

The Role of the Administrative judge in In Financial Rebalancing the Administrative Contract

Prepared By

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Abstract

The study aimed to clarify the role of the administrative judge in restoring the financial balance of the administrative contract. The problem of the study is that there is a clear imbalance in the legal positions between the parties to an administrative case within the scope of administrative contracts. This study will be limited to laws and legislations in Jordan that relate to penalties and comparative laws. And the relevant judicial rulings so that the mechanism of restoring the financial balance of the contract can be demystified and the judge's role in achieving this in light of the large number of disputes, problems and difficulties faced by administrative contracts in general. In this study, the researcher dealt with the comparative method and other texts related to the research topic. Among the results of the study:

-1The administrative judge is considered an innovator and innovator of legal rules and principles that are commensurate with the nature of administrative law.

-2The role of the administrative judge becomes more important and positive in countries that adopt the dual judiciary system, unlike countries that adopt a unified judiciary where the role of the judge is limited.

The study recommended that the Jordanian legislator should assign all disputes related to administrative contracts and other administrative disputes to the administrative judiciary by expanding the powers of the administrative court, as the civil judiciary is inconsistent with the spirit of the administrative judiciary and its privacy.

Keywords: Administrative judge, Financial Rebalancing ,the Administrative Contract .



المخلص

هدفت الدراسة إلى توضيح دور القاضي الإداري في إعادة التوازن المالي للعقد الإداري. وتكمن مشكلة الدراسة في وجود خلل واضح في المواقف القانونية بين أطراف القضية الإدارية في نطاق العقود الإدارية. ستقتصر هذه الدراسة على القوانين والتشريعات الأردنية المتعلقة بالعقوبات والقوانين المقارنة. والأحكام القضائية ذات الصلة بحيث يمكن إزالة الغموض عن آلية إعادة التوازن المالي للعقد ودور القاضي في تحقيق ذلك في ظل كثرة الخلافات والمشكلات والصعوبات التي تواجه العقود الإدارية بشكل عام. تناول الباحث في هذه الدراسة المنهج المقارن والنصوص الأخرى المتعلقة بموضوع البحث. ومن نتائج الدراسة:

1- يعتبر القاضي الإداري مبتكراً ومبتكراً للقواعد والمبادئ القانونية التي تتناسب مع طبيعة القانون الإداري.

2- يصبح دور القاضي الإداري أكثر أهمية وإيجابية في الدول التي تتبنى نظام القضاء المزدوج ، على عكس الدول التي تتبنى قضاء موحداً حيث يكون دور القاضي محدوداً. وأوصت الدراسة بضرورة قيام المشرع الأردني بإحالة جميع المنازعات المتعلقة بالعقود الإدارية وغيرها من المنازعات الإدارية إلى القضاء الإداري من خلال توسيع صلاحيات المحكمة الإدارية ، حيث يتعارض القضاء المدني مع روح القضاء الإداري وخصوصيته.

الكلمات المفتاحية: القاضي الإداري ، إعادة التوازن المالي ، العقد الإداري.

Introduction:

The administration must respect its contractual obligations, as the administrative contract requires the obligation that results in violation of a penalty from the contractor's right to demand his signature, and the administrative contract establishes a kind of financial balance between the interests of the parties, and in the event of a financial imbalance, the contractor with the administration has the right to demand compensation to return it to What it was so that he could continue to carry out the contract appropriately. It is a recognized right without being explicitly stipulated in the contract (Al-Sharqawi, 2007, 438).

The contractor may face a number of financial difficulties when executing the contract, and these difficulties may not be expected when concluding any of the contracts, and this may increase the cost to the contractor, and make the implementation of this contract cumbersome, and despite that, the contractor with the administration must continue to implement the contractual obligations With his right to obtain fair compensation for the expenses he incurred in facing these difficulties, in light of a theory called financial rebalancing of the contract, which is one of the theories by which the administrative judiciary wanted to restore the financial balance of the administrative contract. All administrative contracts when the conditions of application are met (El-Tamawi, 2005, 686).

The jurisprudence in determining the meaning of the financial balance of the contract was divided into two directions: The first trend stipulates that the balance is setting an accurate mathematical ratio between the obligations and rights of the contractor, and in another direction it went that the financial balance of the contract is the flexibility of the contractor's obligations with the management that requires the flexibility of his rights vis-à-vis the management, so it is necessary for his rights to match his obligations, increase or decrease, at least if The occurrence of this increase or decrease was due to the act of administration, which is a prevailing trend in jurisprudence and judgment (Al-Suwailem, 2008, 110).

Accordingly, this study comes to explain the role of the administrative judge in restoring the financial balance of the contract.

The Study Problem:

The problem of the study lies in the fact that the administrative judiciary in Jordan does not exercise the desired role in restoring the balance between the parties to an administrative case, as is the case with the comparative administrative judiciary, especially in France. The administrative judiciary is the competent authority for adjudicating administrative contract disputes, which hinders the adoption of these theories that the comparative administrative judiciary has adopted.

Elements of the study problem (study questions):

The study comes to answer the following questions:

1. What is meant by the administrative contract?
2. What is meant by the financial balance of the contract?
3. What are the judge's powers in the face of emergency circumstances?
4. What is the contractor's right to maintain the financial balance of the contract due to material difficulties?
5. What is the contractor's right to restore the financial balance of the contract due to the prince's work theory?
6. What are the implications of restoring the financial balance of the contract?
7. What are the judicial applications for restoring the financial balance of the contract?

The Importance of studying:

First: The theoretical importance of the study:

The importance of this study lies in the fact that: It deals with a very important topic as it relates to the issue of financial and administrative corruption in administrative contracts.

Second: The practical importance of the study:

The practical importance of the study is that the following groups can benefit from it:

1. Judges and lawyers to learn about the judge's role in restoring the financial balance of the contract in administrative contracts.
2. Researchers by making the study a nucleus for other similar studies.

Previous studies and what distinguishes the study from its counterparts:

Study Al-Hammoud, Waddah, the rights and obligations of the Contracting Administration in construction, independence and delivery contracts.

In this study, the researcher clarified what the bot contract is in terms of the definition and advantages of this contract, the legal formula, and the rights and obligations of the administration. He also clarified the methods of resolving disputes arising from bot contracts, whether from a judicial or non-judicial aspect

The current study differs from the previous study in that it dealt with the judge's role in restoring the financial balance of the contract, which was not covered in the previous study.

The study of the rule, Husam, entitled: "Judicial oversight over the extent of the administration's commitment to restoring the financial balance of the administrative contract in the event of unforeseen material difficulties (a comparative study).

The study aimed to reveal the reality of judicial oversight on the extent of the administration's commitment to restoring the financial balance of the contract in the event of unforeseen material difficulties in the comparative law, as the contractor seeks to obtain profits from behind his contract with the management, and if there are difficulties or circumstances that have prevented him from achieving that, the management must To intervene to ensure that the financial balance of the contract is restored by compensating the contractor to ensure that it continues to fulfill its obligations to the reasonable extent prevalent in the administrative judiciary. The current study differs from the previous study in that the current study will deal with the judge in restoring the financial balance of the contract in the Jordanian legislation, while the previous study dealt with the judiciary's oversight of restoring the financial balance of the contract.

Study methodology:

The researcher will use both the descriptive and analytical approach to analyze the legal texts regulating this topic in Jordanian law and analyze the relevant applications and judicial rulings so that the ambiguity can be removed from the mechanism of the financial rebalancing of the contract and the judge's role in achieving this in light of the many disputes, problems and difficulties faced by administrative contracts in general.

In this study the researcher also deals with the comparative approach and other texts related to the topic of the research, and in order to achieve this we can be enlightened by the comparative legislation and legal principles established by the courts of cassation, judicial jurisprudence, and jurisprudential explanations, to clarify the areas of confusion and ambiguity that the texts lack in the subject of restoring the financial balance of the contract and the role of the judge In achieving this.



The first topic

Definition of the administrative contract

The administrative contract is a contract that contains a set of translated characteristics of the position of the administration in its relationship with other parties, it is not a management contract or a contract of individuals, and among the most important of these characteristics is the public interest, the characteristic of the public authority, and this interest is the main driver of the administration's activity, the reason for its existence, and the secret of its privileges. Which requires clarification of the nature of this contract (Sultan, 1987, p. 10).

The administrative contract is nothing but the agreement of one of its parties, a legal person who is a public law person, such as the state, a central authority, a regional decentralized, or a facility, and another party is a person of public or private law, and the goal of this agreement is to organize and manage public facilities in a way that achieves their benefit. The intention of the administration to adopt the provisions of public law must be demonstrated by including one of the exceptional and unusual conditions in private law (Wumann, 2014, p. 12).

For more details, this topic will be addressed through the following two requirements:

The first requirement: the concept of the administrative contract

The second requirement: the characteristics of the administrative contract

The first requirement

The concept of an administrative contract

The administration concludes contracts called administrative contracts, through concluding them with individuals, bodies or other departments, with the aim of managing and organizing the public utility, within specific conditions, so that the administration enjoys privileges according to which the contracting and management are subject to a legal system, which is the administrative law. The administrative contract, as mentioned above, has three pillars: satisfaction, location and reason, which must be available in order to produce legal effects associated with the conditions of consent, health and safety and free from the defects of fraud, error, unfairness and coercion (Al-Fayyad, 2011, p.9).

An administrative contract in general is a contract concluded by a legal person from among public law persons for the management or administration of facilities, whereby the contract includes conditions that are not familiar to private law contracts.

First: the contract in the language:

The contract is defined in the language as everything that indicates commitment to doing something or leaving it from one side or two sides, and it has other connotations, including linking the parties to the thing, as well as the covenant and guarantee, and it was used by Arabs for the moral linking of speech, and it is said the contract of sale, the marriage contract and other contracts Others (Madkour, 1999, p. 245).

Second: the administrative contract idiomatically:

Several definitions of the administrative contract appeared, with different interpretations in its definition, as you notice that the administrative jurisprudence in France did not define a specific meaning for the administrative contract, there are trends from which the French legislator proceeded in defining the content of the administrative contract, as it may start in defining it sometimes from an important principle, which is the management of facilities The general guarantee of its regular and steady functioning, and sometimes stems from the nature of the special conditions that the administration makes for the operation of public utilities, which clearly indicate the administration's intention behind organizing administrative contracts (Aliwat, 2009, p. 4).

He defined the administrative contract as: “a contract concluded by a legal person who is a public law person to manage or run a facility, and that his intention to adopt the common law method is shown by including the contract one of the conditions that are not unusual in private law contracts” (Raslan, 1978, P. 823).

Third: The legal definition of the administrative contract:

Administration contracts are considered legal contracts, as the law gives them this quality, and the reference is that the legislator has given the administrative judiciary in some countries the jurisdiction to consider disputes related to these contracts, where the judiciary applies the rules of public law (Kanaan, 2012, p. 341).

We find that the legislator in Jordan did not provide for specific contracts that could be considered as administrative contracts based on the legal text that gives them this character, and the laws of the Supreme Court of Justice in Jordan and the Administrative Judiciary Law No. (27) of 2014 did not stipulate the jurisdiction of the administrative judiciary. In considering disputes related to administrative contracts in general, or one of the specific contracts exclusively, and from here the reference to considering the contract administrative or civil is the judiciary according to the subjective nature of the contract, and according to certain principles related to the nature of the contract (Okasha, 1989, p. 24).

This was confirmed by the jurisprudence of the Jordanian High Court of Justice in one of its decisions: “The Supreme Court of Justice does not have jurisdiction to consider administrative contract disputes, as the legislator granted the court under Article 9 of Law No. (12) of 1992 to consider with regard to decisions” (Kanaan, 2009, p. 315).

Fourth: the judicial concept of the administrative contract:

There may be no legislative texts that confer an administrative character on contracts, or the legislator has not made disputes related to one of the contracts the jurisdiction of the administrative judiciary, and the intention of the parties to the contract may not be clear about the contract that has been concluded, and here the judiciary determines the nature of the concluded contract Is it an administrative contract or a private contract (Mahfouz, 1999, p. 22)?

We find that the standard used by the administrative judiciary in France is based on the definition of an administrative contract according to what was stated in the French State Council, whereby the contract is concluded by a legal person for the management, administration or organization of the facilities, and it shows the administration’s explicit intention to adopt the provisions of public law, and to include The contract has unfamiliar terms in private law, or it authorizes the contractor with the administration to participate directly in the management of the public facility.

As for Jordan, through referring to the judiciary rulings in Jordan, we find that it recognized the nature of administrative contracts, and approved its special system because it relates to the management of public utilities. However, the dispute concerning the conclusion of the contract, its validity, its implementation, its expiration, its termination or its cancellation is a human rights dispute that is considered by the ordinary courts (Supreme Justice Resolution No. (40/79) Jordanian Bar Association Journal, 1980, p. 275).

The second requirement

Characteristics of the administrative contract

Administrative contracts are generally distinguished by the fact that one of its parties is a legal person, and the administrative contract is characterized by several characteristics as indicated by (Al-Jubouri, 1999, p. 103):

First: Administrative contracts by defining the law: They are contracts explicitly stipulated by the legislator, as they are administrative contracts, or he has authorized the authority to adjudicate them to the administrative judiciary, such as public works contracts, supply contracts, transport contracts and concession contracts.

Second: Administrative contracts by their nature: There is a difference in the judiciary and jurisprudence regarding determining the nature of an administrative contract, and the majority of jurisprudence has argued that the contract concluded by an administrative person with the intention of managing, managing and organizing public utilities, shows the intention to follow the methods of public law (Abu Al-Anin, 2005, p. 40) .

What is concluded from the foregoing is that the administrative contract has three controls and conditions, which are: The administration is a party to the contract, the connection of this contract with the activity of public utilities, and following the methods of public law (Sharif, 1981, p. 34), and this will be dealt with as follows:

1- Management is one of the parties to the contract:

In order for the contract to be considered administratively, one of the parties must be a public law person, whether it concerns the state or central administrations (such as ministries, departments and departments affiliated to it) or decentralized administrations, whether they are regional, such as local administrations, or utility agencies such as public institutions or others (Kanaan, 2012, p. 297).

As administrative contracts are among the contracts concluded by the administration, so it is obvious when giving the administrative capacity to the contracts that the administration is one of its parties, on the basis that the administrative rules have existed to govern the activity of the management authorities without the individual activity governed by the rules of private law (Badr, 2010, p. 22) .

2- That the contract relates to one of the activities of the public utilities:

We have previously explained that the administration must be a party to the contract, as it takes its administrative character, and yet it is not necessary for the contract to be considered administratively related to the activity of public utilities, whether in terms of its establishment, or in terms of organization and management.

The idea of public utilities and its connection with administrative contracts arose since the emergence of the theories that formed the theory of the administrative contract based on the Blanco ruling issued by the litigation court in 1873, which laid the foundation for the rules of administrative responsibility, and at the same time made the jurisdiction of the administrative courts in disputes related to public facilities (Al-Banna, 2007, p. 40).

3- The use of administration is one of the methods of public law:

It is imperative for the administration to use the methods and means of public law or the so-called exceptional or unfamiliar conditions in the private law in the contract that the administration concludes administratively, and the administration's intention to achieve this can be inferred by researching the provisions of the concluded contract, the content it contains, and an explanation of what this contract contains of Unusual provisions or conditions in private law contracts, as through them it is possible to infer the administration's intention to use public law methods, and these methods are specific to the nature of the contract in terms of it being an administrative contract and the administrative judiciary is competent to consider disputes related to it (Badawi, p.176) .

As for the Jordanian judiciary, it has argued that we are not in front of an administrative contract unless it appears that the administration has used in this contract its powers and privileges derived from the administrative law, so that the contract includes unfamiliar terms in the private law through which the state's authority and sovereignty emerge. These conditions were indicative of the administration's intention to submit to private law regarding any disputes arising from the implementation of the contract (Al-Khalayleh, 2015, p. 304).

The second topic

Theories of financial balance in the administrative contract

The principle in the theory of traditional contracts in civil law is that the contract is the law of the contracting parties, and it does not exempt the contractor from his obligations towards the other party except force majeure, which is an unexpected event that cannot be paid and is a cause external to the debtor that frees him from his obligation or exempts him from liability, and this rule was not taken. It is based on its launch in the field of administrative contracts, especially the concession contract, and from here the French Council of State created a compromise situation between the situation in which the contractor can fulfill his obligations, and the force majeure in which it is impossible to implement the obligation at all (Kedar, 2008, p. 40).

In this case, the contractor can fulfill his obligations, but he will be subjected to severe financial exhaustion, and this is the theory of precarious conditions that the French Council of State invented at the beginning of the twentieth century in order to achieve the public interest which stipulates that the public facility must operate regularly and steadily on the one hand, and in response to the rules of justice and fairness on the one hand. It is always possible, in long-term contracts, that circumstances appear during and during the contract period that were not taken into account at the time of the conclusion of the contract, circumstances that do not affect the will of the contracting parties, but which make the implementation of the obligation cumbersome and difficult, and even make the continuation of the implementation vulnerable to suspension and interruption. (Al-Khalayleh, 2015, p. 306).

Obviously, the contract is the same as that the subject matter of the contract is attached to a public utility. This ultimately leads to the cessation and interruption of public utility activity. If the rules of civil law are applied in contracts to contracts concluded by the public administration, because the contract - according to the provisions of the civil law - is the law of the contractors, and it is not permissible. Any party to it, and with its individual will, can dissolve its obligations, under the pretext that the implementation of the obligation has become difficult or cumbersome, except in one case, which is the case of force majeure, and it is decided to annul the contract, but this case has its conditions, which is that the accident or the new circumstance does not enter into the will. The contractors therein (such as war and disease, for example) and that it was not included in the account of the contractors, but it was not possible to anticipate it at the time of the contract, and that there would be an absolute impossibility to implement the contract. (Aliwat, 2009, p. 3).

The first requirement: the content of the theory of emergency conditions and the conditions for its application.

The second requirement: the content of the prince's working theory and the conditions for its application.

The first requirement

The content of the theory of contingent conditions and conditions for its application

The theory of emergency conditions is based on the following foundations (Sultan, 1987, p. 12):

1. This theory shares with the force majeure theory in finding incidents that could not be anticipated at the time of the contract, and cannot be paid after their occurrence, and it is not the work of one of the contractors. And from the court of cassation's judiciary in this regard, "the pleading is subject to urgent circumstances in contractual liability, which the court may, upon proven, return the burdensome contractual obligation to a reasonable extent, and this defense is not attributable to tort liability." The Court of Cassation ruled from the prevailing principles that the theory of emergency conditions may only be applied if These emergency conditions were unpredictable" .
2. These circumstances do not make the implementation of the obligation impossible - what is the matter in the case of force majeure - but they make it difficult and financially cumbersome. The Court of Cassation ruled, "The jurisprudence has established that the administrative orders that are enforceable are considered force majeure because the conditions of impossibility of anticipation and impossibility of payment are met by them. If the implementation of the commitment of one of the contracting parties becomes impossible after the conclusion of the contract due to the administrative orders, then the duty of this party to implement it lapses and the contract is terminated by the rule of law and it is returned. Each party has reached its status before the contract and there is no place for compensation in such a case because the debtor's obligation has been expired by force majeure and "also ruled" from the principles upon which the jurisprudence and the judiciary settled that the price hike due to war or general unrest is not considered a case of force majeure unless it makes fulfilling the obligation A complete impossibility, but if it makes the implementation difficult or needs extra expenses, it is not considered a compulsive accident" .
3. These accidents do not result in the exemption of the oblige from his obligation as is the case in force majeure, but they result in the distribution of burdens temporarily between the oblige, the contractor and the commitment donor of the contracting administration.
4. The emergency circumstances must be casual, and that they are the direct cause at the heart of the project's financial balance.

The theory of emergency conditions aims to enable the contractor with the management to continue providing his services to it, and implementing his obligations, and not compensating him for the loss he suffered because of those circumstances. As for Jordan, the Jordanian legislator has adopted the theory of emergency conditions in the civil law. Article 205 of the Jordanian Civil Code stipulates the following (Al-Fayyad, 2011, p. 11):-

"If exceptional general incidents occurred that it could not anticipate, and as a result of their occurrence, the implementation of the contractual obligation, even if not impossible, has become so burdensome to the debtor that it threatens him with a heavy loss, the court may, according to the circumstances and after balancing the interests of the parties, to return the burdensome commitment to the reasonable extent if justice is required. That, and every agreement in the process is null and void "(Madkour, 1999, p. 245).

Thus, the Jordanian legislator has codified the theory of emergency conditions that is the creation of the French administrative judiciary, and stipulated it in the civil law to be applied to civil contracts as well and before the ordinary judiciary, and thus we find that this theory is applied in both types of civil and administrative contracts, especially since the ordinary judiciary In Jordan, he is still the one who handles disputes related to the implementation of administrative contracts. This is what was confirmed by the Supreme Court of Justice in one of its relatively old judgments, as it said, "If the decision on the hospital's case requires researching the impact of the new legislation on the validity of continuing to implement the commitment contract according to which the collection of fees was referred to the summoned against them, and whether the trust is It alone has the right to dismiss that contract without the consent of the other party or sue it, so considering these matters and determining the rights of the two contract parties in relation to that - the emergency situation - falls outside the jurisdiction of the Supreme Court of Justice, and falls within the jurisdiction of the regular courts.

In Jordan, we can find a basis for applying the theory of emergency conditions in some provisions of the instructions for organizing bidding procedures and the conditions for participation in them for the year 2008, as Article (82 / c) of these instructions indicated exempting the contractor or contractor from damages arising from his delay in implementing the contract or failure to fulfill it. If it is proven that the reason for the delay is (temporary force majeure) .. and the exemption here due to delay means arranging a specific effect on the occurrence of the compulsive accident, which is to temporarily suspend the implementation of the contract until those temporary circumstances disappear without asking the contractor about this delay .. and we find that the term contained in the text The two previous articles, which is the term (temporary force majeure) is closer to the concept of the theory of emergency conditions than force majeure, as one of the characteristics of the emergency is that it is temporary and not permanent, and that it leads to delay or suspension of the implementation of the contract and does not make it impossible, as is the case in the force majeure that Lead to termination of the contract (Mahfouz, 1999, p. 24).

The second requirement

The content of the prince's working theory and conditions for its application

Administrative jurisprudence and judiciary unanimously agree on the necessity of a set of conditions to apply the prince's working theory in the field of administrative contracts, and we will present with a lease these conditions below (Kanaan, 2012, p.306):

First: There should be administrative contracts. There is no room for applying the prince's work theory to private law contracts or even private administration contracts, as not all contracts concluded by the public administration are administrative contracts that are subject to the legal system of administrative contracts. Some of them fall within a circle Civil contracts, especially if the public administration is determined to come down to the level of private individuals and deal with them on an equal footing.

Second: That the act of the public administration results in harm to the contracting party. It should be noted that this damage does not require a certain degree of severity, unlike the theory of emergency conditions.

Third: - That the harmful act was issued by the contracting administration, but if the harmful act was issued by another public authority or by an administrative body other than the contracting administration, there is no room here also to apply the theory of the prince's action, but rather to apply the theory of emergency conditions if the conditions of its application are complete, so compensation is required The procedure must first be issued by the contracting administrative authority. If this act is committed by a public legal person - other than the one who concluded the contract - one of the conditions of the prince's work theory will be neglected and thus he refuses to apply its provisions.

Fourth:- That the administration has not made a mistake when it took its harmful action, because its responsibility is contractual without error, so the assumption here is that the administration has taken a proper action imposed by the public interest and within the limits of its recognized authority in the amendment, except that if the right to use the legitimate authority to harm the contract with it He had to be compensated for this damage (Sultan, 1987, p. 12).

Fifth:- for the harmful action issued by the administration to be unexpected. In this, the Supreme Administrative Court in Egypt says that "when the contracting party has accepted and agreed to bear the differences in prices of raw materials, labor wages or other costs and increases that occur by the government after submitting the bid and it is It would make the implementation of the contract more costly and burdensome for the other party, but this result is consistent with the provisions of the contract, meaning that the damage was expected at the time of the contract, and thus one of the conditions for applying the prince's work theory has failed.

Sixth: - for the contractor to inflict a special harm that is not shared by all those affected by the general decision, and the special harm is achieved here if, for example, the new legislation afflicts - despite the generality of its provisions - the contractor alone is not the whole of the people or if he suffers a serious damage that exceeds what he has sustained Total people. In this regard, the Egyptian State Council says in its fatwa regarding Law No. 63 of 1964 on Social Security, "... and accordingly, the issuance of Law No. 63 of 1964 after contracting with what it included in the increase in the employer's burdens on social insurance contributions for those who employ them from contracting workers It was carried out by all the business owners of all levels and activities. Therefore, this law does not provide a description of the prince's work because he did not cause these companies any special harm...

Effects of the prince's work theory:

The availability of conditions for applying the prince's work theory has a number of implications and consequences for which we present the following (Ali, 1994, 455):

First: Restoring the financial balance of the contract or project, since the main effect of applying the prince's work theory is to restore the financial balance of the contract by compensating the contractor for damages caused to him as a result of the work carried out by the management in full compensation, and this compensation includes the loss suffered by the contractor, such as his expenses Additional fees or his obligation to pay new fees, as well as compensation for his lost earnings represented in the reasonable sums that he was entitled to obtain had the contract not imbalanced. This is what the administrative judiciary settled on. The Administrative Court in Egypt says in its ruling issued on June 30, 1957: "The rule regarding compensation ... is that if its amount is not agreed upon in the contract, then the administration does not have the right to be independent in its discretion, but the judge estimates it considering that it arises from unforeseen costs .. The court only assesses this compensation according to the rules established in the Administrative Law in this regard, and it includes two elements (Fayyad, 2001, p. 55):-

The first: The loss of the contracting parties' rights, and this component includes the actual expenditures that the contractor has spent, and the second is what the contractor has earned with the management on the grounds that it is his right to compensate for his lawful profit from his work and his capital ... Thus the compensation is distinguished on the basis of the theory of financial balance On the basis of the theory of contingent circumstances, in that the first is a comprehensive and partial compensation as it is in the second compensation.

Second:- There is no room for the contractor to claim delay fines if the prince's work would cause the commitment to become difficult, which justifies the delay in implementation.

Third:- If the procedure issued by the administration and named by the Emir's work results in more burdens on the contractor to a degree that his financial or technical capabilities cannot bear, he may demand the termination of the contract.

Fourth: The application of the prince's work theory entails the exemption of the contractor from his implementation obligations if the implementation of the obligation becomes impossible, then he is considered a force majeure, such as the issuance of legislation prohibiting the import of materials necessary for the implementation of the contract that can only be obtained from outside the country.

It should be noted here that the contractor with the administration can combine more than one of these effects, as he can request the termination of the contract and his exemption from delay fines, for example.



The third topic

The role of the regular judiciary in restoring the financial balance in the administrative contract

Judicial control aims to protect individuals, by canceling administrative decisions violating the law, especially with regard to administrative contracts and the rights of both the administration and the contractor with the administration, so that there is a role for the judiciary in restoring the financial balance of the administrative contract, which caused harm to individuals, or by ruling to compensate individuals for the harm that affects them As a result of the operation of public facilities, or the act of public officials in the state (Badawi, 2011, p. 13).

Judicial oversight is distinguished from both parliamentary oversight and administrative oversight, in that it is only based on a grievance from individuals or bodies. Judicial oversight is not moved by the judiciary on its own, but a lawsuit is filed with it in order for the judiciary to intervene and exercise control over the work of the administration (Hafez, 1992, p. 19).

For more details, this topic will be addressed through the following two requirements to clarify the role of the regular judiciary in restoring the financial balance of the administrative contract.

The first requirement: the definition of judicial oversight

The second requirement: the importance of judicial oversight in restoring the financial balance of the administrative contract.

The first requirement

Definition of judicial oversight

The real and effective guarantee of the principle of legality is subjecting the actions of the administration to judicial control, and taking into account the principle of legality that the administration must work within its scope and not contradict it by its actions, which are usually in the form of legal actions aimed at causing a certain effect or changing a legal position.

It is established that judicial oversight is defined as “those powers and powers granted to the ordinary or administrative ruler, based on the provisions of the law or contract, according to which these courts have the power to adjudicate them and issue judgments in matters in which the administration is a party in a way that guarantees the rights and freedoms of the litigants” (Badran, 1985 12).

Judicial oversight is the actual guarantee for individuals in the face of the administration’s overstepping the limits of its function, its misuse of its authority and its deviation from the limits of the principle of legality. That which arises between the administration and the contractor, as is the case in Jordan, and may be entrusted to a judiciary specializing in administrative disputes, which is represented by the administrative judiciary, which is independent in view of the administrative disputes that arise between the administrative authorities and between individuals (the administration and the contractor) as is the case in Egypt (Khalil (1968, p.16).

From the foregoing it is clear that the administration does not exercise its authority to impose penalties on the contracting party as it pleases, without being punished, but rather is subject to judicial oversight. This oversight is a guarantee for the contractor against the abuse of management and against errors or infringement of the contractor's rights or their violation of the law.

Judicial oversight extends to include oversight of the legality of the administration by imposing a specific penalty, as well as oversight of adequacy so that the judiciary can separate the extent of the error and the appropriateness of the penalty for it.

The judiciary division includes the jurisdiction of annulment and the mandate of compensation, and this is called full judicial oversight, the type of penalty and the type of contract, and the judicial oversight over the authority of the administration in imposing administrative penalties varies according to the type of penalty and the type of contract.

Accordingly, the judge can rule to cancel or reduce the penalty (monetary fines) or to replace it with something else, and he can also rule for compensation in relation to the pressing penalties.

From the foregoing it is clear that the authority of management is not absolute, but has limits, which are:

- a. Judicial oversight.
- B. Requirement of excuses.
- C. Adhere to what is stipulated in the contract and not sign more than what is stipulated.

The second requirement

The importance of judicial control in restoring the financial balance of the administrative contract

The judiciary is the only ruling that the administration and the contracting with it resort to for the purpose of seeking its opinion on the extent of the administration's commitment to the principle of legality, as the courts work with the task of oversight to ensure the legitimacy of the administration's actions issued by them, and since the administrative judiciary is a required judiciary, that is, it cannot perform its role in the work of monitoring Change the appeals that must be brought before it by the real stakeholders, given its jurisdiction over management and individuals (Al-Tahrawi, 2001, p. 22).

And since the administrative control cannot fulfill its intended purpose to ensure the rule of the principle of legality because it is taken on it that the administration is the judgment and the opponent at the same time, and the management employee or the source of the decision may not find it easy for him to return to his mistakes, while judicial control is a real guarantee to protect the interest Individuals (the contractor) and their rights, and this is what Professor Muhammad Kamel Layla emphasized, who says that judicial oversight is one of the most important forms of control in the state, because the judiciary is the body qualified to protect the principle of legality from tampering with it and violating its rulings, and the judiciary performs its task if the necessary guarantees are provided He has independence in the performance of his function (Layla, 1973, p. 60).

The judiciary aims to monitor two main goals, the first is to protect the interest of individuals, and the second goal is to ensure that the administration respects the principle of legality, as this control is manifested through the abolition of administrative acts contrary to the law or compensation for them, or both. Thus, judicial oversight of the administration's activities is the best and effective way to ensure that the administrative authorities respect the law.

If the administration has the right to impose the penalty in administrative contracts, then the contracting party has the right to resort to the judiciary, and any agreement to the contrary is considered void. Judicial oversight over the activities of the public administration is a basic means of ensuring respect for the principle of legality - that is, the rule of law - which is the principle that most contemporary countries have embraced.

If the administrative judiciary is the competent authority to look into administrative contract disputes, then of course the administration's decision to impose a financial penalty in the administrative contract is subject to the control of this judiciary. His oversight is like a complete judiciary, as the judge's task is not limited to the limit of annulment, but rather extends to examining the facts and resolving all elements of the dispute, determining the legal status of the contestant, and examining decisions in terms of legality and suitability, whether in terms of form, jurisdiction, violation of the law, or abuse And it does not stop at this point but extends to include the motive and reasons for its actions. Therefore, the judge discusses together the facts and the law (Fayyad, 1975, p. 77).



Accordingly, the contractor with the administration has the right to appeal before the judiciary the penalty decision issued against him, and this right is guaranteed by the law for him and his promise from public order, and any condition in the contract that excludes this right is considered null and has no effect in particular, and this is a violation of one of the general principles of the law.

In Jordan, the ordinary (civil) judiciary is the one competent to hear disputes related to administrative contracts, as it is the holder of general jurisdiction to hear judicial disputes.

Despite the bold steps witnessed by the Jordanian administrative judiciary, it started with the issuance of the temporary law of the Supreme Court of Justice No. (11) for the year 1989, and then the Supreme Court of Justice Law No. (12) of 1992 was approved to announce the establishment of the first specialized judiciary in administrative disputes in the Kingdom on One degree.

The Jordanian legislator followed this development by issuing the Administrative Judiciary Law No. (27) of 2014 to announce the formation of the Administrative Court and the Supreme Administrative Court, so that litigation in administrative disputes would be of two degrees, to remedy the legislative deficiency in the previous Supreme Court of Justice Law.

However, in spite of this, disputes related to administrative contracts are not mentioned within the competencies of the Administrative Judiciary Law and make them within the jurisdiction of the civil judiciary.

Also, although the Jordanian legislator relied on the fact that the basic condition for establishing the administrative character of the contracts concluded by the administration is the existence of an independent administrative law that governs these contracts and not the existence of an administrative judiciary that specializes in examining the disputes raised by these contracts. However, the existence of an administrative law is far from a specialized administrative judiciary of It would miss the goal that the legislator wanted from this administrative judge, and thus his departure from the immediate and quick solution to most administrative disputes, especially administrative contract disputes, and to maintain the smooth functioning of the continuity and regularity of the public facility, as the civil judiciary, no matter how professional it is, will not be like a specialized administrative judiciary expert in resolving such disputes .

Therefore, we call on the Jordanian legislator to expand the jurisdiction of the Administrative Court to include administrative contract disputes, because of the great and direct impact of these disputes with the continuity of the functioning of the public facility, which the administrative law originally legislated to maintain its continuity and regularity.

Conclusion, Results and Recommendations

First: The conclusion.

The study examined the role of the administrative judge in restoring the financial balance of the administrative contract

Second: Results.

- The administrative judge is considered an innovator and innovator of legal rules and principles that are commensurate with the nature of administrative law. He is the one who interprets the ambiguous legal texts and reconciles the conflicting texts, so it differs from what the civil judge does, whose role is limited to applying the legal rules to the dispute before him.
- The presence of an administrative judge specializing in administrative disputes has the ability to understand the nature of administrative disputes that the administration faces, which will greatly and effectively help in securing the proper functioning of the public facility. It would also activate judicial oversight over the administration's work to ensure that it is not deviated.
- The judiciary aims to monitor two main goals, the first is to protect the interest of individuals, and the second goal is to ensure that the administration respects the principle of legality, as this control is manifested through the abolition of administrative acts contrary to the law or compensation for them or both together.

Third: Recommendations:

1. The Jordanian legislator must assign all disputes related to administrative contracts and other administrative disputes to the administrative judiciary by expanding the powers of the administrative court, since the civil judiciary is inconsistent with the spirit of the administrative judiciary and its privacy.
2. We call upon the Jordanian administrative legislator to investigate the steps of the Egyptian administrative legislator and benefit from its experiences in forming the judicial administrative institution in all its details and components, and to take note of all the judicial precedents issued by it.
3. The necessity of conducting more studies on administrative contracts.

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