

## **Fundamental Rights & Obligations in International Administrative Contracts**

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### **Abstract**

*The aim of the research is to demonstrate the most important rights and obligations of the Department in international administrative contracts. One of the most important rights conferred upon the Department is its right to modify and terminate the contract by its individual will. It is a legitimate right of law that the Administration is responsible for the steady and systematic functioning of public utilities, but nevertheless, those rights conferred on one side "are not absolute, in other words, the Administration may not abuse the use of those rights or otherwise their implementation is flawed by a deviation of authority. In contrast, there are also rights and obligations incumbent on the other party (foreign investor), since one of the most important rights granted is the need for adequate material guarantees and a benefit of compensation, whether in whole or in part in accordance with the principles of financial balance.*

**Keywords:** *Rights, Core Commitments, Administrative Contracts, International Contracts, Foreign Investor.*

### **1. Introduction**

Contracts as a general asset shall be governed by the principle that a pacta sunt servanda contract means that the principle of binding force of the contract prevails between its parties. For its contractors, the contract is regarded as a law or in a more correct sense as their own law, although the contract originates in agreement between them. As a consequence of the fact that the contract is the law of its parties, neither of the parties may, by cassation or modification of its provisions or be exempted from its effects except to the extent permitted or prescribed by law, in that the administration has committed itself to the contractor's obligation towards it.

### **2. Study Significance**

The importance of the research lies in the basic rights and obligations in international administrative contracts from both theoretical and practical perspectives. From a theoretical point of view, there is no doubt that there is a specialized study that deals with basic rights and obligations in international administrative contracts, which are rare in Iraq, according to our knowledge, which means adding material that would supplement the legal library. A recent study, opening the way for future studies on this subject, which will benefit researchers and those interested in this field.

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As for the practical aspect, it is clear that it provides a legal analysis of the rights and obligations of the parties to the international administrative contract, and standing on the position of the legislation in the legal regulation of this type of modern contract, which the administration can benefit from, through economic development projects, by contracting with the foreign investor, as well as from By analyzing legal texts and opinions of jurisprudence, and from this it is possible to identify shortcomings and weaknesses, make proposals for that, solve problems, and develop answers to questions that may be asked about that.

### **3. Study Problem**

The problem of the study lies in the modernity of international administrative contracts in terms of stating the most important rights and obligations of the two parties to the contract, since the general rule that governs contracts is “the contract is the law of the contracting parties,” and it may not be annulled or amended except by agreement of the contracting parties. However, this rule may be disrupted in the field of international administrative contracts because the law and the judiciary recognize that the administration, in order to carry out its work and ensure that public facilities operate steadily and regularly, has broad powers, including its ability to monitor, supervise, and amend the contract, either by increasing, decreasing, or stopping, whenever it deems that this is an appropriate method to achieve its goals. At the same time, the administration must commit to and identify successful means and solutions that preserve the rights of the contracting party, ensuring that public facilities continue to provide services for the public interest if the contract concluded between them is exposed to disruption as a result of administrative or economic risks.

### **4. Study Method**

For the purpose of addressing the research topic and answering the questions mentioned in the study problem, the study attempted to discuss and analyze this problem by highlighting the methodology that we will adopt in the study as we have adopted in the research the descriptive approach enhanced by the analytical approach.

### **5. State's Rights & Obligations in the International Administrative Contract**

That the conclusion of international administrative contracts entails a set of rights and obligations on the part of the Contracting State, i.e. the administrator rights ", such as the right to supervision and direction, the right to amend the contract and the right to terminate the contract, consisting of nationalization, appropriation and liquidation, It has a number of obligations, including during the negotiation period and during the implementation period, which consist of providing administrative facilities and protecting the foreign investor.

#### **A. Rights of the Contracting State.**

1) **Right of oversight and Supervision:** The rights and privileges enjoyed by the administration in the face of the contracting party with it are determined for it according to the general rules that govern international administrative contracts, including the control and supervision authority that is exercised by the state over the other party, where it is considered one of the most important powers granted by law to the administration, in order to verify the extent to which the foreign party applies the financial and technical conditions stipulated in the contract concluded between them. As the administration cannot give up its responsibilities in monitoring the implementation of international

administrative contracts because it derives its right to control from the idea of public utility and the continuity of its progress in a steady and regular way.

One of the most important administrative contracts at the international level is oil and gas contracts, as these contracts are often spread in countries rich in oil and gas wealth, where concluded between the State and foreign investors of another State, the Administration monitors the execution of such contracts, often dispatching bodies or committees to monitor their execution because of the importance of such contracts, first, oil and gas search contracts, their use, marketing and utilization of their resources are priorities of the State's contracts, and the other factor was that they were genuine contracts and were of great importance to developing countries' Governments in particular.

2) **Right of Amendment:** International administrative contracts with foreign investors are often relatively long-term; During that period, changes, whether political, economic or social, occur, since the Department is responsible for keeping abreast of these circumstances and variables and maintaining the steady and systematic functioning of public utilities, the law confers on it the right to modify but within certain limits in international administrative contracts, consequently, the Administration's power to amend the International Administrative Contract is considered to be an established right of the Administration, which may use it, even if the contract does not contain a provision authorizing it but goes further, even if the contract contains a provision prohibiting it if its execution is incompatible with the public interest. However, provided that the Administration does not arbitrarily use this right, in which case it is obliged to compensate the foreign party for such arbitrariness.

3) **Right to Terminate a Contract:** A State has the right to terminate its contract with the foreign party whenever there are provisions or regulations permitting the administration's right but provided that the Department of Public Information aims to achieve the interest of the General Facility or the public interest, The continued steady and systematic functioning of public facilities and the failure to abuse their discretion in this regard as the Administration must comply fully and indefinitely with the needs of the General Annex because the International Administrative Contract is directly linked to the General Annex, which is often subject to change and modification, The contract must therefore have the same degree of flexibility as the facility. Otherwise, the contract is stagnated and the contract concluded is overturned and the benefit of the contract between the parties is lost, as it must take into account the procedures provided for. and not to deviate in the use of such authority as the purpose of the administrator to achieve its financial interest only or to terminate the contract as soon as the foreign party has breached the obligations evidenced by the contract. Such a breach must be substantial and not an ordinary breach, such as the contractor's failure to respect the duration of the contract, breach of the terms of the contract, subcontract, waiver of the contract to others or the bankruptcy of the foreign company performing company.

**B. Contracting State Obligations:**

1) **Commitments During the Negotiating Period:** International administrative contracts are very important to affect countries' economic and investment realities. Therefore, they go through several stages prior to the conclusion of the contract, including the negotiating phase. "It is that preliminary stage at which the terms of the contract are examined and discussed. At this stage, the contract has not been concluded but there are continuing offers and offers because it is considered to be one of the most dangerous stages of the contract ever because the absence of negotiation leads to an imbalance of the contract due to the lack of parity between the parties and the incursion of one of the parties to the contract".

2) **Obligations during the contract implementation period:** We recalled that there are obligations incurred by the Contracting State prior to the conclusion of the contract and

its entry into force. There is another type of obligation during the period of the contract's operation, i.e. during the period of its implementation, as follows:

- **Provision of administrative facilities:** The Contracting State is obliged to provide administrative facilities to the foreign party under the terms of the contract concluded between the parties, including facilities for the entry of machinery, equipment, devices, means of transport of materials and vehicles with construction uses and all necessary for the construction of new projects or the expansion of existing projects, as there are other obligations of a financial nature, namely tax exemption; customs imposed on the foreign party, which are a tool to guide investment and attract foreign investors by reducing or exempting taxes on a particular activity, may have a tax exemption period of 3-5 years depending on the nature of each activity in order to facilitate the project's implementation and timely and timely completion.
- **Provide the necessary protection:** This is intended for the investment host State to undertake to protect the foreign investor from risks to the territory of the Contracting State as well as not to discriminate in treatment between the foreign investor and the national investor and to ensure that his or her capital is protected from the instability of laws so that the foreign investor feels more assured about his or her investment; the source of that obligation was the parties' agreement in their contract or the laws of the host State encouraging investment, there are types of such risks, including commercial risks, which the Contracting State has little liability such as the likelihood that the foreign investor will earn less than expected profits, and for the second type of non-commercial risk, which may fall within the political events to which the State may be exposed and which have a duty to protect the investor with all the effort and care it possesses.

## **6. Rights & Obligations of the Foreign Party in the International Administrative Contract**

International administrative contracts between the parties entail a range of rights and obligations of the administration of the foreign contractor. The contractor's right to claim his or her rights, including the right to receive a financial exchange for his or her work and the right to maintain a financial balance, is punishable by its violation. There are also a number of commitments on the Department's direction that must be made when the contract is executed and as follows:

A. **Foreign party's Rights in the International Administrative Contract:** Through its contracts, including the International Administrative Contract, the Department seeks to achieve public benefit and the systematic and steady functioning of public utilities. This also applies to the foreign party where the contractor's conclusion of such contracts seeks to realize for a material return any profits for its work which is considered to be the harvest of the contractor from the administration or from the beneficiaries or from both. This correspondence varies according to the contracts entered into. Perhaps the most important picture of this counterpart is the price and fee and the right to maintain the financial balance of the contract. Therefore, in the face of management, the foreign investor enjoys a number of rights and we will clarify each of them as follows:

1) **Right to Financial Compensation:** The contractor with the Administration seeks to achieve material interests in respect of the contractor's monetary contract for the goods or services it has provided to the Administration in accordance with its contractual obligations. This exchange varies according to administrative contracts. This correspondence takes multiple forms, including:

- **Price:** The price is an important element of the international administrative contract because it shows the importance of the legal relationship and the economic process to be achieved through the contract to be concluded. In view of the fact that international administrative contracts take a long time to implement, the parties pay great

attention to the element of the price, as it is carefully, clearly and precisely drafted and is free from any ambiguity or ambiguity. The future circumstances and expectations surrounding the international administrative contract are always taken into account, as the price is known in the corresponding contract for the performance of the service.

- **Fee:** The fee is defined as the Department's unique financial counterpart and deserved by the commitment to the public utility commitment contract, especially in concession contracts. The fees are determined either by stipulating in the contract, or fixed or maximum fees as required by the public interest, this monetary exchange is one of the conditions that the foreign contractor receives from the administration in the concession contracts and after being collected from the beneficiaries of the facility in question.

2) **Right to Maintain the Financial Balance of the Contract:** This right is one of the most fundamental principles in the theory of international administrative contracts, as it is included in these contracts for two basic considerations, be justice and ensure the steady and systematic functioning of public utilities. During the performance of the contract, there may be a number of events that could overwhelm the foreign contractor and thus affect the financial position; the financial balance of the contract is disrupted by the Administration's modification of the contract or by a procedure that would harm the foreign contractor. (The theory of the prince's act), or because of material circumstances (the theory of unexpected material difficulties) or because of normal circumstances (theory of emergency circumstances) this would create a basic right of the contractor to cover those burdens in such a way as to restore the financial balance of the contract as it was at the time of commencement of the contract.

- **Prince's act theory:** This theory is one of the first to emerge in order to establish a kind of financial balance of the administrative contract between the contractor's rights and obligations. This theory was created by the French Conseil d'Etat and applied for all administrative acts issued by the public authorities of the State resulting in a breach of the financial balance of the contract. Thus, the theory of the prince's act or as some scholars call it (the prince's act) may be defined as an act issued by the administration under its general authority in a sudden and unexpected manner and without fault on its part resulting in abuse or damage to the legal status of the contractor in their contract, overturning the economics of the contract and breaching the contract balance in international administrative contracts. It entails the Administration's obligation to compensate the victim for all damages and losses suffered, additional expenses and fees, as well as the loss of profits resulting therefrom, in order to ensure a return to the financial balance of the contract as it was at the time of the conclusion of the contract.

- **Theory of unexpected material difficulties:** The theory of unexpected material difficulties is one of the important theories in administrative law approved by the French Conseil d'Etat, where, during the execution of the contract, exceptional and unforeseen material problems and difficulties confront the Contracting Party with the Administration are not required to make the contract impossible but severely burdensome and costly for the Contractor not expected at the time of the Contracting to receive full compensation for all the damages incurred as a result of these difficulties, Therefore, it is the contractor's right to be fully compensated for the damages caused by these difficulties and to incur additional expenses to address these difficulties. The basis of this theory is to achieve justice between the parties to the international administrative contract and to reconcile their common will. The importance of this theory is often highlighted in public works contracts.

- The application of this theory has several conditions, including that such difficulties would be emergency and would not have been foreseeable at the time of the conclusion of the contract, that such difficulties would be of an extraordinary material and extraordinary nature and not merely ordinary or simple difficulties that could easily

be overcome, outside the parties' control, and that such difficulties would make the performance of the contract extremely burdensome for the contractor, the application of this theory, if the conditions are met, implies that the contractor with the Administration shall be entitled to full compensation for damages arising from these difficulties. The contractor must also continue to fulfil its contractual obligations in view of the international administrative contract's association with the General Annex and the public interest requirements. The public interest must therefore prevail over the private interest in order to conduct public facilities in a steady and regular manner, despite the physical difficulties. These difficulties do not make it impossible to perform the contract, since where it is impossible to implement the force majeure theory and although the contractor continues to perform its contractual obligations in the event of unexpected material difficulties, there is another corresponding obligation for the contractor to obtain compensation from management for damage caused by unexpected material difficulties, for example, as if the public works contractor were to discover that the geological composition of the land to which it will deal is incompatible.

- Theory of emergency conditions: The theory of emergency circumstances is a judicial theory that the French Conseil d'Etat was credited with appearing on the occasion of its dismissal in the Bordeaux lighting case. One of the jurists knew the emergency circumstance: "Every public accident and subsequent formation of the contract, unexpected during contracting, it results in an imbalance of benefits arising from a contract that is slowing down for or beyond the term of its contract, so that the debtor's performance of its obligations as imposed by the contract becomes severely burdensome and threatens it with an extraordinary loss of traders' losses, such as the departure of the commodity of the debtor's obligation to supply it from pricing, or an unexpectedly high price.

#### B. The Foreign Party's Obligations in the International Administrative Contract:

The contractor of the Administration shall perform a number of obligations included in the contract and we shall clarify all such obligations of the foreign contractor of the Administration:

- 1) Contractor's Commitment to Personal Execution: The notion of personal consideration is one of the basic ideas in the area of contract conclusion in general both within the scope of civil and administrative contracts and since the international administrative contract is closely linked to the General Annex, special and personal considerations are taken into account in the contractor, including technical and financial considerations. In order to ensure proper implementation of the contractual terms set forth in the contract and to meet the requirements of the public interest, the Contracting Party to the Administration must perform the contract in person as a general rule but may waive the contract to others which is intended to waive all obligations and rights of the Contractor to another person to be placed in full execution. However, the governing body's consent is required and whenever the administration approves this waiver, the new contractor replaces the original contractor in the performance of the obligations. In addition, subcontracting, which is intended to be the legal conduct through which the contractor entrusts third parties to perform part of the original contract, may be possible but remains fully responsible for the performance of the contract.

- 2) Commitment to the Implementation of the Contract Within the Agreed Dates: The foreign contractor is obliged to perform the international administrative contract within the times specified in the contract and in accordance with the terms contained therein, because the projects of such contracts are often linked to public service, the proper functioning of public facilities and any delay in the implementation of such projects will result in damage to the public interest. Consequently, action may be punitive, such as the termination of the contract by the administration or the claim for compensation by the

foreign party for the delay in carrying out the work within the deadlines set by the foreign party's contract.

3) Foreign Party's Commitment to Human Development & National Employment Training: Often, in international administrative contracts, special conditions, including training for local workers, are included in the future and in preparation for replacing them with foreign labour, in order to improve the quality of production, increase its quantity, reduce costs, make better decisions, reduce workers' mistakes and develop their willingness to accept new tasks and responsibilities, because training improves the individual's capabilities, develops his skills, and needs the new worker as the old worker in order to improve the quality of life in different areas through the use of other State information service Economically advanced because without a developed human force capable of absorbing change, the State cannot keep pace with the world unlike other countries with advanced economies. There has been a disagreement among scholars about the nature of this obligation. Is it an obligation to achieve an outcome or an obligation to take care? One scholar considers that this obligation is an obligation to achieve an outcome and not to take care so that the foreign contractor does not shirk his evidence that he has done reasonable care to carry out the work required of him.

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