

THE AUTHORITY OF MANAGEMENT TO TERMINATE THE ADMINISTRATIVE CONTRACT AT ITS SOLE DISCRETION IN THE JORDANIAN ADMINISTRATIVE LAW



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ABSTRACT

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Al-Ghadarah is a public institution with a public interest in a variety of authorities in the face of a contractor under one of the administrative contracts. The most important of these is its authority to terminate the contract in its sole management prior to completion of the contract either for the public interest or for the serious contractor's fault. The extent to which such authority is legitimate, This entitles the pensioner to the right to compensation for the damage caused by the dissolution of the contract in the interest of the public. If the termination is the result of the fault of the serious contractor, the contractor is not entitled to compensation. Any compensation here shall be annulment.

Contribution/ Originality: This study contributes to strengthening the determination of the administrative authority in terminating the administrative contract. A modern methodology was used to study the administrative law in a scientific manner that shows the ability of the administration to protect the public interest by maintaining public funds. It allows the retiree the right to seek compensation if the contract is terminated illegally. A study that works on the analysis. This study is considered one of the few studies dealing with a topic the Authority Of Management To Terminate The Administrative Contract At Its Sole Discretion In The Jordanian Administrative Law.

1. INTRODUCTION

The interest in administrative contracts increased as a means of satisfying the general needs of individuals, especially in the field of infrastructure, following the huge technological development that was acquired by giant companies. Most countries resorted to the market economy system and the emergence of the phenomenon of globalization. The administration sought to achieve the public interest and fulfill the necessary needs of individuals A public institution that takes into consideration the public interest of society, Where the modern state exercises many functions and carries out many social and economic activities that were previously a field of individual activity, all activities aimed at the public interest.

To achieve this goal, public administration activity takes one of two aspects:

The first is to monitor and regulate the individual activity, and impose restrictions and controls on the freedoms of individuals in order to protect public order and this is the method of administrative control.

Second, the state intervenes to manage certain projects by themselves, by means of their means and funds, to satisfy the basic needs of society, for the financial and technical inability of individuals to establish and manage such projects (Nawaf, 2010).

The administration uses legal means in one of two forms:

The first is the behavior of the administration, which is done on its own and with its own will, known as the administrative decisions, which is one of the most important legal means used by the administration to deal with the members of the society in their daily lives in their work, money, interests and freedoms. To exercise judicial control over the work of the administration. administrative decisions are a manifestation of the powers and privileges of the administration and represent the effective means and means used by the administration to obtain its other means, such as the human means (such as appointing employees by administrative decisions) and administrative activity (eg administrative decisions issued in administrative control) Public utilities) and the material means (such as decisions by which the administration obtains public funds such as expropriation decisions) (Nawaf, 2012).

Second: A legal means is the conduct of the administration that is carried out on two sides, and two opposite administrations, the will of the administrative body, and the will of the contract with them, and these are administrative contracts.

The administrative contracts are consistent with the civil contracts in that they arise from the consensus of the two wills, and agree with them in the three pillars of the contract: satisfaction, shop, reason, and different from it that the administration in the administrative contracts have the right to modify some of the terms of the contract during the implementation, to supervise the implementation, to impose sanctions and to terminate the contract of its own volition in violation of the principle of the "contract of the law of the contract", in order to ensure the regular and steady flow of public facilities and for the public interest. On the other hand, the administration is subject to restrictions in the selection of the contractor and in the conclusion of the administrative contract, which are not subject to individual contracts (Nawaf, 2012).

The administrative sanctions used by the administration in administrative contracts differ from those in civil contracts because of the contractual relationship with public utilities. The breach by the contractor of its contractual obligations affects the general facility to which the administrative contract relates, so that the penalty is severe or the termination of the administrative contract, ¹where such revocation is considered to be one of the most severe penalties and the most serious of which is an effect, since this award puts a decisive end to the contract between the administration and the contractor.

The legal system of administrative contracts gives the administration and its sole will the authority to terminate the administrative contract in the event of a serious breach by the contractor, and sometimes even without such breach or default of the contractor, if the management sees, in its sole discretion and diligence.

The importance of research: This research derives its importance from the importance of the administrative contract itself as one of the legal means through which the Department operates through it. The administrative authority to terminate the administrative contract by its own will is one of the most dangerous authorities exercised by it, The direct administration of this authority entails the immediate and direct termination of the administrative contract without the consent of the contractor and without resorting to the judiciary, in violation of the principle of "contract of the law of the contract" to ensure the regular and continuous flow of public facilities and for the public interest.

The purpose of this research is to inform the administrative authority about the termination of the administrative contracts on its own volition, to indicate the legal basis of this authority, and to know the extent to

¹ Nawaf Kan'an ,the brief in the Jordanian administrative law, p.236

which the administration is subject to the supervision of the judiciary and to the principles of legality and convenience, as well as the rights and guarantees granted to the contractor in exchange for this authority

The problem of research: Despite the importance of this subject, which is concerned with the authority of management in the termination of administrative contracts with their own administrative will, but the studies and specialized research dealing with this subject is still few and insufficient, the problem of this research is summarized in several sub-questions: What are the situations that call for direct administration of its authority in solitary confinement, and what are the consequences of the termination of the administration of the administrative contract and the extent of the control of the judiciary during the exercise of this authority, and the rights and guarantees granted to the contractor, The administration in the use of this right.

Determinants of research: I have not dealt with the authorities and privileges enjoyed by the administration in the administrative contracts, namely, its authority to supervise and control the implementation of the contract and its authority to amend some of the terms of the contract and its authority to impose sanctions on the contractor of financial sanctions or implementation at his expense, To all this in short, within the limits of what this research needs, But I have limited my research in the most important and most dangerous authority to management in administrative contracts, Which is its authority to terminate the administrative contract of its own volition either for reasons of public interest or as a result of serious contractor error, all in the light of prevailing opinion in jurisprudence and comparative jurisprudence with reference to the position of the Jordanian judiciary in cases where it had a clear position.

The methodology of the research: I will rely on this research descriptive approach because it is best suited to study this subject and describe it accurately. This method is not limited to the collection of information and data, but extends to analysis in order to reach conclusions that can contribute to the development of reality, In the jurisprudence and administrative justice, while taking care to show the position of the Jordanian judiciary in matters in which it has a clear position.

Research Plan: In the search for management's authority to terminate the administrative contract with its own will, we will follow the following plan:

The first topic: We deal with the first requirement of the termination of the administrative contract in order to achieve the public interest, while we allocate the second requirement to terminate the administrative contract because of the mistake of the serious contractor.

The second topic: We deal with the effects of the termination of the administrative contract by the administration on its own volition in the first demand. The second requirement is to investigate the judicial control over the management's exercise of its authority to terminate the administrative contract with its own will.

Conclusion: In summarizing the total results we reached through the study of this research, and we put a set of suggestions and recommendations.

First: The Administrative Contract Shall Be Terminated by the Administrative Authority of its Own Volition

One of the most important characteristics of administrative contracts is that the administration has the right to terminate the administrative contracts of its own volition and by different means, although no provision in the law or contract permits it to do so.

The termination shall be for the public interest, or for the fault of the serious contractor.

1- Termination of the Administrative Contract in the Interest of the Public

The administration has the power to terminate the administrative contract on its own volition before the contract is concluded and without a mistake by the contractor if the public interest so requires. The French judiciary and jurisprudence have recognized the existence of this authority even if it is outside the terms of the

contract and the laws and regulations. And in all administrative contracts without exception, and that this right is a characteristic of administrative contracts (Khalid, 2003). The Administrative Court of Egypt also ruled that "the right of the administration to terminate its contracts by its own will is a right enjoyed without the need to provide for it in the contract, and that this right is a distinctive characteristic of administrative contracts."²The administrative authority to terminate the administrative contract by its own will - Despite the contractual provisions, have been decided as a general principle to include the various administrative contract sects such as the Public Works Contract, the Public Utilities Obligation, the Procurement Contract, the Contract of Transfer, the People's Lease Contract and other administrative contracts (Ahmed, 2009).

The legal basis of the administrative authority to terminate the administrative contract in the interest of the public interest and the conditions of exercise of this authority:

The administrative contract often states that the management has the right to terminate this contract in certain cases to which the administration is bound. This is not an exception to the contract of the contract law, nor is it a manifestation of the exceptional privilege recognized by the administration Contracting Parties.

The termination of the administrative contract unilaterally without the need to provide for it in the contract or the law is a manifestation of the exceptional powers enjoyed by the administration in order to regulate and ensure the proper functioning of public facilities ,and ensure the proper functioning (Hind, 1999).

If the contract does not provide for the administration's right to terminate the administrative contract on its own volition, and no legal or regulatory provisions have approved such termination, three views of the jurisprudence on giving management the power to terminate the administrative contract at its sole discretion will be taken into consideration:

-Dissenting opinion of the management authority to terminate the contract as long as beyond the provisions of the contract or the law:

The French jurist considered that the authority of the administration to terminate the administrative contract by its own will is not regarded as a general rule of public law. It is merely an application of the general rule regulated by article 1135 of the French Civil Code, Is limited to obligating the contractors ,But also include what is required according to custom, justice and law as required. This is called administrative law in administrative law or administrative custom. When the general practice requires the public administration to include in a particular set of contracts provisions that the contracting authority may terminate the contract or modify the scope The obligations required in its favor by unilateral decision, these texts should be presumed to exist in the contract when the Administration omits the text in a contract (Hind, 1999).

-A dissenting opinion of the management authority to terminate the contract as long as it is outside the provisions of the contract or the law for the contract of commitment only:

Al-Faqih (Davay) believes that it is not allowed for the management to terminate the contract of commitment before the date specified in the contract. The obligor has an acquired right to exploit the general facility for the duration of the contract of commitment. The termination of the contract of obligation is not possible unless it is expressly stipulated in the contract , Or in the event that the obligor does not consistently implement its contractual obligations or in the case of force majeure (Muftah, 2007).

-An opinion that supports the existence of the administrative authority in terminating the administrative contract even if it is not stipulated in the law or contract:

-This opinion of the majority of French jurisprudence (Muftah, 2007). However, these jurists differed among themselves on the legal nature of the authority of the administration in the termination of the administrative contract:

² Collection of Judgments of the Administrative Judiciary Court, Judgment of 25 June 1961, Year 15, No. 199, p. 269

The first group: It went to the fact that this power is only a picture of the power of unilateral modification, based on the fact that the termination is an amendment to the requirement for the duration of the contract. The second is that the authority of the administration to terminate the administrative contract unilaterally is independent of the authority of the administration in the unilateral amendment, because the authority of the administration to amend the contract does not entail the expiry of the contract but only the increase or decrease of the contractor's obligations with the administration (Ahmed, 2009).

Determining the legal basis of the administrative authority to terminate the administrative contract for the public interest without fault of the contractor:

1.1. Three Views Emerged

The opinion of the supporters of this view that the authority of the administration to terminate the administrative contract by its own will is based on the necessities of the public good and the requirements of the proper functioning of public facilities, because it is unacceptable that the contract becomes a barrier between the administration and the achievement of its objectives and the public benefit, or a heavy burden on the public facility, Ahmed (2009) and the administration may terminate its administrative contracts if they become useless to the public utility or do not achieve the public interest (Sulaiman, 1965).

The second view: The proponents of this view believe that the administration as a public authority is mandated to always take care of the necessities of the public interest and to rely on the private interest of individuals by using the means of public law that are not familiar in the private law during the initiation of their administrative activity, and that the authority of the administration to terminate the administrative contract by unilateral will is based on the exceptional privileges of the administration (Muftah, 2007).

Third view: This opinion is conciliatory between the two former views, where the opinion of the proponents of this view that the management's authority to terminate the administrative contract by individual will is based on the idea of the public law privileges retained by the administration in the contract in addition to the idea of the special needs of the public facility (Muftah, 2007). We favor this view.

•Conditions for the exercise of the Authority's authority to terminate the administrative contract for the public interest: The administration's power to terminate the administrative contracts is not absolute, but there are limitations that can be limited to two conditions that need to be met:

A- The administration shall aim to terminate the contract to achieve the public interest

The public interest represents the motive and purpose of the administrative work, and targeting the public interest is an objective condition for the legality of administrative work, the administration does not work except within the limits of public interest (Hind, 1999).

The elimination of the requirement of public interest in the case of termination of the administrative contract by the administration has been determined by the administration if one of the following reasons is met:

Reorganization of the General Facility.-

-Termination of the purpose for which the administration contracted, making the contract useless for the operation of the public facility (Nasri, 2010).

-Amendments to the requirements of the General Facility and the promulgation of new laws relating to the General Facility (Nasri, 2010).

-Changing the economic conditions, which leads the state to terminate the contracts that exceed the need, which weighs on the state budget.

the existence of an invalid clause in the contract and the lack of coordination and organization of the subject matter of the contract, Nasri (2010) where there is a regular administrative and budgetary system of the administrative contract, some contracts are irregular at the administrative level, as a contract concluded by a device not authorized by law, And others that are irregular at the budgetary level as a contract not offset by budget or not

accompanied by the Controller's signature, such contracts where there is a public interest clause which makes the decision of the administration to terminate the contract legitimate.

- Difficulties facing the contractor during the execution of the contract (Muftah, 2007).

The administrative contract may not be terminated by the administration at its sole discretion for purely personal reasons³, or for reasons related to the political or associative activity of the contractor (Nasri, 2010) ⁶ or for reasons related to freedom of religious belief (Muftah, 2007) Or for financial reasons, the right of the administration to terminate it shall not be taken into account, allowing the administration to threaten the contracts concluded with it and to implement them whenever it hopes to obtain an increase in the financial resources it receives from these contracts without having any other public interest⁴.

B) The conditions for the legality of administrative acts based on discretionary authority shall be met in the decision to terminate the solitary confinement:

These conditions are:

-The administration shall take into consideration when issuing the decision to terminate all the procedures stipulated in the contract or in the laws and regulations.

The decision to terminate shall be issued by the competent authority to issue it, the same body that entered into the contract unless the contract or the law specifies another authority (Majed, 2012).

The cause of the decision to terminate the contract. It is most likely that the administration is not obliged to cause its decision to terminate the contract except in cases of termination that have the nature of the penalty due to the mistake of the serious contractor, the termination decisions based on the public interest is not causative, But the administration must give its decision to terminate for serious and correct reasons that the judiciary will achieve, because if the reasons are incorrect and serious, the administrative decision will lose its legitimacy because it involves deviation from the use of power (Nasri, 2010).

(B) The effects of the administration's exercise of its authority on the unilateral termination of the administrative contract:

A. Expiration of the contractual relationship:

The termination of the contractual relationship between the contractor and the management is different depending on the type of contract. Accordingly, we will discuss the termination of the contract by the management of its own will in the most important types of administrative contracts:

-For the contract of supply: the termination of the contract of supply by the administration shall result in the expiration of the mutual contractual obligations between the parties to the contract in addition to the settlement of the amounts due to the management and supplier. If the contractor is a creditor of the administration, it may make a temporary liquidation by releasing a certain percentage of the balance due to him.⁵ The termination of the supply contract also obligates the supplier to cease delivering and supplying the agreed tools from the effective date of the termination decision, In respect of industrial supply contracts, the contractor undertakes to hand over to the Department raw materials, supplies and supplies intended for the execution of the contract if the administration wishes to do so when the contractor is notified of the termination of the contract.

-For respect to the Public Works Contract: the termination of the Public Works Contract by the Administration shall result in the termination of the contractual obligations exchanged between the parties to the contract and the necessity of liquidating this contract in addition to settling the amounts owed to the management

³ Lebanese State Consultative Council, Decision No. 583, dated 20 June 2002, MCA, 2005, No. 17, p. 945.

⁴ Ruling of the Administrative Court of Egypt, issued on 6/12/1970, Group 25, No. 26, p. 172

⁵ Article 30.2 of the General Administrative Requirements Document applicable to supply contracts in France.

and the contractor (Mohamed, 1993). The contractor shall prepare a record showing the parts of the works performed and an inventory of the materials and equipment related to the work.⁶

-For the obligation contract: the awarding authority terminates the commitment of the public utility against payment of compensation to the obligor (Nasri, 2010) and if the contract arranges the conditions for the recovery of the obligation, the judiciary and administration shall observe them, Here, the redemption is contractually, but if the contract is not expressly stated in the contract and the conditions thereof, the management can exercise the non-contractual restitution of the obligation (Sulaiman, 1965). The obligation to recover the obligation will result in the expiry of the contract and the return of the general facility to the administration. If the obligor continues to exploit the facility after the redemption decision, it must refund to the awarding authority the profits it has made from the redemption decision until the effective date. The Plaintiff shall have the right to request the Court to rescind the decision for recovery if it is found to be contrary to the law or to be defective, The court here has the right to compensate the obligor for the loss and loss of his earnings as a result of depriving him of the exploitation of the public facility (Ibrahim, 2003).

B- The contractor's compensation for termination of his contract:

The termination of the administrative contract before the end of its term without error by the contractor deprives the contractor of the expected financial benefits if the contract is fully implemented. Therefore, the court decided to apply the contractual liability system here which allows the contractor to obtain compensation as a result of the act of the administration. Nasri (2010) if the contract, law or regulations do not regulate the amount of compensation and the extent to which the compensation is not regulated by law (Nasri, 2010).

The contractor is not entitled to compensation unless the decision to terminate during the contractual period has been issued and the termination of the contract has caused damage to the contractor whether the public interest condition or the termination decision is arbitrary. The contract or the books of conditions did not stipulate that the contractor is not entitled to compensation at the end of the contract (Nasri, 2010).

The compensation includes the loss that has been achieved, and in respect of the profit that cannot be obtained, some believe that it is due to the judgment of the judiciary according to the facts and the requirements and conditions of each case, including compensation for contracts concluded and not implemented (Nasri, 2010).

2- Termination of the administrative contract due to serious contractor fault :

The administration, as a public authority, has the power to impose administrative sanctions on its contractor if it fails to implement its obligations, delays in its execution or performs them in a manner that is not in accordance with the terms of the contract. These sanctions aim at maintaining the proper functioning of the public facility by forcing the contractor to fulfill its contractual obligations to the fullest extent. These sanctions are commensurate with the severity of the offense, beginning with the fine of delay, confiscation of insurance, This latter penalty is of extreme gravity only if the contractor commits a serious offense to the operation of the public facility.

A -What is the termination of the administrative contract due to the mistake of the serious contractor and its legal basis:

The established principle of jurisprudence and jurisprudence stipulates that the administration has the authority to impose administrative sanctions on a contractor who fails to fulfill his or her contractual obligations on its own and without recourse to the judiciary, which is justified by ensuring that the contract relating to the functioning of the public facility is properly implement .

The Jordanian judiciary did not deviate from the prevailing trend in jurisprudence and the judiciary. The Supreme Court of Justice has set the legal basis for the authority of the administration to impose sanctions on a contractor who fails to ensure that public facilities continue to operate regularly and steadily, , One of its resolutions stated that the administrative contract was designed to meet the needs of the General Facility to ensure

⁶ Article 46.2 of the General Administrative Requirements Document applicable to supply contracts in France.

its regular functioning. If the contractor failed to fulfill its contractual obligations, the Administration had the right to take the necessary measures to ensure the execution of the contract in the interest of the General Facility, In the best interest of the public interest⁷.

B - Conditions of the exercise of management authority to terminate the administrative contract due to the mistake of serious contractor:

For the validity of the criminal annulment in the administrative contracts, two conditions must be met: the first is a serious mistake by the contractor, and the second is that the contractor must be warned by the administration.

A serious mistake of the contractor:

-Any breach by the Contractor of its contractual obligations constitutes a contractual error. However, in order for the error to be a justification for a criminal sanction, it must be of a very serious and serious nature, and the gross error is defined as any breach by the Contractor of a material legal obligation (Nasri, 2010).

The Jordanian legislature has recognized the right of the administration to terminate the contract in several cases, including but not limited to:

1-The Contractor or any of its subcontractors or any of its employees use the bribe in any form whatsoever for any of the employer's organs.

2-The contractor waives the contract or any part thereof to any person without the written permission of the tender committee that referred the tender⁸.

3- The contractor or any of the contractors breach any of the conditions stipulated in the tender invitation and its conditions and the decision of referral, or inability to provide the supplies referred to him in whole or in part or delayed delivery on dates and dates agreed upon in the conditions⁹.

4-The inability of the contractor to implement the work of the town and its inability to fulfill its obligations or to repeat its failure to implement these obligations¹⁰.

5-The contractor assigns the assigned tender or any part of it to any other person in any way without the written consent of the tenders committee and in accordance with the conditions and guarantees determined by it¹¹.

6- Violation by the contractor of any condition of the tender assigned to him¹².

The administration has the right to terminate the administrative contract by its own will, contrary to the cases stipulated in the law. The management has the right to annul the contract for any reason when it is characterized as a serious mistake, it has an estimate of the seriousness of the mistake of the contractor and whether it is justified or not. Authority is independent and independent of the provisions of the law.

However, if the administrative contract determines the reasons for canceling or canceling the contract, the administration does not have the right to terminate the contract, contrary to these reasons. This is what was decided by the Jordanian Court of Cassation in ruling No. 437/8:

"-Having examined the matter, we find that with reference to Article XVIII of the Convention of 23 November 1974, the right of the administration to repeal the Convention is bound by three conditions:

-Delay of the contractor in carrying out his obligations and that the delay is unreasonable and deliberate and without a legitimate excuse or the occurrence of failure to implement is consistent with insistence or scandalous.

⁷ Judgment of the Jordanian High Court of Justice, No. 180/97, issued on 24/9/1997, Judicial Review, Jordan Judicial Institute (vol. I, September 1997), third issue, page 493

⁸ Article 67 General Tender Instructions, No. 1, 199

⁹ Article 13 Instructions for tenders for works and supplies of the Capital Secretariat

¹⁰ Article 73, Supplies and Works of Towns and Village Councils, No. 55, 1989

¹¹ Article 24, paragraph B, Supplies and Works Regulations, University of Jordan, No. 21, 1987

¹² Article 7, paragraph n, the Electrical Works Regulations of the Electricity Authority, No. 67, 1975

The Ministry shall notify the Contractor of the delay or failure to perform the necessary action within a reasonable period of time.

The contractor fails to fulfill the notice requirements.

1.2. Contractor must be notified by the Administration

The warning is a legal proof of the contractor's delay in carrying out his obligations and is intended in public works contracts to prove that the contractor has not fulfilled his obligations legally (Omar, 1993).

In view of the seriousness of the consequences of the criminal annulment on the rights of the contracting parties, this penalty must be preceded by some necessary measures to protect these rights (Nasri, 2010).

The Jordanian legislator ordered the administration before the administrative contract was annulled, and the legislator also stipulated that the exculpation should be excused. The legislator also stipulated that an excuse should be issued by the administration to declare violations committed by the obligor, which in turn must remove the causes of the violation within a specified period - Usually three months - from the date of notification of such violations, And if the obligor fails to correct the errors resulting from his action during this period, and cannot convince the administration represented by the Prime Minister or the Minister to succeed him for legitimate reasons, then the administration may terminate the contract¹³

For example, Article (14) of the Law of the concession contract of the Jordan Petroleum Refinery Company, "The Government may, subject to force majeure and arbitration of this Agreement, disqualify the concession after notifying the company three months after the occurrence of the following matters ..." Article (12) of the Jordanian Tanning Company concession agreement.

Second: The Effects of the Termination of the Administrative Contract and the Control of the Elimination of the Exercise of Management Authority in the Unilateral Termination of the Contract

The termination of the administration of the administrative contract by its own will, either for reasons of public interest or for a serious fault, occurred from the contractor, including a number of legal effects, and these effects vary according to the type of termination. If the termination is for the public interest without fault of the contractor, Loss and loss of profits, whereas if the termination is the result of a serious contractor's fault, the contractor is not entitled to compensation, but sometimes the administration may ask for compensation if that is a way.

In order to ensure that the administration does not deviate from the use of its authority by dissolving the administrative contract by its own will, its decision shall be subject to termination of the administrative court's control, whether this annulment is for the public interest or criminal termination as a result of the fault of the serious contractor.

1-The consequences of the termination of the administrative contract by the Department of its own volition

A - Contractor's right to compensation:

There is no doubt that the termination of the administrative contract by the administration unilaterally without error by the contractor deprives the contractor of the financial benefits expected to be obtained if the contract is fully implemented, so the elimination of the application of the system of contractual liability in this case, which allows the contractor to obtain compensation as a result of the decision of the administration (Nasri, 2010) because it has always the power to terminate the contract if it is deemed necessary by the public interest.

In the view of some jurisprudence, there are two prerequisites for the injury to which a contractor is liable to be compensated:

¹³ Jordan Petroleum Refinery Company (JPC) concession agreement, Article 15, Jordan Drainage Agreement, No. 13, Encyclopedia of Jordanian Legislature, C3,

1-The damage is verified: that is, it is certain that the injury occurred. If the damage is possible, it is not permissible to compensate.

2-The damage is to a protected legal status: the mere violation of rights requires compensation only if those rights that have been injured are legitimate and determined by law (Sharif, 2006).

This was confirmed by the Court of Cassation in its judgment of 4/6/1970, where the facts of the case before it summarized that the government contracted with the plaintiff to prepare a number of passports with certain specifications for a certain amount, and on the basis of this agreement prepared part of them and handed over to the government, But then the government and its unilateral will broke the contract for the rest, After the plaintiff had purchased all the necessary materials for this last section of the passports and placed the logo of the Kingdom so that it became invalid for any other use except for the purpose specified in the contract. In accordance with all the above, the court ruled that the contractor is entitled to claim damages for Elimination ¹⁴

1.3. Conventional and Legal Compensation

In the case of an explicit provision in the administrative contract, laws or regulations, it explains how the contractor is entitled to the amount of compensation upon termination of his contract by the administration without making any mistake, but for reasons of public interest. This text must be applied literally. This text explains how to compensate the contractor and the amount of this compensation and the method. Which is calculated and everything related to this subject (Ahmed, 2009).

If both the administration and the contractor agree from the outset and when the contract is concluded, for example, to estimate a lump sum as compensation or to limit the compensation to the damages actually suffered by the contractor and to exclude the compensation for the lost profits or compensation for the loss suffered by the contractor, In such case, the terms of the contract or the provisions of the laws containing such conditions shall be fulfilled even if they include the denial of compensation by the contractor (Sulaiman, 1965).

1.4. Judicial Compensation

If the contract or law does not provide for the contractor's entitlement to compensation upon the unilateral termination of the contract by the administration and the amount and elements of such compensation, the judge determines the amount of compensation to be awarded by the contractor, and the amount of compensation in this case covers the loss and loss of the contract (Mohamed, 1993).

The comparative court has determined that the contractor should not be compensated with the administration that terminated the contract for reasons of public interest in the event that the contractor has not suffered any real damage as a result of the termination of the contract, since the general principles for obtaining compensation require actual damage suffered by the contractor. Any actual damage to the Contractor (Muftah, 2007).

Full compensation:

The original value of the comparative judgment is that the contractor is entitled to full compensation upon the termination of his contract in the interest of the public interest by the administration, which includes two elements, compensation of the contractor for the right (Mohamed, 1993). However, the Jordanian judiciary did not accept the principle of full compensation. It limited compensation to the element of loss suffered by the contractor without the element of profit. In one of its judgments, the Court of Cassation ruled that " Of the damage caused by the unlawful break-up is the damage and the subsequent loss actually without the profit from which he is deprived. ¹⁵

¹⁴ Discrimination, Rights No. 96/70, Journal of the Jordanian Bar Association, 1970, No. 6 and 5, p. 438

¹⁵Discrimination, Rights No. 523/82, Journal of the Jordanian Bar Association, 1982, No1, P 1585.

1.5. The Full Compensation Includes Two Elements

-Compensation of the contractor for the loss it has suffered: it is a fixed element that cannot be disputed, and no exceptions are provided, provided that the loss suffered by the contractor is the result of termination of the contract, the contractor shall be entitled to compensation for the losses actually incurred as a result of such termination (Muftah, 2007).

Compensation of the contractor for lost profits: Here the profit is calculated and estimated from the date on which the contract was terminated.

Although full compensation covers, as a general rule, two elements of loss and loss of profits, the loss of profits excludes compensation from the scope of compensation awarded to the contractor in the following cases:

The first case: the exclusion of profit from loss due to circumstances beyond the control of the administration, in which case there are uncontrollable external conditions that make the termination of the contract unavoidable result as a state of war (Mohamed, 1993).

The second case is the exclusion of the loss of profits due to the contractor's waiver of the contract, in which case the unilateral termination of the contract by the administration is due to the request of the contractor himself or to his abandonment of execution with the approval of the administration (Muftah, 2007).

Case 3: Exclusion of lost profits If the contract is concluded between two persons, the administrative contract is concluded between two public persons, neither of whom can claim the other for the loss of profit because the contract ends unnaturally, because the public person is always aiming to achieve the good Whether it is the owner of the facility or not, Mohamed (1993) it is inconceivable that the will of that public person will be directed towards obtaining a financial benefit or advantage from the full implementation of the contract.

In all cases, in order to obtain compensation in the case of a unilateral termination of the contract, the contractor must, for reasons of public interest, assess the losses suffered and the profit lost, otherwise it will not be compensated (Mohamed, 1993).

It should be noted that in assessing the two elements of compensation (loss and loss of profits suffered by the contractor), the interest shall be added to the benefit unless otherwise provided. Such benefits shall be due from the date of the claim and not on the date of termination of the contract (Mohamed, 1993).

Finally, we note that the legal regime of compensation in administrative contracts is close to the corresponding regime in private law contracts with respect to the requirement of the availability of liability elements of wrongdoing and injury and causation between them (Issa, 1997).

B - Termination of the Contractual Relationship between the Administration and the Contractor

The termination of the contractual relationship will result in the liquidation of the contract and the settlement of the amounts arising from its termination. The fate of the financial obligations and the fate of the instruments due upon execution of the contract vary depending on the type of contract.

The contract of obligation (concession): the termination of the contract of obligation means recovery, which allows the awarding authority to terminate the execution of the contract against the payment of compensation to the obligor (Nasri, 2010). In case the contract arranges the terms of recovery, the administration must observe them and the courts respect them, The commitment that has become modern forms in the way they are prepared and organized. The precise details in the various stages of implementation, and provides for the terms of termination and dissolution and the good reference for the estimation of compensation, Nasri (2010) here is the contractual restitution, . However, the failure to expressly state in the contract of obligation on the recovery clause does not mean that the administration has no liability at all, but can exercise non-contractual restitution, which is the application of the management authority to the unilateral termination of the administrative contract for reasons of public interest (Sulaiman, 1965).

-Contract of public works: The termination of the contractual relationship in this contract requires the liquidation of this contract and the settlement of the amounts resulting from its termination and this liquidation is based on the amounts due to the contractor or the management of the works (Mohamed, 1993). To achieve this, the contractor must prove the works carried out or parts And to conduct an inventory of raw materials and supplies, as well as to describe and inventory the materials, equipment and tools related to the work, and to organize a record of all that (Nasri, 2010).

-The owner of the works shall have the right to purchase all or some of the temporary installations used for the execution of the contract, raw materials and supplies within the limits of the work required, and to purchase the building materials necessary for the execution of the contract or to keep it at its disposal for the purpose of following the works (Nasri, 2010).

-In the event of the total or partial termination of the contract by the Administration, the Administration shall, when the Contractor is a creditor and without waiting for the final liquidation, release a license to the Contractor for an amount not exceeding (80%) of the maximum balance of the remaining balance (Mohamed, 1993).

-Supply contract: The termination of the supply contract by the administration shall result in the termination of the contractual obligations exchanged between it and the supplier in addition to the liquidation of the contract and the settlement of the sums due to each. However, the administration may make a temporary liquidation without waiting for the final liquidation if the contractor is a creditor to it. (80%) of the public outstanding balance (Nasri, 2010).

However, the supplier may be obliged to take precautionary measures by providing the administration with raw materials, supplies and supplies designated for the execution of the contract if the supply contract is from the industrial supply contracts, if The Administration has expressed its wish to do so upon notification to the Supplier (Mohamed, 1993).

The termination of the contract of supply as a result of the supplier's committing serious errors leads to the liquidation of the contract as stated above, but this severe and cruel punishment may be imposed only after hearing the supplier's defenses (Ali, 2009).

2- Judicial Control over the Exercise of Management's Authority to Terminate the Administrative Contract at its Sole Discretion

The authority of the discretionary administration to terminate the administrative contract by its own will whether the termination is for the public interest or because of the fault of the serious contractor is not absolute and is subject to judicial supervision. The judge considers the legality of the administration's exercise of this authority through the conditions required by the administration, This, in turn, constitutes a basic guarantee for the contractor against the arbitrariness of the administration in exercising its authority to terminate.

A- They may challenge the decision to terminate the administrative contract unilaterally by the administration:
Appeal by the contractor with the administration:

The judiciary and the administrative jurisprudence agreed that the only judicial means owned by the parties to any administrative contract to challenge the decision of the administration to terminate the contract separately is the case of the full judicial process and no general contractor may resort to the cancellation proceedings to challenge any decision of the administration relating to the contract (Mohamed, 1993).

The failure to accept a claim of cancellation by the contractor against the decision of the administration to terminate the contract of unilateral management because it is not considered for the contractor a separate decision for this contract, and therefore can not be the subject of the case for the cancellation of his part.

The Jordanian judiciary has determined that administrative courts do not have jurisdiction over disputes related to administrative contracts. The legislator did not grant the High Court of Justice the authority to rule on

this type of dispute, but the ordinary courts have general jurisdiction over all judicial disputes not dealt with by the High Court of Justice Including disputes relating to administrative contracts.

This was confirmed by the Supreme Court of Justice in several of its rulings, which ruled that "a case which is focused on the appeal in terms of its contractual aspect, not for its administrative aspect, does not fall under the jurisdiction of the supreme justice, but rather is to be considered by the civil courts." ¹⁶that The jurisdiction of the administrative judiciary is limited to the consideration of appeals against decisions issued by employees working on the basis of their powers derived from laws and regulations. Decisions issued on the implementation of the terms of the contract fall within the scope of the contract and are subject to appeal before the ordinary courts. One in accordance with general provisions which may be issued in isolation from the contractual association. ¹⁷

1.6. Appeal by Third Parties

The original is that the foreigner of the administrative contract may not challenge the decisions of the administration issued against the contractor concerning the execution or termination of this contract, due to the fact that the foreigner for the contract is considered a stranger to the contractual relations between the administration and the contractor under their contract, In accordance with the principle of the relative effect of the administrative contract stating that the alien may not hold any right or transfer any obligation on the basis of a contract to which he is not a party. The decisions of the administration, including the decision to terminate the administrative contract at its sole discretion, are not considered to be separate from the contract.

However, some see that the third party, although strange to the contractual relationship between the parties to the administrative contract, is not strange to the effects of this contract, since the implementation of this contract or its end may affect the interests of others, so it is logical that others have a way to appeal To challenge decisions relating to a contract to which it is not party to preserve and protect its interests.

Acceptance of the cancellation action by the contractors against the regulatory measure issued by the termination of a range of contracts should lead to the acceptance of the third party's cancellation action against this measure provided that there is an interest to third parties. If the separate resolution of this measure leads to the acceptance of the cancellation action by the contractors, From third parties (Mohamed, 1993).

From which third parties may challenge the cancellation in the administrative decisions preceding the contract, which contribute to the conclusion or impedes it, such as the decisions of the tenders examination committees, the decisions of the decision committees, and the decisions of the tender, The decision to refuse to conclude the contract, the decisions issued by the contracting authority, and other decisions that may be considered separate from the contract for others. This is known in French jurisprudence and jurisprudence as "the theory of separate administrative decisions" provided that the appeal submitted by third parties Not only on the basis of personal rights resulting from the same contract (Muftah, 2007).

As for the Jordanian judiciary, in reference to the judicial decisions issued by the Supreme Court of Justice, we find that it recognized the idea of decisions that are separable from administrative contracts and considered them administrative decisions that can be appealed against. These decisions are those issued at the preliminary stage of the administrative contract. With respect to appeals by third parties concerning the decision of the administration to terminate the administrative contract, there are no express judicial provisions in this regard (Hind, 1999).

B- The scope of judicial supervision and the power of the judge to cancel and compensate:

-The scope of judicial control over the termination of the administrative contract by the administration in the interest of the public or due to the mistake of serious contractor:

¹⁶ Ruling of the Supreme Court of Justice, No. 46/54, Journal of the Jordanian Bar Association, 1954, p6.

¹⁷ Judgment of the Supreme Court of Justice, No. 69/55, Journal of the Jordanian Bar Association, 1956, p. 684

The scope of the judicial control exercised by the judge differs from the decision of the administration to terminate the administrative contract by its own will in order to achieve the general interest of the scope of supervision exercised by this judge on the decision of the criminal annulment of the administrative contract.

-Case I: The scope of judicial control over the decision to terminate the administrative contract by the administration in the interest of the public:

Judicial control of the decision to terminate the contract for reasons of public interest is limited to the legality of this decision without properly assessing the reason for the public interest in terminating the contract. In other words, the judge's control here is limited to the verification of the public interest that justifies termination of the contract, If the contract has become an unhelpful fact of the public facility, the management is free to assess the adequacy and appropriateness of the public interest to terminate the contract without any discretion by the judge (Mohamed, 1993).

Benoit went on to state that judicial control of the causes and motives of the decision to terminate solitary confinement is unlikely. The judge cannot interfere with administrative appropriateness, since he cannot monitor whether the construction of a building is not useful, Contracts were not useful, as this was considered an area limited to the competence of the administrative authorities (Saeed, 1994). However, this authority is conditioned on the total non-sacrifice of the interests of the contractor and in order to reconcile the considerations of the public interest with the interests of the contractor, the right of the contractor to obtain appropriate compensation for the damages caused by the early termination of the contract has been settled (Muftah, 2007):

-Legitimacy control

The decision of the administration to terminate the administrative contract is considered to be an unlawful public interest if it resembles one of the defects of the administrative decision: defect of form, defect of lack of jurisdiction, defect of violation of law, defect of deviation in the use of power and defect of reason:

-Defect of form: means the lack of respect by the administration of the formal and procedural rules determined by the law or contract, whether by neglect or partial violation of these rules, Abdullah *et al.* (2002) and therefore the decision to terminate is illegal if it violates the previous conditions and procedures and formalities (Muftah, 2007).

It should be noted that some forms are designed for the benefit of the administration alone, and the contractor may not insist on not completing these formalities, and the administration is exempt from following these formalities based on exceptional circumstances or the impossibility of completing these formalities.¹⁸

-Defect of lack of jurisdiction: If the law or contract provides for the decision to terminate by a certain authority or by a specific person, it must be issued, otherwise the decision is wrong and illegal, so the judge checks whether the authority that terminated the contract is the competent authority already by termination, And this was confirmed by the Jordanian Court of Cassation, where it ruled in one of its provisions, "Since the dissolution of the tender that was transferred to the privileged against him was not issued by the commander-in-chief, but was issued by his assistant, the annulment is illegal (Muftah, 2007).

-Defect of the violation of the law: This defect means the violation of the administrative decision of the provisions of the legal rules in force in any form or source, all the legal rules that relate to the legitimacy of the administrative decision entails the violation of the administration of the illegality of this decision, Where the responsibility of the Administration arises in the exercise of its right to unilateral termination in violation of the law.

-Defect of deviation in the use of power: that is, the decision to terminate the contract must be made in order to achieve a legitimate objective, and here is to achieve the public interest or to punish the contractor for serious mistakes in the event of a criminal annulment, otherwise this decision to deviate using the authority owned by the administration (Hind, 1999).

¹⁸ Discrimination, Rights No. 8/75, Journal of the Jordanian Bar Association, 1975, page 1205, Hind Ahmed Musa Abu Murad, op. Cit., P. 133.

-The decision of the administration to dissolve an administrative contract by its own will is unlawful if the purpose of the decision is to exclude the current contractor and to conclude a new contract with another contractor, since its decision in this case is considered a violation of the abuse of power (Hind, 1999).

-Defect Reason: The basis is that each administrative decision is based on a valid reason. The administration may disclose the cause on its own initiative or when the law requires it to cause its decision. Otherwise, the administration cannot be compelled to cause its decision (Mohamed, 2006).

The reason for the administrative decision is the legal or factual situation that precedes the issuance of the decision and the administration is obliged to express its binding will to cause a specific legal effect through this decision. The validity and validity of the reason is that the reason must be valid until the date of the decision. With the provisions of the law, especially if the legislator specifies specific reasons for the administration to make its decision.

The second case: the scope of judicial control over the decision of the criminal annulment of the administrative contract by the administration as a result of the mistake of the serious contractor:

The judicial supervision of the decision of the criminal annulment of the administrative contract is to examine this decision from the angles of legitimacy and suitability contrary to the decision to terminate the administrative contract for reasons of public interest, which is examined from the point of view of legality only as mentioned earlier. We will talk here about oversight of appropriateness without the oversight of legality, as we have already mentioned.

Compliance control: The judge should not extend the judge's supervision to include the examination of the appropriateness of the facts with the decision made on them, because assessing the importance and seriousness of the facts is within the discretion of the administration, but there is a tendency in the judiciary to monitor the adequacy between the reason and the decision based on it.

The judge takes into account the seriousness of the error in the application of non-financial contract sanctions, in addition to the material existence of the grounds of the penalty and their legal adaptation and the appropriateness of the penalty, with the seriousness of the reasons for the decision of the criminal annulment. The judge ascertains that the contractor has committed a serious mistake, Abolition , If the judge finds that the mistake of the contractor is not serious enough to justify the penalty of annulment, he can exempt him from the financial consequences of this annulment and grant him compensation for excessive punishment.

In addition, if the judge finds that the fault of the whole or part of the contractor is due to the fault of the administration, it can turn the cancellation on the account and responsibility of the contractor into a simple annulment which exempts the contractor from the heavy financial consequences of concluding new contracts to complete the contract.

We add that the administration is responsible for the contractor in case the contract is broken for a mistake or error of a special degree of gravity but can be repaired by the contractor.

-The extent of the judge's powers in the face of the decision to terminate the unlawful contract of the administrative contract by the administration:

The powers of the judge differ from the unlawful decision of the administration to terminate the administrative contract depending on the type of contract and the nature of the termination, whether for reasons of public interest or as a result of a serious contractor's fault. These authorities sometimes include the powers of cancellation and award of compensation and are sometimes limited to awarding compensation.

Case I: Powers of the judge in the face of the decision of the administration to terminate the administrative contract for reasons of public interest:

Muftah (2007) the judge cannot eliminate the wrong decision. Mohamed (1993) we will clarify this idea by addressing the most common types of administrative contracts.

Public works contract: If the administration makes an administrative decision of its own volition to terminate the contract of public works, the judge cannot terminate this decision, even though it is illegal. This is what the French Council of State, which was established on a basic basis for the public works contract, That the Dispute Judge for Public Works Contracts did not have the power to adjudicate the measures issued by the Employing Administration against its contractors, even if such measures were unlawful, but only the judge's authority to examine whether such measures had been issued in circumstances that would create the contractor Right to compensation" (Mohamed, 1993).

However, part of the Arab jurisprudence contradicted this judicial procedure, arguing that the failure to recognize the judge's authority to cancel the decision of the administration to terminate the contract of public works is very harmful even for the administration itself, because the contractor dissected for reasons of public interest can be obtained from the administration in the event of illegality of its decision , the amount of damages that may be incurred by the administration in case the contractor continues to execute his contract (Muftah, 2007).

-The supply contract: The opinion of the French Council of State that the judge does not have the power to cancel the decision of the unilateral termination of the contract of supply for reasons of public interest, although this decision is illegal, but the judge only to judge the supplier full compensation includes the loss and loss of gain, The judge shall take into account, when necessary in the estimation of the compensation, that the contract was only partially terminated by the administration, and that the amount of compensation is therefore estimated to be within the termination of the contract (Muftah, 2007).

Administrative contracts of an economic nature: The principle that the management's decision to terminate the administrative contract for reasons of public interest is irrevocable by the judge, although this decision is not lawful, 6 but an exception to this rule is taken in the district of the French State Council, That the decision of the administration to recover the obligation of a public facility should be rescinded if the decision is not valid, The reason for this is that the obligor usually invests heavily, and the duration of the contract is usually relatively long, so the judge granted this power to keep the public facility going and the rights of the obligor, which must feel stable and stable. Public works, mining concession contracts and public works contracts.

- Administrative contracts concluded between two persons: the judiciary has settled in respect of the administrative contracts concluded between two persons of the common law that the decision to terminate the contract in case of illegality is invalid (Mohamed, 1993).

Case 2: Powers of the judge in the face of the decision of the administration to terminate the administrative contract of the serious contractor's mistake:

There is controversy in jurisprudence and the judiciary about the powers of the judge in the face of the decision of the administration of the criminal annulment of the administrative contract, we will address this subject in the most common types of administrative contracts:

-Commitment contract: The general rule, as determined by the judgment of the French Council of State, that the judge has only the power to award compensation to the contractor for the decision of the criminal annulment issued against him in the event of proven illegality of this decision or its disproportionate to the fault attributed to the contractor, Decision of Criminal Offenses (Muftah, 2007).

However, the French Council of State has made some exceptions to this rule, recognizing that the judge has the authority to cancel the administration's decision to annul the penalty and compensate the contractor for the decision of the administration granting the obligation to annul the penalty for a general facility commitment, mining concession contract, General, or the contract of obligation which includes the duty of the Pledge to the General Secretariat. The opinions of the jurists differed regarding the inadmissibility of annulling the criminal annulment decision in respect of administrative contracts and the special exception permitting it , Some argued that the obligor should be granted more stable rights and better guarantees than the guarantees given to the contractor and supplier, and some argued that the judge should be empowered to annul the decision of criminal annulment in all

cases (Muftah, 2007). Is in a state of indifference to justice that the obligor, who may not at times spend any financial investments while exploiting the public facility or spending a small amount of money, can benefit from the judge's power to annul the decision of the criminal annulment issued by the administration against him if he is unlawful, While a public works contractor who sometimes spends considerable investment to fulfill his contractual obligations such as the construction of a railway, a dam or a nuclear power plant, or the supplier who sometimes manufactures the materials and tools he supplies, do not both benefit from the judge's power to rescind the unlawful criminal annulment (Mohamed, 1993).

The contract of supply: The contractor in the contract of supply in the event of a decision by the administration to terminate his contract a criminal annulment can dispute the legitimacy of this decision before the judge, and here we are facing two cases:

A- If the judge proves that the criminal annulment of the supply contract has been issued by the management without a mistake from the supplier or a mistake that is insufficient in terms of gravity, the judge decides not to apply the system of criminal annulment of the contract and decides to apply the administrative termination of the contract based on the discretionary authority of the termination Without error from the supplier for reasons of public interest, and this entails giving the supplier compensation for this abrogation.

B-If the judge proves that the criminal annulment of the supply contract has been issued by the administration on the basis of an illegal proceeding, as if the decision to annul the decision had been issued without the supplier's warning, the judge decides to exempt the dissatisfied supplier from the excessive consequences of such abrogation, even if the supplier committed Serious errors justify the criminal annulment.

In both cases, we find that in either case the judge cannot rule out the annulment of the decision to annul the penal contract of supply, but he can only give the supplier compensation for this annulment (Muftah, 2007).

-Public Works Contract: The French Council of State has settled on a general rule that the judge does not have the power to annul the decision of the administration to terminate the public works contract even if such a breach is contrary to the law, but only to examine whether the decision of criminal annulment Compensation or Not (Mohamed, 1993).

The judge cannot invalidate the decision to reinstate the works in a new tender in the event of a decision to revoke the contractor's liability. The judge may only decide that the decision of annulment is invalid and exempt the contractor from its effects and consequences while granting the contractor compensation for the damage caused by this decision (Mohammed, 2011).

This trend is critical, as a part of the jurisprudence goes that the decision of the criminal annulment by the administration may not be based on a valid reason, or that it is caused by a deviation in the use of power, or that the issuing authority has taken personal reasons for it, And that the decision issued by the administration for the criminal annulment is no more than an administrative decision, which makes it in a situation similar to the other administrative decisions that the judge is entitled to annul if he suffers from a defect of legality (Ibrahim, 1981).

2. CONCLUSION

In order to carry out its administrative activities and to use its human and financial means, the Department uses administrative methods. Through these contracts, the Department undertakes many social and economic activities that were previously a field of individual activity.

In order to achieve this objective, the administration has been granted broad powers in implementing the administrative contract in the face of the contractor. These powers are derived by the administration either from the provisions of the contract or from the general rules that apply to every administrative contract even if no provision is made in the law. The authority to terminate the administrative contract by the Department of its own will, and this termination is permissible in two cases:

First case: In the interest of the public interest and in order to maintain the proper functioning of public facilities, because it is unreasonable for the contract to become a barrier between the administration and the achievement of its objectives by securing the public benefit, or the contract constitutes a heavy burden on the public utility or becomes useless for the facility.

The second case is the result of the contractor's fault, provided that the error is of a very serious and serious nature in order to justify the criminal annulment which constitutes a harsh penalty against the contractor. An example of a serious contractor's fault is that the contractor will not implement or implement his obligations in a manner inconsistent with the terms of the contract.

The judiciary has confirmed that the contractor must be notified by the administration before the contract is terminated, in view of the seriousness of the consequences of such abrogation, provided that the warning is reasonable, ie, the statement of violations committed by the contractor. During which an opportunity to remove the reasons for the violation to avoid the dissolution of the contract, and this excuse is an important guarantee for the contractor in the face of management.

With regard to the legal basis of the administration's authority to terminate the administrative contract in the interest of the public, we have the view that this authority is based on the notion of common law privileges enjoyed by the administration when concluding the contract, together with the idea of the special needs of the public utility.

And concluded that the termination of the administration of the administrative contract by its own will, either for reasons of public interest or for serious error occurred from the contractor of the legal effects vary according to the type of termination, the most prominent of these effects:

First: the right of the contractor to compensation for the damage caused to him following the dissolution of the contract: and the damage to which compensation is due requires that he be an investigator and that he should be in a legal position that deserves protection.

Second: Termination of the Contractual Relationship The termination of the contractual relationship necessitates the liquidation of the contract and the settlement of the mutual financial obligations between the administration and the contractor and determining the fate of the tools used in implementing the administrative contract, all of which we explained previously under the most prominent administrative contracts.

The decision to terminate the administrative contract may be challenged by third parties if the execution or termination of this contract may affect the interests of the third party, and the third party shall challenge the decision of annulment by means of the cancellation proceedings.

The contracting party may also challenge the decision to terminate its administrative contract unilaterally by the administration. However, the only judicial means it has to appeal is the case of the full court. It may not resort to the cancellation proceedings. The termination decision for the contractor is not considered separate from this contract, Therefore, this decision cannot be the subject of the case of revocation on its part, and we note that the Jordanian legislator did not make the consideration of disputes relating to administrative contracts the jurisdiction of administrative courts, and the ordinary courts are competent.

The powers of the judge differ from the unlawful decision issued by the administration to terminate the administrative contract depending on the type of contract and the nature of the termination, whether for reasons of public interest or the result of a serious contractor's fault. These authorities sometimes include the powers of cancellation and award of compensation, The judiciary of the French Council of State, and we found no reference to the position of the Jordanian judiciary.

3. RECOMMENDATIONS

1-We believe that the Jordanian judiciary should not limit the contractor's compensation with the administration in the event of termination of his contract in order to achieve the public interest for the loss he only suffered, but must also compensate him for the loss of profit (lost profits) for Two reasons:

The first is that the obligation of the administration to compensate the contractor for the lost profits will certainly pay it to the riyals before the contract is canceled and the contractor is deprived of the expected financial benefits if the contract is fully executed. The administration does not issue a decision to terminate the contract as soon as it achieves a simple public benefit. In the event that it is confirmed that there is a serious public interest that leaves it with no choice but to annul, and this is claimed for justice.

Second: The contractor aims to contract with the administration to achieve a special interest represented by profit, if the administration to terminate the contract whenever it wishes for the public interest to compensate the contractor for the burdens incurred and the damage done to him only, this means the end of the contractual relationship without obtaining the contractor Any profit, which in turn will lead to the reluctance of capital owners to contract with the administration, while obligating the administration to compensate the contractor for the profits of any other compensation, simple, will encourage them to contract with them.

2-We see the need to give the judge the power to rule the administrative decision to annul the administrative contract by its own will, and enable the contractor with the administration to appeal its decision to annulment through the cancellation proceedings before the administrative courts, because the decision to terminate like any administrative decision, If it is related to the contract, it is a final legal act that is issued by the administration of its own will according to its authority to achieve the public interest, which may be flawed by any of the defects of the ordinary administrative decisions making it illegal, such as lack of jurisdiction, defect of form and procedures, Abuse of power, and defective reason.

3-We believe that the Jordanian legislator should make disputes concerning administrative contracts the competence of the administrative courts to keep up with the guidance of the leading countries in this regard, because making the jurisdiction of this type of dispute the competence of the administrative courts will help draw general principles governing administrative contracts and fill the lack of legislation.

4-We believe that the Jordanian legislator must oblige the administration to cause the decision to terminate the administrative contract for reasons of public interest and oblige it to cause the termination decision which takes the nature of the penalty, because the causation constitutes an important guarantee for the contractor, protecting him from the arbitrariness of the administrative authority. Reasons and seriousness.

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