GUARANTEES OF PENALTY FOR DEALY
IN PUBLIC WORKS CONTRACT
IN BAHRAINI LEGISLATION AND
COMPARATIVE

A Thesis Submitted in partial fulfillment of the Requirements
for the Master Degree in Public Law (Administrative Law)

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Abstract

This dissertation studies the Penalty for Delay in public works Contracts in Bahraini legislation compared with Kuwaiti and Egyptian legislations. And we reviewed the jurisprudence with an accurate analysis of the judgments issued by the Bahraini, Egyptian and Kuwaiti judiciary in that regard.

The study focuses on the subject through defining the penalty for delay in public works contracts and it was concluded with a summary that this penalty is paid to the administration for any potential damage occurring as a result of the delay. In addition, it is a penalty imposed on the contractor, who has been late in implementing the required duties and exceeded the agreed upon time frame. The study is followed by legal basis of this penalty in reference to jurisprudence belief as well as the judiciary view, and it was found that this is basically a contractual basis source contract and non-contractual basis lies in the idea of public power and public facility, and then we highlighted the material and time for a penalty, which escalates. They required foundations for consistently imposed.

We highlighted the power of the administration to impose the penalty in reference to legislation and judiciary view as well as jurisprudence belief. Further protection includes the performance bond which is submitted by the contractor prior to the contract, also, seize the contractor’s tools and equipment. The administration has the authority to deduct the penalty from that performance bond, or it may seize a part of the contractor’s dues, which is equivalent to the penalty imposed upon the contractor, it may also sell seized equipment or tools at the site in order to collect the penalty.

Moreover, these guarantees benefit the contractor in the sense that the contractor is made aware of the consequences at the beginning, which can be considered as a reminder of any consequence that might be taken against him in case of delays. In addition, it brings to his attention the importance of delivering the work at the agreed upon time frame. The contractor may be exempted from this penalty when presenting reasonable evidence, which prove the delay, occurred due to unforeseen events, or events caused by the administration, or force majeure.

Finally, we sum up the study by clarifying the judicial role in legitimizing these penalties and its suitability against the contractor for a breach of contract.