

Management Authority in Monitoring the Implementation of the Concession Contract : A Comparative Study

Basim Abdulkareem Hasan Al-Jhayyish, Muhammad Issa Abdullah
Faculty of Law, Islamic University of Lebanon, Lebanon

¹*Received: 18 March 2024; Accepted: 17 June 2024; Published: 26 June 2024*

ABSTRACT

The concession contract occupies a prominent place among administrative contracts, due to the important role it plays as a means of management in managing its public facilities, and what this requires of applying the principles that govern the operation of facilities, such as ensuring their regular and consistent operation. The contracting administration that owns the project has the authority to monitor the implementation of the contract in the service of the public interest. The authority of the supervisory administration has become one of the recognized topics, and does not raise controversy or doubt about it, but the discrepancy emerges from whether the administration's authority to control is explicitly stated in the text of the contract or not mentioned in the text of the contract, or The oversight authority is stated in a law or regulation or not, and thus the administration has the right to monitor the establishment of the public facilities that are the subject of the obligation, and its progress from the technical, administrative and financial aspects, in addition to amending the obligor's method of managing the public facility and dealing with the public of beneficiaries.

INTRODUCTION

The concession contract is considered one of the most important and oldest administrative contracts. It is of great importance because through it the state can entrust an individual or company to manage a public facility and exploit it in exchange for fees collected from the beneficiaries, subject to the basic rules governing the operation of public facilities in order to achieve public service and improve the performance of their provision. As a result of the importance of this contract, the administration's authority to supervise its implementation is a given, whether when establishing the facility or during its management, from the technical, administrative and financial aspects.

Research Importance

The issue of the administration's authority to monitor the implementation of the concession contract acquires great and broad importance, as it is one of the most important administrative contracts in view of the expansion of reliance on it in the management of economic public facilities, not only in Iraq, but in many countries of the world on the one hand, and on the other hand, the studies that When it deals with the concession contract, it focuses on studying its effects without addressing the problems resulting from its termination, especially if its termination is premature, that is, before the end of its term.

Objectives of the study

This study aims to understand the concept of the concession contract, the authority to control it, the legal basis that the administration uses to impose its authority therein, the scope of exercising these powers, and the effects that result from their exercise, for the functioning and regularity of public facilities, and for the services that the public beneficiaries receive.

¹ *How to cite the article:* Al-Jhayyish B.A.H., Abdullah M.I. (June 2024); Management Authority in Monitoring the Implementation of the Concession Contract : A Comparative Study; *International Journal of Development in Social Sciences and Humanities*; Vol 17, 50-62

Research Methodology

For the purpose of covering the aspects of the subject of our research, we adopted the descriptive and analytical approach based on collecting and analyzing legal information from various relevant studies, books and research, and comparing legal legislation and judicial rulings in France, Egypt and Iraq.

Research problem

The research problem, “The authority of management to monitor the implementation of the concession contract,” revolves around answering several questions to unravel the contents of this topic, the most important of which are: What is the definition of the concession contract? What is the concept of the administration’s authority to supervise this contract, which constitutes a violation of the contract rule, the Sharia of Contracting Parties, in administrative contracts? What is the legal basis that the administration adheres to? What is the scope of the administration’s authority to supervise? What are its effects and types? These and other questions, we will try to answer them in light of this legal study.

Search Plan

The study of the research topic, “The authority of management to monitor the implementation of the concession contract,” requires dividing it into two sections. The first section includes the nature of the concession contract and the concept of control authority and its legal basis, by dividing it into three demands. In the first, we address the concept of the concession contract, and in the second requirement. We focus on the concept of oversight authority, and in the third requirement we highlight the legal basis for oversight authority. The second section includes the scope of oversight authority, by dividing it into three demands. In the first, we explain technical oversight, in the second, we address administrative oversight, and in the third, we focus on financial oversight. Then we end our research with a conclusion that includes the essence of our findings and recommendations.

THE FIRST TOPIC: THE NATURE OF THE CONCESSION CONTRACT, THE CONCEPT OF CONTROL AUTHORITY AND ITS LEGAL BASIS

The specificity and subjectivity of the concession contract clearly appears in the authority of oversight exercised by the contracting administration in the field of its implementation, as it is a guardian of the public interest and responsible for the proper implementation of projects, as it is the administration’s duty to monitor the implementation of the contract, which constitutes an essential aspect of the administration’s functions and duties, so it assumes oversight automatically. In accordance with the powers granted by law, or as a result of the emergence of administrative objections or disputes between the administration and its contractor, in order to detect errors and deviations in implementation to ensure that work is conducted in a harmonious manner in order to achieve the goals sought by the administration, which are represented by its care for the public interest and its satisfaction of the needs of individuals.

The administration’s oversight of the contractor in the field of implementation of the administrative contract is one of the rights and powers it possesses vis-à-vis the contractor. Monitoring is also an obligation not only for the contractor, but also for the administration. For the administration, monitoring the contractor is considered a right and a duty at the same time, on the basis that the rights and powers the administration possesses that the law has granted it in the field of implementing the administrative contract are nothing but a means that it uses with the aim of achieving public benefit.

Thus, it can be said: There is a consensus that the contracting administration that owns the project has the authority to monitor the implementation of the contract in the service of the public interest. The authority of the supervisory administration has become one of the recognized topics, and does not raise controversy or doubt about it, but the discrepancy emerges from the explicit statement of the administration’s authority to monitor in the text. The contract whether it is mentioned in the text of the contract, or whether the control authority is mentioned in a law or regulation or not. In order to shed light on oversight and its legal basis, we must explain the concept of the concession contract in the first requirement, and focus on the concept of oversight authority in the second requirement. Ne, and addressing the legal basis of the oversight authority in the third requirement.

The first requirement: The concept of the concession contract

The concession contract is defined as: “It is that contract, in which a public authority entrusts another party with the total or partial management of a public facility, where the latter bears the investment risks (). Another defined it as “an administrative contract according to which the obligor (whether an individual or a company) assumes his responsibility.” Managing a public economic facility and exploiting it in exchange for fees charged from the beneficiaries, while being subject to the basic rules governing the operation of public facilities, as well as the conditions included by the administration in the concession contract.

The French Council of State has stated its definition, saying: “It is a contract that entrusts a private person or company to implement a public facility or realize a public facility, at its expense, with or without financial aid or guarantees, while giving this person the right to receive compensation from the beneficiaries of this facility or beneficiaries.” From the Public Facility (). As defined by the Administrative Court in Egypt, “The commitment of a public facility is nothing but an administrative contract under which an individual or company undertakes to perform, at its expense and under its financial responsibility, an assignment from the state or one of its administrative units in accordance with the conditions set for it to provide a service to the public.” In exchange for permission to exploit the project for a certain period of time and to seize the profits ().

In light of the above, a concession contract can be defined as a contract that entrusts management to an individual or company with the task of managing a public facility and exploiting it through workers and funds provided by the obligor and at his responsibility in exchange for charging fees from the beneficiaries of this facility for a period specified in the contract, with the obligor being subject to the basic rules of operation. Public facilities as well as the special conditions included in the contract.

From the above, the most important basic characteristics of the concession contract can be stated, which are as follows:

1. It is an administrative contract, as the administration has a number of powers, the most important of which is the authority of the administration in technical, administrative and financial control, towards the contracting party during the implementation phase of the contract, with the obligor being subject to the basic rules for the operation of public facilities as well as the special conditions included in the contract ().
2. It is a contract binding on both sides, as the concession contract entails corresponding obligations.
3. It is a time contract, as it is a fixed-term contract. Legislation often specifies a period of time and the concessionaire bears the project expenses ().
4. Ownership of the facility contracted in the commitment contract remains with the administrative authority granting the concession, even though the concessionaire has the right to manage the facility and invest in it for a long period ().

The second requirement: The concept of oversight authority

To determine the concept of the management’s authority to monitor the implementation of the concession contract during the implementation phase of the administrative contract by the contractor, it is necessary to clarify the oversight authority according to two ethnic meanings.

First: the narrow meaning

The administration has the authority to control and supervise the implementation of the contract, and this is an established right for it in all types of administrative contracts as it is a party to the contract (). The administration’s right to supervise the contractors during the implementation of the contract in this sense is limited to verifying that the contractor proceeds with the implementation of the contract in accordance with its terms. That is, according to the narrow meaning, the authority to supervise on the part of the administration is synonymous with the meaning of supervision, and there is no dispute about this right (). Control here means supervising implementation, and through this procedure the administration can ensure that the service subject to the concession contract is performed for its beneficiaries as stipulated in the contract.

According to the previous meaning, supervision is the minimum of the rights enjoyed by the administration in the implementation stage, and surrender in this sense is unacceptable, because supervising the contractor and ensuring that he is implementing the contract in accordance with the conditions that were agreed upon between them is not only indeed, it is the administration's duty. What is more, this right (the right of supervision) can be found in private law contracts that are characterized by equality between the contracting parties.

Here a question arises: If the commitment contract omits management's authority to supervise, can management carry out oversight outside the texts without the authority to direct? To answer, it can be said: The administration has the right to supervise concession contracts even in the absence of a text. It can also enter the places where the facility, warehouses, workshops, and factories are used, or receive some documents from the contractor to view and examine them, conduct investigations, or receive complaints from beneficiaries. And deciding on it, and oversight may take place in the form of legal acts, such as instructions, warnings, or executive orders directed to the contractor, and oversight in this sense takes place during the implementation of the contract as it is a right established for the administration even if it is not stipulated in the contract ().

Thus, it can be said: The management's authority to control, in the narrow sense, is for supervision only, and is limited to implementing the concession contract and verifying whether the implementation is in accordance with the terms of the contract and technical specifications or otherwise. In this case, management's oversight takes the form of physical actions, such as entering the facility's exploitation areas. Or receiving some documents from the contractor to review, examine, verify their authenticity and certify them. Management supervision is not formal, but rather detailed supervision of all elements involved in the implementation of the contract for the purpose of avoiding obstacles during implementation and taking the appropriate decision to resolve obstacles and difficulties at the various stages of implementation.

Second: the broad meaning

In the broad sense of supervision, it is meant that the administration directs the contractor during the implementation period, which results in the contractor bearing additional burdens not stipulated in the contract. Therefore, this represents a privilege that has no parallel in private law contracts. This is because if supervision were to mean limited to the process of supervision, it would become an ordinary and familiar authority that does not represent a privilege for the administration, because the real privilege is the administration's acknowledgment that it may violate the supervision system and giving it the right to intervene in the implementation stages ().

In this sense, different from its predecessor, according to the concept of jurisprudence and the administrative judiciary, as the right of oversight here includes the authority to direct, that is, the right of the administration to direct the implementation work and choose the most appropriate path that leads to it. This meaning implies an intervention by the administration that has a deeper impact than its intervention as a supervisory authority. The administration is not limited to ensuring that the contract is implemented in accordance with the conditions contained therein. Rather, it intervenes in directing implementation work by choosing the most appropriate methods and conditions that it deems appropriate for the smooth functioning of the facility.

A question may arise: Can the administration exercise the authority of oversight and direction in the event that the authority is not stipulated? To answer, it can be said: The administration's right to control and direct is an established right and does not need to be stipulated in the contract on the basis that the administration is responsible for managing public facilities and running them regularly and steadily, and possesses this right as a public authority (). Also, the administration does not need to resort to the judiciary in order to force its contracting party to comply with its directives and orders regarding how to implement the contract, because it, the administration, enjoys the privileges of direct implementation within the authority of control and direction (). This administration authority is related to public order, and this means, of course, that the administration may not waive it or even restrict it, and all the administration has to do is take into account the subjectivity of the administrative contract based on the idea of public utility, and preserve the essence of the contract, which is the element of consent (). Thus, this authority of oversight and direction is not limited to the financial aspect only, but rather includes the technical and administrative aspects and remains present and linked to the existence of the public facility ().

Based on the above, interpreting the administration's right to oversight according to the broad meaning is more consistent with the administration's goal aimed at achieving the public interest and its function and responsibility in maintaining the proper functioning of the public facility regularly and steadily, given that the administration's hand is

more free and enables it to bypass the right of supervision and control. It extends towards directing the contractor and intervening in changing some conditions, even those not stipulated in the contract, which it deems more beneficial and serviceable to the functioning and regularity of the public facility ().

Here a question arises: What is the type of oversight in which instructions for implementing government contracts are taken into effect? After reviewing the amended texts of the Iraqi Government Contracts Implementation Instructions No. (2) of 2014, it became clear that they did not address the administration's right to direct its contractors, but rather were limited to the terms supervision and follow-up in many places in them. This indicates that they tend to take the narrow meaning of administration control over the implementation of government contracts. Rather, it also did not use the term oversight, which could include the meaning of supervision, follow-up, and direction, and this confirms that it meant the narrow meaning of management oversight of the implementation of government contracts, without the broad meaning.

The second requirement: The legal basis of the oversight authority

The management's authority to monitor in concession contracts becomes more widely apparent than in other administrative contracts, by changing the conditions of the contract, because the management has the authority to monitor in a way that achieves the purpose of concluding the contract. The management's authority to monitor has become one of the recognized topics, and does not raise controversy or doubt. Regarding this authority, but the discrepancy arises from the statement of the administration's authority to monitor when it is explicitly stated in the law or contract? Or is it an inherent right that the administration possesses without the need for a text, whatever its type? We will shed light on these and other questions according to the following:

First: The oversight authority established by text

The administration's authority to supervise is clearly evident when implementing the administrative contract in the state's legislation, the administrative contract, or in the book of conditions. This is a typical picture of the administration's exercise of this authority, which is necessary and required, and an important guarantee for the benefit of the public facility.

In France, there are many laws that regulated the administration's authority to monitor during the implementation of the concession contract, and among these laws are the law of June 11, 1842, and the law of July 15, 1845. Which showed how the administration exercises control over companies committed to exploiting railways, as well as the law issued on 16 June 1984, which regulated the rules of oversight of Air France, as well as the Purchase Contracts Law of 1996, which clarified the administration's exercise of oversight ().

In Egypt, many legislations were issued regulating the administration's authority in oversight, including Law No. (129) of 1947, as stipulated in Article (868) of Civil Law No. (131) of 1948, and the executive regulations of the Egyptian Tenders and Auctions Law (89) of 1998, where Article (79) stipulates the following: "The contractor is obligated to follow all governmental and local laws and regulations relevant to the implementation of the subject matter of the contract, including obtaining the license. He will also be responsible for maintaining order at the work sites and implementing the orders of the management authority to remove anyone who neglects or refuses to implement the instructions." ().

As for Iraq, there are many texts in laws, regulations and instructions that regulate the administration's authority to monitor the implementation of administrative contracts. The most important of these texts in force are Articles (891-899) of Civil Law No. (40) of 1951, and Articles (12) and (13). From the Instructions for Implementing Government Contracts No. (1) of 2008, amended by Amendment No. (2) of 2014. On the other hand, the law sometimes grants the authority to monitor the implementation of the administrative contract to an administrative body other than the one that contracted, since oversight is one of its duties. Examples include: Those texts are the text of paragraph (4/a) of Article (10) of the bylaws of the Maysan Governorate Council, which states: "Monitoring and following up on all types of current and expected urban projects in the governorate" ().

Here a question arises: Do legal, contractual and regulatory texts establish the authority of oversight? These texts are not only considered to establish the authority of oversight, but rather are merely an organization of authority, considering that the authority of oversight is an original authority that exists in itself and is derived from the legal system of the administrative contract (). The administration's requirement to exercise the authority of Control in the contract means an explicit expression to take it into account.

Second: The authority of oversight that is not stipulated in a text

The authority of the administration in oversight finds its echo outside the contractual and regulatory texts, as the administration is responsible for performing services and satisfying public needs on a regular basis, and thus helping individuals does not negate that responsibility, if those needs of the public are satisfied in a bad way, and to confront that responsibility, its right is recognized. Supervising and directing the implementation of its contracts, even in the event of the silence of the contract and regulatory texts, it is an original authority, and therefore it is not permissible to waive it, or agree on anything that contradicts it ().

The prevailing jurisprudence and jurisprudence is that the administration's authority to monitor and direct exists even if there is no provision in the contract regarding it (), and this is what the majority of jurisprudence and jurisprudence in France, Egypt and Iraq said (). But they differed in determining the legal basis on which the administration's authority to monitor and direct is based in the absence of a provision thereof ().

In France, jurists disagreed about whether the administration has the authority to supervise during the implementation of the administrative contract in the event that there is no provision for this authority. There is a jurisprudential opinion that considers it wrong to consider the administration's authority to supervise as existing in the absence of a text. However, they made an exception in this case for public works contracts. They acknowledged the existence of authority even in the absence of a text. There is a jurisprudential opinion that denies that management has the power of oversight in commitment contracts when the contract is devoid of a stipulation of this power ().

In Egypt, the administrative judiciary has established that the administrative authority to monitor the implementation of administrative contracts has a dual legal basis, consisting of the idea of achieving the public good and what it includes in achieving the requirements of public facilities, which aims and justifies the existence of this authority, and the idea of the privileges of the public authority, of which the oversight authority is considered one of its applications (). The explanatory memorandum to Law No. (185) of 1958 emphasized the legal basis of the oversight authority and the right to monitor the obligor and considered it a basic right due to the idea of public utility and what its operation and regularity requires.

In Iraq, the Court of Cassation stated that "contracts conducted by government departments and institutions of a general economic nature are considered public utility contracts in which damage is presumed to be achieved simply by delaying their completion unless there is an acceptable legal excuse or reason for the delay" (). Thus, the prevailing opinion in jurisprudence and jurisprudence is that administrative control exists even without a text or basis derived from the idea of the public facility that is the subject of the contract.

Here a question arises: Is the administration's authority to exercise control that is not decided by text absolute and unspecified? To answer, we can say: The authority is not absolute in the sense that the administration may not use it to achieve a purpose that is not related to the public utility that is the subject of the contract, nor should exercising control result in amending the subject of the contract ().

At the end of this study, it can be said: The management's authority to monitor during the implementation of the concession contract is an established right of the management and is recognized even if it is not stipulated in the contract, regardless of the implementing agency, as this authority exists in itself even in the event of the concession contract being silent, as they are revealing texts. This authority is not created by it.

THE SECOND TOPIC: SCOPE OF OVERSIGHT AUTHORITY

The administration exercises its privileges derived from the texts or from the nature of the public facility during the implementation of the contract on a large scale. The administration's role is not limited to ensuring that the contract is implemented in a manner consistent with the conditions contained therein. Rather, it intervenes in directing the implementation work, and in this regard it exercises its jurisdiction in oversight in accordance with its privileges. Original. Thus, the administration has the right to monitor the establishment of the public facilities that are the subject of the commitment, and its progress from the technical, administrative and financial aspects, in addition to amending the obligor's method of managing the public facility and dealing with the public of beneficiaries.

The oversight authority finds its primary basis in the nature of the activity that is the subject of the obligation, and since the obligor is managing a public facility, he cannot be left alone to manage as he wishes in absolute freedom. Rather, he must be subject to the supervision of the administration in order to ensure that the public facility is always

within the limits of the purpose for which it is committed. Its primary goal is to satisfy a collective need that individual activity cannot fully satisfy. The administration in charge of managing public facilities resorting to others to do it on its behalf is not considered a waiver or abandonment of the public facility, or that removes the role of the state in monitoring, supervising, and bearing responsibility. Rather, it remains a guarantor and responsible before individuals for its management and exploitation, so the control of the state or the legal person remains in place. Its loss means the loss of an essential pillar of public facilities, and in order to carry out this duty, it intervenes in the affairs of the public facility as required by the public facility's interest, by giving directions and instructions that ensure the good functioning of the public facility ().

In order to shed light on the scope of the authority to supervise and control the implementation of the concession contract, this topic must be divided into three demands. In the first, we address technical oversight, in the second, we focus on administrative control, and in the third, we explain financial oversight.

The first requirement: Technical oversight

This is the control exercised by the administration to ensure that the process of exploitation and management of the facility proceeds in accordance with the technical conditions that were agreed upon in the body of the contract or the conditions books attached to it. This control is exercised by the administration through its employees by entering all places of exploitation as well as inspecting all Technical documents, maps and drawings, following up on the implementation process and conducting checks to ensure production rates. This control shall take place throughout the period of implementation of the contract until its final receipt, in order to ensure that the obligor implements the contract in accordance with what was agreed upon and that he carries out maintenance and maintenance operations throughout the period of exploitation, in order to ensure the regular and steady operation of the public facility.

The administration's exercise of oversight authority in the commitment contract finds its legal source in the regulations that follow. The administration is authorized to conclude a commitment contract, and therefore this authority exists even if it is not included in the texts of the contract, and if the contract stipulates it, it does not derive its existence from it because in this case it is revealed and not created ().

Here a question arises: Is the technical control authority affected in the concession contract if it is not stipulated in the contract? To answer, it can be said: The authority of the administration to monitor in concession contracts in the event that it is not stipulated in the contract or the book of conditions is limited and diminished compared to public works contracts. The reason for this matter is due to the right of the obligor to manage the public facility that is the subject of the contract, which makes its authority in the event that it is not Stipulated in the contract, it devolves towards mere supervision and follow-up authority without its right to intervene (direction authority)(). Thus, the state's choice to manage a public facility through a concession contract or commitment to public facilities is not considered a waiver or concealment on the part of the state from the public facility, but rather it remains a guarantor and responsible before members of the people for its management and exploitation ().

Here another question arises: Has comparative legislation regulated the management's authority in technical oversight during the implementation of the concession contract? To answer, the French Civil Law No. (78/12), issued in January 1978, regulated the administration's authority in technical oversight and made the intervention of the technical observer obligatory for large works. The administration relies on technical oversight to limit the possibility of defects appearing during implementation, and to disclose them promptly to ensure good quality. Implementation, in addition to revealing how implementation is carried out and the method of work, through a detailed review of the mechanism and method of implementing the work, and ensuring that the contractor has implemented his obligations in accordance with the terms of the contract and technical specifications (). Enabling the administration to match the materials used with the technical specifications, based on the schedule of quantities and the specifications document. The specifications document is the source of information and instructions in the field of implementing and supervising the works and matching what is stated in it with the actual implementation of the works, relying on measurements and real dimensions in order to reach the goals. Contract().

In Egypt, Law No. (184) of 1958 stipulated that the obligor has the right to appoint his representatives in the various branches and departments that the obligor desires to exploit and monitor the establishment of the facility and ensure its progress in technical aspects, where management employees have the right to enter all departments in the exploitation area, and view the documents. technical aspects, maps, drawings, and following up the implementation

process in its technical aspects, and its conformity with the conditions agreed upon in the contract or the book of conditions attached to it ().

Law No. (1) of 1996 also stated in Article (3) regarding specialized ports that will be established in the future on the Egyptian coasts, ports subject to the supervision of the Ministry of Transport and Communications, in order to ensure the continuation of their powers to work in terms of maritime safety and preservation of the marine environment ().

In Iraq, technical oversight is often stipulated in the books of conditions that are attached to commitment contracts, as they are carefully regulated in terms of their limits and objectives. This is what was stipulated in Article (47) of the book of conditions for hydraulic power concession contracts in Iraq, where it affirmed the right of management employees. Technicians, including drawings and maps, may also conduct the necessary tests at the force level to ensure exploitation rates. The agreement concluded between the Iraqi government and the Basra Oil Company Limited also stipulated the government's right to conduct two types of oversight: The first type: embodied in monitoring the quantities of oil extracted, as the agreement stipulated The second type: embodied in inspecting the company's work ().

The administration may exercise oversight and guidance powers indirectly with regard to some contracts of an investment nature. For example, the General Establishment for Geological Survey and Mineral Investigation has the authority to supervise and monitor the investment of quarries and mines throughout Iraq and direct investment in a way that ensures the preservation of mineral wealth and the protection of the environment (), and the National Authority also has The investment has the authority to alert the investor in writing to remove violations within a specified period (). Oil measurement and control facilities are subject to periodic inspection and standards by a specialized third party nominated by the investing company and accompanied by the approval of the Ministry of Oil. The products of refineries covered by the provisions of the investment law related to oil refining are subject to the laws and instructions that regulate the conditions of quality, standardization and quality control ().

Here a question arises: Are there limits to the oversight authority in the concession contract? To answer, it can be said: The limits of administrative control over the concession contract are dictated by the requirements of the proper functioning of the public facility, and therefore there are no limits drawn with care to reconcile the concessionaire in management and the management's authority in oversight ().

The second requirement: Administrative control

It means that the administrative body, through its representatives, supervises the management of the public facility and participates in issuing internal decisions. The administration exercises this oversight in two ways: it either appoints delegates who attend the meetings of the Board of Directors and have the right to vote or the right to object to the issues raised related to the management of the facility; Either you appoint the facility manager or some members of the board of directors (). That is, ensuring that everything is done in accordance with the law, regulations, instructions, contracts, and books of conditions concluded with the contractor, and diagnosing weaknesses and errors and correcting them.

Administrative control is one of the important administrative functions, because of its role in ensuring the quality of performance and verifying the implementation of what was planned with high efficiency. It aims to preserve material and human resources in order to achieve the goals at the lowest costs in the fastest time with the best quality, while correcting errors. Addressing deviations when they appear and preventing them from recurring in the future.

In France, the laws regulated the management's authority to exercise administrative control when executing the concession contract, as they explained how the administration exercises control It authorized ministers in the field of work related to their ministries to issue the necessary decisions to exercise oversight authority over the contractor. The law of February 8, 1995, in Article 2, affirmed that the contractor must submit a report every year that includes the accounts of the total operations associated with the implementation of the facility subject to authorization, to show the investor's plans and aspirations. In its development, the report is sent attached to the papers proving its content, to determine the extent of continued respect for the book of conditions or general principles, and within the framework of its strengthening of administrative decentralization, the French legislator worked to allocate specific dates and procedures in monitoring the delegation processes issued by local groups ().

As for administrative control in Egypt, it is of two types: The first type: obligating the administration through the donor authority (internal oversight) in accordance with Article (18) of Law No. (129) of 1947, amended by Law No.

185 of 1957 regarding the management of public facilities, as it gave the donor authority oversight. Establishing the franchise public facility and its administrative history. This is done by appointing delegates in all branches and departments to monitor it from the administrative, technical and financial aspects. These delegates are responsible for preparing reports on the oversight and sending them to the donor for the purpose of reviewing them. The second type: Administrative oversight, investigation committees (external oversight). We find that Article (7) of Law No. (129) of 1947 regarding public utility compliance permitted the competent minister to form one or more committees from among the employees of his ministry or other ministries or public bodies to undertake It is a matter of public oversight, and the obligor must submit to the representatives of the authorities undertaking oversight all the documents, data, or statistics they request, intended to facilitate their mission of oversight ().

As for Iraq, this right (administrative control) is recognized under the effective 2005 Constitution, as Article (80) stipulates: "The Council of Ministers shall exercise the following powers: First: Planning and implementing the state's general policy and general plans and supervising the work of ministries and entities not affiliated with a ministry. Second: Proposing Draft laws. Third: Issuing regulations, instructions, and decisions with the aim of implementing the laws. It also granted the House of Representatives the power to monitor the work of the executive authority and the activities of public facilities in the country. As well as the governorate councils and governors, in accordance with the effective Law of Governorates not organized in a region No. (21) of 2008, have the authority to provide technical and financial control and supervision of contracts and projects that are implemented within the boundaries of their administrative units (), and the administration can also grant the commitment of administrative control during the implementation of the administrative contract in accordance with the provisions of The contract or book of conditions or derived from the nature of the public facility.

The third requirement: Financial Supervision

What is meant by it is the right of the concession granting party to inspect the accounts of the contracting party related to the exploitation of the public facility. The contracting party with the management entity within the scope of concession contracts of all types is required to maintain regular books of accounts in accordance with the generally accepted and applicable accounting rules ().

Financial control is evident in the concession contract, in the authority to manage and inspect the accounts of the contracting party for the exploitation of the public facility. This type of contract, just as it needs legal briefing on the part of its conclusion or on the part of its implementation, it also needs financial briefing (). The management authority granting the franchise can examine the financial results that the franchisee is obligated to prepare annually, and this is done by informing the franchisee administration of all the necessary documents to determine the estimates of the management department's revenues (), as well as the details of expenses and developing them in comparison with the previous year, and the franchisee must cooperate. With the administration by enabling it to view everything it requests, even though the funds used by the public utility are private funds that belong to the obligor.

In France, there are many laws that regulated the administration's authority to exercise financial control over the implementation of the concession contract. Among these laws are Law No. (11) June of 1842 and Law (15) July of 1845, which clarified how the administration exercises financial control over companies committed to exploiting railways. As well as the law issued on June 16, 1948, which regulated the rules of control over Air France ().

The French judiciary recognized the right of the administration to exercise financial control by the obligor, in the ruling issued on 7/18/1930 in the railway case (). It was also determined after that that the authority responsible for financial oversight is the financial judiciary, that is, the court of accounts and the regional accounting departments. Until February 8, 1995, the financial judiciary in France did not have the jurisdiction to monitor the person delegated to it as long as he was a subject person and assumed the management of a public facility, so his jurisdiction was delegated to it. However, the legislator The Frenchman, out of his desire to achieve clarity and resist bribery, was a covenant with the judiciary ().

In Egypt, the private law regulated the obligations of public facilities and the rules of financial control exercised by the party granting the obligation over the obligor, as stipulated in Article (7) of Law (129) of 1947, amended by Law (497) of 1954, which stated that the grantor of the obligation shall monitor the public utility. The subject of the commitment and its technical, administrative and financial aspects. To this end, he may appoint representatives in the various branches and departments that the obligor establishes to exploit the facility (). The competent authority has also determined this oversight, which is the Central Auditing Organization, as this agency is responsible for monitoring

commitment contracts, in accordance with Article (7) regarding the commitment of public facilities, which stipulates that it is permissible by a decision of the President of the Republic, based on the proposal of the minister granting the commitment or the supervisor of the body granting the commitment, to The Audit Bureau (the Central Auditing Organization) is entrusted with monitoring the establishment and operation of the facilities in terms of the financial aspects that it is entrusted with monitoring and submitting a report thereon to both the competent minister and the authority granting the obligation.

As for Iraq, this right (financial oversight) has granted the public authority to intervene in the price tariffs that must be paid by public utility customers, as Article (894) of the Iraqi Civil Code stipulates that “price tariffs that must be paid by public utility customers derive their strength and enforcement from Established or ratified by the public authority.” The obligation of the facilities related to the distribution of water, gas, electricity, or motive power to continue performing the services entrusted to it towards the government and towards every person with whom it has concluded an individual contract, and this is what is stipulated in Article (897) of the same law (the obligation of the facilities related to the distribution of water, gas, or (Electricity, motor power, etc.) is committed to continuing to perform the services entrusted to him towards the government and towards every person with whom he concludes an individual contract).

The Iraqi legislator may intervene in some strategic projects related to the economic development of the country by providing some facilities and tax exemptions for specific projects to facilitate their completion at record speed, and directing these projects to serve the economy ().

Investment Law No. (13) of 2006 also granted the administration the authority to exercise financial control through the National Investment Authority, as paragraph (2) of Article (14) stipulated: “The investor with the concession is required to maintain proper books of accounts audited by a certified public accountant in accordance with the law.”. As well as the bodies authorized by law to exercise this authority, such as the oversight of the Financial Supervision Bureau, which Article (10) of the Financial Supervision Bureau law stipulates that “debt oversight includes examining and auditing transactions and dispositions of revenues, public expenditures, and all financial obligations.”

At the end of this study, it can be said that the commitment contract is of great importance, as it can be described as one of the most important and longest administrative contracts, and that the state’s choice to manage a public facility through a concession contract is not considered a waiver or abandonment by the state of the facility, but rather it remains a guarantor and responsible for the management of the facility. The facility and its management through the control authority granted to the administration in terms of technical, administrative and financial aspects, agreed upon in the contract or the book of conditions attached to it, through the entry of administration employees into all departments in the exploitation area, revealing technical documents, maps and drawings, following up on the implementation process, conducting examinations, and ensuring From the quality of performance and verifying the implementation of what was planned with high efficiency, keeping organized books of accounts, and reviewing all the necessary documents to determine the estimates of the management department’s revenues and the details of expenses and developing them compared to the previous year.

CONCLUSION

After completing the study of the management’s authority to monitor the implementation of the concession contract, it is necessary to review a number of results followed by a number of recommendations, perhaps the most important of which are:

1. The concession contract is the management’s undertaking to an individual or company with the task of managing a public facility and exploiting it through workers and funds provided by him and at his responsibility in exchange for charging fees from the beneficiaries of this facility for a specific period. Ownership of the facility contracted in the commitment contract remains with the administrative authority granting the concession.
2. The ideas of public utility and public authority played a fundamental role in granting the administration exceptional powers to maintain the regular and steady functioning of public facilities in order to satisfy the needs of public beneficiaries.
3. The administration has the authority to direct the implementation of the contract, and to monitor its implementation at its various stages, and it exercises it even in the absence of an explicit clause stipulating this in the contract, because these powers find their basis in the concept of public utility.

4. The management's authority to monitor during the implementation of the concession contract is considered an established right of management and is recognized even if it is not stipulated in the contract, regardless of the implementing agency, as this authority exists in itself even if the concession contract is silent. They are texts that reveal this authority and are not established. she has.

5. The state's choice to manage a public facility through a concession contract is not considered a waiver or abandonment by the state of the facility, but rather it remains a guarantor and responsible for the management and operation of the facility through the control authority granted to the administration in terms of technical, administrative and financial aspects.

RECOMMENDATIONS

1. Administrative concession contracts in Iraq need more attention from those responsible for organizing and concluding these contracts, especially since Iraq is witnessing an urban and economic movement and the need to support the private sector and foreign investments, by providing aid and assistance, and reducing the value of taxes imposed, in addition to limiting Identifying instances of the administration exercising its powers, especially the powers to impose sanctions.

2. The Iraqi legislator must intervene, like the French and Egyptian legislators, to determine the cases in which the administration may intervene when there is no provision for oversight of the implementation of administrative contracts.

3. Establishing controls and specifications to inform the contractor of the management authorities so that this authority is not used as a sword drawn against the contracting party, which leads to his reluctance to contract, and thus negatively affects the regular and steady functioning of public facilities.

4. Adopting the standard or principle of competence or merit and good conduct when selecting a contractor with the administration because the contractor is an assistant to the administration in completing its work, which requires that he be experienced and competent.

5. Encouraging investors to conclude an administrative concession contract by providing state aid and assistance, and reducing the value of taxes imposed, as well as inventorying and identifying cases of the administration exercising the powers it enjoys, especially the powers of imposing penalties.

REFERENCES

1. Ibrahim Taha Al-Fayad, administrative contracts and their applications in Kuwaiti law.
2. Ibrahim Muhammad Ali, The Effects of Administrative Contracts According to Law No. 89 of 1998 Concerning Tenders and Auctions and its Executive Regulations, Cairo, 2nd edition, Dar Al Nahda Al Arabiya, 2003.
3. Ahmed Hamza Nasser, The Legal System of Administration Authority in Implementing Administrative Contracts, Master's Thesis, Faculty of Law, Islamic University of Lebanon, 2012.
4. Ahmed Othman Ayyad, Manifestations of Public Authority in Administrative Contracts, PhD thesis, Faculty of Law, Cairo University, Dar Al-Nahda Al-Arabiya, Cairo, 1973.
5. Hossam Morsi, Principles of Administrative Law (Administrative Organization - Administrative Control - Administrative Contracts), first edition, Al-Fath Printing and Publishing, Alexandria, 2011.
6. Hussein Othman, Administrative Law, Public Administration Works, University House, Beirut, 1990.
7. Hamad Muhammad Al-Shalmani, Public Authority Privileges in the Administrative Contract in Libyan Legislation, University Press House, Alexandria, 2007.
8. Suleiman Muhammad Al-Tamawi, General Foundations of Administrative Contracts - A Comparative Study, Ain Al-Shams University Press, 5th edition, 1991.
9. Sherif Youssef Khater, Principles of Administrative Law - A Comparative Study, Dar Al Nahda Al Arabiya, Cairo, 2011.

10. Atef Saadi Muhammad Ali, Administrative Supply Contract between Theory and Practice, 2005.
11. Abdel-Ghani Bassiouni Abdullah, Administrative Law, Mansha'at Al-Ma'arif, Alexandria, 1991.
12. Abdullah Talib Muhammad Al-Kandari, The Legal System for BOT Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 2009.
13. Muhammad Fouad Abdel Basit, Legal Administrative Works - Book Two - Administrative Contract, Dar Al-Nahda Al-Arabiya, Cairo, 2012.
14. Muhammad Yaqoub Al-Saidi, Principles of Administrative Law, Part One, without mentioning the publishing house and year, Baghdad.
15. Mahmoud Abu Al-Saud, Authority on Administrative Contract Implementation, Journal of Legal and Economic Sciences, Ain Shams University, first issue, January 1997.
16. Mahmoud Helmy, Administrative Law, University Press House, Alexandria, 1999.
17. Marwan Mohieddin Al-Qutb, Methods of Privatizing Public Utilities, Al-Halabi Legal Publications, Beirut, 2009.
18. Muhannad Mukhtar Nouh, Offer and Acceptance in the Administrative Contract, Al-Halabi Legal Publications, Beirut, 2005.
19. Nasri Mansour Nabulsi, Administrative Contracts, A Comparative Study, Second Edition, Zein Legal Publications, Beirut, 2012.
20. Walid Haider Jaber, Methods of Managing Public Facilities, Public Institutions and Privatization, first edition, Al-Halabi Legal Publications, Beirut, 2009.
21. Elias Nassif, The BOT Contract, Modern Book Foundation, Lebanon, 2006.

Second: Messages and frameworks

1. Samir Ismail, Personal Consideration in Contracting, PhD thesis submitted to Alexandria University, Faculty of Law, 1975.
2. Muhammad Saeed Hussein Amin, General Foundations of the Obligations and Rights of the Contractor in Implementing the Administrative Contract, PhD dissertation, no place of publication, 1984.

Third: Court decisions

1. The ruling of the Administrative Court issued on 3/25/1956.
2. The Supreme Administrative Court in Egypt, session 3/2/1968.
3. Resolution No. (9391/M1/73 dated 11/14/1973) Egyptian Administrative Judiciary

Fourth: Laws and contracts

1. The Iraqi Constitution of 2005 in force.
2. The 1938 agreement concluded between the Basra Oil Company and the Ministry of Oil.
3. Conditions for Iraqi civil engineering contracting.
4. Private Investment in Oil Refining Law No. (64) of 2007.
5. Investment Law No. (13) of 2006, amended.
6. Law of Governorates Not Organized in a Region No. (21) of 2008 in force.
7. Iraqi Major Development Projects Implementation Law No. 157 of 1973.

8. Executive regulations of the Egyptian Tenders and Auctions Law No. (89) of 1998.

9. Bylaws of the Maysan Governorate Council for the year 2013.

Fifth: Foreign sources

1-FOUASSIER Christophe: Veritable communication of concessions and imprisonment of an interprétative communication, in RTDE, N°04, DALLOZ, 2000, p680.

2-G. Pequinot theorie generale des contrats administratifs juris classeur adm, 1962 fasc, 510p.10.