conclusion of fixed-term employment contracts.

The limitation of the duration of an employment contract does not preclude the generation of its legal effects, whether these arise from contractual obligations or from statutory provisions contained within the mandatory rules of labour law and other legislation related to the nature of the subject matter of the contract. However, the divergence of interests between the employer and the employee, coupled with disagreements over the interpretation of contractual clauses and the mechanisms for

their execution, may give rise to differing viewpoints and, consequently, to disputes between the two parties. This may lead to recourse to the judiciary for the resolution of the dispute.

The judiciary is the legally competent authority for settling disputes between the worker and the employer, by interpreting legal texts and applying them to the subject matter of the dispute. Therefore, the question arises as to what are the main issues raised by the fixed-term employment contract, and how has the judiciary addressed them?

The resolution of the legal issue is grounded fundamentally in the examination of judicial rulings.

1. Issues in the Formation of Fixed-Term Employment Contract

Article 8 of Law No. 90-11 stipulates, "The employment relationship arises from a written or unwritten contract. It exists, in any event, from the mere fact of working for an employer." However, Article 11 provides that the contract be deemed to be "concluded for an indefinite duration, unless otherwise provided in writing. Where no written employment contract exists, the employment relationship is presumed to be established for an indefinite duration." Consequently, the law tends to require that a fixed-term employment contract be in writing, and the absence of a written instrument creates a presumption that the contract is for an indefinite term. However, the use of the term "presumed" establishes this as a simple presumption that is rebuttable by evidence to the contrary. In the event of a dispute regarding the existence of an employment contract, the burden of proof rests with the employee.

Thus, in a case brought before the Supreme Court, it was held as follows: "It appears from the contested decision that the respondent continued to work for 14 days in December after the expiration of the fixed-term employment contract that bound him to the appellant, with the court basing its decision solely on the respondent's allegations. While Law No. 90-11 on individual labour relations stipulates in its Article 10 that the employment relationship may be proven by any means, it places the burden of proving the employment relationship on the claimant, that is, the employee, and not on the employer, and requires that there be a means of proving its existence. Moreover, although it has left broad scope for the employee to prove the employment relationship, it is not sufficient for the employee merely to declare it for that relationship to exist. Therefore, when the trial judge was content to base his decision—that the contract was renewed because the claimant worked for 14 days after the expiration of the last employment contract—solely on the claimant's statements, and the contested decision did not specify what evidence the claimant presented to prove the employment relationship, apart from his own declarations, the trial judge not only failed to provide sufficient reasoning for his decision but also

inverted a fundamental procedural rule concerning the means of proof, thereby exposing his decision to cassation and annulment." (decision, 2019)

Among the most significant issues related to the formation of the contract are the validity of the fixed-term employment contract and the conformity of the contract's cause with Article 12.

1.1 Validity of Fixed-Term Employment Contract

Both parties must sign the employment contract, as a bilateral legal act and given that it is, in principle, required to be in writing, at the time of its drafting. The written form is a formal means of expressing the will of the parties. If one party signs it without the other, the contract loses its legal value and cannot be legally enforced against the non-signing party. This is the point the appellant raised in his appeal for cassation: "The trial judge based his decision on the employment contract presented by the respondent in cassation, which is considered null and void for lack of the appellant's signature and initials, and is deemed a document fabricated for deceptive purposes, thereby rendering the dismissal unlawful and necessitating the cassation of the contested decision.". The Supreme Court responded to the ground of appeal as follows: "Indeed, it appears from the contested decision that its ruling is based on the fact that the employment relationship terminated upon the expiration of the term specified in the last contract, which was in effect from 01/01/2010 to 31/03/2010, despite the appellant's denial of having signed the contract presented by the respondent in cassation for discussion. And whereas the absence of a signature from one of the parties to the contract prevents it from producing its legal effects with respect to the non-signing party and does not bind them, and whereas the trial judge, by overlooking this procedure which must be present in a synallagmatic contract, has exposed his decision to cassation." (Decision, 2013)

In another case, the employer prepared a new fixed-term contract, but the employee refused to sign it and was subsequently dismissed for gross misconduct due to his refusal to sign. He then initiated legal action seeking reinstatement to his position. The trial court, however, rejected his claim on the grounds that "the misconduct attributed to the appellant is serious in accordance with Article 73 of Law 90-11 for his refusal to execute instructions related to his work... his dismissal is not unfair." .When the employee appealed for cassation, the Supreme Court ruled as follows: "The contract is the law of the contracting parties, and the employment contract is a consensual contract that is concluded by the agreement of both parties. Consequently, the exercise of the appellant's will and his refusal to sign the fixed-term employment contract does not constitute a refusal to execute instructions related

to his work. Therefore, the trial judge, in ruling as he did, erred in the application of the law.” (Decision, 2013)

However, if the fixed-term employment contract fulfils the formal requirements but lacks one of the substantive conditions, such as a violation of Article 12, the contract is not rendered void but is instead converted into a contract of indefinite duration. This is evident from a Supreme Court decision, which found that the concluded contract contained neither the duration of the employment relationship nor the cause for the contract, and that the agreed-upon work was of a continuous nature. The Court held: "Whereas it is established in legal doctrine and jurisprudence that contracts concluded for a limited duration in violation of Article 12 of Law 90-11 are converted into contracts of indefinite duration in accordance with Article 14 of the same law.” (Decision, 2000)

The issue of a fixed-term contract's non-compliance with Article 12 is not a matter of public policy. Accordingly, the judge does not raise the issue ex officio, rather, it is incumbent upon the interested party to do so. This principle has been confirmed by decisions of the Supreme Court, including the following ruling: "Whereas it appears from the contested decision that the judge awarded compensation to the respondent, considering the termination of the employment relationship that bound him to the appellant after the expiration of the fixed term in the contract as an unfair dismissal, on the grounds that the fixed-term employment contract binding the parties was contrary to the provisions of Article 12; whereas it does not appear from the facts of the case—as presented by the contested decision—nor from its reasoning that the respondent raised the issue of the contract's violation of the provisions of Article 12, which must be raised by the interested party and cannot be raised ex officio by the judge." (Decision, 2011)

1.2 Conformity of the Contract`s Justification

Article 12 of Law 90-11 has exhaustively defined the cases in which a fixed-term employment contract may be concluded. If a fixed-term employment contract is concluded for, a reason not provided for in this article, the employee is then entitled to request the reclassification of their contract or to challenge its legality.

In this regard, in a case submitted to the Supreme Court, the appellant raised a ground of appeal alleging that: "the fixed-term employment contracts concluded between the appellant and the respondent all state 'service necessity' as the justification, whereas this situation is not provided for under Article 12 of Law No. 90-11, which enumerates the cases for recourse exhaustively. Consequently, the employment relationship becomes one of indefinite duration, especially since the position held by the appellant is, by its nature, a permanent position.” The Supreme

Court responded to this ground as follows: "Whereas it does indeed appear from the contested judgment that it held that the fixed-term employment contract concluded between the parties was, in its justification, compliant with Article 12 of Law No. 90-11, whereas the 'service necessity' invoked as the reason for the fixed term is not among the cases exhaustively enumerated by the said Article 12. By so ruling, the contested judgment has violated the law and is liable for cassation." (Decision, 2008)

In another case, fixed-term employment contracts had been concluded between an employee and an employer, stipulating "building works" as the justification for the contract. Upon the expiration of these contracts, the employee initiated legal action seeking reinstatement, arguing that the contract was, in reality, of an indefinite duration. The court granted his request, relying on Article 12 of Law No. 90-11. The employer appealed this judgment for cassation. The Supreme Court ruled in these terms: "Whereas it appears from the examination of the contested judgment that the trial judge, after analyzing the nine fixed-term contracts produced by the claimant employee and relying on Articles 12 and 14 of Law No. 90-11, concluded that the justification stated in the said contracts did not correspond to any of the cases provided for by Article 12. Indeed, although the stated justification was 'building works,' it was not demonstrated that the nature of the employer's activity was construction, nor that the hiring was temporary and for specific, non-continuous tasks. Furthermore, the positions held by the employee did not fall under any of the cases provided for by the said article. The judge therefore rightly considered the contracts to be of an indefinite duration, in accordance with Article 14 of Law No. 90-11, as they were contrary to the law. The trial judge thus correctly founded his decision." (Decision, 2005)

In reality, it is customary to consider building works as falling under project-based contracts. If the contracts in question pertained to a position unrelated to building works, the decision should have mentioned and discussed this point. Furthermore, the question arises as to whether the nature of a fixed-term contract can be challenged after its expiration. This issue will be addressed subsequently.

Jurisprudence has also established that the inclusion of all the cases provided for in Article 12 of Law No. 90-11 within a single fixed-term contract renders it non-compliant and transforms it into a contract of indefinite duration. This is evident from a judgment of the Supreme Court: "Whereas it appears from the contested judgment that the trial judge correctly founded his decision by considering the employment relationship binding the parties to be of an indefinite duration, in accordance with Article 14 of Law No. 90-11. Indeed, the employment contracts invoked, and particularly the last contract dated 24/10/2000, mentioned all the cases enumerated in

Article 12 of Law No. 90-11. The fact of mentioning all of them implies a lack of precision regarding the justification for hiring the respondent in cassation, whose dismissal is therefore considered unfair under Article 73 of Law No. 90-11. Consequently, the review of the conformity of the fixed-term employment contract falls within the sovereign power of the trial judge.” (Decision, 2006)

The question that arises: is the written specification of the justification for a fixed-term contract mandatory?

A judgment of the Supreme Court reasoned its decision as follows: "Whereas it appears from the contested judgment that the trial judge found that the employment contract concluded between the parties on 30/09/1998 for a fixed term of six months did not state the reason for this fixed term... the contract is therefore contrary to the provisions of Article 12 of Law No. 90-11." (Decision, 2005) This judgment thus required the written specification of the justification for the fixed-term employment contract.

However, an analysis of Article 12 of Law No. 90-11 reveals that the text does not explicitly impose the requirement to record the justification or the case for recourse in writing within the contract. This can be inferred from a series of judicial decisions, including a Supreme Court judgment which ruled: "It is incumbent upon the trial judge to verify the objective reality of the reason for which the respondent in cassation was hired, by examining the documents and arguments provided by the employer as evidence to the contrary of the respondent's allegations." (Decision, 2007) Thus, the contract did not contain a justification, and the Court instructed the trial judge to investigate this justification. If its specification had been a matter of public policy, the judge would have dismissed the appeal without remand.

Consequently, in the event of a dispute between the employee and the employer over the nature of the employment contract, if the employee bases their claims on non-compliance with the cases provided for in Article 12, the burden falls upon them to raise this issue and to prove it. The judge must then verify the justification and the nature of the contract by examining the claims and submissions of the parties. The judge cannot raise the non-conformity of the contract with Article 12. This was affirmed in the reasoning of a Supreme Court judgment: "The non-conformity of the contract with Article 12 is a matter that must be raised by the claimant having an interest to act, and cannot be raised by the judge.” (Decision, 2013)

1.3. Qualification of the Contract

The qualification of contracts—determining whether a contract is one of employment or another type—is an issue frequently submitted to the courts. This determination is essential, as it dictates the application of the relevant law to the

dispute. By way of illustration, in one case, a journalist brought an action against the Public Television Establishment, seeking reinstatement to her position following an unfair termination of her employment relationship. The initial judgment granted her claim. The establishment then appealed for cassation, which was admitted, leading to the referral of the case to another panel of the Court for re-examination. The subsequent judgment dismissed the appeal and ordered the establishment to reinstate the journalist.

The establishment again appealed for cassation against this second judgment, arguing that the Court had not complied with the referral decision, which required a discussion of the nature of the contract between the parties. The Supreme Court then ruled, "What distinguishes an employment contract from service or enterprise contracts is the element of subordination and remuneration. It was therefore incumbent upon the trial judge to examine this issue from a legal perspective, especially since journalists are subject to specific provisions in accordance with Article 4 of Law 90-11." (Decision, 2015) Consequently, the appeal for cassation was accepted.

A judgment rendered on the matter of contract reclassification is subject to appeal, as it does not fall within the cases expressly provided for a judgment in the first and last instance. This is evident from a decision of the Supreme Court, to which a direct appeal for cassation was brought, which ruled that "the contested judgment is qualified as a first-instance judgment, subject to appeal in accordance with Article 333 of the Code of Civil and Administrative Procedure, and consequently, the appeal for cassation should be declared inadmissible." (Decision, 2014)

However, the majority of issues raised before the courts concerning fixed-term employment contracts pertain to the qualification of the contract: whether it is a fixed-term employment contract or a contract of indefinite duration. These questions generally focus on two aspects: the timing of the request for reclassification and the competent jurisdiction.

1.3.1 Timing of the Request for Reclassification

A significant number of disputes concerning the timing for initiating an action for the reclassification of an employment contract, and more specifically the issue of requesting the reclassification of a fixed-term employment contract, have been brought before the judicial authorities. Judicial decisions have diverged on this issue. The majority of the Supreme Court's decisions have held that the action must be brought during the term of the fixed-term employment contract.

In this regard, a Supreme Court decision ruled: "Given that the request for the reclassification of the fixed-term employment contract occurred after the execution of

the final contract and the expiration of its term without reservation, and by reference to Article 14 of the same law, the action for reclassification of a fixed-term contract into an indefinite-term contract must be initiated during the term of the contract. And since the respondent, in the present case, initiated the action three years after the execution of the contract without reservation, the trial judge, by granting the action for dismissal and reclassifying the fixed-term contract as an indefinite-term contract, failed to provide sufficient reasoning and erred in the application of Article 14 of Law 90-11." (Decision, 2009)

Another decision from the Supreme Court reasoned its ruling in these terms: "Fixed-term contracts express the will of the parties, and any dispute concerning them must be raised at the time of the contract's execution, that is, during its term and not after its expiration, which is consistent with the established jurisprudence of the Supreme Court... And since it does not appear from the contested judgment that the trial judge found that the action for reclassification was initiated during the term of the contract, nor does it appear from its reasoning that the claimant proved he continued to work without a written contract after the expiration of the written fixed-term employment contract." (Decision, 2016) This decision thus set two conditions for the admissibility of an action for the reclassification of a fixed-term employment contract: that the action be brought during the term of the contract, or after its expiration if the employee continues to perform the same work.

This is further clarified in another Supreme Court decision: "The request for the reclassification of the contract into an indefinite-term contract, in accordance with the provisions of Article 14 of Law 90-11, must occur during its term and execution and not after its expiration and the end of the employment relationship in accordance with Article 66 of the same law." (Decision, 2013)

Another Supreme Court decision reasoned its ruling as follows: "It appears from the contested judgment that the trial judge did not violate the law, given that he applied the established jurisprudence according to which the action for reclassification of a fixed-term contract into an indefinite-term contract must be initiated during the term of the contract. And since the trial judge found that the employment relationship ended on 05/07/2011, and the appellant did not initiate the action in this case until 08/04/2014, he applied the law correctly, which renders the ground of appeal unfounded." (Court, 2016)

In another case, the employee challenged the judgment of the trial court, raising a ground of appeal that "the contested judgment is faulted for the trial judge's reasoning concerning the discussion of the nature of the fixed-term employment contract, which relies on the jurisprudence of the Supreme Court requiring that the

action be initiated during the term of the contract and not after its expiration, without reference to the source of this jurisprudence, especially since jurisprudence can only be inferred from decisions rendered by the combined chambers of the Supreme Court. Furthermore, Article 14 of Law 90-11 did not require a time limit for discussing the nature of the contract, but rather considered the contract to be of an indefinite duration as soon as it contravenes the provisions of Law 90-11, particularly its Article 12, and this by operation of law. It was incumbent upon the trial judge to discuss whether or not the conditions provided for in Article 12 of Law 90-11 were met in order to give the correct legal qualification to the nature of the employment contract binding the parties—and by ruling as he did, he violated domestic law."

The Supreme Court responded as follows: "The jurisprudence upon which the trial judge relied concerns the established jurisprudence of the Social Chamber of the Supreme Court, which has held that a dispute over the nature of a fixed-term employment contract that contravenes the provisions of Article 12 of Law 90-11 on labour relations must be raised during the term of the contract and not after its expiration and the severance of the employment relationship. Consequently, the trial judge, having found that the employment relationship ended upon the expiration of the term agreed upon in the contract on 17/07/2015, in accordance with Article 66 of Law 90-11 on labour relations, and that the appellant did not challenge its legality during its term, applied the law correctly, particularly the jurisprudence of the Social Chamber of the Supreme Court, and therefore, the ground of appeal is unfounded." (Court, <https://coursupreme.dz/>, 2017)

However, other decisions have held that it is not necessary to initiate the action for reclassification during the term of the contract. In one case, the employee continued to occupy his position for eight days after the expiration of his fixed-term employment contract before being dismissed. He then brought a legal action, seeking compensation for unfair dismissal, considering that the correct legal qualification of the contract was a contract of indefinite duration. The trial judge granted his claim.

Upon the employer's appeal for cassation, the employer raised a ground of appeal alleging that "the Court violated the law, particularly Article 66/2 of Law 90-11, section three, relating to the termination of the employment relationship, as the legislation has established that the employment relationship terminates by operation of law upon the expiration of the fixed-term employment contract, and that the initial action was brought by the respondent on 30/11/2015, whereas his last contract with the appellant had ended on 12/04/2015.". The Supreme Court responded as follows: "It appears from the contested judgment, and contrary to what the appellant alleges, that the trial judge found that the respondent continued to work for eight days after

the expiration of the fixed-term contract, as he established through the inquiry he conducted by hearing the claimant-respondent and the witnesses. In this context, the employment relationship is considered to be of an indefinite duration in accordance with Article 11 of Law 90-11, and cannot be terminated except within the framework provided by law, especially since the appellant did not prove that the dismissal was lawful. What is mentioned in the contested judgment concerning Article 12 of Law 90-11 is superfluous reasoning that does not affect the validity of the judgment. Consequently, the ground of appeal is unfounded and must be rejected." (Court, <http://coursupreme.dz>, 2018)

This decision, therefore, permitted the initiation of an action for reclassification of the contract after the expiration of the term of the fixed-term employment contract if the employee continued to work and was subsequently dismissed.

In another previously mentioned case, the employee was dismissed after the expiration of the fixed-term employment contracts he had concluded. He then initiated legal action, seeking reinstatement because the contracts concluded with him violated the provisions of Article 12 of Law No. 90-11. The court granted his claim, despite the fact that he had initiated the action after the termination of the employment relationship and without having continued to work after the end of the relationship with the employer.

The question therefore arises: what is the most correct position regarding the timing for initiating an action for reclassification? Should it be during the term of the contract, or after its expiration coupled with the employee's mere continuation in their position, or can it be initiated even after the expiration of the term and the severance of the employment relationship?

The majority of judicial decisions have consistently affirmed that an action for the reclassification of a fixed-term employment contract into a contract of indefinite duration must be initiated during the term of the contract and before its expiration, under penalty of the action's dismissal. This position is the most probable, given that a fixed-term employment contract is a contract with a specific term, and any challenge to it must occur during its execution and not after its expiration. To allow otherwise would undermine the legal position of the employer and disrupt their planning concerning workforce needs, which are based on the requirements of their activities. It is certain that an employer, in concluding employment contracts, seeks to accomplish the tasks assigned to their establishment within the specified timeframes, while simultaneously achieving efficiency in their operations, such as generating profits without incurring additional burdens for which there is no corresponding consideration.

1.3.2 Jurisdiction in Matters of Reclassification

In the event of a dispute between an employee and an employer, the law mandates recourse to the labour inspectorate for a conciliation attempt between the parties. If a conciliation is reached, the resulting record acquires the authority of a final judgment and becomes enforceable in the same manner as a definitive court decision. Conversely, in the absence of a conciliation, a record of non-conciliation is drawn up. This record constitutes an essential prerequisite for initiating legal action.

The question then arises: in the event of a dispute over the nature of the employment contract—whether it is a fixed-term or an indefinite-term contract—which authority is competent to rule on this matter?

A case was brought before the courts in which the employee based his claim on the fact that "the claimant produced a formal notice from the territorially competent labour inspectorate, dated 08/06/2016 under number 803, prior to the expiration of the contract binding the parties. Furthermore, the territorially competent labour inspector addressed a second correspondence concerning the illegality of the fixed-term employment contracts during the term of the employment relationship, and that the review of the contract's compliance with the law, particularly Article 12 of Law 90/11, is a matter of public policy and there is no ground to consider that the contract has expired.". The Supreme Court responded to this argument: "The fact that the labour inspectorate contested the position of the respondent in cassation on the grounds that it was contrary to Article 12 of Law 90/11 does not substitute for the initiation of a legal action during the execution of the contract." (Court, <http://Coursupreme.dz>, 2018)

In the reasoning of another decision, the Supreme Court declared: "It is imperative to submit the dispute to the court during the term of the contract, as it is the sole authority competent to examine the validity of the fixed-term employment contract." (Court <http://Coursupreme.dz>(2018) ,

Similarly, the Supreme Court ruled in one of its decisions that "the jurisprudence of the social chamber of the Supreme Court is settled on the necessity of challenging fixed-term employment contracts during their execution before the competent court, which alone has the power to rule on their legality and to proceed with the reclassification of the employment relationship, which was not the case in the present matter." (Court <http://Coursupreme.dz>(2018) ,

Consequently, the jurisdiction to rule on the reclassification of an employment contract as either fixed-term or indefinite-term rests with the court, not the labour inspectorate. As for the competent section within the court—civil or social—established jurisprudence has determined that "the civil section is competent for

disputes arising after the cessation of the employment relationship, whereas the social section is competent for the settlement of individual disputes arising from the employment relationship during the execution of the contract."

In one case, an employer company initiated an action before the civil section of the Koléa court. The judgment dismissed the claim for a formal defect. On appeal, the civil chamber of the appellate court issued a ruling of incompetence based on subject matter. The company appealed this ruling for cassation on the grounds that "the contested judgment relied on Article 500 of the Code of Civil and Administrative Procedure to conclude that the social section had subject-matter jurisdiction to rule on the dispute instead of the civil chamber, whereas this article only mentions, in an exhaustive and exclusive manner, certain matters falling within the competence of the social section. In accordance with Law 90-04 on the settlement of individual labour disputes, the social judge is competent for disputes relating to the execution of the employment relationship. However, the present dispute... does not concern the execution of an employment relationship that has ended, nor the employee's rights arising from that relationship. Compensation is governed by the provisions of the Civil Code, and the civil judge is the one who has the discretionary power if the claim is deemed legitimate. Moreover, the labour inspectorate is not competent in this case, as the dispute is of a purely civil nature, not to mention the principle of plenary jurisdiction." The Supreme Court responded to the ground of appeal as follows: "What the appellant raises in this ground is well-founded. Indeed, in accordance with Law No. 90-04..., the social judge is competent for the settlement of disputes relating to the execution of the employment relationship. However, the subject matter of the dispute in the present case is not of this nature, as the employment relationship ended with the respondent's resignation from his position. The relationship no longer exists. Rather, it is a claim for compensation for breach of obligations arising from a terminated employment relationship... On the other hand, Article 500 of the Code of Civil and Administrative Procedure, which defines the competence of the social section of the court, does not provide for the competence of this section to hear disputes submitted to it after the severance of the employment relationship." (Decision, 2017)

It should be noted that territorial jurisdiction for labour disputes, including those related to fixed-term employment contracts, is vested in the court within whose jurisdiction the employment contract was concluded or executed, or where the defendant's domicile is located, in accordance with the provisions of the Code of Civil and Administrative Procedure. This rule has been confirmed by judicial decisions, notably a judgment of the Supreme Court, the reasoning of which is as

follows: "It appears from the contested judgment that it is based on the fact that the competent court for the claimant's action is the court of Touggourt and not that of Biskra, given the location of the headquarters of the defendant and the liquidator. The appellate court should have declared a lack of territorial jurisdiction in application of Article 40/8 of the Code of Civil and Administrative Procedure. However, the very article on which the judgment is based provides that the territorial jurisdiction of the court in disputes between the employer and the employee is vested in the one within whose jurisdiction the contract was concluded or executed, or in the court of the defendant's domicile. The judges should have adhered to the provisions of this article, as well as to those of Article 24 of Law 90-04, and verified that these conditions were met in the present case." (Decision, 2014)

2. Issues Arising from the Execution of the Fixed-Term Employment Contract

Numerous issues may arise during the execution of a Fixed-Term Employment Contract. Among the most notable are:

2.1 Expiration of the Contract Term During a Period of illness

In a given case, an employee suffered an accident outside the scope of his employment, compelling him to suspend his employment relationship. He provided the employer with medical certificates attesting to his situation. However, the fixed-term employment contract reached its term during the period of sick leave. After his recovery, the employee requested to resume his work for the remaining duration of the contract, but the employer refused, arguing that the employment contract had expired.

The employee then initiated legal action, and the trial court ruled in his favor, considering that the employing company had "contravened Article 65 of Law 90/11, which mandates the resumption of the employment relationship at the end of the cause of its suspension, namely the accident."

Upon the appeal for cassation brought by the company, the Supreme Court decided: "Whereas it does indeed appear from the contested judgment that the appellant in cassation raised the dismissal of the action for lack of foundation, on the grounds that the fixed-term employment relationship terminated on 29/05/2014 in accordance with Article 66 of Law 90/11, and that the employee's persistence in presenting medical certificates from before and after the contract's end date cannot attest to the continuity of the legally extinguished employment relationship, nor extend that relationship; and that, as the judgment ruled otherwise, it has exposed its decision to cassation and annulment." (The Court Supreme, 2017)

In a similar case, the employee initiated legal action demanding the completion of the remaining term of his employment contract, arguing that "it is legally established that in the event of sick leave, the employment relationship is legally suspended in accordance with Article 64/2 from the date of the work accident until the decision of the treating physician to resume work... Articles 64 and 65 set forth the cases for suspension of the employment relationship and are not limited solely to the indefinite-term employment relationship..." The social judge dismissed the action for lack of foundation.

Upon the employee's appeal for cassation before the Supreme Court, the Court responded to his arguments as follows: "The jurisprudence of the Supreme Court is settled on the fact that sick leave taken by an employee during the term of a fixed-term employment contract does not result in the suspension of the employment relationship, such that the term of the fixed-term contract is not interrupted during the sick leave. It follows that the employment relationship is extinguished in accordance with Article 66 of Law 90-11, and the employee is not reinstated to his position of employment in accordance with Article 65 of the same law, which was the case in the present matter, thereby rendering the ground of appeal unfounded and requiring its rejection." (Decision, 2019)

2.2 Simultaneous Conclusion of Two Contracts

Among the issues submitted to the judiciary is the question of the conclusion of an indefinite-term contract, during the execution of which the employer proposes that the employee enter into a new fixed-term contract for a specific position or for work different from the initial employment. Is the new fixed-term contract considered a termination of the initial contract, or is it merely a temporary suspension of the initial contract that does not affect the legal status conferred upon the employee by the indefinite-term employment contract?

In one case, an employee entered into an indefinite-term contract with the employing company. Subsequently, a fixed-term employment contract was concluded between them, under which the employee held a senior management position. After the expiration of the term of the new contract, the employee was dismissed. He then initiated legal action seeking reinstatement to his original position. The court granted his claim and deemed the dismissal unfair.

The employing company appealed this decision for cassation and raised three grounds of appeal. However, the Supreme Court raised a ground (on its own motion) based on an error in the application of the law and insufficient reasoning, which stated: "Whereas it appears from the contested judgment that it ruled by considering the respondent's dismissal to be unfair, and by ordering his reinstatement to his

original position with compensation in accordance with Article 73/4; whereas the dispute submitted to the trial judge concerns the respondent's capacity as a senior manager, as is apparent from the employment contract concluded between him and the appellant in cassation in this regard, which was for a fixed term; and whereas it also concerns the initial indefinite-term contract that bound the appellant to the respondent, given that he was an executive within the company and was subject to Law 90-11. That is to say, in the event of a dismissal decision in this capacity by the employer against the respondent, the decision in that case is subject to compliance with the procedures provided for by that law, resulting in the sanction provided for in Article 73/4. Whereas when the matter concerns a senior manager governed by the provisions of Decree 90-290...which apply to other workers when they commit gross misconduct allowing the employer to terminate the employment contract without further disciplinary action... it was incumbent upon the trial judge to distinguish between the two capacities of the respondent. The judge should have ruled on the issue of the respondent as an employee bound to the employer by an initial indefinite-term employment contract, and ruled on the issue of the temporary contract as a senior manager and the respondent's claims in that regard, without reinstating him to his position as a senior manager. And whereas the criticized judgment, having conflated the two, not only lacked sufficient reasoning but also violated the provisions of Decree 90/290, thereby exposing it to cassation." (Decision, 2006)

Consequently, the Supreme Court's decision did not prohibit the conclusion of a new fixed-term contract that suspends the initial indefinite-term employment contract. Instead, it required that the judgment be reasoned and that it determine which contract, if any, had been breached. This reveals that the termination of the fixed-term employment contract does not necessarily entail the termination of the initial indefinite-term contract.

3.Issues Related to the Termination of the Fixed-Term Employment Contract

The fixed-term employment contract, as its name indicates, is a non-permanent contract that terminates automatically upon the expiration of the agreed-upon term. The parties are not entitled to demand a new negotiation upon the arrival of this term. The legislation does not require either the employer or the employee to notify the other party of the end of the employment relationship.

This position has been confirmed by jurisprudence, notably by a judgment of the Supreme Court which examined an appeal for cassation brought by an employee, who argued that "the company had not provided the Court with proof that it had informed him of the end of the employment relationship." The Court rejected this argument, ruling as follows: "It appears from the contested decision that it is based on

the fact that the employment relationship binding the claimant to the defendant was a fixed-term relationship that ended upon the expiration of the period stipulated in the addendum to the contract dated 20/06/2006, in accordance with Article 66 of Law No. 90-11. The law does not require notification to the employee of the end of the fixed-term employment relationship, given that the contract terminates upon its expiration." (Decision, 2014)

3.1. Continuation of the Employment Relationship after the Expiration of the Term

Among the issues that arise in practice, is the situation where an employee remains in their position after the expiration of a fixed-term employment contract without a new written contract being concluded? The question then arises as to whether this constitutes a tacit extension of the fixed-term employment contract, or whether it represents a new contract, distinct from the previous one.

Numerous jurisprudential decisions have held that if an employee has concluded a fixed-term employment contract and the employment relationship continues after the expiration of the contract's term without a new contract being concluded, this is considered a new employment contract of indefinite duration.

Thus, in a case where the facts involved an employee concluding an employment contract for a term of two and a half years, and after the expiration of the contract's term, the employing company did not dismiss him and he continued to work for it for an additional two years before being dismissed; the employee initiated legal action seeking reinstatement to his position and permanent tenure. The judgment was rendered dismissing his claim for lack of foundation. The employee then appealed for cassation, and the Supreme Court ruled that "the judge, after having found the continuation of work and the retention of the claimant in his position with the defendant after the expiration of the last fixed-term employment contract dated 23/01/2004... should have applied Article 11 of Law No. 90-11 in the absence of a written contract, and considered the employment relationship to be of an indefinite duration. And as long as it was not proven that the employee committed gross misconduct of the third degree, the dismissal he was subjected to was unfair, and Article 9 of Ordinance No. 96-21 amending and supplementing Article 73-04 of Law No. 90-11 should have been applied to him. The contrary having been established, the Court's decision on this point is subject to cassation and annulment." (Decision, 2015)

Similarly, a judgment of the Supreme Court ruled as follows: "Upon examination of the documents in the case file and the reasoning of the contested

decision, it appears that it dismissed the claim on the grounds that the contract binding the parties was for a fixed term. However, it is apparent that the parties were bound at the beginning of 1992 by five contracts and not a single one, as the contested decision indicated. The employment relationship then continued without any contract until the employee's suspension on 11/09/1995 from his position as a night watchman, without any written contract, until his dismissal—a period of approximately 3 years. And given that the absence of a written employment contract, in accordance with paragraph 2 of Article 11 of Law 90-11, renders the employment relationship one of indefinite duration, the employer cannot, therefore, suspend him at will. The Court should have specified which contract it relied upon, that it was for a fixed term, and from when to when the term began and ended for the claimant's dismissal to be justified. Having ruled otherwise, its decision is subject to cassation." (Decision, 1998)

In a similar case, the employing company appealed for cassation against the decision that ordered it "to reinstate the claimant to his original position or a similar one," on the grounds that "the appellant presented to the Court a copy of an addendum extending the respondent's employment contract, which was sent to him for signature via his professional email, and which he retained without signing, despite having regularly received his wages under this written contract.". The Supreme Court responded to the argument raised as follows: "It appears from the contested decision that it is based on the provisions of Article 11 of Law 90- concerning labour relations to establish that the claimant, after the expiration of his fixed-term employment contract on 02/05/2018, continued to work in his position with the defendant, as attested by the certificate of employment... without this contract being extended or renewed. This renders the relationship one of indefinite duration in the absence of a written employment contract... and this decision is correct and well-founded." (Decision, 2020)

However, some jurisprudence has adopted a different position. This is illustrated by a case where a judgment ruled that the dismissal of an employee from a position he held under a fixed-term employment contract, and which he continued to occupy after the contract's expiration, was an unfair dismissal. The court considered his retention in the position to constitute "a tacit renewal of an employment relationship of indefinite duration on the basis of Article 07 of Executive Decree No. 90-290.". Upon appeal for cassation, the Supreme Court ruled that "Article 07 of Executive Decree No. 90-290, which was relied upon, does not provide for the tacit renewal of the employment contract, but rather for the possibility of its renewal at the discretion of the parties whenever the need arises; that is, the renewal is effected by the

agreement of the parties. Consequently, the judges of the appellate court should have discussed the admissibility of the claimed indemnities on the basis of the documents submitted to them, whether it concerned a request for retirement or the end of the employment relationship upon the expiration of the contract's term." (Decision, 2017)

In another case, the facts involved the conclusion of an employment contract for a term of three years. After the expiration of the term, the employee continued to work until his dismissal, which was due to a negative evaluation prepared by his direct supervisor. The employee initiated legal action seeking permanent tenure in his position for an indefinite duration. The court dismissed his claim for lack of foundation. The employee then appealed for cassation to the Supreme Court, which ruled that "contrary to what the appellant has raised, it appears from the contested decision that the trial judge, in dismissing the appellant's claim seeking to reclassify the fixed-term employment contract as an indefinite-term contract and to grant him permanent tenure in his position, did not violate the law and applied it correctly, given that the contract binding the parties was a subsidized employment contract... and that upon the expiration of the contract on 29/02/2016, the employment relationship terminated." (Decision, 2020)

Consequently, the most pertinent question is the following: should the continuation of the employment relationship after the expiration of a fixed-term employment contract, without the conclusion of a new written contract, be considered a new contract of indefinite duration or a tacit extension of the fixed-term contract?

The prevailing view holds that the jurisprudential decisions which have qualified this situation as a new employment contract of indefinite duration are the most well-founded, due to the absence of a new contract and the non-specification of the duration of the work.

3.2. Termination during the Probationary Period

Article 20 of Law No. 90-11 provides that "During the probationary period, the employment relationship may be terminated at any time by either party without compensation or prior notice." This provision applies to both fixed-term and indefinite-term employment relationships, as has been confirmed by jurisprudence, notably in a judgment of the Supreme Court which reasoned its decision as follows: "Whereas it appears from the elements of the case file that the respondent was hired under a fixed-term contract of one year commencing on 07/06/1997, which included a probationary period of three months. Whereas the employer terminated the employment relationship during this probationary period. Whereas, by virtue of Article 20 of Law No. 90-11, the employment relationship may be terminated at any time by either party. And whereas, on the other hand, the employer is solely qualified

to assess whether the employee possesses the required aptitudes during the probationary period to which they were subject. By qualifying this termination as an unfair dismissal, the trial judge failed to provide a legal basis for his decision." (Decision, 2001)

In another case, the facts of which involved the conclusion of a fixed-term employment contract, followed by a second fixed-term contract between the same parties, and then a third, indefinite-term contract that included a probationary period clause for the employee, the latter was dismissed during this period. He brought an action for unfair dismissal, and the trial judge awarded him compensation of 400,000 DA. The employing company appealed for cassation. The Supreme Court quashed and annulled the judgment, holding that the trial judge should have "verified whether the employee had previously occupied the same position within the company for a duration far exceeding the probationary period stipulated in the indefinite-term contract. By failing to do so and by contenting himself with general reasoning, he deprived his decision of a legal basis. On the other hand, the appellant company was entitled to subject the employee to a new probationary period if it was established that it had concluded a new indefinite-term contract for a new and different position, requiring skills other than those the employee possessed when he occupied his previous position under fixed-term contracts. It was also entitled to invoke the provisions of Article 18 et seq. of Law 90-11 to terminate this relationship. The criticized judgment, by neglecting to examine all of these legal issues which were imperative, is subject to cassation and annulment." (Decision, 2010)

Consequently, it is permissible for an employer to subject an employee to a new probationary period upon hiring them under a new indefinite-term employment contract for a position different from the one they previously held with the same employer under a fixed-term contract. This principle has been enshrined in multiple jurisprudential decisions, including a judgment of the Supreme Court which adopted the following principle: "The employer is entitled to subject the employee to a probationary period within the framework of an indefinite-term employment contract, even if the employee has previously worked within the same company under fixed-term contracts, provided it is proven that the new position assigned to the employee is different from the previous position and requires a probationary period." (Decision, 2010)

In another case, the trial judge had ordered the reinstatement of a female employee to her position. The employer appealed this judgment for cassation. The Supreme Court quashed and annulled the decision on the grounds that the judge should have "verified and examined the modalities of the termination of the

employment relationship in light of the concluded contract, and determined whether it had occurred after the expiration of the probationary period. In that case, he could only have ordered the reinstatement of the employee for the remaining duration of the fixed-term contract and compensated her for the damages sustained. He should also have verified whether the dismissal took place during the probationary period due to its being inconclusive, and then ruled on the matter in accordance with the law. The case having been handled differently, the contested judgment must be quashed and annulled." (Decision, 2020)

3.3. Termination Before the Expiration of the Term

The issue arises concerning the termination of a fixed-term employment contract before the expiration of its term, due to the cessation of the situation for which it was concluded. The Supreme Court has ruled in this regard that the employee is not bound to adhere to the completion of the project for which the employment contract was concluded "if the contract expressly mentions the start and end of the employment relationship." (Decision, 2013)

Consequently, the agreed-upon term must be respected, or a new contract amending the one in force must be concluded. It follows from this decision that if the employer was uncertain of the date on which they could dispense with the employee's services, they should not have set a specific date but rather linked the end of the contract to an objective criterion, such as the completion of the works. Indeed, Article 12 of Law No. 90-11 requires the specification of the duration of the employment relationship, without mandating that this take the form of a specific date. The term can therefore be fixed in any unequivocal manner, such as the completion of the works or the commencement of duties by the employee being replaced.

3.4. Unfair Dismissal

If the employer proceeds to terminate the employment relationship before its term without a legitimate reason, this dismissal is classified as unfair. What is the applicable rule in this matter, and if compensation is awarded, what is its legal basis?

3.4.1. The Regime of Unfair Dismissal

Established jurisprudence holds that if an employer dismisses an employee before the expiration of a fixed-term contract, without such dismissal being justified by gross misconduct or based on a contractual clause or a statutory provision (such as the probationary period), the dismissal is then considered unfair. Consequently, the employer is obligated either to reinstate the employee to their position until the expiration of the contract or to compensate them for the remaining period.

A judgment of the Supreme Court reasoned its decision as follows: "Whereas it appears from the contested judgment and the facts it sets forth that the respondent

worked for the appellant under a fixed-term contract of six months, commencing on 01/03/2015 according to the respondent and on 02/05/2015 according to the appellant, and that he was verbally dismissed on 17/07/2015, that is, before the expiration of the contract's term. Whereas the trial judge classified this dismissal as unfair based on Article 73, paragraph 1, of Law No. 90-11 and awarded him compensation for unfair dismissal in accordance with Article 73, paragraph 4, of the same law. However, these two articles apply to indefinite-term contracts and not to fixed-term contracts. Consequently, it was incumbent upon the trial judge, if he found the dismissal by the appellant to be unfair, to order either reinstatement to complete the remaining period of the contract or corresponding compensation, especially since no element indicates that the respondent had been granted permanent tenure in his position and that the fixed-term contract had been converted into an indefinite-term contract. By ruling otherwise, he exposed his judgment to cassation and annulment." (<http://Coursupreme.dz>, 2018)

In another case, the employment relationship was terminated before the agreed-upon date. The employee brought an action for compensation. The trial judge awarded compensation equivalent to six months' wages, in application of Article 73 of Law No. 90-11. Upon the employer's appeal for cassation, the Supreme Court decided: "Whereas it does indeed appear from the facts reported by the trial judge that the employment relationship was for a fixed term and that the respondent's dismissal occurred before the expiration date set by the contract. However, the trial judge applied Article 73, paragraph 4, of Law No. 90-11, which applies only in the case of an employment relationship of indefinite duration. With respect to a fixed-term employment relationship, the compensation can only correspond to the remaining period of the contract. By ruling otherwise, he exposed his decision to cassation and annulment." (Court, <http://Coursupreme.dz>, 2015)

In yet another case, an employee was dismissed before the end of the agreed-upon work term. Following his legal action, a judgment was rendered ordering his reinstatement to his position in accordance with Article 11, coupled with compensation of 20,000 DA in application of Article 124 of the Civil Code. The employer appealed for cassation to the Supreme Court, which ruled that: "If it is found that he was dismissed during the validity period of the contract and before its expiration, and that the dismissal is considered unfair, it must be judged that the claimant employee has the right to be reinstated to his position for the remaining period of the fixed-term contract. If the employing entity refuses his reinstatement, he shall be awarded compensation for the remaining period of the employment contract. The trial judge, having ruled otherwise, deprived his judgment of a legal basis and

erred in the application of Article 73, paragraph 4, of Law No. 90-11, which applies to the unfair dismissal of an employee under an indefinite-term contract, thereby exposing his judgment to cassation and annulment." (<http://Coursupreme.dz>, 2016)

This position has been consistently reaffirmed by the jurisprudence of the Supreme Court, notably in another judgment reasoned as follows: "On the ground raised by the Supreme Court, based on the violation of the law: Whereas it appears from the contested judgment that the trial judge found that the employee's dismissal was unfair and contrary to Article 73, paragraph 1, of Law No. 90-11, and consequently awarded her compensation of 300,000 DA in application of Article 73, paragraph 4, of the same law. However, it appears from the facts of the case and the acknowledgment of the parties that the employment relationship was established by a fixed-term contract from 05/06/2014 to 04/06/2015, but that the appellant terminated this relationship before its term, on 25/11/2014. In this case, the judge should have ruled on compensation for the remaining period of the contract in accordance with general rules, and not in application of Article 73, paragraph 4, of Law No. 90-11. By ruling otherwise, he exposed his judgment to cassation and annulment." (<http://Coursupreme.dz>(2017 ,

This decision elevates the assessment of compensation for unfair dismissal in this context to a matter of public policy, which the judge must raise (on their own motion), even if the parties have not invoked it, and which can be raised at any stage of the proceedings.

It should be noted that if a court decision orders the reinstatement of the employee to their position to complete the duration of the employment contract, the employee cannot subsequently claim either compensation for the dismissal they suffered or the conversion of their contract into an indefinite-term contract.

In this regard, an employee, after being unfairly dismissed before the expiration of his contract, obtained his reinstatement by a court decision. He then initiated a second action to claim compensation for unfair dismissal on the basis of Article 73 or the conversion of his contract into an indefinite-term contract. The Supreme Court rejected his claim in these terms: "...the respondent complied with the judgment that ordered it to reinstate the employee to his position for a fixed term. Since the reinstatement, as ordered by the first judgment, is for a fixed term, the appellant can neither raise the issue of unfair dismissal, nor claim compensation for it, nor demand permanent reinstatement in application of Article 74, paragraph 3, which concerns dismissal within the framework of an indefinite-term contract." (Decision, 2008)

3.4.2. The Basis for Compensation for Unfair Dismissal

Numerous jurisprudential decisions, including judgments from the Supreme Court, base the compensation for unfair dismissal on Article 124 of the Civil Code. One judgment thus states: "On the ground raised, based on the violation of domestic law: Whereas it appears from the contested judgment that the trial judge, although having correctly found that the termination of the employment relationship occurred unfairly before the end of the fixed-term employment contract—after verifying that the contract concluded between the parties was legally valid and that the appellant had not proven compliance with legal procedures and internal regulations—should have, in accordance with the claim, either ordered reinstatement to the position for the remaining duration of the contract, extending from 20/12/2015 to 31/01/2016, or awarded corresponding compensation according to the general rules of reparation, on the basis of the provisions of Article 124 of the Civil Code and not on the basis of Article 73, paragraph 4, of Law No. 90-11, which was invoked by the trial judge. The latter article does not apply to fixed-term employment contracts but only to indefinite-term contracts. By relying on that article and granting the respondent compensation for unfair dismissal, he violated the law.") <http://Coursupreme.dz> (2018)

The reasoning of another judgment from the Supreme Court specifies: "Whereas it appears from the contested judgment that the respondent in cassation was bound to the appellant by a fixed-term employment relationship by virtue of an employment contract dated 08/06/2008... and that he was dismissed on 19/01/2009 before the end of the contract's term. Whereas the trial judge based his decision on the provisions of Article 73, paragraph 4, subparagraph 2, of Law 90-11, whereas compensation for the remaining period of a fixed-term employment contract must be awarded in accordance with the provisions of the Civil Code, and determined according to the prejudice suffered by the employee as a result of being deprived of work during this remaining period of the contract. Likewise, damages resulting from this dismissal must be adjudicated in accordance with the general rules of tortious liability, and the provisions of the aforementioned article do not apply." (Decision, 2012)

This judgment, therefore, interprets the general rule regarding compensation for the unfair dismissal of an employee bound by a fixed-term contract as being Article 124 of the Civil Code. Is this interpretation correct ?

Article 124 of the Civil Code pertains to tortious liability, and more specifically, to liability for one's own personal acts. Tortious liability is engaged when a person breaches a general duty not to cause harm to others. It is distinct from contractual liability, which arises from the non-performance of an obligation by one of the contracting parties. The latter presupposes the existence of a valid contract that

imposes obligations on the debtor. In the event of a breach of these obligations, contractual liability is engaged, entitling the creditor to reparation for the prejudice suffered. Compensation is then based on Article 182 of the Civil Code (prejudice that could normally have been foreseen at the time the contract was made).

Consequently, if the employee is dismissed before the end of the term specified in the employment contract, their reinstatement to their position to complete the remaining period should be ordered. If the employer refuses, the employee shall be compensated by an obligation imposed upon the employer to pay them the salary corresponding to the remaining period, without the employee having to provide any work in return.

CONCLUSION

Through the examination of dozens of jurisprudence, a set of findings have been derived, the most significant of which are as follows:

1. Article 12 of Law No. 90-11 has exhaustively enumerated the cases in which a fixed-term employment contract may be concluded. Consequently, if the contract specifies another justification, it is reclassified as an employment contract of indefinite duration.
2. The law does not require that the justification for the contract be expressly stated therein, which places the burden on the employee to prove that the said justification is contrary to the provisions of Article 12.
3. The majority of jurisprudence, and this is the most probable position, holds that an action for the reclassification of the contract must be initiated during the execution of the contract and not after its expiration. The primary reason for this is that a fixed-term employment contract is a temporal contract, in which time is an essential element. It is therefore not possible to request the reclassification of an employment contract after its full execution or the expiration of its term for one reason or another.
4. In the event of the expiration of a fixed-term employment contract and the employee's retention in their position, this is considered the conclusion of a new contract of indefinite duration.
5. The courts have exclusive jurisdiction to rule on a request for the reclassification of an employment contract, specifically to determine whether it fulfils the conditions of a fixed-term contract or whether it constitutes a contract of indefinite duration.
6. The assessment of compensation for unfair dismissal within the framework of a fixed-term employment contract is calculated based on the remaining period of the contract. This rule is a matter of public policy, which means that the judge must raise

it (on their own motion), even if the parties have not invoked it, and at any stage of the proceedings.

7. The calculation of compensation for unfair dismissal is based on contractual liability, specifically on Article 182 of the Civil Code, and not on tortious liability and Article 124 of the Civil Code, as has been erroneously held in numerous judicial decisions.

8. An employee's refusal to sign a new fixed-term employment contract—whether under the same or different conditions—does not constitute a refusal to execute the employer's instructions and therefore cannot justify their dismissal before the expiration of the current employment contract.

9. If an employee, after the completion of a fixed-term contract, concludes a new indefinite-term contract with the same employer to occupy the same position, the employer is not entitled to subject the employee to a new probationary period.

10. Numerous decisions by trial and appellate court judges are quashed and annulled by the Supreme Court, which indicates a lack of experience and insufficient mastery of the provisions of labour law on the part of these judges.

11. An employee bound to an employer by an indefinite-term employment contract may conclude a new fixed-term contract with the same employer to occupy another position, without this causing them to lose their right to resume their work in accordance with the initial contract after the expiration of the fixed-term contract, whether due to the arrival of its term or its termination.

12. Territorial jurisdiction for disputes relating to a fixed-term employment contract is vested in the court within whose jurisdiction the place of the contract's conclusion, the place of its execution, or the defendant's domicile is located.

Webography

- Court, T. S. (2015, 09 03). <http://Coursupreme.dz>. Retrieved from <http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-رقم-0940450-المؤرخ-3-09-2015>
- Court, T. S. (2016, 03 10). <http://Coursupreme.dz>. Retrieved from <https://coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-رقم-1056733-في-10-03-2016>
- Court, T. S. (2017, 05 03). <https://coursupreme.dz/>. Retrieved from <https://coursupreme.dz/?s=%D9%85%D8%AD%D8%AF%D8%AF+%D8%A7%D9%84%D9%85%D8%AF%D8%A9>: <https://>

- Court, T. S. (2018, 05 10). <http://Coursupreme.dz>. Retrieved from <http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-1254662-رقم-10-05-2018-في-المؤرخ-1254662-رقم>
- Court, T. S. (2018, 09 06). <http://coursupreme.dz>. Retrieved from <http://coursupreme.dz/?s=المدة+محدد>: <http://coursupreme.dz/decision/القرار-1258984-رقم-06-09-2018-في-المؤرخ-1258984-رقم>
- Court, T. S. (2018, 06 07). <http://Coursupreme.dz>. Retrieved from <http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-1229118-رقم-07-06-2018-في-المؤرخ-1229118-رقم>
- Court, T. S. (2018, 07 04). <http://Coursupreme.dz>. Retrieved from <http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-1296630-رقم-04-07-2018-في-المؤرخ-1296630-رقم>
- Decision, 164030 (Supreme Court 09 15, 1998).
- Decision, 188773 (Supreme Court 03 14, 2000).
- Decision, 211422 (Supreme Court 01 11, 2001).
- Decision, 292486 (Supreme Court 03 16, 2005).
- Decision, 299456 (Supreme Court 06 08, 2005).
- Decision, 329195 (Supreme Court 03 08, 2006).
- Decision, 334042 (Supreme Court 05 10, 2006).
- Decision, 411734 (Supreme Court 12 05, 2007).
- Decision, 461905 (Supreme Court 04 09, 2008).
- Decision, 450715 (Supreme Court 04 09, 2008).
- Decision, 476502 (Supreme Court 01 06, 2009).
- Decision, 540093 (Supreme Court 04 08, 2010).
- Decision, 540092 (Supreme Court 07 01, 2010).
- Decision, 622703 (Supreme Court 06 02, 2011).
- Decision, 668271 (Supreme Court 01 05, 2012).
- Decision, 787568 (Supreme Court 05 02, 2013).
- Decision, 622703 (Supreme Court 03 07, 2013).
- Decision, 697035 (Supreme Court 01 10, 2013).
- Decision, 697035 (Supreme Court 01 10, 2013).
- Decision, 717250 (Supreme Court 03 07, 2013).
- Decision, 850356 (Supreme Court 04 03, 2014).
- Decision, 875794 (Supreme Court 06 05, 2014).
- Decision, 871546 (Supreme Court 01 09, 2014).
- Decision, 911780 (Supreme Court 07 09, 2015).
- Decision, 941209 (Supreme Court 07 09, 2015).
- Decision, 909328 (Supreme Court 04 07, 2016).
- Decision, 1129206 (Supreme Court 09 21, 2017).
- Decision, 1087736 (Supreme Court 04 06, 2017).
- decision, 1233770 (Supreme Court 07 04, 2019).
- Decision, 1345084 (Supreme Court 04 04, 2019).
- Decision, 1420796 (Supreme Court 03 05, 2020).

Decision, 1302744 (Supreme Court 07 02, 2020).

Decision, 1242724 (Supreme Court 09 03, 2020).

<http://Coursupreme.dz>. (2016, 07 01). Récupéré sur

<http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-رقم-958049-01-07-2016-في-المؤرخ>

<http://Coursupreme.dz>. (2017, 05 03). Retrieved from

<http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-رقم-1108778-03-05-2017-في-المؤرخ>

<http://Coursupreme.dz>. (2018, 01 04). Retrieved from

<http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-رقم-1199572-04-01-2018-في-المؤرخ>

<http://Coursupreme.dz>. (2018, 02 08). Retrieved from

<http://Coursupreme.dz/?s=المدة+محدد>: <http://Coursupreme.dz/decision/القرار-رقم-1214691-08-02-2018-في-المؤرخ>

The Court Supreme. (2017, 04 06). <http://Coursupreme.dz>. Retrieved from

Coursupreme.dz/?s=المدة+محدد: Coursupreme.dz/decision/القرار-رقم-1095792-06-04-2017-في-المؤرخ