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**The Subject Of Lawsuit Administrative Contracts Conflicts
That Can Be Adjudicated Before The Competent
Authorities In The Saudi Law.**

**Analytical Study In Light Of The New Governmental
Competitions And Purchases System**

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دراسة تحليلية في ضوء نظام المنافسات والمشتريات الحكومية الجديد**

Doctor

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Saudi Arabia

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مجلة علمية عالمية متخصصة ومُحكمة
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قسم القانون، كلية الشريعة والقانون، تبوك، المملكة العربية السعودية.

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ملخص البحث:

تناولت الدراسة موضوع دعاوى منازعات العقود الإدارية التي يمكن فصلها أمام الجهات المختصة في النظام السعودي، وذلك في إطار دراسة تحليلية تتعلق بنظام المنافسات والمشتريات الحكومية الجديد. وتهدف هذه الدراسة إلى تسليط الضوء على الشروط الموضوعية المطلوبة لبدء وتسوية الدعاوى المتعلقة بالعقود الإدارية أمام السلطات القضائية المتخصصة، وذلك وفقاً للقانون السعودي. على الرغم من تنوع الخلافات المتعلقة بالعقود الإدارية فيما يتعلق بصحتها أو تأثيراتها، إلا أن برنامج التحول الوطني، الذي تم إطلاقه ضمن رؤية المملكة العربية السعودية، يهدف إلى تحسين العمليات الحكومية ووضع إطار قانوني يتماشى مع تلك الرؤية. وتأتي هذه الدراسة لتسليط الضوء على اللوائح والأنظمة الجديدة المتعلقة بالمنافسات والمشتريات الحكومية، والتي جاءت وفقاً للمرسوم الملكي رقم (م/١٢٨) بتاريخ ١٣/١١/١٤٤٠ هـ. وقد أنشأ هذا المرسوم العديد من اللجان والمجالس المكلفة بفض النزاعات المتعلقة بالعقود الإدارية، والتي تعمل حصراً في التعامل مع الدعاوى ذات الموضوعات المحددة، سواء كانت في المحكمة الإدارية أو اللجان القضائية الشبه قضائية، والتي تتمتع بالاختصاص القضائي. يجدر بالذكر أن هذه اللجان لا

تتداخل مع مجالات اختصاص المحكمة الإدارية، ويظل الموضوع الذي تناوله محدوداً، ولا تشكل جهة قضائية إدارية صارمة في المعنى التقليدي.

الكلمات المفتاحية: الدعوى الإدارية، نزاعات العقد الإداري، القانون السعودي.

**The Subject Of Lawsuit Administrative Contracts
Conflicts That Can Be Adjudicated Before The
Competent authorities in the saudi law.
Analytical Study In Light Of The New Governmental
Competitions And Purchases System**

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Abstract:

The study addressed the subject of lawsuits related to administrative contract disputes that can be adjudicated before specialized authorities in the Saudi legal system, within the framework of an analytical study concerning the new governmental competitions and procurement system. The aim of this study is to shed light on the objective conditions required to initiate and settle lawsuits related to administrative contracts before specialized judicial authorities, in accordance with Saudi law. Despite the diverse nature of disputes concerning administrative contracts regarding their validity or effects, the National Transformation Program, launched as part of Saudi Arabia's vision, aims to improve governmental operations and establish a legal framework aligned with that vision. This study also highlights the new regulations and systems related to governmental competitions and procurement, which were established according to Royal Decree No. (M/128) dated 13/11/1440 AH. This decree established several committees and councils tasked with resolving disputes related to administrative contracts, exclusively dealing with specific subject matters, whether in administrative courts or quasi-judicial committees endowed with judicial jurisdiction. It's worth mentioning that these committees do

not overlap with the jurisdiction areas of administrative courts, and the subject matter they address remains limited, not constituting a strict administrative judiciary body in the traditional sense.

Keywords: Administrative Lawsuit, Administrative Contract Disputes, Saudi Law.

■ Introduction:

The administrative contract has an important role in propulsion of administrative activities in the state¹, where the administrative body can establish, exploit and manage public utilities so that it performs its services to the beneficiaries in permanently and regularly way to achieve the public interest².

The contract is not administrative unless one of its parties is an administrative body³, and in order for the administrative contract to be subjected to the rules of the public law⁴, and the administrative judiciary is competent to settle its disputes, the administrative body must use the privileges of the public authority as a public asset.⁵

This is what was confirmed by Article (13/c) of the Law of the Board of Grievances on the jurisdiction of the administrative courts to adjudicate in “the lawsuits related to contracts in which the administration is a part of them.” It is clear from this text that the Saudi legislator has expanded in the Board of Grievances’ jurisdiction scope from two sides:

¹ - L'Aqoun, Afaf, and Rita, Walid. (2021). The specificity of administrative dispute: public procurement disputes in Algeria as a model. *Journal of Judicial Jurisprudence*, Volume 13, Special Issue, p516.

² - Al-Shaibani, Munir. (2016). Disputes related to administrative contracts: a study in Libyan law. *Al-Manara Journal for Legal and Administrative Studies*, 13th, 247.

³ - Al-Shaddadi, Abdul Latif. (2020). The concept of modification in administrative contracts. *Moroccan Journal of Local Administration and Development*, p. 155, 63 -66

⁴ - Al-Kabir, Muhammad bin Ali bin admire. (2021). The principle of equality in administrative contracts: a study in the light of the Saudi procurement and competition system. *Jouf University Journal for Human Sciences*, p. 11, p159

⁵ Zabih, Imad Daman, and Arouse, Aisha. (2022). The extent of the permissibility of appealing cancellation in administrative contract disputes. *The Thinker Magazine*, Vol. 17, p217.

The first: looking into all contracts to which the administration body is a party, whether they are administrative contracts in the strict sense or private contracts carried out by the administration without necessarily applying to them the terms of the administrative contract.

The second: its jurisdiction to consider all disputes arising from the contract in terms of (its convening, validating, implementing, expiring or rescinding).

Administrative contracts in the Kingdom of Saudi Arabia are subjected, according to the latest amendments of the new governmental competitions and purchases system and its amended executive¹ regulation.

▪ **Research significance:**

The research aims to protect the rights of parties through resolving disputes related to administrative contracts, whether these parties are administrative bodies or private entities contracting with them. Additionally, the research seeks to achieve administrative justice by enabling the referral of disputes to the competent authorities, thereby promoting the principle of justice and the application of relevant laws and regulations. Furthermore, the research contributes to building confidence in the Saudi legal system by providing effective mechanisms for resolving disputes related to administrative contracts.

▪ **Research problem :**

The problem manifests in the delay in resolving disputes due to appeals and challenges that prolong procedures, coupled with the complexity of the processes, which increases the costs and time required to settle disputes. This results in additional financial burdens on the contracting parties and may lead to a lack of transparency, thereby undermining confidence in the legal system and the decisions of the competent authorities.

¹ Issued by virtue of the Minister of Finance decision no. (2479) dated 11/8/1441 AH.

■ Previous Studies:

- Asseemi, Abdullah Nader. (2018). "Formal Reasons for Dismissing Administrative Lawsuits under the New Saudi Grievance Board System." This study identified the formal reasons for rejecting administrative lawsuits in the administrative courts of the Saudi Grievance Board, under the new system that transformed the old branches of the Grievance Board into administrative courts. It highlights the importance of determining judicial jurisdiction by following the legal texts, especially concerning territorial jurisdiction, within the context of the dual judicial system adopted by the Kingdom of Saudi Arabia, alongside numerous administrative committees exercising judicial powers.¹

- Al-Shahrani, Abdulilah Bin Saeed Ahmed. (2018). "Special Jurisdiction of Administrative Judiciary in Saudi Arabia Compared to Islamic Jurisprudence." This study compares the judicial jurisdiction in Saudi Arabia with Islamic jurisprudence, where judicial jurisdiction is defined as the authority vested by a guardian or deputy to a judicial entity to adjudicate disputes. In Saudi Arabia, the workload is distributed among the courts within the judicial jurisdiction, whereas in Islamic jurisprudence, jurisdiction is determined between the disputing parties and the value claimed. The results emphasized the importance of judicial jurisdiction currently and recommended focusing on it to deliver rights to their owners².

¹ Asseemi, Abdullah Nader. (2018). "Formal Reasons for Dismissing Administrative Lawsuits under the New Saudi Grievance Board System." University of Sharjah Journal of Legal Sciences, Vol. 15, No. 2, pp. 179-207.

² Al-Shahrani, Abdulilah Bin Saeed Ahmed. (2018). "Special Jurisdiction of Administrative Judiciary in Saudi Arabia Compared to Islamic Jurisprudence." Law and Business Journal, No. 13, pp. 86-112.

▪ **Research Methodology:**

The study adopts a descriptive-analytical approach, through describing and analyzing the actual situation of administrative conflicts in procurement and competition contracts that can be adjudicated by the competent authorities in Saudi law. It is an analytical study in light of the new system of government competitions and purchases. The study relies on a range of primary and secondary sources as well as scholarly publications.

1- The substantive content of the accepted lawsuit for consideration before the competent authorities in adjudicating the administrative contract disputes.

The structure of administrative contracts has known a development in its contractual system, in line with the requirements of economic and social development, especially as a tool in the development and performance of the public facility¹, and a mechanism for achieving the state's function, and its reflection on expanding the scope of contracting with the aim of improving services and their continuity².

1-1-The lawsuit' subject that is in the administrative contracts disputes about the decisions that are related and separated from the administrative contract.

Administrative lawsuits are considered in accordance with Article (13/d) from the lawsuits of the full justice, and jurisprudence and the justice have settled that the judge of the lawsuits of the full justice has the permission to judge on the administrative body to take a specific action, unlike the lawsuits of cancellation³, where the role of the administrative judge depends on the annulment of the decision or refuse to cancel it⁴.

¹ AL-SOFANI, D. A. K. A. (2021) The Role of the Administrative judge in In Financial Rebalancing the Administrative Contract. p 7

² Mabkhouta, Ahmed, and Ali, Sharmat Sayed. (2020). Recent economic developments and reorganization of the contractual aspect of administrative contracts. Annals of the University of Algiers 1, Volume 34, Volume 1, p418.

³ Hama, Z. R., & Rasheed, A. K. M. (2021). The competence of the full jurisdiction to settle administrative contracts disputes. Journal of University of Human Development, 7(1), 43-45

⁴ Demanding payment of the fees subject to the lawsuit does not fall within the annulment lawsuit, in which the role of the department depends on either annulment or rejection, but it falls within the lawsuits of the administrative contracts, in which the department exercises its full jurisdiction and its role does not stop only to cancel the defective decision, but to rule the matter on The entity is required to take a specific action. A ruling published in the Collection of Administrative Rulings and Principles for the year 1436 AH, p. 2334

Judicial lawsuits in administrative contract disputes take several forms related mainly to the validity of the contract or its effects, and thus the objective conditions for accepting the plaintiff's requests differ according to the nature of the lawsuit filed before the judiciary, and each lawsuit has its substantive conditions different from the other lawsuit according to what the plaintiff requests, the subject of the lawsuit must be a special with the administrative decision related to the contract or separate from it, as follows:

1-1-1- Decisions separated from the contract:

It considered within the jurisdiction of the rescission judge, and they are decisions issued by the administrative authority before the completion of the contract¹, i.e., before the entitlement decision is issued. The theory of separable decisions is a judicial theory that the jurisprudence and the judiciary has established to work with it and requires the acceptance of requests to cancel decisions issued on the conclusion of a contractual act as long as its separation doesn't affect on the contract². The separated decision is a decision that contributes in forming the administrative contract, and aims to complete it, but it is separated from the contract in its nature, so it was stable on it by jurisprudence and judiciary form is the possibility of appeal the cancellation of these decisions before the Saudi Board of Grievances, because the decision does not fall within the scope of the contractual association which allows an appeal for cancellation independently of the contract³, in accordance with Article (13/b) of the Divan system⁴.

¹Fikri, Fathi (2004) Alwajeez in the annulment lawsuit according to the provisions of the judiciary, Nass Printing Company, p. 94.

² Alaoui, Muhammad. (2011). Jurisdiction of the annulment judiciary in administrative contract disputes. Moroccan Journal of Local Administration and Development, p. 101, 143 - 153.

³ Khalifa Abd Alaziz Abd Elmoneim (2004), General Foundations of Administrative Contracts, p. 338

⁴For example, the decision to exclude a person from the general competition, the decision to extend the competition, the award decision, or the decision to confiscate the initial guarantee for a non-contractor with the administration.

1-1-2- Decisions related to the contract:

It is within the jurisdiction of the contract judge according to Article (13/d) of the Divan system, for example, the decision to confiscate the initial or final guarantee or the deposit for the contracting party with the administration or the seize decision on his equipment's or the decision to withdraw the project and implement it on the account or the decision to terminate the contract¹.

1-2- The subject of the lawsuit in the termination lawsuit:

Administrative termination differs from the judicial termination, as the administrative termination is a procedure carried out by the administration body, either as a result of the contracting party's breach of his contractual obligations or in order to achieve the public interest², even if the contracting party did not breach his obligations³, but in the judicial termination is what the administrative judge adjudges after a lawsuit filed by those who have an interest in terminating the contract, which is often the contracting party with the administration.

-The Board of Grievances is the body that has general and original jurisdiction to consider the administrative contracts disputes in general⁴.

-The committees established by the legislator to decide on some issues either settle issues that arise before the conclusion of the administrative contract, impose fines on violators of the competition and procurement

Alborini, Omar bin Abd Elrahman, (2013) Administrative Decisions that are Separable from the Contract and the Oversight of judiciary on them, Lows Journal, Kuwait, tome13, Number 1, March / Jumada Al-Awwal, p. 497-548.

¹ Zidan, H. M. (2018). Termination of the administrative contract by dissolution. Journal of The Iraqi University, 40(2). p210

² Sararu, C. S. (2011). The termination of administrative contracts in the Romanian and French law. Acta U. Danubius Jur., p17.

³ - Hassan Almoanis (2020), Administrative Disputes in the Kingdom of Saudi Arabia, 2nd Edition, p. 201.

⁴ Shatnawi, Ali Khattar. (2019). The legal qualification of the judges of the Saudi Board of Grievances and its impact on compensation disputes. Journal of Sharia Sciences, Volume 13, Volume 1, 783 -785.

system, or resolve disputes of a technical nature, these committees do not dispute with the Board of Grievances in any of its general or specific competencies, but they were established as a means to resolve specific disputes more quickly.

- That the Saudi regulator has made these committees and the authority to form them subordinate to Board of Grievances and work under his control and supervision.

- The full judiciary is competent to settle administrative contract disputes, whether those disputes are related to the contract's conclusion, validity, implementation, or its completion, and within the full judiciary the decisions issued by the administration based on this contract¹.

- That the subject of the lawsuit or the dispute is not the same in the disputes that are considered before the Board of Grievances or before one of the quasi-judicial committees The purpose of the contracting party's request to terminate the contract is to absolve him of his obligation, and this is one of the most severe penalties that he can request to inflict on the administration, and therefore the judiciary is strict in its application, unless the conditions and reasons for it have achieved for him, which is the essential breach of the administration from its obligations in the contract or it made serious mistakes, also the right of rescission may or may not be associated with the entitlement of the contracting party.

For the consideration of the lawsuit that its subject is the termination and ruling on it, that the contracting party when filing the suit, is continuous in implementation and is not suspended, and that the default is on the part of the administration. If the contracting party is requesting the termination is suspended from implementation, the judiciary does not respond to the request of the termination, and the judge does not resort to adjudge the termination of the contract as soon as one of the parties to the contract requests that, as he has the discretionary power to

¹ Salhab, Kinda Faisal. (2019). A full-fledged lawsuit "Compensation lawsuit": its concept - characteristics - distinguishing it from the annulment lawsuit. Tishreen University Journal of Research and Scientific Studies - Economic and Legal Sciences Series, Vol. 41, v6, p 299-305.

balance between the termination of the contract if it appears to him from the contract's conditions that it is not possible to continue the implementation, and between giving the contracting party a period to implement his obligation, the judicial work was conducted in the Kingdom to adjudge for the termination of the contract in cases of force majeure in which it is impossible to implement the contract, or in the event of a serious breach by one of its parties in his contractual obligations¹.

1-2- Subject of a claims requesting or financial compensations:

In administrative contracts, the administrative authority enjoys many privileges, the most important of which is the right to impose penalties on the contracting party, whether financial or non-financial².

Within the framework of achieving balance with the administration's privileges towards its contracting party³, the laws and regulations

¹ - In one of the cases, the judge considered that “the breach by the party of its contractual obligation after handing over the station to the plaintiff on time and its acknowledgment that there had been a significant change in the station (the fuel station) and its contents was a fundamental influence in reducing its rental value by a large difference in the price of the plaintiff’s contract, which is what It gives him the right to request the termination of the contract and the return of what he paid. Collection of Administrative Provisions and Principles for the year 1435 AH, p. 2942.

² - Refer to Article (77) of the Competition and purchases Law stating that “the government entity may terminate the contract if the public interest so requires. Article (75) also states that the government entity may withdraw part of the business and purchases and implement it at the expense of the contracting party if he breaches his contractual obligations after being warned.

³ -Al-Kahlawi, Rajab Muhammad (2019)• Administrative Contracts, A Comparative Study in the Light of the Saudi Procurement and Competition System, 1st Edition, Dar Al-Shukri, p. 3.

guarantee for the contracting party with the administration the necessary legal protection¹.

The legal influences of the theory of the prince's action differ from the theory of emergency circumstances and the theory of unexpected material difficulties, and these are the most important theories that are based on the idea of the right to restore the financial balance of the contract.

The application of the theory of the prince's action² results in several effects, including³:

- The contracting party has the right to obtain full compensation for any harmfulness caused to him.

-Free the contracting party from the obligation of the implementation if the prince's action results in the impossibility of implementation.

- The contracting party has the right to terminate the administrative contract whenever the "prince's action" results in an increase in the burdens to a degree that is not borne by his financial means.

- The contracting party has the right to demand not to impose fines for delay in implementation if it is proven that the prince's act made implementation difficult to justify the delay as decided by the judge.

¹ - Muslim, Arwa Ismail. (2019). The impact of the prince's work theory on financial rebalancing in administrative contracts. Journal of Studies in the Humanities and Social Sciences, Vol. 2, p. 23, p359

² - Smile, A., & Kak, M. (2020). THE AUTHORITY OF ADMINISTRATION TO WITHDRAW THE WORK FROM THE CONTRACTOR IN PUBLIC WORKS CONTRACT (AN ANALYTICAL STUDY). Journal of college of Law for Legal and Political Sciences, 9, 309-340.

³ - Shantawi, Ali Khattar (2016), The General Theory of Administrative Contracts in the Kingdom of Saudi Arabia, Al-Rushd Library, p. 277.

As for the theory of emergency conditions¹, if it applied, the following results will be done:

- The contracting party has the right to obtain financial aid from the administration body in order to be able to overcome the emergency conditions and continue implementing the contract².

- The contracting party is obligated to continue implementing the contract, otherwise his right to demand compensation will forfeit.

-Distributing the percentage of loss between the administrative body and the contracting party, and the judge in this field has a wide discretionary authority in determining the percentage of each party in the contract in bearing the loss.

As for the theory of unexpected financial difficulties³, it follows:

- Compensating the contracting party with the administrative authority to the extent of the costs or losses incurred to eliminate these financial difficulties, without going beyond that to fully compensate him for the loss resulting from the contract⁴.

Whatever the legal basis on which the right to demand the claims or compensation is based, it is propitious to be a subject for a lawsuit to be

Altahrawi, (Hanani (2017) who calls it “Economic Risks” in his book Saudi Administrative Law, the second book, first edition, p.205. Fahd Ibrahim Aldowayan, (2014) "development of applying the contingent circumstance theory in the Saudi Administrative and Judiciary System, King Saud Journal, tome 26, number 1, p320.

² - Abu Aqil, Aladdin Muhammad Sayed Muhammad. (2021). The legal basis for the financial rebalancing of the administrative contract: the liberalization of the exchange rate as a model. King Abdulaziz University Journal - Economics and Management, Vol. 35, p. 2, p. 154-157

³ -Hamada Abd Elrazek Hamada (1442)◊ Mediator in Administrative Contracts in the Kingdom of Saudi Arabia, An Applied Analytical Study, first edition◊ p. 378.

⁴ - The customer, Wassef Youssef Mohamed. (2019). The legality of the text of the administrative contract on violating the theories of financial rebalancing: a comparative study. Journal of the Islamic University of Sharia and Legal Studies, Vol. 27, p. 2, p. 459.

heard before the bodies that specified by the Saudi legislator to see the lawsuit that related to the administrative contract. in some cases, harmfulness occurs to the contracting party with the administration as a result of the act of others, and the contractor with the administration is obliged to pursue his lawsuit before the public judiciary, As if, during the execution of an administrative contract, he suffered harm from a private law person, it is not valid to request compensation or financial claims resulting from the harmfulness before the administrative judicial authorities specified in the new competition and purchases system.

2- The competent authorities to decide on issues related to the administrative contracts:

There are several competent authorities to adjudicate in the administrative contract disputes. Some disputes fall under the jurisdiction of the quasi-judicial committees¹, and the others are within the jurisdiction of the Board of Grievances, which we will try to shed light on:

2-1 – Courts.

The Board of Grievances is the holder of the general jurisdiction to adjudicate in the administrative disputes. The Board depends on a system of multiple degrees of litigation. Administrative courts are distributed over the regions of the Kingdom, and it considers all contracts to which the administration is a party².

2-2- The subject of disputes considered by the quasi-judicial committees, according to the committee.

The Saudi regulator expanded in the new competition and purchases system in the formation of the quasi-judicial committees and assigned

¹ - Aljarbou, Ayoub bin Mansour, (2017) Quasi-Judicial Committees in Saudi Law (An analytical study in light of the regular texts and the provisions of the Board of Grievances), first edition, Omar Alkhouli (2018), Shadow Judiciary, Hidden Courts, Administrative Committees That Practice Judicial and Quasi-Judicial Activities in the Kingdom of Saudi Arabia, Publications of the Saudi Center for Research and Legal Studies, 2nd edition, p101.

² Hamada Abd Elrazek Hamada, Mediator in Administrative Contracts in the Kingdom of Saudi Arabia, An Applied Analytical Study, previous reference, p. 222

-Despite the breadth of this jurisdiction according to Article 13 of the Board of Grievances system, the Saudi legislator did not differentiate between public utility contracts and private administration contracts, despite the distinction between them during implementation Alzaher, Khaled Khalil (2009) Administrative Judiciary in the Board of Grievances, Kingdom of Saudi Arabia - Library of Law and Economy - Riyadh, p. 155

each of them an important role in adjudicating some administrative contract disputes as follows:

2-2-1- The Grievances and Price Adjustment Committee:

This committee is considered a pure administrative committee with judicial jurisdiction because its formation lacks a judicial element. A decision is issued for its formation by the Minister of Finance. The minister determines in the decision of forming it the committee's chairman and his deputy, and it consists of a number of advisors, their number is not less than five, and the decision stipulates on one or more reserve members. The committee is reconstituted every three years.

This committee is specialized in looking into:

- Competitors' grievances against the award decision or any procedure of the contracting procedure prior to the issuance of this decision, and the committee's role is limited to adjudicate on any decision taken by the governmental body before the award decision is issued, and whether the grievance relates to the award decision or any other decision. It is the same if the grievance relates to a decision or just one of the contracting procedures, as long as this procedure was taken by the government before awarding.

- Consideration the grievances of the contracting party with them from the performance evaluation decisions and the matter here is related to the contracting party with them and not with the competitors. The legislator allowed the contracting party to complain about his performance evaluation before the grievances committee and price adjustment stipulated in Article (86) of the system¹.

¹ - Article (79) of the government purchases system requires the government agency to evaluate the contracting party after the contract implementation ends. Article (140) of the executive regulations for that system showed how to evaluate. The organizer arranged for the evaluation to have serious consequences for the contracting party. The contracting party who receives a low performance report. Less than 70% for three consecutive contracts, the government may terminate the contract with him, in addition to referring him to the committee to consider violations of the government purchases system to consider stopping dealing with him.

- Deciding on requests for price adjustments Article 68 of the new Saudi Governmental Procurement system permits the contracting party to request an amendment to the contract prices in the event of a change in customs tariff rates, fees or taxes, if it is proven that the contracting party has actually paid the value of this increase, and that the contracting party did not bear that increase as a result of his delay in implementation by his wills.

If there is a decrease in the value of the prices, the management may deduct from the contracting party the amount of the difference in prices unless he pays them on the basis of the categories before the amendment, and then if the government body makes these differences, the contracting party has the right to appeal against the discount decision before this committee¹.

The price can also be adjusted based on the occurrence of unexpected financial difficulties, so that committee is the competent authority to compensate².

What is clear from the establishment of this committee is that it is specialized in adjudicating disputes that occurred before the conclusion of the administrative contract; hence, there is no contract

that one of its parties is the administration, so it does not belong to the Board of Grievances, and the role of this committee does not go beyond consider grievances only, and it is dyed in its administrative capacity and it issues decisions and perhaps the wisdom of its establishment is what these committees achieve of interest because of the nature of their formation and their ability to decide on the specific subject before them, and their members specialize in these issues only, as they are not a judicial authority.

¹ - Article 113/third of the executive regulations for the new governmental purchases system.

² - Article 86 of the new governmental competition and purchases system, and Article 113 of its executive regulations

The legislator also did not refer to the method of objecting to the decisions of this committee, which makes its decisions final, and this is considered a clear violation of the principle of two-tier litigation.

This committee is basically an administrative committee, but it has judicial jurisdiction, or as it is called (a quasi-judicial committee), and we believe that the fact that these committees adjudicating some disputes, but that these disputes are not related to an administrative contract in the legally intended form.

It is also considered that this committee is an administrative committee. If it is so, then it is not justified for this committee to be an adversary and an arbitrator at the same time, so we see that what this committee issues and if it does not stipulate the mechanism of appeal, it can be appealed before the Board of Grievances, similar to the committee to consider violations of the governmental purchases system.

2-3- The committee to consider violations of the governmental purchases system:

This committee was established for the first time according to the text of Article (88) of the new governmental competition and purchases system, and this committee is formed by a decision of the minister of one or more of the specialists, the number of which is not less than five, In it, the committee chairman and his deputy specify and his task is to consider the violations of the competitors and contractors with the provisions of the system and the contracts concluded with them, and this committee imposes a number of penalties on the competitors and contracting parties, including¹:

- Penalty for preventing dealings. The committee may issue a decision against the violator to prevent him from dealing with the government agencies for a period not exceeding (5) years. Determining the period of prohibition of dealing is within the discretionary authority of the committee within the maximum limit established by system².

¹ - Langrod, G. (1955). Administrative Contracts-A Comparative Study. Am. J. Comp. L., 4, 325.

² - Article (88/3) of the new governmental purchases system.

- Replacing the penalty of prohibiting dealing with a fine, so the committee may, instead of applying the penalty of prohibition against the violator, impose a financial fine on him at a rate not exceeding (10%) of the total value of his offer¹.

-Penalty of downgrading the committee can issue a decision in the right of the violator to downgrade his classification².

- Combining the penalties of prohibiting dealing and downgrading classification³.

The decisions of this committee are effective from the date of its issuance, even if a grievance is lodged against it before the administrative court, and to stop the implementation of the committee's decision until the grievance is resolved, the complainant must submit an urgent request to the administrative court requesting a temporary suspension of the implementation of the decision until the grievance is resolved. If an order issued by the administrative court to stop the grievance, so the implementation of the decision must stop immediately until a final ruling is issued on the subject of the appeal by the administrative court⁴, and the decisions of this committee are subject to appeal before the administrative courts of the Board of Grievances within sixty days from the date of becoming aware of the committee's decision⁵.

It is clear from the issues examined by this committee that they are not issues related to the administrative contract, but rather consider the violations committed by the competitors and the contracting parties with them away from the issue of the administrative contract.

¹ - Article (4/87) of the new governmental purchases system •

² - Article (3/87) of the new governmental purchases system.

³ - Article (3/87) of the new governmental purchases system.

⁴ - Article (88/5) of the new governmental purchases system.

⁵ - Article (M (68/6) of the new governmental purchases system

3- Disputes Resolution Council:

This council is composed of a representative of the government, he has high experience and competence in the area of dispute resolution, a representative of the contracting party who is also experienced and highly qualified in the subject of the dispute resolution, the chairman of the council, who is appointed by the Ministry of Finance and can be appointed from the government or private sector¹.

This council is concerned in resolving the technical dispute between the government body and the contracting party, and therefore it is not concerned in resolving the substantive or financial dispute, but rather the dispute must be related to a technical nature matter. Therefore, if the dispute includes more than one subject, the technical dispute must be decided only and all other requests are rejected, provided that this technical dispute leads to the failure of the project or harm to either of the two parties or any of the state facilities and that the government first resorts to resolving the dispute amicably.

The council shall decide on the dispute within (30) days from the date of receiving the report and related documents, and the council shall issue its decision by majority, provided that the dissenting opinion is clarified, if any. The decisions of the Council are not effective unless there isn't.

opinion is clarified, if any. The decisions of the Council are not effective unless there isn't objection on it from the dispute parties, and the aggrieved party may resort to the competent judicial authority to contestation on it².

This council has a clear and obvious role in that its competence is limited to resolving technical disputes, and despite our reservations about the establishment of this large number of committees, some of these quasi-judicial committees, such as the Dispute Resolution

¹ - Article (155/1) of the executive regulations for the new governmental purchases system.

² - Article 155/6 of the executive regulations for the new governmental purchases system

Council, are not described as a quasi-judicial committee, this is in view of the peculiarity of its formation, the nature of its work and its limitation to the consideration of technical issues only, which makes this type of councils of great importance and an easy way to resolve disputes without resorting to other judicial bodies in a manner that may not be commensurate with the nature of the subject in dispute and the time and effort it may save for both parties.

The question here is: Is this dispute presented to the Dispute Resolution Council related to the issue of an administrative contract dispute? We believe that defining the nature of this committee will shorten what matters may turn out to be, and the occurrence of a judicial dispute in which an expert is delegated to adjudicate.

The council, according to the ninth item of Article 155, does not exceed its role to consider the technical issue in dispute, which would harm one of the parties or disrupt the project, so we can say that what this committee considered is not related to the dispute of administrative contracts in the intended legal form.

4- The specificity of the role of the Board of Grievances in adjudicating administrative contract disputes¹.

The Board of Grievances has an important role in settling disputes in both types of administrative contracts (public administration contracts and private administration contracts) to which the administration is a party in it, however it applies to the public administration contracts the rules of the public law, and to the private administration contracts the rules of private law are applied.

Referring to the new government competition and purchases system, we find that more than one committee has been established and each of them has been entrusted with a role in adjudicating some disputes. Therefore, all disputes that do not fall within the jurisdiction of these committees are vested in the Board of Grievances, in addition to the fact that the decisions of these committees are considered administrative decisions that can be appealed within a certain period, and that before the Saudi Board of Grievances.

Article (92/1) of the government competition and purchases system states that "the government body shall implement its obligations in the contract in accordance with its terms, and if it fails to implement its obligations, the contracting party with it may apply to the Administrative Court to claim compensation." Also, the Article (13/d) of the Board of Grievances system states the jurisdiction of the administrative courts to adjudicate lawsuits related to contracts in which the administration is a party in it." This jurisdiction includes all disputes arising from the contract (in terms of its conclusion, validity, implementation, expiry or termination.)

¹ - Al-Jarbou, A. M. (2011). The Saudi Board of Grievances: Development and New Reforms. Arab Law Quarterly, 25(2), 177-202.

There is a noticeable role for the termination¹ judiciary in adjudicating administrative contracts disputes, but the greater role in adjudicating these disputes falls under the full judiciary, and the Board of Grievances adjudicates the grievances of the stakeholders in the decisions of the quasi-judicial committees that adjudicate the administrative contract disputes, as follows:

4-1- Competencies of the annulment judge regarding the administrative contract's disputes

There are several competencies for the annulment judge regarding the administrative contract's disputes, as follows:

- Jurisdiction of the annulment judge to considered appeals from beneficiaries in concession contracts:

In Egypt, jurisprudence sees that the beneficiary in the commitment contract can challenge the annulment of the obligor's decision, although he is not a party in it, but in an indirect way, the beneficiary can apply to the administrative authority granting the obligation, asking it to compel the obligor to respect the regulatory conditions stipulated in the commitment contract. If it abstains from responding to the request or refuses to answer it, its decision to refuse or abstain is considered a decision that fulfills the elements, the beneficiary has the right to appeal against it before the annulment judge, if a judgment is obtained to cancel this decision, it will be an argument in the face of the administration to intervene to compel the obligor to respect the terms of the contract².

- The jurisdiction of the annulment judge to consider decisions issued by the administration in its capacity as a public authority:

If the administration derives its authority to impose penalties from the texts of the contract and the books of terms, then the disputes in those

¹ - Sandu, A. M., & Pagarin, M. S. (2012). Study on administrative contracts. Contemp. Readings L. & Soc. Just., 4, 903.

² Jaafar, Anas, (2007) Administrative Contracts, Arab Renaissance House, fourth edition, p. 246.

penalties are subject to the full jurisdiction of the judiciary, But if the provisions of the contract do not give the administration the authority to impose a penalty on the contractor with it, yet the administration has imposed this penalty based on what the laws and regulations guarantee to it the right to use that power as a public authority, the dispute in this decision is not a legal dispute, which makes the annulment judge competent to consider it considering that this penalty in this instance is a purely administrative decision that is related to the administrative contract and its texts¹.

In the Kingdom of Saudi Arabia, the annulment judge's powers stop at the annulment of the illegal decision and do not extend to issuing orders to the administration or replacing it, and it is not permissible for this judge to impose a threatening fine on the administrative body².

4-2- Competencies of the contract judge regarding the administrative contract disputes:

The full judiciary is competent to settle administrative contract disputes, whether those disputes are related to the contract's conclusion, validity, implementation, or its completion. The full

judiciary also includes decisions issued by the administration that based on one of the provisions of the contract, such as its decision to withdraw work from the contracting party or its decision to confiscate insurance.

It follows from considering the contract lawsuit as one of the full judicial disputes that this lawsuit can be filed without taking into account specific procedures or dates as required by the organizer in the annulment lawsuit, so the neglecting of these procedures and dates in the annulment lawsuit results in a ruling that the lawsuit is not accepted in form without deciding on the subject matter of the lawsuit, even if the right to it is apparent, but because the case for the full judiciary is

¹ - Khater, Sherif Youssef, (2009) Principles of Administrative Law, a comparative study, Dar Alnahda Alarabiya, p. 719.

² - Hamada Abd Elrazek Hamada, Mediator in Administrative Contracts in the Kingdom of Saudi Arabia, An Applied Analytical Study, previous reference, p. 484

not linked to any dates or procedures, so it is not necessary for the person concerned to file a grievance to a specific body, It does not have to be filed within a certain period, taking into account the case in which the Board of Grievances is a body competent to grievance only against the decisions of one of the committees, the person concerned must file his grievance before the Board of Grievances within (60) days from the date of his knowledge of the committee's decision, otherwise his claim will be inadmissible from a formal point of view.

Article (92/3) of the new governmental competition system states that "the regulations are specified other means for resolving disputes that may arise during the implementation of contracts." The regulation specified in Article 155 two ways to resolve disputes, either by amicable way or through a council to resolve the dispute.

▪ **Conclusion:**

The study examines the administrative contract disputes that can be brought before the competent authorities in Saudi law, within the framework of the new system for government competitions and purchases. It highlights the importance of understanding the new regulations governing these contracts and providing effective mechanisms for resolving related disputes. The research underscores the significance of enhancing the judicial process and promoting transparency and accountability within the context of an advanced digital government.

▪ **Results:**

-The Board of Grievances is the body that has general and original jurisdiction to consider the administrative contracts disputes in general.

-The committees established by the legislator to decide on some issues either settle issues that arise before the conclusion of the administrative contract, impose fines on violators of the competition and procurement system, or resolve disputes of a technical nature, these committees do not dispute with the Board of Grievances in any of its general or specific competencies, but they were established as a means to resolve specific disputes more quickly.

- That the Saudi regulator has made these committees and the authority to form them subordinate to Board of Grievances and work under his control and supervision.

- The full judiciary is competent to settle administrative contract disputes, whether those disputes are related to the contract's conclusion, validity, implementation, or its completion, and within the full judiciary the decisions issued by the administration based on this contract.

- That the subject of the lawsuit or the dispute is not the same in the disputes that are considered before the Board of Grievances or before one of the quasi-judicial committees.

▪ Recommendations:

- Regularly update the regulations governing administrative contracts to reflect technological advancements and best practices in administrative law.
- Enhance transparency and accountability in the functioning of committees specialized in resolving administrative disputes, ensuring that their decisions are based on clear legal principles and subject to oversight.
- Encourage the use of alternative dispute resolution mechanisms, such as arbitration and mediation, to efficiently resolve administrative disputes in terms of cost and time, thereby reducing pressure on the judicial system.
- Conduct periodic evaluations of the effectiveness of the mechanisms used in resolving administrative disputes, listen to stakeholders' opinions, and make necessary adjustments to improve efficiency and fairness.

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