

The Right of the Contractor in the Administration to receive the Financial Compensation- A comparative Study

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Abstract

The conclusion of the administrative contract entails a set of rights and obligations exchanged between the parties/management on the one hand, and the individual or company on the other, and one of the most important rights that the contractor is keen on is to obtain the financial return, which otherwise would not have concluded the contract with the administration, and in order to clarify this right, which varies according to the contract, it is in most contracts such as the contract of public works, transportation and supply, the price he receives, and in the contract of obligation The fee charged by the contractor to the beneficiaries of the services of the public facility, in terms of its identification, payment methods and the commitment of management to the contractor's performance was this study.

Keywords: administrative contract entails, contractor, financial return.

INTRODUCTION

In order to carry out its duties to the fullest, the administration needs to conclude many contracts in the face of the inadequacy of administrative decisions sometimes to carry out its tasks, and these contracts are in two types, including those subject to private law and which are subject to public law, which are called the term administrative contracts, those contracts that reflect the authority and privileges of the administration in order to manage and operate public facilities, and the administrative judiciary is competent to consider the disputes resulting from them, and subject to rules The general law, this contract arranges obligations and mutual rights between the parties, there is the authority of the administration in oversight and guidance and its authority in unilaterally amending the terms of the contract and signing sanctions on the contractor if it violates its contractual obligations, corresponding to the rights of the contractor before the administration, the most

important of which is to obtain the financial return of the contract, which would otherwise not have provided the contractor to contract with the administration, the contractor aims to Making a profit, which is a legitimate matter that no one denies, and takes the financial equivalent of the contract multiple forms, depending on the type of contract concluded with the administration, in the employment contract the financial equivalent is a monthly salary, and may be a price in the contracts of public works and supply, and takes the form of the fee in the contract of the concession, so the financial equivalent in the administrative contract is the price in the contracts of public works and supply, and drawing in the contract of excellence.

The problem of the study:

In the face of the various and dangerous authorities enjoyed by the administration towards the contractor, the impact on the contractor's right to account for the financial

return and guarantees of obtaining it, which would otherwise not have concluded the contract with the administration, is offset by the need for continued management to conclude such contracts.

The importance of the study:

The right of the trespasser to obtain the financial return of the contract is of paramount importance and is the main motive for concluding the contract, it is important to highlight the most important guarantees and the extent to which they are sufficient to obtain this right, considering the authorities enjoyed by the administration towards the contractor.

Study limits:

The management's obligations are the direction of the contractor - which is the equivalent of the authorities and rights - including what is financial and what is not financial, and this study will be limited to the financial and specific obligation of the administration, which is the performance of the financial return of the contractor.

Study plan:

This study, which followed the comparative analytical approach, was divided into three main investigations that began with an introduction and ended with a conclusion, where the first research was devoted

To study the subject of the price, its concept, its identification, and the methods of payment, and in the second research the subject of the drawing was addressed, its concept and its identification and the restrictions that are contained in the definition after a general clarification of the contract of excellence, while the third research was devoted to the statement of images of the breach of the contracting administration to pay the financial return to the contractor.

First research

Price

The corresponding financial price taken by the contractor in most administrative contracts is considered to be the same as in the public

works contract, the supply, and transport contract, and the price in the administrative contract can be defined as the monetary return that the contractor deserves for the work and costs, he incurs to carry out the contract in addition to the legitimate profits.

In order to clarify the issue of the price, it is necessary to address how it is determined and the extent to which it can be amended by the administration and the methods of payment through the following demands:

The first requirement

Determining the price

The process of determining and agreeing on the price is essential and important in the contractual process in order to avoid what may happen in the future during the implementation of the contract or after the completion of its implementation of disputes, and the original to be determined by the agreement of the parties, and therefore is considered a contractual requirement, and due to the importance of this, most legislation has made sure that it is determined accurately and in a specific number, and may be determined by a clause included in the contract or under a documentation, Independent contracts such as an agreement to take prevailing prices at a specific time are primarily accountable, or determined based on the average price in tenders during the year before the contract.

The method of determining the price varies according to the nature of the contract, in the contract of public works, the price may be determined in total for the contract process where all the work subject to the contract is determined and the total price corresponding to those works is determined within the terms of the contract, and the price may be determined according to a certain unit of measurement units such as the square meter, and there is a jurisprudence of this method called remeasure, where a certain price is agreed for each item of work required Implemented with a determination of quantity or size, the value of the item is taken mainly in the contract.

The price may be determined for each type of work on which the project is based in place of the public works contract, and some jurisprudence has described this method as very practical so that the price of each type of work to be carried out is determined without prior determination of the total amount of work

In the supply contract, the price is determined in three main ways, the first of which is the required quantity and total price, and the second method is determined according to the type of goods to be supplied, while the third method, the price is determined by referring to an external element of the contract where it is agreed to determine the price based on the prevailing market prices on a specific date, and the price becomes final from the moment the contract is concluded, at which point the parties to the contract may not decompose. On the grounds of miscalculation or estimating circumstances, the contractor may not claim the difference in price for high living costs or higher prices after contracting.

Or protest to the administration that it has signed a similar contract at a higher price, and in general the contractor may not demand an increase in the price on the basis of justice, and this also applies to the administration's superiors, as it may not modify the value of the price or the way it is fulfilled, but this does not apply to material errors that may occur from the parties, where it may be corrected, and despite the above the original price may be adjusted based on the agreement of the parties, the price is a condition Contractual, which should be agreed in advance, the parties have the right to agree to adjust the price later, and the price may also be adjusted by the legislator as a result of certain circumstances or by allowing one of the parties to claim an amendment to the agreed price, as well as the price may be adjusted if the administration unilaterally amends the terms of the contract by increasing or reducing the previously agreed work from the point of view of the contractor's right to balance the contract in the event of an increase or on the basis of enrichment for no reason. Article 97/a of Jordan's government procurement system No. 28 of 2019 stipulates that the purchase and contract price is fixed

only in cases where the price may be adjusted to face changes in economic or commercial conditions provided that the purchase and contract documents provide for it.

All this if the price is determined at the core of the contract under the agreement between the parties, but there are cases where the contract does not include how to determine the price of it - in the case of contracting by direct order, and therefore the contracting administration requires the contractor to provide a certain courier to submit the account invoice later, and here is the legislatively prescribed method of determining the price or selected based on the market price at that time in case The contractor works or goods more than agreed upon on the order of the administration, in which case the original price applies if the increase of the sex of the subject of the original contract, or estimates the price in a new way if the increase differs from the subject of the original contract, and the original contractor must abide by the agreed work without increase or decrease, and on the contrary he must bear the result of his mistake, but the French Council of State has reduced the severity of this rule and authorized the contractor to commit to the agreed work without increase or decrease, and on the contrary it has to bear the result of its mistake, but the French Council of State has reduced the severity of this rule and authorized the contractor to commit to the agreed work without increase or decrease. Alpes against this increase in the following cases: 2

1. Case of necessary works, which have not been agreed upon at the heart of the contract, but are necessary for the proper implementation of the project, and to compensate for them, the French Council of State requires that these works be indispensable or represent an imperative and sometimes only abstract an if the administration recognizes that necessity or does not argue with the necessity of the works, then it must pay the contractor for this increase on the basis of the price agreed in the contract for original works.

2. The state of the missing works

These actions are not necessary as in the previous case, but if they are carried out, they benefit the administration with undoubted benefit, and here they are compensated for on the basis of the idea of enrichment for no reason.

The second requirement

Methods of paying the price

The general rule in this regard is that the administration does not pay the price for the disabled until after the completion of the service and the contractor has all the contract obligations required of him, and accordingly, the employee in the employment contract does not pay him his salary at the beginning of the month but at the end, and the supplier in the supply contract does not deserve the price and may not have the demands. After supplying the required quantity under the contract, even if the supply takes a long period of time, as well as the contractor in the public works contract, the contracting administration will pay him the price only after the project is implemented and the warranty period expires and the final delivery is completed.

However, the subject matter of the contract agreed with the administration may require considerable funds that the contractor may be unable to provide, and if the administration leaves him alone, he may have to borrow from the banks to continue the implementation of the project, which ultimately leads to higher prices to cover the cost of interest due to the bank from the loan, or it may lead to the need to stop the project once and for all, thereby damaging public facilities.

Therefore, the legislator in most countries has reduced the previous rule and reminded him to educate the administration along with the contractor in such cases and provide him with a helping hand and assistance to encourage him to contract with the administration to pay him payments under the account or pay part of the price for the work carried out and this will be explained in the following two sections:

Section 1

Pay part of the price in advance under the account

Which is that the administration pays an amount under the account in advance to the contractor without corresponding to a specific work, and this is done at the discretion of the contracting administration within certain controls, and this amount provided is considered as a precursor granted to the contractor until the final account of the project is conducted to be part of the agreed price,

In article 155 of the Public Procurement Contracts Act, the French legislator specified the controls to be observed in the use of this method as follows:

1. The contractor must apply to the management indicating his desire to transfer an advance payment under the account in order to complete the preparatory work required by the implementation of the contract, such as the purchase of raw materials and supplies.
2. The second paragraph of the previous article clarified the maximum that the administrator can pay the contractor in advance, which is 20% of the original value of the contract, yet this percentage can increase to 60% in certain cases received exclusively.
3. The last paragraph of the previous article prohibited the administration from disbursing the amount of the payment made to the supplier only after obtaining the guarantee provided for in article 133 of the Previous Public Procurement Contracts Act.

In Egypt, article 44 of Law No. 182 of 2018 authorized the issuance of the Law regulating contracts concluded by the public authorities with the approval of the competent authority to make payments under the account in exchange for a letter within the approved, in proportions and in accordance with the terms, rules and procedures adopted by the Executive Regulations, which are generally similar to the controls stipulated by the French legislator in terms of the provision of a request from the contractor to the administration to provide a snub as well as to provide An letter of

guarantee in the same category and currency and is not restricted by any condition.

In Jordan, Article 93 of Regulation 28 of 2019 (Government Procurement System 2019) states:

a. Payment of financial dues shall be based on the submission of a financial claim, including any information required by the terms of payment.

b. The purchase contract may provide for the payment of the purchase contract in interim payments based on the progress of the workflow and what has been completed after the contractor has submitted and accepted the documents requested by the beneficiary. A. The purchase contract may provide for:

1. Withhold a percentage of the amounts due until the completion of the purchase contract.

2. Advance payments to clarify in the purchase contract the conditions required for this purpose, including payment through discounts from interim payments.

The total amount of payments made under the purchase contract should not exceed the percentages specified in the purchase documents.

E. No advance payment may be made until after providing financial insurance covering the full value of this payment.

In the Kingdom of Bahrain, Bahrain's tendering, bidding and procurement law No. 36 of 2002 and its recent amendments did not include any provision concerning the methods of paying the price, leaving the arrangement of payment procedures for the same contract*1

Section 2

Paying part of the price for the work done

This is for the contracting administration to pay a partial amount in a gradual manner to the equivalent of the work done.

In the first and second paragraphs of Article (162) of the Public Purchase Contracts Act, the French legislator took this method as the right

of the ineligible person to require payments under the account in exchange for the performance performed on the condition that the value of one payment does not exceed the value of the relevant performance, and the third paragraph of the same article stipulated that a portion of the price equivalent to the obligations implemented should exceed three months.²

In Egypt, the Egyptian legislator followed the example of his French counterpart by obliging the contracting administration under the provision (93) of the executive regulations of the Law on the Regulation of Contracts concluded by the public authorities issued by Law No. 182 of 2018 to pay for the items supplied or services performed as soon as possible and no more than 30 days calculated from the date of the thousand The approval, acceptance, and accreditation, and in the business contracts, the contractor is spent from the date of submission of the extract within the controls and conditions separated by the aforementioned article, as well as the Jordanian legislator in the aforementioned article 93/5.

In the Kingdom of Bahrain, the Bahraini legislator did not regulate the law on tenders, bids, purchases, and government sales, as such as this issue and left the arrangement of that to the same

contract.

* <https://www.iium.edu.my/media/30785/Full%20book%2C%20arabic.pdf>

2 https://scholarworks.uaeu.ac.ae/cgi/viewcontent.cgi?article=1296&context=sharia_and_law

As for the procedures for fulfilling the cost, the original as we mentioned earlier is that the contractor with the administration is not entitled to the full price unless he fulfills his full contractual obligations in accordance with the terms and specifications agreed upon.

The executive regulations of the Egyptian Contract Enforcement Act of 2018 and the

abovementioned delivery procedures were taken over in Article 118, the contract guarantee in Article 119, the final delivery in Article 120, and the contractual management authority if the delivery is carried out in accordance with the procedures and procedures separated by the previous articles.

The contractor shall pay all the amounts due to him and the final insurance refund to him, and if the administration refrains from paying the price to the contractor, whether intentionally or as a result of error or negligence, the contractor has the right to resort to the judiciary and therefore the administrative authority is obliged to pay the price if it is due or by reply to the contractor's request in the event of its inequity.

It was noted here that the Jordanian legislator made disputes relating to administrative contracts the jurisdiction of the ordinary judiciary as the holder of the general jurisdiction to hear judicial disputes - as confirmed in article 95/a of the Government Procurement System No. 28 of 2019 by stating that "Jordanian courts are competent to consider the settlement of disputes arising from the implementation of contracts concluded under the provisions of this system, and Jordanian legislation shall be applicable unless the contract documents state otherwise.

It also did not appear within the jurisdiction of the Jordanian Administrative Court, which was defined by Article 5 of the Jordanian Administrative Justice Act No. 27 of 2014, and some jurisprudence commented 2 on this by saying, despite the development witnessed by the Jordanian administrative judiciary by issuing Jordan's Administrative Justice Act No. 27 of 2014 to announce the formation of the Administrative Court and the Supreme Administrative Court to be litigation on two degrees, but nevertheless did not mention disputes related to administrative contracts within the jurisdiction of the administrative judiciary and make it Within the jurisdiction of the civil judiciary, the researcher considers on the subject of the competence of the ordinary judiciary in the consideration of disputes related to administrative contracts in Jordan, that this constitutes a serious breach in the

guarantees that the contractor of the administration obtains his rights, including his right to receive financial compensation, it is the right of the individual whether he is contracted with the administration or otherwise that the person considering his case is a specialized and independent judge, because this will affect the fairness of his sentences, and therefore on The rights of individuals, therefore, we hope that the Jordanian legislator will assign jurisdiction to consider disputes relating to administrative contracts to the administrative judiciary and not normal, as do other legislators in the comparative countries.

The Bahraini legislator did not regulate these measures, but article 87 of the Executive Regulations of the Government Tenders, Bidding and Procurement Act stipulates that the administration is obliged to pay for the goods supplied during the dates stipulated in the contract.

Second research

Drawing

We mentioned earlier that the financial equivalent of the contractor is determined by the nature of the administrative contract in most administrative contracts such as the contract of public works and supply the financial return is the price that the contractor receives from the administration for the work he provides and the goods he supplied, but in the contract of the concession, the financial compensation is the fees obtained by the contractor from the beneficiaries of the services of the facility directly.

To study the subject matter of the fee in the concession contract, it is necessary to first be exposed to the concession contract due to its difference from the rest of the administrative contracts in the first requirement, and then how to determine the fee in the concession contract in the second requirement.

The first requirement

Commitment contract (concession)

The concession contract will be studied in terms of its concept, elements, and effects within the following branches.

Section 1

Concept of commitment contract (concession)

The obligation contract is one of the most important and famous administrative contracts called and is one of the administrative contracts made by the Egyptian legislator from the jurisdiction of the administrative judiciary, and the contract of obligation is defined as (an administrative contract under which the committed - an individual or company - manages and exploits an economic public facility for a fee from the beneficiaries while subject to the basic rules governing the functioning of public utilities as well as the conditions guaranteed by the administration of the concession contract.

As the Egyptian Administrative Court has known him of one of its rulings (The obligation of public utilities is only an administrative contract under which an individual or company undertakes to carry out its own financial responsibility under the mandate of the State or one of its administrative units and in accordance with the conditions set for it, to perform a public service to the public, in exchange for authorizing him to exploit the project for a limited period of time and to take advantage of the profits. It is charged instead in the form of fees received from the beneficiaries.

Based on the above, it is clear that the concession contract is of a special nature, the subject of the management of one of the state economic facilities in exchange for the contractor's fees from the beneficiaries of the facility, thus differing from the contract of public works in return for the financial obtained by the contractor and here is the price of the work he performed for the administration, and the place of the contract of commitment is mostly attached to the economic public facilities, thus requiring high technical skill that may be lost Management thus usually 3 has the method of concluding the contract through practice, and the concession contract

has two legal forms of contracting the concession of public utilities and the contract of the public works concession, the first picture is what has been mentioned about the definition of the concession contract, examples of this image, water distribution facilities, electricity, gas or purity The second picture, the concession of public works, is a contract under which a person is obliged to establish and maintain a public facility during the duration of the concession in exchange for receiving a certain fee from the exploiters of this facility, which is agreed upon, for example, the establishment of a public park, tunnel or highway between two cities.

Section 2

Elements of the commitment contract

The concession contract is characterized by the fact that it contains two types of conditions, contractual terms subject to the contract rule of the contractors' law, and regulatory conditions, which the administrative authority has the power to amend at any time, and whenever the general facility needs it.

First: contractual conditions:

These are the conditions relating to the financial rights of the obligation to collect fees, his right to receive the subsidies and facilities promised by the administration to operate the facility, and his right to rebalance the financial balance of the contract, and these conditions may not be compromised by the administration by modifying them, and if this happens, they must compensate the committed person for the damages resulting from this amendment.

Second: The conditions relating to the organization and operation of the facility as conditions of exploitation and fees for the application of its services, adherence to the principles governing public facilities, such as the principle of the regular and extrapolated functioning of the public facility, the principle of equality between the beneficiaries and the principle of the applicability of the public facility for modification and change, these conditions are entitled to be amended by the administration and its individual will if the

public interest so requires while compensating the committed for damages to the public interest. As a result of this amendment, this was confirmed by the Egyptian Supreme Administrative Court, which ruled (Although the use of the obligation donor's right to modify the tariff or itineraries for the benefit of the beneficiaries, the altruism of the common good at the expense of the private interest of the committed does not mean sacrificing these special interests so that the obligation alone bears all the damages, so if such an amendment causes harm to the adherent, the obligation donor must compensate him for what forces such damages, and this is what the jurisprudence and administrative judiciary have established)).³

With regard to the fee charged by the committed to the beneficiaries and whether it is a contractual requirement that the administration may work to amend only with the consent of the contractors' law or from the regulatory conditions, which the administration has the right to work on modifying and individually and without referring to the committed, the French jurisprudence differed on this into two opinions. It is the dominant and often prevailing in jurisprudence and the judiciary, which considers drawing by the regulatory conditions, and therefore the administration can work to amend it in a unilateral form without the consent of the committed

Branch Three

Implications of the commitment contract (concession)

The concession contract entails a range of implications, including what is up to the contracting administration, including what is up to the committed and those who are the beneficiaries, and these are the parties to the concession contract.

First: The effects of the commitment contract for the contracting administration:

One of the implications of the obligation contract for the contracting administration is its right to control, where it monitors the

committed during its operation of the public facility to ensure that it implements the contract in accordance with its technical, administrative and financial terms by sending its delegates to the various branches and departments established by the committed to exploit the facility and report This is for the contracting department, and the administration has the right to unilaterally amend the terms of the regulatory contract as previously shown, in order to keep pace with the changing circumstances and emerging needs of the beneficiaries, such as adjusting the rates of use of the facility's services and the dates of their meeting in accordance with the requirements of the public interest, noting that if this amendment adds new obligations and burdens to the obligation or affects its right to the financial balance of the contract, it is entitled to claim compensation as the administration is entitled to sign the obligations. The obligation in the event of breach of its contractual obligations, whether by refraining from implementing the contract, violating agreed terms and specifications, delaying implementation, or in the case of fraud and circumvention in its treatment with the administration, where the sanctions imposed on it vary, such as the right of management to impose a fine or to place the facility under guard as a means of pressure and coercion, or to drop the machine. In the event that the committed person commits serious violations and the need to resort in advance to the judiciary, however, the French Council of State shall impose the penalty of dropping the obligation and make its signature by order of the judiciary if the contract does not provide for the right of the administration to sign them, but the Egyptian Council of State did not exclude this punishment and authorized the administration the right to impose the penalty of dropping without the need to resort to the judiciary, and this is what the Supreme Administrative Court confirmed by saying that this is not true in the law. The penalty shall be imposed or dropped by the obligation) may only be signed by the competent court, as the obligation to have many powers to use in the event that the obligation to the obligation imposed on him under the contract is not

fulfilled, he has a decision to sign the fines stipulated in the contractor to carry out the obligations of the obligation at his expense, as well as to take what he sees as a sponsor to ensure the functioning of the facility, as evidenced by the grantor of the obligation always - In addition to these sanctions-dropping the obligation if the facility is partially or completely disrupted or if the committed person commits serious offenses, the purpose of his opinion is that there are two conditions, the first of which is that physical irregularities be committed, that it is repeatedly neglected or that it is unable to operate it regularly, and secondly, the obligation to warn the committed person before signing this penalty.

Another effect of the obligation contract for the administration is its right to recover the facility before the end of its term if it considers that the public interest requires this through purchase and compensation to the obligation to do so, and the recovery in this sense is different from the projection that is the result of serious irregularities committed by the committed person while running the public facility.

Second: The effects of the contract of commitment to the committed:

The obligation contract arranges certain rights for the obligation and at the same time imposes some duties on it:

1. The rights of the committed person, which is represented by his right to cash return, which is the fees he receives from those directly detracting from the services of the opaque facility, and these fees are a requirement as mentioned earlier, in which the contracting administration has the right to intervene from time to time in the amendment by increase or detract without interference from the committed person if the public interest so requires.

So that the obligation does not have the right to exceed 10% of the capital, and those who are not able to control the administration if it falls short in this matter through recourse to the judiciary, as well as the right of the committed to rebalancing the financial balance of the

contract, if this balance is disturbed by management interventions such as modifying the price lists or the system of work in the public facility or if the imbalance is the result of the legitimate procedures of the contracting administration, which is What is called (the theory of doing the matter) or because of economic risks, which is known as the theory of unexpected emergency circumstances or as a result of the committed person experiencing unexpected material difficulties, if the committed person is exposed to such reasons then he deserves full or partial compensation depending on the nature of the interventions and the circumstances to which the committed person was subjected.

2. Committed duties:

There is a set of duties imposed by the obligation on the obligation to the obligation and it revolves around securing the functioning of the public facility regularly and steadily, providing services to individuals in a regular manner without interruption, and managing the public facility in his nose so that he may waive the contract to others without the consent of the administration, as it is considered in the contract, and if such happens it is not considered and is considered invalid and has no consequences.

Third: The effects of the commitment contract for beneficiaries:

This image of rice is an extension of the effects of the administrative constraints of others, as the beneficiaries of the contracts of commitment derive rights from them in the face of the contracted administration and from them in the face of the committed.

1. The right of the beneficiary to face the contracting administration, when the obligation to refrain from providing the service or to force it to provide the service in a bad way, delay in providing it reasonably or violate the principle of equality between the beneficiaries of the services of the facility, may be entitled to require Eladra to intervene using its powers by pressuring the obligation to force him to respect

the terms of the contract, if the administration refrains from doing so, counting its abstention as a negative administrative decision contrary to the law, they are entitled to intervene by using its powers to force it to respect the terms of the contract. Appeal against him on the grounds of annulment before the administrative judiciary.

2. The right of the beneficiary to confront the committed, maybe regulated the relationship between the soaked and the committed through a contract that has been established between the parties and can be consulted to know the rights and obligations of the parties, but it is noted that this contract is based on the contract of obligation because the parties contract within its limits, so the obligation must provide the beneficiary in the usual way with the services that are equivalent to the wage received in accordance with the conditions stipulated in the contract of obligation and its annexes, The conditions that are met by the nature of the work if there is no such contract, each individual who has fulfilled the conditions of use of the service performed by the obligation is entitled to demand it, and also to require the administration to implement all the conditions stipulated in the obligation contract for the benefit of the beneficiaries. Thus, the right of the beneficiary applicant is derived from the contract of excellence, and the judge of the contract shall be competent to consider disputes relating to the requests of the beneficiaries in the implementation of the terms of the concession, but the jurisprudence and the French Council of State are fair to adopt this idea, because the conditions for applying the theory of requirement in favour of others are not available in the case of the disappearance of public facilities, urging the application of civil theory to be specific and the beneficiaries specified, At the time of contract or may be limited in the future, while the beneficiaries of the concession contract are all members of the public present at the time of the contract or who are present in the future and apply for the use of the services provided by the facilities, but these criticisms do not conform to the rules underlying the theory of requirement for the benefit of others, so the administrative

jurisprudence has turned Speaking to the return of the rights of the beneficiaries to the administrative nature of the contract of the concession in particular, and the administrative contracts in general, the contract of the concession is the subject of the management of a public facility, and most of the texts of its regulation extend its impact to the beneficiaries, which is sufficient to determine the rights of the beneficiaries.

Most jurists differentiate between purely administrative and industrial and commercial luxury, so for the first, individuals cannot have personal rights to them.

Although the administrative authority is obliged to manage public facilities and ensure that they are in the public interest, the individual does not have a personal right to the administrative authority to request that it be sentenced to carry out these obligations, which is different from industrial and commercial facilities, it is subject to the rules of private law, and here the individual has a personal right to claim before the judiciary that the administrative person who manages the facility and the concession company must supply the exile. If a water or gas subscription contract is signed with the concession company that manages the facility, the relationship is contractual and in the event of a dispute, the rules of private law apply to it, and this is what the Egyptian legislator has taken, and the ordinary and administrative judiciary has adopted it.

The second requirement

How to select the fee in the concession contract

We mentioned earlier that the financial return received by the contractor in the contract of the "E", is different from the rest of the other administrative contracts, in the form of a fee charged by the committed beneficiaries of the service of the public facility, and therefore is considered one of the conditions of the regulations, which the contracting administration has the right to modify whenever the interest requires it.

On this basis, the determination of the fee is made in the contract between the administration and the obligation or is determined later by the administration with some restrictions governing the determination of the fee, so this requirement will be divided into two branches, we will deal in the first section with the methods of determining the fee in the contract of excellence and the restrictions that are contained in this determination in the second section.

Section 1

Methods of determining the drawing in the concession contract

Since the drawing is primarily determined by the contracting administration and the regulation of concession contracts in general, it tends to follow the following methods:

1. The contracting administration itself shall determine the fees after consulting the committed person so that this consultation should not be obliged to the administration.
2. The contractor should specify the fee without consulting the obligation as one of the regulatory conditions of the contract, which the administration has the right to amend by its own volition.
3. The administration may only limit the maximum amount of the fee and leave the obligation to the obligation to appreciate it within the maximum limit set by it in advance and the fee set by the committed shall not be valid until it has been ratified by the contracting administration, and the jurist (Geez) has argued that setting the maximum amount of the fee does not give the obligation absolute freedom to determine the amount received by the beneficiaries, but must be approved by the administration in this definition, However, the jurist (de le Pader) disagrees with Geez in this opinion and considers that the judiciary does not confirm it, since the French Council of State entitles the committed to the freedom to determine the fee within the scope of the maximum and this dr. Suleiman Al-Tamawi, who is supported by the researcher, believes that there is no face to this

dispute as long as we recognize the authority of the administration to amend the fee at any time if the public interest requires this:

Section 2

Restrictions on the determination of the fee in the concession contract

The freedom of both management and the committed in the process of determining the fee responds to some restrictions, and can be refunded to the following considerations:

1. The principle of equality between beneficiaries in the public facility:

One of the most important rules governing public utilities in the state is the rule of equality between the beneficiaries of the service provided by the public facility, and this rule also resonates with regard to equality between the beneficiaries in the fees decided by the concession contract, so that the parties to the contract, the administration and the committed must respect this rule, and here is not meant by equality absolute equality, but it is limited Only it applies to equals in circumstances and therefore it is permissible to distinguish between the beneficiaries if their circumstances and status vary, so the fee may be adjusted according to the dimension of the place where the service is performed, the type of service required, or its time, but the French Council of State rejected the distinction based on the following considerations:

A. Changing the price of electricity and the area of the beneficiary's property

B. Changing the price of water supply according to the ability of hotels, restaurants and cafes to meet.

A. Determining the sale price makes a distinction between factories established before and after a given date.

2. The legislative restriction, which is the intervention of the legislator in the process of determining the price of the fee for the service received by the beneficiary, as if the price of electricity or the Gazan - at that point on both sides of the contract management and

committed to complying with this price and adhering to it.

Accordingly, it can be said that the fee charged by the committed in the obligation contract in order to provide public service to the beneficiaries of these facilities is different from the price charged by the contractor in the public works contract or the supply contract in terms of:

- The authority of individual management to determine or modify it.
- This limitation has a mandatory force that amounts to the strength and effects of the administrative regulation.
- The obligation and the beneficiaries may agree to the violation of the fee by increase or decrease.
- Determining the fee is a requirement for the application of the basic principles governing public facilities, the most important of which is the principle of the regular and extravagance of public facilities and the principle of equality between the users of the public utility service if the conditions for access to the service are similar to those of them, in addition to the previous two photographs of the financial equivalent, which were explained in the past, I would like to point out that there is a third picture of the benefits, subsidies and government facilities provided by the administration to the contractor, as incentive rewards for the contractor. Contracted with it on the one hand, and on the other hand, the financing of some projects may be so large that the financial return is useless for the contractor,

Since the administration has agreed with the contractor to grant these rewards and approved them, they are considered an integral part of the contractor's financial return, and the administration has the right to refrain from providing them to the contractor because they were considered for him and who gave them to the contractor for the first time in contract with the administration, such as such subsidies and facilities, subsidies, exploitation of certain areas and facilities adjacent to the project,

ensuring a minimum of profits, loans and credit facilities.

Third research Photos of the breach of the contracting administration by paying the contractor's financial return

The financial compensation is one of the most important rights of the contractor with management, which is considered the main payer for the conclusion of the contract, and the administration must abide by its performance to the contractor if it executes the contract as agreed, and if the administration violates this obligation, then its contractual responsibility will be held and the contractor is entitled to compensation for it.

One form of the administration's breach of the contractor's right to receive the financial return of the contract is the unilateral adjustment of the price agreed in the contract and the delay of the administration in fulfilling the amounts of money due, as well as its failure to take into account the payments of prices and also the breach of the contractor's final insurance refund, which I will clarify through the following demands:

The first requirement

Unilateral adjustment by the administration of the price agreed in the contract We mentioned earlier that the right of the contractor with the administration to obtain the financial equivalent of the contract is one of the contractual conditions agreed by the parties, so the contracting administration is not entitled alone to modify the price that is committed to it by its own will, and this is what the French Council of State has stressed that "the appellant founded his claim that the cancellation of the increase in the quantities of work creates for him an unjustified amendment For the provisions of the contract specified for the agreed price, this would constitute an error on the part of the administration that arranges its contractual liability, since the amendment should not touch the financial rights of the contractor and be limited to the conditions relating to the functioning of the public facility as confirmed by the Supreme Administrative Court by saying () admitted that the conditions

relating to the determination of the monetary equivalent in the contract in general are contractual and therefore determine precisely the time of contract and one of the parties to the contract cannot. As the general origin of its amendment only with the consent of the other party, and the authority of the administration in the amendment is focused only on the conditions relating to the operation of the public facility and not among them those that determine the financial equivalent in the administrative contract, and therefore the conditions relating to the monetary return in the contract are stable.

The principle of binding force of the price agreed in the contract is based on two considerations, the first - that the administration's failure to respect this principle and its adjustment of the agreed price of its own will leads to the reluctance of individuals to contract with it, which affects the regular and extravagance of its facilities and the second is settled jurisprudence and the elimination that the authority of the administration in the amendment is limited only to the conditions relating to the management of the public facility, while the conditions relating to the financial benefits of the contractor can not be compromised and amended by the administration except with the consent of the other party.

However, this principle is answered by two exceptions:

The first relates to the contract of excellence where the conditions relating to the determination of the fee are considered from the dome of the terms of the regulations and not the contractual, and the second relates to contracts assigned to the contractor regular and not personal positions such as employment contracts, the employee is in a position of regulation governed by laws and regulations and therefore the administration can modify the increase or decrease in them.

The second requirement

Delay in meeting the contractor's financial return

Another obligation of the administration in the direction of the contractor, not to delay the performance of the contractor's financial return for the dates agreed upon in the contract, not to abide by it in the form of its contractual responsibility and give the contractor the right to receive compensation without being asked to prove the damage as a result. Its specific times will have negative effects on the contractor on the one hand and on the administration on the other, as it is responsible for ensuring the regular and steady functioning of public facilities.

Therefore, any disruption of the contracted work as a result of the contractor's lack of liquidity resulting from the administration's delay in the disbursement of dues - will inevitably result in disruption to the stages of the execution of such work. Thus, in one of its provisions, the French Council of State ruled that the mere minor delay in the payment of its dues created an obligation on it to compensate under the interest on delay.

In Egypt, the Supreme Administrative Court stated that (since the appellant administrative body has acknowledged its delay in the disbursement of this payment and attributed this to the lack of funding, it is therefore responsible for delaying the payment of its dues, and if it is damaged by this delay, it has the right to claim compensation, and as the appealed judgment has ended up entitling the appellant to compensation for damages suffered as a result of the delay in the payment of his dues for two years. Almost, he had properly encountered the rule of law.

With regard to determining the date when the administration is considered to be late in fulfilling its financial obligations towards the contractor, the Egyptian Minister of Finance (296) issued a decision for 2019 to issue the executive regulations of the law regulating contracts concluded by the public authorities issued by Law No. 182 of 2018 that article 93 of it stipulates (obliging the contracting administration to disclose payments to the contractor. The calculation is based on the progress of the work and that within 60 days of the date of submission of the surveyor within

the controls and conditions separated by the above article.

Based on the above, the commitment of the contracting administration is not limited only to the payment of the financial withdrawals of the contractor, it should not be delayed in its expense, thus calculating the delayed interest in favor of the contractor for the amounts that the administration is late in paying, and to accrue the delayed interest is sufficient for the administration to delay in fulfilling its obligations Cash on time where the delay is due without evidence of damage and the price specified by law if it is not agreed between the parties but is it permissible for the contractor to be awarded compensation along with delayed interest ? In France, the mere delay of the debtor from fulfilling its financial obligation constitutes the wrong corner, and the creditor is obliged to compensate with the delayed interest legally specified, but if the damage to the contractor is greater than the delayed interest, it deserves supplementary compensation provided that the damage is inconvenient and the debtor's bad faith is established.

In Egypt, the administrative judiciary used to compensate the contractor if the administration delayed the payment of its financial dues, and this is not confirmed by the administration's claim that there are no funds.

Demand 3 Not taking into account price fluctuations

The execution of the contract may be an increase over the prices specified in the contract. If there is an agreement between the parties to the contract to increase the prices specified in the contract in the event of an increase in the prices of the materials necessary for the implementation of the contract, this agreement is binding on the parties so that if the administration violates its contractual responsibility, but if there is no agreement on it, the contractor with the administration has no right to claim compensation for the differences in prices based on its contractual responsibility and in doing so. The French Council of State (that the municipality cannot object to the form of the contract to include the requirement to

review the price where the obligation to do so is considered to have failed in its contractual obligations by not providing for that requirement in the contract). In a similar position to the Egyptian Supreme Administrative Court, where it went to ((the contractor with the administration is not entitled to the differences in prices resulting from the increase in the prices of truss because he did not retain in his giving to the administration his entitlement to this increase).)

Fourth requirement

Breach of the contracting administration's obligation to refund the final insurance

The insurance is defined as a guarantee to the management that avoids the effects of mistakes made by the contractor during the execution of the administrative contract and is divided into temporary insurance and final insurance. Money or letters issued by a bank with the value of insurance.

The administration has the right to confiscate this insurance if the contractor violates its obligations with the administration, and in return, the administration is obliged to postpone it to the contractor when the contract is completed in accordance with the agreed specifications and conditions, and without the contractor's request, so that if the administration violates it, it constitutes an error on its part leading to its contractual responsibility. 4

In France, the French Council of State () has required the administration since the final handover to refund the amount of bail and is therefore responsible for the resulting damage.

In Egypt, the Supreme Administrative Court ruled that (if the appeal against them provided a bank guarantee deposit representing the final insurance value of the operation on 12 March 1983 for £14,240, which the Authority returned to Cairo Bank on 25 December 1983, and although it notified them on 25 July 1983 of the dissolution of the contract, it would have infected the applicant. We are against them for not using the value of the letter of guarantee

referred to during the period from the date of its submission to the date of its return to the bank in addition to other damages....

Accordingly, the contested sentence for redressing these damages required the defendant (appellant) to compensate the plaintiffs (challenged against them) for such damages worth 30,000 pounds, the contested sentence thus correctly infected the rule of law, and the appellant shall be aware of the appellant in the face of the statement, who are seeking rejection.

In Bahrain, the Bahraini legislator stipulated that the contractor must return the final insurance in article 77 of the Executive Regulation of the Government Tenders and Procurement Act 2002*3 by stipulating:

(Implementation must be re-guaranteed if the supplier or contractor implements its obligations in full in accordance with the terms of the contract.)

Accordingly, the contractor is entitled to compensation from the administration if it is not obliged to return it or to delay its return to the contractor. Conclusion

Researcher Fi addressed this study and tagged it with "the right of the contractor with the administration to obtain the higher financial equivalent - comparative study -" through three main investigations, in the first research the subject of the price was studied in terms of its concept and identification and methods of payment, and in the second subject the subject of drawing its concept and identification and the restrictions that are contained in the Determining, after a general clarification of the commitment contract, the third research was limited to the most important forms of breach of the contracting administration by paying the contractor's financial return and the implications.

Based on the above, the researcher reached the following most important findings and recommendations:

Results:

- The financial equivalent varies depending on the nature of the contract, as in most contracts, such as the contract of public works and the supply is the price, but in the contract of the concession is the fee.

- The process of determining and agreeing on the price is essential, which should be agreed precisely and at a specific number in the contract in order to avoid any future disputes about this.

- The ordinary (civil) judiciary is competent to deal with disputes arising from administrative contracts in Jordan.

The price is a contractual term, which can only be amended by the agreement of the parties. - The rule is that the administration does not pay the price to the contractor until after the completion of the contract in accordance with the agreed specifications and conditions. However, in order to maintain the regular and ever-functioning functioning of the public facility, legislation in most States has authorized the contractor to make payments under the account or to pay part of the price for the work carried out. The financial equivalent of the obligation to draw is the contract.

- The contract of compliance entails a range of implications, including what is up to the contracting administration, including what is up to the committed, including what is up to the beneficiaries of the services of the public facility.

- The fee is one of the conditions of the regulations, which the administration has the right to work to determine unilaterally.

One of the restrictions on the freedom of administration to determine the fee is to take into account the principle of equality between the beneficiaries in the facility in place of the contract and the legislative restriction.

- There are several forms of management's breach of the contractor's financial return performance consisting of a unilateral adjustment by the administration of the agreed price in the contract, delays in

paying the contractor's due financial return on time, failure to take into account price fluctuations, or breach of the contractor's final insurance refund. - The contractor's entitlement to compensation by the administration if the administration delays its contractual obligations.

Recommendations:

- Agreement between the parties to the contract clearly and specifically on the price to prevent any future disputes about this.

- To ensure that the contractor's financial efficiency is well ascertained by the administration, especially in contracts where large sums of money are required to maintain the regular and ever-increasing functioning of the public facility.

- The legislator in the comparative countries must provide for the obligation of the administration to pay all financial dues to a contractor on time, in order to encourage others to contract with them, and to impose a penalty on them in the event of a breach.

- We hope that the Jordanian legislator will make jurisdiction in the disputes of administrative contracts for the administrative judiciary, not the ordinary judiciary as a guarantee for the contractor to receive the financial return of the administrative contract. We hope that the Bahraini legislator will work to organize a mechanism to pay the price like the legislator in the comparative countries.

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