

Administrative Authority in Termination of Public Contracts: Legal Framework, Conditions, and Effects

Mohamed Badr — Of Counsel

Introduction

Administrative contracts are distinguished from other types of contracts by the fact that the public authority possesses powers and rights exceeding those available in civil or commercial contracts. This distinction is grounded in the objective of administrative contracting, which is to serve the public interest and ensure the regular and continuous operation of public services, whereas the contractor seeks to achieve personal gain.

Accordingly, legal provisions grant the administration powers regarding contract performance, modification, or termination, while the contractor retains certain rights, notably the right to financial compensation and contractual financial rebalancing.

Among these powers, the administration's unilateral right to terminate the contract stands out, raising important questions regarding its legal limits and the safeguards protecting the contractor's rights. These aspects are examined below.

Concept of Termination of Administrative Contracts

Jurisprudence has offered various interpretations of termination of administrative contracts. Some scholars consider termination as resulting in the cessation of the contractual relationship, representing one of the most severe sanctions the administration may impose due to a contractor's grave breach.

Others view termination as a sanction the administration may invoke when the contractor defaults or fails to perform, provided that prior notice and warning have been issued.

Termination can also be defined as a measure exercised by the administration in its contractual capacity, rather than as a general administrative power, when the contractor's non-performance is serious. Such termination does not require prior judicial authorization or the contractor's consent and results in the termination of the contractual relationship between the parties.

Termination differs from administrative contract rescission for public interest purposes. Rescission may occur without any fault on the contractor's part, whereas termination is inherently punitive in nature, as it is generally associated with the contractor's fault, default, or serious failure to perform contractual obligations.

Conditions for Termination by the Administration

Given the severity of termination as a sanction, the law imposes certain conditions intended to prevent the administration from abusing its discretionary authority.

Grave Breach

The contractor's default must be significant and sufficiently serious to justify termination. The seriousness of the breach may be determined by reference to the contract, applicable legislation, or the circumstances of the case, subject to judicial review.

Termination should therefore not be regarded as an automatic consequence of every contractual violation. The breach must be of such a nature that continued performance would undermine the contractual relationship or prejudice the public interest.

Notification of the Contractor

The contractor must be informed of the action taken by the administration, whether termination of the contract or performance at the contractor's expense, in accordance with the principle of good faith and the procedural safeguards applicable to administrative contracts.

The Supreme Administrative Court has affirmed that, in cases of contractor default, the administration may terminate the contract or perform the contractual obligations at the contractor's expense. In such circumstances, the administration may recover cost differences, administrative expenses, and applicable penalties, thereby ensuring the continuity and regular operation of public services.

Mandatory (Automatic) Termination

Mandatory termination applies in cases expressly defined by law, where the occurrence of the legally prescribed grounds leaves no discretion to the administration regarding whether the contract should be terminated.

Grounds for Mandatory Termination

Mandatory termination may arise in particular where:

- The contractor uses fraud or manipulation in dealings with the administration or in obtaining the contract.
- Collusion, fraud, corruption, or monopoly is discovered.
- The contractor becomes bankrupt or is otherwise unable to meet its financial obligations.

The applicable legal framework provides definitions and criteria for concepts such as collusion, fraud, and corruption in order to identify the circumstances capable of triggering mandatory termination.

Consequences of Mandatory Termination

Mandatory termination may produce several legal and administrative consequences, including the removal of the contractor from official registers, subject to the relevant legal procedures and, where applicable, the advice of the State Council's Legal Opinion Department.

The competent authorities may also notify the General Authority for Government Services to ensure transparency and to prevent contractors whose conduct falls within the legally prescribed grounds from obtaining government contracts in violation of the applicable rules.

At the same time, the contractor may have the possibility of requesting reinstatement where the legal grounds that resulted in the removal are no longer valid, subject to the applicable legal requirements and procedures.

Supreme Administrative Court jurisprudence confirms that fraud or manipulation may result in termination of the contract, forfeiture of the final guarantee, and exclusion from future government contracts.

Discretionary Termination

In addition to mandatory termination, the administration may exercise a discretionary power to terminate the administrative contract where the contractor materially breaches a contractual obligation.

The administration may alternatively perform the contractual obligations at the contractor's expense where this is necessary to protect the public interest and ensure the continuity of the relevant public service.

This power requires a balance between the public interest in ensuring proper contractual performance and the potential harm that may result from allowing a defaulting contractor to continue performing the contract.

Conditions for Discretionary Termination

Before resorting to termination, the administration must, where the applicable legal framework so requires, exhaust available amicable means of resolving the contractual breach.

The contractor must also be notified of the decision to terminate the contract or to perform the contractual obligations at the contractor's expense. Such notification may be effected through registered mail, email, fax, or other legally recognized means, thereby ensuring transparency and enabling the contractor to become aware of the measures being taken against it.

The administration's discretion in this regard remains subject to the principle of legality and judicial review. Accordingly, termination must be based on legitimate grounds and exercised within the limits prescribed by law and the contract.

Consequences of Discretionary Termination

Discretionary termination may result in several financial and contractual consequences for the contractor.

The final guarantee may be forfeited in favor of the administration in accordance with the applicable contractual and legal provisions.

The administration may also deduct amounts corresponding to delays, losses, or other financial consequences arising from the contractor's breach from amounts otherwise due to the contractor. Where such amounts are insufficient, deductions may be made from other payments owed by government entities to the contractor, subject to the applicable legal framework.

Where the amounts recoverable by the administration exceed the contractor's available entitlements, the administration may seek judicial recovery of the remaining amounts.

The Supreme Administrative Court has emphasized the importance of timely completion of contractual works in securing the continuity of public services. Delays in performance may therefore give rise to contractual penalties and, where the contractor fails to remedy the breach, may justify termination or performance of the contract at the contractor's expense.

In such circumstances, the administration may recover the associated costs and forfeit the contractual guarantee in accordance with the law.

The guarantee serves an important function in administrative contracting, as it provides assurance regarding the contractor's financial capacity and protects the administration against the financial consequences of non-performance or improper performance.

Conclusion

The administration's unilateral authority to terminate administrative contracts represents a critical legal mechanism for ensuring the proper functioning of public services and protecting the public interest.

At the same time, the exercise of this authority is subject to legal and procedural safeguards intended to balance the administration's powers with the rights and legitimate interests of contractors.

The distinction between mandatory and discretionary termination is particularly significant. Mandatory termination is triggered by specific circumstances prescribed by law, whereas discretionary termination generally arises from a material contractual breach and requires the administration to exercise its authority within the limits established by law and the contract.

Administrative jurisprudence reinforces the principles of legality, transparency, proportionality, and fairness, ensuring that termination does not become an unrestricted punitive measure. Rather, it operates as a regulatory and protective instrument designed to safeguard public funds, preserve the integrity of government contracting, and ensure the regular and continuous delivery of public services.

Understanding the administration's termination powers, their legal conditions, and their consequences is therefore essential to appreciating the distinctive nature of administrative contracts and the special legal principles governing the relationship between public authorities and contractors.