

**The Judicial Oversight on the Administrative Contracts in
the Jordanian Legislation and the Comparison:
The Modern Qualitative Jurisdiction of the
Administrative Judiciary**

Dr. Tareq AL-Billeh¹

Abstract

The research addresses with the issue of the judicial oversight on the administrative contracts, where the research highlighted the fact that the ordinary judiciary in Jordan is the competent to deal with disputes related to administrative contracts, this was confirmed by the Jordanian Administrative Judiciary Law, and the jurisprudence of the Administrative Judiciary in many of its provisions, in which the ordinary courts, are the competent courts with the general jurisdiction to look after all judicial disputes related to administrative contracts, so that the research dilemma lies in that administrative contract disputes must be within the specific jurisdictions of the administrative judiciary, as is the case in some comparative legislative and judicial systems in (Egypt, France and Morocco), where the administrative judiciary is competent to consider disputes related to administrative contracts, while the research concluded a number of findings and recommendations, the most important of which is the need to amend Article (5) of the Jordanian Administrative Judiciary Law No. (27) for the year (2014), by including administrative contract disputes within the scope of jurisdiction of the administrative judiciary, and amending the aforementioned law by adding articles dealing with all types of administrative contracts, and the need for the administrative judiciary in Jordan to retreat from its jurisprudence, which states that the jurisdiction of the administrative judiciary has been mentioned exclusively, as these jurisdictions do not include disputes related to contracts of all kinds, including administrative contracts.

Keywords: *The Judicial Oversight, The Administrative Contracts, The Administrative Judiciary, The Ordinary Judiciary, The Jurisdiction, Qualitative Jurisdiction*

¹ Assistant Professor, Faculty of Law, Applied Science Private University, Al Arab St 21, Amman, Jordan, and the author is a practicing lawyer in Jordan.

I. INTRODUCTION

The administrative contracts are an important field of the practical reality, as these contracts link the administrative activity with its contractors, where it aims to achieve the interests and needs of citizens, as the contract is associated to business, supplies, services or other matters, and although this contractual relationship is regulated, there are many disputes, issues and controversies that may arise², therefore, there is a need for judicial oversight by courts with qualitative competence to consider administrative contract disputes so that to be immediately ready to resolve the disputes that may arise or that may arise between the contracting parties, the development of these contracts, whether economically or socially, led to the necessity for judicial oversight³.

What is meant by the administrative contract: "A contract concluded by a public legal individual with the intent to operate or organize a public utility, in which the administration intends to adopt the methods and provisions of administrative law, where the contract includes exceptional terms uncommon in private law."⁴, While what is meant by the general administration: "Any governmental administrative entity that represents the government, whether it is a public institution, a ministry or a municipality, and it is a party to the administrative contract."⁵

The issue of judicial oversight on administrative contracts is a fundamental issue that has a significant impact on practical reality, the research will address this matter extensively and in-depth, and it will look at all aspects of the topic, whether theoretical or practical, where the importance of the study lies in addressing the

² SULEIMAN AL-TAMAWI, *THE GENERAL FOUNDATIONS OF ADMINISTRATIVE CONTRACTS* 59-60 (5th ed. Dar Al-Fikr Al-Arabi, Egypt 1999).

³ HAMDY OKASHA, *ENCYCLOPEDIA OF ADMINISTRATIVE AND INTERNATIONAL CONTRACTS*, Administrative Contracts In Practical Application General Principles And Foundations 4-5 (Monsha'at Al Ma'aref 1998). NAWAF KANAAN, *THE ADMINISTRATIVE LAW AND ITS APPLICATIONS IN THE UNITED ARAB EMIRATES A COMPARATIVE STUDY* 115-116 (Ithraa for Publishing and Distribution 2004).

⁴ Tariq Al Busaidi, *The Legal Nature of the Concession Contracts and Investment Contracts Concluded by the State According to the B.O.T System*, 36 UAEU. 21, 27-28 (2008). https://scholarworks.uaeu.ac.ae/sharia_and_law/vol2008/iss36/1

⁵ SAHEM NAWAFILAH, *THE EFFECTIVENESS OF IMPLEMENTING THE ADMINISTRATIVE CONTRACT AND CONTRACTOR SELECTION PROCEDURES IN THE JORDANIAN PUBLIC ADMINISTRATION A case study in the Jordanian Ministry of Public Works and Housing* 8-9 (Master Thesis, Al Al-Bayt University 2004).

oversight of administrative courts on administrative contracts, in addition to the increasing role of administrative contracts in the establishment and management of public utilities, and the need to implement contractual obligations on the specified dates without delay, and that the failure to address these issues leads to ambiguity and weakness in the application of the provisions of the articles of the Administrative Judiciary Law.⁶

The research seeks to address the shortcomings in the texts of the Jordanian Administrative Judiciary Law by referring to comparative administrative laws and regulations (Egyptian, French, and Moroccan), the judgments of the French Council of State, the judgments of the Egyptian Supreme Administrative Court, the Court of Cassation in Egypt, the judgments of the Administrative Court in Morocco, the judgments of the Moroccan Court of Cassation (The Administrative Chamber), and to clarify the viewpoint of jurisprudence in these countries, where the researcher looks forward that this research will constitute an effort to address the deficiency, ambiguity, and weakness in legal texts and jurisprudence, to add scientific legal knowledge to these texts, jurisprudence, and its practical applications.⁷

This research aims to highlight that the ordinary judiciary in Jordan is the competent authority to consider disputes related to administrative contracts, this was confirmed by the Administrative Judiciary Law and the jurisprudence of the administrative courts in many of its rulings, so that the ordinary courts are the competent courts with the general jurisdiction to look after all judicial disputes related to administrative contracts, except for those excluded by a special provision, contrary to what is followed in the judicial system in (Egypt, France, and Morocco), where the administrative judiciary is competent to deal with disputes related to administrative contracts.

The research will attempt to answer the questions listed below that represent the research dilemma: What are the practical difficulties that arise from the nature of the jurisdiction to resolve disputes arising from administrative contracts? What is the role of the judiciary in monitoring the breach of contractual obligations,

⁶ BASHAR ABDUL HADI, THE ADMINISTRATIVE CONTRACT THE LEGAL, ADMINISTRATIVE AND LITERARY ASPECTS ANALYTICAL STUDY AND SUGGESTED SOLUTIONS 28-30 (House of Culture for Publishing and Distribution 2015).

⁷ Administrative Judiciary Law Act, 2014, No. 27, Acts of Parliament, 2014 (Jordan).

whether the breach is by the administration or by the contractor? Are the decisions made about the administrative contract separate from or linked to the contract? What are the consequences of canceling the administrative decision in relation to the contract if this decision is canceled due to its illegality?

The descriptive-comparative approach will be adopted in this research due to the diversity of legislations that differed in addressing the sub-sections and sub-topics of the main topic of the study, clarifying the differences between these legislations, knowledge the strengths and weaknesses of these different legislations, and the extent of which they are considered, the research also followed the analytical approach to analyze all the provisions of legislation related to the subject of this study to determine its contents, implications, and objectives, then criticizing and commenting on it, and highlighting the critical aspect of the researcher, the research also followed the critical approach, to highlight the viewpoints and trends of jurisprudence in the topics that were addressed, where the critical aspect of the researcher is highlighted in every aspect that he dealt with in the jurisprudential trend, where this research necessitated the use of several research methods due to the nature of its complexity among the texts of the law, the viewpoints, the jurisprudential trends, and the judicial rulings.⁸

II. THE PRACTICAL PROBLEMS THAT ARISE FROM THE NATURE OF THE JURISDICTION OF THE ADMINISTRATIVE CONTRACTS

It should be noted that the Administrative Judiciary Law in Jordan has limited its jurisdiction, as these jurisdictions do not include disputes related to contracts of all kinds, including administrative contracts.⁹

⁸ BASHAR MALKAWI, (2008), (The Scientific Fundamentals of Writing Legal Research) "Ph.D. and Master's Theses", Bar Association Research Judicial Institute Research and Student Research Conferences and Seminars 13-14 (Dar Wael for Publishing and Distribution 2008).

⁹ Administrative Judiciary Law Act, 2014, § 5 (a), No. 27, Acts of Parliament, 2014 (Jordan) states the following: "The Administrative Court has exclusive jurisdiction to deal with all appeals related to final administrative decisions, including: 1. Appeals about the results of the elections of councils of chambers of industry and commerce, trade unions, associations and clubs registered in the Kingdom, and electoral appeals that are

In a ruling of the Jordanian Supreme Administrative Court, it was stated that: "Since the dispute, the subject of the present lawsuit, is related to the termination of a contract, whereas, administrative contracts and its rescission are not subject to an appeal on the grounds of cancellation, as the jurisdiction of the administrative judiciary is determined by Article(5) of the Administrative Judiciary Law, in addition, Article (17) of the contract denoted by the term (Disputes) stipulates that: (The Amman Court of First Instance / Palace of Justice is the competent authority to consider any disagreement or dispute that may arise between the two parties in connection with or because of this contract),therefore, the subject of consideration of the current lawsuit is not within the jurisdiction of the administrative judiciary and belongs to the ordinary courts, and since the Administrative Court has reached this conclusion in its contested judgment, it's judgment is in accordance with the law".¹⁰

conducted in accordance with the active laws and regulations, unless another law stipulates giving this jurisdiction to another court, .2. The Appeals submitted by those concerned in the final administrative decisions related to appointment to public positions, promotion, transfer, delegation, Secondment, delegation, service proof, or classification,3. Formal employees appeals related to the cancellation of the final administrative decisions related to the termination of their services or their suspension from duty, 4. Formal employees appeals related to the cancellation of the final decisions issued against them by the disciplinary authorities, 5. Appeals related to salaries, bonuses, bonuses, annual increases, and pension rights due to public employees, their retirees, or their heirs in accordance with the active legislation. 6. The appeals submitted by any aggrieved person to request the cancellation of any system, instructions or decision, which are based on the violation of the system by the law issued pursuant to it, the violation of the instructions to the law or the system issued pursuant to it, or the decision's violation of the law, the system or the instructions issued based on it., 7. Appeals submitted by any aggrieved party related to the cancellation of the final administrative decisions, even if the decisions were protected by the law issued pursuant to It., 8. Appeals against any final decisions issued by administrative entities with judicial jurisdiction, with the exception of decisions issued by conciliation and arbitration boards in labor disputes. 9. Appeals that are within the jurisdiction of the Administrative Court under any other law".

¹⁰ Jordan Investment and Multiple Transport Company v. Land Transport Regulatory Authority, Supreme Administrative admin 15 July 2020, D 2020, 172 (The Jordanian Supreme Administrative Court Decision). Where it was stated in regard of a ruling of the Jordanian Supreme Court of Justice (formerly) that: "... Since Article (9) of the Law of the Supreme Court of Justice No. (12) of (1992) and its amendments enumerate the jurisdictions of this court exclusively, which does not include appealing the administrative contracts and objecting it, therefore, handling this lawsuit is outside the jurisdiction of the

While in other countries such as (France and Egypt), this requires them to conclude several types of contracts that differ in the degree of their involvement in them, but this requires defining the types and sorts of these contracts, and whether these contracts are ordinary contracts so that to be submitted to the ordinary judiciary, or it have the terms and specifications of administrative contracts in order to be subject to the supervision of the administrative judiciary.¹¹

Also, in order to prepare and implement the administrative contract, the administration may decide on a set of administrative decisions, and these decisions may raise several problems and disputes, which may be referred to the judiciary to determine decisions types, whether they are administrative decisions separated from the administrative contract, so that its legality will be studied through the annulment lawsuit, or they are decisions related to the contract, so the administrative court decides on them.¹²

A. The Judicial Competence Related to the Type of the Administrative Contract

Before addressing the details of the nature of the judicial competence related to the type of administrative contract, it should be noted that the judicial system globally is moving towards adopting two systems: The First System: Is the unified judicial system, an example of which is the Anglo-Saxon system, so that, there are no dilemmas in the distribution of judicial competence in that system, where both individuals and administrations are subject to the same law and procedure, and the system does not distinguish between administrative disputes and other disputes. The Second System: Is a dual judicial system, as several countries have adopted this system, including (France, Egypt, and Jordan), where there is an administrative judiciary besides the ordinary judiciary that specializes in looking into administrative disputes that fall within its jurisdiction, this system takes into

High Court of justice.” Maher v. Zarqa Municipality, Supreme Justice admin 19 May 2011, D 2011, 33 (Jordanian Supreme Court of Justice Decision).

¹¹ Iman Al Abdouli and Aaad Al-Qaisi, *The judge in charge of judicial oversight of the unilateral termination of the administrative contract for reasons of public interest*, 17 JOURNAL SLS, 137, 137-164 (2020). <https://spu.sharjah.ac.ae/index.php/JLS/article/view/2328>.

¹² Taif Youssef, *The role of the judiciary in resolving the administrative contract disputes*, Ministry of Justice and Freedoms, Rabat, Morocco, Directorate of Studies, Cooperation and Challenge, http://adala.justice.gov.ma/AR/Etudes_Ouvrages/Etudes_administrati on.aspx.

account two methods to determine the jurisdiction between the ordinary judiciary and the administrative judiciary: First Method: Is that the law specifies exclusively the judicial disputes within the jurisdiction of each party, or the law defines the competence of at least one of these two authorities, this method was adopted in the Jordanian law to determine the jurisdiction of the administrative court exclusively under Article (5) of the Administrative Judiciary Law No. (27) Of (2014) and was preceded by Article (9) of the repealed Supreme Court Law No. (12) Of (1992)¹³.

Second Method: It is that the legislator sets general principles according to which the types of judicial disputes that each judicial entity is competent to look after, for example, the legislator states that the administrative judiciary is competent to handle the administrative disputes, and keeps a margin for the judiciary to deal with judicial disputes of an administrative nature and disputes of a civil nature.¹⁴

In general, the judicial Jurisprudence has settled on dividing administrative contracts into two categories: First Category: The administrative contracts by their nature, that is, there is no specific legal text indicating that they are administrative contracts, which prompted the judiciary to set certain criteria that distinguish it from other contracts. Second Category: The administrative contracts stipulated in the law, which jurisprudence names administrative contracts, such as concession contracts, supply contracts, public works, public deals, transportation services, and rent, because such functions relate to a public utility, and the law determines its administrative nature, and the concept of the administrative contract in light of the government's interference by its various departments and institutions and the multiplicity of its activities is represented by several concepts that are difficult to enumerate.¹⁵

In a ruling of the Jordanian High Court of Justice (Formerly), it was stated that: "Granting and rejecting the license is considered an administrative decision as a legal procedure issued by the administration in the course of carrying out its

¹³ SAMI JAMAL AL-DIN, THE OVERSIGHT OF ADMINISTRATION ACTIVITIES 278-279 (Mansha'at Al-Maaref 1982).

¹⁴ ALI SHATNAWI, JORDANIAN ADMINISTRATIVE JUDICIARY 271-272 (1th ed. 1995).

¹⁵ BASHAR ABDUL HADI, THE ADMINISTRATIVE CONTRACT THE LEGAL, ADMINISTRATIVE AND LITERARY ASPECTS ANALYTICAL STUDY AND SUGGESTED SOLUTIONS 28-30 (House of Culture for Publishing and Distribution 2015).

activity, and it is included in the definition of the administrative decision, as settled by jurisprudence and the administrative judiciary, and appeals to consider disputes arising from administrative contracts are not part of these. Three conditions of the administrative contract are required: One of the Contracting Parties must be a public legal person. The contract relates to the administration or management of a public utility. The contract includes exceptional terms that are uncommon in private law contracts.”¹⁶

The French Council of State defined administrative contracts as, those contracts entered into by a public legal person with the intent of managing a public facility and in which it appears that his intends to comply with the provisions of public law, this is illustrated by the inclusion in these contracts’ uncommon terms in the private contracts.¹⁷

The Egyptian Supreme Administrative Court was considered that the administrative contract is derived from an agreement in which one of its parties is a public legal person with the intent to establish or manage a public facility and in which the intent appears to adopt the general law methods by imposing exceptional terms uncommon in the transactions of individuals, whether the administration has privileges and authorities that individuals do not have, or by granting the contractor with the administration exceptional authorities against others that he does not enjoy when contracting with individuals.¹⁸

In a ruling issued by the Egyptian Court of Cassation (Criminal), it was stated that: “for a contract to be considered administrative, the administration, as a public authority, must be a party to it, and the contract must be related to the activity of a public utility with the intent of managing or regulating it, or

¹⁶ Jordan Telecom Public Shareholding Company v. Telecommunications Regulatory Authority, Supreme Justice admin 5 July 2010, D 2009, 539. (Jordanian Supreme Court of Justice Decision).

¹⁷HAMDI OKASHA, ENCYCLOPEDIA OF ADMINISTRATIVE AND INTERNATIONAL CONTRACTS, Administrative Contracts In Practical Application General Principles And Foundations 4-5 (Monsha'at Al Ma'aref 1998).

¹⁸ ABDEL AZIZ KHALIFA, Execution of the administrative contract and settling its disputes by jurisprudence and arbitration Exceptional administration authorities in the implementation of its administrative contract Contractual obligations of the administration and its contractor Settlement of administrative contract disputes 11-12 (Monsha'at Al Ma'aref 2009).

characterized by adopting the method of public law, with exceptional terms uncommon in private law texts".¹⁹

B. The Judicial Competence Related to the Type of the Administrative Decision

The appeal against the decisions issued by the administration in the event of exceeding its authorities , as in the event of concluding or executing the administrative contract, those disputes that arise between the contracting parties are represented either in the procedures and events that occur during the convening stage or when implementing the contract, thus, disagreements and disputes may arise from these issues, so that the judiciary intervenes to control these differences and disagreements, decide on them and resolve them in one of two methods: First Method: Presenting the disputes related to the contract in terms of implementation the conditions, annulment, cancellation and compensation for damages caused to it to the comprehensive judiciary. Second Method: Referring disputes related to decisions separate from the contract to the court for invalidation, whether those disputes are related to the formation, implementation or termination of the contract, and what is meant by decisions are those issued by the administration regardless of the terms and conditions of the contract.²⁰

The administration may issue a set of decisions that precede the formation of the administrative contract, such as the decisions to grant concession licenses, decisions regarding auctions or exclusions from competition, decisions regarding approval of the contract or those relating to physical separation from the contract if it has already been signed, also, the decisions related to refusing to sign or ratify the contract, while all of these decisions are subject to appeal for cancellation if they arise from a violation of the general rules regulated by the laws, whereas these decisions that issued by the administration contribute to the formation of the contract, moreover, these administrative decisions are considered administrative decisions separate from the contract and their cancellation can be appealed.²¹

¹⁹ Cass crime 28 May 1992, D 1958, 1459 (Decision of the Egyptian Court of Cassation).

²⁰ ABDEL AZIZ KHALIFA, THE ADMINISTRATIVE LIABILITY IN THE CONTRACTS FIELD AND THE ADMINISTRATIVE DECISIONS According to the Law of Tenders and Auctions and its Executive Regulations 21-22 (Dar al-Kutub Al-Masryah, 2007).

²¹ HAMDI OKASHA, *Ibid* 49-51.

The Jordanian Supreme Administrative Court ruled that: "It is observed that the decisions complained of have been issued by the challenged based on the provisions of the agreement concluded between the Ministry of Health and appellant against the decision, as the fact of the dispute revolves around the implementation of the agreement, and that this requires researching the agreement, its terms and conditions, and the extent of any party's commitment to it, and such research is out of the jurisdiction of the administrative judiciary, where the cancellation lawsuit must be against the administrative decision and not on the administrative contracts, and whereas the decisions issued by the party being challenged are issued based on the administrative contract concluded between the Ministry of Health and the appellant, and because the administrative judiciary is not competent to consider this lawsuit, the lawsuit must be dismissed for lack of jurisdiction."²²

The administration may issue a set of decisions in order to implement the contract, as it is the entity responsible for managing the public facility, where these decisions clearly affect the status of the contracting party and the implementation of the contract, and regarding the decisions issued for the cancellation of administrative contracts, the administration, as it is responsible for managing the public facility, may issue a decision to terminate the contract without relying on the regulating clauses of the administrative contract.²³

The question that arises here is: "Are those decisions issued regarding the administrative contract separate from or related to the contract?"

In order to answer this question, must refer to what has been settled by jurisprudence and the judicial diligence, where it is noted that a rule has been established, so that a distinction is made between the decisions issued by the administration as a general authority and which are based on the provisions of the law, where the decision in this case is considered an administrative decision separate from the contract and can be appealed for cancellation, and between the procedures issued by the contracting administration to implement the terms of the

²² The dominant care company for expense management and medical insurance services v. Central Bidding Committee, Supreme Administrative admin 19 March 2019, D 2019, 84(Jordanian Supreme Administrative Court Decision).

²³ ABDEL AZIZ KHALIFA, THE GENERAL FOUNDATIONS OF ADMINISTRATIVE CONTRACTS 341-342 (The House of Legal Books 2005).

contract as a result of the contractor's breach of his contractual obligations contained in the contract, as these decisions are related to the contract and are subject to appeal by the ordinary judiciary, on the basis that the ordinary judiciary is a comprehensive judiciary for those decisions.²⁴

As the French Council of State ruled:” The decision of the Minister of Interior to expel expatriate employees, employed by the contractor to complete a deal for the state is not justified by law, because if the contract does not prevent the use of foreign labor, such use remains lawful in all cases through the implementation of the necessary measures required by public security, bearing in mind that this decision, even if it was related to the implementation of an administrative contract, it was a separate decision, and the means to appeal against the cancellation were the available mean to cancel it.²⁵”

In another ruling of the French Council of State it was stated that: “Since the decision of the obligation-granting authority requires the termination of the obligation contract, it is not considered a decision separate from the contract for the obligating party, therefore, the obligor cannot file another lawsuit against this decision, other than the lawsuit he can file with the contract judge.²⁶”

In order to accept the cancellation lawsuit for administrative decisions separate from the administrative contracting process, this decision must be tainted by one of the defects of legitimacy stipulated in Article (7/a) of the Jordanian Administrative Judiciary Law.²⁷

The question that arises in this section is: What are the consequences of rescinding the administrative decision in relation to the contract if this decision is rescinded due to its illegality?

²⁴Abdul Aziz Khalifa, *The Administrative Liability*, ibid 28-29.

²⁵ Gilles et Bellet , 29 April 1898(Decision of the French Council).

²⁶ CEE, FEB, 1987, STE FRANCE 5, REC.28.

²⁷ Administrative Judiciary Law Act, 2014, § 7 (a), No. 27, Acts of Parliament, 2014 (Jordan) states the following: "The lawsuit shall be filed against the person who has the authority to issue the appeal decision or whoever issued it on his behalf, provided that the lawsuit is based on one or more of the following reasons:(1) Lack of competence.(2) Violation of the Constitution, Laws or Regulations, or error in its application or interpretation.(3) The inclusion of the decision or the procedures for its issuance is defective in form.(4) Abuse of authority.(5)Defective reason.

To answer this question, it is worthy to mention that the annulment judge only monitors the legality of administrative decisions separate from the administrative contract, as the illegal administrative decision is canceled by him and he may not override that by ordering the administration to do something or refrain from doing something, in the framework of the theory of separation of authorities, where the administrative judge does not administer, but issues judicial rulings²⁸.

The jurisprudence has developed in France in relation to this principle, which states that judicial supervision of the annulment of the contract should not go beyond a separate decision, the French Council of State confirmed in a case in which it considered that the cancellation of the decision to approve the concession contract prevents the implementation of the conditions contained in this contract, and in another lawsuit, the French Council of State indicated that "When the group violated one of the basic procedures for concluding the deal after the publication of the requests for proposals, the separate decision was appealed, which was canceled and the consequent contract voided."²⁹

Therefore, it becomes clear that the cancellation of a separate administrative decision related to an administrative contract may affect the concluded contract, either by compensating the appellant in the event that the contract continues to be implemented or by preventing the implementation of the terms of the contract and invalidating it, accordingly, it can be said that the criteria related to determining the nature of the dispute related to administrative contracts have developed significantly, as a result of the development of the state's activity through its intervention and management of the activity of its facilities, either directly or through the mixed economy, thus, this development created many dilemmas due to the diversity and development of these contracts by defining the authority with jurisdiction to consider disputes, whether it is the ordinary judiciary or the administrative judiciary, so that, it is believed that the solution to these dilemmas is to establish a set of criteria to determine the competent authority to consider these controversies, and to rely on several criteria and rules to distinguish between decisions taken by management which related or separated from the procedures

²⁸ Mahmoud Al-Sayed, *The Authority of Administration to End the Administrative Contract a Comparative Study* 549-553(Dar Al-Nahda Al-Arabiya 1993). Abdul Aziz Khalifa, *Administrative Liability*, Previous Reference, *Ibid* 30.

²⁹ MOHAMED ABDEL BASSET, *THE DUTIES OF THE ADMINISTRATIVE AUTHORITY* 402 (Alexandria University 1984).

for preparing, executing and rescinding these contracts, and whether those decisions taken in this framework are related to legal and regulatory texts that affect the legality of the administrative decision in order to be presented to the judiciary for cancellation, or are they decisions related to the implementation of the terms and conditions of the contract in order to be presented to the ordinary judiciary.³⁰

III. THE JUDICIAL OVERSIGHT ON THE LIABILITY OF THE ADMINISTRATION AND THE CONTRACTING PARTY

The administration, as a public authority, has several exceptional authorities to confront the contracting party during the implementation of its contractual obligations, even if there is no provision in the contract giving it that authority, which gives it the right to enjoy general privileges in order to ensure the regular and steady operation of public utilities, the authority of the administration goes beyond the powers granted to the contracting party, which he has no right to object to, given that the administration is the concessionaire, these authorities are represented in oversight the implementation, amendment and termination of the contract with the imposition of the resulting penalties, as the administration performs its authority over this right according to the type of the administrative contract in terms of its connection with the public utility, in order to achieve the public interest, while these authorities granted to the administration do not affect the rights of the entity with which the administration contracts, whether to obtain financial return or collect some compensation in case the administration violates the terms of the contract, taking into account the principle of financial balance of the contract.³¹

The administration may commit several errors when executing the contract, and its error is either administrative, financial or technical, and the error results in harm to the contracting party, the management obligations are represented in two basic obligations, namely, the technical and legal obligations in the

³⁰ MAHER ALLAWI, ISSAM AL-BARZANJI & IBRAHIM AL-FAYYAD, THE COMPETENCIES BETWEEN THE ORDINARY JUDICIARY THE ADMINISTRATIVE JUDICIARY AND RESOLVING THE PROBLEMS OF CONFLICT BETWEEN THEM 220-224 (House of Wisdom Creative Design and Printing 1999).

³¹ MAHMOUD AL-JUBOURI, THE ADMINISTRATIVE CONTRACTS 125 (House of Culture for Publishing and Distribution 2010).

implementation of the administrative contract and the financial obligations in the implementation of the contract, and that any breach by the administration of these obligations results in a contractual error that entails its liability to compensate for the damages it causes to the contracting party, thus, the judiciary has a key role in monitoring the administration's violation of its obligations, deciding and settling it by extracting material evidence and applying the law in this regard by taking several measures.³²

A. The Judicial Oversight of the Administration's Breach of its Obligations Related to the Financial Return of the Administrative Contract

The administration's first obligations are to pay the financial return agreed upon in the contract to the contracting party immediately upon its implementation of the content of the contract, where the contracting party gets the financial return either in full after the implementation of the contract or in part as an advance payment and gets the rest through payments according to what is implemented from the contract, and the value of the financial return of the contracting party is determined in the value of the contract or the value agreed upon in the texts of the contract, in addition to the value of the additional activities that occurs during implementation, or the variation orders issued to the contractor in light of the price specified in the contract.³³

The question that arises here is: "What if emergency circumstances occurred during the implementation of the contract that led to an increase in the financial burden on the contractor and the complexity of his financial situation, which led to a breach of the principle of financial balance of the contract?"

To answer this question, it is necessary to refer to several theories established by jurisprudence and Judicial diligence, namely the (Al -emir) work theory and the theory of emergency circumstances, as for the (Al -emir) work theory, it is related to the legal administrative procedures issued by the contracting administration, which leads to harmful effects on the contracting party, which increases its burdens stipulated in the contract, such as amending the terms of the contract, or

³² HAMDY OKASHA, *ibid* 78-79.

³³ *Ibid* 303-304.

that the procedure is general and affects the obligations of the contracting party indirectly, such as amending laws related to financial matters.³⁴

A ruling issued by the Jordanian Court of Cassation stated that: “The (Al -emir) work theory means that the public authority as a preemptory authority, if it was previously contracted with an individual with an administrative contract for supply, public works, or otherwise, then the public authority issued a law that affects the elements of the contract that it is bound by and affects its economies, and the contracting party bears new burdens and costs that increase the burdens it committed in the beginning, the administration shall be liable for compensating the contractor for the damage he sustained as a result of the administration legitimate act, but however fair and flexible the (Al -emir) work theory was, it was not adopted by the Council and the Civil Law of (1977),also, the Court of Cassation did not find in the provisions what would allow it to be adopted, in addition, the judiciary in other Arab countries that have a civil law prior to the Jordanian civil law did not take it into account, however, jurisprudence and the judiciary have established that in order to apply the (Al -emir) work theory, the following is required: First Condition: The new legislation issued after the decade in which the government committed itself to the individual and which increased the financial burden was unexpected to be issued. Second Condition: The new legislation inflicted a specific harm to the contracting party with the government that would disrupt the financial status of the contract and affect a particular group or individuals, whereas if the legislation is general and comprehensive for the whole population or for an unlimited number of them, the above theory does not apply. There is also no basis for considering the (Al -emir) work theory as an application of the theory of emergency accidents stipulated in Article (205) of the Civil Law, this is because the theory of emergency accidents is an independent theory that does not fall under the concept of the (Al -emir) work theory, because there is a fundamental and essential difference between the two theories in terms of conditions and formation”.³⁵

³⁴ ALI ABDEL MAWLA, THE CIRCUMSTANCES THAT ARISE DURING THE IMPLEMENTATION OF THE ADMINISTRATIVE CONTRACT 14-15 (PhD diss, Ain Shams University, Egypt 1991).

³⁵ Cass civ 10 April 1979, D 1979, 117 (Jordanian Court of Cassation Decision).

As for the theory of emergency circumstances, it depends to procedures outside the control of the administration as well as the contracting party, where these circumstances are unpredictable, but sometimes the administration may abandon its financial obligations in case there are problems in the implementation of the administrative contract in a way that affects the terms and conditions of the contract by affecting the financial balance of the contract, or through delay and procrastination in performance.³⁶

In all these cases, the role of the judiciary is to intervene to resolve and judge these disputes. as the differences arising from these matters are represented in several issues:

First: That the contracting party with the administration resort to a claim for compensation due to a change in the terms of the contract, as the administration may amend the terms of the administrative contract based on the new circumstances, and this modification may go beyond the terms related to ensuring the regular and steady operation of the public utility, where these new conditions affect the advantages enjoyed by the contracting party with the administration, so that, the contractor has the right to resort to the courts to claim compensation.³⁷

Therefore, it can be said that the contracting party has the right to demand compensation due to the administration changing the terms of the contract, and if the administration has the right to amend the terms of the administrative contract, then this right should not exceed the conditions related to ensuring the regular and steady functioning of the public utility.³⁸

Second: That the contracting party resort to a claim for compensation for procrastination or delay in the payment of financial consideration and legal benefits, this claim has two parts:

³⁶ OMAR HELMY, THE NATURE OF THE JURISDICTION OF THE ADMINISTRATIVE JUDICIARY IN ADMINISTRATIVE CONTRACT DISPUTES 132-136 (Dar Al-Nahda Al-Arabiya 1993). Ali Abdel Mawla, *Ibid* 14.

³⁷ BASHAR ABDUL HADI, *Ibid* 55-56.

³⁸ OMAR SALEH, THE JUDICIAL OVERSIGHT ON THE ADMINISTRATIVE CONTRACTS IN THE CONVENING AND IMPLEMENTATION STAGES A COMPARATIVE STUDY 103-117 (Master Thesis, Alexandria University 2021).

First Part: Demanding the party contracting with the administration to compensate for the procrastination, as the administration may delay in implementing its financial obligations towards the party contracting with it, whether intentionally or unintentionally, so it is necessary to prove the fact of procrastination.³⁹

Second Part: Claiming the party contracting with the administration for legal financial interest, as the administration may delay in implementing its obligations and this delay results in legal interests, these interests are legal compensation that each contracting party is obligated to pay as an effect of his delay in paying the due amounts resulting from his breach of his contractual obligation, and these legal interests constitute a percentage that is legally determined and calculated from the date of the judicial claim until the date of full payment as long as the due amount of the debt is known and payable, that is, these financial interests are based on firm foundations, and the judiciary has no discretionary power to estimate, since the amount awarded is known.⁴⁰

B. The Judicial Oversight Regarding the Administration's Refusal to Refund the Value of the Final Guarantee to the Contracting Party

The administration may refrain from refunding the value of the final guarantee to the party contracting with it, which is obligated to provide a guarantee before commencing with the implementation of its contractual obligations, this guarantee constitutes one of the conditions provided by law to secure the contractual obligation of the contractor until the final delivery of the work, and it is necessary to return the warranty and the rest of the guarantees that take its place, where the contracting administration may confiscate the value of the final guarantee of the contracting party only in the event that the contractor fails to fulfill his contractual obligations as compensation for the damage he sustained⁴¹, and if these damages exceed the value of the guarantee, the administration has the

³⁹ Makhliid Khashman, Muhammad Al-Hussein, The Administrative Contracts and its Penalties in the Jurisprudence of the Jordanian Administrative Judiciary and the Comparative Judiciary, 43 *Dirasat: Shari'a and Law Sciences*, 1343, 1343-1349 (2016) [file:///C:/Users/user/Downloads/10612-52371-1-PB%20\(2\).pdf](file:///C:/Users/user/Downloads/10612-52371-1-PB%20(2).pdf).

⁴⁰ Mansour Al-Atoum, The Legal System for Delay Fines in Administrative Contracts A Comparative Analytical Study, 53 *scholarworks.uaeu.ac.ae sharia and law*, 343, 360-361, (2013). https://scholarworks.uaeu.ac.ae/sharia_and_law/vol2013/iss53/6

⁴¹ AISHA GHAYYUM, THE FULL JUDICIARY LAWSUIT IN ADMINISTRATIVE DISPUTES 60-66 (Master Thesis, Akli Mohand Olhaj University 2019).

right to claim compensation for the damages incurred by it as a result of the breach of the contractual obligation, accordingly, and in return for confiscating the guarantee in case of default by the contracting party, the administration is obligated to return the final guarantee after the contracting party finishes completing the works and fulfilling its contractual obligations as stipulated in the contract and within the specified period.⁴²

In a ruling issued by the Moroccan Administrative Court (Casablanca), stated that: "That the guarantee or insurance is deposited by the contractor on which the deal contract is based, and that it represents the administration's right to ensure the contractor implementation of the obligations arising from the contract, and what is clear from the records is that the plaintiff delivered the contract vehicles to the defendant, which gives him the right to claim a refund of the guarantee amount, accordingly, the request related to it is valid and justified and must be responded."⁴³

C. The Judicial Oversight of the Administration's Obligation to Compensate the Contractor for Unilateral Termination of the Administrative Contract

The termination by the singular will of the administration is one of the distinguishing features of an administrative contract from a civil contract, where the public administration, exclusively and without the need to resort to the judiciary, has the right to terminate the administrative contract in the event that the contractor seriously breaches his obligations imposed on him, the administration is also obligated to compensate the contracting party in the event of termination of the contract without there being any breach by the contracting party of its obligations⁴⁴, where the reason for this compensation is to deprive the contractor with the management of the financial benefits that the full implementation of the contract brings, which may harm his investments,

⁴² JAMAL OTHMAN, *The General Theory and Its Applications in the Field of Cancellation of Administrative Contracts in Jurisprudence and the Judiciary of the State Council* 221-225 (Modern Arab Office, 2007). ABDEL MONEIM KHALIFA, *The Administrative Liability in the Field of Contracts*, *Ibid* 104-106.

⁴³ Administrative 3 July 2006, D 2004T, 334 (The ruling of the Moroccan Administrative Court Casablanca in its judgment).

⁴⁴ Thamer Al-Mutairi, *The administration's Abuse in the use of its authority to amend the administrative contract Comparative Study* 88-97 (Master's Thesis, Middle East University 2011).

therefore, the administration is obligated to compensate the contracting party for the termination of the contract in order to achieve the public interest, provided that there is no express provision in the contract whereby the contracting party waives its right to compensation in the event of unilateral termination of the contract.⁴⁵

The administration's commitment is rooted in a principle enshrined in the laws of all countries, it is the principle of executing the contract with its contents and in accordance with what is required by good faith, as Article (202) of the Jordanian Civil Law states the following: "The contract shall be executed in accordance with what it contains and, in a manner, consistent with the requirements of good faith. The contract is not limited to obligating the contracting party to what is stated in it, but also deals with what is required for its implementation in accordance with the law, custom and the nature of the disposition⁴⁶."

The Moroccan Administrative Court (Casablanca), in its judgment No. (243) dated (29/9/1996), stated the following: "Whereas, as the administrative jurisprudence and the judiciary reached the right of the administration to terminate its contracts, even if the contracting party did not commit any error, and that the administration always has the power to terminate the contract whenever it deems that it is required by the public interest, where the other party has the right to compensation if it has a right, and this is subject to the circumstances that require such termination, and the administration is directed to resort to it in order to achieve the intended public interest.⁴⁷"

D. The Judicial Oversight of the Administration's Obligation to Compensate in the Event of Termination of the Administrative Contract

The administration may terminate the contract by canceling it as a result of a serious error by the contracting party if the administration finds that the rest of the contract does not serve the public interest, the judicial jurisprudence has

⁴⁵ HIND ABU MURAD, THE AUTHORITY OF THE ADMINISTRATION TO TERMINATE THE ADMINISTRATIVE CONTRACT A COMPARATIVE STUDY 39-41 (Master's thesis, University of Jordan 1999).

⁴⁶ Civil Law Act, 1976, § 202, No. 76, Acts of Parliament, 1976 (Jordan).

⁴⁷ Administrative 29 September 1996, D 1996, 243 (The ruling of the Moroccan Administrative Court Casablanca in its judgment).

identified a set of cases in which the administration can terminate the contract, and they are of two types:

First Type: The compulsory termination of the contract: this termination results in the case of the contracting party with the administration using fraud or manipulation methods, either directly or through others, but it is required that this fraud or manipulation affects the contract, and examples of this is the termination of the contract due to the bankruptcy or insolvency of the party contracting with the administration, which leads to the impossibility of carrying out the contract.⁴⁸

Second Type: The permissible termination of the contract: In this case, the administration has the discretion to inflict such termination penalty as it deems to be in the public interest in terms of termination or continuation of the contract.⁴⁹

It was stated in a ruling of the Moroccan Administrative Court (Marrakesh) in its judgment No. (89) issued on (16/4/2003) that: "But since it was proven from the investigation that was carried out with the two parties, the representative of the contracting company that implements the project acknowledges that the contracting party stopped implementing the project since (1988), due to the non-performance of the project's dues by the institution that owns the project.... and since within the framework of administrative contracts, the contractor executing the project cannot stop completion due to non-performance".⁵⁰

IV. THE ROLE OF THE JUDICIARY IN MONITORING THE OBLIGATIONS OF THE CONTRACTING PARTY WITH THE ADMINISTRATION

The obligations of the contracting party with the administration are that it implements the contract according to the conditions specified in it, and that the

⁴⁸ MUHAMMAD AL-ANDALI, THE EFFECTS OF THE ADMINISTRATIVE CONTRACT IN JORDANIAN LEGISLATION A COMPARATIVE STUDY 67-77 (Master's Thesis, Al Al-Bayt University 2003).

⁴⁹ ABDEL-AL, HUSSEIN, THE GENERAL THEORY OF ADMINISTRATIVE CONTRACTS 75-77 (1th ed. Anglo-Egyptian Library 1958).

⁵⁰ Administrative 16 April 2003, D 2003, 89 (The ruling of the Moroccan Administrative Court Marrakesh in its judgment).

contracting party fulfills its contractual obligations personally and within the period specified in the contract.⁵¹

A. The Obligation of the Contracting Party towards the Administration to Implement the Terms of the Contract.

The obligation of the contracting authority to implement the administrative contract is one of the fundamental obligations of the contractor, where the contractor is obligated to implement the contract in accordance with what it contains and according to the conditions stipulated in the contract in order to achieve the intended purpose of the contract, the contractor may not refrain from implementing it or stop it on the pretext that the administration has not fulfilled its obligations towards the contract, however, the contracting party may not be liable to the administration in the event of a force majeure preventing him from fulfilling its contractual obligations.⁵²

The Jordanian Supreme Administrative Court, in its decision No. (90/2019), issued on (17 April 2019), ruled the following:” The concept of an administrative contract as defined by jurisprudence and administrative judiciary is a contract in which one of its parties is a public legal person, its activity is related to public facility, and contains terms that are uncommon within the scope of private law, where the contract is considered administrative if it has three characteristics, namely that one of its parties is a public legal person, and that the conclusion of the contract relates to an activity related to a public facility, and that it includes conditions that are not common within the scope of private law, the administrative contract is distinguished by that the administration acts in its conclusion as a public authority that enjoys rights and privileges that the contracting party does not enjoy with the intention of achieving a public benefit or public interest, and if the contract loses one of the mentioned conditions, then it is a private law contract and is considered a civil contract in which the administration degrades to the status of individuals in its contract, and concludes civil contracts in which the

⁵¹ Taima Al-Jarf, *The Judicial Oversight of Public Administration Activities, Appeal Against Cancellation in the State Council 233-237* (Modern Cairo Library, 1984). Mahmoud Al-Jubouri, *ibid* 187.

⁵² Omar Abu Bakr, *The Judicial Oversight of the Administration’s Authority in Concluding Administrative Contracts by Bidding 115-117* (Al-Halabi Human Rights Publications 2013). Abdul Aziz Khalifa, *The General Foundations of The Administrative Contracts, Ibid* 177-178.

means of private law are used, (Refer to the set of legal principles approved by the Supreme Administrative Court / the Egyptian State Council - Part (3), Page. (1991), Clauses: (4639 - 4644)), and by applying what was stated in the lawsuit, we find that the administration has concluded with the defendant a unified employment contract for employees that departs from the concept of the administrative contract, and that the first complained decision containing the termination of the service of the respondent against him based on the terms of the contract, and as with this lawsuit, it is a final administrative decision, in which all elements of the administrative decision are combined, as it is issued by an administrative entity competent to issue it and with its public authority, with the aim of establishing a legal center to achieve the public interest and not with the intention of canceling an administrative contract, this is because the administrative decision is issued by a unilateral will of the administration, and therefore it is distinguished from the administrative contract that arises from the convergence of the administration's will with another will with certain conditions, and the dispute shall be in the application of the terms of the contract or agreement that concluded, (Refer to Dr. Majed Al-Helou "The Administrative Lawsuits, Pages (42) and beyond), and since the administrative contract is similar to the civil contract in terms of its basic elements, it is an agreement of two wills, by affirmative and acceptance to perform a contractual obligations based on mutual consent between the two parties, however, the administrative contract is distinguished from the civil contract in that it must meet the conditions mentioned above in the introduction to this decision, and since the above-mentioned conditions are not included in the appellee's employment contract, it is out the scope of administrative contracts, and that the dispute is the subject of this lawsuit within the jurisdiction of the administrative judiciary,(Refer to Decision No. (106/2011), Supreme Court of Justice, dated 29/6/2011)),and since the Administrative Court has reached a different conclusion from that of our court regarding the first complained , its contested judgment is subject to cassation from this aspect".⁵³

⁵³ Ali Al Lozy v. President of the International University of Islamic Sciences, Supreme Administrative admin 17 April 2019, D 2019, 90 (Judgment of the Jordanian Supreme Administrative Court) and the Jordanian High Court of Justice (Formerly) ruled the following: "The administrative contract has a special characteristic that makes it independent of the civil contract, where it based on meeting the needs of public facility

B. The Personal Liability of the Contracting Party in Implement the Contract

The general principle that governs the contractual relationship between the administration and its contractors is that the administrative contract is executed by the contracting party personally, this obligation requires the contracting party to act appropriate effort in personal cooperation with administration in the performance of the contract, and not to withdraw from the contract in whole or in part or sub-contract it without the approval of the administration, where this personal obligation of the contracting party to implement the contract is subject to judicial oversight⁵⁴, where the Egyptian Supreme Administrative Court ruled that: "It has been established in the public law jurisprudence that administrative contracts are governed by its own rules that apply to it all, even if these rules are not stipulated in the contract, and one of these rules is that the obligations of the contractor toward the administration are personal obligations, that is, the contractor must perform them personally and by himself, therefore, the original contracting party is considered solely liable in front of the administration, and the administration always has the right to refer to the original contracting party in case of default in his obligation, whoever the defaulter may be, hence, the contracting party is not entitled to absolve him-self of the liability implied by the

so that they operate regularly, so that, if the contractor fails to implement its contractual obligations, the management has the right to take the necessary measures to ensure the implementation of the contract in accordance with the interest of the public facility, accordingly, the decision taken by the defendant (Amman Municipality-Supplies and Works Committee) which deprived the claimant from participating in the Municipality's bids and purchases for a period of one year, is in line with Article (49) of the Procurement and Works Regulations due to his negligence in maintenance and breach of his contractual obligations, which is a procedure consistent with the implementation of the contract in term the interest of the public utility, this is because the administration that imposes penalties on the contracting party when violating the terms of the contract aims the public interest, in addition to the insurance of the proper functioning of the public facility, to perform the required activities properly, as the contracting parties in administrative contracts are not equal, unlike civil contracts, where the rights and obligations of both parties are regulated. Supreme Justice admin 24 September 1997, D 1997, 181 (Decision of the Jordanian Supreme Court of Justice (Formerly)).

⁵⁴ Wissam Al-Ani, *The General Administrative Penalties: A Comparative Study*, 32 JOURNAL OF LEGAL SCIENCES, 116, 116-161 (2019). <https://jols.uobaghdad.edu.iq/index.php/jols/article/view/135>

supply contract on the grounds that the act entailing liability was done by his representative without his knowledge or consent”⁵⁵.

C. The Obligation of the Contracting Party in Respecting the Time Periods (Time Limits) the Starting and the Completion Dates of the Contract

Each contract has a time period for its implementation stipulated in it in order to complete the execution activities that are the subject of the contract, therefore, if the activities subject of the contract are not completed within the period specified in the contract, in addition to the additional periods granted to the contractor by the administration, this means that the contractor has breached his obligations, this obligation is subject to judicial oversight, as the judiciary monitors the breach of obligations arising from the implementation of the contract during the agreed period, so that the court monitors two things: the starting of the contract term, and the completion of the contract term.⁵⁶

The Jordanian Court of Cassation ruled that: “If the supply contract includes that in the event of a delay in the documentary credit notification issued for a period exceeding ten days from the date of signing the supply contract, the delay period applies to shipping dates without penalties, and as long as this condition is set in favor of the assignee of the supply offer, and it does not violate the law or public system, it is binding on the administration, therefore, the administration’s delay in opening the credit requires calculating the delay period in favor of the assignee without imposing fines for the delay in supplying the goods included within the delay period for opening the credit”⁵⁷.

With regard to the start time of the contract, each contract has a specified period of time, and the contracting party with the administration is obligated to carry out its contractual obligation during the original period specified in the contract, and that any breach of implementation during the period will result in penalties, as for the completion of the contract term, the contract ends with the expiry of its term specified in the contract, i.e. at the end of the activities and the handing the subject

⁵⁵ The Decision was mentioned by Hamdi Okasha, *Ibid* 352-353.

⁵⁶ Muhammad Abd Al-Wahhab, " The Principles and Provisions of Administrative Law 490-493 (Al-Halabi Human Rights Publications 2005). Abdul Aziz Khalifa, The General Foundations of Administrative Contracts, *Ibid* 178-179.

⁵⁷ Cass civ 19 June 1996, D 1996, 825 (Jordanian Court of Cassation Decision).

of the contract, and this handing over is subject to monitoring to ensure that the activities conform to the technical specifications specified in the contract.⁵⁸

D. The Penalties for Breaching the Contracting Party to Implement the Administrative Contract

The delay of the contracting party in fulfilling his contractual obligations within the specified period entails penalties as he fails to fulfill its obligations, and the most important of these penalties is the delay fine.⁵⁹

The meaning of the delay fine is " A financial penalty of a threatening nature aimed at urging the contractor with the administration and forcing him to respect the implementation periods because of their importance in the field of establishing and managing public utilities."⁶⁰

If the administrative judiciary in (France and Egypt) is the competent authority to look after disputes related to delay fines in administrative contracts, the ordinary judiciary in Jordan is specialized in looking after these disputes because it has general jurisdiction in judicial disputes, considering that the Jordanian legislator has limited the competencies of the administrative judiciary, and administrative contract disputes are not among them.⁶¹

The administration approves this fine on its own and without the need to obtain a court ruling allowing it to do so as soon as it becomes clear to it that the contractor did not complete the obligation on time.⁶²

⁵⁸ FATTOUH HINDAWI, THE ADMINISTRATIVE JUDGE AND THE FINANCIAL BALANCE OF THE ADMINISTRATIVE CONTRACT", A COMPARATIVE STUDY 599-601 (1th ed. The National Center for Legal Publications 2016). Mahmoud Al-Jubouri, *Ibid* 183-186.

⁵⁹ FAYYAD ABDUL MAJEED, THE THEORY OF SANCTIONS IN THE ADMINISTRATIVE CONTRACT 68-69 (Arab Thought House 1975).

⁶⁰ Ali Shatnawi, The Authorities of the Administration in Imposing Delay Fines against its Contractor 24 JOURNAL OF LAW KUWAIT UNIVERSITY, 74, 74-95 (2000).
<http://www.pubcouncil.kuniv.edu.kw/jol/homear.aspx?id=8&Root=yess&authid=913>

⁶¹ Muhammad Al-Maamari, The Judicial Oversight of Administrative Contracts in the Convening and Implementation Stages 172-173 (New University House 2011). Mansour Al-Atoum, *ibid* 380-381.

⁶² the instructions regulating the bidding procedures and the conditions for participation Act, 2008, § 68, No. 1, Acts of executive branch, 2008 (Jordan) stipulated the following:

The Egyptian Supreme Administrative Court ruled that: " One of the accepted principles in the jurisprudence of administrative law is that fines for delays in administrative contracts are established to ensure the implementation of these contracts on the agreed dates, in order to ensure the smooth running of public utilities on a regular and consistent basis, therefore, the fines stipulated in those contracts are approved by the administrative authorities on their own without being obligated to prove the occurrence of the damage."⁶³

The Jordanian Court of Cassation also ruled that: "... The plaintiff has the right to demand a delay fine in accordance with the agreement concluded between the plaintiff and the defendant, which includes the date of delivery and the amount of the fine, without being required to prove the damage caused by the damage and has been achieved, which is the delay in delivery...."⁶⁴

V. CONCLUSION

Administrative decisions related to licensing, auctions, approval and ratification of the contract fall under the jurisdiction of the administrative judiciary, as they are administrative decisions separate from the contract and its implementation, then they may be appealed, and that the criteria related to determining the nature of the conflict related to administrative contracts have greatly evolved as a result of the development of the state's activity through its intervention and management of the activity of its facilities, whether directly or through a mixed economy, therefore, this development created many dilemmas due to the diversity and development of these contracts by defining the authority with jurisdiction to

"If the contractor delays in implementing what he has committed to on the date specified in the contract, a fine of no less than (0.5%) half a percent of the value of the supplies that the contractor was late in supplying for each week or part of the week, regardless of the damage caused by the delay in implementation."

⁶³ The ruling of the Supreme Administrative Court on 21 March 1970, a set of legal bases decided by the Supreme Administrative Court in fifteen years 1965-1980 Part 2, 1883 (The Egyptian General Book Authority 1983).

⁶⁴ Cass civ 2 February 2003, D 2002, 3271 (Jordanian Court of Cassation Decision). Corresponding with the decision of Cass civ 19 June 1996, D 1996, 825 (Jordanian Court of Cassation Decision) the court ruled by saying: "The damage caused to the public administration as a result of the contractor's delay in supplying the materials or goods assigned to him and which he was obligated to supply under an administrative contract is presumed harm that cannot be proven otherwise, given the nature of the contract and its relationship to the public interest and its impact on the proper functioning of public utilities."

consider disputes, whether it is the ordinary judiciary or the administrative judiciary.

The solution to problems related to disputes related to administrative contracts is to establish a set of criteria to determine the competent authority to consider these disputes, and relying on several criteria and rules for distinguishing between the decisions taken by the administration, that related to the separate procedures for preparing, implementing and terminating these contracts, and whether those decisions taken in this context are related to legal and regulatory texts that affect the legality of the administrative decision in order to be presented to the cancellation judiciary, or these decisions related to the implementation of the terms and conditions of the contract in order to present them to the ordinary judiciary, and the contracting party has the right to claim compensation due to the administration changing the terms of the contract, and if the administration has the right to amend the terms of the administrative contract, this right should not exceed the conditions related to ensuring the regular and steady functioning of the public facility.

Recommending the necessity of amending the text of Article (5/a) of Administrative Judiciary Law No. (27) of (2014), and for the Jordanian legislator to bridge the legislative gap in that text and work to bridge it by expanding the powers of the administrative judiciary, to include the consideration of administrative contract disputes, as the administrative contract and the legal theories that govern it have a special nature that differs from civil contracts, amending the aforementioned law by adding articles dealing with all types of administrative contracts, because of the importance of this amendment in limiting all disputes arising from administrative contracts to an independent judiciary that is competent to consider it, and relieves pressure on the ordinary judiciary.

The Jordanian legislator's return from the method of exclusively defining jurisdiction with regard to the administrative judiciary, keeping a margin for the administrative judiciary to determine judicial disputes of an administrative nature and disputes of a civil nature and granting the general jurisdiction of that authority, until the legal rules and principles that apply to administrative disputes are unified, and the administrative judiciary in Jordan has retracted its jurisprudence, which states that the competencies of the administrative judiciary

are limited, as these competencies do not include disputes related to contracts of all kinds, including administrative contracts.