وزارة التعليم العالي والبحث العلمي
الجامعة المستنصرية
كلية القانون

الحماية الجنائية للأمن الإجتماعي في العراق

- دراسة مقارنـــــة -

رسالة تقدم بها

الطالب

احمد سعيد هاشم الهماش

إلى مجلس كلية القانون في الجامعة المستنصرية

وهي جزء من متطلبات نيل درجة الماجستير في القانون العام

بإشراف

الدكتور تميم طاهر احمد الجادر

استاذ القانون الجنائي

Abstract

This research deals with the idea of protecting social security in respect of preventive and curative sides, and how to take criminal measures to protect it, and that these measures should be effective to protect the rights and prestigious interests, so the criminality level reaches the simplest acts, which represents a threat to the social security basis. Also, the origin of danger does not lie in the intentional or unintentional crimes, but it highlights when these crimes are repeated without having a criminal protection to curb their repetition even in a certain percentage, since the adverse results ,in this case, will be a move towards social lack.

The research has depended on the idea of criminal jurisprudence in the criminality theory which is based on the division of protecting social entity to pillars and apply that to the tripartite division of the crimes of the theory, as a result, the subject depends on the basic pillars in which the descriptions of the criminal acts vary to felony, misdemeanor, and infraction, depending on its serious danger in damaging the social security, and not depending on the penalty, because the legislature determines how important these interests are and then decides those who assault them the appropriate punishment, that means penalties are later to be described .

The act, which directly affects a priority pillar of social security, is a grave felony because of its serious danger on the social structure , and if the violation does not affect the basic foundation directly, and its danger is less than the serious felony, then it will be as an act which affects a supporting foundation of a basic one, and it will be between the felony and misdemeanor description depending on the gravity of the act and the possibility of damaging the interests of the basic priority, but if the act is less dangerous than in that which affects the supporting pillars and less harmful to the basic pillars, it will be then an act that affects a supporting pillar.

The idea of criminal protection is that the legislator seeks to provide maximum protection to the basic interests and the fundamental values in society, as every single code of the law has an aim which targets it and an interest protects it directly, because the goal of criminalization is directed through the protected interest, and the latter lose its protection merits in the absence of criminalization reason, as well as the legal text loses its justification without an interest to be protected, so the relationship between them is proportional. The protection of these rights and interests represent a necessity for the security of society in order to achieve justice and legal stability in the community and controlling behavior so as to

ensure the development of society toward what achieves its progress and prosperity.

Also, the research in question is not just about criminal protection, but it also depends on the role of the non-criminal laws as a first step in the consolidation of social security which represents an inexpensive prevention policy. The state, while performing the authority of punishment, it spends a lot of money more than what it spends in the implementation of the other forms of legal penalty, like expenses , effort , time, and the staff of correctional institutions of different grades and the expenses of the construction of prisons and the preparation of receiving the prisoners, and the food and clothing, in addition to the financial penalty which may cost more than the non-criminal penalty as it could turn to a simple imprisonment when it doesn't be paid.

It appears that most of the non-criminal laws that give protection to the pillars of social security, do not refer in their acts to the crimes which represent a violation of fundamental pillars in order to be a serious crime, because it necessitates severe penalties to deter offenders, and this is not available but in the rules of criminal law.

جمهورية العراق
وزارة التعليم العالي والبحث العلمي
الجامعة المستنصرية
كلية القانون

التنظيم الدولي للمناطق المحمية

رسالة تقدمت بها الطالبة

إسراء صباح جاسم

إلى مجلس كلية القانون في الجامعة المستنصرية وهي جزء
من متطلبات نيل شهادة الماجستير في القانون العام

بإشراف

أ.م.د. يحيى ياسين سعود

١٤٣٨ هـ بغداد ٢٠١٧ م

الخاتمة

من مجمل ما سبق بحثه يتبين أن فكرة إنشاء وتحديد مناطق محمية جاءت تماشيا مع متطلبات القانون الدولي الإنساني، الذي يقوم على مجموعة من القواعد القانونية سواء الاتفاقية أم العرفية، التي تهدف أساساً إلى توفير الحماية للفئات المتضررة من الأفراد والأعيان، وتحرّم تعريضهم لأية هجمات في أثناء النزاعات المسلحة الدولية وغير الدولية.

لأُشير بعد ذلك إلى المبادئ القانونية الحاكمة للمناطق المحمية، التي توفر الحماية القانونية للفئات المتضررة من الأشخاص والأعيان ذات الطابع المدني الواقعة ضمن تلك المناطق، وذلك خلال إلزام الأطراف المتنازعة بالتمييز في جميع الأوقات بين المقاتلين وغير المقاتلين وبين الأهداف العسكرية والأعيان ذات الطابع المدني، ومن ثمّ توّجه عملياتها العسكرية ضد الأهداف العسكرية دون سواها، إلا إذا استعملت تلك المناطق في الأعمال الحربية أو للضرورة العسكرية، جاز لها مهاجمتها بشروط معينة وبعد اتخاذ الاحتياطات الممكنة لذلك، والتناسب بين الميزة العسكرية التي من الممكن أن تتحقق من استهدافها وبين الأضرار التي تلحق تلك المناطق، ولذا يحظر على الأطراف المتنازعة أعمال الاقتصاص والتدمير الذي يطال الممتلكات والأعيان الواقعة ضمن المناطق المحمية.

ثم استطردتُ الحديث عن المبررات القانونية لإنشاء تلك المناطق، ووجدتُ أن الهدف من إنشائها هو حماية الفئات المتضررة من مدنيين وجرحى ومرضى، فضلاً عن حماية الأعيان ذات الطابع المدني التي لا تشارك في العمليات العسكرية من آثار الحرب.

وبينتُ بعد ذلك دور المنظمات الدولية بشأن المناطق المحمية، لاسيما الأمم المتحدة بوصفها المسؤولة عن حفظ السلم والأمن الدوليين، إذ وضحتُ الدراسة أن انتهاك تلك المناطق يمكن أن يشكل تهديداً للسلم والأمن الدوليين، من هنا جاء دور الأمم المتحدة بشأن تلك المناطق خلال أجهزتها الرئيسة الممثلة بالجمعية العامة ومجلس الأمن، فضلاً عن دور قوات حفظ السلام في حماية وتأمين الاحترام لتلك المناطق. كما يبرز للجنة الدولية للصليب الأحمر دور في ذلك، إذ تعد الراعي الرسمي للقانون الدولي الإنساني من خلال ما تضطلع به من مهام، والتي يقع من بينها إنشاء المناطق المحمية وتأمين الحماية لها ومساعدة سكانها، ومواجهة انتهاكات تلك المناطق عن طريق اتخاذ إجراءات معينة بمبادرة منها أو بناء على شكاوى مقدمة إليها، وأيضا دورها كبديل للدولة الحامية.

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الجامعة المستنصرية
كلية القانون

دور التعددية الحزبية في التداول السلمي للسلطة
(دراسة مقارنة)

رسالة تقدم بها الطالب

أسعد هلال عقيل

إلى مجلس كلية القانون - الجامعة المستنصرية وهي جزء من متطلبات نيل شهادة الماجستير في القانون العام

بإشراف

الأستاذ المساعد الدكتور

كاظم علي عباس الجنابي

١٤٣٨ هـ بغداد ٢٠١٧ م

دور التعددية الحزبية في التداول السلمي للسلطة (دراسة مقارنة)

الديمقراطية ضرورة من ضرورات عصرنا هذا ، فالمواطن لم يعد من الرعايا لدى الحكومات ، بل هو مصدر السلطات كافة في الدول الديمقراطية والشعب هو الذي يختار السلطة الحاكمة ليمارسون السلطة باسمه ، فضلاً عن حق المواطن في إنشاء الأحزاب والجمعيات والنقابات والمشاركة في كافة الممارسات السياسية .

والانتخابات هي الوسيلة الشرعية للوصول للسلطة ، وذلك عبر صناديق الاقتراع وفي هذا المجال لابد من وجود تعددية حزبية ليختار الشعب ممثليه من بين الأحزاب المشاركة في الانتخابات.

وليتم تداول السلطة بصورة سلمية بين الأحزاب ، فإن أي حزب أو جماعة سياسية بإمكانها الوصول إلى السلطة حتى لو كان حزب معارض لسياسة الحكومة طالما أن النظام السياسي القائم يعترف بالتعددية الحزبية والمعارضة والانتخابات الحرة النزيهة التي تقام بشكل دوري ومنتظم .

إذ تقوم الأحزاب السياسية في المجتمعات التي تسير وفق النهج الديمقراطي بدور مهم وأساسي في مجمل العملية السياسية والاجتماعية ، لما يقدم من وظائف سياسية هامة في تدعيم الممارسات الديمقراطية بوصفها حلقة الوصل بين الحكام والمحكومين .

فهي تعمل على مساعدة الجمهور في التعبير عن أفكارهم وتكوين أرائهم السياسية مما يؤدي إلى تنشيط الحياة السياسية ، وتلعب دوراً هاماً في حماية حقوق الإنسان وتؤسس لبناء دولة يسودها القانون والاستقرار السياسي باعتبارها أهم مرتكزات المجتمع المدني فضلاً عن قيامها بدور الرقيب على أعمال الماسكين بالسلطة على نحو يحول دون انحرافهم أو انتهاك حقوق الإنسان.

جمهورية العراق

وزارة التعليم العالي والبحث العلمي

الجامعة المستنصرية

كلية القانون

تنفيذ العقد الإداري من غير المتعاقد مع الإدارة

رسالة تقدمت بها

إنعام عبد ثجيل

إلى مجلس كلية القانون - الجامعة المستنصرية وهي جزء من متطلبات نيل شهادة الماجستير في القانون العام.

بإشراف الأستاذ المساعد الدكتور

علي أحمد حسن اللهيبي

١٤٣٨هـ بغداد ٢٠١٧م

Summary

The general principle in the special law in the field of the civil contracts is governed by the relativeness of the contract's effects, i.e. the effect of the contract is not valid for the non contracting parties, but this principle is different in the field of the administrative contracts as the effects of the administrative contract may be valid regarding the other when this last one executes the contract.

The administrative contract is not executed in all cases by its parties as there are contracts not executed by the contracting party or it can not execute them without the interference of others, and this is confirmed by the practical reality. And the execution of the administrative contract by the non contracting party with the administration may be agreed by the contracting administrative entity or it is done without getting its approval, and despite that the other may execute the contract without the approval of the administrative entity, the law protected it to obtain its rights due to its administrative contract execution when certain conditions are available. And there are many forms of executing the administrative contract by the non contracting party with the administration; hence, there are many contractual relations and effects. But the study examined the most important practical applications for executing the administrative contract by the non contracting party with the administration, as it examined three practical applications which are: executing the administrative contract by the others due to work withdrawal from the contracting party when this last one breaches the execution of its contractual obligations as the administration

transfers the contract to others to execute the obligations of the original contracting party.

Also,the execution of the administrative contract by the non contracting party because of sub-contractiog when the sub-contractor (the other) contributes to the execution of the administrative contract which happens mostly when the works to be executed in the contract are various and the contract is divisible.

Also, the study examined the form of executing the administrative contract by others due to assigning the contract as a result of specific circumstances encircling the contracting party that prohibit it from executing its contractual obligation.

The study dealt with the subject's items under three chapters preceded by an introductory topic in which I examined the aforementioned applications and problems and their effects along with indicating the position of the judiciary and the jurisprudence of the studied countries.

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وزارة التعليم العالي والبحث العلمي
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الحماية المدنية للمصنفات في إطار البث الفضائي الإذاعي والتلفازي

(دراسة مقارنة)

رسالة تقدمت بها الطالبة

بيداء عبد الجبار حسوني

إلى مجلس كلية القانون-الجامعة المستنصرية

وهي جزء من متطلبات نيل شهادة الماجستير في القسم الخاص

بإشراف

الأستاذ المساعد الدكتورة

امل كاظم سعود

١٤٣٨هـ ٢٠١٧م

The Civil protection for classifications in the sector of the radio , satellite broadcasting television

The rapid technological changes and development in the field of media and communications has led to an unprecedented development in the world, and the emergence of new media environment represented in satellite has recede the role of traditional broadcast media and virtually fading .This development opened the doors of the debate over the legal control of satellite broadcasting in total disappeared of the geographical border between the states, so these satellites channel competing to attract the attention of a wider audience. The appearance of digital technology has facilitated the process of classifications copying with high accuracy and quality, so it became difficult to distinguish between original and fake .moreover using the internet to broadcast these classification without owners permeation led to great damages in the literal and finical rights of the creators of these works. So the broadcasting and televisions classifications can be described as the most kind of works that vulnerable to violation ,so it was urgent necessity to activate civil protection to these media classifications .

this thesis has devoted to the study of civil protection of works and classifications that transmitted via radio satellite and television, it has been divided into three chapters . the first chapter devoted to identifying the protected classifications in radio , television ,satellite broadcasting sector and it composed of two parts the first one identified the radio ,television and satellite broadcasting ,while the second part dedicated to the definition of these media classifications in the sector of television ,radio, satellite broadcasting. the second chapter the protected rights that belong to these classifications and violation methods.it is divided into two sections, first one indicate the listed protected rights for these media classifications . the second section has included of violation methods of these classifications .the third chapter dedicated to the civil protection means of media classifications . it has divided into three sections the first includes material and Procedural protection, the material protection include number of actions that protect the classification from Violation ,while the procedural protection include procedures that taken by the court and the owner of the(broadcasting) rights to protect the media classifications . the second sections has been dedicated to Substantive protection and the last section dedicated to determine the applicable law to protect the classifications in the sector of television ,radio ,satellite broadcasting And this Thesis was concluded by conclusion containing a summary of the search in addition to a number of recommendations

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التحلل من الإلتزامات الدولية لضرورات الأمن القومي

رسالة تقدمت بها الطالبة

ريا عبد الستار عبد الوهاب

إلى مجلس كلية القانون / الجامعة المستنصرية
وهي جزء من متطلبات نيل درجة الماجستير في القانون العام

بإشراف الأستاذ المساعد

الدكتورة هديل صالح الجنابي

١٤٣٨ هـ

٢٠١٧م

الخـاتـمة

ان وجود التلازم بين وجود الدولة و الحفاظ على امنها و بين الوفاء بالتزامات القانون الدولي العام يحتم البحث عن اليآت قانونية يمكن من خلالها الحفاظ على عليهما معاً ، ويأتي الاستثناء المتعلق بحماية الامن القومي في مقدمة هذه الاليات على اعتبار انه يهدف الى ترخيص الدولة بأتخاذ التدابير الضرورية لحماية امنها القومي لضمان بقائها و استمرارها من جهة ، اضافة الى الحد من تعسف الدول في اتخاذ تلك التدابير من جهة اخرى بهدف الحفاظ بهدف الحفاظ على تنفيذ الالتزامات الدولية و استقرار المعاملات الدولية من خلال تقييد سلطة الدولة في اللجوء الى تطبيق الترخيص من خلال جملة من الضوابط و الشروط .

فالحاجة الضرورية الى وجود هذا الترخيص كونه اداة توازن بين محورين اساسيين هما امن الدولة و الالتزامات الدولية ادى الى النص عليه صراحة في العديد من الاتفاقيات الدولية التي تعالج مواضيع و مسائل مختلفة ، فقد بينت الدراسة الكثير من الاتفاقيات الدولية التي تنص على تطبيق الاستثناء منها تتعلق بحقوق الانسان ، ومنها اقتصادية ، واتفاقيات اخرى متنوعة .

و اذا كانت الدراسة قد اوضحت ان تطبيق الاستثناء قد يستند الى نص صريح في صلب الاتفاقية ، فأنها قد طرحت تساؤل يتعلق بمدى جواز تطبيق الاستثناء في حالة عدم وجود نصوص اتفاقية صريحة تجيز تطبيقه ؟

وانتهينا في هذا الشأن الى امكانية تطبيق الاستثناء من خلال التفسير الواسع لبعض الاحكام الواردة في الاتفاقية ، او من خلال العرف الدولي ، او بالاستناد الى حالة الطوارئ .

الجدير بالذكر ان الدراسة قد اولت اهتماماً كبيراً لموضوع الرقابة الدولية على تطبيق الاستثناء فبعد بيان الموقف الفقهي و الدولي من الرقابة على تطبيق الاستثناء بين الاتجاه المؤيد و الرافض ، خلصنا الى ان الرأي الراجح يتفق مع خضوع تطبيق الاستثناء الى الرقابة القضائية ، وهو ما تدعمه محكمة العدل الدولية من خلال نضرها في العديد من القضايا التي تتعلق بتطبيق هذا الاستثناء ، مثل قضية الانشطة العسكرية و شبه العسكرية في نيكاراغوا عام ١٩٨٦ ، و موقفها في قضية التعاون القضائي في المجال الجنائي بين جيبوتي و فرنسا عام ٢٠٠٨ .

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وزارة التعليم العالي والبحث العلمي

الجامعة المستنصرية
كلية القانون

المركز القانوني للمهندس في عقود الأشغال العامة

(دراسة مقارنة)

رسالة تقدم بها الطالب

زياد طاهر جعفر

إلى مجلس كلية القانون-الجامعة المستنصرية وهي جزء من متطلبات نيل شهادة الماجستير في القانون العام

بإشراف

الأستاذ المساعد

د. علي أحمد حسن اللهيبي

بغداد

١٤٣٨هـ ٢٠١٧ م

Abstract

It is assumptive and well known that the contract is an agreement between two wills to bring about a certain legal effect.

The contract of public works is one of the important management contracts because of its connection with the economical and social development plans and its relation to the public money.

It is often used in the implementation of key projects to facilitate and conduct the public utility regularly and steadily aiming to maintain the public interest, and it follows a manner of Public law by including uncommon conditions comparing to private law contracts.

With the birth of each contract of these contracts, mutual and shared obligations and rights will be initiated between them (The Administration or the management) and the contracted party, as the administration is a legal public entity consisted of human element that represent it and lead its functions, it requires them to rely on capable people to carry out these obligations and maintain their rights regardless of the legal association that links the management and the employees, whether contractual or regulatory and organizational relationship.

They represent a specialised staff which by them it achieves its goals, and facing what may arise due to changes during the execution of the contract, there is no doubt that the construction engineer is the most prominent and outstanding personality among the staff, whether natural person or an entity, due to his/her or its technical capabilities and skills and the performance of featured mind, efficient and professional experience that made the management select him/her or the entity and no one else to represent it when dealing with the contracted party.

Taking into account the personal profile as a criterion in choosing him/her or the entity and assigning many roles, starting from providing engineering advice and prepare designs and preliminary maps and conduct a feasibility study for the project, through the supervision, direction and control over the proper performance of the works, and finally the primary hand over and testing the efficiency of the work done.

With the growing role of the construction engineer in public works contract , whether domestic or international , which prompted law commentators to research and investigate the role reality, even some of the scholars went on affront to say that the construction engineer is part of the contract , after the various Iraqi legislation have included this role by many laws, instructions and regulations to assign that role and

determine its extent which was the cause for initiating this study of the legal status of the engineer in public works contracts , and explore this role thoroughly and in details.

The study has conducted an in-depth and comparative research with France and Egypt Legislation and judiciary and jurisprudence, as well as what have been brought by successive copies of FIDIC contracts in order to elucidate the nature attributed to the engineer role in such contracts, and the implications of the duties of many tasks assigned to the engineer which have branched and varied between what is technical or financial or legal, with a clarification of what entails those duties of the entitled material/monetary or moral rights for his/her services, based on the idea of tying the balance between the right and the duty, being the foundation of defining the legal status and determine its scope, and the reliable balance in the stability of this role. Also the study sought to show what could affect the engineer's role when the responsibility is challenged, as one of the obstacles that could affect the pillars of this role causing alteration or cancels it.

Eventually the study pointed to the most important findings and recommendations .

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الجامعة المستنصرية
كلية القانون

أحكام التفريق قبل الدخول
بين الشريعة والقانون

رسالة تقدمت بها الطالبة

شيرين حسين أكبر

إلى مجلس كلية القانون-الجامعة المستنصرية-
وهي جزء من متطلبات نيل شهادة الماجستير في القسم الخاص

بإشراف

الأستاذ المساعد أم كلثوم صبيح محمد

٢٠١٧م ١٤٣٩ هـ

Abstract

The marriage thick covenant between the husbands and Islamic law from period designating , goals and purposes from her the family irons reigns him the close friend and the friendliness and the happiness between them , to that this tie already reigns her some matters to caused or for other makes her target for dissolution this tie , and the Islamic law accomplished that the husband is for him followed the divorce, to that he yet her justice truth of the wife in request of the separation from her does not neglect husband then this marital , tie be damaged from on the judge to answers her , and in our yen Islamic opinions the beliefs around extension of legitimacy the separation raved .

The personal law the situations Iraqi fulfilled truth gave the judicial separation before the entering for colleges requested the husbands and does not limit him for the wife only , and limited him in last cases for the wife only , so despite from that the husband for him dropping of the divorce be true to that the Iraqi legislator gives him judicial , request the separation followed in and that for his protection from the financial liabilities the thrown on shoulder his , and likewise to mental avoiding some matters and social , and despite from that the husbands is mere contracting and the entering , do not be complete to that he the judicial separation become organized on finance and legitimacy aroused the solution and the wife , hangs in and this instant chest of the decision become organized from the arbitrator in the separation , and for importance of the subject division considered studious to three chapters , the chapter includes the first (judicial definition in the separation before the incomes) divided to topics, first their judicial definition the separation before the entering includes and his , legitimacy while the topic includes second to statement Concept Absolute . The judicial chapter the second (separation before the entering for reasons includes related in one of the husbands) divided to topics first their the judicial separation before the entering for reasons related in the husband , while the topic includes second to the separation before the entering for reasons related in the husband .

Finally includes the last chapter charitable from him to statement (the separation before the entering for related reasons in colleges of the husbands), divided to topics first of him the second separation judicial before the entering for the disagreement , and the topic includes of him the judicial separation before the entering for the harm includes.

وزارة التعليم العالي والبحث العلمي
الجامعة المستنصرية
كلية القانون

اختلال التوازن بين السلطتين التشريعية والتنفيذية في النظام البرلماني
ـ دراسة مقارنة ـ

رسالة تقدم بها الطالب

مصطفى غازي حسن علي

إلى مجلس كلية القانون في الجامعة المستنصرية
وهي جزء من متطلبات نيل شهادة الماجستير في القانون العام

بإشراف

الأستاذ المساعد الدكتور

كاظم علي عباس الجنابي

١٤٣٨هـ ٢٠١٧م

The Imbalance between the legislative and executive powers in the parliamentary system

Abstract:

The parliamentary system is the most widespread in the political systems in the world , and he based on a flexible separation between the authorities , this flexibility in the parliamentary system is caused by the cooperation between the means of the legislative and the executive authorities , and the means of the mutual effective are making every authority to threaten the other, If the cooperation between them became impossible , the means of effective and the censorship are achieving the balance between the two authorities , in which every authority by its means can address to the other authority , if it is not exceeded the given references and compel it in this reference.

The ministerial responsibility of the government in front of parliament and the right of the government in the resolve of the parliament are the means which achieve the balance between the legislative and the executive authorities in the parliamentary system. So, it is obvious that the constitutional provisions in the countries which follow parliamentary system are always seeking to find the balance between the legislative and the executive authorities throw the cooperation and censorship because the interference in the legislative and executive work between these two authorities.

However , the practical reality is sometimes revealing other fact which is the balance cannot achieve virtually because the certain political conditions which lead to disruption the balance between the legislative and the executive authorities .

And because this imbalance became fact in the various parliamentary systems, some constitutions fixing it throw the constitutional provisions . And some parliamentary constitutions are tended to tipping the legislative authority up on the executive authority and the other parliamentary constitutions are tipping the executive authority upon the legislative authority .

So , our research is to study the constitutional and political reality , and its effect on the balance and in particular in the constitutions which its provisions is more effect , here is the problem and the importance of the object .

So , we divided the research into three chapters , the first chapter is about the balance between the legislative and executive authorities in the parliamentary system , and the second chapter is search in the manifestations of imbalance between the legislative and executive authorities for the executive authority in the parliamentary system , the third chapter is to study the manifestations of imbalance between the legislative and executive authorities for the legislature authority in the parliamentary system .

We searched in the first chapter the balance between the legislative and executive authorities in the parliamentary system. And we divided the first chapter into two topics , the first topic is search about the principle of the separation of powers which consider the mainstay which it based on the balance between the legislative and executive authorities in the parliamentary system. As for , the second topic is search in constitution means which is necessary to make this balance between the legislative and executive authority in the parliamentary system , and we divided the second chapter into two topics , where we search in the first topic , the competence of the executive authority in produce the legislative regulations , and we indicate in it the inversion of the traditional base in the relation between the law and the regulation , after our clarification the competence of the regulation of the executive authority . As for , the second topic is to study the cases that the executive authority is in the position of the legislative authority in the field of legislation when the parliament is found or not.

In third chapter we study the manifestations of imbalance between the legislative and executive authorities for the legislature authority in the parliamentary system, and we clarify in the first topic the fall of right of the solution in the comparative parliamentary systems . As for , the second topic is specialized to the constitution means in choosing the members of the executive authority and the shape of the government and the accountability the president of the republic and its effect on the disruption of the balance in favor of parliament .

And we finished the research in a conclusion and we clarified in it the results and the recommendations .

جمهورية العراق
وزارة التعليم العالي والبحث العلمي
الجامعة المستنصرية
كلية القانون

المركز القانوني لقائد الطائـــرة

رسالة تقدم بها الطالب

مهند موسى جاسم

إلى مجلس كلية القانون-الجامعة المستنصرية
وهي جزء من متطلبات نيل شهادة الماجستير في القسم الخاص

بإشراف

الأستاذ المساعد

فاروق إبراهيم جاســـم

١٤٣٨هـ ٢٠١٧م

Abstract

The pilot is regarded as a president of a state in the society that exist on board because of the remoteness of the aircraft from state authorities .It may be subjected to an emergency without control or surveillance or without supervisor from the governmen . Accordingly it was very necessary to have an authority on board works as government or does state responsibilities specially keeping order and security on board .

The pilot was most proper person to be authorized such a responsibility and difficult task .Because of such difficult task , the international treaties , agreements and laws had put many compulsory obligations and conditions which should be available in the pilot .

There were many differences among the specialists about the nature of the job of the pilot and the nature of this contract between him and the airways investor . Some of them prefer that the signed contract should be work contract with special nature due to some great difficulties about innocence work contract .Here we can call it " air work contract " .

As the aircraft is the main instrument used in this case and used specially by the pilot , then we must refer to speaking about that subject before talking about the pilot personally . Also the air safety depends fundamentally upon the used aircraft in flight; therefore there should be some special conditions and characteristics available in that instrument .

The pilot has wide authorities whether upon the passengers or the aircraft crew that exist on board or even the corresponding and communication on board . Anybody got such capacity , abilities and powers , he must have good qualifications and knowledge . Basing on such information and description, the success of air flight or it failure depends in fundamentally upon the competence and qualifications of the pilot .

Dealing with such a subject needs explanation about the powers and responsibilities of the pilot ., specifying the law concerned which should be applied on board , action which may or should be executed on board , events and behaviors that may occur during the air flight .

Because the pilot has great and wide authorities and power , it was natural that the responsibilities should be in the same level with those authorities and powers .. He is completely responsible for all his conducts , behaviors and any action he does ob board .

But still some of these behaviors may lead to catastrophe mistakes . Any mistake committed by the pilot may lead to destroying and crashing the aircraft and death of the passengers on board and the crew also . Accordingly the pilot will be responsible for the consequences of his mistake ;therefore he feels always that he has great and hard responsibility required from him attention and watchfulness , although some pilots cannot bear such consequences ;therefore the international laws specified the pilot's responsibilities and duties against special amount as with air investor .

وزارة التعليم العالي والبحث العلمي
الجامعة المستنصرية
كلية القانون
قسم القانون العام

مسؤولية الإدارة عن حوادث المركبات الحكومية

رسالة تقدمت بها الطالبة
نعمة سعيد عبد الله

إلى مجلس كليّة القانون / الجامعة المستنصرية وهي جزء من متطلبات نيل شهادة الماجستير في القانون العام

بإشراف

أ.م . د رشا عبد الرزاق جاسم

١٤٣٨هـ بغداد ٢٠١٧م

Abstract

The principle of the government responsibility on their actions and compensating the individuals on damages they had as a result of those actions is a relatively modern principle, since it wasn't decided only at the end of the 19th century, but before that the common principle in most of the governments was the non-responsibility of the government towards their actions based on that deciding their responsibilities contracts with what they have of sovereignty.

The absence of responsibility means that there's a mess and instability and social defect, whereof social security can't prevail unless there is a general base of responsibility, the more an individual was responsible for their actions, the more they were careful, and the more they were unleashed the more they become irresponsible and disrespectful to others rights, the society will be a mess and social security will fall apart.

The government or general authority principle of being responsible for their actions finds its important and main role in its activities boundaries which is issued by its administrative authority, this activity generally consists of two types of actions, the first related to administrating their private money, here the work is similar to normal individuals works and it doesn't differ from the nature of the private activity which is performed by the individuals and the administration seeks through this activity to make money revenues, As is the case in industrial and commercial facilities.

While the second type of administration activities represented by the works performed by them as a general authority that aims to achieve the general benefit through doing their duties specified by the law and provided them with privileges and powers for its performance this activity of the administration consists of two types of works, the first is legal works that issued by the administration to make specific legal effects which seems either dual legal actions resulting from administration agreement with others and these are called administrative contracts, or it might be as individual legal actions prepared only by the administration to create, cancel or edit a legal center assisted by privileges of the general authority like making and terminating decisions and these are administrative decisions, as for the second type of administration activity as a general authority, is the material work type performed by the administration and purpose of it isn't to make different legal effects although the law put certain effects if damage happens

to others, as is the case for the automobile accidents owned by the administration that results damages to the individuals or their properties whereof these actions are not orders or administrative decisions to be appealed with termination, but they have material nature and its effects can't be removed unless by compensation. The study plan in this letter was based on a comparative approach that compares between the situation in the Iraqi, Egyptian, and French legal system through a research plan consisting of two chapters precedes by preliminary chapter titled (Definition of administrative responsibility) detailing the administrative responsibility in two demands.

The first chapter (Foundations of administration responsibilities towards governmental automobile accidents) we made it clear in the first chapter the administration responsibilities towards a diver's mistake who drives a governmental automobile, we explained the aspects of this kind of responsibility in addition to that we explained in the second chapter the administration responsibility towards the risks of governmental automobile accidents and the importance of applications in this matter.

After we explained the legal base of administration responsibility of governmental automobile accidents, it was necessary to make effect on proving this responsibility which compensation, we made the second chapter for this purpose with title (Compensation as an effect of administration responsibility and procedures of fulfilling it).

This chapter was divided into two researches, in the first one we explained the nature of compensation to show the concept of compensation on governmental automobile accidents, and the second demand for the time and bases of compensation, third demand about making the compensation on the responsibility of in employee in charge of the accident. As for the second research we explained the procedures of the compensation decision.

This research was ended with some results that have been reached in addition to recommendations.

وزارة التعليم العالي والبحث العلمي
الجامعة المستنصرية
كلية القانون

الحلول القانونية لعوارض تنفيذ عقد امتياز المرفق العام وتصفيته

(دراسة مقارنة)

رسالة تقدمت بها الطالبة

هدى تحسين الياس

إلى مجلس كلية القانون في الجامعة المستنصرية
وهي جزء من متطلبات نيل درجة الماجستير
في القانون العام

بإشراف الدكتور

علي أحمد حسن الهيبي

أستاذ القانون الإداري المساعـــد

١٤٣٨ هـ بغداد ٢٠١٧ م

الخلاصة

تعالج هذه الرسالة موضوعاً حيوياً له أهمية كبيرة في المجال الاقتصادي بشكل عام ويؤثر على المرفق العام بشكل خاص، ألا وهو عقود الامتياز، فقد تلجأ الإدارة إلى إبرام عقود الامتياز بأشكاله كافة مع القطاع الخاص من أجل تحقيق الأهداف، وتلبية احتياجات المجتمع المتزايدة، فقد ترسخ الاعتقاد لدى البعض بصعوبة تمكن القطاع العام من إدارة المشروعات الضخمة لجميع المرافق العامة، لعدم القدرة على توفير الأموال والاعتمادات اللازمة لتنفيذ تلك المشروعات، لذا توجب التفكير في جذب الاستثمارات لإنشاء وتطوير تلك المشاريع ولاسيما المتعلقة ببناء البُنى التحتية، ولكون مثل هذه العقود كبيرة وخطرة بسبب ضخامة الأموال التي تصرف من أجل إنجازها، فلا بد من أحكام إبرامها بشكل دقيق، فهو يتطلب تخلي الإدارة عن جزء من سيطرتها، والسعي نحو تنفيذ الالتزامات المتبادلة بين الإطراف المتعاقدة.

ومهما كانت الجهود المبذولة نحو إتمام الالتزامات العقدية بين أطراف عقد الامتياز، إلا أنه قد تظهر عوارض لم تكن في الحسبان، ومن الصعب تداركها أو توقعها على وفق المقاييس العادية للأمور، وبالتالي يصعب تنفيذ الالتزامات العقدية بوجود هذه العوارض.

لذا لابد من إيجاد حلول لإدارة الأزمات التي يتعرض لها إدارة المرفق العام، ومحاولة تذليل العوائق التي تعترضه لاستدامته، وتقديم خدماته إلى جمهور المنتفعين بانتظام واطراد.

وكان حافزاً في اختيار موضوع هذه الرسالة هو معرفة الحلول القانونية التي وضعها المشرع، والقضاء، والفقه لتدارك مثل هذه العوارض.

وتم تقسيم هذه الرسالة على مبحث تمهيدي وثلاثة فصول:

تناولنا في المبحث التمهيدي ماهية عقد امتياز المرفق العام، وقسم بدوره على مطلبين، في المطلب الأول عرفنا عقد امتياز المرفق العام، وأوضحنا فيه الخصائص التي يتصف بها، وما هي الطبيعة القانونية لمثل هذا النوع من العقود وتمييزه من النظم المشابه الأخرى، وفي المطلب الثاني تكلمنا عن التطور الحديث لعقد امتياز المرفق العام من خلال تعريف عقد الامتياز الحديث، وتمييزه عما يشتبه به، ومعرفة أهميته من خلال استعراض الامتيازات التي يتمتع بها، وكذلك العيوب التي تؤثر عليه.

فيما بحثنا في الفصل الأول عن عوارض عقد امتياز المرفق العام: من خلال تقسيمه على مبحثين، في المبحث الأول تناولنا الاستحالة النسبية لعوارض تنفيذ عقد الامتياز التي تستدعي البقاء على تنفيذ العقد على الرغم من زيادة التكلفة، وإرهاق الملتزم أو شركة المشروع مادياً، فيما تناولنا في المبحث الثاني الاستحالة المطلقة لعوارض تنفيذ عقد امتياز المرفق العام والتي تؤدي إلى الإنهاء التام وفصل عرى الالتزام بين أطراف العقد.

ودرسنا في الفصل الثاني الحلول القانونية لعوارض عقد امتياز المرفق العام: من خلال تقسيمه على ثلاثة مباحث، في المبحث الأول بحثنا التعويض من خلال تعريفه ومعرفة أنواعه، وكيفية احتسابه عند تواجد أحد عوارض عقد الامتياز، وفي المبحث الثاني بحثنا الفسخ من خلال تعريفه ومعرفه الأساس الذي يستند إليه، وتبيان أنواعه التي قد يتعرض عقد الامتياز لأحدها، وفي المبحث الثالث بحثنا وقف التنفيذ من خلال تعريفه وتبيان شروط التمسك به وأثر وقف التنفيذ على عقد امتياز المرفق العام.

وتناولنا في الفصل الثالث الحلول القانونية لتصفية عقد امتياز المرفق العام: من خلال تقسيمه على مبحثين، في المبحث الأول بحثنا التصفية، وميزناها عما تشتبه به، وآلية فض المنازعات الناشئة عنها، وفي المبحث الثاني بحثنا عن كيفية إجراء عملية تصفية المرفق العام من خلال معرفة مصير عقود العمل المبرمة مع عمال ومستخدمي المرفق، ومعرفة أيضا الأموال التي تؤول إلى الدولة مجاناً عن الأموال التي تؤول إلى الدولة بعوض، وتناولنا أيضا كيفية تصفية الحسابات المالية بين طرفي عقد امتياز المرفق العام.