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Legal Limits Of Management's Authority To Amend And Terminate An Administrative Contract

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Introduction:

The law and the administrative judiciary admit exceptional rights, powers, and privileges for the administration, because the features of the administrative contract are related to the organization and management of the public utility, in addition to the principle of the public utilities' ability to change and modification and keep pace with the requirements of renewal to achieve the public interest and satisfy the needs of the public, and that the administration enjoys these powers even if it is not stipulated in the contract because it follows the public order, and that the authority of the administration to amend and terminate the administrative contract at its own will is one of the most important features that distinguishes administrative contracts from civil contracts, which considered one of the exceptional and unusual conditions in private law contracts, also, this authority constitutes a strong exception to the rule of the Statutory Contracting Agreement, which stipulates that no modification or termination of the contract may be made except with the agreement of the two parties or based on the text of the law.

First – The importance of the research:

The importance of the research lies in explaining the effects of the privileges of the public authority enjoyed by the administration, which constitute a major breach that affects the body of the contract rule, the law of contractors, which is established in private law, that is represented in its power to amend and terminate the administrative contract, and if the privileges of the public authority completely disrupt the effect of this rule so that it cannot be applied to all the terms of the administrative contract, or will this rule continue to have an impact, but this effect is relative to the contractual relationship in the administrative field, so that the administrative contract rearranges and formulates the concept of this rule in the administrative law to take a concept other than the one we are familiar with in private law.

Second – The research problem:

The research problem is the effects of the public authority enjoyed by the administration and related to its authority to amend and terminate the administrative contract on the financial and economic balance of the administrative contract and its impact on the legal status of the contractor with the administration.

Third: The research objective:

The role of the contractor with the administration in implementing the administrative contract is a fundamental role, and the contractor with the administration is an assistant to it in running the public utility that is the subject of the contract, as he must make every possible effort in order to fulfill his contractual obligations in order to ensure the regular functioning of the public utility for which the contract was concluded.

Fourth- Research Hypothesis:

It is assumed that the implementation of the contract by the contractor exerted an

extraordinary amount of diligence and care, but this does not mean sacrificing his rights derived from that contract, because the contractor with the administration is the weak party in the contract, and he is a person who seeks to achieve the profit or the financial compensation specified in the contract, which constitutes his most important rights at all, those rights that the administration should respect based on the logic of satisfaction as the essence of the idea of the administrative contract, whether in private or public law.

Fifth – The structure of the research:

We divided this research into four requirements. In the first requirement, we dealt with the authority of the administration in amending the administrative contract, and in the second requirement we dealt with the authority of the administration to terminate its administrative contracts with its own individual responses, In the third requirement, we explained the restrictions on the authority of the administration to amend and terminate the administrative contract, and we allocated the fourth requirement to the illegal use of the authority of the amendment and concluded the research with some conclusions and recommendations, as follows:

The first requirement: The authority of the management to amend the administrative contract:

The origin in jurisprudence and administrative judiciary is the idea of the flexibility of the administrative contract, and this is the most correct opinion in French jurisprudence, which confirms the authority of individual amendment as a general rule according to which the administration has the power to change the terms of the contract and the obligations of the contractor by increase or decrease and this rule applies to all administrative contracts without the need for a text in Law or clause in the contract[1].

In Egypt, jurisprudence and administrative judiciary support the authority of the administration to amend the administrative contract[2], where we find in the advanced provisions of the Egyptian administrative judiciary a reference to the idea of the authority of the administration to modify the administrative contract individually, regardless of the fact that the administrative judiciary in Egypt admits the authority of the administration in the individual amendment of the contract and this is what is deduced from its provisions, the authority is originally established by the text of the law even if it is not mentioned in the contract, and the administrative authority has the right to amend the quantities or volume of its contracts by increasing or decreasing within the limits of (25%) for each item with the same conditions and prices, without the contractor with these entities having the right to claim any compensation for that, it is also permissible, in case of necessity, and with the consent of the contracting party, to increase this percentage[3], The law also permits in public utilities commitment contracts for the grantor of the obligation - the administration - to amend on his own the pillars of regulating the public utility subject of the obligation or the rules for its exploitation, in particular its price lists if the public interest requires this amendment[4].

As for Iraq: the authority of the administration to amend its administrative contracts is determined by the text of the law, where it is permissible to resort to changing the contracted works or adding new items or quantities, and this change or addition, in case of extreme necessity, is to meet the needs of the public facility, such as preventing delaying work or not damaging it from an economic or technical point of view or for the

purpose of saving the cost of the project or work or reducing the period of contract implementation, provided that this modification does not prejudice the production capacity of the project or the low technical specifications of the work or project, and not to exceed the powers granted to the contracting party in accordance with the instructions for implementing the federal budget, which are issued annually when the budget law is approved by the Ministry of Finance[1], also modifications to the quantities of supply contracts and consultancy services paragraphs should not exceed (20%) of the contract value, provided that the financial allocation is available[2].

The Iraqi Court of Cassation acknowledged the authority of the administration to amend its administrative contracts at its own volition, as one of its decisions came (The date supported by the administration to consider it a date for receiving the work is considered an amendment to the contracting conditions and the responsibility of the contract has risen from what is apparent from a defect by virtue of Article (875) of the Civil Code)[3].

The second requirement: The authority of the administration to terminate its administrative contracts at its own discretion:

Administrative contracts, like civil contracts, are normally terminated by the completion of the implementation of its subject or by the expiry of the time period specified for its validity if it is a time contract[4], the administrative contract may end prematurely as specified in the contract for various reasons[5], including the loss of the subject of the contract, or the fulfillment of certain conditions stipulated in the contract, and the contract must be rescinded by the force of law from the date of their realization, as well as if such conditions are found in the laws and regulations, or due to the occurrence of force majeure or at the request of the contractor due to the reversal of the contract's economics or because of the contractor's mistake with the administration, and the termination is in such a case as a punitive measure as indicated previously, however, what calls for pause and reflection is that the management authority terminates the administrative contract without any of the aforementioned reasons being realized, even if the contractor did not made error with the administration and without referring to the judiciary, if it assesses, based on its discretion, that the public interest requires such a termination, and the justification of the authority of the administration to terminate its administrative contracts is due to considerations related to ensuring the continuity of the functioning of the public facility and achieving the public interest, therefore, the administration has the power to terminate the administrative contract by an individual decision, on its part, at any time it wants before the expiry of the original terms of the contract whenever the public interest requires such termination without the contractor having the right to object to this termination[6], therefore, we find that the majority of administrative jurisprudence in France and Egypt has acknowledged the authority of the administration to terminate the administrative contract by its own will, whether it is stipulated in the terms of the contract or in the law, also a fixed and established right of management, even if it is not stipulated in the contract or the law. Therefore, jurisprudence in France and Egypt considered that the authority of the administration to terminate the administrative contract is part of the public order, but jurisprudence differed in the legal adaptation of the authority of the

administration in the individually termination of the contract on the grounds of public interest, as part of the jurisprudence in France and Egypt went to consider the authority of the administration to terminate the administrative contract as an independent, self-contained authority based on the necessities and requirements of the public interest[1].

While another aspect of jurisprudence in these two countries went to the effect that the authority of the administration in the individually termination of the administrative contract is no more than a form of the authority in the individually amendment of the administrative contract, and that the amendment only for the duration of the contract[2].

Whatever the legal adaptation of the authority of the administration to terminate its administrative contracts individually, the administrative judiciary in both France and Egypt confirmed this authority in many of its rulings, where the French Council of State considered the cessation of hostilities to give the administration the authority to terminate supply contracts related to the war effort and contracts for volunteering, and this is clear from some rulings issued by the French Council of State issued after the First and Second World Wars, which is known as the special provisions (stopping the aggression), where the administration has the authority to terminate contracts concluded to meet the needs of national defense because the need for these contracts is no longer needed due to the end of the war[3] Then another ruling was issued for him in 1954, which stated (the city can always terminate the contract for reasons related to the public interest), then decided in a recent ruling issued in 1986 that (the county can terminate the implementation of the contract at a prematurely appointed time, even if there is no provision in the contract that gives it the authority to terminate the contract, even if the contractor does not violate his contractual obligations), another ruling issued in 1987 stated (the administration can use the authority to terminate the public utility commitment contract even if there is no legislative, regulatory or contractual text regulating the use of this authority)[4].

As for the Supreme Administrative Court in Egypt in its turn acknowledged and affirmed this authority as an established authority for the administration without any doubt in many of its rulings where it came in a ruling issued in 1980, the following: (The administrative body has the right to terminate the administrative contracts it concludes with its own returns if it considers that the public interest requires it, and the other party contracting with it has only the right to compensation if it has a right) rather, the Administrative Judicial Court went to consider the authority of the administration in the individually amendment as a general principle that applies even if it is not stipulated in the contract, as it relates to public order and is considered one of the distinguishing characteristics of the administrative contract[5], but if the contract and the law are devoid of any text that gives the administration such a right, then the administration's use of this authority in such a case is a manifestation of the exceptional public authority that the contractor with the administration does not enjoy[6].

In Iraq, the management's right to terminate the contract is established by law in the event of a war during the period of completion of the works or in the event of impossibility of implementation for reasons beyond the control of the parties and this is what was decided by Article (67) of the

general conditions for civil engineering contracting in its first and second sections for the year (1988), however, the aforementioned article did not explicitly refer to the management's right to terminate the contract based on the requirements of the interest and the necessities of the regular and stable functioning of public utilities at any time and without the need for a mistake on the part of the contractor. Likewise, the instructions for implementing government contracts No. (1) for the year (2008) amended were devoid of any text allowing the administration to terminate individually the contract on its part, but the legislator stipulated that the administration has the right to cancel the tender without compensating the bidders and the price of the tender shall be returned only[1], while the provisions of the Iraqi Civil Code came to decide the termination of the contract by the administration as a result of the contractor's failure to implement his obligation and this provision falls within the authority of the administration to terminate the contract as a result of the contractor's mistake and not in the authority of the administration to terminate the contract for the requirements of public interest[2].

However, with reference to Section (11) of the (dissolved) Coalition Provisional Authority Order No. (87) Year (2004) regarding government contracts, we note that it has expressly stipulated the government's right to terminate public contracts under the authority of this order in whole or in part, when the termination is in the interest of the government and the obligations arising from the contract are settled for both parties of rights and duties, including compensation to the contractor according to the procedures referred to in section (12) of the same order, provided that the Public Contracts Administration Department issues regulations for the implementation of this law showing the circumstances under which the government can[3] terminate public contracts based on this order, and it is noted that the instructions for implementing government contracts No. (1) of (2008) as amended issued based on the provisions of Paragraph (1) of Section (14) of this order did not include an explicit text giving the contracting the authority to terminate the administrative contract at its own will for reasons of public interest but a text authorizing the administration to cancel the tender without compensating the bidders, as we mentioned earlier[4], also, the mentioned instructions did not specify the cases in which the government can individually terminate public contracts for reasons of public interest, and this is a major shortcoming that the legislator had to take into account when preparing these instructions, because these instructions have ignored a basic privilege of management stipulated in the aforementioned Government Contracts Law No. (87) for the year (2004), and that the instructions are supposed to be a mirror that reflects the basic principles of the legislation with the establishment of controls to facilitate its implementation.

As for the position of the Iraqi judiciary regarding the authority of the administration in the individually amendment of the administrative contract, we find that the provisions, despite their rarity and shortness, indicate that the administration may issue a decision to cancel the contract of commitment to public utilities if the public interest requires it[5], and the Court of Cassation, in another ruling issued in (2004), went to say: (The contract concluded between the two parties is a contract that entails obligations on both parties, and the defective shift device has been handed over to the distinguisher for repair

or modification in accordance with the terms of the contract, and since the distinguished person, being to this position, terminated the contract on his part, the text of Article (885/1) of the Civil Code and compensation The plaintiff for the expenses he incurred and the works he accomplished)[1], as we find in this ruling an implicit reference to the authority of the administration to terminate the administrative contract without the knowledge and consent of the contractor with it, this provision establishes two important principles, the first is the management's right to individually terminate the contract on its part, and the second is the contracting party's right to compensation for the administration's use of this power without fault on its part.

The third requirement: Restrictions on the authority of the administration to amend and terminate the administrative contract:

There is a close relationship between the authority of the administration to amend the administrative contract and the authority of the administration to terminate the administrative contract, so that some jurists considered the termination of the administrative contract to be an amendment to the administrative contract that responds to the term clause in the administrative contract, and the relationship between these two authorities is the possibility of premature termination of the administrative contract in fulfillment of the requirements of the public facility if circumstances require it, but the termination authority, in our opinion, is broader so that it implicitly takes over the authority of the administration to modify the term of the administrative contract, because the termination responds to all the terms of the contract to dissolve and sever the contractual bond and make the contract as if it had never existed[2], Because of this relationship between these two authorities, we found it useful to discuss the restrictions that come to them in a single request. It is known that there is no absolute authority that can be used without restrictions, controls and limitations that may be legal or judicial. These restrictions will be addressed in the following two sections:

First section: Restrictions on the authority of the administration to amend the administrative contract:

The restrictions on the authority of the administration to amend the administrative contract can be summarized in the following points:

1- The decision to amend the contract individually by the administration is an administrative decision, and therefore this decision must be within the limits of the principle of administrative legality, otherwise it may be challenged by cancellation by the contractor with the administration, so it must be issued by a valid will of the administration authority and in the form and procedures prescribed in the legal or regulatory rules, and must achieve the public interest, according to that if there are conditions in the contract that are basically established by legal or regulatory texts, the administration cannot amend these conditions, otherwise it departs from the principle of legality, and its decision could be challenged by cancellation. This is what the Supreme Administrative Court in Egypt ruled in a ruling issued in 1995 by saying (such an amendment is indispensable for its issuance by the competent authority with its correct procedure, and the amendment does not

produce an effect if it is not evaded in this way)[1].

2- The objective of the amendment must be to achieve the requirements of the public interest and to be within the limits permitted by law, and must not lead to changing the type and subject of the contract or turning the economics of the contract thoroughly, so that the contracting party becomes as if it is facing a new offer, such as substituting the public works contract with a contract for the supply of construction materials, or switching the subject of transporting goods to transporting people. In such a case, the contractor has the right to request termination of the contract with compensation[2].

3- The amendment should not affect the financial rights and benefits of the contracting party with the administration, and the amendment should focus within the limits of other conditions related to the public facility[3].

4- The modification in the materials and quantities should be within the limits of the percentages established under the laws and regulations and may not be exceeded except with the consent of the contractor with the administration. It is not permissible to make changes to the quantities of the supply contracts and the paragraphs of consulting services, not exceeding (20%) of the contract value[4], as for public works contracts, the changes that occur to the quantity of any paragraph in the schedule of quoted quantities shall not exceed its price up to a limit of (20%) from the increase or decrease of the quantities[5], the administrative authority may also amend the quantities and size of its contracts by increasing or decreasing, except within the limit of (25%) for each item with the same conditions and prices, and that the amendment is issued during the validity of the contract and that it does not affect the priority of the contractor in the order of his bid[6].

5- The amendments and additional works must be of the same type and gender as the original works so that the increase in the quantity or size of the contract is feasible, and the financial accounting with the original contractor, If the additional works are related to the original works and are distinct from them, then it is unavoidable to put them in a separate tender[7].

6- That there has been a change in the circumstances that makes the terms of the contract at the time of its conclusion incompatible with the requirements of the functioning of the public utility or the purpose of concluding the contract, because the administration does not have absolute authority to amend the terms of the contract without justification, and the amendment must be contingent upon changing the circumstances and the requirements of the public interest[8].

7- The amendment should not be to a large degree that amounts to the complete termination of the administrative contract, and the burdens arising from the administration's use of its authority to amend must be within reasonable, natural limits in terms of type and importance. This is what was decided by the Administrative Court of Justice in Egypt

in its ruling issued in 1996, which stipulated (Those burdens must be within the natural and reasonable limits in terms of their type and importance, and not lead to the termination of the original contract, changing its subject matter, or creating a new place for it other than what was agreed upon)[1].

Second section: Restrictions on the authority of the administration to individually terminate the administrative contract:

We can summarize the restrictions on the authority of the administration to individually terminate its contracts for reasons of public interest as follows:

1- The decision to terminate the administrative contract individually is restricted with the aim of achieving the interest of the public utility, and it is not absolute. Rather, it is restricted to meeting the requirements of the public facility, otherwise the termination will be arbitrary and unlawful because there are no justifications for it[2]. The motive may be the demise of the purpose for which the administration contracted, or the introduction of modern technology to it, or because of the issuance of a law obligating the administration to terminate its administrative contracts, or the motive may be the administration's desire to change the state's policy in managing the public facility, in order for the termination decision to achieve the public interest, it must be away from personal reasons, such as personal hostility to the contractor with the administration, religious or political reasons, or considerations related to the financial interest of the administration, such as obtaining an increase in a financial resource charged by the state without there being a public interest, such as canceling the leases of leased premises for the sake of increasing rent allowances or recovering the obligation for a financial purpose[3].

2- The termination decision must fulfills all the conditions necessary for the legality of actions based on a discretionary authority in terms of its issuance by the competent authority to issue it and in accordance with the form and procedures stipulated by the law and that it does not involve a deviation in the use of the authority, and the principle is that the public person who concluded the contract is the one who has the right to terminate it unless the contract specifies another authority to terminate the contract, and the legislator can exceptionally terminate the contract for reasons of public interest. The French Council of State also authorized the government, by virtue of its statutory powers, to use the power to terminate individually administrative contracts, even though the government is not a party in the contract, and the termination decision may be in the form of an individual decision, a regulatory decision, or in the form of a regulatory decree issued by the government as a general measure to terminate administrative contracts, provided that it responds to a specific contract in particular[4]. the administration is not obligated to give reasons for its decisions, including the decision to

terminate administrative contracts, as jurisprudence and modern administrative judiciary in France have settled that decisions of individually termination of administrative contracts for reasons of public interest without the contractor's fault do not apply to them as stipulated in the law (11/July 1979) regarding obligatory causation for all individual decisions that cause harm to citizens, and therefore these decisions are not obligatory on the part of the administration[1].

3- Subject to judicial control: The authority of the judge in this case is limited to a narrow scope, which is to verify the seriousness of the reason on which the administration relied in the individually termination of the administrative contract and does not go beyond examining the suitability of the termination decision to the reason on which the termination was based, unlike the authority of the judge when observing the administration's termination of the administrative contract as a result of the contractor's mistake with the administration, where the judge considers the appropriateness of rescission as a penalty for the magnitude of the error attributed to the contractor to the extent of rescinding the contract with him[2], and the jurisdiction in dealing with termination decision[3], however it consider a minimal control by checking whether the administration has actually decided to terminate the contract for reasons of public interest without this judgment having the authority to assess whether the contract has become in fact not beneficial to the public utility. The administration is free to assess the adequacy and appropriateness of the cause of interest Public to terminate the administrative contract without any control of the judge at its discretion[4].

Fourth requirement: Unlawful use of the power to modify or terminate:

The administration derives its right to amend the administrative contract either from the provisions of the contract or from the requirements of the public interest which refers that amendment to be more realizing this interest in light of the developments that existed after the contract, and the administration uses this authority without the need to expressly stipulate it in the administrative contract, because it is derived from the principles of the common law itself, and from the subjective nature of the administrative contract, which is what is called the theory of the instability of the administrative contract, however, it should not be inclusive of all the terms of the contract, but rather be limited to some of them only, which means limited to those related to the functioning of the public utility as well as the services it provides to the public, and does not extend to the financial benefits agreed upon in the contract[5].

In France, part of the jurisprudence (89) goes to the effect that (the right of the administration to amend the terms of the contract is an inherent right that derives from its character as a public authority, and there is no need to express it in the contract, and therefore it does not have the right to waive it). In addition, the judiciary confirmed that The French Administrator has this authority to manage in relation to the amendment of the administrative contract[6].

In Egypt, the most correct opinion in jurisprudence is that the right of the administration to amend the terms of the

administrative contract is a fixed right of the administration, whether it is stipulated in the contract or not, because its right to the amendment is considered a revealer and not a creator of it, supported by the administrative judiciary in Egypt where the Supreme Administrative Court affirmed in its judgment that it was stated: (The administration, has the authority to amend the contract, and this authority does not derive from the texts of the contract, but from the general system for the conduct of public utilities, which governs the guarantee of their smooth running and regularity in the performance of their services in a way that achieves the public interest, as the administration itself may not relinquish of this authority, as it relates to the entity of public utilities[1]).

the Iraqi jurisprudence also goes to the management's right to amend its administrative contracts, without the need to stipulate it in the contract[2].

The Iraqi judiciary also went to consider the right of the administration to amend the administrative contract from the public order, and it is not permissible to violate or waive it, and the administration has the right to amend its administrative contracts, whether by increasing or decreasing the contracting commitment, without the need to obtain approval from the contracting party. This is what the Court of Cassation went to in its ruling issued on 8/10/1978, where it stated: (The employer shall be responsible for every change he makes to the scheme organized by the contractor at the time of contracting, and the contractor shall not be responsible for delays due to the additional works introduced by the new scheme if those works require that according to the opinion of experts)[3].

The authority of the administration to amend its administrative contracts is from the public order, however, the administration's illegal use of this authority leads to arranging its contractual responsibility towards the contractor because of the damages he sustained, accordingly, the administration's violation of any of these controls while it is in the process of amending the administrative contract is a breach of it that leads to its contractual responsibility to compensate the contractor with the damage he sustained as a result of that breach, and we will explain these controls briefly as follows[4]:

First: the administration amendment targeting to achieve the public interest:

The public interest, which is represented in the need to continue the regular and steady functioning of the public facility, is the justification for the administration's action of individually amendment of the administrative contract, because the administration is always keen to keep pace the contract with the changing circumstances after its conclusion in order to achieve the public interest, so that if it finds that the implementation of the contract has become incompatible with the new circumstances, it resorted to its authority to amend the contract to become more realizing the mentioned public interest. The Supreme Administrative Court in Egypt has stipulated that: (The nature and objectives of administrative contracts are governed by the principle of good running and continuity of public utilities, and it presupposes a change in the contract's circumstances and implementation, which leads to the fact that the management body, which has the competence to organize the facility and determine its operating rules, has the right to amend that contract, in line

with those changing circumstances. In pursuit of that interest)[1].

The administration can use its right to individually amendment as long as the goal is to achieve the public interest, but if its aim is to create problems or obstacles for the contractor, or to make amendments that are not related to the conditions related to the public utility, such as the amendments to the conditions regulating the benefits or financial guarantees to the contractor, or they do not comply with the cases stipulated in the contract, and this behavior may exist or represent an illegal use by the administration of its authority to amend and consequently entail its contractual responsibility and the contracting party has the right to resort to the contract judge to cancel these decisions, as well as to claim appropriate compensation for the damage he sustained as a result of these invalid actions or decisions[2].

Second: There is no justification for the amendment:

The justification for the administration's modification of the administrative contract is to change the circumstances under which the contract was concluded, and in which the contract was considered sufficient to achieve the public interest, however, if circumstances change that the administration was not aware of at the time of the contract, so that the implementation of the contract under it does not lead to the realization of the public interest for which the contract was concluded, in this case, the management may amend the terms of the contract to make it more compatible with the new circumstances, so that the implementation of the contract leads to the achievement of the public interest. In confirmation of this, the Supreme Administrative Court in Egypt went to: (The nature and objectives of administrative contracts are governed by the principle of good functioning and continuity of public utilities, and it presupposes a change in the contract's conditions, circumstances and implementation in accordance with the requirements of the proper functioning and regularity of the public utility, as a result, the management body, which has the competence to organize the facility and determine the rules for its management, has the right to amend this contract, in line with these changing circumstances and achieve that interest)[3]. Accordingly, if the administration amends the contract without justification for that modification, this leads to the establishment of its contractual responsibility on the basis of error.

Third: The amendment is not related to the subject of the administrative contract:

The management's right to amend is focused on the obligations contained in the administrative contract, so the administration may not compel the contracting party to perform another obligations from the contract, and the administration cannot make the amendment unless the contracting party accepts it if it was offered to him when concluding the original contract, and not makes him face a new contract after amendment, although the management's right to amend should focus on the obligations contained in the contract, its right to do so is not absolute, because the administration's use of this right should not lead to a change in the subject and place of the contract. The matter that gives the contractor with the administration the right to request the termination of the contract, and this is what the General Assembly of the Fatwa and Legislation Departments of the Egyptian State Council went to: (Among these restrictions is what is related to the extent of the scope of the amendment and the consequent new burdens on

the contractor as a result of the authority of the amendment, as these burdens must be within the natural and reasonable limits in terms of their type and importance within the scope of the subject matter of the contract, so that it does not exceed the contractor's technical and financial capabilities, or that it may turn the contract thoroughly so that the contracting party becomes as if he is dealing with a new offer, or change the subject or location of the contract. Otherwise, the contractor may request termination of the contract)[1].

Fourth: The amendment exceeded the limits of legality:

The administration, when using its right to amend the administrative contract, must abide by the rules of legality, if the amendment is issued by an authority that is not competent to perform it, exceeds the legal limits, or affects the contractual terms, then the amendment in these cases is illegal and this is considered a breach of the administration, and the contractor has the right to hold to its invalidity[2]. In Egypt, the Supreme Administrative Court went to: (The rights and obligations of the contracting party with the administration are determined according to the provisions of the contract linking him and the modifications that may occur to it. Except for those who are legally entrusted with this jurisdiction, and since the management authority may amend the terms of the administrative contract, there is no way for this amendment to be made and legally enforceable unless, when it is made, it adheres to the established jurisdiction rules, and the amendment can only come from the authority competent to carry out it, and other than that of instructions issued by other authority does not have any effect on amending the contract, modifying its effects and changing its requirements)[3].

Therefore, if the amendment exceeds the limits of legality, it entails the establishment of the contractual responsibility of the administration on the basis of error.

Conclusion:

We reached through objective research the following conclusions and recommendations:

First - the conclusions:

1- The administrative contract, as it represents mutual obligations between the two parties to the contract (the administration) and (the contractor), constitutes a law for the contractors in certain circumstances. The breach of the obligations is not only on the part of the contractor, but also on the part of the administration. The administration which breach of its contractual obligations must compensate the contractor on the basis of her contractual error in accordance with the rules of contractual liability.

2- It is also obligated to compensate the contractor in whole or in part without error from her also to ensure the continuity of the functioning of the public utilities and in certain cases, the administrative judiciary strived to create it, including compensation for the act of the administration, and Compensation for emergency circumstances and for unforeseen material difficulties if the emergence of these cases results in harm to the contracting party, all this without neglecting the basic guarantee established for the contractor with the

administration by resorting to the cancellation judge (legitimacy judge) and the contract judge (the administrative contract judge for substantive disputes), this confirms that the administrative contract has its own legal system distinct from the legal system of the civil contract and that the rule (the law of contracting parties) is not existent in the field of administrative contracts, just as the principle of the authority of the administration is not absolute in civil contracts, as we explained earlier.

Second: recommendations:

the Iraqi legislator must issue a unified law regulating the contracting process, contracting methods, contract terms, and the financial, technical, engineering, accounting and tax procedures related to the contract process, starting with the call for contracting and ending with the settlement of the final accounts of the administrative contract, as the case with comparative legislation of the Egyptian Law of Tenders and Auctions No. (89) for the year (1998) amended and its executive regulations, where this law included a reference to the types of administrative contracts, the conditions for their implementation, and all details related to the contractual process, taking into account the nature of the contract, whereas, the Government Contracts Law issued pursuant to the (dissolved) Coalition Provisional Authority Order No. (87) for the year (2004) falls short of regulating the contractual relationship and taking note of all its aspects, in addition, the instructions for implementing government contracts No. (1) of (2008) did not include all the principles contained in the aforementioned law. Until the issuance of legislation on government contracts. We suggest the following:

1- The Iraqi legislator must complete the jurisdiction of the Administrative Court by making its jurisdiction comprehensive for all administrative contract disputes and everything related to it, whether they are from decisions prior to the contracting process or included in the formation of the contract, in addition to legal disputes of an objective nature related to administrative contracts for the following reasons:

a- The jurisdiction of the Administrative Judiciary Court is currently deficient, as it is a judiciary that has the jurisdiction to cancel with compensation according to requests for cancellation, This is what was specified in Article (7/Second/D) of the State Consultative Council Law No. 65 of (1979) amended.

b- The jurisdiction to consider administrative contract disputes is currently within the jurisdiction of the ordinary judiciary, and the ordinary judiciary, although it has general jurisdiction over all disputes, according to Article (29) of the Civil Procedure Law No. (83) for the year (1969) amended, but the civil judge remains motivated by the desire to apply the rules of private law to administrative contract disputes, and this will lead to a lack of development of administrative law principles and theories, therefore, we note from the extrapolation of the decisions issued by the ordinary judiciary and the judiciary of the Court of Cassation that they try to adapt the subject of the dispute in accordance with the provisions of the civil law, without trying to use the well-established theories of administrative justice in countries that adopt the dual judicial system, this explains the reason for the lack of development of administrative law and administrative judiciary in Iraq, as long as the legislator acknowledges the

existence of an administrative judiciary, he must complete the jurisdiction of this judiciary, because the administrative judge is the most knowledgeable of the principles and theories of administrative law, and he is most knowledgeable of the means and methods of management and the nature of its activity.

2- The Iraqi legislator has dispersed the jurisdiction of the administrative judiciary instead of unifying it. Considering the legality of administrative decisions is within the jurisdiction of the Administrative Judiciary Court, and examining administrative contract disputes is within the jurisdiction of the ordinary judiciary, and the consideration of the objections to the decisions to refer contracts by the contracting parties is within the jurisdiction of the Administrative Court specialized in government contracts, that created under Article (10/Second/A) of the instructions for implementing government contracts No. (1) of (2008). To address this problem, we call on the Iraqi legislator to adopt one of the following solutions:

a- Making the jurisdiction of the Administrative Judiciary Court comprehensive and absolute in considering all disputes of administrative contracts, cancellation and compensation, as indicated in paragraph (2) above, and the abolition of the administrative court concerned with government contracts because it was not feasible to stay thereafter. This is a solution that we support, as the case with the administrative judiciary in Egypt and France.

b- Or complete the jurisdiction of the Administrative Court of Government Contracts to consider all disputes related to the administrative contract, and its jurisdiction is not limited to considering the objections submitted by bidders to the referral decisions issued by the contracting authority based on Article (10/Third) of the instructions for implementing government contracts, especially since Section (12) of the (dissolved) Coalition Provisional Authority Order No. (87) of 2004 has given the aforementioned court the authority to manage the validity of the contract by taking the correct action, for example, but not limited to, canceling the granted contract, if this court has qualitative jurisdiction up to canceling the contract granted, then it is first for this court to consider the disputes raised by the application of the administrative contract and requests for compensation related to it, provided that the composition of the court is reviewed to be one of the experienced administrative judges.

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