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TOKAT GAZİOSMANPAŞA UNIVERSITY

INSTITUTE OF GRADUATE EDUCATION

**LEGAL EFFECTS OF REPLACING ADMINISTRATIVE
CONTRACTS WITH ADMINISTRATIVE AUTHORITY IN IRAQ**

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Master thesis

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SCIENTIFIC ETHICAL STATEMENT

According to the thesis writing guide of the Graduate Institute of Tokat Gaziosmanpaşa University, I declare that my master's thesis titled “***Legal Effects of Replacing Administrative Contracts with Administrative Authority in Iraq***” which I have prepared under the supervision of Assoc. Prof. Dr. Ahmet GÜVEN is an original work that complies with scientific ethical values and rules, and I will accept any legal sanctions if it is determined otherwise

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Iraq*

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Dedication;

- To my dear mother and father.
- To my children
- To my wife.
- To my brothers and sisters
- To my Relevant.
- To my friends.

**Legal Effects of Replacing Administrative Contracts with Administrative
Authority in Iraq**

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ABSTRACT

The authority of the administration in amending the administrative contract stems from the necessity of running the public facility for which the contract was concluded regularly and continuously, and the administration has broad powers during the implementation of these contracts , including modifying the contract by individual will , but this authority is not absolute but is restricted by the controls that the administration has to when using this authority , and highlights the importance of research in practice when new circumstances arise that require the intervention of the administration to modify the contract concluded in keeping with these circumstances in order to achieve the common interest , that the indifference to the will of the contractor and the sole administration with the authority to modify and exceed the limits of these the authorities sometimes has an effect on the interests of the contractor, representing the problem of research and we relied in our research on the method of analytical and comparative approach. In reaching a number of results and recommendations mentioned in the conclusion of the research.

Key words:

Modifications to the administrative contract, administrative powers to unilaterally amend the contract, controls and restrictions on the authority's authority.

Criteria , Contracts , Administrative Contract ,Public Administration , Public Facility

Irak'ta İdari Sözleşmelerin İdarenin Yetkisi ile Değiştirilmesinin Yasal Etkileri
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ÖZET

İdarenin idari sözleşmeyi değiştirme yetkisi, sözleşmenin akdedildiği kamu hizmetinin düzenli ve sürekli olarak işletilmesini zorlaştıran durumların ortaya çıkması halinde mümkün olabilmektedir. İdare bu sözleşmelerin uygulanması sırasında, tek taraflı sözleşmenin değiştirilmesi de dahil olmak üzere geniş yetkilere sahiptir. Ancak bu yetki mutlak olmayıp, idarenin uyması gereken kontrollerle sınırlıdır ve idare bu gücü kullanırken dikkat etmelidir. Uygulama aşamasında idare bu koşulları, kamu yararına ayak uydurmak için akdedilen sözleşmeyi değiştirmek için yeni şartlar ortaya koyabilir. Ancak, yüklenicinin iradesine ve idarenin tek başına değişiklik yapma yetkisine kayıtsız kalması ve idarenin bu yetkilerin sınırlarını zaman zaman sınırlamaması ve bunun aksini yapan tarafın menfaatlerini etkilemesi anlamına gelmektedir. Bu çalışma analitik ve karşılaştırmalı bir yöntem yardımıyla ele alınmıştır. Çalışma kapsamında öncelikle idari sözleşme konusu kavramsal olarak ele alınmakta ardından idare ve karşı taraf arasında sözleşmelerde uyması gereken durumlar ve bu durumların hukuki niteliği ele alınmakta son bölümde ise idarenin yaptığı sözleşmeleri bozma ve geri çekmesine neden olan durumlar ve hukuki dayanakları ele alınmaktadır.

Anahtar Kelimeler:

İdari sözleşmede değişiklik yapılması, yönetimin sözleşmeyi tek taraflı olarak değiştirme yetkileri, otoritenin yetkisi üzerindeki kontroller ve kısıtlamalar

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INTRODUCTION

The administration achieves its goal of achieving the common good by exercising broad powers and authority over its contractors that are not comparable to private channel contracts, including the authority to amend the administrative contract at any time after it is signed and during its implementation. However, these powers are not absolute; there is a set of controls governing this authority to prevent the administration from abusing this authority or going beyond its limits; if the administration goes beyond the limits of these controls and restrictions, the contractor has a set of rights, the most important of which is the right to rebalance the contract's financial balance.

The administration uses administrative contracts to administer the public facility and coordinate and administer its programs, but the contract is not deemed an administrative contract unless it touches the public facility. Because the contract with a public facility is the most explicit requirement for assigning administrative status to the contract, it is not deemed administrative. Contracts concluded by the administration and not related to the operation of a public facility are considered special contracts, and if the contract is broken with public attachment, the administrative contract is subject to administrative law's rules and provisions, in exchange, an administrative contract is a civil contract for the humiliation suffered by the administration.

As a party to an administrative contract, the Administration has special powers that are not found in special law contracts, and these powers are multi-faceted and apply to a variety of situations. One of the most important manifestations of these powers is the administration's right to amend the contract terms at any time and to impose sanctions on the contractor without resorting to the judicial system. It can be said that the edict administration, in carrying out its activities, may use a variety of methods, including common-law methods, which are characterized by the privileges they grant to the administration of public authority or unusual costs and obligations in private law relations to achieve the common good, and that one of its most important powers is the power to amend the administrative contract at its discretion. For the

general principle established in the special law, which considers the contract to be the law of contractors, it may only be overturned or amended.

The goal of this research is to utilize the unusual conditions employed by the administration when negotiating contracts as unfamiliar conditions under special legislation, such as the authority and authority to unilaterally modify the terms of the administrative contract.



CHAPTER I

RESEARCH METHOD

1.1. Problem Statement

When the administration is unique in adjusting the depth, it is not necessary to consider the contractor's wishes. The administration's errors in authority result in the violation of the contractor's rights. It's a question of fairness, as well as a charge that the legal community is hesitant to work with the administration. As a result, guarantees are required to ensure the contractor's right to use and pay for it as part of the expected prospect because of the depth of alteration. At the same time, the administration's authority and sovereignty do not infringe on the administration's authority and sovereignty, and the administration's authority and sovereignty are then used to represent the common good.

1.2. Research Questions

What are the types and criteria of administrative contracts?

How does the right of the administration to amend the contract unilaterally serve the public interest?

Is the authority of the administration absolute to amend the administrative contract and what are the constraints such as an amendment would have?

1.3. Research Objectives

To examine administrative contract details To understand the right of the administration to amend the contract unilaterally in the public interest, To analyse the authority of the administration absolute to amend the administrative contract.

1.4. Theoretical Conceptual Framework

The conceptual framework shows the relationship between administrative contracts and the legal implications. Independent variable Administrative Contracts-Contract Implementation Procedures legal implications as a dependent variable—legal implications The conceptual framework shows administrative contract as the independent variable whose indicators include contract implementation procedures and contract relationships, while the legal implications are shown as the dependent variable. The assumption is that a good administrative contract will result in better legal implications, while a poor administrative contract will result in poor legal implications of the same.

What is meant by "administrative risks"? Actions issued by the contracting administration authority, or by any other administrative body, or by the legislature, or any other authority of the state, and the consequences thereof It has to become more difficult or more expensive to implement the contract or lead to inflation of his burdens and the increase of his obligations under the contract. It may be in the form of a regulation or legislation, an individual decision, or a material act, and its effect may be on the implementation of the contract directly or indirectly.

Examples of Administrative Risk: These risks are represented by the issuance of legislation imposing taxes on the contractor's activity that were not imposed; the issuance of a decision raising the value of customs duties on the machines and tools used by the contractor; or the issuance of a law or regulation imposing on the contractor a method of work characterized by its high cost; example, the issuance of legislation raising the minimum wage for workers, or reducing working hours; and the issuance of a decision to raise the prices of raw materials and raw materials used by the contractor in the implementation of the contract. everything is like that.

The theoretical foundation of administrative risk theory:

The administrative risk theory is not based on the provisions of tort (contractual or sin) Contractual liability is based on one of the contracting parties' breaches of a condition of the terms of the contract, and this breach results in harm to the other contracting party, and the damage is linked to By breaching the condition of causation, and it is clear that the administrative risk theory does not constitute a breach of any condition of the contract, but it may be issued by parties that are not parties to the contract. Even if it is issued by the contracting

administrative body, it is issued by it in its capacity as an administrative body, and not as a party to a contract.

The correct basis for the administrative risk theory is: Jurisprudence establishes the administrative risk theory, based on taking risks and achieving equality for all citizens in the face of public burdens and costs. The statement that it is incompatible with the principle of equality that the contracting party bears all the burdens of the procedures and administrative risk theory, while citizens benefit from the services of the project under the contract, equality is achieved. The public treasury bears the burdens added by the administrative risk theory and thus bears all citizens' share of these burdens through what they pay in taxes to the public treasury. Conditions for the contractor's entitlement to compensation for what he sustained because of the theory: The contractor is not entitled to compensation for the damages incurred by him because of any administrative risk theory taken by him. The public authorities in the state may take measures unless the conditions for their content are fulfilled.

The procedures that increased the contractor's burdens should not be expected at any time, Contracting, but it must be sudden and unexpected measures, and the reason for that If these actions were foreseen at the time of the conclusion of the contract, it is more likely That the contractor has entered it into his accounts and estimates, and then there is no harm and no losses.

It is not sufficient that the actions affected should be sudden and unexpected. Rather, it must have huge consequences, resulting in an imbalance. The financial contract of the contract is a clear and tangible imbalance and announces that the implementation of the contract has become stressful. For the contracting party, if the results of the procedures are of minimal effect, they do not burden or disturb the balance, and the administration is not obligated to any compensation, as such effects' small value and importance are one of the things that contractors are not usually affected by.

The contracting party is not entitled to compensation except for the damages that have been realized as a result. The administrative risk theory, as for the possible damages, has no compensation for them. This is only in the implementation of the general rule that does not recognize potential damage, but rather you are only compensated for the damage that occurred. We used an analytical approach to the detainees' texts regarding the alteration of the administrative contract as well as a comparison approach, comparing Iraqi and Egyptian legislation and occasionally referring to and forgetting French and American law. When necessary, it dealt with the problem.

1.5. Research Methodology

This research uses a qualitative research design. This will play a vital role in examining and analyzing the administrative contract based on the administration's will and the legal implications. Specifically, qualitative research is the method that describes gathering, interpreting, and analyzing non-numerical data.

1.6. Types of Data

This study uses two types of data. Primary data is collected from the main source, the Iraq government, and secondary data is gathered from articles, books, journals, and online resources.

1.7. Significance of the Study

In practice, the topic's importance is underscored by the fact that the administration frequently needs to contract personnel through administrative contracts to run public facilities on a regular and consistent basis. However, due to the country's ongoing development in the face of wicker and the world in general, as well as other factors, there may be changes and new circumstances that necessitate the administration's intervention to amend the contract by those circumstances in the general interest in the administration of the public facility more separately than was the case at the time of the mayors' agreement. On the other hand, entrusting this probe to the administration has harmed the government's connection with individuals. And how to rebalance the financial balance of the mayors against these powers enjoyed by the administration so that there is a demand from many people to contract with the administration in the system of administrative contracts

1.8. Research plan:

We discussed the general framework of the administrative contract in preparation for a brief discussion, then divided the research into five chapters. The first chapter mentioned the introduction of the research framework, and then in the second chapter we mentioned what administrative contracts and criteria are open in other contracts as well as the use of the idea of administrative contracts in the field of tenders. The third chapter discussed the administrative authority in modifying the administrative contract and the principle on which this right is based, limits or elements of the amendment authority, and then in the fourth chapter we focused on the restrictions of the administrative authority in the amendment. If the contract is legal or general restrictions are legal, we have explained our recent legal impact on the administrative authority in amending the contract. We have completed our research on the last chapter, in which we discussed the most important conclusions and suggestions.

CHAPTER II

CONCEPTUAL FRAMEWORK

2.1. What is The Administrative Contract And The Criteria That Distinguish It From Other Contracts?

The function of satisfying public needs is one of the highest functions of the administration, so the legislator has ensured that it achieves this lofty goal, so the administration resorts to the method of concluding the administrative contract to administrative or manage public facilities and implement their projects and achieve their objectives. The theory of the administrative contract is relatively recent compared to the theory of administrative decision, administrative control, and public facility, which were credited to the French Council of State for their creation (Herail, 2017), and perhaps the idea of the administrative contract is one of the most important ideas known to man in the field of economic exchange as well as one of the most important means of social organization (Marcel H., 1990, p. 147). This idea is a relatively recent idea that arose in France around the beginning of the twentieth century.

The criterion that prevailed before the period mentioned, to distinguish between the jurisdiction of the ordinary judiciary and the administrative judiciary, is the criterion of public authority, and therefore the legal work of the administration, which it carries out as a public authority, such as administrative decisions, is solely subject to the authority of the administrative judiciary, while the contracts that the administration conducts with individuals are subject to the authority of the ordinary judiciary (Al-Tamawi, 1948, p. 49).

Accordingly, the administrative judiciary is concerned with dealing with disputes over administrative contracts in Iraq (the Courts of the Council of State are competent to adjudicate several administrative matters, including 1972). The subject of administrative contracts is unclear both at the legislative level and at the judicial level. There are very few legislative provisions on this subject, so the ordinary judiciary is the holder of public jurisdiction (Article (29) of the Civil Arguments Act , 1969). The Iraqi judiciary is unstable in any case, and courts apply the provisions of the special law to administrative contracts (The Court of Cassation's

ruling of 15 March 1958, 1959, p. 424). Sometimes the rules of public and private law apply to them, and even after the passage of the Second Amendment Act No. (106) of 1989 to the Law of the State Shura Council No. (65) of 1979, the Court of Administrative Justice has never been competent to consider disputes of administrative contracts, and therefore the lease between the administration and the other party was dismissed by the ordinary judiciary in 2017. It should be noted here that the determination of some contracts as administrative contracts by the Iraqi legislator, such as contracts for public contracts and contracts for the sale and rent of state funds, does not help to highlight the importance of these contracts as administrative contracts as long as the jurisdiction to date is held by the ordinary judiciary. We therefore call on the Iraqi legislator to lift this contradiction by making the administrative judiciary competent to deal with disputes arising from such contracts, since the administration not only concludes administrative contracts but can also conclude civil contracts in order to satisfy general needs, as we have said, so to determine what the administrative contract is and distinguish it from others requires us to address what the administrative contract is in the first place, and to review in turn the criteria that distinguish the administrative contract from other contracts.

What is Contract Law? Contract law is the body of law that relates to making and enforcing agreements. A contract is an agreement that a party can turn to a court to enforce. Contract law is the area of law that governs making contracts, carrying them out and fashioning a fair remedy when there's a breach. Anyone who conducts business uses contract law. Both companies and consumers use contracts when they buy and sell goods, when they license products or activities, for employment agreements, for insurance agreements and more. Contracts make these transactions happen smoothly and without any misunderstandings. They allow parties to conduct their affairs confidently. Contracts help make sure that the parties to a transaction are clear on its terms.

How do you form a contract? A valid contract has four parts:

Offer, first one party must make an offer. They must state the terms that they want the other party to agree to. If the other side agrees to the terms of the offer, the other side may accept it, and the contract is complete.

Acceptance, accepting another party's offer makes a contract complete. The party that accepts the offer must accept it on the same terms as the terms of the original offer. They must make sure that

the other side knows they accept it. If they propose different terms, there's no contract. Instead, their terms are a counteroffer. It's then up to the first party to accept the counteroffer or propose another counteroffer.

Consideration, a valid contract requires each party to give something up. That's called consideration. For example, in the case of an employment contract, one party agrees to give up money, and the other party agrees to give up labor. A contract is a two-way street with each party giving up something to get something else that they want.

Mutual intent to enter into an agreement, to have a valid contract, both parties must intend to be bound by the contract. If a document says that it's only a statement of intent, the parties may not have a mutual agreement to enter into a contract. Informal agreements between friends often fall into this category. Typically, a promise or an offer of a reward in exchange for certain behavior creates an enforceable contract with the person who undertakes the activity.

How do the courts interpret a contract? To interpret a contract, a court looks at the clear language of the contract from the viewpoint of an objective and reasonable person. If the contract isn't clear, the court may consider outside evidence including outside statements and the behavior of the parties. It's best to put a contract in writing, and the statute of frauds may even invalidate some contracts.

Choice of law and jurisdiction, when lawyers create contracts and handle contract disputes, they should be aware of choice of law and jurisdiction issues. Choice of law means the state law that the court uses to interpret the contract. Because most contract law is state law, choosing to litigate a contract dispute with the laws of one state over another can completely change the outcome of the case. Lawyers should carefully consider whether to incorporate a choice of law provision into the contract at the time of drafting. They should also be careful when they choose a jurisdiction to bring a contract dispute. Because the rules vary in each state, these considerations can have a large impact on the outcome of a case.

Breach of contract, when there's a disagreement about the terms of a contract or when there's a breach of contract, the parties might involve a court to resolve the dispute. The party seeking damages must prove that a valid contract exists. They must also convince the court that there's an appropriate remedy.

Remedies available for breach of contract, there are several remedies that a party might ask a court to impose for a breach of contract. The most common is compensatory damages. These are

the real, financial losses that a party has because of the breach of contract. If the parties agree in advance about damages if a breach occurs, that's called liquidated damages. When a breach occurs without any real damages, the aggrieved party can still get a small amount of damages. That's called nominal damages. In some cases, a party acts very poorly and inexcusably to breach a contract. When that happens, the court may award extra damages called punitive damages. (Materials, n.d.).

2.2. What Is The Administrative Contract?

An administrative contract is an agreement concluded by a common law person with another public person or with a person of special law to arrange mutual obligations to satisfy the general needs of individuals in which the first party enjoys the privileges of public authority. Land, shop, and reason are essential elements of the contract, but they are not sufficient to give the contract administrative status, and therefore, these elements need two other elements for the establishment of the contract. These elements are that one of the parties to the contract must be a moral person of common law person and that the contract contains exceptional conditions unfamiliar with ordinary law. Therefore, the administrative contract is not a pure administrative contract and not a cash contract for individuals, but a contract with certain characteristics of the contracting administration in its contractual relationship with the other party. However, many of these characteristics, the public interest and authority, are some of the most important characteristics of contracting administration. Therefore, the contract can in no way be described as the dominance of the administration over the other party in the contract, no matter what legislative privileges it enjoys in that contract, so that the administration's enjoyment is only a reconciliation between public interests and public authority. The public interest is only a means of regulation and public administration, while the purpose of the private interest is material profit. In the administrative contract, the public interest is not the main motivation and motivation for the activity of the administration, and the legislator did not recognize the privileges of the general authority of the administration except to satisfy the general needs of citizens, Yahya (2004) p. 291. To determine what the administrative contract is, its definition must be addressed in the first section, and its basic elements must be reflected in the second section.

2.2.1. Definition Of Administrative Contract

First, it must be said that most legislation has avoided a specific definition of the administrative contract, as it merely enumerates its types and indicates its characteristics. The Iraqi Civil Code No. 40 of 1951 in article (73) defines the contract as the association of the positive issued by one of the disabled to the acceptance of the other in a way that proves its impact on the contract. The positive has been called positively because the one who starts the contract has or has received a certain matter corresponding to the acceptance of the other party by what the first party has given himself, and the contract is not held as soon as it is uttered, but the will of the parties should go to the words of the contract and its meanings, i.e., the contract shall not be concluded unless the parties or parties realize what has been uttered in the contract and are aware of the legal implications of the transfer of ownership of the object sold to the buyer in the sales contract and the latter's commitment to pay the price (Al-Watiri, 1979, p. 15), A contract is only the confluence of two or more wills to have a particular legal impact, either by establishing, transferring, modifying, or terminating an obligation. According to this definition of civil law, it can be said that the administrative contract is in accordance with the will of two persons of common law or the will of a person of common law and the will of a person of private law with the aim of organizing, managing, or running a public facility, If the contract is "administrative," it is different from the civil contract in its general concept in that both are a consensus of two wills in order to create, modify, or cancel a particular legal effect. This is why some Egyptian jurisprudence has argued that a definition is true both for administrative contracts and for private law contracts (Al-Tamawi D. S., 1977, p. 408). However, this does not mean at all the compatibility between them, as the administrative contract is subject to a distinct legal system because the disputes arising from it should be subject to administrative justice and its parties and effects differ from those available in the civil contract, so some administrative jurisprudence gives rise to defining the administrative contract as "a legal work co-made by two complementary wills of the administration and the will of the contractor and based on the idea of consent" (Wahab, 2005, p. 492). Some have defined it as "a contract concluded by a public moral person to administer or conduct a public facility, and that public moral person has demonstrated his intention to adopt the common law style and derive this intention, which implies exceptional conditions outside the provisions of ordinary or unfamiliar laws in those texts (Ismail, 1994, p. 24). Some define it as a contract concluded by a common law person with another person to run,

organize, or contribute to the operation of a public facility whose parties intend to introduce common law (Al-Fayyad, 1981, p. 61). According to most French jurisprudence, administrative contracts are those relating to the jurisdiction of the administrative judge and are subject to particularly substantial rules, so that their system, which is not subject to private law, is directed at protecting the interests of the public authority (DEBBASCH & COLIN, 2014, p. 396).

The Egyptian Council of State followed in the footsteps of the French Council of State, defining the administrative contract as the contract to which the administration is a party and relates to the activity of a public facility in terms of its organization and administration to serve its purposes and achieve its needs in consideration of the unity of the public interest, in which the administration takes the manner of common law with its exceptional conditions not found in the contracts of private law. The Iraqi Court of Cassation, since the ordinary judiciary in Iraq is the holder of the general mandate, has known the administrative contract in a manner like the French and Egyptian judicial definitions as long as "the contract between the parties applies to it described as an administrative contract because the administration intended to operate a public facility of the State and took the way of bidding on special terms." (al-Hamdi, 1966, p. 284). We can therefore define a contract as an agreement between two parties in which one or both parties are administered to administrative or operate a public facility, using common law means, and in which the administration enjoys the privileges of the public authority, which includes its right to impose exceptional conditions unfamiliar within the scope of private law.

2.3. Criteria That Distinguish The Administrative Contract From Other Contracts

The distinction of administrative counting has gone through several stages, starting with the legislator's attempt to determine the nature of the contract as an administrator within the so-called administrative contract theory, and this stage is called the stage of administrative contracts by determining the law. The legislator has rejected some types of administrative contracts in laws, regulations, and instructions for the regulation of administrative contracts such as supply contracts, public works contracts, and public utility obligation contracts... Accordingly, it is the will of the legislator that determines the jurisdiction of the administrative judiciary over administrative contracts so that the legislator has decided that the rules of common law are the

most appropriate to resolve the dispute from the rules of special law to give administrative status to those contracts. (Helmy, 1963, p. 27). The administrative judiciary then took over the task of determining these contracts by several criteria, which were called the "stages of judicial discrimination of administrative contracts." (Lywradi, 2010, p. 221). The Egyptian legislator specified the types of contracts that are competent for the courts of the Said Council to consider their disputes by saying, "The courts of the Council of State are solely competent to decide the following matters..." (XI) Disputes concerning contracts of obligation, public works, supply or any other administrative contract "as for the Iraqi legislator, he or she has rejected special legislation for some administration contracts, indicating that they are administrative contracts by defining the law, including contracts for the implementation of major development projects by Law No. 6. For the year 1985, contracts for the sale and leasing of state funds by Law No. 32 of 1986 and Law No. 21 of 2013, and instructions for the implementation of government contract No. 2 for 2014. The problem of legislative determination of the administrative contract is evident when the legislator adapts a civil contract in terms of how it is concluded and its objective as an administrative contract, and here the position of the legislator is criticized because if he wants to adapt some of the administration's actions, he must base it on the content of the contract, how it is concluded, and its purpose, which is certainly contrary to the contracts concluded by the administration as a public authority to achieve a particular objective, namely, the organization, administration, or administration of a public facility. Since the legislative definition of the nature of these contracts is not a revealing procedure and is not the origin of administrative contracts, the legislator has limited the mention of some examples of such contracts without placing them in limited space, so that the administrative judiciary and, through a long period of jurisprudence, have taken on the task of identifying these contracts and highlighting their characteristics (Al-Jubouri, 1989, p. 17). The standard of public authority has not worked in including administrative contracts within the jurisdiction of the administrative judiciary, and as mentioned above, the French administrative judiciary changed the standard referred to and proceeded to adopt the standard of the public facility in the Rothschild case. This was confirmed again by the Council of State in the case (Blanco) Blanco on February 8, 1873, Here, it must be emphasized that the general annexed standard was not the only criterion in the development of a special contract system (Douence, 2007) . The general facility standard was not the only criterion for distinguishing the administrative contract from others, but other conditions must be met or

rejected by the Egyptian Supreme Administrative Court by ruling that "the administrative contract is mandated to be a party to the administration, to relate to the activity of the public facility in terms of its organization and administration to serve its purposes and to achieve its needs in the interest of the public interest and what prevails over the interests of private individuals, and to take the contract in the manner of common law and the exceptional conditions that are unfamiliar in the law." Private, whether the contract guarantees these conditions or is prescribed under laws and regulations. " The ruling of the Egyptian Supreme Administrative Court at the hearing of February 24, 1968 (Badr, 2010, p. 5). The Iraqi Court of Cassation referred to the criteria for determining the administrative contract, stating that "since this contract was concluded by the administration with the contractor to establish a public facility beginning in the common law style and on unfamiliar conditions of conducting a public tender and requiring insurance and delay fines, it is an administrative contract distinct from civil contracts governed by private law because of the objectives of these contracts to achieve major interests superior to the private interests of individuals." (Al-Jubouri D. M., 1996, p. 224).

Referring to the definitions of the administrative contract rejected by the French, Egyptian and Iraqi courts, it is clear to us that there are three criteria for distinguishing the contract in question from other contracts, as follows. Moreover, Primarily, an administrator does most of their work before the contract is signed, while an administrator does most of their work on existing contracts. The former comes into play at the beginning of the contract lifecycle, while the latter contributes its efforts to contract maintenance and ending the process. Both roles require knowledge of contracts and their contents. Additionally, they need to know a company's contract history and plans. One might ask, "What happens if the contract gets renewed?" In contracts with a perpetual or indefinite lifecycle, the administrator may indeed hand off the contract to the administrator for renewal, which might require a renegotiation phase. (What Is the Difference Between a Contract Administrator and a Contract Manager, 2020)

2.3.1. The administration should be a party to the contract.

This criterion is one of the criteria on which a contract is considered administrative and even self-evident, so that a contract whose party is, directly or indirectly, a common-law person cannot be considered an administrative contract. Common law persons are known to be the state,

its ministries, and public institutions, as well as local provinces and public people. Even if the parties to the contract are persons of special law, the contract is administratively misleading if one of them works for the administration. This is what the French Court of Conflict went on to rule in *Peyrot* on July 8, 1963 (Casanova, 2015, p. 288). The mixed economy company contracted with the contractor was working for the department. The French judiciary has not yet acknowledged the Adriatic nature of the contract, although it was held between two persons of private law, one of whom did not work for the administration but was an agent under administrative-legal power of attorney, according to (*Le mandate administrative*) (Nicolas & Roussel, 2018), "Even if you are acting explicitly, the implicit act of the public person is sufficient for a private law person to contract for the public person as authorized." The Egyptian Administrative Court ruled in the appeal on March 21, 2000 (Al-Al-Ainin, p. 10).

In addition, the administration can replace another department, moving contractual rights and duties from the second to the first. Other replacements are permissible in Iraqi law by the instructions for the implementation of government contract No. 2 for 2014. The verdict of the 7/3/1964 hearing, as well as its verdict at the February 21, 1987 hearing, were also considered (Badr, 2010, p. 6).

2.3.2.The Link Between The Contract And The Public Facility In Terms Of Its Establishment, Organization, Or Administration

The public facility has two meanings: one is organic in relation to the state body or organization that engages in public activity; and the other is objective material that addresses the activity that satisfies public arguments and leads to public benefit; and we are with the doctrinal trend that defines the public facility without access to the details of these two concerns in terms of their implications and the legal problems that have occurred in the idea of the public facility. Accordingly, a public facility is "any activity carried out directly by the administration or by a private individual under the direction, control, and supervision of the administration with the intention of satisfying a general need for the public." Therefore, it is not required that the administration take over the administrative activity directly but may be carried out by a person of private law, provided that the department has the authority to direct, supervise, and control in order for the activity in question to achieve its objective of satisfying a general need for the

public. In some of its provisions, the French Council of State merely considered the contract administratively without any other requirement, but subsequently stipulated that the other elements of the administrative contract, namely, containing exceptional conditions unfamiliar with private law, were available. The idea of a public facility has its place and importance in the Iraqi judiciary as well, with the Court of Excellence noting in a decision on June 6, 1974, that "since the said contract is an administrative contract, and the damage is considered a reality once the delivery of the work is delayed due to its attachment to In another ruling on August 14, 1974, the administration had the right to impose a delayed fine on the contractor, which ruled that "since the contract between the parties is an administrative contract for its attachment to a public facility and its targeting of major interests above private interests, therefore, damage is considered a reality," and it goes without saying that the requirement that the contract be linked to a public facility gesture or its operation does not mean that all contracts relating to the public facility and then the contract cannot be considered administrative. The contract, in order to be administrative, must relate to the general principles governing the facilities, namely the principle of the functioning of public facilities, the principle of equal use of public facilities, and the principle of applicability according to the circumstances.

2.3.3. Taking Administration by Common Law methods and Privileges

To prepare an administrative contract, it is sufficient to grant the contract administrative character to the administration and to connect it to the administration or administration of a public facility in the public interest; i.e., the contract must ensure special conditions not covered by private law. The administration's preservation of privileges that violate the concept of equality between the parties, such as the power of the administration to avoid the contract without warning, warning, and penalty for the contractor, are only a few examples. It's right to make amendments to the contract, it's right to exclude tenders and bids or the provision of food and beverages at specified prices by the contract, its right to increase or reduce it, its right to dismiss a worker for lack of cleanliness and many other things that appear to him as conditions. exceptional or unfamiliar in similar private contracts. The exceptional requirement in administrative contracts is rightly the basic element of the administration as a party to the

contract in terms of enjoying all the privileges of public authority. It is from the public order, and it is not permissible to agree to violate it or to count the contract of private law. Therefore, the exceptional requirement is defined as a condition that is invalid in the contracts of private law for violating public order. It was also defined as a requirement that was illegal in private law and that individuals could not include in their contracts. According to French jurisprudence Maurice Haurio, the exceptional requirement imposes a privilege of public authority in administration. The French Council of State referred to the exceptional conditions by saying that "those that grant contractor rights or carry obligations alien in nature to those that may be approved by those who contract under civil or commercial law", including the administrative contract of the exceptional requirement uncommon within the scope of private law, is only a means of revealing the intention and intention of the administration to use the methods and privileges of common law, and in return, the nature of the public authority enjoyed by the administration has occurred in it. This authority is no longer merely a privilege granted to the administration but at the same time a restriction on it, as public authority is an organized authority within the legal state and not absolute. In any case, it must be said that the three criteria must be met together to give the administration's adjective to the contract between the Department and its contractor so that the availability of one or some of them is sufficient. In this regard, the Iraqi Court of Excellence ruled that "the contract concluded by the government with the distinguished company is an administrative contract because it will aim to administrate a public facility of the state and contains exceptional conditions that are unfamiliar and in which the government follows the methods of common law and is subject to the rules and regulations.

2.4. Applications of the idea of an Administrative Contract in the Field of Deficits

In Iraq, the legislator obliged the administration to implement its projects by concluding the administrative contract with its contractors in a bid or shortage manner, unless otherwise stated, which is supported by the practical reality about public works contracts, supply, or processing. The most common contracts in Iraq are the three contracts referred to above, which are contrary to the rule in France and Egypt in terms of the freedom of the circuit to choose the method of contracting unless the law states otherwise (Tamawi, 1985, p. 660). As for the contract for the obligation of public utilities, it is possible to take into account the personality of the contractor

with the department, as this contract is concluded through practice and the department is free to negotiate with those it wishes to contract and freely provided by other methods, so we will address this contract in our research and therefore we will address the contract of public works in a first demand, and the contract of supply or processing in a second demand, and we will address the contract of advisory services in a third demand.

2.5. Public Works Contract

public works contract is defined as "a contract between a common-law person and another person (individual or company) under which the contractor undertakes to carry out an act of construction, demolition, excavation, restoration, repair, or maintenance of a property for the public person's account and public benefit for a price determined by the contract." De Laubadere defined it as "the physical preparation of a property carried out on behalf of a public person to achieve public benefit." (Lywradi, 2010, p. 238).

Some define it as "an agreement between the administration and one or more individuals or companies with the intention of building, repairing, or maintaining real estate on behalf of a public moral person, and intending to achieve public benefit in exchange for the agreed return and in accordance with the conditions set forth in the contract," but Egypt's Court of Administrative Justice knew that "the contract of public works is a contract between a person of coercion and a person of coercion." But in Iraq, some define it as "an agreement between the administration and one individual with the intention of building, repairing, or maintaining real estate buildings or facilities for the account of an administrative person and for the benefit of the public." Of these definitions, the conditions depending on the availability of the public works contract can be clear.

First: the subject of the contract should relate to a property.

This includes all matters relating to the construction, restoration and maintenance of the property and comes out, such as public works contracts, and what is contained in transport, no matter how large. The administrative judiciary in France is no longer a public works contract agreement that is replaced by the preparation, construction or restoration of a ship. (Lywradi, 2010, p. 239).

Second: the valid contract must be replaced by a person of common law.

It is not enough for the obligation in the contract to focus on a property to say that it is an administrative contract, but it must be the subject of the obligation in favour of a common-law person because they are responsible for ensuring the public good. Construction, maintenance, or restoration work for a common-law person is the only one who recognizes it as public works personnel, and therefore, if such work is for the benefit of a private person, it is not a public works contract. For its part, the French administrative judiciary has recognized the public works of industrial and commercial public utilities, which are administered directly by public institutions or municipal works on their own in a property threatened with collapse to ensure public tranquillity (Lywradi, 2010, p. 239).

Third: The contract should aim for the public interest.

This requirement requires that the purpose of a public works contract be to achieve the common good, whether the obligation is on a public or private domain property. In the public works contract, the contractor is obliged to implement the contract by what it contains in its provisions in good faith and may not stop executing the contract simply because of minor differences or ambiguity in certain conditions or because of the non-payment of financial dues by the administrative authority (Khalifa, 2008, p. 61). The contractor is also obliged to investigate the work it will undertake, the specifications and designs adopted and to make the necessary observations about it for the administrative authority, and it is the contractor's responsibility once the contract has expired to evacuate the work site from the waste and machinery that has been used and remains a guarantor of the safety of origin according to the contract system and asks for direct damage only. In return, the contractor in the public works contract is entitled to the material equivalent of the contract. Furthermore, he has the right to financial differences arising from the increase in the project when it is not lax in the implementation of its obligations, as well as the right to seek reimbursement for the final insurance cost at the time of delivery. Because a public works contract is an administrative contract, the administrative authority in front of the contractor has the authority to monitor, go over, and amend the contract, as well as to highlight the administrative authority in oversight and guidance, because the contractor is obligated to carry out the orders issued to him from a contracting standpoint (Al-Tamawi D. S., 1948, p. 139).

This does not, however, preclude the contractor from opposing these directions or taking legal action to seek contract cancellation and compensation if necessary. In addition to the Department's control and guiding authority over the public works contract, it also has the jurisdiction to change the contract if the revision does not violate the contract's substance and requires the contractor to perform new work not covered by the original contract.

2.6. Supply Contract

A supply contract is defined by jurists as an agreement between a common-law person and an individual or company under which the individual or firm agrees to provide specific transfers to the public person at a price indicated in the contract. It is described by the Administrative Court of Egypt as a contract between a common-law person and an individual or company in which the individual or company agrees to provide specific transfers to the moral person required for a public facility for a set price. As a result, it can be defined as an agreement in which a contractor agrees to supply transfers to the administration at a certain price and in which the department employs public authority privileges, such as supply contracts, to equip the administration, the most important of which are:

The purpose of this contract is the provision or supply of transport, an element that distinguishes it from the public works contract, in which a property is committed.

The contractor with the supplier must be a common law person, an element in which all administrative contracts are involved.

To aim at achieving the public interest, which is an element that must be supplied to a common-law person, as the purpose is that common-law persons aim only to achieve the common good.

The public moral person must disclose his intention to use common law means by including exceptional conditions not within the scope of private law. The supply contract is to be held in one or multiple batches. Industrial development has produced the emergence of new contracts that have entered into the supply contract for the delivery of post-industrial transfers and have been named industrial supply contracts, which in turn are divided into two types of

contracts: manufacturing contracts and modification or conversion contracts. The Iraqi legislator has organized public works contracts and supply or processing contracts by the instructions for the implementation of government contract No. 2 for 2014, and the supply contract is one of the most important economic contracts. The supply contract is not always an administrative contract unless it meets the general conditions necessary for all administrative contracts and otherwise is a civil contract (AbdulZid, 2013, p. 62). Regular supply contracts are divided into regular supply contracts, in which the contract is focused solely on supply, and the supplier is independent in determining the methods of implementation and selection as a food supplier has the right to obtain them from any source, and the role of the administration is limited to examining the materials supplied to ensure that they conform to the specifications stipulated in the contract. They may be supply and installation contracts where, apart from the supply of the required items, the supplier is obliged to install them in their designated premises, in which case there is a mixed contract between the supply and public works to which the terms of the contracts apply. The second type of supply contract is the industrial contract, which is not subject to a particular definition of being very flexible and leaves the administration with broad freedom to act as arms manufacturing contracts are concluded by the methods known to conclude administrative contracts, namely public tendering and general practice (AbdulZid, 2013, p. 231). The supplier is obliged to supply items on time, which has an impact on ensuring and ensuring the regular and steady functioning of public facilities, and to do everything in its power to do so, and is not responsible in the event of a breach of the existence of the foreign reason that made it impossible to implement. The supplier also adheres to the supply by the agreed specifications and this obligation is very important as it is answered to the place of the contract, and since the shop is a pillar of the contract, the failure of the shop is the champion of the contract, and as in the case of the public works contract, the administration has the powers of control, guidance, and modification of the supply contract. In exchange for the obligations to which the supplier is bound, it has the right to pay the contract and the right to seek compensation as a penalty for the administration's breach of its contractual obligations, as well as the right to rebalance the financial balance of the contract when the obligation becomes too cumbersome for the supplier to continue to implement.

2.7. Advisory Services Contracts

It is an agreement under which a person provides his services to a public moral person in exchange for an offer agreed upon by the terms associated with this administrative contract. Some defined it as a ground-based contract, and its main performance was based on advice. A contract is entered into by the administration with an individual, a specialized office, or one of the licensed institutions or companies to prepare advanced studies on a public project, whether in terms of economic feasibility, calculating implementation costs, preparing designs or special specifications, supervision and follow-up to its implementation, or inventory of the work completed, and the person contracted must be competent. It is thus a contract of a contract but of a special nature (Khater, 1999, p. 119). Because his commitment is to provide information, a professional contract is based on personal consideration. The Department has often resorted to contracting with advisory offices to provide technical, engineering, or administrative expertise or may be required to do so, and these offices take several names from one state to another and provide them with an active role in conducting field studies and research for several government agencies. In the field of administrative contracts, these services do not deviate from the preparation of feasibility studies in the initial and detailed types of engineering projects and recommend to the administrative authority the best alternatives to the method of contracting and the method of implementation of the project, in terms of specifications, cost and time. They also prepare tender documents for processing contracts for materials and other equipment (Al-Shahwan, p. 36). Also, provide advice on the selection of the best contracting methods and methods of implementation and daily supervision of the implementation of the on-site work by the main contractor and secondary contractors by the approved timetable, and ensure conformity and quality assurance in terms of specifications of materials received at the workplace as well as methods of implementation, and follow the requirements of safety and environmental conservation. To achieve the goal of completing the resulting projects, which are to work with specifications specified within the planned period and without exceeding the speculative cost previously developed by the Administration, The contractor is also obliged to provide advice in the case of contractual disputes that occur during the execution of the contract with contractors or processors and other relevant parties and to make recommendations to resolve them amicably and limit their access to courts or arbitration committees, and the contractor is subject to

employer control. Through the above, we find that a contract for the provision of advisory services is an original contract based on a firm commitment to advice (Al-Oden, 2009, p. 8). It's also a subsidiary or supplementary contract for public works contracts and supply or processing contracts, and it's supplemented by it, and it's subject to the same laws controlling administrative contracts in terms of contracting technique, and it's performed through a public tender. The consultant ensures good performance and implementation in the form of a bank guarantee acceptable to the administrative authority, and the contract date takes effect from the date of its signing by the parties, or any date agreed in advance, according to the terms of the contract format.



CHAPTER III

3.1. The Administration's Right To Unilaterally Change The Administrative Contract

The administration's authority to unilaterally modify the administrative contract is one of the most important and dangerous powers held by the contractor's administration authority, and this advantage provides flexibility to administrative contracts, which can be narrowed or expanded depending on the scope of this authority. Contrary to common practice in special law contracts governed by the principle "contract is the law of contractors dangerous powers held by the contractor's administration authority, and this advantage provides flexibility to administrative contracts, which can be narrowed or expanded depending on the scope of this authority. Contrary to common practice in special law contracts governed by the principle "contract is the law of contractors," the administration has the authority to change the terms of the contract, impose additional duties on the contractor, or terminate the contract without the contractor's approval. This right, like the rest of the administration's rights and powers under the administrative contract, is a right of the administration. The administration's right to change the contract in the public interest, on the other hand, does not imply that the contract's contractual character is being destroyed. The Administration is required to carry out the contract and use its unilateral modification power for the public good while adhering to the established rules, requirements, and goals. The presence of the amendment power, if it is not mentioned in the contract and in the absence of a legal text to be decided by it, has been a doctrinal debate, but most jurisprudence has maintained the contracting administration's right to change contracts at its discretion.

In 1910, the French State Council acknowledged this power to administer the French public tram company, recognizing the legitimacy of altering the transport facility's operating hours without the approval of the contractor. With this decision, the French State Council put an end to a doctrinal debate about the administration's right to unilateral amendment authority if it is not specified in the contract and if the amendment does not impact the contract's financial and economic aspects. In exchange, the contractor has the right to be compensated if the alteration harms him or his interests (Hindawi, 2016, p. 414).

The Administrative Court of Justice in Egypt went to prove the administration's right to change the administrative contract without requiring the other party's agreement or stating it in

the administrative contract. This right is based on the administration's authority to control the contract in the public interest. If the contract's terms mention this amendment, it's just an organization of the amendment authority and a description of the circumstances and conditions under which it was exercised. The court even went so far as to say that because this authority is tied to public order, the administration cannot abdicate it (The General Basis of Administrative Contracts, 1957, p. 660) (Khalifa, 2008, p. 871).

In Iraq, the administration's right to unilaterally change the contract is acknowledged in the limited regulations of the Iraqi judiciary on administrative contracts as well as the jurisprudence on the subject. The administration, on the other hand, wanted to reaffirm this right by citing provisions in Article 10 of the instructions for the implementation and follow-up of the projects and work of the national development plans that establish the administration's right to amend and specify its terms and procedures (Al-Jubouri M. S., 2009, p. 441).

We need to know what the basis was for the administration's use of its ability to change the contract solely based on Iraqi law and other comparative legislation once we've demonstrated the administration's right to do so. What happens to the elements of the contract that come under the administration's authority to amend? This will be demonstrated in the following demands.

3.2. The Legal Basis For The Administrative Contract Amendment Authority

Whether in France or Egypt, different jurisprudence is the foundation of the legislation on which the government relies to change the contract at the individual's will. Some jurists contended that the administration's ability to change its contracts at a whim was founded on the concept of public authority separate from the contractual connection. Another group considers that this authority is based on contractual association and is due to the needs and necessities of the public facility. As a result, we will divide our research into two branches, the first of which will focus on the concept of public authority as the foundation for the administration's right to unilaterally change the contract. The second will be devoted to reflecting on the idea of the facility's needs as the basis for the administration's right to amend the contract.

3.2.1. public authority as the basis for the right of the administration to amend the contract.

Supporters of this viewpoint argue that because the decisions made by the administration while amending its contracts are not derived from the contract's provisions, they are not a

contractual privilege, but rather derived from the law's provisions, and thus this right is related to public order (Sultan, 2010, p. 90).

Decisions by the Administration to amend its contracts are the responsibility of the public authority, which is responsible for taking all necessary measures to ensure that the public facility's needs are met and in the public interest and thus enters as a public authority to impose what it considers to be in the facility's public interest. Decisions by the Administration to amend its contracts are the responsibility of the public authority, which is responsible for taking all necessary measures to ensure that the public facility's needs are met and in the public interest and thus enters as a public authority to impose what it considers to be in the facility's public interest. This right is established as a public authority responsible for the public facility, for the public good, and for ensuring the proper functioning of the public facility and meeting its needs. Therefore, the administration has in no way the right to waive this right, which is a manifestation of public authority in administrative contracts and is exercised by the administration with the privilege of direct implementation (Tharwat, 2010, p. 224).

In Egypt, the administration, as a binding authority, always considered the public interest, and the distinctive nature of the administration's activity was the standard of public authority, and the special methods used by the administration and means were different from normal methods. The administration is using its power-style methods to achieve the public interest (Hindawi, 2016, p. 153).

Another aspect is that public authority emerges when the administration uses unusual methods and competencies in private law. The manifestations of public authority in the administrative contract are illustrated by the inclusion of unusual conditions in civil contracts (Hindawi, 2016, p. 153).

Some jurisprudence has criticized this view as the argument that the idea of public authority is the basis of the power of unilateral amendment leads to the administration exercising this right without any restrictions. The nodal texts do not constitute a restriction on the administration's exercise of this authority, which is contrary to what the administrative judiciary has established, which requires many controls and restrictions that the administration is committed to taking into account. On the other hand, this statement leads to the administration's issuing instructions to the contractor not as complex, but as a normal alien blasphemy for the contract, and the inevitable result is that the administration should have this framework for any foreign individual, and this is unacceptable (Hindawi, 2016, p. 153).

3.3. The Needs Of The Public Facility Are The Basis For The Right Of The Administration To Modify The Contract.

Supporters of this opinion rely on the requirements of public benefit or the necessities of the public facility, as most of the French and Egyptian jurisprudence, supported by the judiciary, believe that the public facility and public benefit are the legal basis for the authority of the administration in amending the administrative contract (Sultan, 2010, p. 90). This privilege is not outside the contractual association but is a contractual privilege consisting of the idea of the public interest and the requirements of the public facility. The administration has resorted to contracting with individual companies only to meet the needs of the public facility and ensure that it proceeds regularly and steadily and that it amends the contract to meet the needs of the facility. It is faithful and based on the interest of the facility and to achieve the public interest (Hindawi, 2016, p. 153).

This right finds its theoretical basis in the principle of the scalability of public utilities and change. It is justified for the Administration to modify its contracts to suit this change in the needs of the facility. In addition to the fact that the public facility, which has to proceed regularly and steadily, may not be able to go through the long contract procedures to face this change, it is more appropriate to modify the contract rather than to expire it and conclude a new one (Afifi, 2017) (Sari, 2004, p. 1077).

The nature of administrative contracts, their purposes, and their connection to the public facility imply the ability to change the contract's terms, considering the principles regulating the public facility's operation. Furthermore, the contracting parties intended to consider the requirement to ensure that the facility operated consistently and reliably because of the handover to the administration as the competent authority in the organization of the public facility. The administration's authority is the outcome of the general authority, which is inherent in the idea of the public facility, its needs, and the right to alter the contract for the public good. The amendment's goal should be clear (Al-Mamari, 2011, p. 136). The right of the administration to modify the contract is derived not only from the contract but also from the nature of the facility and the connection of the contract to it, so the administration can not relinquish or waive that authority as the one responsible for organizing the public facility. Requiring the administration to

fulfill contracts that have become unhelpful or contractual terms that have become unsuitable for the needs of the public facility is contrary to the nature of administrative contracts (Hindawi, 2016, p. 154).

For our part, we agree with the second opinion, which establishes the administration's right to modify the administrative contract at its discretion based on the needs of the public facility, because it is the public interest and the needs of the public facility that justify the administration's intervention during the contract's implementation by modifying it by increasing or decreasing in response to the public facility's needs and new circumstances.

3.4. Elements Of Administrative Authority In The Amendment

The scope of the administration's jurisdiction to alter the terms of hate varies widely depending on the form of the contract, peaking in public utility obligation contracts when the contractor administrative the facility on behalf of the administration. The same word applies to public works contracts because the administration owns the business instead of the contract, and the breadth of the administration's jurisdiction to change supply contracts has been reduced (Khalifa, 2008, p. 188). This authority varies depending on the contracts, the extent to which it communicates with the facility for which the contract was signed, the extent to which the contractor participated in the facility's operation, or the importance of the contractor's services to the facility's administration and the nature of those services (Al-Mamari, 2011, p. 136). (Sari, 2004, p. 1078). The change might be made to the number of contractor responsibilities, which could be increased or decreased. The adjustment may be in the contract's methods and means of implementation as well as in the cities of hatred's implementation, either by decreasing or lengthening the time, as we shall show in the following three branches in turn.

3.4.1 Adjustment in the amount of work by increase or decrease

The administration can adjust the number of its contractors' obligations by increasing them or reducing them. The amendment here responds to the number of obligations, not their type, and is called (quantitative adjustment) as the increase or decrease is required from the same nature of the obligations auctioned or reduced. This amendment is recognized by the administration

whether it is stipulated in the contract or not. It is a fixed right of administration in all administrative contracts (Ahmed, 1973, pp. 222–223).

The modification may be increased, such as the number of weights and items, or the addition of new rooms or accessories to the building to be built in the public works contract, or by increasing the amount of supply agreed upon. This increase is imposed by working conditions. An increase in quantity or volume of work is required to be enforceable by the contractor and financially accountable for the same categories and prices for each type or gender of additional work as the original work (Hindawi, 2016, pp. 195–196).

The Department can adjust the volume of work required of the contractor because the contractor is an assistant to the department in the administration of the facility and the assistant must complete the process with the administration to ensure the proper functioning of the facility and continue to function regularly, steadily, and inevitably in keeping with the implementation of general needs (Al-Fuham, 1976, p. 218). The administration may consider that the amendment is not imposed by the circumstances of the contract but is required by the public interest or to make better use of the contract as if the amendment would save large sums of money or make better use of the works (Hindawi, 2016, p. 196). The Department has the option of reducing the size of the contractor's contractual duties, which has made contract implementation a component of the contract. The contract's responsibilities are not carried out, for example, because the number of materials given is lowered by a specified percentage in the supply contract. The Department has the authority to cut the contract amount anytime the public facility requires it by express decision, and the contractor can only act on the administration's directives (Al-Fuham, 1976, p. 218). The administration, on the other hand, is unable to reduce the quantities contracted to be executed, and so more work may be done by a different contractor. This is a breach of the administration's contractual responsibilities, as well as an infringement of its right to reduce the quantities contracted to implement it, and the administration's actions are inconsistent with the norm of good faith (Hindawi, 2016, p. 196). The Administration derives its authority in the amendment not from the contract provisions but from the general system of public utility functioning, which has ruled to ensure that it is well functioning and regular in the performance of its services in the public interest, and thus the administration has the right to amend a decision

without the consent of the other party, and the administration may not waive the practice of this audacity (Ruling of the Supreme Administrative , 1992).

3.4.2. Amendment in the methods and means of implementation of the contract stipulated in the contract

The administration can modify the methods and means of implementing the contract on its own whenever it finds out during the implementation that the mistakes that marred the original projects should be corrected. Or to cope with modern discoveries that require the use of more economical or more advanced technical means than those stipulated in the original projects (Ahmed, 1973, p. 225) & (Ibrahim, 2003, p. 58) (Sari, 2004, p. 1078).

The Department has the right to impose certain methods of implementation on its contractor when it considers that the public interest requires an adjustment of the methods and methods of implementation established in the contract. This leads to the good administration of the public facility, and this amendment is called the "qualitative amendment". The administration may request that the contractor employ more modern technical means of implementation instead of those specified in the contract if this does not exceed the contractor's technical and financial capabilities or reverse the contract's economics (Hindawi, 2016, p. 198). All contracts of any sort, whether a public works contract, a supply contract, or a contract with public utility duties, are covered by the administration's authority to exercise its powers to change the contract's meaning. This right is decided by the Administration if the amendment comes within the authority granted to the Administration and is intended to develop and improve the circumstances of the public facility while also boosting the level of service there.

3.4.3. Amendment to the duration of the contract

In addition to the above-mentioned option for the administration to change the contract in terms of increased or decreased work volume, or in terms of the ability to change the contract's implementation methods. Furthermore, the Department has the authority to change the term of implementation at its discretion, increasing or decreasing it without the approval of the contractor, if the change is for the public good and the needs of the public facility. The

Administration may request that the contractor cease its obligations before the contract's agreed-upon time expires, or that the contractor increase some periods while decreasing others. This is a gesture of gratitude to the administration considering the circumstances that have arisen throughout the contract's implementation (Hindawi, 2016, p. 200). The extension of the contract by the administration may be explicit that the administration expressly discloses its intention to give the contractor an additional time limit and may be in response to the contractor's request. It may be implicit if the administration remains silent at the end of the implementation period (Ali, 2000, p. 110). The duration of implementation is one of the main aspects that the administration can change, particularly in public works and supply contracts. Some urgent facility requirements may necessitate completing public works in less time than the contract stipulates. The Department may also extend the period of the contract's implementation or stop the enforcement of the funds and the facility's general requirements. On the other hand, in the case of public utilities, there is no provision for adjusting the contract's execution period because the terms relating to the duration of the obligation are not conditions relating to the public facility, but rather fall within the scope of the contractual terms, which the administration cannot change without consulting the other party. If the administration enters into a contract with the obligation for the facility's exploitation for a specific period, the facility cannot be transferred from the original obligation to another obligation before the end of that term. However, if the administration believes that the administration method will shift from the obligation to direct administration, for example, or public bodies, it may recover the public facility before the end of the contract (Al-Tamawi D. S., 1977, p. 476).

CHAPTER IV

THE ADMINISTRATION'S AUTHORITY ON THE AMENDMENT

4.1. Restrictions On The Administration's Use Of This Authority And The Effect Of The Administration's Authority On The Amendment

We also mentioned earlier that the administration has the right to amend the contract without the contractor's consent, but this authority is not absolute, as it is subject to a set of restrictions, including that the administration must respect and abide by the legal controls set forth for it, and that if the administration deviates from these controls, the contractor has guaranteed that the contract will be terminated.

As a result, we will divide the study in this research into two requests, the first of which is to identify the limitations on the administration's jurisdiction to change the contract. The second section is devoted to an assurance that the contractor has the authority to utilize the improper administration of the amendment authority.

4.2. Restrictions On The Administration's Use Of The Amendment Authority

The administration's capacity to change the administrative contract at its discretion is limited by two sets of constraints aimed at balancing the public interest requirements represented by the facility's interest in the contract and the contractor's interest in the administration. These limitations could be legislative, resulting in a violation of the amendment and, as a result, the contractor's ability to seek judicial cancellation. General limits could prevent a violation of the contract and render the terms invalid. As a condition of the legitimacy, it has exercised over that authority, the administration must respect and adhere to these standards.

As we will show in the following two sections:

4.2.1. Legislative restrictions on the authority of the administration in amending the administrative contract

Within the framework of the controls to be available once the administration uses its right to amend the contract, article (6) of the instructions for the implementation of government contracts stipulates that the right of the administration to modify the contract is bound by conditions and defined by certain controls that the administration must observe as follows:

4.2.1.1. Approval of the amendment by the competent authority

The person in charge of adjusting is the same one that signed the contract in the first place. Administrative labor necessitates the approval of its activities and competencies for legitimacy, and so the rules of jurisdiction are derived from the public order, which may not be disregarded in any way or rendered null. When an administrative entity is participating in a contract, another administrative entity can't change it for any reason. Unless the appropriate authority has given permission (Hindawi, 2016, p. 179), (Khalifa, 2008, p. 190).

The oral instructions of the engineer of the work in this particular are not indicated, but if the contractor carries out the necessary and required work without the approval of the administrative authority, if the contractor's dues are paid to the administration based on the theory of enrichment without reason stipulated in the Civil Code, it is considered in the curious judgment, noting that the subsequent administration's approval of the amendment is equal to the prior authorization of it as the basis for the contractor's right to be required in exchange for an increase in the work (Abdul-Latif, 2009, p. 314).

4.1.1.2. Availability of the financial provision necessary for adjustment:

If the availability of financial credit is a barrier to the initial conclusion of the administrative contract, It is not acceptable to conclude an administrative contract without adequate money. The same provision applies to the amendment because contract amendments frequently result in a rise in financial obligations, necessitating financial dependence to cope with this increase so that the amendment does not burden the state treasury, thereby affecting development priorities and plans (Khalifa, 2008, p. 190). The administration's failure to pay the contractor's dues is not based on the administration's issuance of amendment orders without the availability of financial accreditation unless the contractor is aware that he is implementing adjustments that are not matched by financial credit and is the executor of those amendments knowingly and agreeing not

to be required to pay for them successfully but is paid for when the funds are available (Atef, 2007, p. 232).

4.1.1.3. The amendment does not affect the priority of the contractor in arranging his giving: This restriction is supposed to be lower than the contractors at the operation's closing account, implying that the contractors' total category at the project's closing account does not exceed the value of the contractor's next bid in the register of decreases (Khalifa A.-A. A.-M., 2014, p. 48). The executing contractor's prices are compared to the total prices of other acceptable bids that were higher than the price above the anchorage. If each of these tenders carried out the same works contained in the final account, if the contract price is higher than any of them, the excess amount should be deducted to make it lower than all of them (Khalifa A.-A. A.-M., 2014, p. 48) However, the administration is not obligated to work under which the contractor retains the priority of giving to those who are decreasing with it if the contract in question excludes the work of this restriction or the work in question are subject to the work in question or in the case of a sole tender or an amendment after the original contract has expired (Hindawi, 2016, p. 182) & (Khalifa D. A.-A.-M., 2008, p. 190).

However, we believe that the priority requirement is no longer acceptable under the philosophy of the law of tenders and bidding, under which the standard of contracting has become double as it is carried out in the light of the lowest price and the most efficient, so that technical competence has become important in the selection of the contractor with the administration.

4.1.1.4. The amendment was issued during the period of the contract's validity:

This officer is reasonable since it is a good order. When a contract expires, whether it is a natural or premature conclusion, all the administration's rights, including the right to alter, expire. The amendment will be returned to the shop with no effect, and its request for amendment will be treated as a new contract. The contract's validity term is the mayor's execution period, and lax implementation does not mean the contract's agreed period, but the

duration of the contract's execution period; as long as the mayors are not done, the administration has the right to alter the contract (Hindawi, 2016, p. 182) & (Khalifa D. A.-A.-M., 2008, p. 190).

4.1.1.5. The amendment does not exceed the legally specified ratio, and the approval of the contractor if that percentage exceeds that percentage;

Unless the contract specifies otherwise, the value of changes in the amount of work by the administration is calculated by increasing or decreasing (20%) for each paragraph of the quantities contained in the list of quantities priced, according to the general conditions for contracting civil engineering works prepared by the Ministry of Planning in Article 53/C. This ratio is the same for all types of administrative contracts. If that percentage increases, the administration can impose it on the contractor only by consenting to it. The contractor is committed to implementing the amendment with limits (20%) on the same terms and prices (Hindawi, 2016, p. 182) & (Khalifa D. A.-A.-M., 2008, p. 190).

According to Egyptian law, the administration has been assigned a 25 per cent ratio for each item under the same conditions and prices, without the contractor having the right to claim any compensation, and the contractor may exceed this percentage with the necessary financial provision in case of emergency necessity and contractor agreement (Hindawi, 2016, p. 188).

The US administrative law did not prescribe a specific rate of the amendment, allowing for greater administration flexibility and independence. It does, however, discern whether the change is significant and so cannot be imposed on the contractor. Alternatively, the adjustment could be non-material, requiring the contractor to execute it even if he does not want to. U.S. law also takes the important principle that it is not permissible to impose amendments on the contractor by the administration through economic coercion, as if the contractor's grandfather himself is obliged to accept the implementation of the amendments made by the administration to the contract, or to find himself exposed to bankruptcy or insolvency or to find the administration promising him unfair treatment in the future (Abdul-Latif, 2009, pp. 516 - 520).

To our point, we believe it is a legal obligation to obey US law's determination not to stray from the amendment rate. The increase in the business adjustment rate exceeds the contractor's right to the contract's financial balance. giving the administration permission to

expand the quantities of its contracts rather than precise ratios and price ratios and failing to account for the likelihood of rising market data, increasing the contractor's burden, and therefore constituting an over-satisfaction. Meanwhile, if prices decline, the change may undermine the administration's interests, making the adjustments a failure for the administration when they had previously been a benefit and source of authority. In terms of coercion under American law, we believe that the contractor should be given the option to accept the administration's contract amendments while avoiding any pressure or material or moral coercion to which the contractor is subjected by the latter because the contractor will be tainted by a defect of will.

4.3. General Restrictions On Administration In Amending The Administrative Contract

Some restrictions result in the modifications being violated, and the contractor can ask the contract judge to cancel them, or he can refuse to implement them. As stated in the contractor's statement, some constraints and regulations result in the contractor's right to avoid the contract, in addition to his right to compensation for the damages he has suffered.

4.3.1. The Controls That Result In The Nullity Of The Amendment

To alter the administrative contract, general restrictions are connected to the purpose of delegating power to the administration as well as the extent and boundaries of the amendment. These conditions concern the legality of the administration's actions to change its contracts on an individual basis. Decisions made without them are erroneous and in violation of the law, and the contractor has the right to ask the contract judge to cancel it, as well as to refuse to carry out the illegal amendment in breach of the administrative legitimacy constraints. The limitation is that the common good must be the goal of the amendment. The validity of the amendment procedures must meet four conditions that we explain in turn: The amendment is limited to the conditions relating to the public facility: The administration's authority to alter the contract is based on the necessity to meet the needs of the public facility. This basis limits the scope of the amendment, as it must be limited to the conditions that determine the obligations imposed on the contractor in favour of the public facility, and this authority does not extend to the conditions of the benefits and financial guarantees prescribed to the contractor by the party who paid him to complete the

contract. It's a condition of validity because it has to do with the shop's legitimacy (Al-Banna, 2011, p. 232).

(A) The amendment should remain within the scope of the contract and not deviate from it: The administration's authority to alter the contract is limited to the scope of the contract, which is the subject of the contract. The contractor has a contractual relationship with the administration and must fulfill its obligations within that framework. However, if the administration departs from this framework under the guise of amendment by assigning it to work that has nothing to do with the original contract, the contractor is not obligated to implement it, and the administration cannot force it to do so (Hindawi, 2016, p. 163).

The amendment's validity should be limited to works of the same sex and type that are contracted to pay for the demands of the public facility, but the amendments should not result in the contractor being faced with a new contract. It is not easy to determine whether the amendments issued by the administration are involved in the subject matter of the contract. It is a delicate matter, and there is no specific criterion on which to rely on the distinction of the obligations that fall within the subject matter of the original contract. There should also be no circumvention on the part of the administration in using its authority to amend by adding new works that are outside the subject matter of the contract and are not contained in the term's booklet (Hindawi, 2016, p. 167).

New circumstances are required to justify the exercise of the amendment authority: the circumstances under which the contract was concluded must have changed because the basis of the administration's right to amend the contract is that the public interest requires that the public facility proceed regularly and promptly and that there is no doubt that the administration will set the conditions that are appropriate for the facility in the circumstances of the time. The administration has the power to change the contract and declare it differently, allowing it to distance itself from its duties arising from contracts entered under the guise of exercising its right to amend. (Khalifa D. A. A. M., 2008, p. 191) The extent to which the administration could revise the contract was called into question if circumstances had not changed and the administration had initially miscalculated and failed to grasp the requirements for the proper

operation of the public asset. Is it possible for the administration to change the contract to meet the facility's actual needs?

Part of the jurisprudence stated that no amendment could be made in this case since no change in circumstances occurred after the contract was signed, justifying the alteration. Another aspect of the jurisprudence argues that the amendment authority is linked to the rules of public facility operation, the first of which is the rule of the facility's ability to change and the law that the contract may be amended at any time and that the administration should be able to organize the public facility in the public interest whether it is correct in its assessment or not (Hindawi, 2016, pp. 169-171). For our part, we believe that the administration's inability to properly assess the situation does not mean that it should be deprived of its right to face the new circumstances that the facility may be exposed to. If the administration's purpose of the amendment is in the public interest,

(C) Issuing procedures for amending administrative validity rules: The change must be made in accordance with the legislation in all of its components and foundations. The administration must follow the rules of legitimacy in its modification method, and the decision is given by the responsible authority in writing and in line with the formal and legal procedures that have been addressed (Al-Banna, 2011, p. 232).

Second, the controls that result from the contractor's right to avoid the contract being violated:

In addition to the previous limitations, there are limitations on the administration's ability to amend the contract, resulting in a violation of the contractor's right to request contract avoidance, as well as his right to claim nullity of the amendment and compensation if its conditions are met, as follows:

(A) The administration went beyond the scope of the amendment specified in the contract or the books of conditions, as well as the legally specified: the purpose of imposing this restriction is to ensure that when the contractor entered into the contract with the administration, he considered the possibility of amendments made by the contracting administration during implementation, as well as the fact that the administration is required not to go beyond the limits

stipulated. In any case, the added works must be subordinate to the original works to block the administration's circumvention of the law by assigning additional work to the contractor without being subject to the procedures established by law for contracting (Hindawi, 2016, p. 174).

(B) The amendment must impose new burdens on the contractor, causing fatigue: the amendments must be proportionate to the contractor's financial and technical capabilities, or the contractor may refuse to implement them and request that the contract be avoided; at the same time, the administration has the right to refuse to carry out the required modifications if they exceed the contractor's capabilities, preventing the facility's development (Hindawi, 2016, p. 175)

(C) Although the administration is given the right to amend the contract at any time, this amendment must be burdened within the natural and reasonable limits in terms of the type, importance, and scope of the contract's subject matter and must not exceed the contractor's technical and financial capabilities or turn the contract upside down (Abdul-Latif, 2009, p. 327). The imposition of such amendments would give the contractor the right to take the contract to court to have it avoided, and he would be required to seek compensation for the damage caused by the execution due to the administration's intervention by the amendment if it would reverse the contracting economy, especially if the amendment is at the heart and essence of the contract. The administration cannot impose on the contractor work that is not a part of the contract. When the original work is performed in line with new terms and conditions, it is not affiliated with any affiliation (Hindawi, 2016, p. 176).

4.4. The Legal Effect Of The Amendment

In a civil contract, the administration has a distinct position from the contractor. Administrative law grants them many powers and privileges not found in private law contracts, and these powers and privileges are necessary for achieving the public interest and operating public facilities, in exchange for the other contractor's financial rights being guaranteed by the administrative contract. The "financial balance of the contract", as the implementation of the contract's two main features, is the essence of the difference between administrative contracts and private law

contracts: the administration has powers unmatched in private law contracts. The legal system of administrative contracts, on the other hand, guarantees the contractor with administration fair compensation for each administrative intervention and the circumstances that make the performance of his obligation difficult, and this is referred to as the financial balance of the contract (Al-Jubouri D. M., 1996, p. 438).

We shall quickly detail the contractor's rights to rebalance the administrative contract in this demand:

4.4.1. The right of the contractor to require in exchange for additional work

The contractor is responsible for the new products, which are priced similarly to the initial items. If the adjustment is reduced, the price differences are deducted for the reduced value of the work or the reduced quantities, and the contractor is held accountable for the increase up to 20% according to the prices of the contract paragraphs and the same conditions, but for actions above this ratio, the contractor will be held accountable based on what has been agreed between him and the administration, provided that this does not affect the priority of his grant (Hindawi, 2016, p. 202) .

However, there should be a distinction between additional and new business. The additional work is not mentioned in the contract and its price is listed and is linked to the original work carried out by the contractor with the administration. Unlike the new job, which is essentially unrelated to contract's subject matter, it is not anticipated that the contractor will perform these extra services for free or benefit the administration on his account without legal justification. The contractor is held liable to the administration for the additional work at the agreed-upon prices, but this is contingent on the administration's commitment to fulfilling all of its contractual obligations; otherwise, the contractor has the right to demand that the administration be held liable for this work, as well as compensation for the damages caused by the administrative authority's negligence (Abdul-Latif, 2009, pp. 337 - 338).

4.4.2. The right of the contractor to require the value of the spreads

The contractor's right to price differences is closely linked to the contractor's use of certain items that have been subject to forced pricing by the state during the contract's execution and then an

increase in the prices of those items after the contractor exports his goods and before the implementation is completed. The contract must allow for this privilege for the contractor to profit from it. When the contractor's work must be differentiated between the part of the contract that was implemented before the price increase and the other part that was implemented after the price increase, the contractor is not entitled to the price difference except for the part that was implemented after the price increase. According to the administration, only items immediately required in the execution of the contract will be compensated for the value of the spreads. The provision also differs on the contractor's right to require spreads or not, depending on the reason for the increase in the price of goods; if the reason was due to the volatility of the market price and the currency price, the contractor was responsible for the subsequent effects of the increase or decrease, whether due to the administration's adjustment of taxes and customs duties to meet the value of the price differences to the contractor (Abdul-Latif, 2009, pp. 341-342)

4.4.3. The contractor is entitled to an additional period

When these works require a deadline to be completed due to their nature and the time of commissioning to increase them, the contractor must request an increase in the duration by the amount of increase in the work, keeping in mind that the period specified in the contract was only to complete the work in place of the contract. If the increase in the ratios referred to in the law is entitled to an additional period equal to the value of the excess work over the original work, if it exceeds the specified rate, the contractor and the administration will agree on the price of the excess work and the duration of its implementation and give them an appropriate additional period. The justification for this additional period is to achieve considerations of justice on the one hand, as it is unfair for the contractor to bear the burden of increasing the work alone, and on the other hand, it is in the public interest, which the public facility aims to achieve through the expedited completion of these works (Hindawi, 2016, p. 204).

4.4.4. The right of the contractor with the administration to compensate for the work of the prince:

The prince's action theory is summarized in every legitimate work issued by the authority that concluded the contract and focuses either on the same contract or on the circumstances of its implementation, which leads to an increase in the contractor's financial burden and entails the right to compensation; and the prince's act may appear in an individual procedure issued by amending the terms or system of the public facility related to it, as it may be a general procedure (Al-Helou, 2007, p. 184).

The application of this theory requires an administrative contract linking the contractor with the administration. How much is required to issue the harmful act or procedure from the administrative authority that concluded the contract? This act should result in harm to the contractor with the administration and does not require a certain degree of gravity to increase the financial burden of the contractor, leading to a breach of the financial balance of the mayors. The contractor's loss should be kept private and not shared with everyone who is affected by the decision. If the administration's activity is legal, the administration's obligation is a contract responsibility with no room for mistakes. The administration's move should come as a surprise (Al-Helou, 2007, pp. 185-186).

Due to the existence of the preceding criteria, the contractor must be reimbursed in part, including compensation for two elements: the first for the loss he has experienced and the second for the loss he has lost. However, this does not preclude the contractor from distancing itself from the administration of its contractual obligations, which, while onerous, have not yet reached the point of impossibility, and the contractor may demand that the contract be terminated if the amendment increases the contractor's burden to the point where it is unable to fulfill its obligations (Abdul-Latif, 2009, p. 352). In our opinion, compensation for the prince's act should be extended to any action taken by administrative or legislative authorities without requiring that they be the same contracting administrative authority, as administrative contracts must be more transparent and include some profit for the contractor.

4.4.5. The right of the contractor with the administration to compensate for unexpected material difficulties

This hypothesis is because, once executed, the department's contractor experienced extraordinary material obstacles that he could not have predicted at the time of the contract. It made the contract's execution problematic, necessitating the administration to reimburse the contractor in full for the losses incurred as a result of the issues (Khalifa D. A. A. M., 2008, p. 171) (Al-Helou, 2007, p. 182). The contractor's claim for compensation based on this approach must be substantial, uncommon, and extraordinary. This is frequently owing to natural events such as the earth's rocky nature. These difficulties should be exceptional as the contractor cannot overcome them with their usual potential. The criterion for identifying those difficulties is purely personal. These difficulties should also be an emergency or money that can be expected by the contractor, and the standard of expectation here is an abstract criterion that no one can expect. Implementation should also result in costs that exceed the contract's agreed-upon pricing, raise the contractor's administrative load, and not be the responsibility of one of the contractors (Khalifa D. A. A. M., 2008, pp. 173–177) (Al-Banna, 2011, p. 312).

This hypothesis, which has ramifications for the prince's notion, has the consequence of continued implementation and the contractor's claim to full pay (Abdul-Latif, 2009, p. 367). (Al-Helou, 2007, p. 184)

4.4.6. The contractor's right to compensation for emergency conditions

The contractor's obligations remain unchanged as a result of the availability of the terms of this theory, but he or she is entitled to administration as the contractor is partially and not completely entitled, as in the previous two theories, because the judge must return the reasonably burdensome obligation by bearing the familiar loss that could have been expected at the time of the contract and dividing more than an unusual loss among the contractors. The judge's responsibility is confined to determining adequate compensation without having to change the contract's terms. Instead of compensating the contractor for its losses, the Administration might relieve it of certain of its duties (Abdul-Latif, 2009, pp. 362 - 363). This theory is required to

find, after the conclusion of the contract, general special events that could not be expected in the contract and to implement the commitment cumbersome to the contractor Fatal loss The application of this theory entails the right of the contractor to require the administration to contribute to the consequences of the increased burden because of those circumstances. Al-Bannah (2007), page 301).

Iraqi law, analogous legislation, and American law all specify the principle of emergencies. The implementation of this theory is subject to certain constraints. After the contract is signed, there must be an emergency of a general extraordinary type, as the emergency must be unexpected and unpayable, and the criterion for assessing the likelihood of its prediction is simply that no one in the same circumstances can foresee it. This emergency must also reverse the economics of the contract where the implementation of the obligation for the contractor with administration becomes so cumbersome that it results in a heavy loss to the contractor and the criterion of heavy loss is purely objective (Al-Helou, 2007, p. 189).

The contractor's obligations remain unchanged as a result of the availability of the terms of this theory, but he or she is entitled to administration as the contractor is partially and not completely entitled, as in the previous two theories, because the judge must return the reasonably burdensome obligation by bearing the familiar loss that could have been expected at the time of the contract and dividing more than an unusual loss among the contractors. The judge's responsibility is confined to determining adequate compensation without having to change the contract's terms. Instead of compensating the contractor for its losses, the administration might relieve it of certain of its duties (Abdul-Latif, 2009, pp. 362–363).

CONCLUSION AND RECOMMENDATIONS

We conclude our investigation of the administrative authority in changing the contract based on individual will by expressing our findings and recommendations:

The Administration has vast rights in administrative contracts that are unmatched in private law contracts, including the ability to change the contract at its discretion and without the approval of the contractor. The public interest and the needs of the public facility are the basis on which the administration bases its authority to modify because it is the public interest and the needs of the public facility that justify the administration's intervention during the implementation of the contract by modifying it by increasing or decreasing in response to the public facility's needs and new circumstances and finding the necessary to run the facility by the new circumstances. The authority of the administration to amend the contract by individual will extends to the adjustment in the amount of work by increase or decrease as well as the modification of the methods and means of implementing the contract. The amendment may be for the duration of implementation. The contractor cannot oppose the change, and the administration cannot waive it or agree not to act on this power. The administration has the power to amend the contract all the time, whether the administration is wrong in its assessment or not. This authority has been decided to be administrative in the public interest and the viability of the public facility for development and change. The administration's authority to amend the contract is subject to a set of controls—whether legislative or general restrictions—which the administration must abide by, not lose, or arrange the right of the contractor to resort to the administration to go to court to obtain appropriate compensation. In some cases, the contractor may also claim avoidance of the contract, or its violation of these controls may result in the contractor's right to claim that the amendment is invalid. Civil engineering business contracts prepared by the Ministry Calculating the value of changes in the amount of work by the administration has been restricted by increasing or decreasing by (20%) for each clause of the quantities that are included in the volume schedule. In our view, the determination of an adjustment rate exceeded the contractor's right to the financial balance of the contract. Giving the administration the authority to increase the quantities of its contracts based on specific ratios and price ratios without considering the possibility of market changes that may arise, increases the

contractor's burden and thus constitutes an infringement on his satisfaction. On the other hand, this amendment harms the administration's interest when prices fall. Compressing the contractor's will to carry out the contract, whether by material or moral compulsion, is not appropriate since it taints the contractor's desire.

Finally, we recommend that article (53/c) of the general conditions for contracts of civil engineering works be amended by not specifying a rate of adjustment for administration by increasing. We suggest that the text should be as follows: (The administration has the right to modify the quantities or size of its contracts by reducing the amounts by 20% for each clause. We recommend that the administration's decisions to amend the administrative contract be subjected to more judicial scrutiny and that the administration's use of the authority to amend the contract should not be based solely on the individual's will to protect the contractor from the administration exceeding its authority. On the other hand, we urge that the contractor be allowed some leeway in accepting the administration's contract changes and that no pressure be applied to him that might taint his will, resulting in a defect that will jeopardize the contract's validity.

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