

Grounds for Annulment of Administrative Contracts in Iranian and English Law

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Abstract

Administrative contracts, intrinsically linked to public interest and welfare, are subject to specific rules and formalities. The formalities governing these contracts, which manifest in various forms throughout the contractual process from inception to execution, are so diverse that a single, specific sanction cannot be universally applied. This research, with a particular focus on Article 92 of the General Penal Code, the Implementing Regulation of the Law of the Complaints Review Board Statute for Law on Conducting Tenders, and Article 13 of the Administrative Justice Court Law, examines the legal status of such contracts in cases of invalidity. The predominant legal doctrine and the views of most legal scholars posit that the sole sanction for non-compliance with formalities is the annulment of the legal act. However, legal logic necessitates a broader interpretation in such cases. The wording of Article 92, which refers to the "rejection of a transaction" as a sanction for non-compliance, suggests that non-compliance with formalities does not necessarily render a contract void. In such cases, if the transaction can be rendered ineffective, the interests of the administrative body will be served. Otherwise, the concept of vested rights must be considered. Furthermore, the research delves into the annulment of contracts under English law and its adjustment. An examination of certain provisions of the Implementing Regulation of the Law of the Complaints Review Board Statute for Law on Conducting Tenders and Article 13 of the Administrative Justice Court Law reveals that, in administrative adjudication, the legislature is sometimes compelled to adopt a special approach.

Keywords: Administrative contract, invalidity, termination, nullification.

Introduction

This research aims to investigate the grounds for annulment of administrative contracts under Iranian and English law. As is known, termination refers to the ending of a contract's legal existence by either party or a third party. This dissertation will examine the possibility of exercising the right to terminate administrative contracts.

Undoubtedly, one of the ways to end administrative contracts is through termination by one of the parties. Contract termination is considered a premature end to an administrative contract, as mentioned in Articles 46 and 48 of the General Conditions of the Contract. It is worth noting that contracts entered into by the administration are subject to various principles and rules, which also apply to the other party to the contract. This research seeks to examine the criteria and conditions for invoking termination from the perspective of public law, judicial precedent, laws, and regulations by carefully studying this issue in Iranian law and comparing it to other legal systems.

Termination of an administrative contract by the employer, contrary to the apparent inference, is subject to reasons and factors and is only possible after the occurrence of one of the factors mentioned in Article 46 of the General Conditions of the Contract. Government agencies, as contracting parties, do not have unlimited authority to terminate contracts and cannot, at any moment, arbitrarily decide to terminate. Furthermore, the terms of the

contract, especially the general conditions, indicate that the contract is binding—optional. That is, it is binding on the contractor but optional for the employer. Therefore, the contractor can never unilaterally terminate the contract. However, the employer, although without unlimited authority, can proceed to terminate the contract. Thus, the contractor's position in the contract will always be binding.

2.1. The Concept of Administrative Contracts

In the realm of law, there is a fundamental dichotomy that most legal scholars recognize:

1- Public law and private law, 2- Domestic law and International law¹

Given that general terms and conditions of contracts (GTCs) are typically used between government agencies and contractors to safeguard public interests, it is clear that GTCs fall under domestic law. However, the compulsory nature of GTCs, necessitated by the government's involvement as a contracting party, raises the question of whether these contracts align more closely with public law or private law. Considering the definitions provided for administrative contracts and their categorization within the realm of public law, it is crucial to examine this type of contract. As construction contracts form the most significant category of administrative contracts in our country, we will delve into the definitions and characteristics of administrative contracts.

2.1.1. Administrative Contracts Within the Public Law System

To delve into administrative contracts, it is first essential to define public law, as these contracts are governed by and fall within the realm of public law. One of the most prominent scholars of private law has defined public law as follows: "The rules governing the organization of the state and the relations of its affiliated organizations with the people, insofar as these organizations are exercising sovereign power and implementing public authority."

Essentially, the concept of public law is intrinsically linked to state sovereignty. It is impossible to conceive of its rules as separate from public authority. The distinction between public law and private law arises from the fact that the state and other public institutions do not occupy the same position as individuals. Individuals, in their activities, aim to profit and protect their private interests. Conversely, the purpose of administrative actions is to protect public rights and exercise sovereignty². While it is true that public organizations are managed by individuals, the benefits of their work do not accrue directly to them. When carrying out their duties, they focus solely on the public interest and the correct implementation of laws. To achieve this goal, they possess the sovereign power and authority unique to the government. It is therefore logical that the rules governing the relationships of such organizations differ from those that regulate private relationships between individuals. However, when public legal persons engage in private activities and their purpose is not to exercise national sovereignty, their relations with the people are subject to the rules of private law. In such cases, the application of the exceptional rules of public law loses its factual basis.

In reality, administrative organizations are not always obligated to base their contractual relationships on administrative contracts. Depending on their duties, these bodies may sometimes subject their contracts to the provisions of private law and sometimes to the rules of public law. Examples of private contracts of administrative organizations include:

Example 1: Civil contracts are governed by the provisions of the Civil Code regarding lease agreements and the law governing the relationship between landlords and tenants. These laws do not classify government lessors and tenants as public entities. Therefore, the issuance of eviction orders for schools by the judiciary indicates a landlord-tenant relationship between the landlord and the education ministry (i.e., the government). Whether the tenant is a government entity or an individual, it makes no difference. Consequently, such contracts are not considered administrative contracts in the eyes of the courts. Therefore, these contracts are considered private

¹ Ghahramāni, S., & Shamsā. (2014/2015). Claims arising from general contract terms. Research Center of the Islamic Consultative Assembly.

² Katouzian, N. (2003/2004). Introduction to Jurisprudence (p. 42).

contracts of the government, and the applicable legal rules are those contained in the contract itself as well as the provisions of the Civil Code.

Example 2: A public institution affiliated with the Ministry of Commerce enters into a contract with a transportation company to transport goods required by the Ministry of Commerce, excluding cases related to public services. This contract is considered a commercial contract, and the rules of commercial law will govern it³.

Based on the above, it can be concluded that not only administrative contracts are concluded in government organizations and agencies, but in some cases, government contracts are in accordance with the rules of private law and fall within this scope.

However, regarding administrative contracts, there are two general and specific meanings of this type of contract, and administrative contracts in their general sense are also called administrative contracts.

Administrative contracts in the general sense include all contracts concluded between administrative bodies, whether governmental or municipal, with any person, whether natural or legal, and whether domestic or international. However, in this research, the subject of discussion will be administrative contracts in their specific sense, because according to the definitions that will be presented later, the applicability of general terms and conditions of contracts to administrative contracts in their specific sense will become clear. To clarify the matter, it can be said that the administrative contracts that are the subject of this research are the product of the government's positive intervention in economic and social activities through planning. Government intervention through planning in Iran also has a history. The history of economic development planning in Iran took shape in 1941. The design and implementation of special projects such as railways, dam construction, the establishment of sugar factories, cement, road construction, bridge construction, building construction, the establishment of government hospitals and schools, and then universities are among them. Articles 21 and 22 of the First Seven-Year Development Plan Act of 1948 and the Second Seven-Year Plan in 1955, and subsequently three five-year plans before the revolution, are the legal basis for the initial administrative contracts⁴.

Following the Iranian Revolution, economic, social, and cultural development planning was legally mandated in 1989 and implemented over five years. Subsequently, the second, third, and fourth five-year plans were carried out, and we are now in the process of executing the fifth plan.

Consequently, administrative contracts have become a fundamental method for implementing planning and budgeting laws. This formula highlights the crucial role of contractors who, on behalf of government agencies, timely execute countless national and local projects through contracts with these agencies.

2.2.2. Definition of Administrative Contracts

Although more than a few decades have passed since the creation of the current form of general contracting conditions, due to the tendency of most jurists and writers in our country towards the field of private law, public law has unfortunately not been given as much attention as it has in many other countries. Therefore, until a few years ago, the definition of administrative contracts by domestic jurists was limited. One jurist has defined an administrative contract as follows: "A scientific term referring to contracts in which at least one party is a government agency and which is concluded to provide certain public services and as a public right, such as a contract for public services, such as a contract granting a mining concession to individuals or granting a railway line to a specific company⁵."

³ Ansari, 1392, General Principles of Administrative Contracts, p. 38.

⁴ Ansari, 1392, General Principles of Administrative Contracts, p. 31.

Jafari Langroudi, Legal Terminology, Rastad Publications, Tehran, 1363, p. 532.

Katouzian, General Principles of Contracts, Volume 5.

⁵ Jafari Langroudi, Legal Terminology, Rastad Publications, Tehran, 1363, p. 532.

2.2.3. Specific Characteristics of Administrative Contracts

Perhaps the best way to identify administrative contracts is to examine the specific characteristics of this type of contract. Therefore, to achieve the above goal, it is better to briefly examine these characteristics by stating the differences between administrative contracts and civil contracts.

(3) Forcible Dissolution

This type of dissolution occurs forcible and is technically called "annulment"⁶. Obviously, due to the forcible nature of rescission, the joint will of the contracting parties or one of them is not involved in this type of termination. For example, one can refer to cases of rescission that are explicitly provided for in the Civil Code:

- 1) The loss of the subject matter of the sale before its delivery to the buyer, as provided for in Article 387 of the Civil Code, leads to the annulment of the sale contract.
- 2) The loss of the leased property during the lease period, as provided for in Article 483 of the Civil Code, leads to the annulment of the lease contract.
- 3) The death of the tenant in a lease contract where the tenant's presence is a condition, as provided for in Article 497 of the Civil Code, which leads to the annulment of the lease.
- 4) The annulment of a revocable contract upon the death or legal incapacity of one of the parties, as provided for in Article 954 of the Civil Code, is also a case of forcible dissolution of the contract.

2.2.4. Nature of Annulment

As mentioned, annulment, as one of the grounds for the dissolution of contracts, dissolves a contract that has been validly concluded without the involvement of the will of one of the contracting parties. In other words, annulment occurs involuntarily and the legal life of the contract ends forcible and without the need for any additional legal act. It should be noted, however, that the cause of annulment can be voluntary, and for example, the contracting parties can stipulate the occurrence of an event in the future as a condition for the annulment of the contract without impairing the nature of annulment as an involuntary phenomenon.

Also, the involuntariness of annulment is not incompatible with the possibility of preventing it by agreement. For example, in a case where a resolutive condition is stipulated in the contract, the two parties can agree to change the conditions of dissolution or remove that condition. But it must be understood that this action eliminates the cause of dissolution and does not make the annulment itself optional or voluntary. Therefore, the common feature of all cases of contract annulment in various forms is the involuntary nature of the dissolution, and this feature distinguishes it from rescission and termination, which occur by agreement or with a single will⁷.

2.3. Types of Annulment

To understand the nature of annulment in general terms of the contract, we must know the types of annulment in general, as annulment has different types based on its cause. Below is the opinion of a jurist in stating this matter, which seems useful. A contract can be annulled based on the role of the will in creating its cause into three groups:

- 1) Annulment that is directly caused by the express will of both parties.
- 2) Annulment is caused by a legislative provision, but from the analysis of the provision, it appears that it implements the presumed and implied will of both parties, such as the rule of loss of the subject matter before delivery.
- 3) Annulment that occurs as a result of a legislative provision and its purpose is to secure the basis of agreement and the foundation in mind, such as the dissolution of all revocable contracts, and especially a deposit, in the event of the death or incapacity of one of the two parties.

⁶ Katouzian, General Principles of Contracts, Volume 5.

⁷ Ibid., p. 42.

By carefully examining the articles of the general terms of the contract, it seems that the annulment of this contract is due to the first category, that is, annulment that is directly caused by the express will of both parties, meaning that the cause of annulment is foreseen in the text of the contract, and in the event of its occurrence, the contract is annulled. Although the existence of a condition in the text of the document is somehow agreed upon, regardless of the voluntary nature of the cause, in the event of the fulfillment of the condition, the contract automatically dissolves, and neither the contractor nor the employer nor the adjudicating court can have a choice other than accepting the annulment of the contract. Jurists have called this type of condition a resolutive condition and have defined it as an agreement that the two parties make about the annulment of the contract in the future, thereby limiting the obligations arising from the contract to a specific time or the non-occurrence of specific conditions.

The nature of a resolutive condition differs from a suspensive condition. As Article 399 of the Civil Code stipulates, an option to terminate can be stipulated in a contract of sale, granting the seller, buyer, or a third party the right to terminate the contract within a specified period. On the other hand, the contingent nature of a resolutive condition should not be confused with a suspensive condition. In a resolutive condition, the contract is valid and complete from the outset, and the occurrence of the resolutive condition in the future terminates the contract. However, in a suspensive condition, the contract comes into existence upon the occurrence of the suspended event⁸.

2.3.1. Effects of Annulment

As mentioned, grounds for dissolution, whether termination, annulment, or rescission, result in the termination of an existing contract and bring an end to the legal life of a validly formed contract. However, what is important is the effects of contract dissolution concerning each of these grounds. We must examine whether contract dissolution due to each of these grounds has similar effects. To achieve this, we must necessarily examine the provisions of the Civil Code that indicate the effects of contract dissolution as a result of one of the three aforementioned grounds. In this regard, we refer to the interpretation of one of Iran's great jurists who, in his book, has written:

“Contract dissolution, whether by mutual agreement, unilateral action, or automatically, is prospective and terminates the contract from the time the cause of dissolution occurs. This rule is not explicitly stated in any text but can be inferred from various scattered provisions in the Civil Code. For example, in the case of rescission, we read: ‘Benefits and profits that have accrued from the time of the contract until the time of rescission concerning the transaction belong to the person who acquired ownership through the contract. Benefit follows ownership; whoever owns the property also takes its benefits. Therefore, the attribution of benefits to a party to the contract indicates that rescission does not affect the main effect of the contract (i.e., ownership) before that time and only returns ownership to its original state in the future.’”

Article 459 of the Civil Code states that if the seller acts in accordance with a resolutive condition and recovers the property from the buyer, the property will belong to the seller, but it also states: ‘From the time of termination, the fruits and profits accruing from the time between the contract and the termination belong to the buyer.’ This article explicitly refers to the effect of termination on ownership and its accessories, indicating that it is prospective and does not have a retroactive effect.

Article 483 states: ‘If, during the lease term, the leased property is wholly or partially destroyed due to an event, the lease is terminated from the time of the destruction concerning the destroyed portion⁹...’

Therefore, it can be concluded that the effects of contract dissolution are prospective, and the causes of dissolution do not affect the past. However, since the rule of the effect of contract dissolution is general, the parties can, by their own will, extend the effect of dissolution to the past of the contract.

⁸ Ibid

⁹ Katouzian, Nasser. General Principles of Contracts, Vol. 5, 1369, p. 69.

2.4. Dissolution of Contracts from the Perspective of General Contractual Principles

In this section, we will examine the specific provisions governing the dissolution of contracts within the framework of the broader philosophy underlying the contract itself. As previously discussed, contracts and their provisions do not always align with the general principles of private law contracts. The specific provisions stipulated in these contracts may be justifiable solely within the context of an administrative contract. We have also examined administrative contracts, their principles, and characteristics to better understand the nature of contracts, particularly concerning their dissolution. Now, we must determine whether, based on the general principles of private law contracts and the accepted rules and principles of administrative contract law, we can conduct a legal analysis of the grounds for contract dissolution. Furthermore, we must assess whether the results of our analysis of the methods of contract dissolution are consistent with the customary and logical norms of both public and private law systems.

Therefore, in this chapter, we will examine the grounds for contract dissolution, namely rescission, termination, and annulment, in light of the provisions stipulated in the contract. Given the focus of this research, the primary emphasis will be on the annulment of contracts. However, due to the similarities and conflicts between these grounds of dissolution within the contract, we will necessarily examine all three.

2.4.2. Rescission of the Contract

Article 283 of the Civil Code stipulates that after entering into a contract, both parties may mutually agree to rescind it. Given that one party to the construction contract is a government agency, any agreement to rescind must be between the government agency and the contractor. While rescission is generally accepted as a means of terminating contracts, both in private and public law, a careful review of the general conditions of the contract does not explicitly provide for rescission. However, it could be argued that rescission is a fundamental principle of contract law and its absence from the contract does not preclude its application.

The primary benefit of rescission lies in its application to binding contracts, as termination of a voidable contract does not require mutual agreement and can be initiated by either party.

Given the provision in Article 48 regarding the termination of the contract, which allows for termination at any time before the completion of the work, and the purpose of such a clause (to increase the government agency's discretion to continue or terminate the contract), it seems that rescission is rarely necessary for the dissolution of contracts.

2.4.3. Termination of the Contract

Article 46 of the general conditions of the contract explicitly states the grounds for termination under two subsections, (a) and (b). We will examine each of these subsections in detail after presenting the full text of Article 46.

2.4.4. Article 46 - Grounds for Termination of the Contract

2.4.4.1. The employer may terminate the contract according to Article 47 if any of the following occurs:

- 1) The contractor's delay in taking over the site exceeds the time specified in Article 28(b).
- 2) Delay in submitting a detailed schedule exceeding half of the specified time for submission.
- 3) Delay in equipping the site for the commencement of the works exceeding half of the time specified in Article 4(c) of the agreement. Termination in this case is only permissible if the employer has paid part of the advance payment that was to be paid after the handover of the site¹⁰.
- 4) Delay in commencing the works exceeding one-tenth of the initial contract duration or two months, whichever is less.

¹⁰ Katozian, General Principles of Contracts, Volume 5, page 203.

- 5) Delay in completion of any of the works specified in the detailed schedule beyond half of the specified time for that work in accordance with Article 30.
- 6) Delay in completion of the work for more than one-quarter of the contract duration in accordance with Article 30.
- 7) Failure to start work after the removal of the force majeure situation referred to in Article 43 and notification of the start of work by the employer.
- 8) Leaving the construction site without a supervisor or suspending work without the employer's permission for more than 15 days.
- 9) Failure to follow the consulting engineer's instructions to correct defective work, as per Article 32(d).
- 10) Dissolution of the contractor company.
- 11) Bankruptcy of the contractor or seizure of the contractor's machinery and property by the courts, in a way that causes the work to stop or slow down.
- 12) Delay of more than one month in paying workers' wages, according to Article 17(v).
- 13) If it is proven that the contractor has given bribes or rewards to the employer's agents to obtain or execute the contract, or has shared the benefits with them or their intermediaries.

3.1. Defining Administrative Contracts

As previously mentioned, there is no universally agreed upon, comprehensive definition of administrative contracts. Scholars have attempted to define these contracts based on the characteristics outlined in various administrative laws and regulations.

One expert defines an administrative contract as "a contract where at least one party is a public administration and is entered into to provide a public service and as a public right¹¹." However, this definition is criticized for not specifying whether "public administration" refers to government agencies or non-governmental public entities. Additionally, the definition sets three conditions for identifying an administrative contract, implying that all three are necessary.

Another definition states, "An administrative contract is concluded between an administrative organization or its representative, on the one hand, and any natural or legal person, on the other, to perform an act or service related to the public interest, in accordance with special provisions (usually preferential or privileged, and sometimes supportive), and disputes arising from such a contract (disputes in interpretation and execution) are within the jurisdiction of administrative courts¹²." Given the structure of the Iranian legal system, the most logical criticism of this definition is that it places jurisdiction over disputes arising from such contracts in administrative courts. However, in the Iranian legal system, due to the absence of administrative courts for adjudicating administrative contracts, jurisdiction cannot be a precise criterion for distinguishing administrative contracts from other contracts. Although this definition is scientifically correct, it cannot serve as a standard or basis in all countries, including Iran.

Another definition of an administrative contract states: 'An administrative or governmental contract is one where at least one party is the government, a government administrative body, or a public non-governmental institution such as municipalities and public institutions. This contract is entered into using public authority to provide a

¹¹ Jafari Langroudi, Mohammad Jafar. (2006). *Legal Terminology*. 16th ed., Tehran: Ganj-e Danesh Publications, p. 533.

¹² Ansari, Vali Allah. (2001). *General Principles of Administrative Contracts: Along with Sample Exam Questions*. Tehran: Haghoughodan Publishing, 3rd ed., p. 32.

public service¹³.' By stating at least,' the author emphasizes that if one party to the contractual relationship is the government, a government administrative body, a public non-governmental institution, or a public institution, then the contract can be considered administrative or governmental. Moreover, by mentioning 'government administrative bodies,' the author excludes private offices and organizations from the definition but includes the exception of 'public non-governmental institutions,' considering their contracts as administrative if other conditions are met.

The points raised demonstrate a subtle distinction between an 'administrative contract' and a 'contract of an administrative body'. A 'contract of an administrative body' encompasses all contracts entered into by an administrative body as a legal person, regardless of their nature, purpose, content, or governing law. Thus, any contract where one party is an administrative body can be classified as a 'contract of an administrative body'. However, the term 'administrative contract' carries a specific connotation. It implies that such a contract is necessarily governed by a special legal regime. Consequently, not all 'contracts of an administrative body' are necessarily 'administrative contracts'. When an administrative body enters into a contract to satisfy its private needs, like any other entity, such a contract is governed by civil law. But when an administrative body enters into a contract to fulfill public needs, the contract may qualify as an 'administrative contract'. Therefore, 'contract of an administrative body' is a broader term, referring solely to contracts where one party is an administrative body, and they may be governed by either civil or administrative law. In contrast, 'administrative contracts' are specifically those where one party is an administrative body and are subject to administrative law¹⁴.

3.1.1. Specifications of Administrative Contracts

In this clause, based on existing regulations and legal opinions, we will specify the characteristics to distinguish administrative contracts from other contracts.

3.1.1.1. The involvement of the government or government-affiliated institutions as one of the parties to the contractual relationship

In administrative contracts, one of the contracting parties is typically a public entity. However, not all administrative contracts necessarily involve a public entity. While the presence of a public party is generally considered essential, there are exceptions where private parties might enter into a contract with the primary purpose of providing a public service. In such cases, the agreement can be classified as an administrative contract.

Although the status of this characteristic varies across different countries' administrative contract systems, the English legal system has accepted such an originality and exception. However, until the early 20th century, the application of administrative contracts in England required the presence of a public entity as one of the parties to the contract. However, from that time on, and specifically with the 1938 ruling of the Council of State in the case of "Relief and Protection Funds," which was considered a private entity, the previous view of such contracts was broken. This allowed for the provision of public services by private entities and the possibility of private individuals entering into administrative contracts. In Iran's legal system and judicial approach, the institution of a contract is generally understood within the context of private law. While it's true that the Constitution mandates the government to provide public services¹⁵, there's no explicit provision allowing private entities to do so. However, other laws, such as the Civil Service Management Act¹⁶ and the Law on Implementation of the General

¹³ Shami, M. (1393). A Concise Treatise on Administrative Contracts. Tehran: Majd Publications, 1st ed., p. 34.

¹⁴ Va'ez, S. M. (1395). Course Notes on Administrative Contracts. Faculty of Law and Political Science, Shiraz University.

¹⁵ Articles 3, 45, and 49 of the Constitution

¹⁶ Articles 13 to 15 of the Civil Service Management Law.

Policies of Article 44¹⁷ of the Constitution, do allow for private sector participation. This implies that private entities can also enter into public law contracts. Nevertheless, due to the lack of a well-established institution for such contracts, it's difficult to provide a definitive opinion on this matter. As a result, legal scholars often define administrative contracts by emphasizing the public nature of at least one of the contracting parties. For instance, an administrative contract is defined as "an agreement entered into by public administrations and institutions to carry out a public function and to subject the contract to specific administrative rules and regulations¹⁸." Therefore, a prerequisite for a contract to be considered an administrative contract is that at least one party is a government entity or a public institution like a municipality. The term 'at least' indicates that if both parties to a contractual relationship are governmental entities, the contract can, by analogy, be considered an administrative contract¹⁹.

3.2. Examining the Validity, Invalidity, and Voidability of Administrative Contracts

As previously mentioned, under English law, contracts can be classified as Valid, Absolute Nullity, Relative Nullity, or Voidable. Iranian jurists, with slight variations, categorize the legal status or effects of contracts as Valid, Void, Enforceable, Unenforceable, Voidable, Permissible, or Obligatory. Consequently, a contract can be classified as Valid, Void, or Unenforceable based on these categories. To better understand the concept of a void contract, it is essential to define a valid contract. Validity is the legal status attributed to a contract that has a legal existence. This is in contrast to invalidity, which is the legal status of a contract that lacks legal existence. A valid contract fulfills all legal requirements and produces its intended legal effects. Therefore, a valid contract comes into legal existence through the expressed will of the parties involved. In common parlance, a valid contract can be further categorized as enforceable, unenforceable, or voidable²⁰.

Broadly speaking, contracts can be divided into two main categories based on their legal status: valid and void²¹.

3.3. Grounds for Contract Adjustment in English Administrative Law

This chapter delves into the foundations of contract adjustment within English administrative law. Our primary objective is to ascertain whether the principle of adjustment is fundamental in English administrative law or if it is considered an exceptional circumstance. To achieve this, we have initially examined evidence, principles, and rules within English law. Our findings suggest that English law primarily upholds the government's freedom to adjust administrative contracts. Consequently, we propose this principle as the foundational basis for contract adjustment in English administrative law. Subsequent discussions will explore the concepts of economic duress, governmental action, the fault of contracting parties, and frustration, aiming to determine whether these factors can also serve as grounds for contract adjustment.

3.3.1. The Principle of the Government's Discretionary Power Contract Adjustment

In English law, it is well-established that a contract cannot prevent the government from fulfilling its duties necessary for its survival. This does not mean that the government is never bound by contractual obligations. Rather, it means that the government cannot escape its contractual obligations except in circumstances that are in the public interest or for the public good. However, each government organization in England can, through a contract, agree to compensate the other party for any loss or damage suffered as a result of an adjustment to the

¹⁷ Article 4 and subsequent articles of the Law Amending Certain Articles of the Fourth Economic, Social, and Cultural Development Plan Law of the Islamic Republic of Iran and Implementing the Policy.

¹⁸ Tabatabaei Motmanni, M. (1373). *Administrative Law*. Tehran: Samt Publications, 1st ed., p. 331.

¹⁹ Shami, M., *ibid.*, p. 35.

²⁰ Shahidi, Mehdi. (2004). *Principles of Contracts and Obligations*. Tehran: Majd Publications, p. 32.

²¹ Shahidi, *ibid.*, p. 4.

contract due to a change in governing law or the exercise of governmental powers. The English legal system emphasizes the sovereignty of Parliament. Using this principle, the government can unilaterally adjust or terminate contracts through legislation. Therefore, no government organization in England can, through a contract, place any restrictions on the legislative authority of the British Parliament and consequently on the amendment of concession agreements entered into with the government. For example, one can refer to the British government's unilateral adjustment of the contractual terms of licenses for North Sea oil exploration in 1975²².

The English legal position on this matter aligns with the American view. In England, when the government, in its executive capacity, decides to adjust or terminate a contract, this action is considered lawful and justified, rather than a breach of contract²³.

In the same vein, the International Encyclopedia of Comparative Law states:

“...the interpretation of a public contract is that it is implicitly conditioned on the exercise of the powers and discretion of the competent government authority in the public interest. Therefore, actions taken by the Crown or other government officials in the proper discharge of their duties or for an executive purpose do not constitute a breach of contract, even if such action renders the performance of the contract by the contracting party impossible or more difficult²⁴.”

Furthermore, when a contract is governed by English law (which seems to be the case for all contracts entered into by the British government and performed within the territory of England), it may always be subject to new laws that are enacted in the future. Therefore, neither local government authorities nor the central government can prevent the application of subsequently enacted laws by including a clause in the contract to fix the terms. As has been stated in recent cases before the English Court of Appeal:

‘...the government cannot contract out of its duty to act in the public interest. The government cannot bind itself by contract to refrain from performing its public duties.’

In English law, it is not only impossible to include a stability clause in a contract against future laws, but due to the doctrine of parliamentary sovereignty, no court can disregard the principle of Parliament's authority to act in the public interest. The UK government's recent willingness to adjust the terms of its contracts with foreign companies for North Sea development projects demonstrates the relative instability of government contracts. Therefore, under English law, a stability clause in a contract, which would restrict the legislature's ability to enact future laws, is not enforceable. A private party to a contract with the UK government is in a relatively weak position²⁵.

The general and accepted principle in the English administrative law system is that the government has broad discretion to adjust, change, or terminate a contract. This is due to the government's special powers and the principle of continuity of public services. Officials cannot create obligations for the future by accepting terms that conflict with the principle of adjustment, such as a stability clause, and limit the possibility of adjusting the contract in the future.

This is also confirmed in comparative law encyclopedias:

‘The most distinctive privilege of the state is its power to terminate a contract when the public interest so requires. This broad power is a special privilege of the state in the national legal system, the existence of which is necessary to protect the authority of national authorities²⁶.’

²² A.F.M.Maniruzzaman, *State Contracts with Aliens: The Question of Unilateral Change by the State* in

²³ *Contemporary International Law, Jurnal of International Arbitration*, vol. 9, no.4, p. 144.

²⁴ *state contracts with Aliens: contemporary development on*, (1986) 1 Derek William Bowett

²⁵ Derek William Bowett (1986), *op. cit.* 416

²⁶ *International Encyclopedia of Comparative Law*, *op. cit.*, p. 40

It is also important to note that not every contract entered into by the state can be considered a government contract. Sometimes, the state or its institutions and agencies enter into contracts to satisfy their interests and those of their members, rather than the public interest. In such cases, the state does not enjoy the special privileges of government contracts, and the term 'state contract' does not apply.

A. The Principle of Parliamentary Sovereignty

The English legal system places a strong emphasis on parliamentary sovereignty. This means that Parliament holds supreme power and can unilaterally adjust or terminate contracts by passing legislation. This principle is closely linked to the doctrine of parliamentary supremacy²⁷ over the judiciary, which stipulates that no court can disregard Parliament's actions taken in the public interest²⁸.

Consequently, no government body in the UK can, through contractual means, impose any limitations on Parliament's legislative authority, including the power to modify contractual concessions granted to the government. For instance, in 1975, the UK Parliament declared its readiness to unilaterally alter the terms of licenses issued for North Sea oil exploitation²⁹.

B. Case: Rederiaktiebolaget Amphitrite vs. The King

The crux of this case was that Swedish owners of a cargo ship had received assurances from the British Embassy in Stockholm that their vessel would not be seized if it sailed to England with a specific cargo during World War I. Despite this assurance, the ship was indeed seized, and no compensation was provided for the breach of this agreement. The legal principle derived from this case is that a government cannot limit its freedom to take actions that may be necessary to meet the future needs of society. In other words, a government cannot bind itself through a contract from taking actions that are in the public interest. However, this does not mean that governments in English law are never bound by their contractual obligations. Rather, it signifies that in exceptional circumstances, such as the public welfare or the public interest, a government can override its contractual obligations and unilaterally adjust the contract³⁰.

C. Case: Zarneckikov Ltd v. Rolimpex

A government's discretionary powers do not imply an absolute immunity from contractual obligations. Rather, it means that a government cannot escape its contractual commitments except in circumstances where the nation's welfare or the public interest is at stake. The explicit language used by Lord Denning in the judgment of Zarneckikov Ltd v. Rolimpex clarifies any ambiguity in this regard:

"...a government cannot suspend its duty to provide for the common good... A government can create an obligation for itself by entering into a contract. This means that it cannot do anything that would delay or make impossible the performance of the contractual obligations..."

It is also worth noting that the possibility of terminating or adjusting the consideration or other terms of a contract due to considerations related to the public interest can be accompanied by a provision for compensation for losses incurred as a result of premature termination or the imposition of additional obligations on the private party. However, it should be noted that English law has not explicitly confirmed the right to damages in the event of government interference with financial rights, and this can perhaps be demonstrated by examining the 1975 Act of the British Parliament, which will be discussed later³¹.

²⁷ The Doctrine of Parliamentary Supremacy

²⁸ Derek William Bowett (1986), op. cit. 416

²⁹ A. F.M.Maniruzzamanop. cit, p. 146

³⁰ A. F.M.Maniruzzamanop. cit, p. 149

³¹ A. F.M.Maniruzzaman, op. cit, p. 149

The aforementioned opinion of Lord Denning in the aforementioned case was also approved by the House of Lords in 1978.

D. Attorney General of the Crown Lands v. Page

An examination of Judge Devlin L.J.'s judgment in the Attorney General of the Crown Lands v. Page case demonstrates the English legal system's stance on government adjustment of contracts and the specific limitations and conditions governing contracts entered into by the government or public authorities. According to the judgment, when a right or privilege is granted to the King or any other person to be exercised for the public good, it cannot be rendered by private contract that he will refrain from exercising the power and authority vested in him. However, the limits of the government's freedom to adjust contracts are vague and subject to debate, and some judgments have imposed certain limitations on this freedom while recognizing the principle of the government's ability to adjust contracts. Devlin suggests in his judgment that if a private party or governmental body enters into a contract, the King cannot bind himself to any terms, and goes on to say that this principle has been accepted in numerous cases³².

E. Robertson v. Minister of Defence

In the Robertson v. Minister of Defence case, the court, while acknowledging the government's general freedom to adjust contracts, imposed certain limits on this power. Judge Denning suggested that the government could be estopped from acting inconsistently with its previous representations. He rejected the absolute defense of executive necessity, which argues that the government cannot be bound to refrain from exercising its powers in the future³³.

Judge Denning's judgment, while recognizing limitations on the government's contractual freedom, affirmed the underlying principle that contracts can be adjusted. Therefore, this case can be seen as supporting the principle of contractual flexibility.

F. The Petroleum and Submarine Pipe-lines Act 1975

The United Kingdom's Petroleum and Submarine Pipe-Lines Act 1975 serves as a prime example of the acceptance of contractual adjustment within the British administrative legal system. As will be discussed, this act introduced significant changes to the legal regime governing oil production contracts and licenses in the UK, thereby reflecting the prevailing legal view regarding contractual adjustment. The Act subjected licenses issued in 1966 for the exploration and exploitation of the North Sea, which had been in effect for many years, to adjustment³⁴. It substantially altered the terms of all existing production licenses, imposing new obligations, particularly regarding development and production programs for oil fields, without providing compensation. Moreover, it introduced more stringent restrictions on the assignment of concessions.

In response to the predictable parliamentary criticism that this Act constituted a breach of British contractual obligations, a denial of the rule of law, and even an unlawful expropriation of concessionary rights under international law, ministers unequivocally stated that they saw no difference between the impact of this Act and the effect of legislative or fiscal measures that would result in a worsening of the contractual terms and the imposition of heavier financial burdens on the contracting party³⁵.

The new law has substantially altered the government's authority, granting it the right to control production levels and increase its ownership stake. Notably, these provisions have been applied retroactively, allowing the government to claim a 50% stake in all contracts, even those signed before the law's enactment. This retroactive

³² Commissioners of Crown Land v. Page, (1960) Q. B. p. 274

³³ Amani, Masoud, op. cit., p. 95.

³⁴ Habibzadeh, Mohammad Kazem, Principles Governing Government Contracts, Jangal-e-Javadaneh Publications, First Edition, 1390, p. 240.

³⁵ A.F. M.Maniruzzaman, op. cit, p.149

application of the law is a significant departure from previous legal frameworks. Similar instances of government intervention can be seen in countries like the United Kingdom, where the government has exercised its authority to adjust contract terms in response to fluctuating oil prices. For instance, the UK government has increased taxes on oil companies during periods of high oil prices, demonstrating the acceptance of governmental power to adjust contractual agreements³⁶.

Conclusion

Historically, the role of governments was limited to defending national borders, maintaining domestic security, and addressing grievances. Economically, the philosophy of economic liberalism prevailed, which advocated for non-intervention by the government and believed that freedom in economic activities would lead to public welfare. However, the subsequent spread of egalitarian and distributive justice ideas led to the prevalence of the theory of interventionist economics and an increased role for the government in the economic sphere. Gradually, the government's role in providing public services became more prominent. However, the delivery of certain services required the government to delegate them to the private sector and enter into contracts. This is how the concept of administrative contracts emerged as a form of governmental action.

Our study of the theoretical and historical foundations of administrative contracts in the Iranian legal system has revealed a noticeable lack of clarity regarding the concept of administrative contracts among legal actors, including legislators, legal scholars, and courts. Despite well-defined concepts and understandings of civil contracts, the approach to administrative contracts, which is often seen as an imported institution, remains ambiguous. When discussing administrative contracts and their characteristics, the tendency is to reference English law and its principles. There seems to be a prevailing belief that Iranian public law's sources and history offer little in terms of a foundation for these types of contracts. Although Iranian law does not provide a specific definition or regulations for administrative contracts, legal scholars have proposed theories and principles suggesting that such contracts do not necessarily conform to the mold of civil law contracts and may even deviate from the principles governing the Civil Code. However, they are entered into by government agencies to serve the public interest and promote the common good.

In civil law, based on the principle of freedom of contract, contracts are generally considered consensual unless specifically provided for by law. However, administrative contracts involve formalities that are mandatory by law. The lack of explicit legal provisions regarding the consequences of non-compliance with these formalities, coupled with inconsistent judicial decisions and arguments, has led to divergent views on this matter. Analysis of opinions by public law scholars and various court rulings reveals a divergence among legal experts. Some argue that administrative bodies have a mandatory duty to adhere to tendering and bidding procedures, while others contend that such adherence is discretionary. Proponents of the mandatory view argue that the need to safeguard contracts, documents, and public rights, as well as to ensure public access to government services, justifies strict compliance with formalities in administrative contracts. Hence, they maintain that, in addition to the conditions stipulated in Article 190 of the Civil Code, government contracts must also meet the requirements of the General Penal Code and other laws. This view is influenced by a similar trend in civil law, where the adoption of the Real Estate Registration Law led to the argument that formalities should be added to the conditions of Article 190 for the validity of real estate transactions.

In the realm of public law, an offer must be made in a specific form, and tender procedures are considered a means of expressing this offer. Therefore, the government, assuming that the tender procedures have been followed, can make an offer. Adherence to tender and auction procedures, as stipulated in Article 190 of the Civil Code, ensures the validity and enforceability of a contract. Non-compliance can lead to the contract being declared void. Conversely, some argue that Article 190 outlines the conditions for the validity of contracts and that public contracts are no different in this regard. Thus, non-compliance with specific administrative laws, such as the Government Procurement Regulations, General Penal Code, and Law on Conducting Tenders does not invalidate the contract but merely constitutes an administrative or disciplinary violation by the relevant officials. Courts have

³⁶ Amani, Masoud, *ibid.*, pp. 226 and 227.

exhibited conflicting practices and arguments regarding the procedures stipulated in public contracts. This inconsistency stems from the lack of clear regulations regarding these procedures and the absence of appropriate legal sanctions for non-compliance at various stages of contract formation by public entities. Some courts consider compliance with tender procedures to be a mandatory duty of the administration, and non-compliance results in the contract being declared void. However, other courts view compliance as discretionary and consider non-compliance grounds for the civil liability of the public official. These courts argue that the purpose of these procedures is to safeguard the government's interests, and since only the government's interests are at stake, it can voluntarily waive these procedures. This argument, however, is not without flaws.

Based on the aforementioned points, we can conclude the following:

1. Private and administrative contracts are governed by different principles, leading to distinctions between them. In private contracts, the principle of freedom of contract, equality of parties, and the binding nature of contracts allow for contract adjustment under specific conditions. On the other hand, in administrative contracts, which are subject to principles such as governmental authority, continuity of public services, and the permanence of public services, the government can resort to adjustment or termination under certain circumstances. As we can see, adjustment is accepted to some extent in both types of contracts.
2. Regarding judicial adjustment, which is a type of adjustment in private contracts, we can say that although Iranian law does not explicitly recognize judicial adjustment (or the theory of unforeseen circumstances), this theory has been justified in our legal system by the rules of unjust enrichment and hardship. However, for reasons previously mentioned, these rules cannot be considered as justifications for judicial adjustment. Therefore, judicial adjustment is not permissible under Iranian law. On the other hand, the English legal system, based on the hardship doctrine, allows for judicial adjustment. Moreover, in another context, this theory has also been recognized, contrary to the general judicial practice in England regarding the non-adjustability of private contracts by a judge. Judges have the authority to substitute their assessment of the actual damages suffered by the promisee for the contractual provision agreed upon by the parties if the penalty clause is punitive. This indicates an acceptance of judicial adjustment in the English legal system.
3. If parties to a contract, during its execution, conclude that the initial agreed-upon prices are insufficient and, in good faith, mutually agree to revise them, there is no doubt about the validity of such an agreement in both Iranian and English legal systems. Regarding direct adjustment clauses, it can be said that, in the domestic law of both countries, these clauses will be accepted as long as they do not conflict with mandatory rules. However, in the Iranian legal system, due to the strong emphasis placed by the legislature on maintaining public order in contracts, entering into such agreements without a valid reason is not permissible. Iranian judicial precedent has been very passive in this regard and has remained silent on this issue. Generally speaking, in our legal system, the conclusion of such agreements cannot be unconditionally permitted, and there must be a justifiable reason for substituting gold, foreign currency, or another service for national currency. On the other hand, in English law, including such clauses in a contract is permissible, based on the judicial precedent of that country.
4. Regarding intermediate conditions, it should be said that in English law, if the specification of a person to determine the price is sufficient for the formation of a contract (which is the case), then there is no doubt about the acceptance of the validity of adjustment by a third party. Similarly, in the Iranian legal system, whenever a condition of adjustment is such that, despite the third party's authority to adjust obligations and price, the third party's powers and flexibility in reducing or increasing obligations are specified with a precise basis that prevents ignorance of the consideration, such a condition is valid.
5. Regarding one type of non-automatic adjustment condition, which is the discussion of renegotiation, in our legal system, despite the lack of any legal provision in this regard, there is no doubt about its acceptance, given its non-contradiction with the spirit of many existing regulations and its rationality. In English law as well, this condition has been accepted, approved, and used.
6. Regarding legal adjustment, despite the existence of numerous legal regulations in this regard in the Iranian legal system, the legislator has avoided formulating a general rule in this area. This is because stating a general

rule in this regard would seriously disrupt private contracts between individuals in society, which are considered the vital artery of their relationships. However, in practice, our legal system should be considered an acceptor of legal adjustment. On the other hand, a study of legal sources shows that legal adjustment has no place in English law, and more often than not, judicial adjustment is mentioned. This may be because English law is inspired by and influenced by the unwritten common law system.

7. Force Majeure: For comparing the Iranian and English legal systems, it can be said that in both systems, in terms of legal effect, the result of force majeure is the termination or suspension of the obligation, and therefore, the possibility of adjusting the consideration in an administrative contract in the event of such an occurrence is not possible.
8. Government Actions: In a broad sense, government actions can be considered unforeseen events that disrupt the balance of a contract, thus justifying adjustments. As previously mentioned, the Iranian legal system allows for price adjustments in contracts based on government intervention, and in the English legal system, contract adjustments by the government as a sovereign act is also an accepted principle.
9. Fault of the Parties: Neither Iranian nor English law allows for contract adjustments due to the fault of one or both parties involved in the contract.
10. Unforeseen Events: In Iranian law, unforeseen events can serve as a basis for contract adjustments. Similarly, in English law, this concept can encompass government actions, making adjustments to administrative contracts possible under such circumstances.
11. Frustration: Frustration, a concept in English law, is comparable to force majeure in Iranian law. Based on legal precedents and doctrines in both systems, contract adjustments are not generally allowed in cases of frustration; instead, the contract is considered terminated.

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