

The Legal Effects of the Public Works Contract in Iraq

Dr. Farkad Abood Awad

Abstract--- *The public works contract is one of the important administrative contracts concluded by the administration in order to satisfy the public needs. This need has emerged largely in Iraq after 2003 due to the circumstances of the international war, through the circumstances of the internal war and terrorism experienced by the naked. As a result, there was an urgent need to establish or rebuild the infrastructure on which the Iraqi state is based, including buildings, roads, bridges and related cleaning, sweeping, spraying, dyeing and other works. However, the implementation of the public works contract in Iraq has not fully had legal implications in terms of the quality of the service provided to the public to satisfy their needs, in addition to the frequent theft of contractors and the failure to carry out the work. This is due to our modest assessment of the laxity and fragility of the forms of administrative contracts concluded between the administration and the contractor or to the negligence of the administration and its disregard for the control of the proper execution of contracts or the conclusion of fictitious administrative contracts as a result of the administrative corruption that is rampant in its joints. Therefore, we decided to look into the challenges facing this administrative contract in Iraq, while demonstrating the effectiveness of its legal implications in terms of providing public service to the public and providing treatment as much as possible.*

Keywords--- *Public Works, Legal Effects, Administrative Contract.*

I. INTRODUCTION

The importance of research: The contract of public works is one of the important administrative contracts in Iraq, especially after 2003, as its subject is the construction, restoration or maintenance of buildings or real estate facilities belonging to a person of common law in order to achieve the public benefit. It is no secret that the public service is only a body, organization or administrative body that engages in public activity (or private activity under the supervision of the public authority) in order to provide a public service and thus satisfy public needs. Hospitals, schools, public universities and all ministries are only public services that provide public services in order to satisfy public needs. Therefore, any public service must have - first and foremost - a particular property on which its service facilities are based and then come from other things necessary for its creation, such as financial and human resources. Hence, the importance of the public works contract appear in improving the country's infrastructure and even improving the image of the administration in public if the contract is completed in accordance with the legal requirements and formulated in a way that ensures the quality of work and its reflection on the level and quality of service provided to the public. Although public works contracts fall within the jurisdiction of common law, their disputes are subject to the jurisdiction of the ordinary courts, although Iraq has become a dual judiciary country

Dr. Farkad Abood Awad, Faculty of Law, University of Qadisiyah.

since the enactment of Law No. (106) of 1989¹ (The Fifth Amendment of the Law of the State Consultative Council No. 65 of 1979²) which established The Administrative Court of Justice. The administrative courts of justice were established by the law No. (17) of 2013³. The Supreme Administrative Court was established in accordance with Law No. (71) of 2017⁴, which established for the first time in Iraq the Council of State, similar to that established in France and Egypt. From this, it is clear that the ordinary judiciary is the holder of the general mandate⁵. Therefore, the issue of administrative contracts, including public works contracts, in Iraq is ambiguous, both at the legislative level and at the judicial level. There are very few legislative texts on this subject. As for the Iraqi judiciary, it is noted that it is unstable on one case, and the courts apply the provisions of the private law to administrative contracts⁶, and sometimes the rules of public and private law apply to them⁷. In general, the Administrative Court of Justice is not competent to deal with disputes of administrative contracts⁸. The Iraqi administrative judiciary expressly refrained from considering a lease dispute in which the administration was a party and has acknowledged the jurisdiction of the court of first instance to consider it⁹, even though the criteria for the administrative contract are available in the said contract¹⁰. Here it should be noted that the identification of some contracts as administrative contracts by the Iraqi legislator, such as contracts of general contracts and contracts of the sale and rent of state funds¹¹, does not help to highlight the importance of these contracts as administrative contracts, as long as the jurisdiction until the present is given to the ordinary judiciary. We therefore call on the Iraqi legislature to lift this

¹ Law No. (106) of 1989. The Second Amendment Act of the State Consultative Council Law No. (65) of 1979, Iraqi Facts number 3285 on 11/12/1989. Even after the issuance of Coalition Provisional Authority Order No. 87 of 2004 on public contracts, the ordinary judiciary continued to adjudicate disputes which deal with the public contracts, although the order in question stipulated that rules should be established for an independent administrative court to deal with disputes arising from these contracts, Article (2/1/2) Of the said order, the Iraqi facts number 3984 of 6 January 2004. Here we record our astonishment at the text mentioned, since the Court of Administrative Justice has existed since 1989, the legislator would have to make the consideration of disputes of public contracts the jurisdiction of the Court of Administrative Justice, which is one of the bodies of the State Consultative Council.

²The State Consultative Council Law No. (65) of 1979, Iraqi Facts 2714 on 11 June 1979.

³ Law No. (17) of 2013, The Fifth Amendment Act of the State Consultative Council Law No. (65) of 1979, Iraqi Facts 4283 on 29 July 2013.

⁴ Iraqi State Council Law No. (71) 2017, Iraqi Facts 4456 on 7 August 2017.

⁵ Article 29 of the Civil Proceedings law No. 83 of 1969 stipulates that ((the jurisdiction of civil courts applies to all natural and moral persons, including the government, and is competent to adjudicate all disputes except which has a special provision)), Iraqi Civil Proceedings law No. 83 of 1969, Iraqi facts number 1766 of 10/11/1969.

⁶ The judgment of the Court of Cassation of 15/3/1958, Journal of the Judiciary, N°. 3, 1959, p. 448. The same court judgment on 14 April 1959, Journal of the Judiciary, N°. 4, 1959, p. 524.

⁷ The Court of Cassation's ruling of 13 April 1967 in the case of 16/H/1967, referred to by Riad Abed Aissa Al-Zuhairi, the administrative authority in the implementation of public works contracts, master's thesis, Baghdad University/Faculty of Law, 1976, p. 98-99.

⁸ The above-mentioned court is competent to decide on the validity of individual and regulatory administrative orders and decisions only without the administrative contracts, Article (7/IV) of the State Consultative Council law No. 65 of 1979 amended. The State Consultative Council has acknowledged the lack of jurisdiction of the Administrative Court of justice in matters of administrative contracts, Decision of the General Authority of the State Consultative Council issued on 2/9/1990, referred to by Abdul Muttalib Abdul Razzaq al-Hashimi, determining the jurisdiction between the ordinary judiciary and the administrative judiciary in Iraq, master's thesis, University of Baghdad/Faculty of Law, 1992, p. 103.

⁹ Decision of the State Consultative Council N° 140/2017 on 27 December 2017.

¹⁰ These criteria are as follows: 1- The fact that the administration or a common law person is a party to the contract, 2- the contract relates to the administration or management of a public facility, 3- the use of the methods of common law by the administration in its contract with the other party, to detail in these criteria Dr. Mahmoud Khalaf al-Jubouri, administrative contracts, first edition, Amman, The House of Cultural for the Publishing and Distribution, 2010, p. 35 and beyond. It should be noted that the Iraqi administrative judiciary is tightening up on the issues of the duration of the appeal as a formality that the result of the failure of its observe is the rejection of the case, Decision of the Administrative Court of Justice issued in case N°. 765/S/2015 on 24 August 2015. Its decision in case N°. 11/S/2014 on 12 August 2015. Its decision in case N°. 941/S/2014 on 17/11/2014.

¹¹ For public works contracts, instructions for the implementation of government contracts N°. 2 of 2014, Public, Government Contracts Department, revised edition, July 2017. For the supply contract, the Law on the Implementation of Major Development Projects N°. 60 of 1985, Iraqi Facts N°. 3056 on 29 July 1985. For the contracts of the sale and rent of state funds, the Law of the Sale and Rent of State Funds N°. (21) of 2013, Iraqi Facts N°. 4286 on 19/8/2013, amended by Law N°. (21) of 2016, the First Amendment Law of the Law of the Sale and Rent of State Funds N°. (21) of 2013, Iraqi Facts 4415 on 5/9/2016. These legal provisions have become the general theory of administrative contracts, even if the current Iraqi administrative judiciary is not competent to consider disputes arising from them.

contradiction by subjecting disputes arising from these contracts to the jurisdiction of the administrative judiciary.

Research problem: The research problem revolves around the possibility that disputes arising from the works contracts may be subject to the jurisdiction of administrative courts. In addition to the possibility of others prosecuting the administration in the event of suspicions of corruption in the public works contract has arranged or may have negative effects on the public interest through the failure or possible failure of the work.

II. RESEARCH METHODOLOGY

The research will be reviewed in two sections, the first of which deals with the nature of the contract of public works and its legal characteristics, while the second will be presented to the legal effects of the said contract.

The first section: The definition of the contract of public works and its legal characteristics:

The presentation of the said contract requires us to address its definition first, and then review its legal characteristics secondly, according to the following:

A. The definition of the contract of public works: The contract of public works in France is defined as those works that are received on a property and carried out on behalf of a public person for the sake of public interest, or within the framework of the task of the public facility, or those carried out by a private person in order to provide a public service¹². Egyptian jurisprudence defines the contract of public works as ((contract of contract between a person of common law and another person (individual or company) under which the contractor undertakes to carry out work of construction, demolition, excavation, repair, renovation or maintenance in a property on behalf of the public person and to achieve public benefit for a price set by the contract))¹³. In Iraq, some define it as (an agreement between the administration and one individual with the intention of building, renovating or maintenance, buildings of the estate facilities for an administrative person and for the purpose of a public benefit)¹⁴. Therefore, we can define the public works contract as the agreement between the administration and one of the public or private persons to carry out the construction, maintenance or renovation of buildings of the estate facilities for a public person and in accordance with the conditions in the contract for the public benefit.

B. The characteristics of the public works contract: From the total definitions above, it is clear to us that the public works contract must have certain characteristics:

1. The subject of the contract must be a property, whether the works are related to the construction, modification, restoration or maintenance of the property (such as cleaning streets, buildings and public

¹² Charles DEBBASCH et Frédéric COLIN, *Droit administratif*, 11^e édition, Paris, ÉCONOMICA, 2014, p. 406. Jean WALINE, *Droit administratif*, 27^e édition, Paris, Dalloz, 2018, p. 499. Manuel DELAMARRE et Timothée PARIS, *Droit administratif*, Paris, Ellipses, 2009, p. 299. Philippe FOILLARD, *Droit administratif*, 2^e édition, Louvain La Neuve/Bruxelles, Larcier, 2013, p.219. Élisabeth Chaperon, *Droit administratif Droit de l'environnement, catégories A et B*, Vanves, Éditions Foucher, 2005, p. 258.

¹³ Dr. Hussein Othman, *Administrative Law*, Beirut, University House, No Publication Year, p. 68. Dr. Mahmoud Atef Al-Banna, *Administrative Contracts*, first edition, Cairo, Arab Thought House, 2007, p. 73.

¹⁴ Dr. Ali Mohammed Badir, Dr. Essam Abdul Wahab Al-Barzanji, Dr. Mahdi Yassin al-Salami, *Principles of Administrative Law*, Baghdad, Law Library, 1993, p. 490. Dr. Khaled Khalil Al-Dhahir, *Administrative Law*, Book II, first edition, Amman, The House of Al-Masera for the Publishing, Distribution and Printing, 1997, p. 252.

places, etc.) or even demolishing it. Therefore, this contract does not respond to a movable funds of any kind or value¹⁵.

2. The contract should be executed for the benefit of a public moral person or for his own account, this mean that the property may not be owned by the public person, it may be owned by ordinary individuals, but on condition that the work is done for the benefit of public person.
3. The contract aims to achieve a public benefit, the latter is the purpose of establishing hospitals, schools, universities and all other public facilities.

The Second Section: The Legal Effects of Public Works Contract

According to the relativity rule for the contract effects in terms of persons in private law¹⁶, the legal effects of the contract are limited to the rights and obligations of the parties of the contract only¹⁷. But this cannot be applied in the field of the administrative contract where its effects must cover the public through the extent to which they benefit real and tangible from the contract¹⁸. The contract whose effects does not go with the realization of their benefit (public interest) translates a clear imbalance in the obligations of one of the parties to the contract or perhaps both due to corruption which is a major part of the general administration in Iraq. Therefore, the legal effects must be investigated first through the effects of the contract for both parties, and secondly in terms of its effects for others.

A. The Effects of the Public Works Contract for the Parties to the Contract

It seems self-evident that the effects of the contract for the parties include their rights and obligations in accordance with the contract. An administrative contract is a contract in every sense of the word, so that it corresponds to the will of the administration with the will of the contractor to produce legal effects of their respective rights and obligations¹⁹. Here it should be noted that the authorities enjoyed by the administration in the implementation of the administrative contract²⁰, although they are being studied within the subject of the effects of this contract, but we will not go into their details. Firstly because they are decided without the need to be stipulated

¹⁵ The administrative judiciary in France did not consider as public works contracts the agreements for the preparation, construction or restoration of a ship or aircraft carrier, Dr. Mazen Lilo Radhi, Administrative Law, I3, Duhok University Press, 2010, p. 239. Harun Abdul Aziz Al-Jamal, Legal system of sanctions in public works contract, Doctoral Thesis, Ain Shams University, Faculty of Law, 1979, p. 8.

¹⁶ Article (142/1) of the Civil Code stipulates that (the effect of the contract shall be passed to the contractors and the general successor without violating the rules relating to inheritance, unless it is clear from the contract or the nature of the transaction or from the text of the law that this effect does not go back to the general successor), Iraqi civil law N°. (40) of 1951. Iraqi facts, number 3015, on 8 September 1951. The general successor, according to this text, is not for others. If we want to identify others, it can be said that the one who does not go to the contract, and one of two people: 1- is the one who enters the sect of the successor or the creditors, but the effect of contract does not go to him as an excluded from the contract, 2- who is not of the first sect, he is a foreigner at all about the contract, Dr. Abdul Razzaq Al-Sanhouri, The theory of the contract, Cairo, The House of Arab Thought, Without A Print Year, p. 857 and beyond. Dr. Abdul Majid al-Hakim, Summary in the explanation of Civil Law, Sources of commitment, first part, first edition, Baghdad, Civil Company for print and publishing, 1963, p. 30.

¹⁷ In relation to the relativity rule to the contract effects in terms of persons in the private law, Dr. Jassim al-Abboudi, The rule that the other may not benefit from the contract, Baghdad, Granada Press, 1997, p. 4.

¹⁸ The requirements for the proper functioning of the public facility are regularly given to the Administration the power to intervene to amend the contract, and therefore we support the jurisprudence that administrative contracts are subject to the relative rule of the effects of the contract within the scope of the purely contractual texts, while departing from that rule within the scope of the regulations relating to the good conduct of the public facility with a manner regularly and steadily, Dr. Ibrahim Taha al-Fayyad, Administrative Contracts, Mosul, Mosul University Press, 1990, p. 279.

¹⁹ For more details seen, René CHAPUS, Droit administratif général, Tome 1, 14^e édition, Paris, Montchrestien, 2000, p. 1180 et suivantes. Michel DEGOFTE, Droit administratif, 2^e édition, Paris, Ellipses, 2012, p. 353 et suivantes.

²⁰ These powers are: - the authority to direct and control the implementation of the contract, - the authority to impose sanctions on the contractor if he violates its obligations to it, - the authority to modify the contract or some of its conditions unilaterally. - the authority to terminate the contract.

in the contract²¹, they have been satisfied with the research by the jurisprudence²², as they are one of the means of public authority enjoyed by the administration to organize or manage a public facility in order to achieve the public interest, and secondly in order not to expand the subject too much. These authorities distinguish the administrative contract from the civil contract. Therefore, our discussion will address the effects of the administrative contract (the public works contract) in terms of the rights and obligations of his parties.

1. Contractor's Obligations with the Administration

The main purpose of concluding the public works contract is limited to the execution of certain works (contracting) in accordance with the announcement of the tender and then in accordance with the terms of the contract, and may not be removed from this obligation unless there are compelling circumstances, for which the will of the contractor has not interfere for them, prevent the implementation. The contractor's obligation in the public works contract is a personal obligation to carry out the works as his personality is considered important in the contract, and therefore he cannot entrust with the execution of part of the work or all of the work to another person without the editorial consent of the administration, otherwise this will be a breach of the terms of the contract²³. If the administration agrees to the sub-execution, the subcontractor is obliged to perform the work with the same conditions and specifications agreed in the contract with the original contractor, and the latter remains responsible for the negligence of the subcontractor or his failure to implement the terms of the contract²⁴. The contractor is finally obliged to complete the work within the time specified in the contract, and in the event of delay, the delayed fines contained in the contract are imposed. In general, in the face of the contractor, the administration has all the powers referred to above that force him to implement or at least guarantee the administration's right to implement.

2. Contracting Administration Obligations

The administration's obligations in the public works contract are to enable the contractor to receive the property in question, facilitate the task of entering and using it, obtaining its plans and documents and using public roads through the licenses that must be provided to him. The administration must grant for the contractor the necessary powers and facilities for achieving his contractual obligations, such as subsidies, credits and guarantees with banks.

One of the administration's most important obligations to the contractor is the obligation to pay the financial return of the price or the amount agreed in the contract. The administration has not the authority to amend the financial return without the contractor's consent²⁵. The administration's obligation is not limited to pay the agreed financial return, but may exceed its obligation to pay another amount as a result of the necessary works or useful

²¹ These authorities may be determined by the laws, regulations or instructions of contracts, for example, see/ Instructions for the implementation of government contracts No. (2) for 2014 and the guidances attached to them.

²² For more details about the administration's powers towards the contractor, see Dr. Nawaf Kanaan, Administrative Law, Book II, Amman, Cultural House for the Publishing and Distribution, 2010, p. 354 and beyond. Dr. Mohammed Bakr Hussein, The medium in administrative Law, Alexandria, University Thought House, 2006, p. 311 and beyond. Dr. Maher Saleh Allawi Al-Jubouri, The medium in administrative Law, Mosul University, Dar Ibn al-Atheer for the Printing and Publishing, 2009, p. 438 and beyond.

²³ Mahmoud Khalil Khudhair, Legal status of sub-Contractor, Doctoral Thesis, Baghdad University/Faculty of law, 2001, p. 91.

²⁴ The sub-contract is defined as (the contractor agreement- with the administration - with others in the implementation of a certain part of the contract), Ahmed Khurshid Hamidi, administration's authority in withdrawing work in public works contracts, Master's thesis, University of Baghdad/Faculty of Law, 1989, p. 95.

²⁵ The amendment often covers the conditions for the regular and steady operation of the public facility, Dr. Nawaf Kanaan, *op. cit.*, p. 366. The requirement that the contractor agree to change the financial terms is due to two reasons: the first is that these conditions are purely contractual terms, and the second is due to the fact that giving the administration the freedom to adjust the financial return with its sole will would lead to the result that the contractors being reluctant to contract with the administration, Dr. Mohammed Bakr Hussein, *op. cit.*, p. 347.

work done by the contractor in addition to the required work²⁶. It is advisable not to give the amount of the contract a single payment from the beginning of the work, but it is given in the form of payments related to the actual completion rate of the work after the completion of each stage of the work. By this a real and actual completion of the work can be guaranteed and to ensure that the contractor does not escape with the money before the completion of the work.

Another important obligation for the Administration is its obligation to rebalance the contract financially when there are circumstances beyond the control of the parties to the contract but add a heavy burden to the contractor. This obligation is in return for the administration's legal powers that would increase the contractor's obligation and it is also dictated by the close relationship between the contractor's rights and obligations. All this lead to achieve the public interest of ensuring that the public facility proceeds regularly and steadily²⁷. The financial rebalancing does not mean a rigid account balance between the obligations of the parties to the contract, but rather the compensation of the damage done to the contractor with the administration, which assures him that his financial interests will not be affected when there are difficult circumstances or events that would affect the implementation of the contract²⁸. The risks justifying the financial balance of the contract are divided into two parts: administrative risks (the prince's work theory) and economic risks (emergency situation theory and the theory of unforeseen material difficulties)²⁹. It is possible to apply them all to the public works contract, but the theory of unexpected material difficulties finds its scope in the contract of public works. The prince's work is meant to be all (an act issued by a public authority without error on its part, resulting in the deterioration of the contractor's position in an administrative contract that leads to the obligation of the administration to compensate the contractor for all the damages caused by it, thereby restoring the financial balance of the contract)³⁰. The Administration is committed to restoring the financial balance of the administrative contract in the event of emergency circumstances that make the contractor's implementation of its obligation cumbersome as a result of circumstances beyond the control of the parties of contract, and the Administration is committed to compensate him for damages so that the public facility can be ensured to function regularly and steadily. These circumstances are unexpected when the contract is concluded and may arise during its

²⁶ The necessary works are intended for works that are not included in the contract and show their importance during the execution of the contract so that they must be completed in accordance with the technical rules to carry out the required works, and the right of the contractor to compensate for them has been approved by the comparative judiciary based on the supposed intention of the parties to carry out such works. Either Useful works are unnecessary works, but they are carried out by the contractor and benefit the administration and the judiciary has recognized, based on the enrichment of the administration without reason, the right of the contractor in the financial return provided that the administration does not object to it in advance., for detail/ Dr. Suleiman Mohammed Al-Tamawi, *The general foundations of the Administrative Contracts*, fourth edition, Cairo, Arab Thought House, 1984, p. 567 and beyond.

²⁷ Conseil d'État, 21 mars 1910, *Compagnie Générale Française des Tramways*, Recueil Lebon, p. 219, conclusions Blum. The French State Council's ruling on this issue is the first basis of the theory of financial rebalancing in the administrative contract.

Dr. Khaled Khalil Al-Zahir, *op. cit.*, p. 270-271. ²⁸

²⁹ These three theories are judicial from the creation of the French Council of State, for detail seen/ Patrice CHRÉTIEN, Nicolas CHIFFLOT et Maxime TOURBE, *Droit administratif*, 14^e édition, Paris, Dalloz, 2014, pp. 211-213. Serge VELLELY, *Droit administratif*, 15^e édition, Paris, Vuibert, 2018-2019, pp. 190-192. Pierre-Laurent FRIER et Jacques PETIT, *Droit administratif*, 10^e édition, Issy-les-Moulineaux, LGDJ, 2015, n°690-697.

³⁰ Dr. Othman Salman Ghailan Al-Abboudi, *Practical guide in the provisions of sale, purchase, rent and government Contracts*, second edition, Baghdad, Sabah Sadiq Jaafar al-Anbari, 2009, p. 101. The conditions for applying the theory are: - that the matter is an administrative contract, - that the procedure was issued by the contracting administrative authority, - the procedure is specific to the contractor with the administration and therefore the contractor may not claim compensation if the procedure is the result of law, regulation or instructions involving the rest of the citizens, - The procedure is harmful and it is enough to merely prove the damage to the entitlement of compensation, - the action issued by the administrative authority should be legitimate, without any error on its part, and be unexpected at the time of the conclusion of the contract, for the detail/ *op. cit.*, p. 102.

implementation³¹. Similarly, in the case of unforeseen material difficulties (the largest field being the public works contract), the Administration is obliged to compensate the contractor for the full damage caused by these circumstances so that it can continue to implement his obligation and thus ensure the proper function of the public facility on a regular basis³².

Therefore, the financial obligation is one of the most important obligations of the administration before the contractor. The contractor did not contract with the administration in the public works contract only in order to obtain that return or to restore the financial balance of the contract in certain circumstances requires a balance between the powers granted to the administration and the guarantee of the rights of the contractor.

B. The Effects of the Contract Of Public Works for Others³³

When the administration concludes the public works contract with the contractor may dictate conditions for the benefit of others in order to avoid any problems that may arise as a result of the implementation of the said contract³⁴. This is clear evidence that the administration knows that the contract will have its effects on others and therefore his rights must be guaranteed. However, if it is true that the purpose of achieving the public benefit of concluding the public works contract is one of the characteristics of the contract when concluded between the administration and the contractor³⁵, then this public benefit may not be achieved in the end³⁶ or achieved but for an unreasonable period³⁷ as a result of the defect that marred the work resulting from the negligence of one or both parties of the contract. In Iraq, the administration's contracts are often hedged by suspicions of corruption and their complicity with the contractor is noted, leading to the failure of the contracted work or even its completion, but without the public interest being realized. Here, the question arises as to who is responsible for raising the responsibility of the administration's complicity.

³¹ The conditions for the application of this theory are as follows: - the emergency circumstances are not expected from the parties to the contract, - that those circumstances are beyond the control of the parties and one of them cannot avoid it or push it, - the implementation of the obligation is exhausting because of those circumstances and not impossible because if it is impossible, we will be in front of the force majeure allows the contractor to decomposition of his commitment, for detail/ Dr. Maher Saleh Allawi Al-Jubouri, op. cit., pp. 450-452.

³² It is therefore required to apply this theory that : - the difficulties faced by the contractor are material difficulties resulting from an unexpected natural phenomenon that occurs during the implementation of the contract such as the presence of abundant ground water or that the nature of the earth is harsh rocky, - the difficulties are the result of something outside the will of both parties, - that the difficulties are not Expected during the conclusion of the contract, for detail/ Dr. Khaled Khalil al-Dhahir, op. cit., pp. 277-278.

³³ The secondary contractor and the workers who are employed in the work are also such a third person, but we will concentrate our research on the third community, which is the community of beneficiaries of the public works contract in order to show the extent of their real benefit of the contract and thus achieve the public interest that represents the purpose of the said contract.

³⁴ The administration may require for the benefit of workers to specify working hours and minimum wage and insurance against risks and damages that may affect them at work, and may also require the contractor to insure against damages that may affect others and the contract may include conditions for the benefit of the owners of the property adjacent to the work site, for details/ Dr. Sulaiman Mohammed Al-Tamawi, op. cit., p. 667. Dr. Abdul Alim Abdul Majid Musharraf, The limits of the effects of administrative contract to others, Cairo, Arab Renaissance House, 2004, p. 111.

³⁵ The Iraqi court of cassation indicates that the public interest is the main purpose of the public works contract, and in that it says (since this contract was entered by the administration with the contractor in order to establish a public facility in the manner of common law and with unusual conditions of conducting a public tender and the requirement of insurance and the fines of delay. It is therefore a distinct administrative contract from civil contracts governed by the special law because of the targeting of these contracts in order to achieve major interests above the special interests of individuals), referred to by/ Dr. Maher Saleh Allawi Al-Jubouri, Principles of Administrative Law, Baghdad, Book House for Printing, 1996, p. 224.

³⁶ The contractor may steal the project money given to him by the administration and run away without doing anything or after completing a small percentage of the work, for detail/ Thieves of the Iraq Development Fund (DIF), when are they being tried? Website : <https://annabaa.org/arabic/goodgovernance/8028>

20 corruption stories. How did \$500 billion go missing in Iraq? Website : <https://ultrairaq.ultrasawt.com/>

³⁷ Such as the fall of the bridge or the building agreed to be built or the breaking of roads and the breaking of the ground after an unreasonable period of construction or completion, in addition to the imaginary projects, for detail/ Imaginary projects in Iraq. For who? Website: <https://yaqein.net/reports/44227>

Corruption in Iraq became a dinosaur after it was an ant!, Website: <https://www.mc-doualiya.com/articles/>

If a public works contract imposes burdens on third parties, such as the temporary seizure of land adjacent to the work site in order to provide a suitable place for the work tools and employees³⁸, or as the contract between the administration and the secondary contractor is in force against the original contractor³⁹, it in turn arranges rights for them as well. These rights appear where the beneficiaries (other) of the public works contract ask the administration to intervene in order to protect their interests in the event that they find that there is a breach in the terms of the contract either in terms of actual achievement or in terms of the duration of the completion or in terms of their non-actual benefit from it such as the fall of the bridge or the break of the highway shortly after created⁴⁰. The decision of the administration or its reasons is subject to the cancellation (provided the obligatory grievance with the relevant administration).

The right of the beneficiaries here is based on the regulatory aspects of the public works contract in addition to this contract, which is subject to three parties, as is the contract of commitment of the public facilities⁴¹. Therefore, in the advanced sense, others have the right to raise the responsibility of the administration in terms of judicial appeal. They have also the right to raise the responsibility of administration by the independent oversight which is exercised by the Integrity Bureau sits⁴² and the Inspector General in Iraq⁴³. Since many individuals do not have sufficient legal knowledge of their right, we therefore stress the establishment of educational courses and seminars on the exercise of this right by individuals in order to achieve the public interest which is the basic and the actual purpose of the public works contract in Iraq.

III. CONCLUSION

The conclusion contains a number of conclusions and recommendations, including:

³⁸ The temporary takeover is defined as ((the measure taken by the administration to control the real estate of individuals or their moneys without their consent to be used to satisfy urgent and temporary needs directly in the public interest), Dr. Abdul Baqi Nema Abdullah, expropriation - the privilege which is decided for administration, research published in the journal Legal and Political Sciences, Volume II, N° 1 and 2, 1978, p. 176.

³⁹ For more details/ Dr. Mahmoud Khalaf al-Jubouri, op. cit., pp. 245-246. Moreover, we support the doctrinal trend that the contractor has the right to exercise administrative control powers over others in order to maintain public order on the work site and thus ensure that the general facility is functioning regularly, for more details about this doctrinal trend/ op. cit., p. 675. Dr. Cheb Touma Mansour, Administrative law, first part, Baghdad, Salman Al-Azami Press, 1975, p. 276.

⁴⁰ The legal basis for the right of the beneficiaries of the public works contract to request the intervention of the administration is the requirement for the benefit of others which is used in the scope of the private law, where it can be worked in the field of administrative contracts but in a manner different from that established in private law. In the Iraqi Civil Code (Articles 152-154), the beneficiary has the right to sue the contractor and has no right to refer to the person who require, but in administrative contracts the beneficiary may sue the administration directly if it does not intervene despite his request for intervention, in this sense/ mohammed Sami Medkur, The technical scope of the requirement for the benefit of third parties, Research published in the Journal of Law and Economics, N° 1 and 2, Year 23, 1953, p. 5. Therefore, there is nothing to prevent the application of the idea of requiring the benefit of others within the scope of administrative contracts, as the provisions of this idea do not conflict with the principle of the regular and consistent functioning of the public facility.

⁴¹ For detail, Dr. Mahmoud Khalaf al-Jubouri, op. Kit., pp. 242-244. In fact, the others have to appeal to the administrative decisions that are detachable and related to the contract of public works for the defect of form, the decision of the court of administrative judicature on 28/11/1990, referred to by/ Habib Ibrahim Hamada, the appeal of annulment against the administrative decisions that are detachable, doctoral thesis, university Baghdad/ faculty of Law, 1994, p. 52.

⁴² Anyone can raise the responsibility of the administration through the claims provided to the Integrity Commission about the cases of corruption practiced by the administration in the public works contract, about the right of the Integrity Commission to investigate any cases of corruption and the right of anyone to provide claims about such cases / Articles (2, 3, 13) of the Integrity Commission Law No. (30) of 2011, Iraqi Facts 4217 on 14/11/2011.

⁴³ The administration can be monitored and held accountable for its corrupt conduct through the complaint or communication submitted by any person to the Inspector General's Department within the scope of the legal jurisdiction, as each ministry has an inspector general's office, about the composition of the Inspector General's Department, its independence, its functions and its authority to receive complaints and communications, Coalition Authority Order No. 57 of 2004 for Iraqi Inspectors general, 2004 Law and Regulations, p. 47. Also look/ The Second Amendment Act of the General Inspectors No. 1 of 2011.

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First: Conclusions

1. The public works contract is one of the important administrative contracts that was greatly needed in Iraq after 2003, due to the circumstances of the international and internal war and the circumstances of terrorism that Iraq has experienced. All this in order to improve the infrastructure that has been destroyed because of these circumstances.
2. Although the CPA Order No. (87) of 2004 stipulated that rules should be established for an independent administrative court to deal with disputes arising from public contracts, the ordinary judiciary continued to adjudicate disputes over these contracts. Here we record our astonishment at the text mentioned, since the Court of the Administrative Judicature has existed since 1989, and the legislator had to give jurisdiction to these disputes to the jurisdiction of the Court of Administrative Judicature.
3. The legal provisions derived from the instructions for the implementation of government contracts No. 2 for 2014 (public works contracts), from the Law on the Implementation of Major Development Projects No. 60 of 1985 (for the supply contract) and from the Law on the Sale and Rent of State Funds No. 21 for 2013 amended by Law No. (21) for 2016 explain that there have become the general theory of administrative contracts, even if the current Iraqi administrative judiciary is not competent to consider disputes arising from it.
4. We have concluded that the public works contract is defined as the agreement between the administration and one of the public or private persons to carry out the construction, maintenance or restoration of buildings or real estate facilities for a public person and in accordance with the conditions set out in the contract for the benefit of the public.
5. The effects of the public works contract, as it applies to both parties, also apply to others who may sue the administration in the event of suspicions of corruption in the public works contract, as well as to file reports and complaints concerning corruption to the Integrity Commission and to the Department of the Inspector General as a kind of control over suspicious management actions.
6. We support the argument that administrative contracts are subject to a relative rule of contract effects within the scope of purely contractual texts, while they come out of that rule within the scope of the regulations on the proper functioning of the public facility on a regular basis and in a sustained manner.
7. We support the doctrinal trend that the contractor has the right to exercise administrative control powers over others in order to maintain public order in the workplace and thus to achieve the public interest by ensuring that the requirements of the public facility function regularly.

Second: Recommendations

1. On call on the Iraqi legislator to subject disputes arising from administrative contracts in general and public works contracts to administrative judicature, as is the case in France and Egypt, especially since Iraq has become one of the countries of the double judiciary in accordance with Law No. (106) of 1989, Law No. (17) of 2013 and Law No. (71) for the year 2017 The establishment of the Iraqi State Council.
2. It is preferable not to give the amount of the contract a single payment to the contractor, but it is given in the form of payments related to the percentage of actual completion of the work, this means after the completion

of each stage of the work, so that a real and actual completion of the work can be guaranteed and to ensure that the contractor does not escape with the money before the final completion of the work.

3. Since many individuals do not have sufficient legal knowledge of their right to sue or report it in case of involvement of the administration with the administrative corruption with the contractor, we therefore stress the establishment of educational courses and seminars on the exercise of this right by individuals in order to reach the contract of public works in Iraq for its primary and actual purpose in achieving the public interest.

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