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Role of Public Authority in Protecting the Interests of Parties in the Contractual Relationship Between the Academic and the University or Private College

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Abstract

The contractual relationship between the academic and private universities and colleges, like other contracts, does not lack the non-realization of the interests of its parties; assuming the existence of disparities between the legal positions of the parties in this relationship. One of them may enjoy a special economic position, making him impose whatever arbitrary terms he wishes on a party driven by economic need to succumb to them and accept them with the least rights. This led the public authority (Ministry of Higher Education and Scientific Research), with its supervisory and follow-up authority over these universities granted by the Private Higher Education Law No. 25 of 2016, to take regulatory solutions that somewhat contribute to achieving the common interest of the parties in the contractual relationship, and at the same time, guarantee all their rights, especially the rights of academics as they are the direct link for higher education institutions to provide their academic activities.

Keywords: *Academic, Private, Regulatory, Conditions, Supervisory Authority*

1 Introduction

1.1 Importance of the Study

Academics are an essential segment in society, burdened with delivering educational tasks, one of the services that serve the public good. Universities and colleges, both government and private, in conjunction with their teaching staff, provide educational services in pursuit of public interest. What interests us in this context are private universities that contract with their academic staff to achieve the objectives for which they were established (Draper & Schellenberg, 2022). The success of these contractual relationships leaves a positive impact in guaranteeing the achievement of the goals of private universities and colleges, in addition to realizing public interest, which is one of the essential concerns of the public authority (the state) and the legislature. (Altememy et al., 2023)

1.2 Problem Statement

We are well aware that the Iraqi Ministry of Higher Education and Scientific Research is one of the executive authorities in the state, which undertakes supervisory, follow-up and oversight

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tasks on government and private universities and colleges under the authority granted to it by the legislator (Khamzin et al., 2022). However, what concerns us in our study framework is whether this ministry plays a role in supervising and overseeing the performance of private universities and colleges in their tasks in the sector of higher education and scientific research. Can this role reach the extent that it can achieve a balance in the interests of the parties in the contractual relationship that occurs between the academic and these universities? Can it ensure a legal-economic balance for that relationship? What mechanisms can the ministry, as a public authority, resort to in order to achieve this? These questions will be the focus of discussion in this study until we reach the conclusions that we will arrive at (Tamba & Widnyana, 2022).

1.3 Research Methodology

The analytical approach was followed, through presenting the legal texts that came with the provisions of the Private Higher Education Law No. 25 of 2016, and the comparative laws that regulated the provisions of private universities and colleges, and discussing them in order to reach the required treatment within the general framework of the study (Jiayao et al., 2023).

1.4 Research Structure

To encompass the topic from all sides, we divided the study into two demands. The first demand: Arbitrary conditions, which includes two branches. The first branch examines the meaning of arbitrary conditions, and the second branch discusses the consequences thereof. The second demand is titled: Regulatory Regulations, and includes two branches. In the first, we study the internal systems, and in the second: regulatory decisions (Wang et al., 2022; Afzal et al., 2022).

2 Arbitrary Conditions

Sometimes the obligations of one party in a contractual relationship might become burdensome due to the unilateral control of the other more powerful or efficient party in formulating a contract that includes unjust terms, also known as "arbitrary conditions" (Agussalim et al., 2022). These could alleviate its contractual obligations or might even impose new ones, resulting in an imbalance between the interests of the parties involved.[1] The legislature does not stand idle, but rather plays a prominent role in correcting this imbalance and mitigating it to protect the interests of the parties in the contractual relationship, to ensure its continuity and achieve its objectives (Solikhah & Budiharso, 2022). We notice this within the framework of contracts of teaching staff with private universities. Therefore, we divide this Topic into two sections. In Section One: We examine what is meant by "arbitrary conditions", and Section Two: We investigate the implications that follow from them, as follows:

2.1 What is Meant by Arbitrary Conditions

At the moment of its formation, a contract might contain - or when organizing or executing obligations between its parties, and the consequences resulting from non-implementation - unfair conditions that burden one of the parties at the expense of the other. Thus, it is necessary to know what is meant by them, and what made them carry this description. Accordingly, we divide this Section into two sections, the first: The jurisprudential definition of the arbitrary condition, and the second: We examine the legal definition of the arbitrary condition (Karsten & van der Bank, 2022).

[1] Marzouk, M. M. S. (2014). Unfair Contractual Terms. *Journal of Legal and Economic Research*, (56), 962.

2.1.1 Jurisprudential Definition of the Arbitrary Condition

The jurisprudential definitions of the arbitrary condition have varied. Some have defined it as a condition in the contract that results in a clear imbalance between the rights and obligations of both the professional and the consumer, which results in rewarding the professional with an advantage due to his use of his economic power against the other contracting party, the consumer.[1] Others have defined it as the condition that results in a contractual imbalance in favor of the professional, which is imposed on the other party who has no experience, or the contractor who is in a position of technical, legal, or economic inequality against the other party.[2] Even French jurisprudence defined it as: "A condition that is pre-drafted by the economically powerful party, which allows him to obtain a gross advantage from the other party."[3]

Based on the above, the aforementioned jurisprudential definitions have focused on consumer contracts, and contracts that include the economic, technical, and scientific power of one of its parties, which can create a relationship between the strong and the weak, and make the positions of both parties unequal, thereby achieving a privilege for one at the expense of the other.

2.1.2 The Legislative Definition of the Arbitrary Condition.

The term "arbitrary conditions" is widely used in Iraqi legislation,[4] despite lacking a definition from the Iraqi legislator and most of the comparative civil legislations. Its definition is often found in laws relating to consumer protection, amidst the growing legislative desire to provide protection for consumers in most countries. Contemporary legislations are tending to directly intervene to prohibit certain conditions that appear to be arbitrary in themselves in a specific type of contracts or a specific pattern of their preparations.[5] The French legislator has defined the arbitrary condition in a comprehensive and clear way, stating: "In contracts concluded between professionals and non-professionals or consumers, the conditions that cause damage to non-professionals or consumers, and a blatant imbalance between the rights and obligations of the contract parties are considered arbitrary".[6] Despite the absence of a legislative definition for arbitrary conditions, the reason for this is due to the novelty of the idea on one hand, and on the other hand, the legislator's avoidance of engaging in definitions that seem to be the work of jurisprudence. Moreover, the issue of whether or not there is an arbitrary condition is linked to the disparity in economic power or technical competence of the parties to the contractual relationship. This means: there is no need to raise the issue of arbitrary conditions in contracts where the parties are almost in the same position in terms of economic power, as they are more capable of caring for their interests, preserving their rights, and if they neglect this, they can only blame themselves.[7]

2.2 The Effects Resulting from Arbitrary Conditions

The scope of arbitrary conditions is no longer confined to contracts of adhesion but has extended its influence to all consensual contracts. This is considered a serious matter that has a significant impact on the interest of the contract parties and leads to disparity in the legal

[1] Rabahi, A. (2008). Impact of Economic Dominance on Imposing Unfair Terms in Algerian and Comparative Law. *Journal of North African Economics*, (5), 346.
[2] Mahy El-Din, M., & Salim, I. (2007). Impact of Economic Domination on Contractual Balance. Faculty of Law, University of Al-Monofia, 9.
[3] Calais-Auloy, J., & Temple, H. (2015). Droit de la consommation. Dalloz.
[4] Articles (167) and (985) of the Iraqi applicable Civil Law are considered.
[5] The same applies to consumer contracts and model contracts, as cited from Jamei, H. A. (1990). The Effect of Inequality between Contracting Parties on Contract Terms. 259.
[6] Abdel-Salam, S. S. (1988). Contractual Balance within the Adhesion Contracts. Dar Al-Nahda Al-Arabiya, Cairo, 50.
[7] Al-Jumaili, S. B. (2002). Unfair Terms in Contracts. PhD Thesis, Faculty of Law, University of Al-Nahrain, Sudan, 12.

positions between the contracting parties as a result of one party imposing arbitrary conditions on the other.[1] This could be by exploiting his economic position as in contracts of adhesion or due to the necessity and strong desire of the contractor for a particular job or sale, imposing an arbitrary condition in order to gain an advantage that puts one party at the mercy of the other.[2] We may wonder, where did this power or dominance or economic position come from?

It is certain to find its causes, which could be economic or technical reasons. The economic reasons have their effects in terms of the diversity of goods, services, and contracts, as the difference has become vast between the parties in terms of capability and experience in the fields of contracting, and the technical components of the contract. This, in turn, led to the emergence of a new type of contractual relationships, resulting in an imbalance between the parties, which has forms and faces previously unknown. On the other hand, there are technical reasons, which are manifested through the economic and social developments that have produced new contractual forms. These forms are almost devoid of free discussion between their parties. Many contractual methods and means have appeared, especially with the increase in the number of projects and the diversity of transactions.

Each day, a company owner, factory, institution, or merchant needs to contract with several individuals without discussing each condition of the contract with everyone who applies to contract with them. They resort to using standard contract forms, whose conditions are almost non-negotiable, thus, they impose any conditions they want. Naturally, the more economically capable contractor's monopoly of drafting the contract leads to perpetuating the phenomenon of arbitrary conditions that find their place in contracts of adhesion.[3] These allow the professional or dominant party to lessen their contractual obligations while overburdening the one who joins the pre-prepared contract with new obligations or intensifying their original obligations.[4] It is worth noting that the reasons mentioned earlier have broadened the scope of the arbitrary condition, which is no longer limited to consumption contracts only or to certain individuals, but has become a pervasive phenomenon associated with the imbalance between the parties of the contractual relationship. Regardless of the nature of the contract, whether it's a negotiation contract - where the freedom of the two parties' will is manifested - or a contract of adhesion - where the recipient submits according to the conditions set for contracting without bargaining between them due to severe need or the monopolization of the subject of the contract by the obligor. This is also true whether it's a consumption contract or a work contract.[5]

It is noteworthy that contracts of subjugation require a monopoly and economic superiority in order to be recognized as such,[6] in addition to being based on a set of prerequisites, such as that one of the contracting parties is in an economic position that allows him a legal or actual monopoly[7] that gives him clear and continuous economic dominance over those he contracts

[1] The phenomenon of Adhesion emerged at the beginning of the last century as a result of the economic conditions produced by the economic revolution. Contracting became the acceptance of conditions dictated by one party for the other party to accept without discussion, as quoted from Dr. Waeed Katib Al-Anbari, Contractual Balance in Individual Employment Contracts at the Formation Stage, 215.

[2] Al-Ayal, A. T. H. (2015). Guarantees of Contractual Balance in Adhesion Contracts Affected by Unfair Terms. *Journal of Legal Message*, (3), 218.

[3] Mahy El-Din, M., & Salim, I. (2007). Impact of Economic Domination on Contractual Balance. Faculty of Law, University of Al-Monofia, 9.

[4] The legislator directly intervenes to confront unfair terms in Adhesion contracts. Article (149) of the Egyptian Civil Law states: "If a contract is concluded by Adhesion and includes unfair terms, the judge may modify or exempt the consenting party from these conditions in accordance with the principles of justice. Any agreement contrary to this is void." Similarly, Article (167) of the Iraqi Civil Law states: "If a contract is concluded by Adhesion and includes unfair terms, the court may modify or exempt the consenting party from these conditions in accordance with the principles of justice. Any agreement contrary to this is void."

[5] Al-Zubaidi, M. A. (2007). Guarantees of Legal Contractual Balance. Master's Thesis, Faculty of Law, University of Al-Nahrain, Sudan, 79.

[6] Al-Kalabi, H. A. (2011). Imbalance in Contracts Resulting from Unfair Terms. *Journal of Legal Sciences*, (26)(2), 210.

[7] Jamei, H. A. (1990). The Effect of Inequality between Contracting Parties on Contract Terms. 102.

with, and that the contract pertains to goods or services that are primary necessities which the subjugated contractor cannot overlook or avoid contracting for, as well as that consent comes in a general and model form.[1]

Accordingly, can the contract entered into by the teaching staff with private colleges be considered a contract of subjugation?

Knowing that economic necessity is a usual driver in all contracts that are mostly financial in nature, as it pushes the teaching staff to contract with private universities, under contracts, which may have been prepared in advance by them, and the issue of considering them as contracts of subjugation was controversial at the level of jurisprudential law, between those who consider them as contracts of subjugation, and those who find them far removed from the description of subjugation, perhaps the reason for this is the difference in vision, and the lack of precision in analyzing the components on which these contracts are based, in addition to the lack of explicit legal texts capable of settling the matter, and if we applied the standards or elements of subjugation contracts to the contract of the teaching staff with private colleges, we do not find it in accordance with it, for example, the issue of monopoly that gives economic dominance to one of its parties, we cannot imagine it in private colleges, as they provide a public service, and it is not permissible to monopolize it, and that the service of education is provided by governmental and private educational institutions, as for the standard of the good or service provided under the contract of subjugation and which the other contractor cannot dispense with, we find this far removed in the framework of the teaching staff's contract with these universities that involves providing a service by him, and earning a wage in return for it, this is not considered a pressing primary necessity, and the teaching staff can dispense with this contractual relationship, and provide his educational services with governmental educational institutions, finally, the standard of the general consent under a model form, despite the fact that the contracts that the teaching staff enter into with private colleges were contracts whose clauses were poured out by those colleges, and imposed on all those wishing to work for them, but there are some private universities - at a very minimal level - that give the teaching staff the opportunity to negotiate and discuss to establish the contractual relationship, and more importantly than all this is the initiative of the public authority to put in place a unified contract that applies to the parties of the contractual relationship, in a way that achieves their interests.

Based on this, it cannot be considered a contract of subjugation due to the non-applicability of the standards of subjugation contracts to the contract of the teaching staff with private colleges.

Moreover, the issue of whether the terms are arbitrary or not is not only confined to contracts of subjugation, but we also find it in most contracts where the legal positions of the parties vary. Importantly, the aim of the legislator is not limited to ensuring the achievement of contractual justice, which the parties to the contractual relationship arrive at from a personal perspective, but it is a justice of an objective nature that largely aligns with the public interest. [2]

In response to the above, whether the arbitrary terms are included in contracts of subjugation or other contracts where there is a variance in the positions of the parties, the legislator will take a serious stance towards addressing this and will achieve parity between the parties to achieve aligned and balanced interests. The Iraqi legislator did well when it gave the public authority (Ministry of Higher Education and Scientific Research) the power to impose its

[1] Monopoly is defined as "the ability to impose contract terms with certainty that the other contracting party will not deviate from the contract because they have no alternative to the monopolistic party," as quoted from Al-Sada, A. M. (1974). Exploitation as a Ground for the Nullity of Contract. Beirut Arab University, 58.

[2] Al-Bayeh, M. (2011). Two Problems Related to Acceptance: Silence and Adhesion (2nd ed.). Dar Al-Nahda Al-Arabiya, Cairo, 125.

supervisory authority on private colleges, by finding a suitable solution to the spread of prioritizing the interest of the university or private college over the interest of the teaching staff in all aspects of the contracts concluded by private colleges with teaching staff wishing to work for them. At the same time, it removed the teaching staff from the burden of arbitrary conditions, subjecting them to a legal system that guarantees their rights and duties.

3 Regulatory Regulations

The public authority (executive authority) may, for the purpose of regulating work in public facilities and its affiliated institutions and defining their jurisdictions and objectives, issue a set of legal rules and orders known as (regulatory regulations). These act as organizers of work within institutions affiliated with the public authority (state administration), as well as those affiliated with the private sector, according to the authority granted to it by the legislator under applicable laws and instructions, which are often referred to supplement the deficit in some legal texts.[1]

Also, these can be considered as types of subsidiary legislations,[2] due to their binding nature for workers in public facilities. To avoid verbosity in explaining its concept, as the above is considered sufficient; what interests us in this regard is its role in guaranteeing the interests of the parties in the contractual relationship between the teaching staff and the private college.

It appears that there are two types of regulatory regulations, which have appeared in reality and contribute to the achievement of the interests of the parties in the contractual relationship. Based on this, we divide this Topic into two sections, where we discuss in the first requirement: internal systems, and in the second requirement: regulatory decisions, as follows:

3.1 Internal Systems

Referring back to the laws of universities and private colleges under comparison, we find that they have obligated private higher education institutions to prepare an internal system that regulates the work of the university, college or institute.[3] This serves as a set of regulatory rules set by employers or executive authorities within private institutions for the purpose of clarifying work conditions and rules, and obligations and rights of employees in the institution, as well as discipline rules.

Furthermore, labor laws under comparison oblige employers to prepare internal rules to regulate work within their projects, companies, or private institutions.[4] The employer is responsible for establishing them to regulate the work and ensure its smooth running, and usually includes all

[1] Sabeh, N.M. (2003). Principle of pacta sunt servanda and the Limitations Imposed on it in International Trade Law. 45

[2] Al-Waisi, S. N. (2021). Labor Law. Nour Al-Ain Library for Legal Books and Lectures, New Edition, 48.

[3] Article (8) of the Egyptian Law for Private and Non-Governmental Universities stipulates that: "The Board of Trustees, after consulting the University Council, shall establish the internal regulations for managing the university and conducting its affairs. These regulations include special rules for using the net surplus resulting from the university's activities according to its annual budget." Likewise, Article (6/2) of the Effective Law for Private Higher Education states: "Attached to the establishment application is an internal system that includes the following: a) the name of the university or college not affiliated with a university or institute, its headquarters, and its objectives; b) the financial resources of the university, college, or institute; c) the organizational structure of the university, college, or institute; d) the private college and its scientific departments or branches; e) the private institute and its scientific departments or branches."

[4] Article (58) of the Egyptian Labor Law for the year 2003 stipulates that the employer must establish work organization and disciplinary regulations, specifying the rules for work organization and disciplinary penalties, which must be approved by the competent administrative authority. The administrative authority should seek the opinion of the trade union organization to which the workers of the establishment belong before approving the regulations. If the administrative authority does not approve or object to the regulations within thirty days from the date of Adhesion, they shall be considered valid. The competent minister may issue model regulations and penalties to guide employers. In the case of employing ten or more workers, the employer is required to display these regulations in a conspicuous place. Similarly, Article (136/1) of the Iraqi Labor Law for the year 2015 states: "The employer subject to the provisions of this law, who employs ten workers or more, shall establish internal rules for the following cases: the opening hour of the project, daily and weekly rest hours, the amount of wages and the amount of overtime pay, occupational health and safety procedures, workers' obligations and disciplinary rules, annual and special leaves." Secondly, the Ministry shall issue model internal regulations to guide employers. Thirdly, the employer shall establish an internal system within three months from the opening of the project or from the implementation of the provisions of this law if the project already exists.

work conditions in which the legislator has given the right to the employer to organize, and falls within the scope of the employer's administrative and organizational authority.[1]

Employees within the institution are obligated to comply with and execute these rules. Indeed, the executive authority (the Ministry of Labor and Social Affairs) plays a role in requiring employers subject to the provisions of labor law to prepare and officially adopt these internal systems after approval by the ministry's Employment Department.[2] Furthermore, the Arab Convention on Labor Standards, under Article 25, obligates each establishment to develop a system regulating its operations, emanating from the employer's right to organize his establishment and supervise its smooth operation.[3]

It can be understood from the legal texts mentioned above that the legislature obligates institutions and establishments to prepare internal systems. The aim is to organize their work within their projects, ensure the smooth running of work, and achieve their goals. The Ministry of Higher Education and Scientific Research has even directed private colleges to send their internal systems to them. These become effective after approval by the legal department in the Ministry of Higher Education and Scientific Research on all their provisions.[4] Naturally, these institutions refer to the laws and instructions in force in higher education when preparing their internal systems, which will determine the rights and obligations of employees within the educational institution, including faculty and staff.

This raises the question: To what extent is a faculty member subject to the provisions of the internal systems of the private educational institution in which they work?

The faculty member contracted with the private university or college is an active member and is considered one of its employees. They are subject to all the provisions contained in the internal system, including their rights and the university's or college's obligations towards them, as it is organized under the laws and instructions in force in the Ministry of Higher Education and Scientific Research. It expresses the will of the private university or college. However, this will is restricted by the public authority (represented by the Ministry of Higher Education) with its academic supervisory authority.[5] This includes ensuring that internal systems include legal rules derived from the legal provisions specified in the laws of higher education and scientific research, including the University Service Law and the Private Higher Education Law. These laws contain rights and obligations for this group, which the legislature has granted legal protection due to its scientific and academic status in society.

It's worth noting that despite its role in organizing work within these institutions, regardless of their nature, we find it unable to achieve its purpose as required, especially in the context of faculty contracts with these universities. Even if private educational institutions adhere to the provisions of the internal systems in terms of respecting and guaranteeing the rights of teaching staff, they retain the right to impose contractual conditions, which sometimes lead to a lack of balance in the interests of both parties. This has prompted the public authority to resort to

[1] Article (41) of the Iraqi Labor Law states that the employer has the following rights: organizing their activities, assigning tasks and responsibilities to the workers, making necessary decisions, and supervising the work progress and performance of the workers in carrying out their duties. Article (107) of the same law also states that the employer must prominently display in the workplace: the internal work regulations of the project.

[2] Article 136/4 of the Labor Law states that "The employer shall present the internal regulations, before implementing or amending them, to the legal department or unit for approval.

[3] According to Article 25 of the Arab Convention on Labour Standards, "Each establishment shall establish regulations to organize work and penalties. The legislation shall determine the establishments that are required to establish these regulations and their contents, and inform the workers thereof. The legislation shall notify the competent authorities thereof, and the establishments shall have the right to object to such regulations if they contain provisions that contradict the provisions of the law or infringe upon the rights of workers" (Al-Lamsawy, A. (2007). Rights and Duties of Workers and Employers in Arab Agreements and Legislations in Other Arab Countries (1st ed.). National Center for Legal Publications, 79.).

[4] An approved and attached rules of procedure model, for one of the private higher education institutions.

[5] Smism, J. K. (2018). Stages of the Contract between Contractual and Legislative Will. *Tikrit University Journal*,3(2), 116.

stronger and more stringent means to ensure the interests of the parties to the contractual relationship are met, which will be explained in the following section.

3.2 Regulatory Decisions

The executive authority (such as private universities and colleges and bodies under the authority of the state) assumes the task of implementing what the legislator has intended, through its performance of tasks with both material and legal characteristics, to achieve the public interest, which is one of the goals sought by the public authority in any country. It can issue circulars, guidelines, develop controls and instructions that might facilitate the implementation of certain laws, or determine procedures and mechanisms that are supposed to be followed by the institutions and entities under it, which it supervises and monitors. In addition, it issues what is known as regulatory decisions,[1] which may pertain to certain issues and serve a specific or unspecified group in society. The purpose of these decisions may be to address specific cases due to their legally binding nature as they reflect the will of the legislator and are prepared in accordance with the applicable laws and instructions, and serve the public good.[2]

What is of interest to us in this regard is the role of the Ministry of Higher Education and Scientific Research in the context of faculty contracts with private colleges. Being one of the executive authorities in the state, it expresses the legislator's will under the supervisory and oversight authority it has over private universities. This has led it to find many solutions to the alleged injustices and hardships faced by faculty when working in private colleges, as they are exploited by these institutions to achieve their interests. In return, the faculty is subjected to contracts drawn up by these institutions, adorned with arbitrary terms, and lacking all standards of contractual justice, with a significant gap between the legal positions of the parties to the contractual relationship. The faculty has no choice but to accept the conditions as they are, being the weaker party.

In general, the executive authority has made efforts to elevate the position of the faculty member and enhance their status, while guaranteeing their rights, as they are the direct link for the educational institution to deliver its academic activity. This has been done through its legal organization of a unified contract that applies to all those wishing to work in private universities and colleges. Moreover, it has stipulated the contract's duration to be no less than five years, which also applies to the teaching staff when renewing their contracts, through its issuance of a regulatory decision directed at private colleges requiring them to comply and not violate it, as they would be legally accountable in the case of violation, which could reach the point of withdrawing the founding license if the necessary conditions were met.

Last but not least, in reality, the rights of the teaching staff are guaranteed. They have received respect and appreciation from the public authority due to their importance in the community, and the negatives imposed by previous contracts have faded, as they are the element responsible for providing educational services in higher education institutions. This has reflected on enhancing the legal position of the faculty in these institutions, which has now acquired a regulatory character, coupled with their contractual position imposed by the contractual relationship.

[1] Al-Jubouri defines it as "decisions that include general, objective, and abstract rules. These decisions apply to a number of individuals who are not determined by their identities," as quoted from: Al-Jubouri, M. S. (1991). Administrative Decision. Al-Hikmah Printing House, Baghdad, Iraq, 152.
[2] Mahdi, G. F. (2022). Regulatory Administrative Decisions (1st ed.). Al-Maslah Printing, Publishing, and Distribution House, 16.

4 Findings and Recommendations

4.1 Findings

1. The contracts that faculty members enter into with private universities and colleges cannot be considered as contracts of submission, due to the inapplicability of the standards of submission contracts to the contract of the faculty member with private colleges.

2. Whether arbitrary conditions are included in submission contracts or other contracts that vary in their parties' statuses, the legislator will take a serious stance on addressing this, achieving parity between the parties; to accomplish compatible and balanced interests. The Iraqi legislator has done well when it empowered the public authority (the Ministry of Higher Education and Scientific Research) to impose its supervisory authority on private colleges, by finding an appropriate solution to the proliferation of privileging the university or private college's interest at the expense of the faculty member's interest in all aspects of the contracts that private colleges enter into with the teaching staff willing to work for them. At the same time, it has protected the faculty from the burden of arbitrary conditions, subjecting them to a legal system that guarantees their rights and obligations.

3. Despite the existence of internal systems regulating work within private universities and colleges, whatever their description, they are unable to achieve their goal as required, especially in the context of faculty contracts with these universities. Even if private colleges adhered to what is stipulated in the internal systems in terms of observing and guaranteeing the rights of teaching staff, they still retain their right to impose contractual conditions, which can sometimes lead to an imbalance in the interests of both parties. This has prompted the public authority to resort to stronger and more severe means to ensure the interests of the contractual relationship parties are achieved.

4. The Ministry of Higher Education, with the supervisory and regulatory authority it possesses over private colleges, guarantees the interests of both parties in the contractual relationship between the faculty and these colleges. This is done through its legal organization of a unified contract applicable to all those wishing to work in private universities and colleges, and it also applies to the teaching staff when renewing their contracts. This contract, which is binding on private universities and colleges, subjects them to legal accountability in case of violation.

4.2 Recommendations

1- Activating the role of supervision and control to include the legal economic balance of the contract that links the faculty member to the private college, especially in the context of wage fairness and guarantees of its receipt, as well as means of terminating the contract, through following specific methods such as financial regulations and standard contracts.

2- The balance of the contractual relationship should be looked at in terms of its overall effects, not a specific effect, as it is one of the legal relationships that achieve public good.

3- Applying the characteristic of "consideration" to the wage that the faculty member deserves in exchange for providing his services, with the necessity of obligating private universities and colleges to pay it regularly.

References

Abdel-Salam, S. S. (1988). *Contractual Balance within the Adhesion Contracts*. Dar Al-Nahda Al-Arabiya, Cairo, 50.

Afzal, N., Hameed, A., & Jabeen, I. (2022). The Use of Macro and Micro Structures in Pakistani Prime Minister's Speech at UNGA: A Critical Discourse Analysis Approach. *Croatian International Relations Review, 28*(89), 39-61. https://cirrj.org/menuscript/index.php/cirrj/article/view/484/420

Agussalim, M., Yanti, N., & Hussin, M. (2022). The Role of Training, Discipline and Work Environment on Employee Performance: a Pls-sem Approach. *International Journal of eBusiness and eGovernment Studies, 14*(4), 1-21. https://sobiad.org/menuscript/index.php/ijebeg/article/view/1346

Al-Ayal, A. T. H. (2015). Guarantees of Contractual Balance in Adhesion Contracts Affected by Unfair Terms. *Journal of Legal Message*, (3), 218.

Al-Bayeh, M. (2011). *Two Problems Related to Acceptance: Silence and Adhesion* (2nd ed.). Dar Al-Nahda Al-Arabiya, Cairo, 125.

Al-Jubouri, M. S. (1991). *Administrative Decision*. Al-Hikmah Printing House, Baghdad, Iraq, 152.

Al-Jumaili, S. B. (2002). Unfair Terms in Contracts. PhD Thesis, Faculty of Law, University of Al-Nahrain, Sudan, 12.

Al-Kalabi, H. A. (2011). Imbalance in Contracts Resulting from Unfair Terms. *Journal of Legal Sciences*, (26)(2), 210.

Al-Lamsawy, A. (2007). Rights and Duties of Workers and Employers in Arab Agreements and Legislations in Other Arab Countries (1st ed.). National Center for Legal Publications, 79.

Altememy, H. A., Neamah, N. R., Mazhair, R., Naser, N. S., Fahad, A. A., Abdulghffar al-sammarraie, N., Sharif, H. R., Alseidi, M. A., & Al-Muttar, M. Y. O. (2023). AI Tools' Impact on Student Performance: Focusing on Student Motivation & Engagement in Iraq. *Social Space, 23*(2), 143-165. https://socialspacejournal.eu/menu-script/index.php/ssj/article/view/217

Al-Waisi, S. N. (2021). Labor Law. *Nour Al-Ain Library for Legal Books and Lectures*, New Edition, 48.

Al-Zubaidi, M. A. (2007). Guarantees of Legal Contractual Balance. Master's Thesis, Faculty of Law, University of Al-Nahrain, Sudan, 79.

Anbari, W. K. (2018). *Contractual Balance in Individual Employment Contract at the Formation Stage*. 215.

Calais-Auloy, J., & Temple, H. (2015). *Droit de la consommation*. Dalloz.

Draper, P., & Schellenberg, J. L. (2022). The why and the how of renewal in philosophy of religion. *European Journal for Philosophy of Religion, 14*(1), 1-20. https://doi.org/10.24204/ejpr.2022.3289

Egyptian Civil Law. Article 149.

Egyptian Labor Law of 2003. Article 58.

Egyptian Law of Private and National Universities. Article 8.

Egyptian Law of Private Higher Education. Article 6/Second.

(Ida Hanifah 1 Anwar Soleh Purba 2 Khairuddin Alwi Fajar P. 3) . LEGAL PROTECTION AGAINST PAYS OF WORKERS RETURNED DURING THE COVID-19 PANDEMIC PERIOD IN INDONESIA / RGSA – Revista de Gestão Social e Ambiental / 03/07/2023

Iraqi Civil Law (2015). Article 167.

Iraqi Labor Law. Articles 41, 107, and 136/Fourth.

Iraqi Private Higher Education Law.

Jamei, H. A. (1990). *The Effect of Inequality between Contracting Parties on Contract Terms*. p.102.

Jay F. Omotoy / EXAMINING COLLEGE STUDENTS' SELF-EFFICACY IN THE ONLINE LEARNING ENVIRONMENT SYSTEM DURING THE COVID-19

PANDEMIC IMPLICATIONS FOR HIGHER EDUCATION INSTITUTIONS / RGSA – Revista de Gestão Social e Ambiental / 28/06/2023

Jiayao, Z., Sadiq, M., & Ling, T. W. (2023). The Impact of Corporate Governance on the Internal Control Objectives: Evidence from China's Listed Financial Companies. *Cuadernos de Economía, 46*(131), 84-92. https://cude.es/submit-a-manuscript/index.php/CUDE/article/view/404

Karsten, A. A., & van der Bank, M. M. (2022). The role of carbon emissions taxes and carbon greenhouse gas emissions on the renewable energy output: Evidence from South Africa. *International Journal of Economics and Finance Studies, 14*(2), 156-174. https://sobiad.org/menuscript/index.php/ijefs/article/view/1142

Khamzin, A., Buribayev, Y., & Sartayeva, K. (2022). Prevention of Human Trafficking Crime: A View from Kazakhstan and Central Asian Countries. *International Journal of Criminal Justice Sciences, 17*(1), 34-53. https://ijcjs.com/menu-script/index.php/ijcjs/article/view/449

Mahdi, G. F. (2022). *Regulatory Administrative Decisions* (1st ed.). Al-Maslah Printing, Publishing, and Distribution House, 16.

Mahy El-Din, M., & Salim, I. (2007). Impact of Economic Domination on Contractual Balance. Faculty of Law, University of Al-Monofia, 9.

Mahy El-Din, M., & Salim, I. (2007). Impact of Economic Domination on Contractual Balance. Faculty of Law, University of Al-Monofia, 9.

Marzouk, M. M. S. (2014). *Unfair Contractual Terms. Journal of Legal and Economic Research*, (56), 962.

Rabahi, A. (2008). Impact of Economic Dominance on Imposing Unfair Terms in Algerian and Comparative Law. *Journal of North African Economics*, (5), 346.

Sabeh, N.M. (2003). *Principle of pacta sunt servanda and the Limitations Imposed on it in International Trade Law*. 45

Sada, A. M. (1974). Exploitation as a Ground for the Nullity of Contract. Beirut Arab University, 58.

Smism, J. K. (2018). Stages of the Contract between Contractual and Legislative Will. *Tikrit University Journal*,3(2), 116.

Solikhah, I., & Budiharso, T. (2022). Linguistic Landscape to Improve Quality of Language Learning and its Relationship with Blended Learning, Learning Motivation and Teacher Competence. *Eurasian Journal of Applied Linguistics, 8*(3), 55-69. https://ejal.info/menuscript/index.php/ejal/article/view/374

Tamba, I. M., & Widnyana, I. W. (2022). Consumer Preferences on The Purchase of Cayenne Pepper in Bali Province Market. *AgBioForum, 24*(2), 73-82. https://agbioforum.org/menuscript/index.php/agb/article/view/128

Wang, Y., Sukpasjaroen, K., Moudsong, P., & Chankoson, T. (2022). The Effects of Entrepreneurial Learning and Entrepreneurial Bricolage on the Startup Performance of Small and Medium-Sized Platform Enterprises (SMPEs). *International Journal of Operations and Quantitative Management, 28*(2), 525-548. https://submissions.ijoqm.org/index.php/ijoqm/article/view/101