

Disputes in administrative contracts and the possibility of utilizing; arbitration to solve them

ASAM SAUD ALSAIAT

A faculty member in the Department of Law, Faculty of Sharia and Law at the University of Al-Jawf

Abstract

Arbitration has become a manifestation of the times due to its importance in the transaction process considerations always calls for the agreement to arbitrate, to put disputes on the people trusted adversaries rather than put it on the competent courts in order to benefit from their expertise, this research deals with the subject of arbitration in disputes administrative contracts and the major search problem could be determined as the permissibility administration resort to arbitration which is in the center represents the sovereignty of the state, there is a varied views and contrasted trends in this regard, and this is what the research will deal with, reaching to paper conclusion then analyzed Inadmissibility of resort to arbitration in disputes administrative contracts relying legislation and comparative jurisprudence and the judiciary. **Keywords:** Arbitration, disputes, administrative contracts.

1. Introduction

Administration always strive to achieve the public interest, through what it do through legal work, administrative decisions issued in its discretion, and the conduct of public facilities management through the Administration contract entered into with persons of private law, and usually the administration of these contracts requires unfamiliar conditions in private law which characterizes this decade as an administrative contract. (Assar, 2001) But sometimes it happens that this contract may result in a conflict between the two parties, and both parties have the right to resort to the judiciary to resolve the dispute , in a spatial case the parties may agree to resort to arbitration to resolve this dispute. (Sheikh, 2000)

1.1 Research problem

We can identify the main problem of the research relating to arbitration administrative contracts following question in an attempt to provide an answer and thorough in his findings and recommendations: Is it permissible for the management resort to arbitration which is in the center represents the sovereignty of the state, and give up the legal guarantees granted to it by law, or the provisions of the contract itself?

2. Arbitration

Arbitration (in general) is: a system or a way of special separation on disputes between individuals and groups, whether civil or commercial contractual or non-contractual one. (Bin Afif, 2012)

Arbitration texture is to go out on the roads regular litigation mainly depends on the parties to the conflict are themselves choosing their judges rather than relying on the judicial organization of the country where they reside. (Sheikh, 2000)

As for the the arbitral tribunal could be defined as: A single arbitrator or more as the parties agree charter party arbitration or in the document of the Organization of the relationship covered by the arbitration and when the parties agreed to resolve their dispute to arbitration, the establishment of the conflict necessarily lead to a dispute arbitration and begin the formation of the arbitral tribunal, a matter of minutes if dependent upon the success of arbitration or failure. (Al-Abadi, 2007)

2.1. Advantages and disadvantages of arbitration

Arbitration of legal regimes that imposed itself in all areas of legal relations became whether these relationships were internal or international. Like any legal system, the arbitration system is not at all good nor evil at all, but a lot of features that allow its introduction and application, as tainted by flaws and gaps paid a lot of legal systems to hesitate and apply it in the custody of scholars have reacted to highlight these pros

2.1.1 The advantages of arbitration

There are many reasons to resort to arbitration as an alternative means for the judiciary, and that many of the

advantages and benefits of arbitration. We can be summarized as follows:

Simplicity and speed: The advantage of arbitration simple, easy, measures would Arbitration does not marred by complexity such as the judiciary, and that the arbitration is characterized by a degree of flexibility in the eyes of disputes put to it, and lead to action adaptations through laws and customs, and hold its place in a suitable and fast times to restrict arbitrators duration certain to issue their verdict and solve of the conflict. (Sandu, 2012)

Save time and money: The resort to the judiciary needs to effort and many expenses and time does not foldable. This does not exist in arbitration which is usually all on one level as opposed to the judiciary, which are numerous degrees and methods of appeal against the judgments which is handed from it.

Arbitration maintains good relations between the disputants :It reflects the good feelings that cherish each party to the other, while the access to justice expression of hatred carried by each of the other discount and try to get to the achievement of a court ruling in its favor, it is the way chosen by both rivals must not arbitration. Therefore, we find that while the parties resort to the judiciary to look behind, while they look forward in the case of arbitration. (Sandu, 2012)

Maintains the confidentiality of the arbitration dispute: Public basic rule in the judiciary hearings considered as a guarantee of legal safeguards to ensure the integrity and impartiality of the judiciary, and with the public that this guarantee in eliminating the secrecy an important advantage in arbitration, when the parties to the conflict turn to it to keep their secrets.

2.1.2 Disadvantages of arbitration

The lack of judicial guarantees in the arbitration: because it deprives asylum limbs of many judicial guarantees, the arbitrator is often a specialist in a specific culture and a few legal issues and its experience does not help him to achieve justice. Also, the award is in the interest of one of the parties does not allow him to challenge it, and even raise new suit before the courts, and this deprives it of an important safeguard is the right to go to court and challenge the judgment. (Wakene, 2011)

The cost of the arbitration expenses: Some do believe that arbitration is expensive, especially if attached to a dispute with international parties and the expenses of the arbitration cost huge amounts of money here, so to say that one of the advantages of arbitration is to save money is contrary to the truth and reality say.

Not causing awards and dissemination: This defect taint arbitration, lack of causation and non-publishing is not a general trend in the arbitration cannot be guided by precedents can be used in the future.

Despite these defects attributable to arbitration, this did not prevent the legislator nor the governments of the text and organization, because the advantages outweigh the disadvantages, which can be avoided by reducing of unwanted effects. (SPAHIU, 2014)

2.2. Disputes in administrative contracts

Originally in administrative contracts that have disputes arising from the implementation or interpretation within the jurisdiction of the administrative judiciary bodies, in Egypt and France regard to the Council of State (the administrative tribunal) to adjudicate in disputes relating to administrative contracts. In Saudi Arabia the Board of Grievances administrative body eliminate segregation in the contracts that the government or be a general moral personalities party whether these contracts whether administrative or non-administrative (Chong at el , 2013).

2.3. The legality of recourse to arbitration in disputes administrative contracts

legal systems have a different trends about the legality of the recourse to arbitration in disputes Chapter in administrative contracts, In (Egypt) ... Great controversy erupted in jurisprudence and the judiciary about the legality of arbitration in disputes these contracts that the project intervention of Law No. 9/1997, which authorized the agreement to arbitrate in disputes administrative contracts provided that this agreement has been the approval of the competent minister or who would assume competence for the figures public legal nor authorization may be in it. (Bin Afif, 2012)

In (France) It was prohibited to resort to arbitration in administrative contracts, but that this situation may be amended under a law was passed in the year (1986) where limited arbitration ban in the internal contracts with some exceptions and permitted arbitration under certain conditions in international administrative contracts any contracts concluded with institutions and foreign companies. (Al-Abadi, 2007)

Either in the (Saudi Arabia) , article III of the arbitration system stipulates that (the government agencies may not resort to arbitration to settle their disputes with others only after the approval of the Prime Minister and Council

of Ministers decision may modify this rule). (Bin Afif, 2012)

Article VIII of the Implementing Regulations of the arbitration and decided that (in disputes in which government entity is a party with others and saw recourse to arbitration should this party to prepare a note on arbitration in the dispute, indicating the subject and justification for arbitration and the names of litigants to be submitted to the Prime Minister to consider the approval of the Arbitration may be prior decision of the Prime Minister to authorize a government agency in a specific contract to end disputes arising him through arbitration. In all cases shall be notified of the Council of Ministers of the provisions which are issued) (Assar, 2001)

2.4. The importance of arbitration in disputes administrative contracts

arbitration in administrative contracts could be define as an exceptional system of litigation in which the state and other people of other common law may be some emerging administrative disputes output for contractual legal relationship or non-nodal national or foreign from the state of the elimination of the State Council in order to resolve through arbitration based on the legal provision to authorizing it. (Sandu, 2012)

The recourse to arbitration to settle all disputes, except disputes administrative contracts, is indisputable; it did not raise a dispute over access to commercial arbitration or labor arbitration or domestic arbitration. However, the recourse to arbitration in administrative contracts may be as a controversy erupted around it in the possibility of resorting to it; the reasons for this go back to the following:

The nature of administrative contracts :Excellence administrative contracts and private different for all other contracts of course, trade, such as contracts, or labor contracts and other, administrative justice when viewed in disputes administrative contracts considered by some differentiation and heterogeneity which fits with the nature of the administrative contract and who is not applied by arbitration often considering disputes decades and which ones contracts administrative. (Wakene, 2011)

Management contracts link the sovereignty of the state Of administrative contracts associated state sovereignty directly relates to a natural state wealth, as in the commitment contracts, which often extend to many years, their disputes shall be subject to eliminate, because the subject of the arbitration which may be some kind of violation of the sovereignty of the state.

Restrict the freedom of the will in administrative contracts: The arbitration based on the basis of freedom of the parties to resort to application of the principle of will power but that this order does not exist when resorting to arbitration in administrative contracts, because the expression of the administration's will when its conclusion is governed by other rules prescribed by law, and settled upon command from the need to use management tools the common law, (Sheikh, 2000) or the contract conditions include unusual in private law; when concluded, as the conclusion of the employee in charge of administrative contract does not act in the capital owned by him, and then the recourse to arbitration in administrative contracts is not easy as it is for other contracts.

3. Conclusions

The most important advantages of arbitration is the speed of decide the issues that raised in the dispute and not to prolong the conflict in administrative contracts and confidentiality in the arbitration as that with respect to technical issues likely to resolve the issues through arbitration because they keep pace with the customary requirements for specifications and technical matters.

Administration should utilize people who have high legal and technical expertise at the conclusion of the arbitration agreement so as not to lose sight of the characteristics of the administrative contract or determine the applicable law on the subject and that the arbitrator so that the application of the law that has to do with the conflict. It was notes that the legislature has dealt with arbitration in disputes administrative contracts like regular contracts, despite the different nature of these contracts and objectives.

References

- 1- Al-Abadi, W. Mohammed, (2007), The importance of arbitration and passport resorted to administrative disputes in contracts comparative study, Sharia and Law Science Studies,, Vol. 34, No. 2007.2.
- 2- Assar, y. Mohammed (2001) , arbitration in contractual and non-contractual administrative disputes, Arab Renaissance Publishing House, Cairo.
- 3- Sheikh, Ismet Abdullah (2000), arbitration in the international character of administrative contracts, the first

edition, Arab Renaissance Publishing House, Cairo.

4- Bin Afif, Mohammed (2012), Arbitration in Administrative Contracts ,Codes of law for all public and private assets and all the civil, commercial and criminal branches ,<http://binafif-law.blogspot.com/2012/08/blog-post.html>

5- Chong, H., Zin, R., and Chong, S. (2013). "Employing Data Warehousing for Contract Administration: e-Dispute Resolution Prototype." *J. Constr. Eng. Manage.*, 139(6), 611–619.

6- Sandu, Adriana Magdalena; Pagarin, Maria Sofia, (2012), Study on Administrative Contracts, 4 *Contemp. Readings L. & Soc. Just.* 903.

7- SPAHIU, Artan, (2014), Administrative Contracts of the Public Procurements in Albania - The Distinctive Features of Their Juridical Nature and Invalidity, *Mediterranean Journal of Social Sciences*, Vol 5, No 2.

8- Wakene, Wondwossen, (2011), The Law of Administrative counteracts; Teaching Material, (University of Gondar, Faculty of Law <https://chilot.files.wordpress.com/2011/06/administrative-contracts.pdf>).