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Employment contracting procedures in Iraq and Lebanon and administrative control over them

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Abstract

The contracting process, like other actions carried out by the administration, must be in accordance with the foundations, controls and procedures specified by the legislator. The aim of this is to achieve the principle of equality among individuals nominated to fill the position to be contracted for. To ensure the administration's commitment to these procedures, the administration must be subject to administrative oversight, whether internal oversight by the administration itself or external oversight carried out by independent oversight bodies to ensure that the administration does not arbitrarily select and to remove sectarian, partisan or tribal tendencies in selecting contractors.

Keywords: Employment contracting, contracting procedures, administrative control, equality principle

Introduction

First: The Subject of the Research

The employment contracting procedures constitute one of the most important operations carried out by the administration during the contracting stages in selecting the contractor required by the administration according to the procedures drawn up by the legislator and the administration's lack of diligence in this unless the law grants it this authority. In order to ensure that the administration does not abuse this or submit to political, tribal or partisan tendencies, it is necessary that these procedures be subject to administrative oversight represented by internal oversight or the oversight of independent oversight bodies. Therefore, in this research we will discuss the employment contracting procedures in both Iraq and Lebanon and the oversight imposed on them.

Second: The Research Problem

The problem lies in the lack of a specific mechanism followed by all departments in the Iraqi and Lebanese public sectors to select contractors for public service, with these departments being affected by political, partisan and tribal pressures without following a mechanism that guarantees the achievement of the principle of equality and equal opportunities among applicants for the employment s to be contracted for.

Third: Research Methodology

The comparative approach between Iraqi and Lebanese legislation will be adopted as much as possible, with the adoption of the analytical approach to analyze the legal texts related to employment contracting in both Iraqi and Lebanese legislation.

Fourth: Research Structure

The research will be divided into two sections. In the first section, we will discuss the procedures for contracting employment in Iraq and Lebanon. In the second section, we will discuss the administrative control over contracting procedures in Iraq and Lebanon, adopting the binary division in the research as much as possible.

Section One

Procedures for contracting employment s in Iraq and Lebanon

One of the manifestations of equality in assuming public employment s is the right of the good citizen to occupy employment s, whether permanent employment s or temporary employment s that are filled through contracting.

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There are many ways to achieve this principle as well as guarantee individuals who have the qualifications required for the vacant employment. Legislation differs in determining the mechanism for selecting contractors in the field of public employment, and for this reason we will discuss the contracting procedures in both Iraq and Lebanon.

The first requirement: The mechanism and methods of employment contracting in Iraqi legislation

By reviewing the legislation regulating employment contracting in Iraq, we did not find a single specific mechanism that includes all types of employment contracts. They differ in the nature of those contracts and what is stipulated in the legislation that allows the administration to contract according to it, but we can distinguish between two methods, which are:

The first branch: The free choice method for selecting the employment contractor:

Here we find that the administration enjoys, according to the free method, complete freedom in selecting contractors without restrictions or controls. The administration alone has the power to determine the criteria and components on which the selection is based, without being obligated to announce these criteria, nor is it obligated to justify its selection of a category or person from the candidates for contracting ^[1]. This method is criticized for leading the administration to deviate from the right path and represents a violation of the principle of equality and equal opportunities among individuals. Therefore, it is advised not to resort to it except within narrow limits ^[2].

The method of free selection is followed by the administration in selecting senior employees due to the importance of the positions to be filled and what is required of their occupant's trustworthiness, technical ability and political competence. We find this method of contracting in Iraqi legislation, contracting with experts from retirees according to the decision of the dissolved Revolutionary Command Council No. 361 of 1985, which permitted ministries or bodies not affiliated with a ministry to employ retirees who have specialized scientific or technical qualifications, with regular working hours and a fixed wage equivalent to the minimum wage for the profession from which they are appointed, provided that the candidate for the contract meets the conditions necessary for that work ^[3]. We also find this method of selecting retirees in Iraqi Cabinet Resolution No. 280 of 2009, which includes giving powers to ministers or heads of bodies not affiliated with a ministry to appoint experts from among retirees in their departments for a specific salary. Here, the choice is theirs and there are no controls in the method of selection or competition, but rather it depends on the needs of the administrative institution.

The aforementioned decision stipulated that the contract is concluded by a decision of the competent minister or the head of the entity not affiliated with a ministry ^[4], provided that the General Secretariat of the Council of Ministers ratifies the contract if the contract is concluded in accordance with the principles and controls specified in the decision, and the General Secretariat has the right, of course, not to ratify the contract if the administration violates those controls. Although the free choice method gives priority to personal considerations over objective

considerations and opens the way for administrative heads to choose people according to their whims and private tendencies ^[5], this method is followed in contracting with experts in Iraq, as we mentioned above, as the legislation that it built gave absolute authority to the minister or head of the department not affiliated with a ministry to choose what they see fit in the contract.

As a result of the political and economic reality in Iraq, the administration on the one hand and individuals on the other hand may resort to bypassing employment specialization, competence and merit and accepting the recruitment of non-specialists in public employment s through appointment or contracting alike, especially the disproportion between the number of graduates from universities and institutes in each specialization and the real need of state departments for those specializations. Also, the appropriate situation is to appoint or contract with graduates in specializations other than their own, given the spread of unemployment and its negative impact on society. Therefore, the state may resort to contracting through the free method for those reasons, even if that has a negative impact on the administrative and functional system, as it results in the spread of disguised unemployment represented by the huge numbers of employees and contractors in state departments without real work, and it also results in the distribution of administrative work and the concentration of the workforce in city centers at the expense of remote and distant areas of those cities, which leads to obstructing any plan for the comprehensive development of the state ^[6].

The second branch: The restricted method of employment contracting: In order to avoid the negative aspects of the administration's absolute choice of those it wants to contract with, and to apply the principle of equal opportunities and achieve the principle of equality among candidates for contracting, the administration resorts to following certain standards and controls that it adheres to in order to achieve the public interest, as this adherence to the standards is likely to achieve the interest of the public function as well as raise its efficiency while taking into account the interests of individuals seeking public functions through equality among them ^[7].

One of the means or methods used in selecting and accepting candidates for contracting in the field of public service is the preference of qualification, which is that selection is made on the basis of employment qualifications, whether represented by an educational certificate or practical experience. When the number of applicants is more than the required number, which is the norm, of course, the comparison between them is based on the highest qualification or the highest rate in obtaining the same certificate or qualification or the period of experience or other criteria that are determined for comparison between applicants. Since Cabinet Resolution No. (315) of 2019 has adapted the conditions of contractors in a manner that applies to them what applies to permanent staff employees under the applicable laws and decisions, the mechanism for selecting a contractor among those in force for contracting according to Resolution No. 315 of 2019 is represented by the following steps:

First: Forming contracting committees. The Civil Service Instructions No. (119) of 1979 stipulated the formation of appointment committees in the office of each ministry (119)

of 1979^[8], by order of the Minister (or the head of the authority not affiliated with a ministry). In each ministry, there is one or more committees consisting of a chairman whose employment rank is not less than Assistant Director General and two members whose employment rank is not less than Director. This committee is responsible for considering applications submitted for appointment or contracting in accordance with controls attached to these instructions^[9], provided that this committee submits its recommendations in accordance with the procedures specified by law for the purpose of approval by the highest authority of the ministry or department not affiliated with a ministry. The instructions for implementing the federal budget for the year 2023^[10] also stipulated the formation of a committee headed by the governor and membership of the assistant governor and the directors of human resources, accounts, legal and auditing, which is responsible for considering the applications of applicants for contracting. The committee also accepts contracting applications announced according to a form within thirty days of publishing the announcement^[11].

Second: Advertisement: Advertisement is a basic procedure for contracting employment and the administration must take it into account to achieve the principle of equality and equal opportunities among individuals^[12]. The advertisement must include all details of the announced vacant positions. The foundations and controls for filling positions upon appointment attached to the Civil Service Instructions for the formation of appointment committees in the office of each ministry numbered (119) of 1979 stipulated in Article (First) thereof that the advertisement for vacant positions be in a daily newspaper and on the bulletin board in each ministry and in the beneficiary department, provided that the advertisement includes the title of the position, its salary, the department in which the documents to be submitted are located, the amount of the salary, as well as the required qualifications and the nature of the work.

The instructions for implementing the federal budget for the year 2023 issued by the Iraqi Federal Ministry of Finance stipulated that the competent committee must announce on the website and bulletin board a table of the names of applicants for contracting, their academic qualifications, year of graduation, their academic average, and the grade they obtained in the test^[13]. Accordingly, the announcement must be made in the manner stipulated by law. In this regard, the French Council of State distinguished between the essential formalities required in the announcement and the non-essential formalities, the failure of which does not result in nullity, and the administration may overlook the violations related to them under the supervision of the administrative judiciary^[14].

We note that the aforementioned instructions stipulated advertising via electronic websites, as they are more widely circulated than daily newspapers at the present time, which allows everyone to know that there is a need for a employment contract. The aforementioned committee accepts the contracting requests that are posted according to a specific form within a period of 30 days from the date of publishing the advertisement^[15], and the competition depends on specific criteria in these instructions to compare between the candidates for the contract, which are as follows:

Graduation rate: For every higher grade in the candidate's rate, more points are added to him. This criterion is to give preference to competent individuals over others in order to provide the best services to the public service and thus achieve the public interest. The comparison is according to the instructions referred to as follows:

Table 1: Grading System and Corresponding Points

Grade	Points
Excellent	25
Very Good	20
Good	15
Moderate	10
Acceptable	5

Year of graduation: One point is awarded for each year of graduation, not to exceed five points.

Social status of the candidate for contracting: The instructions also added another criterion, which is a social and humanitarian criterion that has nothing to do with competence, which is the criterion of marriage and specifying children, and perhaps the legislator wanted to take into account the social status of the candidates for contracting.

It would have been better to add other criteria such as a certificate of experience in the field of specialization to support the public service with competent elements who have experience in the public and private sectors.

The second requirement

The Lebanese legislator has determined the principles and procedures for employment contracts in accordance with Decree No. (10183) issued on 5/2/1997. According to this decree, administrations adopt the procedures stipulated therein. Otherwise, any contract concluded after the issuance of this decree in which its provisions are not observed shall be considered void and invalid^[16].

These procedures are as follows

1. The administration wishing to contract shall request the special appropriations for contracting in the budget, where this administration must organize a statement specifying its need for this contract and the compensations to be allocated for each contractual capacity.
2. Referring the contracting request with attachments to the Civil Service Board, as the Board is responsible for approving contracting with Lebanese and foreign experts within the limits of the appropriations allocated in the annual budget^[17].
3. Referring the contracting request after reviewing it and ensuring the availability of all documents to the Research and Guidance Department for the purpose of verifying the actual need for the contract requested by the administration for all methods and means of proof that it deems appropriate. It may seek the assistance of the Central Inspection Department to complete its investigation.
4. The investigation must take into account the extent to which the need can be met without contracting by any available or possible means and through^[18]:

A- By transferring employees from the same departments or from one department to another to meet the required need

and to be contracted for. B- By reorganizing the administrative unit within which the contract is to be contracted by forming a committee from the Minister and based on a proposal from the Chairman of the Civil Service Council and the Head of the Central Inspection Department to conduct studies within the administrative unit appointed by the competent ministry or the Civil Service Council Authority or the Inspection Department Authority or the Council of Ministers, and this study addresses the tasks assigned to the concerned administrative units on the one hand and the number of employees required to carry out the tasks and their scientific and behavioral competence on the other hand in order to determine the surplus positions, provided that the committee submits its report on the specified date set by the Prime Minister, and the ministry and the competent department must prepare, in cooperation with the Central Inspection Department, within a maximum period of one month from the date of notification of the committee's report, a table of the names of the unit's employees equivalent to the surplus renewed in the committee's report^[19].

Through other means such as

- Delegation, which is the decision issued by the administration to assign another employment to the employee other than his original employment temporarily, within or outside the administrative unit in which he works, and the other employment is either at the same employment grade or higher, while the employee remains organically linked to his original employer from which he was delegated, such that he receives his salary, allowances and promotion from his original employer^[20].
- Agency: This means temporarily assigning the public employee to occupy an employment other than his original employment, and it is stipulated that the agent may not be appointed except in a vacant employment or in an employment from which the principal is absent, and this condition is essential in the agency system^[21].

Assignment to additional work

The entire file is returned after the investigation is completed to the Civil Service Board, where the Board takes a final decision on the administration's request for contracting in accordance with Article (3) of Article (74) of the Lebanese Civil Service System No. 112 of 1959^[22]. The Lebanese legislator has obliged the public sector departments requesting the contract to contract as a result of a competition conducted by the Civil Service Board in accordance with the applicable laws^[23]. The competition method was adopted for appointment to the positions of the fourth and third categories on the permanent staff in Lebanon, and therefore appointment to these positions is only made by passing the competition, and the administration must respect the sequence of success rates in it^[24]. This method is the normal path followed by most countries in the world with regard to appointment, as it is one of the best ways to fill a public position, as it achieves the principle of equal opportunities and equality between individuals nominated to fill public positions, and it also achieves another goal, which is to lead to the arrival of those who are best in filling a public position, whether through appointment or contracting.

Section Two

Administrative Control of Contracting Procedures in Iraq and Lebanon

Administrative control is a basic function and an important element of the administrative process, which is defined as "the process of observing and modifying organizational activities in a way that results or aims to facilitate the achievement of organizational goals"^[25]. The contracting that the administration carries out with individuals, as one of the activities of the administration, is subject to administrative control in all its types, whether internal or external control, and this is what we will discuss in administrative control of employment contracting procedures in both Iraq and Lebanon.

The first requirement: Internal administrative control over employment contracting in Iraq and Lebanon

Internal administrative control is characterized by being a self-control emanating from within the institution, practiced by the administration to reveal the extent of the legitimacy of decisions and their compatibility with the law, as well as the extent of the suitability of the decision taken by the administration with its objectives. The importance of this type of control is that it allows the administration to reconsider, correct or cancel the decision, in order to preserve the prestige of the administration after discovering that its decision is illegal or inappropriate^[26]. Internal administrative control is of two types:

The first section: Internal administrative self-control: It is the control that the administration exercises on its own initiative over the procedures related to contracting, whether this control is carried out by the highest head of the department, the direct manager, or the concerned employee, or the control is exercised by a committee authorized to consider contracting requests, whose mission is to review the procedures and actions accompanying the contracting process, and to reconsider those procedures before concluding the contract in a way that ensures the legitimacy of those procedures and their non-violation of the law. And the administrative self-control is either a state control, where the member of the administration cancels, suspends, or amends the contract if he finds an error in its procedures without the need to submit a grievance from the person harmed by those procedures^[27]. One of the applications of this control in Iraqi legislation is the control carried out by the committee that is responsible for considering the requests submitted for contracting according to the contracts granted to the governorates not organized in a region, and formed under the chairmanship of the governor and the membership of the deputy governor and the directors of human resources, accounts, legal, and auditing^[27].

Internal administrative self-control can also be presidential control, which comes after state control, and is meant to be the control that the president carries out over the work of his subordinates. Presidential control is an aspect of the responsibility of the highest administrative president, regardless of his position within the administrative structure. The president derives his jurisdiction in the field of control from his administrative and legal authority based on the idea of the regularity of employees in the central administrative system of the base of the administrative pyramid and what follows from this rule of the necessity of the subordinate's subordination to his president^[29].

This control is characterized as comprehensive control because it is directed at the persons and work of subordinates. The subordinate is subject to his superior in everything related to his person as a public employee in the public sector, as well as with regard to his work and the administrative actions issued by him in relation to his exercise of the powers specified for his job, whether the superior carries out this control himself or through someone he authorizes or through his assistants. The responsibility of control may be entrusted to a special administrative committee whose mission is to monitor the work of the administration, and then cancel the illegal decision or inform the administrative superior of what he must do and inform him of administrative and legal violations so that he may act in the manner he deems appropriate ^[30].

The most important elements of self-control that supervise job contracting in Iraq are

Supervision of ministers and those in their position: The supreme leader represented by the minister, the head of the authority, or the governor plays an important role in supervision of employment contracting procedures. The minister is the first person responsible for achieving integrity within the limits of his ministry by seeking the assistance of the relevant supervisory bodies, as the concerned minister takes decisive measures against anyone proven to be negligent or corrupt by referring him to the Integrity Commission. As for the governor, he is also, in accordance with the powers granted to him under the Law of Non-Regional Governorates No. (21) of 2008, to supervise the operation of public facilities, inspect them, and supervise them within the limits of his governorate ^[31]. Thus, the governor has an effective supervisory authority by issuing directives, instructions, and orders that aim to avoid errors or deviations while finding appropriate ways to treat them.

The heads of the contracting bodies shall impose control over the contracting procedures through the powers granted to them under the law. The control of the head of the contracting body shall be through the formation of committees to follow up and monitor the transparency of the contracts concluded by the administrative bodies affiliated with him.

Supervision of legal and regulatory departments: The legal and regulatory departments in the contracting authorities have an important role through the participation of representatives of these departments in the committees specialized in considering the applications of contracting applicants. This is what is stipulated in Instructions No. (2) of 2023, which facilitates the implementation of the provisions of Clause (Second) of Article (66) of the Federal General Budget Law for the years (2023, 2024, 2025) by involving the directors of legal and regulatory departments in the governorates not organized in a region in the committee formed pursuant to these instructions to consider contracting applications in order to ensure the implementation of the contract in accordance with the controls and instructions. The Legal Department also has a role through the participation of its members in the investigative committees formed on the violating employee and the recommendation to the administrative head to issue the appropriate penalty in accordance with the State and Public Sector Employees Discipline Law No. (14) of 1991

as amended and the recommendation to refer him to the Integrity Commission in the event that the violation, which constitutes a criminal offense, is proven to have been committed.

Presidential control is characterized by the following characteristics ^[32]:

- a) It is an internal self-control carried out by administrative bodies, as it monitors itself on all the actions issued by it in terms of legitimacy and appropriateness.
- b) It is an original and practical function as it is a duty that falls on the shoulders of the administrative head who exercises his supervisory powers.
- c) It is administrative control as it is derived from the persons in charge of it within the powers granted to them by law.

The presidential self-control aims to achieve legitimacy by achieving the legal and regulatory legitimacy of the work carried out by the administration, including the contracts it concludes with individuals. It also aims to achieve efficiency and effectiveness at the level of administrative work performance in order to achieve the public interest. Presidential control also aims to achieve realistic suitability and to verify the compatibility between administrative work and the practical and realistic circumstances surrounding the administrative decision or contract.

One of the applications of the presidential self-administrative control is the approval of the Council of Ministers of contracts concluded by ministries and entities not affiliated with a ministry with retirees in the capacity of an expert in accordance with Cabinet Resolution No. (280) of 2009 to ensure that the correct legal procedures are followed during the contract (). Likewise, the approval of the Lebanese Petroleum Authority Board and the approval of the competent minister of the contracts concluded by the head of the authority are a form of presidential self-control stipulated by the Lebanese legislator ^[34].

Second Section: Internal administrative oversight based on a grievance from the candidate for contracting:

This type of oversight is carried out by the administration not on its own initiative, but rather based on a grievance submitted to it by the person harmed by the failure to properly implement the contracting procedures or by the fact that he was wronged by the procedures or actions taken by the administration during the contracting period. This type of oversight is characterized by the ease of its procedures and is less expensive and time-consuming than judicial procedures. However, it is criticized for representing a sufficient guarantee for the contractor, as it is possible that the administration will not be neutral and will be both an opponent and a judge at the same time ^[35]. A grievance means "a complaint or petition submitted by the interested party to the competent authority, in which he expresses his objection to the decision and requests its withdrawal or cancellation" ^[36]. The administrative grievance is submitted by the candidate for contracting to any of the following administrative bodies ^[37]:

- The grievance may be submitted to the same employee who issued the decision in order to withdraw, cancel or amend it, and in this case, it is called a state grievance.
- The grievance may be submitted to the administrative head of the employee who issued the decision in order

to cancel, withdraw or amend the employee's decision, and here the grievance is called a presidential grievance. This type of grievance is of two types: a single-level grievance, which is the grievance submitted to the administrative head of the employee who issued the decision being complained about, or a multi-level grievance, in which case the complainant can submit his grievance to multiple levels in the administrative ladder of the concerned institution.

- The grievance may be submitted to a committee formed by law for this purpose in order to cancel, withdraw or amend the decision of the employee who issued the decision.

The following conditions must be met for the candidate to submit a grievance

1. The grievance must be submitted by the concerned party whose decision has affected his exclusion from the competition for contracting or affected his legal status. Therefore, the grievance submitted by a third party cannot be considered even if it is directed at the same subject, since the grievance request must include the name of the complainant, the date of issuance of the decision and the subject of the decision being appealed.
2. The grievance must be submitted to the competent administrative authority in order to review and reconsider the decision or to its administrative head.
3. The grievance against the decision must be useful and enable the administration to amend, cancel or withdraw its contested decision.
4. The grievance must be clear, explaining the shortcomings of the employee who issued the decision that would harm the candidate for contracting. The grievance must be specific and conclusive in its meaning so that the administration can understand and know the reason for the objection.
5. The grievance must be against a final administrative decision that was actually issued by the administration and that meets all its requirements.
6. The grievance must be submitted within the period specified by law, otherwise the grievance is considered void and has no legal effect.

The administrative grievance is sometimes a condition for accepting a lawsuit in Iraqi legislation, whether the lawsuits are filed before the Civil Service Court or before the administrative courts. It is a procedure required by law in some cases in the hope of avoiding the judiciary from considering it and resolving it by the administration itself [38].

A candidate for contracting who has been harmed by a decision of the administration to deprive him of obtaining an employment contract may submit a grievance either to the employee who issued the decision, to his direct supervisor, or to his supervisors within the hierarchy in order to achieve justice.

The second requirement: External administrative oversight of contracting procedures in Iraq and Lebanon: As a result of the expansion of the work and tasks of the administrative authorities and the increase in their activities, as well as the defects that indicate the work of internal oversight, which sometimes becomes incapable and unable to exercise oversight in a correct and satisfactory manner that achieves the desired goal, which is to achieve

the principle of legitimacy, countries have therefore resorted to creating specialized oversight bodies or agencies independent of the work of the administrations that issue administrative decisions, although these bodies, in the prevailing opinion, are considered administrative bodies and the oversight they exercise is of the type of administrative oversight [39]. Here we will discuss the independent bodies that exercise oversight of the contracting procedures carried out by public sector administrations in both Iraq and Lebanon.

Section One: Oversight of Independent Bodies over Job Contracting Procedures in Iraq:

Oversight bodies in Iraq exercise oversight over all actions carried out by public sector departments to ensure the legitimacy of those actions, including, of course, job contracting procedures. Among these independent oversight bodies are:

Oversight of the Integrity Commission: The Integrity Commission in Iraq is one of the independent bodies stipulated in the Constitution of the Republic of Iraq for the year 2005 [41], which was established pursuant to the dissolved Coalition Authority by Order No. (55) of 2004, whereby the Integrity Commission has an independent legal personality as well as financial and administrative independence, provided that it is subject to the Council of Representatives [41]. The aim of establishing this body was to implement and apply the laws that combat administrative corruption and public service standards in Iraq, as well as to propose the necessary legislation for that, in addition to practicing awareness initiatives aimed at educating the public in order to strengthen its positions demanding the creation of honest and transparent leadership.

The Integrity Commission has important powers granted to it by the legislator in order to ensure the performance of its supervisory duties in combating administrative and financial corruption in public sector departments with the aim of eliminating it [42]. In this study, we limit ourselves to the powers related to the supervision of job contracting procedures in the public sector departments under investigation, and the most important of these powers are:

Criminal investigation into cases of administrative and financial corruption associated with job contracting procedures:

The investigation within the framework of criminal law is "multiple procedures taken by the competent authority in order to scrutinize the available evidence and attempt to collect new evidence with the aim of proving or denying the crime, and attributing it to the accused before the case reaches the court" [43]. The Iraqi legislator has granted the Integrity Commission the authority to investigate criminal cases, which is a power granted by the legislator to the Commission and not to other independent supervisory bodies [44], but within the framework of specific crimes related to administrative corruption, and the most important of these crimes are those related to breach of job duties, namely the crimes of bribery, embezzlement, and the public employee exceeding the limits of his job. The investigation into these crimes is undertaken by one of the Commission's investigators, and the investigation conducted by the Integrity Commission is preferred over the investigations conducted by other competent investigative bodies, such as military investigative bodies or those

affiliated with internal security. These bodies must transfer documents, papers and data to the Integrity Commission whenever the Commission requests it ^[45]. If the investigating judge initiates investigation procedures in cases within the jurisdiction of the Integrity Commission through police stations, he must notify the Integrity Commission's legal department of the investigation details immediately and upon its request. The Commission also has the right to appeal the rulings and decisions issued by the investigating judge through the Court of Cassation ^[46]. The Court of Cassation in Iraq has issued a legal principle stipulating that the Integrity Commission be a party to the administrative and financial corruption cases stipulated in Article 1 of the Integrity Commission Law, even cases that are being investigated by the Commission's investigators, and it has the right to appeal the decisions and rulings issued in them ^[47]. However, the Federal Qadisiyah Court of Appeal ruled in one of its rulings that was contrary to the aforementioned principle, which stated: "Upon examination and deliberation, it was found that the appeal was submitted by the Chairman of the Integrity Commission in addition to his position, in violation of the provisions of Article (249/A) of the Code of Procedure, which specified the parties that have the right to appeal decisions and rulings, since what is stated in Article (14/Second) of the Integrity Commission Law No. (30) of 2011 pertains to lawsuits that the Commission did not investigate, and thus the Integrity Commission does not have the status of a party in this lawsuit since the investigation is being conducted by the Integrity Commission investigators, and the Commission has the right to appeal those decisions in corruption cases that it did not investigate, and thus the appeal was submitted by a party that is not competent to submit it, so the court decided to reject the appeal in form..." ^[48].

Through what was mentioned, we note the Integrity Commission's supervision of the contracting procedures carried out by administrations in the public sector, by following up on any cases of administrative corruption that may accompany these procedures in the stages of concluding the contract, such as bribery crimes or exploitation of public office, which are common crimes that individuals nominated for contracting may resort to in order to obtain a job opportunity, especially in light of the spread of unemployment in society, and as a result, the Integrity Commission undertakes the investigation of those accused of the crimes mentioned above.

Investigation and monitoring in order to uncover cases of corruption that accompany job contracting procedures: This is represented in monitoring the legality of the actions and decisions issued by public sector departments linked to ministries and bodies not linked to a ministry and governorates not linked to a region and the extent of their commitment to the standards of integrity and transparency in procedures, through cooperation with other oversight bodies ^[49]. The Operations Division of the Integrity Commission is responsible for collecting information on crimes related to administrative and financial corruption and arresting those involved in these crimes in flagrante delicto ^[50].

Ministries and bodies not affiliated with a ministry have been sending controls for contracts that are subject to the Integrity Commission and a specific agency to uncover cases of corruption in order to achieve the goals for which

they were established to conduct them to the Integrity Commission in order to verify that those agencies follow integrity and transparency in their procedures.

This agency has been established, as the legislator has granted the agency means represented by specific powers in order to uncover cases of administrative corruption, including, of course, cases of corruption that accompany job contracting procedures. The most important of these means are:

Using scientific progress means: Article (12) of the current Integrity Commission Law states that "The agency shall use scientific progress means, investigation and investigation devices and machines, and evidence collection, and its head shall provide the requirements and requirements for their use in the field of uncovering corruption crimes, preventing them, or prosecuting their perpetrators." Among the modern and unconventional means that the Authority may resort to in order to uncover cases of corruption and crimes arising from them is through audio or video recordings, since the perpetrators of these crimes usually conclude their deals through communication devices, especially in bribery crimes ^[51].

Although the First Criminal Trials Law No. (23) of 1971, as amended, did not allow the use of these methods to prove crimes, the Constitution of the Republic of Iraq for the year 2005 allowed the use of these methods when necessary and after obtaining judicial permission for that ^[52].

Obligating all public sector departments to provide the Integrity Commission with documents and papers related to the cases being investigated ^[53]. Thus, the Commission has sufficient information about the case to be investigated to be able to impose its control over the procedures taken by government institutions and to ensure their legitimacy in terms of their compliance with the law.

The Integrity Commission investigators, under the supervision of the investigating judge, may summon witnesses, interrogate the accused in corruption cases, and appoint experts. The Commission investigator has all the powers granted to the investigator in the courts ^[54]. The Integrity Commission exercises its duties in monitoring the employment contracting procedures and the decisions resulting from them after receiving the documents and files referred to it by the Financial Supervision Bureau, where the External Streaming Department exercises verification of the subject by studying all priorities, analyzing those priorities, providing comments on them, and returning them to the party that sent them to take the necessary action in light of the comments recorded in the report. From the above, we note that the Integrity Commission has the authority to directly monitor employment contracting procedures, especially if those procedures include a crime such as bribery.

Auditing the Financial Supervision Bureau: The Financial Supervision Bureau is one of the oldest auditing bodies in the modern Iraqi state, which was established pursuant to the repealed Law (Auditing Public Accounts) No. (17) of 1927. Laws have followed that regulated the work of the Financial Supervision Bureau in Iraq, the latest of which was the Federal Financial Supervision Law No. (31) of 2011 in force, which was amended pursuant to Law No. (104) of 2012, which added to the Bureau's tasks the authority to investigate cases in which the Council of

Representatives requests investigation. The Financial Supervision Bureau conducts external auditing of all actions, decisions and actions carried out by public sector departments, including, of course, employment contracting. This auditing is a subsequent auditing, as the Bureau audits the financial auditing of all activities of the departments subject to its auditing, to verify the legality of the administration's work from a financial and administrative perspective in terms of its compliance with the law.

The control carried out by the Financial Audit Bureau is called post-control; as it monitors the actions of the administration after they occur or after the encroachment on public funds has occurred (). The Bureau exercises its control over all financial and administrative actions, including the appointment and contracting procedures carried out by public sector departments subject to the Bureau's control, through post-control, i.e. after the administration has made its decision to contract. The scope of the Financial Audit Bureau's control over contracting procedures focuses on the contracting mechanism, which includes studying how the human element is used, as it is the most important element in production. Federal Financial Control Law No. (31) of 2011 defined the powers of the Financial Audit Bureau to contribute to the process of control and auditing, as well as providing opinions to the entities subject to it and preserving public funds from corruption and poor planning that may be practiced by public sector departments in their procedures, including job contracting procedures ⁽⁵⁶⁾. The powers of the Financial Control Bureau include reviewing all records, documents, decisions and transactions related to the tasks of control and auditing, as well as requesting all clarifications and information from all administrative and technical bodies in order to ensure the performance of the Bureau's tasks ⁽⁵⁷⁾.

In the event that the Bureau discovers violations, it requests the Integrity Commission (and previously the offices of the Inspectors General before its cancellation) to conduct an investigation into these violations and work to remove them and end their effects, which is what is included in Article (14) of the aforementioned Federal Financial Supervision Bureau Law in force. The Bureau also exercises oversight over the entities specified by the law, which are public sector departments and any entity whose law stipulates that it is subject to the Financial Supervision Bureau. The scope of oversight exercised by the Bureau over employment contracting procedures is to determine the entities competent to contract to ensure the integrity of the contracting conditions and their compliance with the law and to ensure that the administration does not exceed the controls related to contracting procedures and conditions. Cabinet Resolution No. (315) of 2019 included texts that give the Financial Supervision Bureau the following powers:

1. Follow up the work and procedures of ministries and entities not affiliated with a ministry in localizing the salaries of contractors and daily workers ⁽⁵⁸⁾.
2. Inventory the number of daily workers working in ministries and entities not affiliated with a ministry in order to convert them to contracts ⁽⁵⁹⁾.
3. Limit the number of contractors working in ministries and entities not affiliated with a ministry and governorates not organized in a region and classify them according to educational attainment, monthly salary amount, appointment orders and classify them

according to years of service, as well as coordination between them and these entities for the purpose of providing the Retirement and Social Security Department with electronic or paper data in order to complete the full census of the numbers of contractors and daily workers.

A portion of the annual general budget is allocated for the purpose of appointments, whether they are contracts or permanent appointments. The Financial Supervision Bureau exercises its oversight, which consists of auditing the contracting procedures and conditions specified in the annual budget law and the extent to which they are available to applicants. In the event that the administration detects a violation of these procedures, the Bureau contacts the Integrity Commission to conduct an investigation into these violations, remove them, and take all legal measures against the violators if their negligence in this regard is proven ⁽⁶⁰⁾.

The Financial Control Bureau may request the minister or head of the entity not affiliated with the relevant ministry subject to the control of the Bureau to take legal action against the employee who violates the instructions related to contracting, by referring him to administrative investigation and withdrawing his hand or initiating a criminal case against him if his violation constitutes a criminal offense ⁽⁶¹⁾.

It is worth noting that the means adopted by the Bureau in auditing and investigation are the control reports that contain the observations and violations indicated by the Bureau, and they are of two types: the first is the annual reports on the work and performance of ministries and bodies not affiliated with a ministry and governorates not organized into regions, and submitting them to the House of Representatives, including proposals and observations related to the financial, economic, administrative and legal situations ⁽⁶²⁾. In addition, the Bureau submits a report to the House of Representatives on every important matter related to control and evaluation of administrative, financial, economic and legal performance, and it may publish what it deems appropriate with the approval of the House of Representatives ⁽⁶³⁾.

The other type of reports are the initial reports that include the work and observations of the Federal Financial Supervision Bureau regarding the employment contracting that were discovered during the supervision of operations related to administrative bodies. These reports are prepared in time periods that are consistent with the plan for preparing the accounts on the one hand and according to the nature of the operations that the Bureau is monitoring on the other hand ⁽⁶⁴⁾. We note that the powers granted to the Federal Financial Supervision Bureau by the legislator are among the most important distinguishing features of the Bureau and distinguish it from other supervisory authorities in order to achieve flexibility and effectiveness in practicing its supervisory and auditing activity. Despite this, the work of the Financial Supervision Bureau is not free from obstacles that negatively affect the performance of its supervisory work in general and the supervision of job contracting procedures in particular. The most important of these obstacles are ⁽⁶⁵⁾:

1. Failure of public sector departments subject to the Bureau to adhere to the recommendations issued by it regarding violations discovered during the audit of contracting procedures.
2. Failure of institutions and public sector departments to respond to the reports submitted to them by the

- Financial Control Bureau, which constitutes a violation of Article (2- Fourth) of the Federal Financial Control Bureau Law No. (31) of 2011, as amended.
3. Some public sector departments cover up for persons who violate instructions and do not present them to the Bureau.
 4. The highest authority (the Minister) is not informed of the results of auditing work for the purpose of following up on the work of his ministry and its affiliated formations, since the answers issued by the lower administrative bodies weaken the control of the concerned minister over violations that may occur during the job contracting process.

Section Two: External control over job contracting in Lebanon: A number of institutions and bodies are responsible for monitoring the procedures of external control over the work of departments in the public sector, including job contracting. These bodies or institutions include:

The Civil Service Council's supervision of employment contracts: The Federal Service Council was established by Legislative Decree No. (114) of 1959. Its powers include all public administrations and institutions and their employees, major municipalities and municipalities subject to the government's supervision by a decree issued by the Council of Ministers, with the exception of the judiciary, the army, civilian personnel attached to the army, the Internal Security Forces, Public Security, and the Customs Police ^[66]. The Council exercises the powers granted to it by laws and regulations related to the appointment, promotion, compensation, transfer, discipline, and dismissal of employees and all their personal affairs. The Council also seeks to raise the behavioral level of employees, especially by preparing them for the job and training them during service ^[67]. One of the issues related to the Council is approving the contracting process with Lebanese and foreign experts within the appropriations allocated in the annual budget ^[68].

The Civil Service Council's supervision of the contracting procedures in the Lebanese public sector is represented by referring the contracting request from the party wishing to contract, and the Council refers the request with all its attachments after reviewing it to the Research and Guidance Department in order to verify the actual need for the contract ^[69].

The Central Inspection Authority's supervision of contracting procedures: The Central Inspection Authority was established by the Lebanese legislator pursuant to Decree (115) of 1959, as amended. The Authority consists of two departments: the Central Inspection Authority and the Research and Guidance Authority. The Central Inspection Authority is part of the Administrative Inspection Authority and the Technical Inspection Authority. The Central Inspection Authority has a management body consisting of the Head of the Central Inspection Authority as Chairman and the membership of the Head of the Research and Guidance Authority and the most senior inspectors general as members of the body ^[70].

The tasks of which were defined as monitoring and inspecting all public sector departments and their employees. The Authority consists of the Head of Central Inspection, the Financial Inspector, and the General Educational Inspector. The Central Inspection Authority is an administrative body with a judicial character concerned with oversight. This was confirmed by the Lebanese State Council in one of its rulings, which reads: "And since it is

clear from the above that the manner in which the Central Inspection Authority is formed, when it exercises its powers in accordance with the provisions of Article (19) of Decree 115 of 1959, as amended, it is considered an administrative body with a judicial character" ^[71]. The Research and Guidance Department, after receiving contracting requests from administrative bodies wishing to contract, verifies the need of these departments for contracting by all methods and means that it deems appropriate for proof. The Research and Guidance Department refers the contracting request files received from the Civil Service Council to the Central Inspection Authority to assist it in reviewing the job contracting request files ^[72]. The Central Inspection Authority has the authority to combat corruption in the field of public service by issuing decisions in numerous files. It may impose disciplinary penalties on violating employees or refer them to the Audit Bureau, the Supreme Disciplinary Authority, or the Public Prosecution Office of Cassation ^[73].

The Audit Bureau's control over employment contracting procedures:

The Audit Bureau in Lebanon is responsible for the financial judiciary by monitoring the use of public funds in accordance with regulations and instructions and prosecuting violators of the use of those funds. It oversees public funds, and the tasks of this Bureau were determined by Law No. (82) of 1983 Regulating Accounting, which stipulates "monitoring the use of these funds and the extent to which this use applies to the applicable laws and regulations, deciding on the validity and legality of its transactions and accounts, and prosecuting those responsible for violating the laws and regulations related to them" ^[74]. It is worth noting that the Audit Bureau's control over public funds is prior control in order for the Bureau to be able to tighten its control over administrative operations by prior approval of those operations in the event that they comply with the laws and regulations, while reserving for itself the subsequent control in holding accountable the employee who violates those laws.

The Audit Bureau's oversight is a guiding oversight that aims to guide public sector departments to the right path so that they can implement transactions in a manner that is consistent with the law. The law makes prior oversight by the Bureau an essential procedure ^[75]. Any transaction that is not subject to prior oversight is considered invalid and the public employee is prohibited from implementing it. Otherwise, he will be subject to punishment ^[76]. This gives an important result, which is to stop wrong procedures, whether they are administrative decisions or contracts. One of these contracts that are subject to the Bureau's oversight is the employment contract.

Conclusion

After completing the research, we will review the most important results that were reached, as well as mention some recommendations that are necessary to be put forward, hoping that the Iraqi and Lebanese legislators will pay attention to avoiding the loopholes in the legislation regulating employment contracting with regard to the mechanism for selecting the employment contractor from among the candidates for contracting.

Results

1. There is no unified mechanism in Iraqi legislation for selecting contractors that guarantees the achievement of the principle of equality and equal opportunities, and the same is the case in Lebanon.

2. Political, tribal and partisan tendencies play a role in selecting contractors in both Iraq and Lebanon, far from the correct criteria that the administration must follow.
3. Contracting in Iraq as well as in Lebanon is not based on the actual need of public sector departments, but rather contracting is often the result of political or popular pressures to absorb the phenomenon of unemployment.
4. There is no direct role for regulatory bodies, whether for internal oversight or oversight of independent bodies on the process of selecting contractors according to the mechanisms stipulated by law.

Recommendations

1. A law must be enacted to regulate employment contracting in Iraq and Lebanon, including all contracts conducted by public sector departments, including a specific and unified mechanism for explaining the mechanism of employment contracting.
2. We recommend that contracting be in accordance with the actual needs of public sector departments.
3. The role of internal oversight and independent oversight bodies must be activated to prevent the administration from exploiting its influence in violation of the mechanism set by the legislator.

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