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Invalidity of the Administrative Contract, Compared to the Civil Contract A Comparative Jurisprudential Study

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Abstract

Administrative law is one of the branches of public law. It is concerned with a set of rules that govern and control the administration in many respects. Various departments carry out their activities and systems through the administrative decisions issued by them, which are binding on different individuals in order to achieve their goals and ambitions. Departments also resort to another means to achieve their goals through cooperation with another party or another team within the so-called administrative contracts. An administrative contract is an agreement that includes the administration being one of the parties or both parties of the contract with the aim of organizing a public utility. The administration uses the privileges provided by the public authority. Contentment, location, reason, and formality are the most important pillars of the administrative contract. It is not right to neglect one of them. Fulfilling the formalities on contracting, submitting bids, designating the entity on which the bid is awarded, and concluding the contract are the most important procedures that are followed in order to conclude the administrative contract. The criterion of administration as a party of the contract, the criterion of the contract's connection with the public utility, and the criterion of exceptional conditions are the most prominent criteria that distinguish administrative contracts from other contracts. The present study reveals the most important cases of invalidity of the administrative contract compared to the civil contract. The present study is divided into three sections and a conclusion containing the results and recommendations of the present study.

Keywords

Nullity, Administrative contract, civil contract.

Introduction

The theory of administrative contracts is one of the most important theories of administrative law. Is mainly represented in the administration, organization, and management of public utilities in the country. Accordingly, this theory has become specific in the provisions of administrative law. Despite the fact that the civil law had previously organized and established the theory of the contract, but that does not mean that there are no differences that may be minor sometimes and essential at other times. Among those topics are the provisions of invalidity of the administrative contract in comparison with the invalidity of the civil contract according to the jurisprudential opinions on this issue.

Significance of the Present Study

The present study is significant due to the great importance of administrative contracts in which the provisions of the public interest appear and outweigh the provisions of the private interest. This type of contracts is related to the state's industrial, commercial, professional, sovereign, and security facilities. Thus, it appears to researchers that there is a special importance for the theory of invalidity in administrative contracts in terms of administration's rights, the rights of the contractor, and the effect of invalidity on those rights.

Objectives of the Present Study

The present study aims to define the administrative contract, explain its elements, discuss the provisions regarding the invalidity of the civil contract, and drop those cases on the special legal system of administrative contracts and the main elements of the contract such as location, satisfaction, reason, special formality, and announcing the conclusion of those contracts.

Problem Statement

The research problem of the present study revolves around applying the general provisions of contract theory in civil law to the provisions relating to the invalidity of the administrative contract. Hence, it tackles whether the legal positions of the parties of the administrative contract are equal, as in the civil contract.

Thus, the researchers will highlight the cases of invalidity of the civil contract. They will discuss the cases of invalidity of the administrative contract. The researchers will address the subject of the study in three sections. Section one introduces the concept of the administrative contract and the exceptional conditions

that are specific to it. Section two tackles cases of nullity in the civil contract. Section three addresses cases of nullity of the administrative contract.

Section One

The nature of the administrative contract and its exceptional conditions

Public law jurisprudence is keen to emphasize the independence of administrative law against civil law." This is confirmed by administrative judges in many rulings, whether in France or in Egypt. Jurisprudence reports and the judiciary confirm that administrative law possesses independence against civil law. The question arises about the nature of this independence; Is it absolute to the extent that makes both laws opposite, so that there is no kind of connection between them, and then their relationship does not go beyond being a relationship of disharmony? Or, the matter is reversed (Shoaib, 2015).

The nature of administrative legislation, which is always described as regulation and management legislation due to its keenness to ensure the proper functioning of public utilities more than its eagerness to anticipate legal problems and develop solutions to them, has contributed to making the administrative legislator unable to anticipate all future legal problems that may result from the work of the public administration (Muqallid, 2021). The change in the role of the state has contributed greatly to the phenomenon of insufficient administrative texts to face all management problems. This makes determining the nature of the relationship between the administrative and civil laws very important to determine whether the administrative judge is able to use the provisions of civil contracts or not, which is one of the objectives of the present study. The present study also aims to put the features of the French and Egyptian experience before the administrative judge to determine how the public law judge in France and Egypt could preserve the essence of administrative law by invoking the rules of civil law in the process of adjudicating contract disputes by adopting the dual justice system (Kriko, 2020).

The idea of the contract originated mainly in the framework of civil law. The contract is generally based on the agreement of two wills to produce a legal effect. Therefore, the contract is a consensual action between two parties with the intention of achieving a goal that is to create a specific legal effect, which is the creation of an obligation (Al-Khateeb, 2019). Hence, it is possible to say that the contract is a legal act that aims to achieve a goal of producing a legal effect. If this intent fails, the character of the contract is negated. Not every agreement between two parties constitutes a contract. Administrative contract is subject to the same principles and pillars of civil contract in terms of consent, location, and reason. The difference is that the administrative contracts include unfamiliar conditions for civil contracts, the purpose of which is to enable the administration to achieve the goals for which it concluded the administrative contract. These conditions lead to making the two contractors unequal, unlike civil contracts whose conditions ensure balance

Between the interests of the two parties of the contract. The administrative contract derives its rules from legislative texts that regulate one or more of its multiple aspects (Al-Jubouri, 2021).

The administrative contract has not been clearly defined, but the administrative judiciary has defined this contract as the one that includes one of the two aforementioned elements. Thus, it is a contract that is concluded by a public legal person and includes the contractor's contribution to the organization and management of a public facility. It may also include unfamiliar terms in private law (Jabaili, 2021). Thus, the previous definition, which prevails in the judiciary of the French Council of State, indicates that there are two elements to give an administrative character to the contract. The first element is a fixed element that is associated with every administrative contract, which is the conclusion of the contract by a public legal person. The second element is a variable element, consisting of two conditions, the availability of any of which is sufficient. Those two conditions are either the contractor's contribution to the organization and management of a public facility or the contract includes unfamiliar conditions in private law (Jabaili, 2021).

A. The Constant Element: The conclusion of the contract by a public moral person

For a contract to be administrative, one of the contracting parties must be a public-law person, such as the state, bodies and institutions with legal personality, or local groups. Accordingly, contracts concluded between private law persons cannot in any way be considered administrative contracts.

However, the Court of Dispute in France has decided that contracts concluded for the purpose of constructing a highway by a mixed sector company in which private companies contribute, have an administrative capacity although this concessionaire company is a private law person, as long as it is known that it works for a public legal person (Radhi, 2020). It does not seem that this provision can be applied to Private institutions entrusted with the management of a public facility.

In Egypt, the administrative judiciary considered that the contract is administrative if it is concluded by a private legal person for the account and interest of one of the public legal persons. Following-up the rules of French State Council and Cassation Court reveals that they interpret the aforementioned ruling of the Dispute Court very narrowly. They state that as long as mixed sector companies are private law persons, the contracts they conclude with other private law persons are private law contracts and not administrative contracts (Atwa, 2017).

B. The variable element: The contract being connected to a public facility or unfamiliar conditions are included in it

It has already been mentioned that not all management contracts are

administrative contracts. Management often concludes private contracts, like any individual. Therefore, in order for the contract concluded by a public legal person to be an administrative contract, it must include the contractor's participation in the implementation of works related to a public utility and the performance of the public service itself. The contract must also include exceptional conditions that are unfamiliar in private law.

C. The contract should be connected to a public facility

Although a long period of time has passed since the idea of the public utility appeared, a lot of ambiguity still surrounds it. The use of the general bond as a standard, with regard to the distribution of jurisdiction or the application of administrative law, has become less easy than it was in the past. At a time when jurisprudence gave great importance to the idea of general facility; It has been unable to reach agreement on giving a specific definition to it or extracting the elements to which it decomposes. This is undoubtedly due to the fact that the public utility is basically subject to development according to the changing needs of society and the development of the role of the state (Al-Jubouri, 2021). The term general facility has been used from the beginning to mean two different meanings; the formal organic meaning or the material objective meaning. According to the first connotation, it means the administrative body that carries out, with its workers and money, the activity of public interest, whether it is a ministry, department, institution, or body. According to the second connotation, the public utility means the activity to be undertaken by administrative persons to satisfy a collective need (Al-Sayyat, 2016).

Under traditional administrative law, the public utility had a relatively simple concept, and the formal and material connotations were almost identical. The facility has always been an activity of public interest that is performed by an administrative person and is subject to the rules of administrative law, as is the case, for example, in the case of defence, police, and public health (Kharboush, 2018).

However, the problem in defining the concept of public utility appeared whenever the scope of the functions of the state rights got lost just as public approval was no longer just purely administrative facilities, but administrative facilities appeared. Such facilities are of an economic nature. In the past, such facilities were included within the framework of individual initiatives such as transport, industries, and trade. Thus, identifying the public utility with the double standard has become very difficult at times. The French Council of State has taken an important step in the search for a new concept of public utility. It has established the general structure of the Council. On the occasion of considering the issue of technical centres for training, three basic characteristics for determining the general facility are summarized as follows:

A. The administration shall have the right to entrust the facility with a task of public

interest.

B. The administration shall have the right to supervise, that is, to control the methods of performing this task.

C. The body charged with managing a public utility has some of the prerogatives of a public authority.

Indeed, as many scholars have noted. This decision does not resolve the debate. However, the researchers believe that the attributes set by the State Council are suitable to be a general framework, and the assessment in identifying the public facility is left to the nature of the activity and facts, which are objective issues that the judiciary give judgements about in case of ambiguity. For example, it is possible to identify the public facility by ascertaining the importance of the activity in the life of the group and the intention of the authority that establishes the facility, whether the expression is an express will or an implicit will and general direction. It is possible to consider projects that are established and managed by a public authority as public facilities on the basis of the existence of the intention to establish the facility. The contract concluded by a public legal person is an administrative contract if it includes the contractor's contribution to the operation of a public facility (whether in terms of establishing the facility, organizing it, exploiting it, managing it, implementing and supervising it, or contributing to its management). This is true even if the contract does not contain unfamiliar terms in private law (Jabaili, 2021).

On this basis, in the Bertin case, the French administrative judiciary considered that the private contract in the case aims to entrust the stakeholders with the implementation of the duties of a public utility entrusted with ensuring subsistence of the deportation of refugees of foreign nationalities who are in the French territory. This condition alone is enough to give the contract an administrative character despite the absence of unfamiliar conditions in this contract (Al-Sayyat, 2016).

The administrative judiciary in France is keen that the subject of the contract is directly related to the general public. It is limited to giving an administrative character to the contract, which would make the contractor contribute extensively to the operation of a public facility, and not just the existence of a relationship between the contract and the facility. Therefore, it considers that contracts that only include the contractor's supply of materials or tools of a public utility are private contracts. The matter is somewhat different in Egypt. The administrative capacity is not limited to the money related to the organization of the public facility to its exploitation (such as concession contracts and public works, but it extends to those related to assistance in running the facility through the supply of materials or the provision of services and to contracts that include employment of public's money and the use of it. Accordingly, the Egyptian Administrative Court recognized the administrative capacity of the contract for the exploitation of food carts and trolleys by trains, and for the contract for the exploitation of a court canteen" (Supreme Administration, 2019).

2. Uncommon conditions in private law

A contract concluded by a public person has an administrative character if it contains unfamiliar terms in private law. Unfamiliar terms are those exceptional terms that are not usually found in private contracts'. This is because the placement of such clauses in private law contracts is often considered illegitimate. These terms aim to give the contracting parties rights or entail obligations that are inherently alien to those that can be agreed without any restrictions by any person under Civil and Commercial Laws.

There are some doubts about the concept of the uncommon condition. Some decisions have considered that the right of unilateral annulment granted to the administration constitutes an unfamiliar condition, while other decisions of the French administrative judiciary denied it (Kriko, 2020). The unfamiliar condition is the condition that is unusual to find in private law contracts. The presence of one of the unfamiliar conditions is enough to give the contract an administrative character. However, instead of being based on a specific condition, modern judicial rulings take into account the general climate of the contract. Yet, in the event that the contract concluded by the administration is free of any unfamiliar conditions, it is considered an Administrative contract that requires reference to the nature of the facility and the system prescribed for its functioning, its working conditions, or the extent of the degree of connection established by the contract between the contracting party and the bondsman. This is what the administrative judiciary in France and Egypt goes to. Although in most of its provisions, it requires exceptional and unusual terms to be included (Jabaili, 2021).

Administrative contracts include those contracts that authorize the contractor to participate directly in the management of the public utility even if the contract does not contain any exceptional conditions. The utility concession contract, public contracts, as well as contracts related to the organization or management of purely administrative facilities must be considered administrative contracts even if they do not include exceptional conditions because these facilities are already managed in accordance with the rules of common law. These contracts are not considered private contracts except as an exception in the event that there are presumptions or elements indicating that the administration intends to conclude the contract in accordance with the rules and method of private law (Al-Mishi, 2017).

However, some jurists in Egypt are keen not to be satisfied with one of the two conditions of the double standard in order for the contract to become administrative. In this regard, Dr. Muhammad Suleiman Al-Tamawy says that if the connection of the contract concluded by the administration with the public utility is a necessary condition for the contract to become administrative, then it is not sufficient by itself to give the contract that character, but rather the third condition that is inherent in it and that separates it from distinguishing administrative contracts. It is the administration's intention in choosing and means of common

law, and in particular that the contract includes exceptional and unfamiliar terms. Al-Tamawy also mentions what a group of jurists hold to say that if the condition of the public facility is neglected, the third condition is satisfying in the sense that if the contract includes exceptional conditions that are not familiar in private law, the contract becomes administrative regardless of its relationship to the public utility. He says that this trend did not remain isolated from the administrative judiciary. It has found provisions that reflect the previous opinion. But, these provisions that stop at unfamiliar terms and neglect the link of the contract with the public facility are still few in comparison to those that link the two conditions. Dr. Al-Tamawy concludes by saying that it is in the public interest to combine the two conditions in Egypt with the expansion of the meaning of public utility. The Egyptian administrative judiciary adheres to the rulings of this trend so far. It was finally upheld by the Supreme Constitutional Court in its rulings (Shuaib, 2015).

Elements of Administrative Contracts

The provisions that control and govern the contract are the most important necessities that must be met in the contracts that are concluded. Contracts concluded by the administration - of all kinds, whether they are civil or administrative, and whether they are between two different systems - must have a set of provisions, which permits their legitimacy and proven correctness. An administrative contract, like a civil contract, includes an agreement of two wills to abide by a set of terms and conditions that may not be violated or neglected. The offer must be issued by both contracting parties, which is matched by acceptance from the other party. The following is an explanation of the elements of administrative contracts:

First: Consent

Consent is expressed as soon as the two contracting parties agree on the terms and conditions contained in the contract. The contract takes place through the contracting parties expressing their will in the affirmative and acceptance, in addition to paying attention to the specific conditions and provisions established by law. Consent must be expressed by the administration as it is one of the contracting parties. Consent must be issued by the party concerned with the contract based on a set of established systems in terms of jurisdiction and form. The legislator has specified the persons who can conclude administrative contracts in the name of the administration. No person may practice this right in the name of the administration, and individuals who have been granted this authority may not authorize this right to other individuals except within the limits and restrictions specified by the legislator (Al-Khateeb, 2019).

Consent is not only limited to the administration. It must also be on the part of the other contracting party. One of the basic conditions included in the pillar of consent is that the consent should not be based on the defects of consent, such as

that there is some kind of mistake, deception, compulsion, or coercion. The administrative judiciary follows the civil judiciary's approach in nullifying administrative contracts that do not include the consent of both parties and their affirmative and acceptance agreement. The evidence for this is the ruling of the French State Council, which invalidated an administrative contract as a result of making a mistake (Sirt, 2022)

Second Location

The location of the contract means the legal process that should be implemented to establish the rights and obligations of the contracting parties, which is required to be present and possible and may be dealt with in a manner precluding obscene ignorance, as it is appointed by reference to it or to its special place or by clarifying the distinctive reasons for it. In addition, the subject matter of the contract should be something that can be dealt with in the sense of being legitimate with regard to determining the subject matter of the contract. The administrative judiciary implements and follows the civil rules, as the nature of administrative contracts requires, as the place of the contract is determined by the two contracting parties, but the administration may modify or change it unilaterally as it deems appropriate based on the privileges it possesses before the contracting methods (Sirt, 2022).

One of the most important conditions that should be focused on in relation to the subject of the contract is the condition of legality, which means that the subject of the contract is legitimate and may be dealt with. An example of the invalidation of an administrative contract as a result of exceeding the legality condition is the ruling of the Supreme Administrative Court in Egypt for 2018, which resulted in the invalidation of an administrative contract concluded between the administration and a supplier for the supply of forks, knives, and spoons that were proven to contain a high percentage of harmful substances. It is worth noting that the conditions for the validity of the location are subject to the general rules contained in the field of civil law, as required by the nature of administrative contracts (Al-Ruwais, 2020).

Third Reason

The fulfilment of the two preceding conditions is not sufficient to complete the administrative contract. In addition to the consent and acceptance of the contracting parties, in addition to focusing the contract on a permissible and legitimate place; There must be a legitimate reason for this contract, as this reason must exist directly or indirectly, in an administrative or civil manner. In the event that the contract is devoid of this element, the contract is considered void, and the subject court has the right to nullify the contract when it is sure that there is no legitimate reason for the administrative contract as a result of its violation of the provisions of public order. In fact, it is difficult to have an administrative contract without a clear reason for

concluding it, as the motives that the administration seeks to achieve by concluding these contracts are to achieve the public interest and a necessity for the functioning and organization of public utilities (Al-Khateeb, 2019).

Fourth Formality

It is customary in the legal provisions that contracts are concluded by agreement or offer and acceptance without the presence of a condition that includes the necessity of emptying the contract in a specific form, but if the law stipulates the need to empty the contract in a specific form, this must be done. Administrative contracts follow the provisions of the general rules found in the Civil Code related to this subject. For example, if an individual wants to donate a plot of land to an administrative authority, he/she must follow the formalities associated with real estate sales contracts that include registration within the Real Estate Registration Department. On the other hand, it is noticeable that administrative contracts go through many stages that differ from other contracts, such as bidding and tendering procedures, and awarding decisions that require that the performed administrative contract be in writing (Al-Silat, 2016). Writing does not represent an essential pillar of the contract, nor is it an essential condition of its validity. It is permissible for the contract to be concluded without writing, since writing in its legal adaptation represents only one of the means through which proof is made, but if the law requires writing in a certain contract, in this case, the rules of the law must not be violated. Otherwise, the contract is considered to be in violation of one of the pillars of the contract. Therefore, the contract is invalid (Shuaib, 2015).

It is noted from the above that the administrative contract is very similar to the civil contract in terms of the necessity of providing the elements that ensure that the contract is not invalidated, and the rules of civil law are the main reference on which the laws and provisions of administrative contracts are based.

Section Two

Cases of contract invalidity in civil law

The concept of invalidity in civil law is considered one of the broad topics about which many jurisprudential theories have been said. Invalidity is a comprehensive and multiple concept. There is an invalidity related to procedures as stipulated by law in the invalidity of some procedures before the court, for example. This study is concerned with the invalidity related to contracts. The freedom of people to contract stems from the principle of the authority of the will, which enshrines the idea of the parties' will and freedom to create contracts, which then becomes a Sharia that prevents them from being amended or infringed (Ali, 2022), but the freedom of the parties may sometimes be a reason for the invalidity of actions that arise from them, represented by contracts, which will be highlighted in this study.

There is no invalidity except by a text. Hence, it is not permissible to judge the invalidity of something unless there is a legal text ruling its invalidity. The Jordanian legislator has defined a void contract in the text of Article 168 of the Jordanian Civil Code in paragraph 1 of it, which states that a void contract is what is not legitimate in its origin and description by the failure of its pillar, place, purpose, or form imposed by the law for its contract. It does not have any effect and the license does not respond to it (Article 168/1, Jordanian Civil Law No. 43 of 1976). Professor Dr. Yassin Al-Jubouri defines invalidity as the penalty imposed by the law for the failure of one of the pillars of the contract, or the failure of one of the conditions of its validity (Al-Jubouri, 2011).

Before this and that, it is necessary to define the contract whose invalidity is intended in this study. The Jordanian legislator defines the contract in Article 87 of the Jordanian Civil Code, which states that the contract is the link of the offer issued by one of the contracting parties to the acceptance of the other and their compatibility in a manner that proves its effect on The contract is binding and entails the obligation of each of them to what they are obligated to the other (Article 87, Jordanian Civil Code).

From the two previous definitions, it is concluded that a void contract is essentially a contract in terms of its legal nature, which is necessary to distinguish it from other legal acts. It is considered in principle a source of obligation if it is a valid contract, which has been expressly stipulated in the text of Article 167 of the Jordanian Civil Code, which states that a valid contract is a legal contract in its origin and description to be issued by its people in addition to a place subject to its ruling. It has an existing, valid, and legitimate purpose, its descriptions are correct, and it is not accompanied by a condition that would spoil it (Article 167, Jordanian Civil Code). A correct contract is that valid contract which is free from any defect in its elements and descriptions, which is achieved if the contracting parties are qualified, and the place and reason are combined, so when these conditions are met and the contract is not dependent on a condition or added to its term, it is considered valid" (Sultan, 2022). On the other hand, the contract may be non-existent, such as someone who is born dead. The Jordanian legislator describes the invalid contract as not legitimate in its origin and description due to the imbalance of its pillars, which is mutual consent, as in the case of the issuance of a disposition from the undistinguished young, in its place or reason. Since the motive is illegal or the form imposed by the law for its holding as it is in the formal contracts in which the law requires a certain formality, for example the transfer of ownership in real estate and vehicles, the law stipulates a condition related to the necessity of registering it before official departments under nullity, which is the purpose of the Jordanian legislator in that. If the conditions required by law are met, this would lead to a judgment invalidating the contract.

According to the traditional jurisprudence, invalidity is divided into two types: absolute invalidity and relative invalidity. Absolute invalidity is the one that results from the failure of one of the conditions of convening required by law, as in the

case of failure of the formality pillar in a vehicle registration contract, and relative invalidity is when there is a defect in the objective elements, such as the presence of one of the defects of the will (Al-Omran, 2015).

Who has the right to claim nullity of the contract?

It is found that the text of Article 168 in the second paragraph of it has answered this question as it states that every interested party has the right to adhere to the nullity and the court may rule it on its own (Article 168/2, Jordanian Civil Code).

From the previous text, it is concluded that the Jordanian Civil Code has permitted anyone with an interest. The text has released that it is sufficient for the person to prove that he/she has an interest, as a condition for claiming the invalidity of the contract. The court may decide that on its own without the request of one of the litigants. If the court finds That the contract before it is void, it may rule its nullity without a request from the litigants, based on the text of the aforementioned article.

There is also an invalidity related to the procedures, as stipulated in the Jordanian Civil Procedure Code in several legal articles, among which is the text of Article (24) of it, which states that it is harmful to the litigant. It is not judged null despite its stipulation if the procedure does not result in harm to the litigant. Since the topic of the present study is related to the nullity of contracts, there is no need to expand on this framework. The theory of invalidity was derived by some Arab laws from Islamic jurisprudence as it is in the Jordanian and Iraqi laws, while some laws took the Western approach in building this theory as it is in the Egyptian law (Al-Fatlawi, 2014).

An aspect of jurisprudence has divided invalidity into absolute and relative. Absolute invalidity is what is in agreement with what is mentioned and required by the text of Article 168 of the Jordanian Civil Code. As for relative invalidity, it is considered by a part of jurisprudence as a suspended contract, which is considered conditional on the approval of a certain person as stipulated in Article 171 of the Jordanian Civil Code, which states that the disposition is suspended in the license if it is issued by a curious person in the money of another or from an owner in money to which the right of others is attached, or from a person who lacks capacity in his/her money and it is a disposition that is between benefit and harm, duress or if the law so provides (Article 171, Jordanian Civil Code).

Referring to the basis of the idea of the suspended contract, it is found that the Jordanian legislator drew it from Islamic jurisprudence that makes it correspond to the idea of "relative invalidity" or the voidable contract in French and Egyptian law and those who followed their path (Mansour, 2022). In any case, despite the multiplicity of jurisprudential theories that have been said about the invalid contract, the researchers believe that the contract has applied the legal nature of the contract, but it is possible that it is invalid, which requires the court examining it to rule its invalidity. The researchers also find that the Jordanian legislator has

specified The causes of the invalidity of contracts and the resolution of the controversy. In this regard, there is no room for jurisprudence in the presence of an explicit text through which the legislator defines the invalid contract.

Consequences of nullifying the civil contract

If the contract is void, then it is permissible for the contracting parties to adhere to its invalidity, which raises the question about who has the right to rule the invalidity of the contract. Here, according to the provisions of the law, the power to rule the invalidity of the contract is within the jurisdiction of the competent court. In some cases, it falls within the jurisdiction of the arbitral tribunal in the event that the dispute is referred to arbitration due to the existence of the arbitration clause or if the parties agree to refer the dispute to arbitration. Accordingly, In the event that the conditions for invalidity are met, the competent court and the arbitral tribunal may rule the invalidity of the contract, which results in the judgment of rescinding the contract and returning the situation to what it was before the contract. It is a real estate sale contract in which the formality condition was not taken into account (that is, it was concluded outside the Department of Lands and Surveys), or in the event that the contract was not registered in the Traffic Department, if it was a vehicle sale contract, then that contract is void by virtue of the law. Therefore, the subject judge must rule to rescind the contract and restore the situation to what the contracting parties were in before the contract. If the buyer has received the price or part of it, the ruling must be returned to the received price.

With regard to those who have the right to hold to invalidity, it was stated in the text of Article (168/2) of the Jordanian Civil Code that every person with an interest can hold to invalidity, and the court may rule it out on its own.

From the previous text, it is concluded that every person has an interest in upholding the invalidity of the contract, as it is not limited to the contracting parties, but it extends to everyone who has an interest in the invalidity of the contract. According to the text of the aforementioned article, the Jordanian legislator has permitted that creditor to demand the invalidity of the contract in order to protect his/her debt. It is also found that the court has the right to rule the invalidity on its own, that is, without a request from one of the litigants, and if the person has no interest in holding on to the invalidity, he/she may not Stick to the void contract (Al-Sarhan and Khidhr, 2012).

The question may be raised about the legal ruling if one part of the contract is invalid and the other part is true, what is the ruling in this case? Referring to the text of Article (169) of the Jordanian Civil Code, it is found that it stipulates that if the contract is void in one part of the contract, the whole contract is nullified, unless the share of each part is specific, then it is invalidated in the invalid part and remains valid in the rest.

From the previous text, it is deduced that the Jordanian legislator has arranged for the invalidity of one part of the contract to invalidate this entire

contract in principle, but there is an exception to this rule in the event that the share of each part is specified separately, then it entails a ruling for the invalidity of the invalid part and its validity in the correct part.

As for the ruling in the event that it is impossible to restore the situation to what the contracting parties were before the contract, Article 248 of the Jordanian Civil Code stipulates that if the contract is rescinded or rescinded, the two contracting parties shall be returned to the state they were in before the contract, and if that is impossible, a judgment for compensation shall be passed. Here, the Jordanian civil law has arranged for the termination of the contract or its rescission to return the situation to what it was before the contract, but in the event that it is impossible to restore the situation as in the event of the destruction of the thing, it entails a judgment for compensation. The value of compensation is estimated by experts and specialists based on Assigning the subject judge. As a result, one of the contracting parties is obligated to pay that amount to the other party.

Section Three

Reasons of invalidity of the administrative contract

It is clear by presenting the criteria by which the administrative contract can be distinguished from other civil contracts that the presence of the administration as a party to the administrative contract is no longer sufficient to consider the contract as administrative. The same applies to the contract's connection with the public utility. Rather, it must be added to these two criteria that the contracting parties have followed the law of public order and not the private law so that the administration's desire to use the laws of public order is revealed by the contract containing the exceptional terms that are not familiar or known in private law (Al-Sayyat, 2016).

Reasons for invalidating administrative contracts

Administrative invalidity is defined as the penalty that results from violating one of the legal conditions and the pillars of the administrative contract. The invalidity of administrative contracts is considered more comprehensive and broader than the invalidity of civil contracts. Administrative contracts are directly related to the public interest and the organization of public utilities. The administrative contract goes through many procedures for the purpose of reaching its final form. The authority owned by the administration in the future may contribute to deepening the idea of invalidity in the administrative contract (Kriko, 2020). An invalidity is considered an inherent condition of the contract from the beginning of its conclusion. Invalidity leads to the termination of the bond between the two contracting parties and stripping this bond of any legal effect. It is necessary to distinguish between the invalidity of the contract and the termination of the contract or the cancellation of the contract. The dissolution of the contract

as a result of a set of events occurring after the establishment of the contract that results in a retroactive effect is called cancellation, but if the concept of the solution is limited to the future, then it is called annulment. The commitment of the two contracting parties with the clauses contained in the contract is necessary, as the contract is essentially valid, but it may appear in it after one of the parties is not committed to performing its duties, in which case the other party has the right to request the termination of the contract in exchange for claiming its due compensation. The reasons for the invalidity of the contract can be summarized in the following points:

1. Invalidity as a result of the disappearance of one of the pillars of the administrative contract, such as consent, place, reason, and form in formal contracts.
2. Annulment as a result of a breach of one of the conditions that guarantee the validity of the administrative contract. A void administrative contract is a contract that did not include all the conditions that prove its validity, such as lack of eligibility or a defect in the administration, such as the administration's compulsion and coercion of the other contracting party. If all the elements of the administrative contract and all the conditions that prove its validity are met, it is considered valid and has legal implications. In the event of a defect in its pillars or conditions after its establishment, it is not said that the contract is void. Rather, this leads to annulment, as invalidity is due to a defect in the formation of the contract in the first place, while rescission is due to a defect in the implementation of the contract after its establishment (Al-Jubouri, 2021).
3. There are two main types of cases of invalidity of administrative contracts, namely absolute invalidity and relative invalidity. Absolute invalidity includes neglecting and disregarding one of the pillars of the administrative contract, as it is legal and does not exist, and its presence and absence is due to the failure of one or more pillars of the administrative contract. The administrative contract is absolutely void in the following cases (Al-Sayyat, 2016):

1. Unconsent between the contracting parties, such as the lack of an offer and acceptance, or if the contract is concluded through an unqualified person (such as an insane person), or by influencing the counterparty under duress and compulsion.
2. Failure of the store, such as if the store does not exist, is illegal or is not identifiable.
3. Lack of reason, and illegality.
4. The form of the administrative contract is left behind if the law requires a specific form of the administrative contract.

As for the invalid contract, it is relatively invalid. It is considered valid, but it is voidable, as the invalidity is relative in the event that one of the conditions for the validity of the contract fails due to a lack of eligibility for one of the parties. The relative invalidity is viewed from a different point of view, which is the nature of the

interest being protected; That is, if the conclusion of the contract resulted in a violation targeting the private interest, and the absolute invalidity is if the conclusion of the contract resulted in a violation targeting the public interest (Abdulaziz, 2022).

The researchers have already talked in section one of the present study about the concept of administrative contract and its pillars, such as consent, location, reason, and formality. An example of these procedures is the administration's lack of respect for the principle of advertisement. The advertisement is like the offer submitted by the administration, in which it announces its intention to conduct the contract. The purpose of this procedure is to make room for the largest possible number of individuals. The administration must abide by the conditions required by the legal texts. On this Basis, The French Council of State ruled that the auction is invalid if it is not conducted in the manner imposed by law. It is also ruled invalid if the period prescribed for the announcement is not respected.

Among the procedures in this context is also obtaining permission to contract or take previous advice. The general rule in consulting is that it is of two types in terms of its legal capacity, including non-binding consultations, which is a type of procedure that if it is not done, the administrative contract is not invalidated. But if the legislator makes the subject of the consultation binding on the administration, then the rule of authorizing the contract is taken. The administration's violation of this procedure leads to the invalidity of the administrative contract; Thus, it becomes clear that the failure of the administration to obtain the mandatory advice or permission to contract leads to the invalidity of the administrative contract (Kriko, 2020).

In addition, among the cases of invalidity of the administrative contract is the administration's failure to observe the principle of equality between the competitors. The authority of the administration to choose the contractor with it is a restricted authority and every decision of the administration during the contractual process that violates the principle of equality between the competitors is invalid. Examples of this include exempting one of the competitors from paying the financial guarantees or refraining from signing the contract without a legal excuse. It is also agreed in jurisprudence that the administration's violation of the rules of jurisdiction means that the contract is signed by a non-competent administrative authority. This leads to the invalidity of the administrative contract. The same applies to the authorization to sign if the authorized exceeds the limits of the authorization (Shuaib, 2015).

Finally, it should be pointed out that there are cases that lead to the invalidity of the administrative contract during the implementation phase of the administrative contract, for example, the total waiver by the contractor with the administration without taking the approval of the administration, and also in the event that the administration amends the terms of the contract without taking into account the rules of administrative legality so that the contractor with The administration adheres to the nullification of everything to the contrary, and it is stipulated in this amendment that

it does not exceed a certain limit so that the contractor is before a new contract that turns the economics of the contract upside down. These are the most prominent cases of invalidity of the administrative contract according to the present study.

Conclusion

This study tackled the most prominent concepts related to the administrative contract in terms of its concept and exceptional conditions. Then the researchers tackled cases of invalidity in civil law and then in administrative law. A set of results were obtained, including:

Unconsent between the contracting parties is considered as non-offer acceptance and failure of the location. For example, if the location does not exist, illegal, or appointed, in addition to the failure of the administrative contract form, if the law stipulates a specific form of the administrative contract, the most important reasons that lead to the invalidity of the administrative contract are the pillars that control the administrative contract, and the violation and neglect of one of these pillars leads to the absolute invalidity of the administrative contract. It is considered valid and has legal implications if it has all its pillars.

Recommendations

It is important at the present time that the world is witnessing wide developments in all fields and at various levels that a legal system for administrative contracts be established in a way that keeps pace with the development taking place in the world and fits the modern trends towards managing public facilities by private law persons represented by giant companies and international companies. It is also important that the legal system of administrative contracts be a flexible and easy system that enables private companies to cooperate with the state in order to develop the goods and services provided by government organizations, in addition to the need to expand the jurisdiction of the Administrative Court.

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