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## Cases of Nullity of Administrative Contract Compared to Civil Contract under the Jordanian Legislation

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### **Abstract**

*This article examines the degree of effect of the theory of nullity in Jordanian civil law on administrative and civil contracts and the utmost key cases of nullity of the administrative contract as compared to civil contract. The descriptive and analytical research approach is adapted to achieve the research objectives. In carrying out its activity, the administration resorts to several diverse and numerous means and actions, and these actions may be physical or legal actions. Legal actions may be unilateral actions, which are called administrative decisions, or they may be two-sided, meaning an agreement, which is what, is called contracts, whether these contracts are concluded between persons of public law and between a person of public law and one of the persons of private law. The administrative contract does not differ in its work from other contracts if it is concluded by simply exchanging the expression of their wills between the two parties, taking into account the specific conditions stipulated by the law for its conclusion. In its formation, it is necessary that its pillars be present, which are the administration element, the place element, and the cause element. It is also necessary that the conditions for its validity be met, which is that the will of its two parties is free from any defects of consent that may taint it. Towards the end, results and recommendations are properly incorporated.*

**Keywords:** *Administrative Contract, Civil Contract, Nullity, Theory*

## INTRODUCTION

The contract is the most common form of legal action in the domain of special law, as the contract is regarded as a unique system that has served humanity and contributed to creating human progress (Al-Samadi & Al-Majali, 2022). A contract is essentially based on the agreement of two wills regarding the establishment, modification, transfer, or termination of a particular obligation. In administrative law, legal action takes the form of a single will, meaning the administrative decision, or it takes the form of compatibility of the two wills, meaning the administrative contract (Badr, 2017).

The administrative contract differs from the civil contract in several aspects. Since the contract is mainly concerned with the management, firm, and supervision of communal utilities in the country, the contract theory has recently become explicit in the provisions of administrative law. Although civil law preceded the organization and establishment of the contract theory, this does not mean that there are no secondary differences in places and fundamental differences in other places. Among these issues are “the provisions for the nullity of an administrative contract compared to the nullity of a civil contract according to jurisprudential perspectives on that issue” (Mirić & Petrović, 2020, p. 8).

The statement accurately highlights the foundational role of civil law in regulating the concept of nullity, which subsequently affects administrative contracts. Civil law indeed serves as the primary source for understanding and applying principles related to nullity, which are then extended to various types of contracts, including administrative contracts.

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The general provisions of contracts, including elements such as consent, subject matter, consideration, and formalities, are established within civil law and are applicable to administrative contracts as well. This compatibility ensures that fundamental principles governing contract formation and validity remain consistent across different types of contracts.

Despite the general compatibility between administrative and civil contracts, differences do exist, particularly concerning the circumstances and criteria for nullity. These distinctions stem from the unique characteristics and purposes of administrative contracts compared to civil contracts. Understanding these differences is crucial for accurately determining the grounds for nullity and applying relevant legal principles in each context.

Furthermore, the importance of accurately determining the nullity of a contract cannot be overstated. Nullity rulings have significant legal implications, impacting the rights and obligations of parties involved in the contract. Therefore, ensuring clarity and precision in determining nullity is essential to uphold legal integrity and fairness in contractual relationships.

In conclusion, while administrative contracts may be influenced by the principles and provisions of civil law, they also possess distinct features that necessitate careful consideration when assessing nullity. By understanding these nuances and adhering to legal principles, stakeholders can effectively navigate the complexities of nullity rulings in both administrative and civil contract law.

## **RESEARCH PROBLEM**

Exploring the administrative contract, its constituent elements, provisions governing nullity in civil contracts, and their application within the specialized legal framework for administrative contracts is of paramount importance. Defining the essential components of contracts including consent, subject matter, consideration, formalities, and the announcement of contract conclusions also holds significant weight. Understanding the distinctions between cases of nullity in administrative contracts versus civil contracts is crucial given the inherent differences between the two. Moreover, determining the validity of a ruling is of utmost importance.

The research aims to elucidate the instances of nullity in both administrative and civil contracts, considering their unique characteristics. It is imperative to ascertain whether these instances serve as examples open to expansion or if they are exclusively enumerated. Additionally, the research seeks to compare and contrast the cases of nullity between administrative and civil contracts, highlighting similarities and differences.

The central focus of the research is to evaluate the impact of nullity theory within Jordanian civil law on administrative and civil contracts, particularly examining the most notable instances of nullity in administrative contracts as compared to civil contracts.

## **RESEARCH SIGNIFICANCE**

This research holds significant importance in elucidating the comparisons between administrative and civil contracts, particularly regarding the impact of nullity theory on both Jordanian civil and administrative law. Notably, the absence of prior research on the degree of nullity theory's influence on administrative and civil contracts within the Jordanian legal landscape underscores the unique contribution of this study. By addressing this gap, the research provides scholars, researchers, and legal specialists with a valuable reference for understanding and navigating Jordanian legal developments.

Moreover, the research's novelty lies in its status as the first comprehensive study of its kind at the Jordanian level, signifying its potential to contribute to the advancement of legal scholarship and knowledge within the country. The incorporation of future suggestions and recommendations further enhances the research's practical utility for practitioners, theorists, and legal stakeholders in Jordan.

## **METHOD**

The research adopts a descriptive and analytical research approach, which is highly significant in the field of law. By analyzing relevant primary and secondary sources, this method facilitates a comprehensive exploration and analysis of the degree of nullity theory's impact on administrative and civil contracts in Jordanian law. Past

studies and researchers have played a crucial role in establishing the narrative and theoretical framework, which forms the basis for this research.

## **DISCUSSION**

The nature of the research necessitates the structuring of a conceptual framework into three distinct sections. The first section delves into the administrative contract and exceptional conditions, emphasizing the independence of administrative law from civil law jurisprudence. This section explores the nature of this independence and its implications for legal practice and interpretation.

Subsequently, the second section delves into contract nullity cases in civil law, highlighting the foundational role of civil law in regulating nullity concepts and principles. The discussion underscores the significance of understanding nullity within the broader context of civil law jurisprudence.

Finally, the third section provides insight into the reasons for the nullity of administrative contracts, focusing on the unique features and characteristics that distinguish them from civil contracts. Through a nuanced examination of these reasons, the research aims to elucidate the complexities surrounding nullity in administrative law and its implications for legal practice in Jordan.

In conclusion, the research's structured approach and comprehensive analysis contribute to a deeper understanding of nullity theory's impact on administrative and civil contracts in Jordanian law. By elucidating key concepts and principles, the research aims to inform legal practice, scholarship, and policymaking in Jordan and beyond.

The elements of the Administrative Contract:

1. The fixed element: The conclusion of the contract by a public legal entity

For a contract to be considered administrative, one of the parties must be a public law entity such as the state, legal entities, or local authorities. Contracts between special law entities cannot be categorized as administrative contracts unless they involve public entities. For instance, in France, contracts involving the construction of highways by mixed-sector companies may have an administrative character if they serve public entities.

2. Variable element: The contract is connected to a public utility or includes exceptional conditions

Not all management contracts are administrative; an administrative contract typically involves the contractor participating in public utility work or includes exceptional conditions uncommon in special law. The concept of public utility remains elusive, and its definition varies across jurisdictions. Contracts that contribute significantly to public utility operations are considered administrative, even without exceptional conditions.

3. Exceptional terms in the special law

Administrative contracts may include exceptional conditions not typically found in private contracts, granting rights or obligations uncommon in civil and commercial laws. Some jurisdictions require exceptional conditions to categorize a contract as administrative, while others consider the general nature of the contract. Contracts entitling contractors to manage public utilities or administrative facilities are often deemed administrative, even without exceptional conditions.

In conclusion, administrative contracts must involve a public entity, contribute to public utility operations, or include exceptional conditions to be categorized as such. The interpretation of administrative contracts may vary depending on jurisdiction and legal precedent.

- a. Consent

Consent is the agreement between the parties to the contract regarding its terms and conditions. It is expressed through offer and acceptance, with attention to specific provisions mandated by law. In administrative contracts, consent must adhere to regulations concerning jurisdiction and form, and only individuals authorized by the legislator can conclude such contracts. Additionally, consent must be free from defects such as mistake, deception, coercion, or intimidation.

b. Subject

The subject of the contract refers to the legal process intended to establish the rights and obligations of the parties. It must be achievable and legitimate, and failure to meet these criteria may result in nullification. For example, if the subject is proven illegal or violates public order, the contract may be nullified. The conditions for the validity of the subject in administrative contracts are governed by general rules found in civil law.

c. Reason

In addition to consent and a legitimate subject, there must be a legitimate reason for the contract to be valid. The reason may be direct or indirect, administrative or civil, and its absence may render the contract null. Administrative contracts are typically pursued to achieve public interests and the organization of public utilities.

d. Formality

While contracts are generally concluded through offer and acceptance without specific formal requirements, administrative contracts may involve additional phases such as bidding and tendering processes. Although writing is not always essential for contract validity, certain administrative contracts may require written documentation as mandated by law. Failure to adhere to such formalities may render the contract null.

In conclusion, the elements of the administrative contract, including consent, subject, reason, and formality, must be carefully considered to ensure the contract's validity and enforceability within the legal framework. Failure to meet these requirements may result in the nullification of the contract.

## **CONTRACT NULLITY CASES IN CIVIL LAW**

Nullity in civil law encompasses a broad spectrum of concepts, including nullity related to procedural matters as stipulated by law and nullity related to contracts themselves. Nullity results in the complete annulment of a contract, rendering it devoid of any legal effect and unenforceable against others. The freedom of parties in contract formation may sometimes lead to actions that warrant nullity, which this study seeks to explore. However, nullity can only be established based on explicit legal provisions, as there can be no nullity without legal grounds.

In Jordanian civil law, a void contract is defined in Article 168(1) of the Jordanian Civil Code as a contract lacking legitimacy in its origin or description due to defects in its essential elements such as consent, subject matter, consideration, or formality prescribed by law. Nullity, as described by Al-Jubouri (2011), signifies the legal penalty for the failure of essential contract elements or conditions for validity.

It's essential to understand the definition of a contract under Jordanian law, as outlined in Article 87 of the Jordanian Civil Law, which establishes a contractual relationship through offer and acceptance resulting in mutual obligations between parties.

A nullified contract is essentially null and void, distinguishing it from other legal actions, and is considered a source of obligation if valid. However, a valid contract, as per Article 167 of the Jordanian Civil Code, is legitimate in origin and description, devoid of defects, and fulfills all essential conditions for validity.

Nullity can arise from various factors, including defects in essential contract elements or descriptions, rendering the contract invalid. Absolute nullity occurs due to failures in meeting conditions required by law, while relative nullity pertains to defects in objective elements such as the presence of a defective will. Any interested party may claim nullity of a contract, as per Article 168(2) of the Jordanian Civil Law, and the court may also initiate nullity proceedings.

The consequences of nullifying a civil contract are significant. The competent court or arbitration panel has the authority to nullify a contract, leading to its complete annulment and restoration to its pre-contractual state.

While various legal systems adopt different approaches to nullity theory, the legal nature of contracts remains consistent. The Jordanian legislator has codified reasons for contract nullity, eliminating ambiguity in this regard and emphasizing the importance of explicit legal provisions in determining contract validity.

In conclusion, nullity in civil contracts carries substantial legal implications, necessitating careful consideration of contractual elements and adherence to legal requirements. The authority to rule on nullity lies with the competent court or arbitration panel, ensuring fairness and adherence to legal principles in contract enforcement.

By understanding the intricacies of nullity in civil law, stakeholders can navigate contractual relationships with clarity and confidence, ensuring legal compliance and mitigating the risk of contract nullification.

With that being said, the invalidation is retroactive from the time the contract is created because the contract is initially born dead. If the invalid contract is a contract for the sale of real estate and the formality condition is not observed, i.e. If a contract is concluded outside the Department of Lands and Survey or is not registered at the Department of Traffic for vehicle sales contracts, it is considered invalid by law, necessitating a ruling of nullity. According to Article 168/2 of the Jordanian Civil Code, any interested party can claim nullity, and the court can also decide on nullity without a specific request. Interested parties include not only contracting parties but also creditors who stand to benefit from nullity. If the contract is partially invalid, the entire contract is null unless each part's share is specified. Article 169 of the Jordanian Civil Law stipulates that if part of the contract is invalid, the entire contract is void unless each part's share is specified separately.

Article 248 of the Jordanian Civil Law dictates that if a contract is annulled, the parties should be returned to their pre-contract state. If that is impossible, compensation should be awarded. Compensation is calculated by experts based on the judge's assignment.

Reasons for nullity of administrative contracts are distinct from civil contracts. While the presence of the administration and connection to public utility are significant, adherence to public order laws, containing exceptional conditions unfamiliar in private law, is crucial for administrative contracts. Administrative nullification is more comprehensive due to its direct relation to public interest and organizational facets. Nullification terminates a contract due to inherent defects from its formation, whereas cancellation occurs post-contract establishment due to breaches by either party.

In summary, nullity of contracts due to failure to adhere to legal procedures or contain essential elements necessitates legal rulings to annul contracts and, if possible, return parties to their pre-contract state or award compensation. The distinction between nullity and cancellation underscores the legal consequences of contractual defects and breaches.

An invalid administrative contract lacks conditions necessary for its validity, such as capacity or defects in administration, like coercion. However, if all elements and conditions are met initially, the contract is considered valid. Subsequent defects may lead to cancellation rather than nullity, as nullity concerns defects at the contract's formation, while cancellation pertains to defects post-formation.

Nullity in administrative contracts encompasses absolute and relative nullity. Absolute nullity results from severe breaches of essential contract elements, rendering the contract legally non-existent. Examples include lack of consent, subject matter, reason, or formality. Conversely, relative nullity deems the contract valid but voidable due to breaches of less fundamental conditions, such as lack of capacity.

Instances of administrative contract nullity include failure to adhere to advertising principles, unequal treatment of competitors, and breaches of administrative legality. Additionally, exceeding authorization limits or unauthorized amendments to contract terms may lead to nullification.

In conclusion, the absence of consent, subject matter, reason, or formality constitutes grounds for administrative contract nullity. Compliance with essential contract elements is imperative for validity. Recommendations include establishing a flexible legal system for administrative contracts to accommodate evolving trends and expanding the jurisdiction of the Administrative Court. Additionally, adherence to general provisions in Jordanian Civil Law and explicit stipulations regarding invalidity in governmental purchasing processes are recommended.

By adhering to these recommendations, the legal framework governing administrative contracts can adapt to contemporary needs and ensure fairness and efficiency in public-private partnerships.

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