

**THE Effect of the Decision to Exempt from Delay Fines on
Carrying Governmental Reforms
(Cabinet Resolution No. 7 of 2016)**

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Abstract

The idea of the research is based on finding solutions and proposals for the procedures for exempting the private sector companies from the late fines as an exception to the instructions for implementing government contracts No. (1) for the year 2008 and (2) for the year 2014 and the general conditions for civil engineering contracting in its first and second sections prepared by the relevant departments in the Ministry of Planning and the issued decision From the Council of Ministers No. (7) of 2016 .. to be a guide to be used by public sector institutions such as ministries and all entities not associated with the Ministry and the governorates that are not organized in a region (especially with regard to government contract formations and the investment plan) when the private sector companies are delayed or broken in carrying out the tasks assigned to it according to the agreed time schedule in the contract and to avoid personal jurisprudence. The fine for delay in contracts is characterized by the fact that it is

subject to a special legal system, compared to other financial penalties in the field of contracts, compensation and fines, which reveals through scientific practice the legal problems of this financial penalty, especially with the growing contractual method resorted to by the various administrations of the state in order to perform their tasks, which should be in the public interest, with the need to achieve at the same time, not to waste the rights of the contractor with the administration, and to ward off the abuse of the administration in its exercise of the privileges of public authority, which It is embodied - indeed - in the mechanisms of execution of contracts, especially when imposing this sanction, which is not accompanied by the need to prove the damage on the part of the contracting administrative authority to sign it, its full discretion in this regard, and the position of the judiciary towards the exercise of this power, within the framework of a system that mainly takes into account the principles established by the French Council of State in this regard, which constitute the historical source of law, In addition, a comparative study is the best way to understand legal ideas and highlight legal principles at the stage of contract implementation.

Keywords: Impact, Exemption, Fines for Delay, Cabinet Resolution

أثر قرار الإعفاء من الغرامات التأخيرية على تنفيذ الإصلاحات الحكومية وفق قرار مجلس الوزراء رقم 7 لسنة 2016

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المستخلص

تستند فكرة البحث على ايجاد حلول ومقترحات لإجراءات اعفاء الشركات الخاصة من الغرامات التأخيرية استثناء من تعليمات تنفيذ العقود الحكومية رقم (1) لسنة 2008 ورقم (2) لسنة 2014 والشروط العامة لمقاولات الهندسة المدنية بقسميها الاول والثاني المعد من وزارة التخطيط والقرار الصادر من مجلس الوزراء رقم (7) لسنة 2016 ليكون دليلا يسترشد به من قبل مؤسسات القطاع العام من الوزارات وكافة الجهات غير المرتبطة بوزارة والمحافظات غير المنتظمة بإقليم (وخاصة تشكيلات العقود الحكومية والخطة الاستثمارية) عند التأخر او الاخلال في تنفيذ الاعمال المكلف بها شركات القطاع الخاص وفقا للتعليمات النافذة ولتجنب الاعتماد على الاجتهادات الشخصية . تتميز غرامة التأخير في العقود في أنها تخضع لنظام قانوني خاص، مقارنة بالجزاء المالية الأخرى في مجال العقود التعويضات والغرامات الأمر الذي يكشف من خلال الممارسة العلمية الإشكالات القانونية لهذا الجزاء المالي، ولاسيما مع تعاضم الأسلوب التعاقدية الذي تلجأ إليه الإدارات المختلفة للدولة من أجل أداء مهامها والتي ينبغي أن تتوخى الصالح العام، مع ضرورة أن يتحقق في ذات الوقت، عدم إهدار حقوق المتعاقد مع الإدارة، ودرء تعسف الإدارة في ممارستها لامتيازات السلطة العامة والتي تتجسد- حقا - في آليات تنفيذ العقود ولاسيما عند توقيع هذا الجزاء الذي لا يقتصر بضرورة إثبات الضرر من جانب الجهة الإدارية المتعاقدة لتوقيعه، وسلطتها التقديرية التامة في هذا الشأن، وموقف القضاء إزاء ممارسة هذه السلطة، وذلك في إطار منظومة تعدد أساسا، بالمبادئ التي أرساها مجلس الدولة الفرنسي في هذا الشأن والتي تشكل المصدر التاريخي للقانون فضلا عن أن الدراسة المقارنة، هي خير أسلوب لفهم الأفكار القانونية، وإبراز المبادئ القانونية في مرحلة تنفيذ العقد.

الكلمات المفتاحية: الأثر، الاعفاء، غرامات التأخير، قرار مجلس الوزراء

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Introduction

The Iraqi legal system has witnessed continuous development in order to adapt legislation and procedures to meet economic and social challenges. Among these legislations is Cabinet Resolution No. 7 of 2016, which regulates the exemption from late fines due on government contracts and tenders, in the context of addressing the effects of the exceptional circumstances that the country has experienced. This decision comes in response to the economic challenges resulting from the political, security and economic crises in Iraq, as it aimed to ease the burdens on the contractors with the State who failed to implement their contractual obligations as a result of those circumstances beyond their control. However, the implementation of the decision raises many legal questions about the impact of exemption from late fines on contractual rights and obligations between the parties, and its impact on the public interest and contractual justice. This research focused to determine whether the exemption strikes a balance between supporting affected contractors and protecting the rights of the State, taking into account contractual obligations. The research concludes with recommendations aimed at improving the legal framework governing exemption from late fines in Iraq.

Research problem:

Because of the security conditions and military operations that our country has gone through, and the financial conditions that resulted from that, the Iraqi government issued a decision that is an exception to the instructions for the implementation of government contracts No. (2) for the year 2014 that were to impose late fines in the event of late delivery, shipping or completion of Business according to a mathematical formula to calculate it for one day. This is in accordance with Resolution No. (7) of 2016, which includes exemption from late fines.

Research hypothesis:

This research aims at the researcher's attempt to reach fair and equitable solutions for the related parties and assisting administration officials to take the appropriate decision.

Research importance:

The delay fine in contracts is distinguished by being subject to a special legal regulation, compared to other financial penalties such as compensation or threatening fines ... which reveals through scientific applications legal problems resulting from the implementation of this option, especially with the increasing use of administrations in the world to the contractual method in order to perform their tasks represented in the provision of services and goods for the public good, with the need to achieve at the same time, non-waste of rights the second party contracting with the administration and staving off the administration's arbitrariness in exercising the privileges of the public authority which are.

Research Objectives

in fact - embodied in the mechanisms of implementing the contracts, especially when exercising its authority to sign this financial penalty that is not associated with the necessity of proving the occurrence of the damage by the contracting administrative authority as a condition for signing it, taking into account consideration of its full discretion in this regard, and the position of the judiciary towards the exercise of administrations by this authority, within the framework of a system that essentially respects the legal principles established by the French State Council in this field and which constitute the historical source of Iraqi law as well as that the comparative study is the best method to understand legal principles and ideas in this area. Our research aims to analyze and study the legal system for signing the delay fine in contracts in a comparative framework -

an analytical and original approach - through which we will analyze all the particles that are the subject of this research, and then arrange them in one legal intellectual framework, which constitutes an indication of the features of the legal system of delay fine, in light of the Resolution issued by the Council of Ministers No. (7) of 2016 adopted at its second session, held in Basra Governorate, the economic capital of Iraq on 12/1/2016, for exempting public and private sector companies from delaying fines as an exception to the instructions for implementing government contracts No. (2) for the year 2014.

Sub-questions:

1. What are the objectives that the Council of Ministers sought to achieve through this decision?
2. What is the role of the decision in reducing the financial burden on troubled companies?

Research Plan

The research was divided into two sections, the first in which we talked about delay fines in general according to the rules of civil law and the second was the delay fine in and exemption from them as an exception to the instructions for the implementation of government contracts No. (2) of 2014 with the issuance of Resolution No. 7 of 2016 and then a conclusion in which we reached conclusions and recommendations.

The First Topic: The Concept of Delay Fine in General

We will address the concept of a delay fine in general through the concept of a delay fine and we will present a proposal for the delay fine as follows:

1- The concept of the delay fine:

Contractual fines in western civil laws may be expressed under the concept of austerite, which are based on the obligation of the debtor to pay the creditor, as a financial penalty ^(†), an amount of money determined by the judge in total (and often by day, week, or month) for delay if the matter relates to a positive commitment represented Executing a job, or by abstaining from work, if the failure to perform or perform is proven in time or manner, the dominant feature of the fine is its threatening nature in combinative. It is freely determined by the judge, and the fine that meets this definition embodies this austerite conditioning where there are two other types of fine, namely the agreement fine and the legal fine, the contracting authority will be primarily responsible for the work that the contractor has carried out within the scope specified in the contract in time and place. And how^(‡), throughout the period from the date set to start implementation until the date of the decision to suspend business in other words, contractual responsibility is based on a hypothetical existence of error or default as an existing and independent element in itself, taking into account that the contract predetermines contractual obligations) on the other hand Management as the first party in the contract, contractual relationship or agreement may arbitrarily resort to its authority that relates to the implementation of the contract, that is, the implementation of its contractual obligations that are often the payment of the consideration for services,

goods, construction, consulting or other types of obligations through its administrative procedures which do not reach the imposition of the fine, which must be stipulated as a general principle in the contract (4)

The delay fine in civil contracts is generally considered the source agreement, unless the contract includes a condition for referral to the list of tenders and public auctions in the absence of a special provision in the contract, since in this case the delay fine is applied as part of the regulations referred to by the contract to complete what there is a shortage of contractual clauses and it is submitted that the term fine / contains in its linguistic and legal connotations the idea of financial sanction.

The contractual liability and compensation that may result from damages that result from delay in execution or defective implementation of the contract of contract⁽⁵⁾, does not start from the temporal point of view regarding the responsibility or guarantee is on the contractor and the architect⁽⁶⁾, except after the completion of the construction, but before that and during the implementation of the construction and construction operations, the relationship of the contractor or architect is subject to the general rules in the contractual responsibility, and the responsibility of each depends on the type of commitment that has been violated and the consequent Damages.

Below, we try to define copies of the obligations that breaching and breaching the contractor's and architect's responsibility are held, according to the general rules of contractual responsibility.

Article (44)⁽⁷⁾ that (the contractor must complete all the works during the contracted period provided that that period is counted from the date to commence with the specified works .. or the period to be extended as permitted .. provided that any requirements in the contracting are taken into consideration

regarding the completion of any part of the works before they are completed in their entirety). The contractor's responsibility then holds or verifies if he does not perform the work agreed upon on the date specified in the contracting contract, as the contractor may be obliged to deliver the entire building on a certain date or his commitment is limited to completing a certain part of the construction process such as a concrete contracting or lining contracting or painting and at that time its completion this part has a condition for another contractor to start his work to complete the part of it. In this case, the contractor's failure to comply with his obligation, and his delay in delivery over the agreed date, will delay the entire construction process. And takes into account the date of receipt of the site or work performed each according to the conditions, as it begins on the basis of calculating the period of implementation specified in the contract to finish the work. Usually, contracting contracts are not limited to determining the date of receiving the site and commencing business, but rather are determined by the means of proving it through the minutes of receiving the site signed by the employer and the contractor or their legal representatives. In this field, some refer to a stable rule in the field of contracting contracts, which is that it is not correct Handing over the site, vacating it, or handing it over to the employer except with legal evidence⁽⁸⁾.

There is no doubt that the intended legal evidence is the written evidence, which is the predominant means of proof in the field of contracting and the aim of requiring the written evidence is to avoid disputes that arise from not specifying the date of commencement of business and the receipt of the site and this does not negate that the delivery is considered a material fact that may be proven by all Roads, including evidence, testimony of witnesses, and damages resulting from a breach of this obligation

on the other hand, are independent of the damages generated due to construction defects, which the legislator singled out for legal guarantee, and it is envisaged that the employer will relax in claiming compensation for it until after the completion of the receiving process⁽⁹⁾, Where the employer can then assess the actual damages incurred and their extent, except that the employer relaxed in claiming them until after the completion of the building handover process does not negate the independence of these damages in terms of their source from those that fall under the legal or ten-year guarantee and should not be affected or mixed with it, according with this point

2-The nature and content of the obligation:

The contractor's commitment to delivery in the agreed upon colleges is considered an obligation to achieve a result, and not an obligation to do care⁽¹⁰⁾. Therefore, the employer's proof of the contractor's breach of this obligation is a demonstration of the error in which the responsibility is realized, and it is only avoided by him except for the foreign cause in which the causation relationship is negated. (If it becomes evident from the contract that the contractor has pledged to carry out all the agreed construction work and hand over the building ready for housing, at the agreed time, and this commitment is a commitment to achieve a result⁽¹¹⁾, For when it proves that he has violated this obligation, she will have proven the mistake in which his responsibility is realized and he does not find in denying this mistake that he has demonstrated what he has done from his effort that he could not, as long as the goal was not achieved and then if the contested judgment required to establish the responsibility of the contested contractor Against him, a mistake or negligence) The responsibility of the contractor takes place if he does not perform the work agreed upon in the contracting contract⁽¹²⁾, then

the contractor may be obligated to hand over the entire construction at a specific date and his commitment may be limited to the completion of a certain part of the construction process, such as a concrete contractor or a coating and painting contractor and at that time its completion of it the part is a condition for a contractor to start his last business to complete the part of it. In this case, the contractor's breach of his commitment and his delay in delivery from the agreed date leads to Delaying commencement of other related works, which delays the entire construction process.

And it takes into account the date on which the site was delivered and received, as the execution period specified in the contract for the completion of the works is calculated on the basis of which the contracting contracts are usually not limited to determining the date of receiving the site and the start of the work but are exposed to determining the way to prove it through the minutes of the site's receipt signed by the employer, the contractor or their legal representative.

In this field, some people refer to a stable customary rule in the field of contracting, which is that it is not correct to hand over the site or vacate it or hand it over to the employer except with legal evidence⁽¹³⁾, and there is no doubt that the intended legal evidence is the written evidence, which is the dominant means in the world of evidence in the field of Contracting, and the goal of requiring written evidence is to avoid disputes that may arise from the failure to clearly and explicitly specify the date of commencement of business and receipt.

The French jurisprudence and judiciary tends to say that the employer is not obligated to notify the contractor of the implementation of his commitment to put him in late execution, as such contracts include an implicit condition that exempts the

employer from excuses⁽¹⁴⁾. Article 220⁽¹⁵⁾. According to this ruling, the Egyptian Court of Cassation decided that if (The technical faults in which the contractor has occurred are not irreversible, the obligation arising from the contractor's contract has become unenforceable, and therefore the contested judgment, if a contract is to be annulled and compensated without preceding the debtor's excuses for the execution in kind, would not have violated the law)⁽¹⁶⁾.

And it is logical in this field to say that it is the administration and represented by the engineer here to supervise⁽¹⁷⁾, the progress of construction and construction operations, the obligation to observe the rate or progress of work in the rate of progress and that this rate or platform be appropriate to complete the construction work at the agreed date and in this field is worthy of reference to Article 46/1⁽¹⁸⁾, Thus, upon receiving the notification, the contractor must take the necessary steps after taking the approval of the engineer to expedite the workflow rate to the extent necessary to complete the work on the agreed date and the contractor does not deserve any additional compensation for that, and if the contractor deems it as a result of any notification addressed to him in this regard and according to this item, the necessity of doing any work during the night or during the rest days recognized locally, it is entitled to ask the engineer's approval for that, provided that if any of the steps taken by the contractor in the performance of his obligations according to this clause resulted in the employer incurring additional supervision expenses, the engineer must.

To determine these expenses and after due consultation with the employer and the contractor and the employer recovers these expenses from the contractor and he can deduct them from any amounts due or they may be due to the contractor, and the

engineer is obligated to notify the contractor of his decision with a copy of this notification sent to the employer.

There is no doubt that the beneficiary must be notified that the submission of work does not proceed according to what is agreed upon, because the employer's silence on this may be interpreted as an implicit consent of him and an agreement to grant an additional period of execution, and therefore the notification is necessary for such context as it makes sense to charge the contractor what the employer may incur it from additional supervision expenses, because these expenses are caused by the contractor's fault and failure to complete the work according to the agreed schedule. What corresponds to the previous ruling was mentioned in Article (46)(¹⁹). And the report of the contractor's responsibility for the inconvenience that others may be harmed afterwards falls within the scope of what is stipulated in Article (807) of the Egyptian Civil Code Paragraph 1- The owner must not use his right to the extent that it harms the property of the neighbor 2- The neighbor may not refer to his neighbor in a Harmful neighborhood harm that cannot be avoided, but it is required to request the removal of these harms if it exceeds the usual limit, provided that the custom is observed in that). Undoubtedly, there is no place for the contractor's responsibility, if the delay in delivery is due to the force majeure, or the mistake of the employer himself who was late in d The site or the removal of what it occupies or the delay in completing the building permit. In this last assumption, the Egyptian Court of Cassation went to the fact that the appellant (the employer in the contract to obtain the necessary licenses to start work and proceed with its implementation until the completion of it .. is a breach of his contractual obligation, and whoever Then it is considered in itself a positive liability that can only be avoided by proving that the

foreign cause has no hand in it, and such delay justifies the contractor to claim compensation if this delay entails a change in prices or an increase in it, in addition to his claim for the additional wages he paid to his workers)⁽²⁰⁾.

3-Delay in delivery and classification of reasons leading to the extension of contracts:

The reasons that lead to extending the original agreed period starting to implement the contract vary⁽²¹⁾, and consequently the delay in the delivery date from that date stipulated in the terms of the contract. The reasons for delaying the execution of contracts and the related right to obtain compensation and extensions damages are among the topics reviewed by the Anglo-Saxon jurisprudence in detail.

A- Extending the contract for reasons related to the contractor or the employer:

It is natural that the employer is obligated, and if it is not stipulated in the terms of the contract or an agreement to exert the necessary care to enable the company or the contractor to start implementing the contract⁽²³⁾, or at least the start of its requirements, but if the delay was due to the employer, this does not give The contractor has the right to claim compensation, even if it gives him the right to demand an extension of the original execution period stipulated in the contract, The most prominent of these reasons is force majeure in its sense known in Egyptian and French jurisprudence⁽²⁴⁾, as an accident that is impossible to anticipate and impossible to pay and Anglo-Saxon jurisprudence knows this reason and the term Force Majeure, It may also be called the will of heaven or nature Act of GOD except that this jurisprudence expands in the exponent of extending the contract and that does not give both parties to the contract the right to

claim compensation either for the contractor or the employer. This jurisprudence refers to images of the extension of the contract that the Anglo-Saxon judiciary settles to take into account, most notably:

- 1- Fire or accidents.
- 2- Illness or death of one of the parties to the contract.
- 3- The delay in transportation, in which the contractor had no hand.
- 4- Strike and labor disputes.
- 5- Wars.
- 6- Unusual weather and climatic conditions⁽²⁵⁾.

There is no doubt that such reasons do not justify in the Egyptian law, the extension of the contract and do not preclude the aggrieved party from claiming compensation, although there is nothing to prevent it from expressly stipulating in the terms of the contract as reasons that justify delaying the implementation of construction works on the supposed date specified in the terms of the contract and usually what is mentioned in the contracting contracts, the reasons mentioned as a justification for extending the implementation period, without either party to the contract having the right to claim compensation, if it is realized. Verify one of them, and the model contracts issued by the professional organizations for contractors and architects in the Anglo-Saxon countries list the cases in which the contractor is investigating to request that the contract be extended for reasons related to it beyond his control and leaves the consultant engineer the discretion in verifying the availability of one of these cases, as well as in determining the duration Necessary to extend the contract.

Among these reasons, in addition to the force majeure and the aforementioned reasons, the following cases are included:

1. Civil disobedience and strikes that affect the trade of materials used in construction or in the manufacture or transportation of materials required in architectural works.
2. If the contractor cannot expect, for reasons beyond his control, at the time of the conclusion of the contract that he will not be able to procure the necessary and sufficient employment to complete the business subject to the contract.
3. If, at the time of the conclusion of the contract, the contractor is unable to anticipate, for reasons beyond his control, that he will not be able to procure the materials or tasks necessary to implement the construction workers subject to the contract.

There is no doubt that such reasons are not considered as a force majeure or a foreign cause that exempts from liability in the concept of the Egyptian civil law, but there is nothing to prevent them from stipulating in contracting contracts as a reason to exempt the contractor from liability resulting from the delay in completing the work subject to contracting the agreed date.

B- Delaying and extending the contract for reasons attributable to both parties to the contract at the same time, which is called delaying due to concurrent delays:

Such a situation occurs when both the contractor and the employer contribute to the delay, such as if the project owner fails his contractual commitment to fulfill the financial entitlements of the contractor on the specified dates and in return the contractor fails to implement without issuing any written protest because of his failure to meet his dues and in such an assumption, all from both sides of the contract has contributed to Delaying the execution of the contract outside the time limits specified in the contracting, and consequently, neither of them is entitled to claim compensation. In the countries that follow the Anglo-Saxon doctrine, the judiciary believes that each party must bear the

losses it suffered without having the right to ask the other party for compensation. In fact, this ruling can be taken, and is in accordance with the provisions of Egyptian law as the contractor's position is lax. In the implementation of the contract as a result of the delay of the project owner in fulfilling its dues, it is considered an application of the principle of non-implementation of the exchange obligations and then it is considered a legitimate failure to implement, And if it is temporary, and in return, it is not permissible for him to demand compensation from the project owner, because he is silent about claiming to fulfill his dues in writing - it is considered as if he had granted the latter - an implicit term to fulfill them.

C - Compensable delay

In this way, the damages resulting from delaying implementation cannot be returned to the contractor's authority or will, but they fall within the scope of the project owner's will and control, such as a change in work orders from what is agreed in the terms of the contract as well as a material change in the date the work began with a picture Different from what is specified in the terms of the contract. Among the judicial examples in this regard are:

There is no doubt that such reasons can be considered as errors that necessitate the responsibility of the employer in accordance with the provisions of the Egyptian Civil Law. In a related matter, a FIDIC contract was described in a corresponding description of the reasons that would extend the contract for an additional period to complete the work agreed in the terms of the contract as was mentioned. There is a definition for these reasons in item (44/1), as this article decided regarding the extension of the time set for the completion of the work ,and that it does not operate under the guidance and supervision of the employer⁽²⁶⁾.If one of the conditions referred to above is fulfilled, and it is fair to decide the

extension of the completion time of work for all or part of the work, then the engineer, after consulting the contractor and the employer, must determine the duration of this extension, provided that the contractor and the employer are notified of that period.

The second topic: The delay fine and exemption from it as an exception from the instructions for implementing government contracts No. (2) for the year 2014 with the issuance of Resolution No. (7) for the year 2016.

In light of the decision issued by the Council of Ministers No. (7) of 2016 in its second session held in Basra Governorate on 12/1/2016 and what was stated in the provisions of Article (49) in the Federal Budget Law of 2016 which stipulated:

1. The late fines are mentioned in the instructions for implementing government contracts No. (2) for the year 2014, and there is no legal impediment that prevents the Council of Ministers from canceling the fines specified in the instructions, let alone exempt them.
2. Although⁽²⁶⁾ Cabinet Resolution conflicted with Article (49)⁽²⁷⁾, because the imposition of late fines as a result of the delay of public and private sector companies in completing their projects was due to the non-payment of their dues, the exemption of the sector companies Public and private delay penalties as an exception from the instructions⁽²⁸⁾ and its comment on the condition of delaying completion of projects due to the lack of Paying dues for the year 2015 in accordance with Article (49) of the aforementioned Federal Budget Law does not take away the authority of the Council of Ministers to exclude from the implementation of government contract instructions.

3. With regard to exemption from late fines, it is related to those achieved by the delay in completing projects due to the non-payment of dues for the year 2015 exclusively.

The decision was issued above, due to weak financial financing and the financial crisis that our dear country has gone through. The financial sanctions that the administration has the authority to sign vary with the right of the contractor, and late fines are the most common when they are late in implementing the obligations arising from contracts.

Where Cabinet⁽²⁹⁾ was issued above due to the exceptional circumstances that our country went through and the deficit that afflicted the federal budget in achieving revenues covering the expenses that were directed to defend the security of the country, then the government faced a financial problem represented by the inability to pay the full financial dues of the executing companies and contractors due to Lack of cash liquidity, which led to the delay of companies and contractors from completing the works and projects under their custody due to the non-disbursement of advances due to them.

In normal conditions, we mean that when there are no such exceptional circumstances, it is necessary to impose late fines due to the delay in the implementation of the obligation for each day of delay based on:

1. Terms of the contract or agreement.
2. Instructions for implementing government contracts No. (2) for the year 2014.
3. General conditions for standard documents.⁽³⁰⁾
4. Contracting terms for civil engineering works for the year 1987 and contracting terms for electrical, mechanical and chemical engineering works for 1987.

As a solution to this, the cabinet came at the time as one of the branches of the executive authority, and according to the third paragraph of Article 80 of the Constitution, which authorized the Council of Ministers (issuing regulations, instructions and decisions to implement the law), the Council issued Resolution No. (7) of 2016.

Types of administrative sanctions:

The administrative penalties that the administration inflicts on its contractor⁽³²⁾, are divided into three main sections, namely financial, non-financial (pressure) and penalties that allow the contract to be terminated. In this paper, we will limit ourselves to studying the delay fine as the core of our research.

1. Late fines

Delaying fines are sums of a predetermined, cut-off percentage that the administration estimates in advance that are included in the terms of the contract as a part imposed on the other party if it slackens or delays in implementation.

The delay fine is a penalty that can be included in the conditions of all administrative contracts, which is a privilege enjoyed by the administration, and if the administration is not exposed to damage as a result of the contractor's delay, because the damage is, and the situation here is supposed to be related to the matter of the running of public facilities⁽³¹⁾. This opinion, which tended to be adopted by the Court of Cassation of Iraq, in its ruling issued on 13/4/1967 it ruled that "contracting work related to building construction is a commercial business, and if the contract is commercial for one of the contractors, then the provisions of the Trade Law apply to the contractor obligations arising from that contract, in addition to that the contracting relates to the establishment of a school and is one of the public utilities. The contract was conducted in a tender manner and on terms In

particular, it is therefore an administrative contract in which the damage is considered to be realized once the delay and with it the judgment of the penalty of delay is complete with the fulfillment of the idea of the administrative contract and what it aims at in running the public facilities according to what happened to this court. Often contracts concluded by the administration stipulate the condition for the delay fine, and the administration has the authority to sign it without the need for warning or resort to the judiciary to obtain a ruling to apply it.

This is worth noting that stipulating in the contract the amount of the fine in a predetermined manner means and will lead to the administration restricting the amount of the fine, then you cannot ask the executing company to amend the amount on the basis that the damage exceeds the amount of the fine as the contract is the law of the contractors, just as the contractor cannot prove that the administration was not affected by the delay in implementation. If, however, a certain amount of the fine is stipulated and the general or special conditions include another amount, then the expression of what is stipulated in the contract is because the will of the two parties agreed to consider its provisions as the basis for their obligations.

Where Article 9 / IV / A / of the Instructions for Implementing Governmental Contracts No. 2 of 2014 stipulated (the late fines from the contracting party are set at a percentage of not less than 10% and not more than 25% of the contract amount and the contracting authority must fix that percentage in the contractual terms in Tender documents and instructions for bidders and the following formula applies:

Contract amount (original contract amount + _ any change in amount)

One day fine = _____ (10-25%)

Total contract period (original period + _ any change in term)

2. Can late fines be imposed even if they are not stipulated in the contract or in the conditions attached to it?

A part of the jurisprudence is that the administration has the right to impose late fines even if no provision is made in the contract. However, it is more likely that late penalties must be stipulated in the contract or the conditions attached to it to which the contract refers. The Consultative Department of the Egyptian State Council clarified this matter by saying, "This regulation is not considered complementary to the contract, and the penalties shown cannot be applied unless the contract includes its provisions or a referral to it as an integral part of it. Thus, the administration may not impose a fine that was not stipulated in the contract based on the mentioned list.

It is established in the jurisprudence and the administrative judiciary that the administration has wide discretionary powers in imposing the late fines, however the fine may not be imposed if the delay is due to a reason due to the administration, or because of force majeure or an emergency circumstance as well as the contractor is exempt from the fine if it is proven that the delay has occurred by act He requested a deadline for implementation and the administration agreed to this, or that the delay occurred due to the actions of others.

It is worth noting that the forty-eighth article mentioned in the general conditions for civil engineering contracting works in both its first and second sections has mentioned a provision in Article (48) It stipulates (1 - If the contractor is unable to complete the "works" within the period specified in Article 44 of these conditions or during the period that has been extended, then the "contractor" must pay the "employer" the amount specified in the second section of the conditions. The contract "as a late fine for this delay and" for the employer "and without prejudice to any

other method of collection that deducts the amount of the late fines from any implementation guarantees or amounts owed to the "contractor" or it may become due to him. "Contractor" of his obligation to complete the "works" or any of his obligations and responsibilities under the "contractor".

3. Reducing late fines

If the receipt certificate is issued for a “section of the works” under Article 49 of these conditions before the issuance of the receipt for the “works” as a whole, then the delay fines for any delay period after the completion date fixed in that certificate are reduced by the value of that section to the amount of the “contractor”. . And according to the text of Article 9 / IV / B / the late fines are reduced according to the percentage of completion of the contractual obligations specified in the method of implementation of the work in which an initial delivery certificate for the completed work or the supplied or the required service is issued in accordance with the use according to the terms of the contract and the following formula applies:

The value of contractual obligations ____ (10-25%) = one day fine
Total contract duration.



Conclusion

It is clear from studying the issue of exempting companies from delay fines in accordance with Cabinet Resolution No. 7 of 2016 that this decision represents an important step towards supporting companies and enhancing their economic activity, especially in light of the exceptional circumstances that the country has gone through in recent years. The decision came to balance between protecting the public interest and encouraging the private sector, by reducing the financial burdens on companies committed to government contracts and affected by reasons beyond their control.

The decision also proved effective in reducing legal disputes related to late fines, which supported the investment environment and economy in the country.

The study showed the importance of establishing clear mechanisms to apply exemptions and ensure that they are not misused, with the need for coordination between government agencies to ensure justice and transparency.

Results

By studying the issue of exempting companies from delay fines in accordance with Cabinet Resolution No. 7 of 2016, the research reached the following results:

1. Objective of the decision :Resolution No. 7 of 2016 aims to support companies operating in Iraq that have been affected by economic and political conditions, especially in light of the security and economic crises that have affected the implementation of contracts
2. Balancing Interests :The decision reflects the government's desire to strike a balance between protecting the public interest and not burdening companies with additional

financial burdens that may hinder the continuity of their business.

3. Exemption Conditions :The decision set conditions and controls for obtaining the exemption, ensuring that it is not exploited by non-compliant companies, but it was not clear in some details, which led to a disparity in application between government agencies.

Recommendations:

Based on the results of the research on exempting companies from delay fines according to Cabinet Resolution No. 7 of 2016, the following recommendations can be made:

1. Setting uniform standards for application: Preparing unified and comprehensive criteria and guidelines for the application of exemptions, ensuring clarity of conditions and mechanisms for all concerned parties, and reducing conflicts in interpretations between government agencies.
2. Enhancing transparency and accountability :Establish an effective oversight mechanism to ensure the transparent implementation of the decision, while defining responsibilities and ensuring that the decision is not exploited by companies that are not eligible for the exemption.
3. Review of relevant legislation: Issuing complementary legislation to the decision to accurately identify the cases that deserve exemption, and clarify the role of the executive authorities in its application, in order to achieve harmony between the legal texts.
4. Integration of legal arbitration :Establishing a specialized legal committee to settle disputes related to the implementation of the decision, which contributes to

reducing judicial disputes and speeding up the process of resolving cases.

5. Enhancing cooperation between the public and private sectors: Develop communication channels between government agencies and companies to clarify the conditions of exemption and mechanisms for submitting applications, which contributes to enhancing confidence and achieving better results.

Endnotes

(1) Dr. Suleiman Al-Tamawi, General Principles of Administrative Contracts, Cairo, Arab Renaissance House, Third Edition; 1975, p. 476. In economic policy, austerity is a set of political-economic policies that aim to reduce government budget deficits through spending cuts, tax increases, or a combination of both. There are three primary types of austerity measures: higher taxes to fund spending, raising taxes while cutting spending, and lower taxes and lower government spending.

Austerity - Wikipedia en.wikipedia.org/wiki/Austerity

(2) Dr.. Ali Khattar Shantawi, Al-Wajeez in Administrative Law, Wael Publishing House, First Edition, 2003, Amman, Jordan, p. 704 (fourth topic: Executing the Administrative Contract)

(3) For more information, see: Abd al-Rahman Abbas Adain, Delaying Fines in Administrative Contracts, Journal of Babylon University, Issue: (22) for the year 2014.

(4) See: Faik Hattab Damad, the delay fine in the administrative contract and the position of the judiciary thereof, research published in the Journal of Justice, Issue: 4, fifth year, Baghdad 1971, p. 1068.

(5)The Iraqi legislator defined it in Article (864) of the Iraqi Civil Law as: (A contract made by one of the parties to do something or perform work in return for a fee that the other party pledges).

(6) For details: Al-Wajeez in civil contracts, d. Ja`far al-Fadhli, Cairo, second edition, Al-Atak for Book Production, pp. 394-411.

(7) Article (44) of the general conditions for civil engineering contracting works in its first and second parts issued by the legal department in the Ministry of Planning in Iraq and approved by the Planning Council in 1973 stipulated.

(8)Ahmad Munir Fahmy, Saudi and International Rules for Contracting and Supply Contracts, Riyadh Chamber of Commerce Publications, p. 24, Item 31.

(9) Decision of the Court of Cassation No. 271 / Human Rights / 1966 on 4/12/1966 / Volume 4, p. 127: (If the employer can fix the work without excessive expenses, he may obligate the contractor to fix the specific time he sets ..).

(10)For details: Kamal Qasim Tharwat, Al-Wajeez in Explaining the Provisions of the Contracting Contract - A Comparative Study of Decisions

of the Court of Cassation of Iraq, First Edition, Baghdad, Offset Al-Wissam Press, 1976, pp. 94-109.

(11) Judge Lufta Hamel Al-Ajeeli, the ten-year guarantee for the architect and contractor, research published in the Legislation and Judiciary Magazine, eighth year - second issue 2016, p. 150

(12) Article (246) of the Iraqi Civil Law stipulated in paragraph (1) Ali (The debtor is obliged to implement his obligation in kind, whenever possible).

(13) Ahmad Munir Fahmi, Saudi and International Legal Rules for Contracting and Supply Contracts, Riyadh Chamber of Commerce Publications, p. 24, Item 31.

(14) This can be found by visiting the <https://www.rjcc.fr> court, which includes an index of the French Court of Cassation rulings. For this comparison, see: G. Jeze le régime juridique du contrat administratif, R.D.P, 1954P251.

(15) of the Egyptian Civil Law No. (131) of 1948 stipulates: (The debtor's excuses are not necessary in the following cases: A- If the fulfillment of the obligation becomes impossible or useless by the debtor's actions)

(16) Referred to in the author of the consultant / Hamdi Yassin Okasha: Encyclopedia of Administrative and International Contracts, Administrative Contracts in the Practical Application of General Principles and Principles, Al-Maaref Establishment, Alexandria, 1998, p. 214. And compared to the position of the Egyptian judiciary 4/4/1960 (year 14 p. 36).

(17) ph. Comet; Essai d'une théorie d'ensemble de la concession de service public th, Paris, 1934, P21 . contained in FIDIC contracts, Part I / The contract for the standard contracting contract for construction projects (general conditions - FIDIC 1999) stipulates that (if the engineer considers that the contractor does not deserve an extension of time in the event that the works are submitted or Any part of it is too slow to achieve its completion on the agreed date, so he must notify the contractor

(18) Articles (255-258) were organized in the third branch of the Iraqi Civil Law No. (40) for the year 1951, which the legislator allocated for implementation by means of compensation.

(19) general conditions for the contracting contract book issued by the Jordanian Ministry of Works, which adopts the conditions mentioned in the FIDIC contract in general but this article added a detailed definition of what was mentioned in the FIDIC contract, as in the last paragraph, I decided that

(.. In the event that the contractor is allowed to work at night, he should take every possible precaution to avoid disturbing others or harming them and protect the business owner from any losses or claims of any kind as a result of such inconvenience or damages arising and he must pay wages and additional salaries for the employer's supervisory device).

(20) For detail: Dr. Issam Ahmad Al-Bahji, FIDIC contracts and its impact on the obligations of the contractor, the engineer and the employer, Amman, the new university house.

(21) Which was handled by Officer No. (6) of the set of controls issued by the Iraqi Ministry of Planning to facilitate the implementation of the provisions of the instructions for implementing government contracts No. (2) for the year 2014 on October 27 2016.

(22) For detail d. Muhammad Labib Shanab, Explaining the Civil Law, Part IV, p. 149.

(23) Dr.Suleiman Muhammad Al-Tamawi, General Principles in Administrative Contracts, p. 701.

(24) Fires and others accidents illness or death of one or more of the contractors transportation delays over which the contractor has no control. Unusually severe weather. v. Sidney m .levy, project management in construction ,second edition, mc graw-hill. Inc.p.148

(26) Dr.Ahmad Abdel-Al Abu Qurain, General Provisions for the Contract for the First Edition, Arab Renaissance House, 2002-2003, p. 99

(27) Cabinet Resolution No. (7) for the year 2016 conflicted

(28) of the Federal General Budget Law for the year 2016.

(29) instructions for implementing government contracts No. (2) for the year 2014 and its comment.

(30) Cabinet Resolution No. (7) for the year 2016 conflicted

(31) See: G.Vedel et P.Delevolve;op.Cit,P.1141.

(32) Wafa Mahmoud Al-Babwati, The Financial Consideration in Administrative Contracts - A Comparative Study - First Edition - Cairo, The Arab Center for Publishing and Distribution, 2018, p.

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