

The Impact of The Oil Contract on The Third-Party

DR. Faroq Azaldeen Khalaf
Alsalam University College/ Baghdad/Iraq

Abstract: As the oil contracts are considered as the mean, which is used by foreign oil companies to gain profits as much as possible thus, the contracted state is aiming to earn the highest possible portion of society development and prosperity, thereupon those contracts are a fertile field for disputes. Those contracts are including huge bargains with long execution duration, economic, political and social conditions may change during the execution time, new abnormal contractual terms and conditions may rise in such time, from this standpoint, the arising of disputes between one of the parties to the oil contraction one side who is outside the contract on the other side is possible, especially since most oil contracts include rights and obligations for others, in addition to the rights and obligations contained in the national legislation of the producing country, which requires the development of mechanisms and means for how to address and avoid oil contract disputes, the foreign oil investor, when choosing between alternative places for oil investment, take into account the place that provides equipment that ensures the implementation of laws, respect for property rights and the fulfillment of contracts.

Keywords: 1-oil contract 2-oil companies 3-oil producing countries 4-rights and duties 5-oil laws .

Introduction

First - Research topic:

Unlike the civil contract, the administrative contract is not subject to a relative rule, the effect of the administrative contract is absolutely, but its effects go to others, because the contract is linked to the ideas of the public utility and public authority, and these effects are either rights or they are obligations, and there is no doubt that the two parties to the oil contract after it. An administrative contract has mutual rights and obligations stipulated in the contract, but at the same time the third party outside the contract has rights and obligations that it derives from the oil contract concluded between the oil-producing state and the foreign company contracting with it, or from the law.

Second - the importance of research:

The importance of this research appears through its relation to the oil contracts that are concluded between the oil-producing state on the one hand, and a foreign oil company on the other hand, as these contracts are increasing in importance day after day in the lives of all countries, especially those on the path of growth such as Iraq, which knew openness Economically, this resulted in the intensity of the oil contracts he concluded with foreign oil companies.

Likewise, the importance of studying this topic in oil contracts lies in the fact that those contracts arrange rights for others from the contract and impose obligations on them, especially since most of the studies and research, if not all of them that dealt with the subject of oil contracts, focused primarily on studying the bilateral relationship of the oil contract represented by the rights of the contract parties. And their obligations - the oil-producing state and the foreign oil company - and neglected an important segment, namely the third parties to whom the effects of the contract extend, even though they are not a party to it and are in a weak position in relation to the management center and the contracting company.

Third - the research problem:

The oil contract is like any administrative contract that has effects in the face of its parties represented by mutual rights and obligations, but in practice we find that the oil

contract, as an administrative contract, has effects that can affect foreign people who were not a party to it, hence the problem of research in determining the rights of Others and their obligations, and whether the source of these rights and obligations is the oil contract only, or is there another source represented by the law, in other words, is it a contractual or legal source, and then the problem of determining responsibility is contractual or tortuous. Are these effects a direct result of the contract or indirect.

Fourth - Research Methodology:

In the scope of our research, we relied on the comparative analytical deductive approach that relies on the deduction and analysis of legal texts in Iraqi legislation and an attempt to compare them with comparative laws and legal systems, as well as the adoption of the applied approach that is based mainly on strengthening jurisprudential and legislative positions with oil contracts concluded closely related to the subject, especially oil contracts Iraq, as well as oil contracts concluded in other oil countries in order to reach fruitful results.

Fifthly, the research plan:

We will divide the research into the effects of oil contracts for others into two sections. In the first, we deal with the rights of others about the oil contract in two demands. We discuss in the first requirement the right of others to conclude oil contracts in accordance with the law, and we devote the second requirement to discussing the rights that others derive from the oil contract Then we move on to the second topic to study the obligations of others about the oil contract, in two demands.

The first topic

Rights of third parties on the oil contract

In some administrative contracts, including oil contracts, there are rights for people who are not a party to the contract, but are within the category of others, and they have the right to adhere to these rights towards the administration or the contractor with it. To intervene in the field of oil contracts, after which are administrative contracts, and to demand some rights or to oblige the competent administrative authority to conclude the oil contract, or the foreign oil company contracted with it to take a certain position, and we can address these cases in two demands. While we address in the second the rights derived by third parties from the oil contract.

The first requirement

The right of third parties to conclude oil contracts in accordance with the law

The legislator is the one who shows the method of concluding administrative contracts in general, including oil contracts, with the aim of achieving the greatest financial abundance for the public treasury and taking into account the interest of the administration, which requires enabling the administration to choose the most efficient advanced companies to perform the oil service, and oil contracts go through multiple stages before they produce their effects, and each stage From these stages it goes through certain procedures drawn up by the legislator that the administration must follow, so we will show these procedures in two branches.

First branch

Choosing an oil company and negotiating with it

In this section, we will discuss the selection of the contractor with the oil-producing country represented by the foreign oil company, and the negotiations that take place between the two parties to conclude the contract in two paragraphs. We dedicate the

first to selecting the contractor, and the second to negotiations according to the following:

First - Choosing the oil company:

The oil state follows certain methods in choosing the foreign oil company contracting with it, and in general these oil companies are invited either based on the public tender, or on the basis of a private tender or a direct invitation, and the oil companies may be contacted directly, which is called direct negotiation, and these methods will be clarified by something From the summary according to the following:

1- Public Bidding Method:

One of the most important methods organized by law for selecting the contractor with the administration is the public tender method, as it guarantees that everyone who meets the conditions will submit to the tender and participate in it and compete with others (1). This method is considered one of the best methods that the administration resorts to conclude its contracts, in order to open the door to competition between the largest number of competitors, and then give the administration an opportunity to choose the best bid submitted, and many countries have resorted to using the public tender method to conclude their oil contracts, and among these countries Iraq, as it resorted to in concluding traditional oil concession contracts, on May 26, 1931, the Ministry of Economy and Communication published an advertisement in local and foreign newspapers calling on those wishing to submit their offers no later than 9/30/1931, to obtain a concession in any part that was not granted There is a concession in Iraqi territory, and the tender was awarded to (Mosul Company Limited) (). The Iraqi National Oil Company also announced through the international press an area of (28) thousand km of western desert for oil investment through a more sophisticated contracting method than the concession contracts, called oil service contracts, and in 1973 the Iraqi National Oil Company announced five oil areas southern Iraq and two fields in the north for oil investment, and it was set on March 31, 1974, as the last date for bids, and 23 foreign companies submitted to tender (2).

2- Limited Bidding Method (Direct Invitation):

According to this method, the invitation is directed to a certain number of companies and institutions approved for their ability and technical and financial efficiency (3), or if the nature of the contractual process requires that, and this method guarantees the right to compete and participate in the tender for a limited number of natural and legal persons determined by the owner of the project, as it invites them in a form Directly to enter the tender (4). In concluding oil contracts after 2003, Iraq adopted a contractual method called (oil licensing rounds), which is a direct invitation according to which the invitation is directed to solid international oil companies that enjoy high financial and technical efficiency. However, oil licensing rounds were not regulated by law, but were concluded based on The powers granted to the Ministry of Oil, and the number of oil licensing rounds implemented by the Ministry of Oil from 2008 to 2013 reached four oil licensing rounds (5).

3- Direct agreement method

This means the method of direct communication between the administration and the foreign company to implement development projects of a monopolistic nature without following the general or limited tender procedures after the administration has obtained all the required fundamental approvals from the competent authority (6). The state resorts to this method because its procedures are simple when compared to the public tender method, whose procedures are complicated, as well as resorting to it in case of urgency, or in the event that there is no point in conducting the tender, as if the

contract requires expertise, skills or financial capabilities that are not It is available only to a certain authority, and the subject of the contract may be confidential, or the administration may have recourse to it under the law in contracts of limited value (7). Referring to the Oil and Gas Law of the Kurdistan Region - Iraq No. (22) of 2007, we find it permissible to follow the direct negotiation method as an exception to the rule represented by the public tender method, in Article (26/First/2) wherein it states ((The Minister chooses the method of direct negotiations to grant Leave if the public interest calls for it.

Second: Negotiations with the oil company

Negotiations are an important stage of concluding oil contracts that last for a long time between the oil-producing country on the one hand, and the foreign oil company on the other, which may reach several years. Negotiations take place in several stages. The first stage of negotiations is the negotiation of the technical aspect of the contract. After that, the parties move to discuss the financial aspect, and then move to discuss implementation dates, contract term, funding sources, financial guarantees, determining the applicable law and the competent judiciary in the event that Dispute during the execution of the contract (8). Given the importance of negotiations, we find that most of the oil laws in the oil-producing countries refer to them as a means to be resorted to before concluding the oil contract, including the amended Iraqi National Oil Company founding law for the year 1967 in Article (4/3), and the decision of the dissolved Bull Command Council No. (267 for the year 1987, which is repealed.

However, the question that arises is who is the administrative body competent to negotiate oil contracts (oil licensing round) with foreign companies that Iraq concluded after 2003? Referring to those contracts, we find that the Department of Oil Contracts and Licensing in the Ministry of Oil, which is a department specialized in negotiating the development of oil fields, conducted negotiations with several foreign oil companies, according to which several oil contracts were concluded, represented by the four oil licensing rounds implemented by the Iraqi Ministry of Oil since 2009. Until 2013 (9). The researcher believes that the negotiation of the conclusion of oil contracts has been made the specialty of the Iraqi National Oil Company, which was entrusted by the Iraqi National Oil Company Law No. (4) of 2018 in force, the task of concluding oil contracts by forming a body or department specialized in negotiating oil contracts formed on a scientific and objective basis from experts Legal experts, economists, geological technicians and other competencies in this field, provided that they are appointed by the Federal Oil and Gas Council, which makes the issue of oil negotiations an institutional and transparent matter.

second branch

Drafting, signing and ratifying the oil contract

After completing the procedures for selecting the contractor and negotiating with him, the terms of the contract must be accurately formulated so that they are free from errors, and a fortiori from fraud and deception, and it is no secret that oil contracts, as in any other contract, do not create obligations once they are signed. The conclusion stage is complete, so we will discuss the most important procedures required for this stage, which are first drafting the oil contract, signing it second, and ratifying it third, according to the following:

First: Drafting the oil contract

The task of drafting the oil contract is entrusted to jurists with experience and competence in the subject matter of the contract, as the drafting of the contract paragraphs must be in clear and precise terms, and not resort to ambiguous terms, as it

must be borne in mind that this contract will serve as the law governing the relationship between its two parties throughout The term of the contract, so it must include all matters that may be in dispute so that the contract is the reference for its settlement (10). The stage of preparing the draft oil contract begins after the negotiations between the two parties to the contract - the oil-producing country or one of its affiliated bodies or institutions on the one hand, and the foreign oil company on the other - and the two parties agree on the final contract formula. Among the issues related to the form of the contract is the structure of the contract, as it The general framework by which it is inferred on its content and effects, and the structure usually includes the preamble, definitions, subject and appendices.

It should be noted in the matter of drafting oil contracts that a number of oil countries such as Indonesia, Libya and Algeria have adopted the model oil contracts system, which includes summary terms that do not differ from one contract to another, and it is not permissible for the negotiator of the oil-producing country and the foreign company to agree on different terms, even in countries that do not Take the model contracts, there are several restrictions to be bound by when concluding oil contracts (11). The Iraqi Ministry of Oil adopted the model contracts method in its contracts concluded in the four licensing rounds from 2008 to 2013, as it adopted the two models of the Technical Service Contract (Tsc) and the Service Contract for Oil Production Development (DPC).

Second: Signing the oil contract:

Since oil contracts are generally considered administrative contracts, so they must be signed by the competent authority specified by law, and on the contrary, they are defective with the defect of lack of jurisdiction, and their legality can be challenged (). Most of the legislation of the oil-producing countries includes texts regulating the issue of the authority competent to sign oil contracts, including the Iranian Oil Law, Article (3) authorized the Ministry of Oil to sign oil contracts (12). As for the Oil Law of the Republic of Nigeria of 1990, in Article (2) of it, the Minister of Petroleum Resources may grant a license to explore for oil (13), and with reference to the Lebanese Petroleum Resources and Marine Waters Law No. (123) of 2010, we find that Article (8) of it gave the authority to sign The oil contract of the Lebanese Minister of Energy and Water (14), and in accordance with Article (8) of the Turkish Petroleum Law of 2013, the right to sign oil contracts was given to the General Directorate of Oil Affairs of the Turkish government (15).

As for Iraq, whoever signed the oil licensing contracts, the representative of the extractive oil companies (North Oil Company, South Oil Company, Central Oil Company, and Maysan Oil Company) is considered the national party in those oil contracts.

Third: Ratification of the Oil Contract:

Because of the importance of oil in the economy of oil-producing countries, ratification is a necessary procedure, as it is a leave to act of the person who signed the contract (16), but the legislation differed regarding the authority competent for this procedure, some of which made it the competence of the legislative authority, and some of them assigned the task of ratification to the executive authority, and there are legislations Others entrusted this task to a council or a special body.

The ratification of oil contracts from the executive authority is the method currently in force in Iraq, as the four oil licenses that were concluded with foreign oil companies were ratified by the Council of Ministers without Parliament on those contracts by law, and the ratification of those oil licenses by the Council of Ministers is not based on A legal text, as it is necessary to refer to the oil laws in force that regulate the process of

ratifying oil contracts, including the law on the allocation of investment areas for the Iraqi National Oil Company No. (97) for the year 1967, as Article (3/2) stipulates that ((It invests in any of the areas allocated to it by jointly with others if it finds it better to achieve its purposes. In this case, the contract is only contracted by law)), and based on this law, all contracts concluded after its entry into force have been ratified by a law issued by the legislative authority Therefore, it became clear that the ratification of oil licenses concluded by the Iraqi government from 2008 to 2013 is not based on a legal text, which results in its illegality, as any action in the state of law must be based on the text of the law. Law. Accordingly, the oil contracts, in order to be concluded in accordance with the law, go through a series of procedures in which the competent administrative authority takes many decisions until the contract is concluded. If it violates its requirements, everyone with an interest who is a third party has the right to sue the administration before the competent administrative court, by requesting the cancellation of the separable administrative decisions (17), and compensation for them if the administration's violation of the law results in harm, as if the competent administrative authority excluded anyone's bid from the oil contract The foreign oil companies that compete without the right to tender and award the oil tender to an oil company other than the first bidder arbitrarily (18). This case cannot be counted in the field of rights that the foreign oil company derives from the contract, because this company, which is challenging a separate administrative decision, does not base the appeal on a provision in an administrative contract, but rather is based on the provisions of laws and regulations, so the third party represented by the oil company that was excluded from The tender derives its right to appeal for cancellation from the legal system established by the legislator for oil contracts and not from the contract.

The second requirement

Rights of third parties derived from the oil contract

Others have rights in relation to administrative contracts in general, and in oil contracts in particular, which are represented in the guarantees stipulated by the laws in force in the producing country, or those guarantees required by the competent administrative authority in the oil state for their interest on the oil companies contracting with them, as the administration when concluding oil contracts takes into account The interests of all persons who are affected by the oil contract negatively and positively, so it is necessary to clarify those rights enjoyed by others in several branches:

First branch

Protecting the rights of workers in the oil company

When the contracting oil company employs a group of workers with it in the implementation of its obligations, any reluctance on the part of these workers will reflect negatively on the management, so we find the contracting administration keen to avoid these problems by including the oil contracts that it concludes with the oil companies, conditions in favor of the workers employed by the foreign company , especially since oil contracts require the use of large numbers of workers and employees and the continuation of work for long years. Oil contracts may stipulate setting working hours, or imposing a minimum wage, if the foreign oil company violates these conditions, as if forcing workers to work more hours than specified. In the contract, or if it gives the workers wages less than what is agreed upon in the oil contract, this is considered an infringement by the oil company of the contractual rights of the workers who are counted from third parties for the oil contract, and they may challenge the company's illegal behavior before the competent court. It is worth noting that the foreign persons employed by the foreign contracting company are subject, in

entering the territory of the host country, to the laws regulating the entry of foreigners, such as residency and travel laws and other relevant laws, including what is stipulated in the Iraqi production sharing contract (development and production contract) with Russian and Chinese companies In 1997, it stated: ((The contractor's foreign affiliates are subject to all laws related to travel, residence, and others))). The oil company that stipulated that contract concluded between the government of Bahrain and (Cyberpur) in 1970 in Article (23), as it came in it ((giving the requirements of production efficiency the first place in the selection of employees of different nationalities and with the application of the Labor and Passports Law in Bahrain))))).

second branch

Recruitment and training of national cadres

Among the rights of third parties derived from the oil contract, what is included in some contracts of obligating the contracting oil company to employ and train national cadres during the implementation of the oil operations agreed upon in the contract, and to reduce the use of foreign persons, as the oil contracts stipulate allowing foreign companies to use foreigners with technical and administrative specializations To carry out the oil operations stipulated in the oil contract, however, this right is not absolute, but rather restricted by the terms stipulated in the contract, which often require the employment of national workers (19), such as the contract concluded between the Iraqi National Oil Company (ENOC) and (Erap)) French in 1968, as Article (10/3) of the contract stipulates "work to reduce the use of foreign employees by ensuring, as much as possible, that foreigners are not employed except in positions for which it is not possible to obtain Iraqi employees with the qualifications and experience required to fill them." (), and the two models of the Technical Service Contract (TSC) and the Oil Development and Production (DPC) Service Contract, obligate the foreign contracting company to give priority in employment to Iraqi citizens N who possess the qualifications and experience necessary for this (20), including the contract for participation in the Egyptian production with the (Ayuk Kwank) company in 1996 in Article (17 / C) where it is stated: ((The contractor and the company operating the operations undertake to gradually replace its foreign employees with non-national executives Qualified whenever available...))(21). Also, the majority of oil contracts argued that the foreign company should prepare a program to train national employees on all work related to the oil industry, including what was stipulated in the two models of the Technical Service Contract (TSC) and the Oil Development and Production (DPC) Service Contract in order to increase the number of Iraqi employees and reduce The number of foreign employees (22). Based on the foregoing, the requirement of oil contracts to appoint a certain percentage of workers and employees in foreign oil companies is a requirement for the benefit of third parties outside the contract, as this third party can benefit from it without being a party to the contract. In the event that the oil company does not implement this condition, it is considered A breach of a contractual obligation that raises the contractual liability of the company.

third branch

Protection of the property of others

The administration may stipulate in the oil contracts conditions in favor of the property owners within the contract area or the adjacent areas, and in this case the owners of these properties rely on these conditions to protect their interests if they suffer harm as a result of the implementation of the oil contract. The lands within the contract area are either owned by the state and the use of the surface of the land does not pose any problem in this case, as the oil-producing state is obligated to enable the contracting

company to use the land subject of the contract as determined by the cadastral maps attached to the contract, or the lands within the contract area are owned Private property for individuals, in this case either the company agrees with the land owner on the process of leasing it, or the state acquires it and rents it to the company for an agreed upon rental fee. The contracting state may enable the investing company from this land by expropriating it for the public benefit in return for a fair compensation, or by any other method and placing it at the disposal of the investing company for the purpose of its use (23), this is what was stipulated in the contract concluded between the Iraqi National Oil Company and Erab Company in 1968 In Article (3/8), it states: ((When the land requested by Erab is private property, its purchase or lease is done through There is direct negotiation with the owner...)) (24).

Fourth branch

The oil company's commitment to preserving the environment

Among the obligations of the contracting oil company, which are the rights of others in relation to the oil contract, is the obligation of the oil company to protect the environment, as the contracting oil company is obligated to preserve the environment from pollution under the laws of the producing country and the paragraphs of the oil contract concluded between it and the oil-producing country. Countries have been concerned with protecting the environment, including Iraq. In the Environmental Protection and Improvement Law No. (27) of 2009, Article (14) stipulated that ((it is forbidden to dispose of oil waste or leftover fuel and budget water for oil tankers into the internal surface waters or Iraqi marine areas..)) Also, Article (21) of the above law stipulates that ((The authorities concerned with the exploration and extraction of oil and natural gas wealth shall do the following: Take the necessary measures to reduce the damage and risks that result from the exploration and exploration for oil and gas... And Article (44) of Law No. (21) of 2008 amended, "The governorate's financial resources consist of the following: 5- Taxes imposed by the council on companies operating in it as compensation for environmental pollution and damage to infrastructure." (25), According to the above article, the Provincial Council imposes taxes on foreign oil companies operating within the governorate's borders in the event that the company pollutes the environment, and the tax is revenue for the oil-producing governorate whose oil site is located within its administrative boundaries. As for the protection of the environment under the oil contracts concluded between the producing countries and the oil companies, Article (41) of the two models of the oil service contract (Tsc) and the oil development and production contract (DPC) stipulated that the foreign company be obligated to take into account health and safety, protect the environment and preserve natural wealth when Implementing petroleum operations and making efforts to avoid environmental damage or reduce such damage to a minimum.

From this it becomes clear that the legislation of the oil countries and the oil contracts obligate the oil companies to protect the environment and preserve it from pollution, and this is a right of the third party who was not a party to the contract. .

The second topic

Obligations of third parties on the oil contract

In this section, we deal with the obligations that are imposed on third parties as a result of the oil contract, which represent rights of the foreign company that it enjoys towards others, and these obligations may result from the oil contract directly, and may be an

indirect result of the oil contract. direct, while we allocate the second to indirect obligations, according to the following:

The first requirement

direct obligations

As a result of the oil contract, third parties have obligations that affect his legal status directly, even though he is not a party to that contract, which is the possibility of expropriation of real estate belonging to this third party in order to implement the oil contract, and it may be represented in the possibility of using the administrative control authorities in the face of third parties from In order to preserve public order at the site of the contract, and this is what we will deal with in two branches, we dedicate the first section to expropriation, while we dedicate the second section to the use of administrative control authorities.

First branch

expropriation (expropriation)

The administrative body competent to manage the oil facility, in its supervision and management of the facility, especially when concluding oil contracts with foreign oil companies, needs real estate funds that it usually obtains through its allocation from the state. In order to obtain them, and in this case the administration is subject as a general rule to the rules of private law in the same way as individuals, but it may be unable to obtain these properties in a friendly manner, which leads to the disruption of the implementation of the contract, and then the disruption of the operation of the oil facility, so it authorized many the constitutions for the administration forcibly expropriate the real estate of individuals if they need them in return for a fair compensation (26), if this is necessary for the administration to carry out its tasks (27), by appropriating those funds, in accordance with the law regulating it (28).

The legislator may grant this authority to the contractor - the oil company - with the administration by authorizing him this authority. This right if its activity is in the public interest (29). In Iraq, the legislator initially authorized the contractors with the administration the authority to expropriate property for the public benefit. It was stated in the eighth paragraph of the law of the acquisition of immovable property No. 43 of 1934 that the repealed authority to expropriate shall be ((for each person between him and the government an agreement under a concession to invest the country's natural sources and projects to liquefy water and enlightenment)) (30), but the expropriation laws subsequent to the above law omitted to mention authorizing the contractors with the administration the authority to expropriate, so the Expropriation Law No. 57 of 1960 (31), then Law No. (54) of 1970 (32), The same applies to Law No. 12 of 1981 as amended. This matter only clarifies the possibility of the mixed sector exercising the power of expropriation, and this is what Article Nine stipulates ((for state departments and the socialist and mixed sectors that are entitled to legally expropriate real estate.. .)) Even this provision did not continue, as the legislator later narrowed the scope of the practice of expropriation and made it confined to state departments and the socialist sector, after excluding the mixed sector or depriving it of this privilege, in accordance with the law amending the expropriation law in force. No. 16 of 1998 (33).

As for the administrative judiciary, it has come a long way regarding authorizing the authority to expropriate property for the public benefit to persons of private law, as the French administrative judiciary authorized the expropriation of real estate for the benefit of a private company in the event that it is targeting the public interest, and it came in a decision of the French State Council on July 20, 1971 In the case of (Ville de Sochaux), "it is permissible to expropriate private property in favor of the (peugea)

Peugeot car company, given that these car companies achieve the general interest of the country by strengthening and developing modern industry in the region in which this company is located” (34). As for Iraq, we did not find a judicial ruling that goes to authorizing the contractor with the administration the authority to expropriate property, as is the case in France, and the reason for this, according to our estimation, is the subordination of administrative contracts to the jurisdiction of the ordinary judiciary, which is usually restricted by legislative texts that only allow the judge to apply the text, while we find the administrative judiciary had the main role in the emergence of the principles and theories of administrative law.

Through the foregoing, it can be said that the contractor in the administrative contract, especially in important administrative contracts (including oil contracts), can exercise the authority to expropriate property if the public interest so requires, if the legislature or the judiciary permits or the contract includes a provision for that, and reminding in this regard that the company In the oil contract, when it exercises the authority of expropriation, it is in fact performed on behalf of the administration and for its account, and if the company on the other hand is authorized to expropriate for its own account, the money that was expropriated will return to the state at the end of the contract.

second branch

Use of some administrative control powers

If the origin is that the executive authority is the one who exercises the function of administrative control through the administrative authorities that represent it, and aims behind it to protect the public order with its three elements(35), then the question that arises is whether the contractor in the administrative contract, from that oil company in the oil contract Exercising the authority of administrative control authorized by the administration?

The jurists differed in this regard, but the most likely opinion is that the administration authorizes the contractor with the right to use some of the administrative control powers if the implementation of the contract requires that, as the contractor with the administration is primarily responsible for maintaining public order at the work site, and he must also take certain measures to prevent injuries or the death accidents of workers and the protection of public funds by issuing decisions, instructions and orders that obligate its workers and others who are related to the work subject of the contract (36).

The researcher believes that administrative contracts are always aimed at achieving the public interest and achieving this can only be done by empowering the contractor with the administration with means that help him to reach this goal. Rather, you look at him in the capacity of assistant and assistant, and if the contracting party earns a profit from the administrative contract, there is no harm in achieving that for him as long as his goal coincides with the goal of the administration in some aspects.

Referring to the oil contracts, we find that they grant the contracting foreign company some of the administrative control powers required by the oil operations, as the oil company is committed to taking all safety measures to preserve individuals and public or private property from damage, so the foreign company can issue procedures that are imposed on its employees and on others who they relate to the implementation of the oil operations subject of the contract, from that contract concluded between the Kuwaiti government and the Arab Oil Company Ltd. in 1958, as Article (21/b) stipulates ((... The company also has the right to import technical and skilled employees and any user imported by the company commits misconduct. His behavior is a breach of public security, or causes public disturbance, or otherwise makes himself undesirable. Upon

the Sheikh's request, the company must remove him from his work and expel him outside the Emirate of Kuwait and outside the neutral zone if it has the authority to do so...))(37). It is evident from this that the foreign company contracting with the host country is responsible for maintaining order in the contract area, and it must take all that falls within the scope of administrative control by taking measures and issuing orders that it imposes on its workers and on third parties who are related to work in the contract area.

The second requirement
indirect obligations

There are some obligations imposed on third parties for the oil contract that have an indirect effect on increasing the financial burdens and costs on it, such as exempting the foreign company from some taxes, which will lead to the transfer of those burdens to others, and the foreign oil company may monopolize the use of public money, which means depriving these others from benefiting from this money, and this is what we will deal with in two branches. The first section will be devoted to exempting the oil company from some taxes, while the second section will be devoted to the oil company's monopoly by benefiting from public money.

First branch

Exempting the oil company from some taxes

One of the most important foundations that govern tax is the principle of tax justice. The tax must be imposed on everyone without distinguishing one person from another and according to what suits the status of the taxpayer and the tax base (38). Since the foreign oil companies contracting with the competent administrative authority in the oil state are considered their assistants in running and managing the oil facility that provides services to individuals, the administration may depart from the principle of equality in bearing public burdens or costs and exempting the oil company contracting with it from some taxes, this exemption is permanent or temporary, according to the requirements of matters (39), and the main motive that drives the administration to exempt the contracted oil company from some taxes is to achieve the public interest by encouraging those companies to contract with them to invest their money in the management and implementation of the oil facility (40).

The question raised here is about the legality of including the exemption clause from some taxes in administrative contracts, including oil contracts?

The truth is that the French administrative judiciary does not object to this. For example, in a decision of the French Council of State in the Hebert case in 1939, it allowed the administration to include this condition within the administrative contracts if the public interest so required (41). As for jurisprudence, some jurists, such as the French jurist (De Lopader), have not considered the condition of exempting the contractor from some taxes among the direct effects of the administrative contract towards others, but rather indirect effects (42). The researcher supports this view, as exempting a foreign oil company from some taxes does not have a direct effect on the oil contract towards others, and the reason for this is that the administration owns, through its concern for the public interest, the exemption of economic projects, including oil projects, for the purpose of encouraging them to invest and exploit the oil wealth in countries. However, exempting these foreign companies from taxes has an indirect effect on increasing the financial burdens and costs on others, as we have previously explained that the tax is paid to contribute to the public burdens and costs, and therefore exempting these companies from paying taxes will lead to the transfer of

those burdens to third parties, i.e. individuals who were not a party to the contract. Examples of oil contracts that exempted foreign companies from taxes and customs duties are the Model Oil Service Contract (TSC), and the Oil Development and Production (DPC) Service Contract, as it included exempting the foreign oil company from taxes (43), except for paying income tax on the profits made under the contract. It is represented in the wage due to it, and the tax amount was set at 35% of the income earned for it (44).

second branch

The oil company's monopoly by benefiting from public money

The foreign company's expropriation by using part of the public money imposes on others a negative obligation on the contract not to be exposed to this part of the public money, which means depriving others from benefiting from it, and the oil company may participate in using this public money with others, which affects the quality and quality of the service provided to others. The contractor with the administration under the administrative contract, including the oil company in the oil contracts, has the right to take legal measures against third parties in order to prevent them from being exposed to the use of this part of the public money allocated to him, and then he has the right to use seizure cases against other individuals who dispute this the right (45). The Egyptian Supreme Administrative Court referred to the issue of the possibility of a certain individual excluding a part of the public money, as it stated in its ruling issued on March 31, 1962 that "the government has the right to allocate or influence an individual with part of the public money for his private use as long as This does not conflict with the public interest to which the property is allocated, and does not limit the freedom of the administrative person to withdraw from it or modify it for the purpose of public interest...)) (46). It is clear from this ruling that the administration can, with its discretionary power, authorize the foreign oil company in the oil contract to account for the use of part of the public money, such as using a public road that leads to the work site and is designated only for the passage of its own cars that transport tools and work materials, and it is frequently obtained in The practical life, and the reason for granting the oil company the right to use part of the public money without others is the nature of the work it is doing, and for the requirements of the workflow (47), the oil contracts have given these companies the right to use the public facilities of the oil-producing state for the purpose of benefiting from them, as the oil operations need For those facilities, most of which are located outside the contract area(48), and these facilities include land, sea and air transportation to carry out their work, and transport the produced oil to the places of export, and one of the oil contracts that stipulated this right is the contract concluded between the government of Bahrain and (Syprior) company in 1970, which Article (21) stipulates that the company has the right to use transportation and transportation facilities in return for regular wages. The contracting oil company has the right to use public and private telephone lines and telecommunications facilities in the host country, including the text of Article (24) of the contract concluded between the Iraqi government and the Basra Oil Company Limited in 1938, as it stated that ((the company has the right to extend and maintain Inside Iraq, above and below the princely lands, and on its phases, all pipelines required for its work stipulated in this agreement and all telegraph or telephone devices installed with government authorization in accordance with the provisions of Article (21) of this agreement...)) (49). The company also has the right to benefit from electric energy for the purpose of operating machinery and equipment to carry out its work and meet the personal needs of the employees and workers in the project, and it may also use water for the purpose of carrying out its

work related to the oil project and meeting the personal needs of the workers, as stipulated in Article (3/9) of the contract between The Iraqi National Oil Company and the French Erab Company in 1968, as stated in it ((For the purposes of operations in accordance with the provisions of this contract, Erab has the right to use any water it may find on the surface or underground within the area covered by this contract or in the land belonging to the government and not used by it. ...and such use is free of charge, unless there is a right to a third party or any payments or compensation that must usually be paid.

Conclusion

After we finished the study on the subject of our research tagged (the impact of oil contracts for others), we reached a number of results and a set of recommendations, represented by the following:

First - the results

In the context of researching the impact of oil contracts for others, we reached the following results:

1- The effects of administrative contracts, including oil contracts, represented by rights and obligations are no longer limited to their parties. Rather, they can affect people who are foreign to the contract, who are considered to be third parties, transcending the principle of relativity of the effects of the contract that governs private law contracts, which stipulates that the effects of the contract cannot be spent on non-contractors.

2- The rights enjoyed by third parties regarding the oil contract are that the oil contract is concluded in accordance with the law, as the legislator has imposed on the administration a number of restrictions and procedures that it is obliged to follow in order to preserve the public interest and public money. Likewise, third parties have rights in relation to administrative contracts in general, and in oil contracts in particular, represented by the guarantees stipulated by the laws in force in the producing country, or those guarantees stipulated in the contract and required by the competent administrative authority in the oil state in their interest on the oil companies contracting with it.

3- The obligations borne by third parties for the oil contract are the sum of the powers and privileges that are unparalleled in private law contracts authorized or granted by the administration in the oil state to the oil company contracting with it. These obligations may be a direct result of the oil contract represented in the possibility of expropriation of real estate belonging to this Third parties for the implementation of the oil contract, and may be represented in the possibility of using the administrative control authorities against others in order to maintain public order at the site of the contract, and these obligations may be an indirect result of the oil contract that has an indirect effect in increasing the financial burdens and costs on it, represented by exempting The foreign company from some taxes, which will lead to transferring those burdens to others, and the foreign oil company may monopolize the use of public money, which means depriving this third party from benefiting from this money.

Secondly, recommendations:

1- Making the jurisdiction to decide on disputes that arise between one of the parties to the oil contract - the competent administration in the oil-producing country and the contracting oil company - and the third party outside the contract within the jurisdiction of the national administrative judiciary, and removing it from the jurisdiction of the ordinary judiciary, and that this jurisdiction applies to all types of administrative contracts .

2- The researcher recommends the adoption of the public tender method mainly in the process of contracting with foreign oil companies, as it allows a large number of oil companies to enter into more competition than other methods allow, reduces the risk of corruption and provides the element of transparency and distances the administration from the circle of suspicion.

3- The competence of negotiating and signing oil contracts should be confined to the federal authority represented by the Iraqi National Oil Company, whose competence in negotiating and concluding oil contracts was stipulated in the Iraqi National Oil Company Law No. (4) of 2018 in force.

4- The right of the foreign oil company to employ foreigners must be linked with the issue of training nationals in the oil contracts concluded by the competent authorities in the Iraqi government, and a law must be issued to protect workers in the oil sector, with the aim of protecting workers from environmental and work risks, and obligating oil companies to provide the appropriate environment them to ensure safety, health and security, taking into account the laws and international agreements related to working conditions and protection of workers.

Sources

First - the books

(1) Dr. Ibrahim Abdel Aziz - Fundamentals of Administrative Law - Foundation of Knowledge - Alexandria - without publication year.

(2) Dr. Ahmed Anwar Arslan - Administrative Law - Arab Renaissance House - Cairo - 1994.

(3) Dr. Ahmed Hafez Negm - Administrative Law - 1st Edition - House of Arab Thought - Cairo -1981.

(4) Dr. Ahmed Abdel Hamid Ashush and Dr. Omar Abu Bakr Bakhshab - The Legal System of Petroleum Agreements in the Gulf Cooperation Council Countries - University Youth Foundation - Alexandria - 1990.

(5) Dr. Hussein Khalaf - The Science of Finance - Baghdad - 1940.

(6) Dr. Hamada Abdel Razzaq Hamada - The Legal System for the Public Facility Concession - New University House - Alexandria - 2012.

(7) d. Raed Naji Ahmed - The Science of Public Finance and Financial Legislation in Iraq - 2nd Edition - Al-Atak for the Book Industry - Cairo - 2012.

(8) Dr. Saad Allam - Encyclopedia of Petroleum Legislation for Arab Countries, Arabian Gulf Region - 1st Edition - Doha - Qatar - 1978.

(9) Dr. Suleiman Al-Tamawi - General Foundations of Administrative Contracts - 5th floor - Ain Shams Press - 1991.

(10) d. Samir Dannoun - Oil Law and Oil Contracts - 2nd Edition - Modern Book Foundation - Beirut - 2015.

(11) Dr. Abdel-Alim Abdel-Majeed Musharraf - Limits on the Exemption of the Administrative Contract to Others - Without Dar Publisher - Cairo - 2004.

(12) Dr. Abdelkader Bayna - The Manual of Moroccan Administrative Law - 1985.

(13) Dr. Esmat Abdullah Al-Sheikh - Principles and Theories of Administrative Law - Dar Al-Nahda Al-Arabiya - Cairo 1999.

(14) Omar Al-Khouli - Al-Wajeez in Administrative Contracts - 2nd floor - without publishing - 2012.

(15) d. Maged Ragheb Al-Helou - Administrative Contracts - New University House - Alexandria - 2014.

(16) Dr. Maher Alawi Al-Jubouri - Principles of Administrative Law - Dar Al-Kutub for Printing and Publishing - University of Mosul - 1996.

- (17) Dr. Mazen Lilo Radi - Administrative Law - Baghdad - 2016.
- (18) d. Muhammad Hussein Mansour - International Contracts - 1st floor - New University House - Alexandria - 2008.
- (19) d. Muhammad Fouad Abdel Basset - The works of the administrative authority - without a publishing house - 1989.
- (20) d. Muhammad Labib Shukair and d. Sahib Dahab - Petroleum agreements and contracts in the Arab countries - Part 1 - 2nd floor - International Press - Cairo - 1969.
- (21) d. Muhammad Labib Shukair and Dr. Sahib Dahab - Petroleum agreements and contracts in the Arab countries - Volume 2, 2nd floor - International Press - Cairo - 1969.
- (22) d. Muhammad Musa Khalaf Al-Jubouri - The Legal System of Investment Contracts in the Refining of Crude Oil - New University House - Alexandria -2013.
- (23) d. Muhammad Yusef Alwan - The legal system for oil exploitation in the Arab countries, a study in international contracts - 1st floor - Faculty of Law - Kuwait University - 1982.
- (24) Dr. Mahmoud Al-Sinari - Recent Developments to Appeal for Cancellation of Administration Contracts - Dar Al-Nahda Al-Arabiya - Cairo - 1984.
- (25)- Dr. Mahmoud Helmy - Administrative Contract - 2nd floor - Arab Thought House - Alexandria - 1977.
- (26) Dr. Muhammad Khalaf Al-Jubouri - Administrative Contracts - House of Wisdom - Baghdad -1989.
- (27) d. Mahmoud Atef Al-Banna - Principles of Administrative Law, Public Funds and Public Service - Arab Thought House - no publication date.
- (28) Muhannad Mukhtar Noah - Offer and Acceptance in the Administrative Contract - Al-Halabi Human Rights Publications - Beirut - 2005.
- (29) d. Najdat Sabri Aqrawi - Implementation of development projects by foreign companies in Iraq - Edition 1, Dar Al-Qadisiyah Press - Baghdad -1986
- (30) d. Nouri Abdel Hamid Khalil - The Political History of the Oil Concessions in Iraq - 1st Edition - The National Library, Baghdad - 1980.
- (31) d. Yahya Hammoud Hussein Al-Boali - Data of the oil policy in Iraq, lessons of the past and future prospects - 1st Edition - Iraq Center for Studies - Baghdad - 2015.
- Secondly - letters and theses
- (1) Habib Ibrahim Hamada - Appeal for annulment against separable administrative decisions - PhD thesis - College of Law - University of Baghdad - 1994 - p.29.
- (2) Saadia Aziz Dfar - The right to amend oil licensing contracts in Iraq - PhD thesis - Faculty of Law - Al-Nahrain University - p. 2017.
- (3) Sabah Abdul-Kadhim Shabib - The legal system for the development and oil production contract in Iraq - Master's thesis - College of Law - University of Baghdad - 2000.
- (4) Abd al-Salam Abdallah Qaid Mufleh - The Legal System of Oil Contracts in Yemen - Master's Thesis - Institute of Arab Research and Studies - Cairo - 2004.
- Third - Research
- (1) Dr. Ahmed Refaat Khafagy - Acquisition in Lebanese Administrative Law - Research published in the Modern Egypt Journal, Cairo - Issue 324 - 1966.
- (2) Dr. Sabah Abdul-Kadhim Shabib - The legality of signing a service contract with foreign oil companies to develop oil and gas fields - Research published in the Department of Petroleum Contracts and Licensing - Ministry of Oil - Baghdad -2009.
- (3) Dr. Abdel Hamid Hashish - Separable Decisions and Management Contracts - Egypt Contemporary Journal - Cairo - Issue 363 - 1976.
- Fourth - Iraqi laws

- (1) The Constitution of the Republic of Iraq for the year 2005 in force, published in the Iraqi Gazette, No. (4012) dated December 28, 2005.
- (2) The Law of Acquisition of Immovable Property No. (43) of 1934, which was repealed, published in the Iraqi Gazette, No. (1357) dated May 17, 1934.
- (3) Acquisition Law No. (57) for the year 1960 published in the Iraqi Gazette, Issue (343) dated May 8, 1960.
- (4) The Law No. (97) for the year 1967 to allocate investment areas for the Iraqi National Oil Company, which was repealed, published in the Iraqi Gazette, No. (1449) on 7/8/1967.
- (5) Expropriation Law No. (54) for the year 1970 published in the Iraqi Gazette, Issue (1855) on March 22, 1970.
- (6) The Law of Preserving the Integrity of the Arabic Language No. (64) for the year 1977 in force, published in the Iraqi Gazette, No. (2587) on May 16, 1977.
- (7) Acquisition Law No. (12) for the year 1981 published in the official Iraqi Gazette, Issue No. (2817) on February 16, 1981.
- (8) Decision of the dissolved bull leadership council No. (267) for the year 1987, which was repealed, published in the Iraqi Gazette, No. (3149) on 11/5/1987.
- (9) Effective Acquisition Law No. 16 of 1998 published in the Iraqi Gazette, Issue (3725) dated 06/18/1998.
- (10) Environmental Protection and Improvement Law No. (27) of 2009 in force, published in the Iraqi Gazette, Issue No. (4092) dated 10/20/2009.
- (11) The Oil and Gas Law of the Kurdistan Region-Iraq No. (22) of 2007 published in the Gazette of the Kurdistan Region-Iraq, Issue (75) dated 11/15/2007.
- (12) Law of Governorates Not Organized in a Region No. 21 of 2008, as amended, published in the Iraqi Gazette, Issue No. (4070) on 3/31/2008.
- (13) Law of the Iraqi National Oil Company No. (4) of 2018 in force, published in the Iraqi Gazette, Issue No. (4486) on 9/8/2018.

V. Foreign laws

- (1) The Iranian Petroleum Law of 1987.
- (2) The Petroleum Act of the Republic of Nigeria of 1990.
- (3) Law of Petroleum Resources in the Offshore Waters of Lebanon No. (132) for the year 2010.
- (4) The Petroleum Law of the Republic of South Sudan for the year 2012.
- (5) The Turkish Petroleum Law of 2013.

Sixth - Websites

[www.Lexadin \(1\)](#)

[www.nejeria.law\(2\)](#)

[www.kpmg.com -\(3\)](#)