

# UNCUSTOMARY EXPIRATION OF PUBLIC WORKS CONTRACTS IN JORDAN AND EGYPT: A COMPARATIVE STUDY

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## ABSTRACT

*The public works contract expires in different ways; for instance, it may expire normally through temporary delivery of works or final delivery of works that is outside the sphere of this study. This study addresses the importance of unusual expiry of public works contracts by targeting the essence of the legal system that administers the expiry of this type of administrative contract. This topic has been discussed in three themes. Firstly, the nature of the public works contract is stated to determine its concept and forms. Secondly, the expiry of the public works contract has been stated by agreement of the two parties or by the force of law in conjunction with a study of revoking the contract by agreement and revoking the contract by the force of law. Thirdly, the judicial and administrative expiry of the public works contract has been addressed by determining judicial revocation and administrative revocation. The study is significant for the law professionals and personals as well as for the law students. The study also provides valuable insights for the public and private entities, those who are involved in administering the collaborative activities and ventures.*

**Keywords:** Administrative Contracts, Administrative Revocation, Contract Revoking, Expiration of Public Works and Legal System.

## INTRODUCTION

Public sector has greater tendency to derive and influence the market through their collaborative ventures with their counterparts in the markets (Knutsson & Thomasson, 2013). The public works contract is characterized as an administrative contract. It is subject to a legal system that governs special-law contracts as compared to other administrative contracts. It occurs when the two parties in a public works contract represent unequal interests. In such contracts, administration represents the public interest whereas the contractor represents private interest, that is unlike civil contracts in which individuals' interests are equal. Therefore, the administrative contract is different from the civil contract in its implementation and impact. On account of the development in the last decades, the nature of the administrative contracts has been undergone with notable modification. For instance, in the backdrop of the emanation of the revolution in 1989, the legislations in France set a precedent as there were various types of the administrative contracts that are either accorded between public and private personal or between

two private entities or persons. However, among all the private contracts, administrative contracts were held with different and supplementary conditions (De-Smet, 2019).

The public works contract is one of the most important and oldest administrative contracts that are subjected to rules independent of special law rules. In such law, the administrative body enjoys privileges of public power; however, these privileges have limits and restrictions that should be considered when concluding these contracts. These restrictions are represented as a group of principles. Adopting these principles result in upholding the interest of the administration and the interest of the contractor, such as the principle of publicity and equality between competitors, freedom of competition and the principle of transparency. Thus, the administrative body can conclude public works contracts with people who possess the ability to fulfil their obligations in the public interest and private interest simultaneously. Special law are the unusual procedures that are awarded to the administrative or public contracts i.e., public private partnership and in the affairs of public works, public procurement and other service-related concessions (Dragos & Sparios, 2016).

The classification of administrative contract is based on the criterion that is determined by the private law contractors. Through resources of the case-law, some of the core features of the administrative contracts are devised. Aiming to meld a contract as an administrative contract, it is prerequisite to apply some of the essential public laws. In addition to it, the objective of the contract must be implemented for the public service (Tabacu, 2009). The problem lies in treating the obstacles and compulsions that may result due to the implementation of public works contract, particularly when deciding the penalties and their imposition. Thereby, damaging the interests of the contractor with the administration, and putting forth legislative, judicial, and jurisprudence solutions to help stakeholders are taken into account through the modern developments. These developments are accompanied by administrative contracts in general and public works contracts.

In practical, the right of purchasing of lessee for the leased assets took place frequently. It is usually undertaken the objective for which individuals resort to financial leasing as a way of investment funding needed by the financial lessee, particularly if these assets are equipment slow technical perdition or real estate. The price paid by the lessee experience owned leased funds is usually legible than the market prices, so that it is adjusted into account when predicting the price of rent that the lessee has paid for the contract period. In this regard, a financial lessee is provided the right to purchase the leased assets under the Egyptian legislator at the end of the contract period.

The lessee, under Article (5/1) of Act No. 95 for the year 1995, modified by Act No. 16 for the year 2001 has the privilege for purchasing the leased assets comprehensively or partially at the data and price mentioned by the contract, on the circumstance that the money paid can be undertaken into account. On the other hand, the Jordanian legislator does not emphasize on the purchase option as a circumstance when undertaking the contract as a financial leasing contract. This can be apparently shown via the provision of Article (3/a) of the Financial Leasing Law No (45), indicating that a contract is undertaken as a financial leasing contract if it comprises of lessor's ownership of the leased assets and lessor commitment for paying the rent.

The public works contract expires in different ways. It may expire normally through temporary delivery of works or final delivery of works, outside the sphere of this study. The

public works contract may expire prematurely through the agreement of the two parties or by the force of law, before the term is determined for it. It may also expire by judicial revocation of the contract or by administrative revocation of the contract. The importance of this study emanates in two ways. Firstly, this study has clarified the ambiguity that may spoil the texts related to the expiry of a public works contract. Secondly, this study has provided scientific analysis related to the scope of the study. Therefore, the study is significant for the law professionals and personals as well as for the law students. The study also provides valuable insights for the public and private entities, those who are involved in administering the collaborative activities and ventures.

## METHODOLOGY

This study has been discussed in three themes. Firstly, the nature of the public works contract is stated to determine its concept and forms. Secondly, the expiry of the public works contract has been stated by agreement of the two parties or by the force of law in conjunction with a study of revoking the contract by agreement and revoking the contract by the force of law. Thirdly, the judicial and administrative expiry of the public works contract has been addressed by determining judicial revocation and administrative revocation.

## FINDINGS

### Nature of the Public Works Contract

Public works contracts are essential in administrative contracts as acknowledged by the state through participation of the private sector or by foreign investment. This contract is related to the basic structure of the state and public utilities (Marzoq & Alanzi, 2008). The administration concludes contracts through using local or foreign tenders when it desires to carry out a construction project with the lowest prices and the best technical conditions. Then, the administration concludes the contract with the most efficient contractor (national or foreign). The contractor must be able to maintain good progress and ensure regular functioning of public utilities to realize public interest in cooperation with the administration.

Public works contracts may be concluded with a national contractor or international contractor (Alhariri, 2011). Therefore, it is natural that the public works contract is subject to a special and distinguished legal system from the legal system that is governing contracts in special law (Marzoq & Alanzi, 2008). When the administrative body concludes a public works contract, it intends to realize two functions:

1. Obtaining services
2. Obtaining a basic tool to carry out the economic policy of the government.

In the wake of the larger scope and importance of the administrative contracts, the State Council in France widened the application of public works contracts without confining its connotation to the contracts that are concluded by the state, public institutions and bodies to view the major role of general law in establishing and financing basic structural projects. Its

interpretation extended to include contracts that are settled by special law people, who depend on carrying out public projects (Public Procurement, 2012).

### **Concept of the Public Works Contract**

Jurisprudence, judicial, and legislative bodies have set various definitions to public works contracts as follows:

#### **First: Jurisprudence Definition**

A public works contract allows the contractor to undertake public works in the interest of a public artificial person for a price (Algemeli & Alnahri, 2001). Some jurists define a public works contract as a contract, in which a general law person entrusts a contractor to carry out public works. Moreover, these contracts are related to real estate to realize public interest for a certain price. Some jurists define public works contract as an agreement between the administration and a contractor. The contractor, in return for consideration, will construct, restore, or maintain certain real estate in the interest of a public artificial person to realize public interest (Alhulw, 2009).

#### **Second: Judicial Definition**

The judiciary defined a public works contract as: *“an agreement between one of the general law persons and an individual or company under which the second party undertakes, carrying out construction works or restoration or maintenance works of real estate. It is in the interest of this general artificial person to realize public interest against a price that determined in the contract.”* The study comprises a comparative study in Jordan and Egypt since the derivation sources of the Jordanian Civil Law are from the civil code of Egypt that was promulgated in 1948. The roots of Egyptian Civil code were taken from the Napoleon code (Hayajneh, 2012). Furthermore, in Jordan, there are no special rules or mechanism to opt and administer the projects of public and private partnership. Internationally adopted strategies can be followed to acquire spontaneous bids; however, the Jordanian law has nullified all the unsolicited bids for the contracting authorities (EBRD, 2013). According to the Amman governorate has been collaborated with the private entities and has entered in to the contracts with them in the field of water management and renovation of infrastructure (The Economic Policy Council, 2017).

Furthermore, the Egyptian State Council in its Fatwa defined administrative contract as: *“It is a contract, under which a contractor undertakes, to the government, to carry out certain work under his responsibility and under the supervision of the government against cash amount to be paid to him as per the bases stated in the contract. Two main factors in the contract are: the contractor carries out the agreed work without having the right to use it and the administration will pay the cash amount to the contractor”* (Okasha, 1998). Notably, the term fatwa is used in Islamic legal literature that denotes to an explanation of a legal verdict that carries no binding effect (Al-Qasimi, 1986). Moreover, it can also be interpreted as the statement

that is discoursed by the head of the fatwa committee that is also known as Mufti. Typically, the fatwa is publicized and conveyed to the people through the media (Nasohah et al., 2012).

Most jurisprudents and judiciaries agreed that public works contracts are “*a contract between one the general law persons and individual or company under which the contractor undertakes to carry out some construction works or restoration or maintenance works in the real estate for the interest of this public artificial person to realize against a price determined in the contract.*” In Article No. 646, Egyptian civil law defined the contract as “*a contract under which one of the contracting parties undertakes to do something or perform work against wage to be paid by the other contracting party*” (Ayyad, 1973). The public works contract is initially considered as a contract outside the special law. This basic quality is found while concluding the contract, during its implementation and at its expiry (Ayyad, 1973).

Jordanian civil law defined the contract in Article No. 780 as “*a contract under which one of the two parties undertakes to make something or perform work against wage, undertaken to be paid by the other party*”. One can understand a collective definition of the public works contract as: “*a public works contract is a contract in which the contractor (company or individual) undertakes to carry out general real estate works in the interest of the general artificial person to realize public interest against consideration to be obtained by the contractor, which is the price.*”

To sum up the aforesaid, the proposed definitions of the public works contract allow the possibility of concluding a contract between a general people. This definition also states the necessity of linking the public works contract and the public utility, as it is considered an important contract that contributes towards the regular progress of such a utility, aiming to realize public interest. This definition also illustrates the necessity that such works should relate to real estate. It is not essential that the real estate should be owned by the state as public ownership in the “*public domain.*” However, the real estate could be owned by the state, privately (in the “*private domain*”), on the condition that it realizes the public interest. In consideration, the contractor will obtain payment from the administrative body for carrying out the public works contract.

The exceptional condition, unfamiliar in special law contracts, is not known in most rulings of the judicial because the task of the judiciary is to decide the disputes as it views. Rather, the exceptional condition is left to administrative jurisprudence. In some cases, the administrative judiciary mentions that the contract is considered administrative because it includes exceptional and unfamiliar conditions. The administrative judiciary leaves the interpretation of this condition to administrative jurisprudence. The exceptional condition is one of the most important factors that should be fulfilled in public works contracts. For instance, the administrative body appears to be the owner of power and can impose conditions on the contractor unlikely to be found in special law contracts.

Thus, it is clear that unfamiliar conditions cannot be included. They differ from one contract to another. However, one can identify some of these conditions:

1. Referring to the manual of terms and conditions, this is however a debatable issue, as should the reference be fruitful or is the reference, per say, will be sufficient?
2. The administration reserves the right to amend contract conditions through its sole will.

3. The right to impose penalties on the contractor.
4. The right to impose fines for project delay.
5. The right of the administrative body to carry out work at the expense of the contract, if conditions warrant.
6. Subrogation of the rights of the contractor to replace the administrative body while temporarily seizing the materials necessary for the project.

## Forms of the Public Works Contracts

There are many types of contracts to carry out public works as they are similar to those for public works to a great extent. However, they differ from public works contracts in some elements. Public works contracts are similar in content, carrying out public works. The capacity of the administrative body becomes clear in these contracts, as the owner of the works has to be carried out. Therefore, one can detect three categories in these contracts: normal works contracts, design and completion contracts, and public works. Contracting contracts is aligned with; Normal works contracts are contracts associated with the contractor. Their subject is to implement the work of building, installing or engineering and fulfilling certain needs for a public person or the employer (Abdelatif, 2014). Design and completion contracts entrust a contractor to study and carry out work at the same time. In fact, resorting to this type of contracts is necessitated by technical issues that make it necessary to join with the contractor. These contracts are under the control of the concerned judiciary.

Public works contracting contracts use or maintain such public installations. These contracts should be determined in a separate manner from construction prices or building or maintenance where the contractor obtains financial consideration when carrying out any of these works from the administrative body (Terneyre, 1992).

Some public works projects are markedly similar to the public works contract, but they lack an important element: the price. One of these projects is direct implementation, or “*voluntary work*.” They are as follows (Oshba, 1992):

**Direct implementation:** The administrative body will carry out and complete the public works itself through its own capabilities including engineers, tools, equipment, vehicles, and workers. The administrative body often resorts to this method in carrying out simple public works, less important works, works that require a certain degree of confidentiality or in cases of emergency.

**Voluntary work:** Exceptional methods are used in this work, to which the state resorts in certain circumstances. The state regulates voluntary campaigns during school and university vacations to carry out public works free of charge, using the collective energy of youth, students, and workers. All these works are carried out without consideration and free of charge (Ibrahim, 2000).

## Expiration of the Public Works Contract by a Two-Party Agreement or by Force of Law

The contract may not continue until its natural expiry date. It may be terminated prematurely, before carrying out the obligations contained in the contract or before the elapsed term that was determined for its completion. Expiration is done with the consent of the two parties or by the force of law. This study discusses following two requirements:

## Revoking the Contract by Consent of the Two Parties: Consensual Revocation

The public works contract, similar to the civil contract, can be revoked by the consent of the two parties, if they decide to terminate the contract completely before finishing the contract period. It is conditional when it is subjected to or before the expiration of its fixed term in the contract (Ayyad, 1973).

Two parties may agree to compensate the contractor for the profit, resulting from revoking the contract, or such revoking may not be accompanied by compensating the contractor, who concluded the contract with the administrative body. Compensation is considered one of the effects of revoking the contract. It is necessary not to claim compensation, except when revoking the contract.

Revoking the contract generally results in the abatement of the obligations generated between the two parties, considering the contract as if it were not concluded. The two contracting parties return to the same status as before concluding the contract. The rules that govern revoking the contract, in this case, are the rules applicable to civil contracts. In Egypt, the State Council did not step aside from the general rules regarding consensual revocation. The supreme administrative court, in one of its rulings, confirmed this by saying “*revoking the contract, whatever the type of the contract may be, and is subject to a general legal rule. It states that the contract or the creditor has the right of recourse on the debtor for compensation in case of revoking regarding the damages incurred to him, if the debtor non-carrying out of its obligations is due to his mistake. Such mistake resulted in causing damages to the creditor. This rule is generally applied in cases of revoking an administrative contract or a civil contract*”.

In Jordan, the normal judiciary is concerned with viewing administrative contract revocation actions because they are concerned with the administrative judiciary’s capacity. If one party of any contract desires to revoke it that party should send a warning to the other party, denoting revocation of the contract.

## Revoking by the Force of Law

A public works contract may be revoked by the force of law if certain incidents are realized. Its results take place from the date of the occurrence of the incident that led to revocation. This is stated in the text of Article No. 24 of the present Egyptian tenders and beddings law No. 89 for 1998. This revocation takes place without need to obtain a judicial ruling (Badr, 2003). Several cases exist for revoking the contract by the force of law which are as follows:

## Damaging the Contract Place

In this case the contract is considered revoked from the date of realizing the incident that resulted in revoking the contract (Ayyad, 1973) and damaging the contract location. If this is due to a cause outside the will of the two parties of the contract, the contract is terminated and no party has the right to claim compensation. An example is destruction of the contract location during military actions. However, if such destruction or damage is due to an action by the

administrative body, the contractor has the right to claim compensation. But if such action is a general procedure, issued by the administration, the contractor has no right to claim compensation unless the conditions of “the prince action theory” are fulfilled (Altamawi, 1979).

### **Revocation Stated in the Contract**

Two parties of the contract may agree that the contract will be revoked by the force of law in case of the occurrence of certain events. In this case, the contract is considered revoked from the moment of the occurrence of such event, such as the death of the contractor, contractor bankruptcy, or the contractor being subject to judicial liquidation (Mehana, 1967). The Egyptian State Council, in one of its Fatwas, confirmed that: “*the implicit waiver of the right of use for one of another companies, without the consent of the administrative body and in breach of the contract, allows revoking the contract as per its clear items.*”

One may argue that such consent to revoke the contract removes any discretionary power from the judge. If such consent is found, the judge has no choice but to revoke the contract, aligned with the will of the two parties. However, this common general thinking is not correct and here this study should differentiate between two cases.

The first case: The judge can revoke the contract when the revocation condition emerges. Firstly, if the two contracting parties desire to revoke the contract, in line with the revocation condition, as soon as a debtor breaches obligation without need to give notice or warning. However, this condition does not take away the judge’s discretionary power. It does not force the judge to revoke the contract at once, but the judge can give the debtor a period of time to carry out its obligations or avoid revoking the contract by implementing this obligation.

The second case: The contractor is not allowed to cancel the contract unilaterally if the revoking condition exists but not aligned in the aforesaid manner. However, it is necessary for the contractor to resort to the judiciary to obtain a revocation ruling if it is proved to the judge that the administrative body made a serious mistake.

The Egyptian court of cassation issued a ruling stating that even if it is agreed that the contract will be automatically revoked without a need to give notice or warning, due to breach of obligations resulting from the contract, the judge’s discretionary power is removed concerning revoking the contract. Instead, the power reverts to the court’s realization of fulfilling consensual revocation conditions, which are mandatory to carry out.

Some administrative contracts expire when their term expires. Public works contracts may include maintenance of the installation during a certain time period. These contracts expire by their fixed term, which indicates the time period of their termination. This termination puts an end to the public works contract by the force of law (Altamawi, 1984).

### **Expiration of the Public Works Contract Judicially and Administratively**

The public works contract may be terminated judicially by judicial revocation, or administratively by administrative revocation. This theme has two requirements:



## Revoking the Contract by the Judiciary: Judicial Revocation

The judge decides to revoke the contract pursuant to the request of one of the two parties. In this case, one party may resort to the judiciary requesting revocation of the contract. If the judge issues a ruling to revoke the contract, the results of this contract go back to the date of filing the action. The conditions of requesting revocation of the contract include violating the obligations of one party and the readiness of the party, requesting the revocation to carry out obligations (Nasohah et al., 2012).

The Egyptian Supreme Administrative Court decided that the contractor has no right to revoke the contract itself but must resort to the judiciary to obtain a ruling to revoke the contract. The reasons for judicial revocation can be summarized in three cases that are presented below (Nassar, 2005):

### Judicial Revocation because of Force Majeure

Force majeure leads to exempting the contractor to carry out obligations that are spelled out in the contract. The administrative body cannot force the contractor to carry out the contract as long as the contractor is not the cause of particular action. The contractor expects it as force majeure. The contractor may become forced to confront an absolute impossibility that prevents completing the contract. Therefore, the contract is revoked without giving the contractor the right to claim compensation. The Jordanian cassation court has imposed two pillars that should be fulfilled to adopt the principles of force majeure. The court ruled that “*force majeure is an event that cannot be expected and is impossible to avoid.*”

The events of *force majeure* include the explosion of a landmine that injured an employee in the survey body because the work site was not completely cleared from mines. This led to stopping work by the body until the concerned bodies provided people specialized in revealing mines. Besides, hardship clauses are drafted and implemented according to the devised circumstances (EY Global Legal Commercial Terms Handbook, 2017).

The Egyptian State Council also confirmed, in legal advice issued 1/3/1999, that: “*if it is impossible to carry out the original works contracted upon, the contract is considered as revoked. It is not allowed to increase any quantities.*” Here, it is necessary to differentiate between revoking the contract because of *force majeure* between civil contracts and administrative contracts. If the contract is civil, it is automatically revoked without a need to obtain judicial ruling. If the contract resorts to the judiciary because of enforcement impossibilities due to a foreign cause, the judicial ruling decides revocation but does not initiate revocation.

Concerning the administrative contracts domain, one should differentiate between revocation of the contract, requested by the contractor and revocation of the contract requested by the administrative body. If the contractor requests revocation, the case should revert to the judiciary to obtain a revocation ruling of the contract due to *force majeure*. But if revocation is made by the administration body, it can terminate the administrative contract by a decision issued that is pursuant to force majeure, and then the revocation becomes administrative revocation (Marei, 2014).

## **Judicial Revocation as Penalty for Contractor Default**

Various penalties are imposed by the administrative body on the contractor for breaching the implementation of obligations, generated from the public works contract. Such breaches may be delayed in implementation or not carrying out the contract (Ali, 2006). These penalties are represented as criminal penalties if the action by the contractor is considered as crime. This assumption is based on the United Nations` Universal Declaration of Human Rights that there is no crime and no penalty unless it has been declared or legislated as crime (Oshba, 1992). The penalty for revocation is considered one of the strongest penalties in the public works contract that the administrative body can impose on the contractor because it leads to terminating the contractual link between them. Such penalty is only imposed when the contractor makes a serious mistake or commits a dangerous breach of its obligations. As a result, the administrative body will revoke or terminate the contract. This is different from the power of the administration to terminate an administrative contract by its sole will for considerations related to public interest and without error on the part of the contractor (Ali, 2006). This power is enjoyed by the administrative body even if it is not stated in the contract and even if the degree of the grave mistake by the contractor is determined by the discretionary power of the administration. Although, the law states that in some cases the contract may be revoked. All this is done through the supervision of the judiciary (Marei, 2014).

## **Judicial Revocation as Consideration for the Powers of the Administrative Body**

The judge can revoke the contract while following the request of the person who contracted with the administrative body without giving a ruling of compensation, such as in the case of dispelling an administrative mistake.

The administrative body can impose amendments on the condition of implementing the contract unilaterally, such as increasing or decreasing the burden on the contractor. If such amendments lead to increase the burden on the contractor leads to exceed the financial and technical abilities of the contractor. It also affects the contract economies such as the contractor confronts new offers or changes in the contract subject or location. The contractor can resort to the judiciary to request revocation of the contract, on the condition that the compensation undertaken by the management will not lead to repairing the damages.

The judge also has the possibility of deciding to revoke the contract with the contractor due to a grave mistake made by the administration. In this case, the administration is obliged to compensate the contractor. An example of this is the unilateral amendments imposed on the contract by the administration that result in exceeding the obligation limits.

The Egyptian State Council, in one of its rulings, confirmed that serious breach of the contractual obligations by the administration is subjected to declare null and void all the decisions of the authority administrative (Egyptian High Administrative Court, 2002). An example of such a breach of obligations by the administrative body is the delay by the administration in delivering the work site to the contractor for a period exceeding a reasonable limit. Such delay may cause the contractor to experience fluctuations in prices in the period between concluding the contract and delivering the work site.

## **Revocation by the Contracting Administration: Administrative Revocation**

The administrative body enjoys the right to terminate the public works contract even if there is no text authorizing it to do so. This is an important property solely found in administrative contracts, including public works contracts. It is necessary that a revocation decision should be issued by the administrative body, which has the power to decide such revocation. The enforcement power allows the administration to issue the revocation decision.

The revocation decision is considered invalid, if the authorization decision to revoke the contract does not exist (Abdelatif, 2014). The Egyptian State Council has the fixed opinion that the administration has the right to revoke the contract unilaterally. Therefore, the entry of any item in the contract that prevents practicing the right of revocation by the administration is considered invalid, as it contradicts the necessities of progress of works for public utilities. The administrative body has the right to terminate a contract using its sole free will, applicable to all contracts including public works contracts. This happens if the administration decides that implementing this contract has become unnecessary in light of the necessities of public interest. Following are two cases of administrative revocation: Administrative termination when the contractors have made no mistake revocation for public interest considerations. (Egyptian High Administrative Court, 2002).

The administration body can terminate the contract by its own will before the time of the term fixed for the contract, even if the contractor commits no mistake. This termination is accomplished without resorting to the judiciary. The administrative body has in its discretionary power to decide that public interest necessitates such early termination. Therefore, estimating the action resulting in revoking the contract cannot be raised as an objection before the State Council or the Supreme Administrative Court (Abdelatif, 2014), but correspondingly, the administration is obliged to compensate the contractor fully (Altamawi, 1979), in execution of the theory of prince action.

The Egyptian State Council confirmed the right of the administration to revoke the contract should be proved useful in the public interest. The intended meaning puts an end to the contract to protect the public interest and not as a penalty for a serious mistake committed by the contractor. The necessities of public interest and public utilities progress requirements may necessitate terminating the contract by the sole will of the administration before the expiration of its term. In the same way, the administration can amend the contract conditions by its own sole will. Premature termination of the contract is considered by the Supreme Administrative Court and extension of the right to amend the contract when it addresses the power to terminate administrative contracts prematurely because such termination links to the condition of the contract term. Sole termination should also be used with a clear decision in the ruling issued by the administrative judiciary court. Therefore, it is clear that the administration enjoys the power to terminate the contract when it estimates that the necessities of public interest require such termination, even if the contractor does not make any mistake. It is also clear that the administration decides such termination through its own free will without resorting to a decision by the court.

The decision of the administration to revoke the contract in the public interest is subject to judiciary supervision. The judiciary can decide to cancel the administrative decision to

terminate the contract because it does not depend on causes or evidence, explaining that such a decision was made in the public interest. Revoking the contract for public interest considerations relates to the public order; therefore, any condition in the contract that prevents the general person from practicing this right becomes invalid (Abdelatif, 2014). The power of the administration to terminate the contract without the contractors making an error corresponds to the right of the contractor to get compensation for damages it incurs as a result of this early termination (Mustafa, 1971).

### **Administrative Termination Due to Contractor Error**

Such termination allows the administration to impose a penalty on the contractor who commits a serious mistake that makes continuing implementation of the contract improper. This is done under the supervision of the judiciary. In Egypt, the penal revocation of an administrative contract could be probable or mandatory, without being the discretionary power of the administration, if the right of the contractor in any matter is proven. This is confirmed by Article No. 24 of the Egyptian tenders and biddings law No. 89 for 1998, which states the follows: *“the contract is automatically revoked on the following two cases: If it is proved that the contractor used cheating or fraudulence by himself or by others in his dealing with the contracting body or obtaining the contract. If the contractor becomes bankrupt or insolvent.”*

The judiciary of the Supreme Administrative Court also agreed to the Egyptian legislation. It was confirmed that the legislation made it obligatory to revoke the contract and erase the names of the contractors from the registry, appropriate to the final insurance. This usually takes place, if the contractor who concluded a contract with the administrative irregularities or was fraudulent in dealings with the administrative body.

If the legislation does not determine the meaning of cheating and fraudulence for which it is mandatory to impose these severe penalties, due to various means taken and developed from time to time. In these cases, it denotes the contractor's non-obligation to follow the correct procedures in implementing obligations and instead tries to find gaps. It enables the contractor to shed on obligations for illegal benefit at the expense of public interest. This is not possible except by proving the bad intention of the contractor through the evidence proving that the contractor aimed to realize illegal interest and used deception to realize this aim. Revoking the contract could be possible and enjoyed by the administrative body as part of its discretionary power. Article No. 25 of the same law states, *“it is possible for the contracting body to revoke the contract or carry it out at the expense of the contractor if the contractor breaches any condition of the contract.”* This right is different from the power of the administrative body to terminate the contract for reasons of public interest when a contractor makes a mistake. The administrative body does not decide to use this right unless the contractor's default is proven to the administration or the contractor has a condition that does not allow the fulfilment of contractual obligations (Abdelal, 1969).

It is fixed in the judiciary of the supreme administrative court that if the administrative body decides to impose the revocation penalty, it should stop at the limit of imposing the penalty without accompanying it. It can be accompanied by re-announcing the process at the expense of the default contractor and making that contractor responsible for the financial results of the new

process. This judiciary rightfully depends on the notion that the revocation penalty leads to contract termination. Special legislation, by laws, or conditions books have special conditions for revoking public works contracts. The contract is terminated by the force of law, pursuant to judicial ruling, or by administrative decision under the supervision of the judiciary based on precedent.

It is necessary to refer to the idea that if a public works contract is revoked, it is necessary to settle its effects. Here, the ruling is different from the leading to termination of a public works contract prematurely. The contractor is subject to financial fines and to a compensation ruling in the interest of the administration, if the reference is due to a mistake by the contractor. However, the contractor has the right to obtain compensation, if revoking the contract is not due to a mistake by the contractor.

## CONCLUSION

The public works contract may expire prematurely through the agreement of the two parties or by the force of law, before the term is determined for it. It may also expire by judicial revocation of the contract or by administrative revocation of the contract. It has been concluded that public works contracts fall into three categories: (1) Normal works contracts concluded with a contractor to carry out building works, engineering, or civil installations that provide certain needs for the employer; (2) design and achievement contracts are entrusted to a contractor by the administrative body to study and carry out works simultaneously; (3) public works contracting contracts are used or maintained for public installations. The penalty of revoking a contract aims at encouraging the contractor to carry out the contract as agreed, under the conditions and specifications and during the legally fixed period. The public works contract may not continue until its natural expiry. It may be terminated prematurely, before implementing the obligations contained in it, or before the elapse of the term fixed for its completion. This is done by means of consensual revocation, force of law, or by judicial revocation. The study recommends that the Jordanian judicial and the Egyptian judiciary should consider effective decisions on lawsuits related to administrative contracts and urgent matters because delayed review of these lawsuits results in causing marked stain to litigants and wastes much time, effort, and money. Following recommendations are presented based on the aforesaid discussion:

1. The Jordanian judicial and the Egyptian judiciary should consider effective decisions on lawsuits related to prevent delayed review of administrative lawsuits. It will be useful in averting the defamation of litigants and wastage of resources.
2. Legislators need to limit and narrow the possibility of imposing the revocation penalty through considering the public interest and efficient use of resources.
3. The formulation of administrative contracts in Jordan and Egypt should be explicit, measurable and tactful to allow the parties of the contract to understand their rights and obligations. Parties should think that this could be done by hiring the services of specialized people to acquire the theoretical and practical legal experience in drafting public works contracts.

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