Multicultural Education

Volume 7, Issue 2, 2021

The Jordanian Administrative Judiciary Oversight Of Administrative Contracts

Shukran Qasem Naser Al-Dughmi

Article Info

Article History

Received:
December 21, 2020

Accepted:
February 18, 2021

Keywords :
Jordanian Administrative Judiciary, Administrative Contracts, Oversight Of The Administrative Judiciary

DOI:
10.5281/zenodo.4549811

Abstract

The study aimed to identify how the Jordanian administrative judiciary and the control process deal with administrative contracts and what disputes arise from these administrative contracts, as it seeks more precisely to determine the extent to which administrative contracts are subject to the control of the Jordanian administrative judiciary under the Administrative Judiciary Law No. 27 of 2014 which has not It stipulates his competence to consider administrative contracts, and from here this study seeks to look at how to find a solution and a suitable law to administer these contracts. Among the things that appear to be evident in this context and to find the problem is that these disputes are assigned to the civil judge and this would lead To prejudice the specificity of the administrative law and thus the administrative judiciary, especially since Jordan had approved the Administrative Judiciary Law No. 27 of 2014, as the Jordanian legislator had to assign any dispute arising from the administrative contracts to this law without the civil judiciary in order to preserve the proper functioning of public facilities and their regularity. This study also discussed the extent to which administrative contracts are subject to judicial oversight, and judicial oversight of decisions issued by the administration in the field of administrative contracts. The study found the following points, including: The existence of a special case in Jordanian legislation, as the legislator insists in all its laws not to stipulate the jurisdiction of administrative courts to consider disputes related to administrative contracts, and therefore jurisdiction in that is for the regular courts, or as for administrative decisions related to contracts, their adaptation and oversight They differ in the event that these decisions are prior to the contract than if they coincide or accompany the implementation of the contract as we have seen in this research, and as it has been noted that most of the legislations have agreed to remove the acts of sovereignty from the jurisdiction of judicial oversight, so the judiciary has no right to monitor them in any way. The Jordanian legislator on this in the new Administrative Judiciary Law. This study made many recommendations, the most important of which are: Creating specialized administrative courts for reasons related to the nature of administration work.

Introduction

The judiciary occupies a high position, especially the administrative judiciary, which is considered the observer of the work of the public administration and the guardian of the rights and freedoms of individuals that works to ensure that the public administration respects and adheres to the principles of legality, and through the courts that enjoy integrity and independence far from political considerations where they can effectively monitor the administration Because it is an independent body from the administration, and if it found that the administration's actions are violating laws or result in harm to individuals, it shall either cancel it or decide to compensate for the damage caused to individuals due to the administration and this censorship does not act by its own. Rather, the individual (stakeholders) must file a complaint so the courts can impose Its censorship over the administration. [1]

In order to achieve the public interest, the public administration carries out a group of material and legal actions, the legal acts are actions that have specific legal effects and are divided into a group of actions that the public administration undertakes by its own will on one side, that the administrative decisions, and actions that the public administration undertakes in association with another side, that is a compliance of wills, and that is the administrative contract.[2]

The public administration works to achieve the public interest by carrying out these actions, especially the administrative contracts through which it can manage public facilities and meet their needs, and there must be a censorship that is working to inspect the work and ensure the extent of the administration's commitment to the principle of legality and not deviating from it, and this is undertaken by the judiciary administrative.

Significance of the study:
The importance of the study lies in the fact that the public administration's contract with others cannot happen in one day; rather, it needs a set of administrative decisions that need time in order to reach the stage of concluding the administrative contract and implementing this contract. This supposed to be subjected to the supervision of the administrative judiciary that respect and protect the rights and the freedom of individuals and that oversees all the legal actions that the public administration carries out.

On all the legal work carried out by the public administration, this study has a special significance as it is - according to what the researcher sees - one of the original pioneering studies in Jordan in the field of dealing with an important and sensitive topic, which is the Jordanian administrative judiciary's oversight of administrative contracts and its great importance within The Jordanian society, according to the researcher's knowledge there was no similar study conducted in Jordan, so it is hoped that this study will fill a gap in this field, moreover, it is expected that its results will contribute to providing the necessary data to develop and strengthen the role of the Jordanian administrative judiciary monitoring of contracts.

Problem statement:
The problem of the study lies in determining the extent to which administrative contracts are subjected to the control of the Jordanian administrative judiciary under the Administrative Judiciary Law No. 27 of 2014, which did not stipulate its competence to consider the administrative contracts, which is why they are not subject to judicial control. Therefore, what is the appropriate legal solution?

The first requirement: Administrative Contracts
There are some actions that the administration carries out because its public authority, such as administrative decisions, and there are some actions that the administration undertakes to contract in association with another party, which is known as administrative contracts, and the administration may contract in two capacities, either in which it is a private person, this means it does not have authority and is subjected to the controls of private law, or it contracts with the other party as the owner of the authority, and these administrative contracts are aimed at managing, establishing or repairing a public facility. As our study deals with the Jordanian administrative judiciary oversight of administrative contracts, we must define the concept of an administrative contract.[3]

First Defining the administrative contract: The contract in language mean: the contract, the opposite of the solution, its contract is made by a contract[4], God Almighty said: "O you who believe! fulfill your obligations contracts." [5]

Second: The contract in law: The contract in the Jordanian civil law in Article (87) "is the linkage of the offer issued by one of the contracting parties to the acceptance of the other and their agreement in a way that proves its effect on what being contracted on and entails the commitment of each of them to what they owe to the other.[6]

The judiciary in Jordan did not address the definition of an administrative contract, even that when a dispute related to it arose, it was not possible to resort to the Supreme Court of Justice in the past. Whereas, the Supreme Court of Justice Law No. (12) of 1992 established the jurisdiction of the court to be limited, and the administrative contract was not included in it, and even with the issuance of the Administrative Judiciary Law No. (27) of 2014 also, the administrative contract was not considered one of the competencies of this court to consider.[8]

The administrative contract in jurisprudence:
The administrative contract has been known as the following: "It is a contract in which one of the parties is the public administration represented in its legal persons and administrative system organ as a public official authority, and aims to run a public facility regularly and steadily to achieve the public interest, and is based on the methods and means of General law and what these methods and means contain in terms of procedures and conditions that are not familiar in private law contracts. It is also known as: "A contract related to the contract in private law, two wills agree to create, amend or cancel it, and its consistency is achieved. Through the

formalities and the stipulated conditions in order to produce its correct effects, and like private contracts, it must be based on mutual consent."

The first branch: types of administrative contracts
There are many types and forms of the administrative contract, which increase and differ according to the need of the administration for these contracts, and among these contracts are the concession contract, the public works contract, the supply contract, the transportation contract, and providing the assistance contract. The researcher in this application will talk about these contracts briefly.

CONCESSION CONTRACT (COMMITMENT)
This contract is considered one of the most important management contracts, according to which the obligor, along with the administration, manages a public facility for the citizens' service, and this obligee has the right to exploit it, and he /she receives a fee from the citizens, which is a fee for their usage of this facility. A concession (commitment) contract has several types:
1. A public works concession contract: This contract consists in establishing a public facility, such as ports, tunnels, and toll roads; Whereas, fees are collected from the citizens for using these facilities.

2. A public utility concession contract: The concessionaire manages one of the public utilities at his/her own expense and responsibility, during a specific period in exchange for a fee he/she collects from the beneficiaries, such as distributing water.

3. The Resource Exploitation Contract: One of the most prominent forms of this contract is the extraction of oil, and there is a dispute about whether it is considered a public works concession or a public utility concession. however, oil is not considered a public utility, and also that the franchisor does not provide a service in the public utility that benefits citizens and does not take fees from them. Despite that, this contract leads to the achievement of a public interest, and therefore, it is considered a concession contract.

A public works contract
The public administration shall contract with a contractor to establish or restore a public utility, and that is within a specified period, and it must be related to a property, and the aim of this contract must be to achieve the public benefit, not achieving financial gains for the contractor. This contract must mean that the property is related to you. And whenever these conditions are met, this contract is called a public works contract.

C) The supply contract
It is one of the administrative contracts according to which the public administration agrees with an individual or company to supply the transportations, and the state may be here, either the supplier or the importer, and this is according to a certain amount that is agreed upon. It is on the real estate, as for the supply contract, what distinguishes it from the public works contract is that the works contract only deals with property while the supply contract deals with the transportation, and it may be the supply contract for one time or for a period of time, and this contract cannot be considered administrative unless it has the elements of the administrative contract. They are as follows:

The administration is one of the parties to the administrative contract as it has formal authority
2. This contract seeks to operate a public facility by exploiting this facility, organizing it, or providing assistance in order to achieve the public interest.
3. The public administration sets unfamiliar terms in private law contracts that give the public administration what distinguishes it; such as deviating from the principle of equality between the two parties to the contract, or setting up a text that gives it the right to amend or add conditions to the contract by its own will.

D) Contract of transportation
It is an administrative contract whereby an individual or company agrees with the public administration to transport movables. It is similar to the supply contract and it is subjected to the same provisions and it can be for one time or several times. Individuals and companies paid in return for their transfer of the movables a certain amount agreed upon with the administration.

E) Aid contract
It is a contract whereby an individual, whether he is a public or private person, is obligated to contribute in cash or in kind to construct or repair a public facility. Upon a request from her to present her temptations from her side to the other party, and the party who wants to provide assistance has the right to withdraw its offer before

the administration accepts it. The offer must waive its commitment. This contract is binding on one side, and the public administration has the right to release the obligation without referring to the other.

The second branch:
The position of the Jordanian legislator according to the administrative contracts.
The position of the Jordanian law on arbitration in administrative contracts according to Law No. (31) of 2001. Jordan was one of the first Arab countries to have developed a separate law regarding arbitration, but with the economic developments and the presence of many foreign investments in the kingdom and a number of international and bilateral agreements that encourage resorting to arbitration, such as Amman Convention of Commercial Arbitration in 1989, these matters led the Jordanian legislator to issue a new Law No. (31) for the year 2001, and under this law, dealing with the previous arbitration law was suspended. This is due to a number of amendments to the provisions of the previous law.

The Arbitration Law No. (31) of 2001 in its provisions was affected by the Egyptian Arbitration Law No. (27) of 1994 despite the fact that the Egyptian Arbitration Law No. (9) of 1997 was issued at that time, and both of them were affected by the UNCITRAL Law No. (9) for the year 1997. ; As the text of Article (3) (of the Jordanian Arbitration Law) came the following: "The provisions of this law shall apply to every consensual arbitration that takes place in the Kingdom and is related to an innocent or commercial dispute between the parties in which the relationship is related to the public law or the law. , Whether contractual or non-contractual. " The Egyptian Law No. (27) (1994) influence on the Jordanian legislators wasn't successful.it was supposed to be affected by the law No. 9 (1997) that added to the provisions of article (1) the second paragraph. Stipulates explicitly the possibility of agreeing to resort to arbitration in administrative contracts, even though the current text has not caused any problem, but it would have been better for to stipulate explicitly the possibility to resort to arbitration. (4) for the year 2008 in Article (2/2) The competent court has been determined to hear the case of nullity of the arbitration award by one of the parties in the Court of Appeal, and this text explicitly specified The competent authority, which is a good amendment; Whereas the previous law in the text of Article (18/3) states the following:

Judgments issued by the courts of reconciliation, commencement and appeals with ratification, revocation, or re-decision of the arbitrators or dismissal are subjected to appeal and discrimination in accordance with the established rules for the appeal and implementation of other judgments. No decision has been made in this regard by the Supreme Court of Justice describing it as not competent to hear the lawsuit related to administrative contracts, as well as the matter with regard to the administrative court and the Supreme Administrative Court regarding the case (2014). With regard to the administrative contracts in which it has been agreed to resort to arbitration in the event of a dispute and the ruling of the arbitration panel is issued, the appeal shall be resorted to the court of appeal either to implement or for filing a lawsuit invalidating the judgment as being invalid.

And the Cassation Court's decision No. (557) of 2013 stated the following: "We find that the appealed exceptional decision is not subjected to appeal, as it is discriminated against as a final decision in accordance with Article 51 of the law. In another decision, No. (3155) for the year 2013, the following came: we find that article (49) of the Arbitration Law No. (31) of 2001 specified, exclusively, the cases that will be accepted to be nullified of the arbitration law. Whereas, the Court of Appeal did not find in the reasons for appealing the arbitrators 'decision that one of these cases requires a ruling to invalidate the arbitrators' judgment, with the exception of what is related to the legal interest over the attorney's fees which is (14,500 JD). So they decided to reject that and to ratify the verdict because it get the point of the law that calls for rejecting this reason. In the two previous decisions, one of the parties to the lawsuit was a person subject to public law, and the contract was administrative, meaning that the judiciary does not oppose resorting to arbitration by the state and its legal persons, according to the text of Article (3) of the Arbitration Law No. (31) of 2001 despite Not to mention it explicitly.

The second requirement: The extent to which administrative contracts are subjected to judicial oversight.
Judicial oversight in the field of administration work is the oversightthat is practiced by courts of different types and degrees over the work of administration, whether they are legal or material acts. This oversight aims to ensure that the administration respects the law and protects the rights of individuals from the abuse of administration's authority.

Administrative contracts, like all the works of the administration, are subjected to administrative, judicial and parliamentary oversight. Perhaps the most important of them is the judicial oversight that is practiced by the administrative judiciary, and when the public administration is not subjected to this control gives it the space of

concluding contracts that may intend to deviate from its real goal and achieve other goals, so the researcher decided to address the specialist judiciary in examining the administrative contracts disputes in the first branch while studying how the judge examine an administrative contract disputes is as the following:

The first branches: the competent judiciary to examine the administrative contract disputes.

The second branch: how a judge examines an administrative contract disputes.

The first branch: the competent judiciary in examining the administrative contract disputes.

The first method: the legislative census.
In this method, the law clearly defines the judicial disputes that fall within the jurisdiction of each side, or at least the jurisdiction of one of the two parties.
We find that most of the legislations tend to define the jurisdiction of one of the two parties as an exclusive matter and leave the rest of the disputes that were not mentioned in the list to be within the competence of the other party as it is the general mandate holder to consider the judicial disputes. Because the administrative judiciary is newly established compared to the regular judiciary, most countries initially tried to define the jurisdiction of the administrative judiciary, and this is what the Jordanian legislator adopted in all laws related to administrative judiciary.

The repealed Supreme Court of Justice Law No. (12) of 1992 used to define the jurisdiction of this court in Article (9), and with the entry of the Administrative Judiciary Law No. (27) of 2014 into force, which came as a result of the Jordanian constitutional amendments on 10/1/2011 which stipulated Article 100 of it, provided that (all types of courts, their ranks, divisions, and jurisdictions, and how they are administered, are appointed by a special law, provided that this law provides for the establishment of an administrative judiciary at two levels.

Article 5 of the Administrative Judiciary Law stipulates the jurisdiction of the Administrative Court, which does not include administrative contracts, thus excluding the jurisdiction of the Administrative Court for administrative contract disputes.

The second method: the general standard
Jurisprudence tried to search for a criterion to distinguish between administrative and civil disputes and to define the jurisdiction of the ordinary and administrative sides, and it found more than one criterion, such as the public authority standard, the public utility standard, and the nature of the applicable legal rules, and some of them said the mixed standard and did not go into these criteria in the course of this research.

However, the owners of this method believe that with regard to administrative contract disputes it is considered according to the nature of the contract in dispute, and it falls within the jurisdiction of the administrative judiciary that includes the management of the public facility or those that contain unfamiliar conditions in the private law, and the ordinary judiciary is competent to consider disputes of other contracts, including the Civil administration contracts.

In view of the foregoing, the administrative contracts are subjected to censorship as well as the rest of the administration's work if we take the general standard, but if it is stipulated within the legislative enumeration, then it belongs to the specific judiciary, so in Egypt we find that the current constitution approved the administrative courts to consider administrative disputes, meaning that the constitution considered the second method.

The second branch: How to view administrative contract disputes
The judge does not initiate the lawsuit on his own initiative related to a dispute over an administrative contract, but rather it must be filed by the stakeholder, and the consideration of administrative contract disputes is subjected to the full jurisdiction of the judiciary (cancellation and compensation) without eliminating the cancellation that falls under the idea of legitimacy judiciary and in which the dispute threatens centers of Objective legal works that are occupied by individuals or transgressing them, aimed at contesting the objective legal works that are occupied by individuals or transgress itand aims to contest the objective legal works that individuals occupy and the legal works that are tainted by the defect of illegality .

As for the complete judiciary, it belongs to another form of the judiciary where the dispute revolves around an assault or threat to attack a personal legal position aimed at contesting the personal legal acts that affect the acquired rights of individuals, and the judge has broad authorities as he determines the legal positions for the

plaintiff and defines the rights of the plaintiff and is not only limited to canceling the contested decision, but rather goes beyond this role to amend or reform the decision or to award financial compensation.

We conclude that the exclusion of administrative contract disputes from the scope of the jurisdiction of the annulment judiciary because the subject matter of the case in the annulment court is an administrative decision issued by the administration issued by its own will. And this decision was found to maintain the principal of legality.

While the role of the annulment judiciary is limited to rejecting or accepting the case without having the right to order the administration to initiate or abstain anything.

As for the administrative contracts, it represents the agreement of two wills, one of which is the administration, and to protect the arising rights from the administrative contract, a complete judiciary is necessary to achieve adequate protection of rights and work to force the parties to implement the obligations even if the matter requires amending the contract in dispute.

In the view of the foregoing, we will quickly present in this branch urgent requests within the framework of administrative contract disputes and how they are considered by the competent judge, as urgent requests in administrative contracts are requests submitted by the concerned person in case of urgency to demand obtaining a judgment of a temporary nature to ward off an imminent threat threatening the existence of the right itself or the establishment or preservation of evidence establishing the right if it is feared that it will changed or disappearedby time, as the urgent judiciary has a major role in protecting the legal positions of the parties to the litigation when the time factor deprives the objective judiciary from providing that protection. The consequences of the lapse of time would make the role of the substantive judiciary is useless.

We conclude that if the ordinary judiciary is the one that specialized in settling disputes related to administrative contracts, then the settlement of urgent matters related to the administrative contract the subject of the dispute is also within the jurisdiction of the ordinary judiciary.

The urgent requests are subordinate requests, and the judge of origin is the branch judge, and the court decides on urgent requests within the established limits and controls, so it shall:

First: To make sure that the urgency is present, according to the presented situation and the right to be preserved.
Second: It verifies if the reasons are serious or not according to its standards.
Third: It issues its judgment in the urgent dispute by taking the required measures or rejecting them without prejudice to the substantive aspect of the dispute.

Deciding on the issue of the urgent request as it is a dispute branching off from an administrative contract that falls within the jurisdiction of the ordinary judiciary, given that the ordinary judiciary is the owner of the jurisdiction in the litigations related to the administrative contracts, as this jurisdiction is a comprehensive jurisdiction for the origin of those disputes and their ramifications as long as they do not take the form of administrative decisions.
The third requirement: Judicial oversight of decisions issued by the administration in the field of administrative contracts.

When the administration concludes an administrative contract issued by it a set of actions and decisions that ensure that the contract includes the best conditions that achieve the interest of the administration and thus the public interest accordingly, and we find that there are two types of decisions issued by the public administration during the contracting process, the judicial control over them varies and will be divided This requirement is as follows:

The first branch: Judicial oversight over decisions that issued by the administration.

The second branch: the effect of canceling the separated administrative decision on the administrative contract.

The first branch: Judicial oversight of decisions issued by the administration

The administration issues administrative decisions related to the contracts it concludes, which may precede the contracting process or during the implementation of the contract, and by studying the decisions of the Supreme Court of Justice, we can know the judiciary's position of these decisions as follows:

A- If the decision was issued by the administration before the signing process, the administrative decisions are considered subjected to appeal by the Supreme Court of Justice, and this is what the Supreme Court of Justice said in its decision No. 181/1997, where it says: the administrative contract has a special character that makes it separated from the civil contract, as it is based on satisfying the needs of the public utility so that it runs regularly, and if the contractor fails to implement his contractual obligations, the administration has the right to take the necessary measures that ensure the implementation of the contract in accordancewith the interest of the public utility. The administration has the right to take the necessary measures to ensure the implementation of the contract in accordance with the interest of the public utility, and therefore the decision taken by the respondent against it ... to deprive the plaintiff from participating in the tenders and purchases of the secretariat for a period of one year is in accordance with Article 49 of the Supplies and Works Regulations ..This ruling also states ((...) This judiciary is not obligated to apply the rules of private law to relationships that arise within the scope of public law unless there is a provision. The administrative judiciary has its freedom and independence to devise appropriate solutions to the relationships that arise in the field of public law between the administration in its establishment On the management of public utilities and among individuals, it is, as established jurisprudence, that it is a constructive judiciary that creates appropriate solutions according to the nature of the dispute and the needs of the public utility).

B - The decisions imposed by the administration during the implementation of the contract: the jurisprudence of the Supreme Court of Justice is not stable, at times it considers them as disputes related to the implementation of the terms of the contract or the extent of adherence to its terms, therefore it is not within the jurisdiction of the court. 1997 11/1997 in which it was stated (that the dispute between the plaintiff and the respondent against them revolves around the respondent's bid committee to resolve (10%) from a good execution guarantee ... that the dispute in the execution stage is in fact a dispute over the right and the interpretation of the contract, and the rights of its parties, The extent of compliance with its terms and specifications of the supply, which is a dispute governed by the contract and its terms, and is considered one of the rights disputes that civil courts have jurisdiction to consider pursuant to Article (2) of the Law on the Formation of Regular Courts

At other times, it considers it an administrative decision capable of separating from the contract and is therefore subjected to appeal by the Supreme Court of Justice, and an example of this approach is its judgment in Case No. 181/1997 of 9/24/1997, which was mentioned earlier, it was stated (that the administration authority imposes penalties on the contractor With itself in the event of breaching the terms of the contract, targeting the public interest and ensuring the proper functioning of the public facility and the completion of the required work in the best way ..... If the contractor fails to implement his obligations or he is unable to fulfill them, then the administration has the right to take the necessary measures to ensure the implementation of the contract).

Since most of these decisions include imposing penalties on the contracting party with the administration, controls have been put in place by the judiciary (Supreme Justice and cassation), which the administration must observe when imposing the penalty on the contracting party is as follows:
1 - That the objective of imposing the penalty in the administrative contract is to achieve the public interest, to ensure the proper functioning of the public facility and to complete the works in the best way.
2- That the penalty will be signed by the competent authority.
3- The availability of all the legal elements and conditions stipulated in the contract or in the law necessary to inflict the penalty.
4-It is not permissible to combine penalties unless there is a provision in the contract or in the law requiring that.

THE SECOND BRANCH: THE EFFECT OF CANCELING THE SEPARATE ADMINISTRATIVE DECISION ON THE ADMINISTRATIVE CONTRACT.

The rule is that the cancellation of separate administrative decisions leads to the nullity its consequences, because what is based on falsehood is null, but the French and Egyptian Council of State, had a different position in the case of administrative contracts only, so canceling the administrative decision cannot by itself lead to the cancellation of the contract. It remains intact and enforceable until one of its parties adheres to the ruling of cancellation in front of the contract judge, and therefore the contract judge - regardless of whether the court is ordinary or administrative - may decide to cancel it based on the precedence of canceling the separate administrative decisions that contributed to the completion of the contract process , and the owners of this approach defend And among them the Commissioner in the French Council of State (Romeo) expressed their opinion that even if the initiator of the opinion imagines that the appeal for cancellation regarding the

administrative decision will be useless as long as it does not lead to the cancellation of the contract itself, However, the interest to appeal is clear by noting that the cancellation decision may be appreciated by the court competent to consider the contract, and for others who are not able to appeal the contract in a civil manner, since they are not parties to the contract, they can appeal the contract by canceling the relevant administrative decision that is related to it if they have a personal and direct interest in this appeal, and also with this approach was the judgment of the Egyptian Administrative Court issued on November 18, 1956, in which it was stated (... the annulment judge examines whether the contested decision should be annulled if it is necessary or not to be canceled without concern for the negative or positive consequences of this cancellation .... If it is true that canceling the administrative decision in the case presented does not lead to the loss of the contractual relationship that arose out of it, but this does not negate the existence of an interest in the request to cancel this decision. ... and it is against logic ... to cancel the tender award, after which the resulting procedure - the conclusion of the contract - remains valid, provided that the applicant has a specific interest, based on the cancellation ruling, he can obtain compensation from the administration)

On the other hand, we find an aspect of jurisprudence that contradicts this approach and takes this approach in the French and Egyptian administrative judiciary, and finds a contradiction in it, especially in light of the modern approach of the French and Egyptian administrative judiciary, which believes that canceling separate decisions leads to nullification of the consequences of them without exception of contracts So administrative. This approach was supported by the jurist Pekino, the jurist (Weil), Dr. Suleiman Al-Tamawi, and other jurists, considering that the administrative decision, even if it is separate from the contract, except that when looking at the nature of the relationships and legal actions that are based on the principle of invalidity of each procedure that based on falsehood, the decision that was taken contributed to the formation of the contract and ordered its cancellation. The contract will become void accordingly, and the decision to revoke the contract cannot be considered separate from the contract because without this decision, the contract itself would not exist. If the decision to accept the bid is revoked due to the lack of jurisdiction of its source, then this decision, although it is separate from the contracting process, will not result in an administrative contract, and one of the contracting parties can resort to terminating the contract itself based on the canceled decision

The question that arises, based on the foregoing, can we in Jordan rely on this last opinion in if the separated administrative decision is canceled, and if the problem in Egypt and France does not arise in relation to the jurisdiction, then the State Council has the authority to consider appeals in administrative decisions in addition to administrative contracts, but The situation in Jordan differs as the judicial body that hears the appeal of administrative decisions - the administrative court –differs from that that hears the appeal of administrative contracts - the regular courts - so does the administrative court ruling to cancel a separate administrative decision apply to the administrative contract on which it is based and immediately cancel it, or is it is necessary to refer to the ordinary judiciary in that.

We conclude that in order to solve this problem according to the practical reality in Jordan, we must address two very important issues:

Firstly:
The administrative judiciary is the one who has the authority to hear appeals according to the administrative decisions and does not have the power to consider contractual disputes as we have seen previously, and therefore it has the right to rule to cancel the administrative decision without extending its consideration or judgment to the contractual relationship that arose from this decision.

Secondly:
If the adoption of what was mentioned in the first issue is justified for the purpose of ensuring the stability of the contracts concluded by the administration and adding some kind of safety to them, then it cannot be ignored that freeing the hand of the administration leads to the spread of corruption as the contracting administration will continue to conclude incorrect contracts based on invalid decisions because it knows that The farthest thing that judicial rulings will go to is to cancel their decisions without affecting the contracts they concluded, in addition to the basic legal principle which states that what is based on falsehood is null.

After highlighting the two previous issues as determinants of the framework for our treatment of the effect of canceling the separated administrative decisions on administrative contracts that were concluded accordingly in Jordan, we believe that canceling the administrative decision does not necessarily order the cancellation of the contract, but rather it is necessary for the stakeholder to file an appeal against this contract and request its

cancellation, adhering to the nullity of the administrative decision that was made It was concluded accordingly and this shall take place in front of the ordinary court that reviews and rules on this request.

The administrative judge is considered an innovator and creator of the legal rules and principles that are consistent with the nature of the administrative law, as he is the one who interprets the vague legal texts and reconciles the opposing texts, as this is different from what the civil judge does, whose role is limited to the application of the law. The role of the administrative judge becomes more important and positive in countries that adopt a dual system of justice, unlike countries that adopt a unified judiciary, where the role of the judge is limited. In other words, administrative contracts, as one of the administration's means of carrying out its tasks and conducting its business, are subjected to judicial oversight like all the work of administration, and this oversight and its nature do not raise any problems in the system that adopts a unified judiciary, but the matter is different in countries with a dual system.

Countries with a dual system differed among themselves in how to distribute jurisdiction between administrative courts and ordinary courts, taking more than one standard in that, but as a result, the jurisdiction of adjudicating administrative contract disputes, even if it was initially for the ordinary courts or jointly between the ordinary and administrative courts, but most legislation In the end, assigned this jurisdiction to the administrative courts, whether they follow the standard of the legislative census or if they are taken by the general standard, and this is what was shown to us by studying, for example, the approach of the Egyptian legislator and its inclusion in this regard.

We have seen a special case in the Jordanian legislation, as the legislator insists in all its laws not to stipulate the jurisdiction of administrative courts to consider disputes related to administrative contracts, and therefore the jurisdiction in that is the regular courts.

As for the administrative decisions related to contracts, their adaptation and control are different if these decisions precede the contract than if they coincide or accompany the implementation of the contract as we have seen in this research.

However, despite the great steps taken by the Jordanian legislator in adopting a dual judicial system, by issuing the Administrative Judiciary Law No. 27 of 2014. However, it did not expand the scope of this law to include all administrative disputes, particularly those arising from administrative contracts, which the civil judiciary has jurisdiction over it. Whereas in Egypt, administrative contract disputes are subjected to the administrative judiciary that has jurisdiction over all administrative disputes. The administrative judiciary must delegate all disputes related to administrative contracts and other administrative disputes to the administrative judiciary by expanding the powers of the administrative court as the civil judiciary is inconsistent with the spirit of administrative justice and its privacy.

In addition, the presence of an administrative judge specializing in administrative disputes has the ability to understand the nature of administrative disputes that the administration faces will greatly and effectively assist in ensuring the proper functioning of the public utility. It would also activate the judicial control of the administration’s actions to ensure that it does not deviate from it, as the judiciarycontrol has two main objectives. The first: is to protect the interest of the individual, while the second is to ensure that the administration respects the principal of legality, as this oversight is manifested through the abolition of administrative acts in violation of the law or compensation for them or both together. Thus, judicial oversight over the work of the administration is the best and effective method to ensure that the administrative authorities respect the law.

We have discussed the effect of canceling the separate administrative decision on the administrative contract from the point of view of the judiciary and jurisprudence, and we have concluded that the cancellation of the administrative decision does not necessarily lead to the cancellation of the contract. The ordinary judiciary that hears this request and rules on it.

We have also dealt with the issue of acts of sovereignty, and we noticed that most of the legislations have agreed to remove acts of sovereignty from the jurisdiction of judicial oversight, so the judiciary has no right to monitor it in any way, and the Jordanian legislator kept that in the new administrative judiciary law.

RECOMMENDATIONS

At the end of this research we can come up with the following recommendations:

First: The creation of specialized administrative courts was for reasons related to the nature of the work of the administration, and administrative contracts as one of the important means of administration for the conduction of its business, theconsideration of the disputes arising therefrom is within the jurisdiction of the administrative courts for the reasons for which this judiciary was found. Therefore, we wish the Jordanian legislator to reconsider the terms of reference of the administrative judiciary in Article(5) of the new law, and to add the jurisdiction to consider disputes in administrative contracts to the rest of the specializations, and it is worth noting that this jurisdiction was present in the draft law, but its text was canceled and was not approved in the final versionof the law.

Second: We hope that the legislator will adopt the general standard in defining the jurisdiction of the judiciary in Jordan, and this does not harm its preservation of the text on some of the specializations, but that is not exclusively, but an example.

Third: We wish the legislator, if it kept the text on acts of sovereignty, to either set a definition for these acts or an accurate standard to differentiate the acts of sovereignty from others; Because this is closer to legality, acts of sovereignty are an exception that should not be expanded.

Fourth: We call on the Jordanian administrative legislator to investigate the plans and other legislations in this regard to benefit from it in dealing with administrative contracts, such as the Egyptian administrative legislator, and to benefit from his experiences in forming the administrative judicial institution in all its details and components, and to take note of all the judicial precedents issued by it.

References

Books:
Abdul Aziz Khalifa, General Foundations of Administrative Contracts, Author, 2004.
Al-Helou, MagledRagheb. (2004) Administrative Contracts and Arbitration. Alexandria: The NewUniversity Publishing House.
Ali KhattarShatnawi, The Jordanian Administrative Judiciary, First Edition, 1995.
Ali KhattarShatnawi, Administrative Judiciary Encyclopedia, House of Culture, Jordan, 2008.
Bashar Jamil Abdullah Al-Hadi (2015) The administrative mind, legal, administrative and ethical aspects, First Edition, Amman: House of Culture.
Bin Zaid, Abdul Aziz Muhammad Ali (2006) Arbitration in administrative contracts). Master's thesisPublication. The University of Jordan, Amman, Jordan
Ibn al-Mandhar, Lisan al-Arab.
Interview, MazenFlayz Mahmud. (2005) Arbitration in Administrative Contracts Disputes). Al-Bayt University, Mafraq, Jordan.
Ismail Al-Badawi, Administrative Court, PH, Cairo, 1997.
Khamis Ismail, General Principles and Practical Applications of Administrative Contracts, Author, 1994.
MajedGhaleb El-Helou, (2004) Administrative and Arbitration Systems, 1st Edition Alexandria: The New Jamila House.
Mahmoud Al-Banna, Mediator in the Administrative Court, P H, Cairo, 1999.
Mahmoud Al-Banna, Mediator in the Administrative Court, P H, Cairo, 1999.
Mal Allah Jaafar Abdul Malik Al Hammadi (2004), Rights and guarantees of the contractor with management and arbitration in the administrative contract, First Edition, Beirut: Al-Halabi Legal Publications.
Muhammad Ali Al-Khalayleh (2012), Administrative Law, 1st Edition, Amman: House of Culture.
Nawwaf Kanaan, Jordanian Administrative Law, Book Two, First Edition, 1996.
Ragab Mahmoud Ahmed, Administrative Judiciary - The Sharia principle - The organization and jurisdiction of the judiciary Administrative, Arab Renaissance House, Cairo, 2005.
Sami Gamal El-Din, Supervision of Management Works, Knowledge Establishment, Alexandria, 1982.
Suleiman Al-Tamawy, Administrative Court, Arab Thought House, Cairo, 1976.
Sulaiman Al-Tamawi, General Foundations of Administrative Contracts, Arab Thought House, 1991.
Ismail Al-Badawi, Administrative Court, PH, Cairo, 1997.
Ibn al-Mandhar, Lisan al-Arab.
Bashar Jamil Abdullah Al-Hadi (2015) The administrative mind, legal, administrative and ethical aspects, First Edition, Amman: House of Culture.
Bin Zaid, Abdul Aziz Muhammad Ali (2006) Arbitration in administrative contracts). Master's thesisPublication. The University of Jordan, Amman, Jordan.
Al-Helou, MagledRagheb. (2004) Administrative Contracts and Arbitration. Alexandria: The New University Publishing House.
Khamis Ismail, General Principles and Practical Applications of Administrative Contracts, Author, 1994.
Ragab Mahmoud Ahmed, Administrative Judiciary - The Sharia principle - The organization and jurisdiction of

the judiciaryAdministrative, Arab Renaissance House, Cairo, 2005.
Sami Gamal El-Din, Supervision of Management Works, Knowledge Establishment, Alexandria, 1982.
Sulaiman Al-Tamawi, General Foundations of Administrative Contracts, Arab Thought House, 1991.
Suleiman Al-Tamawy, Administrative Court, Arab Thought House, Cairo, 1976.
Abdul Aziz Khalifa, General Foundations of Administrative Contracts, Author, 2004.
Ali KhattarShatnawi, Administrative Judiciary Encyclopedia, House of Culture, Jordan, 2008.
Ali KhattarShatnawi, The Jordanian Administrative Judiciary, First Edition, 1995
MajedGhaleb El-Helou, (2004) Administrative and Arbitration Systems, 1st Edition Alexandria: The New Jamila House
Mal Allah Jaafar Abdul Malik Al Hammadi (2004), Rights and guarantees of the contractor with management and arbitration in the administrative contract, First Edition, Beirut: Al-Halabi Legal Publications.
Interview, MazenFlayz Mahmud. (2005 (Arbitration in Administrative Contracts Disputes). Al-Bayt University, Mafraq, Jordan.
Muhammad Ali Al-Khalayleh (2012), Administrative Law, 1st Edition, Amman: House of Culture.
Mahmoud Al-Banna, Mediator in the Administrative Court, P H, Cairo, 1999.
Mahmoud Al-Banna, Mediator in the Administrative Court, P H, Cairo, 1999.
Nawwaf Kanaan, Jordanian Administrative Law, Book Two, First Edition, 1996.

Author Information

Dr. Shukran Qasem Naser Al-Dughmi
Zarqa University
Collage Of Rights
Assistant Professor