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Judicial Oversight of Public Procurement Contracts by the Administrative Judge

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Abstract

Judicial oversight exercised by the administrative judge over public procurement contracts represents a fundamental safeguard for ensuring the administration's compliance with the principle of legality and for protecting the rights of contracting parties. Public procurement disputes often arise from administrative decisions related to the preparation, conclusion, or execution of such contracts, which necessitates the intervention of administrative courts to maintain legal balance and transparency in public administration. This oversight manifests through various legal mechanisms, particularly the action for annulment of unlawful administrative decisions and the exercise of full jurisdiction by the administrative judiciary in disputes concerning administrative contracts. Within this framework, administrative judges possess the authority to adjudicate claims for compensation and to determine the liability of the administration when damages arise from violations of contractual obligations or abuse of administrative powers.Moreover, legal doctrines such as the theory of the financial equilibrium of the administrative contract play a significant role in maintaining fairness in contractual relations between the administration and private contractors. These doctrines aim to preserve the stability of contractual commitments while ensuring the continuity of public services. Consequently, judicial oversight contributes not only to the protection of public funds but also to reinforcing transparency, accountability, and trust in public administration. The present study therefore examines the scope, mechanisms, and limits of judicial review exercised by the administrative judge in public procurement disputes, as well as its effectiveness in safeguarding legality and ensuring sound public financial management.

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Introduction:

Public procurement contracts are considered among the most important means upon which the public administration relies to implement its developmental programs and to manage public utilities, given what they involve of massive financial expenditure and direct impact on public funds and the public interest. In view of the particular nature of these contracts, the legislator has subjected them to a set of exceptional rules and procedures that distinguish them from private law contracts, with the aim of ensuring the principles of legality, transparency, and equality between operators. Within this framework, the role of the administrative judge has emerged as a guarantor for the respect of these principles, through extending his oversight over the various stages of concluding and executing public procurement contracts, whether it relates to oversight of legality or to the protection of the rights of those contracting with the administration. The importance of this oversight increases in light of the

growing disputes related to public procurement contracts, which requires studying the limits and mechanisms of the intervention of the administrative judge in this field.

Problematic of the Study:

The problematic of the study revolves around the following question: To what extent does the administrative judge contribute to consecrating the principle of legality and ensuring the protection of public funds through his oversight over public procurement contracts?

Sub-Questions:

From the main problematic branch a group of sub-questions, among them:

1. What is meant by public procurement contracts and what are their legal characteristics?
2. What is the legal basis for the oversight of the administrative judge over public procurement contracts?
3. What are the forms and mechanisms of judicial oversight over the stages of concluding and executing these contracts?
4. What are the limits of the intervention of the administrative judge in public procurement disputes?
5. To what extent is judicial oversight effective in protecting public funds and ensuring the principle of legality?

Hypotheses of the Study:

The study proceeds from the following hypotheses:

1. The administrative judge exercises an effective oversight over public procurement contracts to ensure respect for the principle of legality.
2. The oversight of the administrative judge differs according to the stage of the contract (conclusion – execution – termination).
3. Judicial oversight contributes to enhancing transparency and protecting public funds, despite the existence of certain practical and legal constraints.
4. The intervention of the administrative judge remains governed by the principle of non-interference with the discretionary power of the administration except within the limits of legality.

Importance of the Study:

This study acquires great importance, which is manifested in:

- Highlighting the central role of the administrative judge in protecting public funds.
- Clarifying the legal framework regulating judicial oversight over public procurement contracts.
- Contributing to enriching academic research in the field of administrative law.
- Providing a legal conception that helps to improve the practice of judicial oversight in this field.

Objectives of the Study:

This study aims to:

1. Analyzing the concept of the oversight of the administrative judge over public procurement contracts.
2. Determining the legal and doctrinal foundations of this oversight.
3. Clarifying the forms and limits of the intervention of the administrative judge in public procurement disputes.
4. Evaluating the effectiveness of judicial oversight in consecrating the principle of legality.
5. Proposing certain solutions or recommendations to strengthen the role of the administrative judge in this field.

First Axis: Definition of the Administrative Action

The administrative action is defined as the legal means granted by law to a person in order to resort to the administrative judiciary to claim his rights which have been affected by the acts and activities of the administration and have caused damage thereto (Baali, 2009, p. 127). It is also considered a right and a legal means in activating and using the competent judiciary, within the framework of a set of established formal, procedural, and substantive legal rules, in order to claim recognition of a right or protection of a right or a substantial interest, whenever the infringement thereof results from unlawful and harmful administrative acts, with the request for their removal and for reparation of the damages resulting therefrom (Baali, 2009, p. 127). The administrative action is regarded as a legal means brought by a person before the competent administrative judicial body, through

which he requests the settlement of an administrative dispute whose subject is a legal or material administrative act (Atta Allah, 2014, p. 158).

Included within the administrative action are the actions of full jurisdiction (Atta Allah, 2014, p. 161), which comprise actions aiming at claiming personal rights and establishing the responsibility of the administration for damages affecting these rights and claiming compensation for them. They include actions of administrative liability, disputes of administrative contracts, disputes of taxes and fees, disputes of public employees when their subject is compensation, disputes of expropriation for public utility for the purpose of claiming compensation, disputes of public works, and disputes related to supplies, works, and leasing of services, and claims for compensation for damages resulting from a felony, a misdemeanor, or a tortious act, in addition to requests for the execution of judicial judgments (Aouabdi, 2014, p. 221), as well as disputes related to elections and other actions of full jurisdiction. This is based on the principle of the general competence of administrative courts as holders of general jurisdiction, which has been consecrated by the expression "in all cases" contained in Article 800 of the Code of Civil and Administrative Procedures, in addition to the expression "by virtue of special provisions" contained in Articles 801 and 901 of the same law, which grant the administrative judge a broad power not restricted except within the limits determined by the legislator.

Among the most well-known actions of full jurisdiction is the action for compensation or the action of administrative liability, which is considered the basic mechanism for reparation of damages resulting from unlawful administrative acts. From a legal and legislative perspective, and pursuant to the provisions of Articles 800, 801, 802, 900 bis, 901, 902, and 903 of the Code of Civil and Administrative Procedures, the administrative actions falling within the competence of the administrative judge include, in particular, the action for annulment aimed at challenging administrative decisions (Atta Allah, 2014, p. 160), in addition to actions for interpretation of these decisions and examination of their legality.

Second Axis: Oversight of the Administrative Judge through the Urgent Action

Urgent judiciary is considered one of the most important mechanisms of judicial oversight in the field of public procurement disputes, and the Algerian legislator has granted it special attention through the texts regulating urgency contained within the Code of Civil and Administrative Procedures, where he devoted to it independent provisions allowing recourse to it in disputes related to public procurement contracts. Despite the importance of this type of judiciary, the legislator did not provide an explicit definition of urgent judiciary, but sufficed with indicating some of its characteristics and features, particularly through what is stated in Article 917 of the Code of Civil and Administrative Procedures, which addressed the nature of urgent judiciary and referred to the formation by which it is decided, represented in the collegial formation. The legislator also permitted the urgent judge, pursuant to Article 918 of the same law, to order the taking of temporary measures in the shortest delays, provided that these measures do not affect the substance of the right, which consecrates the provisional character of this judiciary and defines the scope of its intervention. From a doctrinal perspective, urgent judiciary is viewed as a temporary and rapid judicial procedure, to which recourse is often made upon the request of one of the parties to the dispute, with the aim of providing immediate protection to rights and legal positions exposed to an imminent danger, in order to avoid consequences that may be difficult to remedy in case of waiting for the adjudication of the substantive action (Kelloufi, 2012, p. 124).

1- Limits of the Urgent (Administrative) Judge in the Field of Public Procurement:

The powers of the urgent judge in the field of public procurement are determined by the stage of conclusion, since the exercise of his competence ceases immediately upon the signing of the contract, considering that urgent oversight precedes the emergence of the final contractual relationship. The Algerian legislator has consecrated this orientation through Article 946 of the Code of Civil and Administrative Procedures (Law 08-09, 2008), which allows the referral of the administrative court within the framework of urgency to examine the extent of compliance with the legal rules governing the conclusion of the contract before its signing. The urgent judge, in exercising this oversight, relies on a set of legal and regulatory texts, among them Law 23-12, which determines the general rules relating to public procurement contracts (Law 23-12, 2023, p. 5), and Law No. 10-05, amending and supplementing the ordinance dated 03/03/2003 relating to competition (Law 10-05, 2010, p. 10), in addition to other relevant texts.

The urgent judge focuses essentially on monitoring the extent of respect for the rules of publicity and competition, considering them among the fundamental principles governing the stage of concluding public procurement contracts. However, the scope of his oversight is not limited to texts that directly address publicity and competition, but extends also to every procedure whose non-respect may lead to breaching these two principles or affecting the freedom of choice of the contracting operator. On this basis, procedures that do not appear in their outward form related to publicity or competition may be subject to the oversight of the urgent judge whenever it is established that they have a direct or indirect impact on the transparency of competition and equality of opportunities between competitors (Ennawi, 2011, pp. 454–457).

In practical application, most violations at the stage of conclusion are often connected to the breach of publicity and competition rules, as in cases of total absence of publicity, or incomplete publicity, or ambiguous announcement, all of which directly affect the principle of competition. Other violations may also appear which are not in themselves direct procedures of publicity, but

they effectively influence the transparency of competition, such as changing the place of opening the envelopes or its date without notifying the competitors, which contradicts the requirements of competition that necessitate the presence of competitors at the process of opening envelopes, in addition to being a breach of the principle of transparency. Added to this are cases of retreat from the deadline fixed as the last term for submitting offers, whether by accepting them after the deadline or by postponing it without informing the competitors, which also constitutes an infringement of the principle of equality and equal opportunities, although certain judicial jurisprudence, foremost that of the French Conseil d'État, has excluded some of these elements from the scope of direct publicity, yet they remain subject to oversight whenever their actual impact on competition rules is established (Ennawi, 2011, p. 458).

2- Orders Issued by the Urgent (Administrative) Judge in Matters of Public Procurement:

The Algerian legislator granted the administrative judge, within the framework of urgent judiciary related to public procurement contracts, broad powers pursuant to the Code of Civil and Administrative Procedures, particularly in Article 946 thereof (Law 08-09, 2008, Art. 946), which empowered him to issue orders aimed at ensuring respect for the legal rules governing the conclusion of public procurement contracts and protecting the public interest. These powers are mainly represented in ordering the contracting authority to comply with its obligations, or ruling a coercive fine to compel the administration to execute, or ordering the postponement of signing the contract until the completion of the legal procedures. Each power will be addressed separately.

2-1- Ordering the Contracting Authority to Comply with Its Obligations:

The urgent judge possesses, within the framework of the urgent action related to public procurement contracts, the authority to order the party causing the breach to comply with its legal and regulatory obligations (Yaich Tammam, 2012, p. 409), in accordance with the texts in force, and within a period determined by the administrative court (Boudiaf, 2013, p. 319). Article 946 of the Code of Civil and Administrative Procedures expressly consecrated this authority, as it allowed the court to order the party responsible for the breach to comply with its obligations, while specifying the necessary time limit for that (Law 08-09, 2008, Art. 946/4). Accordingly, there is no legal justification that prevents the intervention of the administrative judge to direct his orders to the administration for the purpose of respecting its obligations, especially those related to the rules of competition and transparency in concluding public contracts and procurement (Ben Ahmed, 2011, p. 64).

2-2- Ordering the Imposition of a Coercive Fine to Compel the Administration to Execute:

The coercive fine is considered a legal means aiming at ensuring the execution of orders and judicial judgments issued against the administration (Ben Ahmed, 2011, p. 65). The legislator has empowered the urgent judge, pursuant to paragraph five of Article 946 of the Code of Civil and Administrative Procedures (Law 08-09, 2008, Art. 946/5), to rule a coercive fine that applies starting from the date of expiry of the period fixed by the judge for executing his order. The text of the article states that the court may also rule a coercive fine applied from the date of the expiration of the specified period, which reflects the binding character of urgent judiciary decisions and the concern of the legislator to strengthen their effectiveness in confronting the administration's refusal to execute.

2-3- Ordering the Postponement of the Signing of the Contract until the Completion of Procedures:

The urgent judge may, within the framework of the urgent action related to public procurement contracts, order the postponement of signing the contract until the completion of the necessary legal procedures, whenever it appears to him the existence of violations affecting the rules of publicity and competition (Ennawi, 2011, p. 460). The administrative court decides on this action within a short period not exceeding twenty days from the date of its filing, which confirms the particular urgent character of this type of disputes (Boudiaf, 2013, p. 319). Article 947 of the Code of Civil and Administrative Procedures stipulated this period, and Article 935 of the same law clarified that the judgment issued in urgent matters entails immediate execution from the date of official notification or notification to the losing party, and the urgent judge may also decide its execution immediately upon its issuance (Law 08-09, 2008, Art. 935).

Third Axis: Oversight of the Administrative Judge through the Action for Annulment

The action for annulment is considered one of the most important mechanisms of judicial oversight exercised by the administrative judge over the acts of the administration, since it aims at protecting the principle of legality through confronting unlawful administrative decisions. This oversight extends, in the field of public procurement contracts, to administrative decisions separable from the contract, which are issued by the administration at the various stages of concluding and executing the contract, and which are subject to challenge by annulment before the administrative judiciary whenever the required conditions are fulfilled.

First: Cases of Annulment of Administrative Decisions Separable from the Public Procurement Contract

By cases of annulment of administrative decisions separable from the public procurement contract are meant those legal defects that may affect these decisions and render them subject to challenge by annulment before the administrative judiciary. They may be summarized as follows:

1- Defect of Competence:

By the element of competence is meant the availability of legal capacity to exercise the legal act, as the law determines for each administrative authority the scope and limits of its competence (Ben Ahmed, 2011, p. 36). Article 10 of Law 23-12, which determines the general rules relating to public procurement contracts (Law 23-12, 2023), provides that contracts shall not be final nor enforceable except after their approval by the competent authority, represented by the minister with regard to State contracts, the head of the independent national authority, the wali with regard to wilaya contracts, the president of the municipal popular council with regard to municipal contracts, the director or director general with regard to contracts of national public administrative institutions, or the director general with regard to public institutions of industrial and commercial character, as well as the director of the research center, and the director of the specific public institution of scientific and technological or cultural and professional character.

Among the examples of the defect of competence in the field of public procurement contracts is assigning the process of selecting the contracting operator to a non-competent body, since the operations of sorting offers, evaluating them, extracting the best offer, and awarding the selection do not fall within the competence of the representative of the contracting authority, but are entrusted to the competent committees determined by regulation. Consequently, the unilateral action of a non-competent body in taking the award decision constitutes an usurpation of a legally determined competence and renders the decision tainted with the defect of incompetence (Ennawi, 2011, p. 465).

2- Defect of Violation of the Element of Form and Procedures in the Separable Administrative Decision:

By form is meant the set of formal rules which the administration must comply with when issuing the administrative decision, whenever the law provides for that, such as the necessity that it be issued in written form, that it be signed, and that it be accompanied with the required data. Formalities may be essential or secondary, since the violation of secondary formalities does not result in the annulment of the administrative decision, but it suffices that they be corrected, whereas the breach of essential formalities leads to the annulment of the decision (Al-Tamawi, 1991, p. 641).

As for procedures, they are the acts preceding the issuance of the administrative decision, such as consultations, the respect of legal deadlines, and adherence to the procedural sequence (Maneaa, 2008, p. 132), particularly in the field of public procurement contracts, where the law obliges the taking of a number of essential procedures, beginning with the publication of the tender announcement in daily newspapers, passing through the receipt of offers, the opening of envelopes by the competent committee, then the evaluation of offers by the evaluation committee. The omission of any of these essential procedures renders the administrative decision liable to challenge by annulment (Ben Ahmed, 2011, p. 37).

3- Defect of Cause:

By cause is meant the legal or factual situation which leads the administration to issue the administrative decision. This defect relates to the extent of the correctness of the facts upon which the administration relied and to the legality of their legal characterization, whether the authority of the administration is bound or discretionary (Boudiaf, 2009, p. 198). The stating of reasons in certain decisions constitutes an essential condition for their validity, especially in decisions related to the selection of the contracting operator, where the law requires the justification of the provisional award decision of the contract, and the clarification of the reasons for rejecting the other offers, particularly in the case of rejecting the financial offer on the ground that it is abnormally low (Ennawi, 2011, p. 473). The neglect of reasoning or the invalidity of the cause entails the nullity of the administrative decision and the effects resulting from it.

4- Defect of Violation of the Law:

The administrative decision is considered tainted by the defect of violation of the law when it is issued in contradiction with a legal rule that is mandatory to apply, whether it is a constitutional, legislative, or regulatory rule, such as decrees and regulations, including the law related to public procurement contracts (Ben Ahmed, 2011, p. 40). Violation of the law is also realized in the case of error in interpreting legal texts or applying them in an incorrect application, or expanding their field of application to include facts that do not fall within their scope, or relying on material facts that are not correct (Ennawi, 2011, p. 474).

Violation of the law may be direct, when the administrative decision explicitly contravenes a legal rule, a constitutional principle, or one of the general principles of law, such as the administration's refusal to execute a judicial judgment issued against it (Bouchaour, 2011, p. 90). It may also be indirect, and that is in cases where the administration issues a decision based on a legal text that is not required to apply, or by omitting binding legal provisions, or by issuing decisionsconcerning situations not covered by the legal text subject of application (Bouchaour, 2011, p. 91).

5- Defect of Misuse of Power:

The defect of misuse of power is regarded as one of the most serious defects of legality, and it is realized when the administration uses its authority to achieve a purpose other than that for which it was granted, whether seeking a personal interest, or motivated by revenge or favoritism, instead of achieving the public interest (Al-Sughayri, 2008, p. 302). This defect relates to the objective of the administrative decision, and it is connected with the intention of the issuer of the decision and his psychological motives (Labad, 2011, pp. 262–263). It is a defect that does not relate to public order, therefore the judge does not rule upon it on his own initiative, but the appellant must invoke it and prove it.

Among the forms of misuse of power is the issuance of an administrative decision whose aim is to achieve a private interest or to take revenge on a particular person (Maneaa, 2008, p. 133), such as refusing to grant a license to exercise a commercial activity despite the applicant fulfilling all the legal conditions, or preventing the competition of a specific person due to a previous personal dispute (Khalifa, 2002, p. 159). This defect also appears when determining the technical conditions of the contract in an arbitrary manner that is not justified by the nature of the contract, with the aim of granting preference to a certain party or excluding other competitors from competition (Ennawi, 2011, p. 474).

Second: Effects Resulting from the Judgments Issued in the Action for Annulment of Administrative Decisions Separable from the Public Procurement Contract:

Before addressing the judgments which may be issued by the annulment judge concerning the administrative decisions separable from the public procurement contract, it is appropriate to pause at a matter of great importance, related to the extent of the authority of res judicata of these judgments and their legal effects, considering that the judgment of annulment raises particular problematics in the field of public procurement contracts due to their composite nature and the interlacing of their procedures.

1- Extent of the Authority of Judgments:

The principle is that final judicial judgments acquire the authority of res judicata, and this rule is general and applies as well to annulment judgments issued by the administrative judiciary. However, the question of the authority of judgments annulling administrative decisions separable from the public procurement contract has known a doctrinal and judicial development, especially in the jurisprudence of the French Conseil d'État.

At its beginnings, the French Conseil d'État held that the annulment of separable administrative decisions does not by itself lead to the annulment of the administrative contract, on the basis that the contract remains valid and effective until one of its parties invokes the annulment judgment before the contract judge, who alone possesses the power to rule its annulment, even if this annulment concerned the prior decisions which contributed to the conclusion of the contract. This orientation was opposed by a part of doctrine, foremost among them the jurist "Weyl", who considered that the administrative decisions contributing to the formation of the contractual operation constitute elements forming a composite administrative act, and that the acceptance of an annulment action against one of these decisions requires considering the legality of the whole operation as an indivisible unity, which necessitates the nullity of the contract if the nullity of one of its essential elements is established.

The French Conseil d'État later followed this doctrinal orientation, particularly by virtue of its judgment issued on 01/03/1954, where it ruled the annulment of the administrative decision related to the approval of the contract, considering that the conditions contained in the contract could not be executed, although the request for interpretation of the contract submitted to the Council was considered devoid of object. It is inferred from this judgment that the effects of the annulment judgment, which is characterized by its absolute authority, extend automatically to the contract without the need for the parties to invoke it before the contract judge, in harmony with the nature of the annulment action aiming at protecting legality.

This orientation is considered more consistent with the principles governing public procurement contracts, particularly the principles of freedom of access to public order, equality between competitors, transparency, publicity and competition, since the breach of these principles at the stage of conclusion cannot be remedied without affecting the contract itself (Kelloufi, 2012, p. 120).

2- Judgments Issued Concerning the Annulment of Administrative Decisions Separable from the Public Procurement Contract:

Sessions of the administrative judiciary are held after the competent judges have conducted the investigation of the case, and the sessions are public, unless their publicity constitutes a danger to public order. Before ruling on the merits, the administrative judge must decide on the formal aspects of the action, as he may rule lack of jurisdiction, or inadmissibility of the action in form, or rejection on the merits, or expressly rule the annulment of the challenged administrative decision (Freija, 2002, p. 97). The judge may not rule more than what has been requested by the litigants, nor may he order the administration to take decisions that were not submitted before him, in compliance with the principle of judicial neutrality (Karim Al-Nafs, 2013, p. 72).

2-1- Suspension of Execution of the Challenged Administrative Decision:

The claimant may, upon filing the action for annulment, request the suspension of execution of the challenged administrative decision until the adjudication of the annulment action. Although suspension of execution is regarded as an exceptional measure and of limited application, it may nevertheless be granted whenever the claimant succeeds in proving the seriousness of the

annulment action, and that the execution of the contested decision would cause him grave damage that would be difficult to remedy afterwards. Suspension of execution thus represents an effective temporary means for the protection of rights pending the issuance of the final judgment in the annulment action (Ennawi, 2011, p. 475).

2-2- Annulment of the Administrative Decision:

The administrative judge rules for the annulment of the challenged administrative decision whenever it is established that the administration has abused its power or violated the principle of legality. The judgment of annulment entails the disappearance of the administrative decision with retroactive effect, and its consideration as if it had never existed, together with the annulment of all decisions adopted on its basis, except for acquired rights that have arisen in good faith.

However, if the decision has been fully executed before the issuance of the annulment judgment, such judgment may become without practical usefulness, even though it enjoys the authority of res judicata. In this situation, the administration is required to comply with the requirements of the judicial judgment relating to annulment, by removing the effects of the annulled decision, whenever this is legally and factually possible (Ennawi, 2011, p. 476).

Fourth Axis: Oversight of the Administrative Judge through Full Jurisdiction

Full jurisdiction refers to that type of judiciary in which the administrative judge possesses all the legal powers enabling him to resolve the dispute in a comprehensive and complete manner. His role is not confined to reviewing the legality of the administrative act only, but extends to determining the existence or absence of the right, assessing the legality of the conduct of the administration, and then examining whether such conduct has caused harm to others, in order ultimately to decide upon the appropriate compensation to redress that harm. His competence may even reach the annulment of the administrative act whenever its illegality is established. On this basis, the Algerian legislator has considered disputes concerning administrative contracts, foremost among them disputes of public procurement contracts, as falling within the scope of full jurisdiction, due to the effective legal mechanisms this type of jurisdiction offers, which enable the judge to restore contractual balance, return rights to their holders, and achieve justice between the parties to the contractual relationship (Aouabdi, 2014, p. 229).

The action of full jurisdiction is distinguished by the fact that it is not directed against a mere administrative decision, but rather arises between parties disputing over acquired personal rights, so that each party occupies a defined legal position. The claimant therein is harmed by the conduct of the administration or by its breach of its contractual obligations, and therefore seeks compensation corresponding to the damages suffered as a result of this breach or violation of the contractual provisions. This action aims at protecting personal rights and individual legal positions, and not merely at safeguarding abstract legality, which differentiates it from the action for annulment that is brought for the protection of the principle of legality without requiring the existence of a specific personal right (Tichouri, 2025).

The bringing of an action of full jurisdiction in disputes relating to public procurement contracts requires the fulfillment of several conditions, foremost among them that the claimant be one of the parties to the administrative contract, namely the administration or its contracting partner. Actions submitted by parties foreign to the contract, such as secondary operators, are not accepted, except in exceptional cases expressly provided for by law. It is also required that the claimant have a personal, direct, and legitimate interest, represented in an infringement of one of his rights arising from the reciprocal contractual obligations, and that the damage be the result of an act attributable to the other party within the framework of the public procurement contract, whether it concerns non-performance of obligations, delay in performance, or defective performance. In addition, the legal time limits prescribed for bringing the action of full jurisdiction must be respected, since failure to comply with them results in the loss of the right to judicial recourse (Ennawi, 2011, p. 480).

First: Termination of the Public Procurement Contract:

The administrative judge possesses, upon the request of the contractor, the authority to rule the termination of the public procurement contract if it is established that the administration has committed a serious fault, such as its unjustified withdrawal from the execution of its obligations, or its prolonged and unreasonable delay in commencing the execution of the subject matter of the public procurement contract, whenever this results in a serious prejudice to the contractual bond, and the financial consequences that may follow, which can reach the imposition of financial penalties upon the party at fault. In addition to termination, this judgment produces legal effects that require examination of its different situations (Ben Ahmed, 2011, p. 94).

The situations upon which the judge relies in issuing a judgment of termination are:

1- Termination for Breach of Contractual Obligations:

The judiciary has expressly required the contracting operator to resort to the administrative judiciary in order to obtain a judicial ruling for the termination of the public procurement contract, if the administration has committed a serious breach of its contractual obligations, whether this concerns preventing the contractor from beginning execution, or failing to perform the financial consideration, and whenever one of these serious breaches is established, the judge may rule the termination of the contract (Al-Shawarbi, 2003, p. 150).

2- Termination Due to Force Majeure:

Force majeure refers to an event independent of the will of the contracting parties, which cannot be foreseen nor prevented, and which renders absolutely impossible the execution of the contractual obligations. Force majeure, in principle, leads to the definitive termination of the contract, since it severs the contractual bond as a result of the impossibility of execution. However, the administrative judiciary may not always use expressly the term termination in certain cases, and may prefer to postpone adjudication or to intervene temporarily until the cause of force majeure ceases, in consideration of the public interest, although this type of intervention remains subject of doctrinal debate regarding the extent of its conformity with the limits of the judge's competence (Al-Maghrabi, 1997, p. 43).

3- Termination in Confrontation with the Administration's Right to Amend the Contract:

Since the administration represents the party seeking to realize the public interest, it enjoys particular prerogatives vis-à-vis its contracting partner. By reference to Article 87 of Law No. 23-12, which determines the general rules relating to public procurement contracts, the legislator has authorized the administration, in all public procurement contracts, to amend the clauses of the contract by increase or decrease, in accordance with specific conditions, namely:

That the amendment be in writing so long as the original contract was written, that the amendment does not affect the essence of the contract, and that it be limited to increase or decrease while respecting the financial ceiling fixed by law. The power of the administration to amend the contract is subject to the oversight of the administrative judge, who verifies the proportionality of the amendment with the requirements of the proper functioning of the public service, its connection with the original contract, and the respect of the financial limits stipulated legislatively (Boudiaf, n.d., p. 151). If the judge establishes the existence of abuse in the exercise of the power of amendment, he may rule the termination of the contractual bond, in protection of the contractor's rights and in order to achieve contractual balance (Al-Shawarbi, 2003, p. 149).

Secondly:Action for Compensation:

The principle of liability in administrative law is founded upon the general rule whose meaning is that every act, whoever its perpetrator may be, if it causes damage to others, obliges the one who was the cause of its occurrence to provide compensation. (Skakni, 2006, p. 53) Proceeding from this principle, the action for compensation is considered one of the most important actions of full jurisdiction, through which the concerned person requests from the competent judicial body to oblige the administration to pay a monetary amount in order to redress the damage that befell him as a result of its activity or its acts. (Boudiaf, n.d., p. 107) Accordingly, the contractor with the administration has the right to resort to the administrative judge to claim compensation if damage has afflicted him during the execution of the public contract, whether this damage resulted from a fault on the part of the administration or in some cases even without fault, whenever the legal conditions for that are fulfilled.

The action for compensation is also defined as the action brought by concerned persons in order to claim redress for the damages that have affected them because of the functioning of public utilities or as a result of the activity of administrative authorities, where the administration is responsible for compensating its contractor for the damages resulting from its fault or from the risks associated with its activity, (Skakni, 2006, p. 57) and this within the framework of achieving justice and ensuring the stability of administrative transactions.

1- Obliging the Administration to Compensate for Damages Resulting from Its Fault:

The liability of the administration is based on fault whenever its three elements are present, represented in fault, damage, and the causal relationship between them. The burden of proving the fault of the administration, as a general rule, lies upon the one who brings the action for compensation, however the administrative judiciary is characterized by a particular flexibility in this field, due to the difficulty of proving fault vis-à-vis the administration. Once the judge is convinced that the administration or one of its agents is the one causing the damage, it becomes incumbent upon him to rule for compensation in favor of the injured party, as is the case when the administration refrains from executing a judicial judgment, which constitutes a fault giving rise to its legal liability. (Boudiaf, n.d., p. 111)

It is not sufficient that fault be merely established in order to burden the administration with liability; rather, it is required that this fault results in actual damage affecting others, provided that this damage is attributable to the activity of the administration or one of its agents. The plaintiff bears the burden of proving the damage and its causal link with the activity of the administration, and the administrative judge may, when necessary, seek technical expertise to determine the nature and extent of the damage. (Boudiaf, n.d., p. 113) On the other hand, the administration may negate the existence of the causal relationship by proving that the damage resulted from a foreign cause or from an act not attributable to it, and in this case its administrative liability is negated. The task of the administrative judge consists in linking the facts and analyzing them in order to reach a conclusion of accepting or rejecting the action. (Boudiaf, n.d., p. 134)

The fault of the administration giving rise to compensation appears in particular in the breach by the contracting authority of its contractual obligations, as the conclusion of the public contract entails the obligation of the administration to enable the

contractor to execute his obligations and to respect his financial rights. The breach of these obligations by the administration leads to the establishment of its liability, and grants the contractor the right to claim compensation for the damage he suffered and for the profit he lost. The forms of this breach are manifested in not enabling the contractor to commence execution, whether by not handing over the site of execution, or by not providing the advance payment, or by not providing a site free of obstacles, or by not granting the necessary authorizations, or by not providing the materials necessary for execution. (Boudiaf, n.d., p. 159) The breach also appears in the financial aspect, such as non-payment of the financial consideration, or delay in fulfilling it, or delay in refunding the final guarantee.

Added to this is the case of unlawful use of the exceptional powers granted to the administration, such as misuse of the powers of control and supervision, or the power of modification, or the imposition of penalties, or the termination of the public contract without legal basis, which are practices constituting an administrative fault that entails compensation whenever damage results therefrom to the contractor. (Ben Ahmed, 2011, p. 97)

2- Restoring the Financial Equilibrium of the Public Contract:

The financial consideration determined in the administrative contract is, in principle, fixed, and the contractor is bound to execute his obligations at the agreed price, just as the administration is likewise bound. However, the execution of the contract may be affected by the occurrence of unforeseen events that lead to a serious economic imbalance making the performance of obligations more costly and burdensome for the contractor, and the matter may even reach the point of threatening the continuity of the public service or the bankruptcy of the contractor. From here emerged the theory of the financial equilibrium of the contract, which is a judicial theory aiming to enable the contractor to continue executing his obligations while ensuring a minimum degree of contractual justice. (Labad, 2011, p. 296)

Within this theory fall three main forms of compensation, represented in the theory of unforeseen material difficulties, the theory of the act of the prince, and the theory of exceptional circumstances. (Ben Ahmed, 2011, p. 118)

2-1- Theory of Unforeseen Material Difficulties:

This theory is realized when the contractor, during the execution of the administrative contract, especially works contracts, encounters exceptional material difficulties that were not within the contemplation of the two parties at the time of concluding the contract, and which render execution more severe and more costly. Jurisprudence, particularly French jurisprudence, has settled on the necessity of compensating the contractor if these difficulties lead to overturning the economics of the contract, on the basis that the agreed prices were set under normal circumstances, and that exceptional difficulties require compensation proportionate to their effects. For the application of this theory, it is required that the difficulties be material, exceptional, and unforeseeable, and that they lead to a disturbance of the financial equilibrium of the contract, with the contractor remaining obliged to continue executing his obligations. The fulfillment of these conditions entails the contractor's entitlement to full compensation for the damages he has borne. (Issani & Larousi, 2022, pp. 1312–1327)

2-2- Theory of the Act of the Prince:

By the act of the prince is meant every measure taken by the public authorities that would increase the financial burdens upon the contractor during the execution of the contract, without having been foreseeable at the time of contracting. This theory is based on administrative risks, as the measure is issued by a public authority not in its capacity as a party to the contract, and it results in a serious financial burden upon the contractor. For the application of this theory, the existence of an administrative contract is required, and that the damage results from an unforeseeable measure, and that it leads to a considerable disturbance of the financial equilibrium. The contractor is granted, in this case, full compensation for the damage, in order to enable him to continue the execution of the contract in realization of the public interst. (Majdoub & Khelassi, 2019, pp. 246–255)

2-3- Theory of Exceptional Circumstances:

The theory of exceptional circumstances is based on the assumption of the occurrence of general exceptional events during the execution of the administrative contract, which the contractor was not able to foresee or prevent, and which lead to the infliction of heavy losses whereby the economics of the contract become seriously disturbed. In this case, the administration is obliged to share with the contractor the bearing of part of the losses, in order to guarantee the continuation of the execution of the contract and the continuity of the public service. The role of the administrative judge here is limited to ruling for partial compensation without modifying the clauses of the contract. For the application of this theory, it is required that the events be exceptional and unforeseeable, that they be foreign to the contract, and that they lead to a serious disturbance of the financial equilibrium, and the compensation granted is a partial compensation for the actual losses. (Manaa & Hamli, 2022, pp. 13–33)

Conclusion:

At the conclusion of this study which addressed the oversight of the administrative judge over disputes relating to public contracts, it becomes evident that the Algerian legislator has attached great importance to subjecting the acts of the administration to the principle of legality, in protection of public funds and in guarantee of the rights of those dealing with it, and this through

consecrating effective judicial mechanisms enabling the administrative judge to extend his oversight over the various stages of concluding and executing the public contract. This oversight has constituted one of the fundamental pillars for achieving balance between the requirements of the public interest on the one hand, and the guarantee of the rights of contractors on the other hand, in a manner that strengthens confidence in the administration and consecrates the rule of law.

This study has led to a set of results, perhaps the most prominent of which is that the administrative judge's role is not limited to monitoring the legality of administrative decisions separate from the public contract through the action for annulment, but rather extends to adjudicating its disputes within the framework of full jurisdiction, which grants him the power to rule for compensation, to rescind the contract, and to restore the financial equilibrium whenever it is disturbed due to faults of the administration or exceptional circumstances. It has also been shown that the action for compensation represents an effective instrument for redressing the damages suffered by the contractor as a result of the administration's breach of its obligations or misuse of its exceptional powers, alongside the role performed by the theories of financial equilibrium of the contract in ensuring the continuity of the public service and protecting the contractor from unforeseen risks. The study likewise concluded that the Algerian legislator has encouraged the adoption of amicable dispute settlement mechanisms because of their role in accelerating the resolution of conflicts, reducing costs, and achieving flexible solutions that take into account the interests of both parties.

Proceeding from these results, a number of recommendations emerge which would enhance the effectiveness of judicial oversight in the field of public contracts, through the necessity of strengthening the position of the administrative judge by clearer texts that define the scope of his intervention and his powers in disputes of administrative contracts, together with intensifying specialized training for judges in the field of public contracts and their technical and financial complexities. It is also advisable to broaden the scope of recourse to amicable settlement of disputes and to confer upon it a more mandatory character at the stage of executing the contract, while ensuring subsequent judicial oversight that protects the rights of the parties. In addition to that, it is recommended to reinforce the commitment of contracting administrations to the principles of transparency and good faith in the execution of their obligations, in a way that reduces disputes and contributes to achieving the stability of administrative transactions and serving the public interst in a more effective manner.

Ethical Considerations

This research was conducted in accordance with the fundamental principles of academic integrity and research ethics. The study is based exclusively on the analysis of legal texts, judicial decisions, and scholarly literature related to administrative law and public procurement regulation. No human participants, personal data, or confidential information were involved in the research process. The author ensured proper citation of all referenced sources and adhered to ethical standards concerning originality, avoidance of plagiarism, and accurate representation of legal doctrines and jurisprudence.

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Conflict of Interest

The author declares that there are no conflicts of interest regarding the publication of this paper. The research was conducted independently, and the author confirms that there are no financial or personal relationships that could have influenced the work reported in this article.

References

1. Aouabdi, A. (2014). *The general theory of administrative disputes in the Algerian judicial system: Theory of the administrative action* (Vol. 2, 5th ed.). D.M.J.
2. Baali, M. S. (2009). *The intermediary in administrative disputes*. Dar Al-Ouloum for Publishing and Distribution.
3. Ben Ahmed, H. (2011). *The role of the administrative judge in resolving disputes related to public contracts* (Master's thesis, University of Tlemcen).
4. Bou Chaour, W. (2011). *The powers of the administrative judge in the annulment action in Algeria* (Master's thesis, University of Badji Mokhtar, Annaba).
5. Bouchhamdia, A. A. (2014). *The concise guide in administrative judiciary: Organization, functioning and jurisdiction* (3rd ed.). Dar Houma.

6. Boudiaf, A. (2009). *The annulment action in the law of civil and administrative procedures: A legislative, judicial and doctrinal study* (1st ed.). El Joussour for Publishing and Distribution.
7. Boudiaf, A. (2013). *The reference in administrative disputes: Practical aspects of administrative dispute* (Part 2). Joussour for Publishing and Distribution.
8. Fereja, H. (2002). Procedures of the annulment action in Algeria. *Revue d'Administration, 12*(23).
9. HR Discussion. (n.d.). *HR Discussion*. https://hrdiscussion.com/hr9740.html
10. Issani, D., & Larousi, A. (2022). The theory of unforeseen material difficulties in public works contracts in Algerian legislation. *Algerian Journal of Law and Political Science, 7*(1).
11. Karim Al-Nafs, N. A. (2013). *Judicial oversight of administrative acts separable from contracts* (Master's thesis, University of Laghouat).
12. Khalifa, A. A. A. M. (2002). *Deviation in the use of power as a ground for annulling the administrative decision*. Dar Al-Fikr Al-Jami'i.
13. Kheloufi, E. (2012). *The system of dispute in the field of public contracts in light of the law of civil and administrative procedures*. Djilti Publishing House.
14. Kherchi, N. (2011). *Project management within the framework of public contracts regulation*. Dar El Khaldounia.
15. Labad, N. (2011). *The concise in administrative law*. Dar Al-Mujaddid for Publishing and Distribution.
16. Maghribi, M. A. M. (1997). *Problems facing the execution of administrative contracts*. Modern Institution of the Book.
17. Majdoub, A. H., & Khelassi, A. (2019). The theory of the act of the prince and its role in preserving the financial equilibrium of the administrative contract: A comparative study. *Al-Mishkat Journal in Economics, Development and Law, 5*(10).
18. Manaa, A. H. (2008). *Methods of concluding the public contract and how to supervise it under Algerian law* (Master's thesis, University of Abu Bakr Belkaid, Tlemcen).
19. Manaa, A. H., & Hamli, M. (2022). The impact of the theory of exceptional circumstances on the execution of the administrative contract: A comparative study. *Journal of Legal Studies and Research, 7*(1).
20. Mohamed El-Saghiri, A. A. A. M. (2008). *The administrative decision in France and the UAE and the role of courts in its annulment*. Dar Al-Fikr Al-Arabi.
21. Skakni, B. (2006). *The role of the administrative judge between the litigant and the administration* (2nd ed.). Dar Houma.
22. Tamam, A. Y. (2012). *The powers of the administrative judge in directing orders to the administration* (Doctoral dissertation, University of Mohamed Khider, Biskra).
23. Tamawi, S. M. (1991). *General foundations of administrative contracts: A comparative study* (5th ed.). Dar Al-Fikr Al-Arabi.
24. Cane, P. (2011). *Administrative law* (5th ed.). Oxford University Press.
25. Craig, P. (2016). *Administrative law* (8th ed.). Sweet & Maxwell.
26. De Smith, S., Woolf, H., & Jowell, J. (2013). *Judicial review of administrative action* (6th ed.). Sweet & Maxwell.
27. Elliott, M., & Thomas, R. (2017). *Public law* (3rd ed.). Oxford University Press.
28. Harlow, C., & Rawlings, R. (2009). *Law and administration* (3rd ed.). Cambridge University Press.
29. Mashaw, J. L. (2012). *Creating the administrative constitution: The lost one hundred years of American administrative law*. Yale University Press.
30. McLean, I., & McMillan, A. (2009). *State of the union: Unionism and the alternatives in the United Kingdom since 1707*. Oxford University Press.
31. Peters, B. G. (2010). *The politics of bureaucracy: An introduction to comparative public administration* (6th ed.). Routledge.
32. Rose-Ackerman, S., & Lindseth, P. L. (2011). *Comparative administrative law*. Edward Elgar Publishing.
33. Schwartz, B. (1991). *Administrative law*. Little, Brown and Company.
34. Stewart, R. B. (2003). Administrative law in the twenty-first century. *New York University Law Review, 78*, 437–460.
35. Wade, H. W. R., & Forsyth, C. (2014). *Administrative law* (11th ed.). Oxford University Press.