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**The effect of the legislative omission on effectiveness of administration in
confronting the corona virus
Study in Iraqi law**

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Abstract

The effectiveness and quality of legislation depend on the extent to which it relates to political , economic ,social ,geographical , health and moral realities , so the unrealistic legislation and its failure to address all the problems facing society make these legislation out of reality , this requires this legislation be able to regulate all aspects related to public health in society in exceptional circumstances such as cases of wars ,diseases and pandemics as outbreaks of corona virus in the word ,this study focuses on the effects of legislative omission on the effectiveness of the administration when performing its tasked in health administrative control in exceptional circumstances in light of spread of corona virus pandemic in Iraq in 2020 ,and was the legislators policy far-sighted to address all aspects expected in the future ,the study also examines the efficiency of the means of physical and legal management to perform health control tasks during the outbreak of corona pandemic and possibility of continuing the necessary public facilities regularly during this period ,this is what will answer in the folds of research .

Introduction:

Legislative omission is the deficiency or deficiency that marred the legislative texts enacted by the competent legislative authority in connection with the regulation of an issue, topic, right, or guarantee stipulated in the constitution for individuals or public moral persons, intentionally or negligently on the part of the legislator, and legislative omission may result from the absence of the text that

regulates The situation that needs to be regulated as a result of the legislator's reluctance to fulfill his constitutional duty to legislate, which is what is known in jurisprudence as legislative abstention, and as a result there is a legislative vacuum that violates or detracts from the rights, guarantees or issues that there is a legislative necessity to enact or reduce their effectiveness, so the absence of the text leads to a state of legislative omission Complete, the deficiency and shortcomings in the organization put us in front of a relative legislative neglect, and the legislative neglect, if it is complete or relative - that is, in the absence of the text or its deficiency - then this surely affects the administrative powers that it must have in light of exceptional circumstances, which need powers greater than Its powers are in normal circumstances. If the legislative texts do not assist the administration's position in providing the necessary legislative measures, this would violate the principle of legality that governs the administration's work in Because normal and exceptional circumstances and conditions, and for the administration to carry out its material and legal work within the framework of legitimacy, it must be based on legislative texts that represent the legal framework for the work of the administration in crises, which are known as (legitimacy of crises), to ensure that the administration is not abusive in issuing decisions that would affect or limit The freedom of individuals or diminishing their rights, as well as ensuring the legal framework for managing public utilities during an exceptional circumstance with efficiency, permanence and quality through modern technological means and to benefit from e-government applications, while securing clear mechanisms for the administration's actions to be subject to control during this period or after.

Research problem:

The research problem is represented in the absence of accurate legal regulation and clear legislative frameworks that organize the administration's work to confront crises such as epidemics and disasters under unusual circumstances, and this would weaken the effectiveness of the administration in making decisions and managing crises, especially if it is related to public health in the event of an epidemic or pandemic such as a virus Corona, which would paralyze the administrative and economic public facilities and the private sector, as well as endanger public health and the lives of individuals to the risk of perdition, and this requires the existence of a legislative intervention to address the legislative deficiency or deficiency and benefit from practical experience in its positive side and place it within a legislative framework to avoid its disadvantages in the future. research aims:

The research aims to diagnose the deficiencies and deficiencies in the existing legislative texts, and to determine the effects that resulted from this deficiency or deficiencies in order to address them legally after the demise of the Coronavirus pandemic and to benefit from practical experiences in the legislative aspects, as the study aims to identify weaknesses in some relevant legislation On the subject of the study and its impact on the effectiveness of the administration in carrying out its work during the period of the outbreak of the (Corona) pandemic and beyond.

Research Methodology:

The deductive and analytical comparative approach, whether related to legal or constitutional texts, was adopted to prepare this study.

Search Plan:

The study was divided into two main topics, the first of which we devoted to researching the effects of legislative omission on the effectiveness of the administration in the field of administrative control in light of the current pandemic (Corona), and we divided it into two demands, the first of which we devoted to studying the effect of legislative omission on the effectiveness of the administration in maintaining security and public tranquility in light of the spread of the (Corona) pandemic and the announcement by the health authorities of a complete and partial curfew, and in the second requirement we dealt with the impact of legislative omission on the effectiveness of the administration in the field of health administrative control and the protection of the public health of the Iraqi community.

As for the second topic, we dealt with the impact of legislative omission on the legal work of the administration in light of the outbreak of the (Corona) pandemic and the extent of the efficacy and effectiveness of the means of administration in this circumstance, and we divided it into two requirements, the first of which we devoted to studying the effectiveness of the legal regulation of the administrative decision in the face of the Corona virus, and we dealt with In the second requirement of it is the effectiveness of the legal regulation of government contracts and the extent of the administration's ability to conclude, manage and follow up their contracts in light of the outbreak of the Coronavirus, and the extent to which legislative texts respond to technology facilities in this field.

We concluded the research with an in-depth and focused summary that includes the conclusions and recommendations that we have reached.

The first topic**Effects of legislative omission on the effectiveness of the administration in the field of administrative control****In light of the outbreak (Corona)**

Administrative control is one of the most important functions of management in modern countries, and administrative control according to its organic meaning means the administrative bodies and agencies that are responsible for preserving public order, such as the Ministry of Interior and the Ministry of Health agencies and the municipal bodies ... etc. As for the functional meaning of administrative control, it is devoted to the activity that you undertake The bodies concerned with protecting the public order with its three elements represented in public security, public health and general housing (1), and in order for these agencies concerned with preserving public order to carry out their disciplinary duties, there must be legislation that supports the work and nature of the activities of these agencies in order to help them achieve their objectives in administrative control and protect the higher interests of society. Especially in light of unusual circumstances such as situations of wars, disasters and dangerous pandemics such as the Corona pandemic that threatens the stability of society in terms of health, security and economic aspects, and therefore the effectiveness of the administration's bodies

depends on the effectiveness, pragmatism and responsiveness of the legislation in force and its legitimacy to allow facing such unusual circumstances efficiently and effectively, In this topic, we will try to focus on the deficiencies in the legislation that is supposed to be Supporting the administration's activities in confronting this virus in the aspects of security, public peace and public health, with the following demands:

The first requirement

The impact of legislative omission on the effectiveness of the administration in maintaining security and public peace

Public security means reassurance of a person about himself and his money from the danger of attacks that may occur to him, whether these attacks are crimes, seditions, disturbances, disasters, or epidemics, and this is achieved by taking the necessary measures to confront these attacks or the dangers of nature or epidemics, while the concept of Public tranquility is to maintain a state of calm and tranquility in roads and public places and to prevent everything that might disturb the comfort of the citizen (2), and what concerns us in this area are the measures and measures taken by the administration and its executive bodies in the face of the disturbances and unrest that may occur due to the spread of a dangerous pandemic Such as the Corona pandemic and its impact on citizens' freedom of movement, shopping, and reassurance of the health of family members and not being disturbed by rumors and false news that would disturb his comfort and demoralize him, as the duties of the administration are not limited to material measures represented by regional quarantine or road closures in implementation of the curfew. It also aims to protect citizens' properties during the period of prohibition and prevent them from being disturbed while they are staying at home, and to prevent rumors that disturb this tranquility. This requires that the agencies concerned with imposing these procedures have legal frameworks that confer on these activities the character of legitimacy even in an emergency situation, and this requires the existence of a legal system decided under the constitution and laws to protect national interests and resort to them only exceptionally and temporarily to confront the emergency situation that the administration refuses to confront with its means Under normal conditions (3).

It is noted that the Iraqi government, after the outbreak of the Coronavirus, has been unable to declare a state of emergency even though it has taken decisions that affect public rights and freedoms, such as freedom of residence and movement, the right to privacy, the right to assembly and assembly, the right to education and work (4), and these decisions, including the imposition of curfews and the closure of areas Housing and accountability for violators by the security forces is like imposing a state of emergency without a legal basis and by a party not competent to impose a state of emergency, and this is a violation of the Constitution of the Republic of Iraq, which attended restricting the exercise of any of the rights and freedoms or limiting them except by law or based on it, and he also attended to affect that restriction Or the definition of the essence of the right or freedom (5).

The reason for this is due to the deficiency of the legislation in force that neglected to address all aspects that need to be addressed by the legislator so that

these legislations are applicable and effective in light of emergency circumstances, and the most important of these legislations that have a direct bearing on public rights and freedoms is the Defense of National Safety Order No. (1) For the year 2004 (6), the aforementioned order was applied in practice for the first time and the state of emergency was declared on November 7, 2004, and the state of emergency was extended according to Presidential Order No. (18) for the year 2005 (7), except that after the 2005 constitution was issued that regulated the state of emergency in the texts Constitutionalism (8) It can no longer be applied due to its inconsistency with the provisions of the Constitution and the legislative deficiencies that are marred and neglected to regulate many issues related to the state of emergency, including those related to the issue of epidemics and pandemics, and we will try to shed light on the most important legislative omissions in the aforementioned law that prevented its application during the outbreak of the pandemic (Corona) and as follows:

1- Article (1) of the Defense of National Safety order defines the state of emergency as the situation in which the Iraqi people are exposed to a grave danger that threatens individuals in their lives and arises from a continuous campaign of violence by any number of persons to prevent the formation of a broadly representative government in Iraq and disrupt peaceful political participation For all Iraqis or any other purpose, it is noted on this definition that it limited the concept of the state of emergency to the grave danger arising from political violence that would disrupt political participation and the peaceful transfer of power, and neglected to extend the scope of the state of emergency to include other situations such as the occurrence of a state of war or the threat of its occurrence or situations of disaster occurrence. And the spread of diseases and epidemics that threaten the life of the Iraqi society. The danger is not limited to political violence and internal disturbances, but includes disasters, epidemics and everything that threatens the lives of community members. Natural origin such as general disasters and dangers resulting from human errors, the spread of diseases and epidemics, and this legislative omission made it difficult to introduce the (Corona) pandemic as a cause To declare a state of emergency, and on the other hand, we find comparative legislation that, along with violence and internal disturbances, have introduced situations of wars, public disasters and the spread of epidemics as a reason that justifies the declaration of a state of emergency (9). It is a general, indefinite, broad term, capable of broad interpretation and creating different sources of danger (10) because it has linked the source of danger to violence related to preventing government formation and exclusively disrupting healthy political participation.

2- The provisions of the authority concerned with declaring the state of emergency and its duration, extending the period of emergency, and overseeing the measures taken during the period of emergency mentioned in Legislative Order No. (1) of 2004 are not in conformity with the provisions contained in the 2005 constitution. Therefore, the application of this legislative order makes the procedures unconstitutional, According to the legislative order, the one who has the right to declare a state of emergency is the Prime Minister with the unanimous approval of the Presidency for a period of (60) days, which can be extended by the

same mechanism (11) and the decisions and procedures of the Prime Minister are subject to oversight by the Court of Cassation and the Court of Cassation in Kurdistan with regard to emergency procedures in the Kurdistan region and ending with the Federal Supreme Court Deciding that these procedures are invalid, unlawful, or approved (12).

Whereas the 2005 constitution assigned the authority to declare a state of emergency in the Iraqi Council of Representatives based on a joint request from the Prime Minister and the President of the Republic for a period of (30) days, which can be extended by the Council of Representatives with new approval, and made the Council of Representatives the body that oversees the actions taken and the results within The period of declaring the state of emergency during a period of fifteen days from its end (13) and thus the constitutional legislator has tacitly canceled the provisions contained in the Defense of National Safety Order No. (1) of 2004 and makes the government's reliance on it contrary to the constitution, and here we must point out that the Iraqi legislator overlooked an amendment The provisions of this law to be in harmony with the constitutional text, or to abolish it, and to issue new legislation that regulates the state of emergency, especially since Paragraph (9 / g) of Article (61) of the Constitution of the Republic of Iraq for the year 2005 included a constitutional obligation on the legislator to issue a law regulating the powers of the Prime Minister during the period of the declaration State of war or emergency, and this constitutes a legislative abstention on the part of the Iraqi Council of Representatives from exercising its legislative competence that would raise its political responsibility.

3- To remedy this legislative omission, we call on the Iraqi legislator to issue a new law that organizes the declaration of a state of emergency in accordance with constitutional principles with specifying the cases that require declaring a state of emergency (such as war, unrest and internal disturbances, general disasters, diseases and epidemics) and not restrict it to the emerging situation (a continuous campaign of violence) received In Article (1) of the Defense of National Safety order, it also includes the mechanism for declaring the state of emergency, the duration of emergency and determining it, and the authority of the Prime Minister, and we see the necessity of subjecting the decisions of the Prime Minister to the oversight of the administrative judiciary represented by the Administrative Court as a first degree and the Supreme Administrative Court as a final degree because the Iraqi constitution approved The dual judicial system (14), and therefore subjecting the decisions of the prime minister to the control of the Federal Court of Cassation violates the jurisdiction of the administrative judiciary, and the decisions of the Prime Minister cannot be considered an act of sovereignty because the Iraqi constitution prohibits the text in the laws on immunizing any action or administrative decision from appeal (15) As we also see, and from the requirements of parliamentary rationalization, granting the executive authority the power to issue necessary regulations (regulations) in light of the state of emergency to avoid problems or difficulties. The parliament convenes during an emergency, as happened in light of the (Corona) pandemic, provided that the regulations of necessity are presented to Parliament when it is possible to convene for approval (16) and this requires a constitutional amendment to Clause (IX) of

Article (61) of the Constitution and Clause (Third) of Article (80) of the constitution that limited the authority of the Council of Ministers to issue executive regulations only.

The second requirement

The effect of legislative omission on the effectiveness of the administration in the field of health administrative control

Health administrative control is the set of means and measures taken by the health administrative authorities with the aim of preserving the health of citizens, protecting them from diseases, working to prevent the spread of epidemics, and taking precautionary measures against everything that is a cause or is likely to be a cause of harm to health, whether its source is human, animal, or things (), And what is related to the topic of our research, which is the measures related to precaution and combating outbreaks of infectious diseases, epidemics and pandemics and avoiding their risks to ensure the achievement of health safety against these risks until the concept of public health and protecting the environment from pollution by preventing epidemics and combating pollution is among the social values that legal systems seek to achieve (17) .

Certainly, such procedures and means must be based on a legislative cover that makes these procedures and means within the framework of legitimacy, especially in an emergency situation, and we have previously explained in the first requirement the Iraqi legislator's neglect of creating an integrated legal regulation for the state of emergency and easy to implement because the emergency legislation in force has not Diseases and epidemics are among the reasons that require declaring the state of emergency, and therefore we see that the management procedures and decisions issued by the committee formed under the Diwani Order (55) for the year 2020 and the Supreme Committee for National Health and Safety for combating the Corona virus formed according to Cabinet Resolution No. (79) for the year 2020 has relied on legislation that includes these measures and decisions, including total and partial curfews, disrupting official working hours in universities, institutes and educational institutions, suspending flights, closing public places such as malls, restaurants and cafes, and preventing visits in parking lots and prisons. These are unusual measures that are only taken under exceptional circumstances.

It is noted that the health authorities have taken all measures that fall within the powers of the Minister of Health in the face of communicable diseases (18), but the health authorities have not identified the Coronavirus as one of the communicable diseases as the communicable and endemic diseases must be determined according to instructions issued by the Minister of Health (19) We can record on Public Health Law No. (89) of 1981 amended the most important weaknesses that reduce the effectiveness of the aforementioned law in facing diseases and epidemics and also reduce the effectiveness of health authorities in confronting and confronting dangerous diseases and epidemics, as follows:

1- By referring to the provisions of the Public Health Law, we find that it has given the Minister of Health the authority to impose a state of health emergency that would restrict public freedoms and to practice procedures and measures to control communicable diseases and prevent their spread. Among these powers

(declaring an affected area, restricting the movement of citizens within the affected area and preventing entry And exit from it, close public shops such as cinemas, cafes, cabarets, restaurants, hotels and bathrooms, prevent the sale of food and drinks, prevent the movement of animals, put hands on transport, put hands on plants and animals suspected of being a reservoir or vector of disease, enter housing homes and public stores to conduct health inspection and detection Health and taking laboratory analysis forms, procedures for spraying pesticides and sterilizers, procedures for monitoring, isolation and quarantine, forbidding working or working in the educational institution ... etc.) (20) However, the legislator neglected to regulate some aspects in this law, so the health administrative control must be attached exactly This requires the organization of mechanisms of cooperation, communication and coordination with these bodies, and the party responsible for implementing the decisions of the Minister of Health must also be identified. It cannot restrict the movement of citizens or close public shops, and this requires that this be regulated in the body of law.

2- 2- The procedures of the Minister of Health under the Public Health Law are inconsistent with the National Safety Defense Order No. (1) of 2004 and the Constitution, because the order to defend safety is no longer the case for the spread of diseases and epidemics from a state of emergency declaration, and the constitution prohibits restricting freedoms except in emergency situations For a limited period and subject to oversight by the judiciary and parliament, while the procedures of the Minister of Health are contained in a law related to public health and includes procedures that are not imposed except in a state of emergency within an emergency law, and this leads to conflict of procedures, loss of responsibilities and abuse of public rights and freedoms due to health emergencies, and therefore health authorities It was not able to implement its decisions to confront Corona virus except with the intervention of the security forces to implement these decisions, and this intervention, as we have shown, lacks legislative cover. Therefore, we see the need to regulate the state of health emergency within the emergency law, which must be enacted and the mechanisms of cooperation and coordination between the health and security authorities are drawn up to determine the duties and responsibilities.

3- 3- We also note that the Public Health Law, despite the broad powers of the health authorities previously mentioned, did not give the Ministry of Health employees or the officials responsible for implementing the decisions of the Minister of Health the control powers to ensure the implementation of these decisions in the event of an outbreak of serious diseases and epidemics, and the security authorities do not have Such authority, therefore, what was stated in the decisions of the Supreme Committee for Health and National Safety regarding imposing fines on citizens in the event of failure to take health precautions (such as wearing masks, paws and social distancing) faces difficulties in implementation by the health and security personnel charged with following up on the implementation of decisions and all that the police have Refer violators to investigative judges to initiate the judicial complaint against them in accordance with Article 240 of the Penal Code No. (111) of 1969 amended for the crime of violating orders issued by an employee or assigned to a public service or from

municipal councils or an official or semi-official body within their legal powers or in If he commits a public health crime (21), and therefore the executor of these decisions cannot impose immediate fines on violators and take legal action Intention in light of the spread of diseases and epidemics and due to the length of the procedures and their bureaucracy, they may lead to the injury of the violating person if he is deposited in the positions and the injury of the detainees and the police if the violator is infected with the disease. The immediate right to the violator directly and within the framework of an integrated legal system to impose a state of emergency.

4- 4- It is noticed that the Public Health Law has regulated the procedures for transferring funerals and burying the dead and accurately regulating the case of transferring a body from outside Iraq to Iraq and vice versa if the cause of death was a transmissible disease that is not subject to the International Health Regulations, as it required the body to be wrapped in a cloth saturated with a disinfectant solution and placed in a metal coffin It is sealed by welding in the presence of the Iraqi consul or his representative, and it is placed inside a wooden box whose thickness is not less than (2 cm) and its sides are not permeable to liquids. If the burial takes place inside Iraq within (36) hours from the time of the occurrence of death (22), but the legislator neglected to organize procedures for the transfer and burial of the bodies whose cause of death is a serious transitional disease or an epidemic inside Iraq, and the aforementioned law did not regulate any procedures or protocols related to ceremonies The preparation, transportation, washing and burial in a safe and dignified manner, and the Ministry of Health did not issue instructions published in the Official Gazette for this purpose, with the exception of brief procedures issued according to an official letter from the Forensic Medicine Department on 3/15/2020 (23), and this requires from our point of view to amend the law It is not mentioned in the future to introduce mechanisms and ceremonies for preparing, transporting and burying the dead and places of burial and their health conditions for the dead of serious communicable diseases in Iraq. For example, the dead (Ebola) disease (24), for example, rules and procedures must be established for selecting and identifying cemeteries for burying the dead of dangerous diseases and epidemics in a safe and healthy manner away from residential places, especially since there are religious fatwas issued in Iraq that prohibit burial in public cemeteries (25), and it is certain that such The amendment will increase the effectiveness of health authorities in making quick and orderly decisions in preparing, transporting and burying the dead from transmissible diseases, and not relying on immediate decisions and directions that may create a state of turmoil and errors.

5- The necessity to update the instructions for determining communicable diseases No. (1) for the year 2007 (26), as Article (45) of the Public Health Law No. (89) for the year 1981 amended necessitated the determination of the communicable and endemic diseases covered by the provisions of this law according to instructions issued by the Minister of Health or whoever authorizes him Noting that Article (1) of these instructions that specified communicable diseases did not occur and did not include some dangerous communicable diseases that have appeared in the world, such as (Ebola) for example and the

virus (Corona) now, and we also call on the Iraqi Doctors Syndicate to reconsider the instructions for behavior Professional Doctors issued by decision of the Council of the Syndicate No. (6) Session (8) on 19/5/1985 (27) to be in line with global developments in the field of treatment responsibility, diagnosis responsibility, doctor's duties towards his patient, and humanitarian interaction in light of general epidemics, especially since the Doctors Syndicate was issued in cooperation With the World Health Organization (Medical Conduct and Medical Ethics) guide (28).

The second topic

The impact of legislative omission on the effectiveness of the legal administration's work

In light of the outbreak (Corona)

The administration undertakes in order to maintain public order and ensure the continuity of the public utilities in a regular and steady manner and a series of material and legal actions, which concern us in this topic the legal works that the administration undertakes by its own will only on its part and we mean by this the administrative decisions of their individual and organizational types to effect an amendment in the legal centers to be established Or cancel or amend a commitment to a matter of legal status (29), as for the second form of the legal administration's actions, it is the administrative contract that is issued in accordance with two wills, the first is the will of the administration and the second is the will of the contractor. The aim of the administration to conclude its administrative contracts is to manage public utilities and achieve the general benefit of the public of citizens of all kinds (30), and in this topic we will try to address the effectiveness of the legal regulation of the legal department's work to confront diseases and epidemics and the extent to which the administration can continue to carry out its legal work effectively and efficiently in light of the state of emergency Health and the extent to which legislation in force responds to the media of technology Hadith which facilitated the work of the administration in case of emergency in the following demands:

The first requirement

The Effectiveness of Legal Regulation for Administrative Decision in Confronting Coronavirus

An administrative decision is a legal act issued by a national administrative authority by its own will with the aim of arranging legal effects by establishing, modifying, or canceling a specific legal center, and this legal effect is the criterion of administrative decisions, in whose absence it results in the administration's actions becoming mere material actions (31) without going into the divisions of decisions In this case, we will try to focus on the effectiveness of the administrative decision in having its legal effects in light of the state of emergency in general and health emergencies in particular, as the outbreak of diseases and epidemics will restrict the movement of public employees in movement and conducting the work of the public office, especially in the event that the health authorities declare a state of ban Comprehensive or partial health on the areas of residence of employees who represent the means of administration to direct its public facilities, whether administrative, economic, security or health, and this

leads to the cessation of public facilities from work, as happened in Iraq, where the imposition of a curfew led to the suspension of the activities of these facilities, with the exception of health facilities Security and military, of course, and despite these harsh conditions, the administration always needs to ensure the continuity of public facilities, even in emergency situations and If at reasonable rates, it is not possible to imagine the complete cessation of these facilities, and here emerges the role of modern technology (32), in supporting communications and electronic correspondence, which can be secured through two entrances. The first relates to fulfilling the requirements of e-government work, which means the ability of different government sectors to provide traditional government services to individuals. And the completion of transactions over the Internet with infinite speed and accuracy and with less costs and effort, in addition to providing utility services and communicating with employees (33), as the e-government is based on the idea of maximizing the use of modern technology to free the movement of information and services from the restrictions and physical obstacles found in traditional papers and systems (34), where it is allowed The application of the e-government system to reduce the employee's prejudice to the citizen and the ease of providing services remotely. It also reduces the impact of the employee's absence from the facility in his administration, as in cases of emergency or employee strike. In addition, it achieves equality in the use of public facilities because transactions and services are carried out and provided electronically to those who It fulfills the conditions for using the facility electronically and provides flexibility or development as a stable principle In the management of public facilities.

As for the second approach: it is represented in the electronic automation of public administration systems and the establishment of an integrated system for electronic public administration, and this is intended to transform the administrative work that takes place based on human intervention into electronic work that is done on its own, and also helps to perform simple administrative work that may occupy the employee or consume A part of his time while the machine can do it on its own (35), and we can record in Iraq the absence of legal regulation of the issue of electronic public administration with the exception of some legal provisions that do not provide adequate legislative support to work with the electronic public administration system, and the reason is due to many physical, technical and human obstacles There is no room to talk about in administrative, financial, security and legislative matters (36).

Where the Iraqi legislator neglected to establish an integrated legal system for the electronic administrative decision, and it does not differ in its content and elements from the written administrative decision, except that the administration expresses its will electronically. Therefore, the electronic administrative decision was defined as the administration's disclosure of a single binding will issued by a public administrative authority through electronic means and arranging effects It is legal, and that the difference from the written administrative decision is in terms of the means of expressing the will of the administration only. The administrative decision issued through electronic means must have the components and elements of the administrative decision from its issuance by an administrative authority by

its own will, with the intention of creating certain legal effects, the legitimacy of its cause and the location that It is related to it and its issuance from a specialized reference in the form and procedures legally established and aims to achieve the public interest (37) The electronic administrative decision is issued and becomes enforceable in the face of those addressing it as soon as its elements are available and its electronic procedures are completed (38), and this requires the existence of a legal regulation for the procedures for issuing the electronic administrative decision and the mechanisms of its announcement and reporting With regard to the procedures for issuing an electronic administrative decision, the emission must be controlled Electronic application procedures Regarding the decisions that require the person concerned to submit a request to the administration with determining the form of the request and the mechanism for submitting it electronically and the electronic exchange of data between the public administration and the one dealing with it through the information system of the administration (39), the procedures for defining the external corners of the electronic administrative decision, such as the jurisdiction with its personal elements, must also be set Objectivity, temporal, spatial, form, and procedures such as the decisions issued by the committees and what is required to invite members and the venue of the meeting, which can be done by one of the electronic means of communication (video conferencing) and dialogue rooms or chat rooms, as well as organizing the issue of electronic administrative investigation and controlling the statements of the violating employee in a program or application The computer in preparation for issuing the disciplinary administrative decision (40) and other details cannot be mentioned, and the legislator must regulate the rules governing the electronic (digital) signature technology and the manual signature technique drawn on the scanner or the biometric signature or the legislator's approval of one of these techniques for issuing electronic administrative decisions (41), and the legal framework must be put in place for recognition The electronic administrative r by means of electronic publishing using modern means on the Internet, such as publishing the electronic administrative decision on the website of the decision-issuing body or the person concerned, fulfilling all of its elements, and also organizing the electronic communication (announcement) mechanism by available electronic means, which is easy for organizational administrative decisions. The method of approval of individuals can be adopted at Submitting requests through government websites with their desire to receive the response electronically via their e-mail, for example, or on the website that the individual wishes to receive the electronic response to with organizing procedures that prove the time of receipt of the response, such as the time of sending the message that includes the electronic administrative decision and the time of its receipt (42) as well as organizing the implementation process The administrative decision electronically (43), and procedures for appealing electronic administrative decisions must also be organized through the electronic judicial administration and the organization of electronic grievance procedures and remote electronic litigation (44). It should be noted that the Iraqi legislator has issued the Electronic Signature and Electronic Transactions Law No. (78) of 2012, and the legislator neglected to

regulate many issues related to electronic public administration, and we can summarize the most important weaknesses in the aforementioned law as follows:

1- That the aforementioned law specified in Article (First) the scope of its application to electronic transactions that are carried out by natural or legal persons and the transactions that parties agree to implement by electronic means, as well as electronic commercial and financial papers, and it did not explicitly refer to its adoption in the conduct of administrative or governmental transactions even though the bodies and public administrations possess a public legal personality according to the law, and this means the possibility of including state departments within the scope of the validity of the law considering the state departments of public legal persons and that the text was absolutely stated regarding (legal persons) and this requires legislative interference to explicitly extend the scope of the law's application to future administrative transactions and decisions .

2- The law defines the electronic signature as a personal mark in the form of letters, numbers, symbols, signs, sounds, etc. having a unique character indicating its attribution to the signer and is approved by the certification authority (45) and granting it administrative authority in evidence in addition to the civil and commercial authenticity (46), if The signing took into account the conditions of its creation mentioned in the law and approved by the certification authority (47), but it did not regulate the types of electronic signature and the techniques of its adoption by the public employee and government departments as if the will of the legislator had devoted itself to organizing the electronic signature for the purposes of civil, commercial and administrative activities between individuals and private legal persons and not with the intention Organizing them for the purposes of administrative transactions between employees and public administrations or between public juridical persons and individuals or between public legal persons or their representatives in government departments, and the legislator has not set the provisions for electronic signature implementation site through the establishment of authentication and electronic authentication bodies, as there is no law or legislation An explicit statement in Iraq provides for the adoption of social media and e-mail for the purposes of proof in administrative work (48), and did not regulate provisions Correspondence and electronic administrative decisions for public facilities.

3- The aforementioned law did not regulate the technical and procedural requirements for issuing, announcing, notifying and implementing the electronic administrative decision.

4- The aforementioned law did not include organizing electronic judicial grievance and appeal procedures with electronic administrative decisions and electronic litigation procedures or what is called (remote litigation) because the electronic organization must be integrated from the beginning of the electronic administrative decision and until it is protected from the methods of appeal with the end or by acquiring the decision issued by The competent judiciary is peremptory, and this requires the existence of unified and comprehensive legislation that addresses the issue of the electronic administrative decision in all

its aspects from the moment of its issuance until all the details of the methods of appeal and its finalization.

For the above, the legislation in force in Iraq falls short of meeting the requirements of e-government and e-public administration, as it was possible to accomplish many administrative transactions electronically during the period of total or partial ban for state employees and to manage public facilities remotely by electronic means and media with the possibility of providing services to citizens such as issuing official documents For citizens, such as identity documents, national cards, market permits, birth and death registration procedures, notification of administrative instructions and directives, electronic examinations for students in light of the spread of the Coronavirus, as well as not disrupting judicial institutions if there is a system (for remote litigation) that helps resolve postponed cases and absorb new This will affect the effectiveness of the administration in facing the health emergency due to the Coronavirus and we hope that the Iraqi legislator will avoid this legislative omission in the future after this emergency is gone.

The second requirement

The Effectiveness of Legal Regulation of Government Contracts in Confronting Coronavirus

An administrative contract is an agreement in which one of the parties is a public legal person with the intention of managing or running one of the public facilities and in it the administration's intention to adopt the method of public law is shown by including the contract with exceptional terms unfamiliar with the direction of the contractor with the administration with the latter having privileges and powers that the contractor does not enjoy (49) and has settled The judiciary and jurisprudence to consider the contract administratively if the administration is a party to the contract, and the contract relates to a public utility activity, follows common law methods and includes exceptional, unusual conditions (50).

What concerns us in this field is not the legislative texts related to dealing with the effects of diseases, pandemics and general disasters, because the Iraqi legal system is rich in legal provisions that deal with the effects of contracts in general in such exceptional circumstances, and despite the fact that the Iraqi constitution of 2005 approved the dual judiciary system In Iraq (51), however, administrative contract disputes, which are called in Iraq by the term (government contracts), are still subject to the jurisdiction of the ordinary judiciary that applied civil texts to administrative contract disputes, and the administrative judiciary was not able to apply the theories of the administrative judiciary in dealing with the financial imbalance of administrative contracts that required Compensating the contractor with the administration without the need to prove the error on the part of the administration, such as the theory of the prince's action, the theory of emergency conditions and the theory of unforeseen material difficulties (52) and promises to start saying that the Iraqi legislator has approved the theory of emergency conditions in Article (146 / Second) of the Iraqi Civil Law No. (40)) For the year 1951, the amended amendment that resulted in exceptional, unforeseen public emergency accidents that would make contractual obligations burdensome even if they were not A ploy to reduce the burdensome commitment to a reasonable

extent, and the Iraqi judiciary has considered the spread of epidemics and diseases such as cholera and foot-and-mouth disease among sheep, floods, heavy rains, road blockages, and high prices ... emergency conditions (53).

Article (211) of the Civil Code also addressed the damage arising from a foreign cause that would breach contractual obligations, such as a celestial lesion, a sudden accident, or force majeure. Islamic law jurists called force majeure the term (pandemic), and force majeure is defined as every matter other than Expected to be obtained and impossible to pay makes the implementation of the obligation impossible, as it is an accident external to the will of the contracting parties, unpredictable and impossible to pay, and leads to the impossibility of implementing the obligations (54), and thus leads to the termination of the obligation and the termination of the contract on its own (55). General conditions for contracting civil engineering works in its first and second sections of 1987 amended and issued by the Ministry of Planning to terminate the contracting in the event that it is impossible to implement it for any reason or reasons that (the employer) and (the contractor) agree that it is beyond the control of the parties. Paragraph (Second / 2) (From the controls No. (6) attached to the Instructions for the Implementation of Governmental Contracts No. (2) for the year 2014 (56) related to stopping and extending contracting work, supply contracts, consulting services contracts and non-consulting services contracts on the possibility of terminating current contracts Due to the continuation of force majeure and the impossibility of implementation with the agreement of the two parties, it should be noted that the decision of the Diwaniya Order No. 55 of 2020 issued on March 21, 2020 stipulated in paragraph (12) of it that the period of the Corona virus crisis is considered (force Cairo) for all projects and starting from February 20/2020 until the Iraqi Ministry of Health announces the end of the Corona epidemic, regardless of the problem of jurisprudential opinions on whether the Corona pandemic represents an exceptional emergency circumstance that makes governmental contractual obligations burdensome for the contractor with the administration or it represents (force majeure) They make contractual obligations impossible and lead to the termination of the contractual relationship with the administration, as we explained in the provisions above, except that they constitute a legal system to address the effects of the (Corona) pandemic on government contracts, but the important thing in this is that the Iraqi legislator neglected to establish an integrated legal system for concluding, managing and implementing contracts The government electronically, and if the legislator had organized this issue in an integrated and comprehensive manner, it would give the administration the effectiveness and ability to manage government contracts and implement them during this crisis, especially since the administration's need exists to conclude contracts etc. It is important to import medicines, equipment, and medical supplies to face this crisis and others. All successive government contract legislation (57) is devoid of any legal regulation of the following aspects:

- 1- Failure to organize the procedures of invitation, advertisement and public tenders electronically.

- 2- The procedures for concluding administrative contracts electronically and what is related to the subject of the electronic signature and the electronic enforcement of the contract are not regulated.
- 3- Failure to organize the procedures for following up the implementation of administrative contracts electronically, such as imposing late fines, withdrawal of work, termination of work, receipt of work, spare orders, extension and stop orders, and other details of government contract management and follow-up.
- 4- The absence of an electronic legal system for financial dealings with tenders, electronic administrative contracts and electronic payment systems such as plastic money, electronic money and electronic payment cards (such as monthly debit card, network cards, debit card, credit cards) and other smart cards (58).
- 5- The absence of a legal system to secure the technical protection of the electronic bid, such as data encryption and securing the automatic computer receiving the bids (59), in addition to providing legal protection for the electronic bid and the criminalization of prejudice to the electronic editor or the electronic medium or the electronic signature and the electronic offer and acceptance (60).
- 6- The lack of legal regulation for concluding the electronic administrative contract and its traditional and modern methods of concluding it. Examples of modern contracting methods are electronic auctions and electronic tenders, as well as the lack of legal regulation of the means of proof and authority among the contracting parties (61) and the conditions that must be provided in electronic writing as evidence for proof that can be presented to the judiciary such as electronic writing ability For reading, understanding and clarity, its ability to be preserved and the inability to amend it electronically in addition to the electronic signature and its conditions to prove the electronic administrative contract (62), the offer and acceptance must also be organized in the electronic administrative contract and the time and place of its conclusion, which usually represents the date of ratification of the referral decision or the decision issued to contract or purchase. Etc., as for the place of the electronic contract, it is the headquarters of the administration or the public legal person as the one who issues the acceptance. In general and electronic administrative contracts on the face Particular (63).
- 7 - The deficiency of the legislation in force that dealt with electronic signature and electronic transactions, so the Electronic Signature and Electronic Transactions Law No. (78) of 2012 defined the electronic contract as the connection of the offer issued by one of the contracting parties to the acceptance of the other party in a way that proves its effect on the contract that is made by an electronic means (64), The offer and acceptance in the contract is authorized by an electronic means (65) and the processing and systems of cases of consideration of electronic documents issued by the site (66) and the systems of cases of receiving and sending the electronic document (67), and although these provisions can be used in some aspects of concluding electronic administrative contracts, they are not considered an integrated legal system For electronic administrative contracts for the reasons we explained earlier, in addition to that, the legislator neglected to regulate the issue of determining the competent court to adjudicate in electronic contract disputes because the aforementioned law excluded court procedures, judicial announcements, attendance announcements, search warrants, arrest

warrants and judicial rulings from the scope of this law , as well as omitted The legislator addresses the determination of contractual eligibility, defects of will, problems of electronic proof and the problem of conflict of suspicion Electronic mechanism with formalities in electronic evidence (68).

In summary, the failure of the legislator to create an integrated legal system for the electronic administrative contract has a negative impact on the effectiveness of the administration in facing the economic and health conditions during the outbreak of the Coronavirus, and this requires the existence of an integrated and comprehensive legal system for general government contracts, part of which is singled out for the electronic administrative contract and its methods, management and proof And the authority competent to hear his disputes in the future.

Conclusion

In conclusion, we discussed this and through objective in-depth research of the effects of legislative omission on the effectiveness of management in facing the crisis of the (Corona) virus outbreak, we reached the following results and recommendations:

First: Results:

- 1- The administration needs exceptional and unfamiliar powers under normal circumstances to face extraordinary circumstances such as situations of wars, disasters, diseases and epidemics, and these powers must be organized according to emergency legislation to give legitimacy to the decisions, procedures and measures of the administration during these emergency circumstances, which often affect public rights and freedoms such as the right of movement. Travel, the right to assembly, the right to education, etc., in addition to subjecting them to judicial or parliamentary oversight upon the end of this case, and therefore the complete lack of legislation regulating this case or its deficiency will affect the ability and legitimacy of these decisions and measures to be taken.
- 2- It is not sufficient for emergency legislation to have been enacted in accordance with the principles and mechanisms of the constitution, but rather it must be effective, realistic and transparent in order for the administration to understand and apply them and to know the responsibilities, limits, duties and scope of them to ensure the effectiveness of achieving the administration's objectives in maintaining security, social peace and public health during emergency periods.
- 3- Legislative omission would limit the administration's ability and effectiveness in carrying out its legal work. The total neglect or lack of legal regulation of the legal means of administration according to its modern concept that coincides with technical and technological development paralyzes and disrupts the administration's work during emergencies in general and health emergencies in particular. It may require quarantine and a comprehensive curfew, which leads to the complete suspension of public utilities, which weakens the effectiveness of the administration as well as conflicts with the principles of work of the public facility that require permanence, continuity and development.

Second: Recommendations:

In order to avoid being overlooked in the legislations in force that reduce the effectiveness of the administration in facing a health emergency such as the spread of a virus, we recommend the following:

- 1- Canceling the National Safety Defense Order No. (1) of 2004 and enacting new legislation consistent with the provisions of the declaration of a state of emergency stipulated in Article (61 / Nine) of the Constitution of the Republic of Iraq for the year 2005 with the necessity to introduce a state of war or the declaration of war or public disasters and diseases Epidemics are among the cases that require the declaration of a state of emergency while granting the executive authority the power to issue regulations (necessity) during the absence of the House of Representatives due to the outbreak of diseases and epidemics, provided that the procedures, measures and regulations issued by the government during the emergency period are subject to judicial oversight.
- 2- The emergency law must include a comprehensive and integrated legal system of responsibilities, duties, scope, and oversight bodies to ensure that public rights and freedoms are not violated.
- 3- Granting the Minister of Health the right to request the declaration of a state of health emergency with a joint request with the Prime Minister of Parliament to confront deadly diseases and epidemics to give effectiveness to the provisions of Public Health Law No. (89) of 1981 amended with the emergency law including the powers of health authorities and security authorities in facing epidemics and communicable diseases and a procedure The necessary constitutional and legal amendments for that.
- 4- Giving the Ministry of Health cadres in the event of a health emergency with controlling powers to implement the procedures and measures ordered by the Minister of Health based on his powers in the Public Health Law and the proposed emergency law, as the experience of the spread of the Corona virus resulted in the inability of health personnel to fulfill their duty to quarantine or adhere to preventive measures Health or taking samples from injured or touching patients except with the support and backing of the security authorities with the registration of cases of assault on health personnel.
- 5- The need to amend the Public Health Law No. (89) of 1981 amended by adding special provisions related to procedures for the transfer of dead bodies with dangerous viruses such as (Corona) or any other transmissible disease stipulated in health instructions inside Iraq, as Article (58) of the law The aforementioned regulated procedures for transferring the body from outside Iraq to Iraq and vice versa only, without regulating the procedures for the internal transfer of the bodies.
- 6- Amending the Public Health Law No. (89) of 1981 amending or issuing health regulations that regulate procedures or protocols related to the ceremonies of processing, transportation, washing and burial in a safe and dignified manner, and we suggest to the legislator and the Ministry of Health that the guidelines for burying the dead of Corona be used by the World Health Organization (WHO).
- 7- Amending the Public Health Law No. (89) of 1981 amended or issuing health regulations that regulate procedures and rules for selecting and identifying

cemeteries for burying the dead of dangerous diseases and epidemics in a health-safe and away from residential places, as the Coronavirus experiment revealed confusion and delay on the part of health authorities to allocate places for burial Corona virus victims.

8- We call on the Ministry of Health to update the Instructions for Defining Communicable Diseases No. (1) for the year 2007, whereby the Corona virus and other communicable and endemic diseases must be included in the list of these diseases based on Article 45 of Public Health Law No. (89) of 1981 amended.

9- We call on the Doctors Syndicate to reconsider the professional conduct instructions for doctors issued by the Bar Council Decision No. (6) Session (8) on 5/19/1985 and not content itself with issuing the guideline (medical behavior and medical ethics) with a focus on the responsibility of treatment, diagnosis and the duties of the doctor Attending his patient during health emergencies and setting disciplinary penalties for every medical behavior in contravention thereof.

10- We call on the legislator to enact a comprehensive and integrated legal regulation of the electronic administrative decision to enable the administration to manage its facilities during periods of comprehensive curfew and the impossibility of employees accessing their departments in addition to the speed, ease and cost-saving of this system.

11- We call on the legislator to enact an integrated and comprehensive legal regulation for governmental public contracts, provided that it addresses the subject of the electronic administrative contract and everything related to electronic contracting procedures to enable the administration to conclude and manage its contracts during the period of health emergency that affects the movement of public employees and affects the ability of the administration to maintain its resources during These exceptional periods such as the supply of medicines, medical supplies and the provision of foodstuffs during these periods.

Margins

1- Seen: Dr. Maher Saleh Allawi Al-Jubouri, Administrative Law, First Edition, Memory for Publishing and Distribution, Baghdad, 2017, p. 121 and beyond.

2- See: Dr. Ali Muhammad Badir and Dr. Mahdi Yassin Al Salami and Dr. Essam Abdel-Wahab Al-Barzanji, Principles and Provisions of Administrative Law, University of Baghdad, College of Law, Directorate of Dar Al-Kutub for Printing and Publishing, Baghdad, 1993, pp. 216, p. 218.

3- See: Dr. Ahmed Fathy Sorour, The Constitutional Protection of Rights and Public Freedoms, 1st Edition, Dar Al Shorouk, Beirut, Lebanon, 1999, p. 785

4- For more details, see: Dr. Hamid Hanoun Khaled, Human Rights, Sanhour Library, Beirut, 2015, pp. 73, p. 75, p. 89, p. 134.

5- Article (46) of the Constitution of the Republic of Iraq of 2005.

6- This legislative order was preceded by laws that regulated the state of emergency, including Emergency Decree No. (57) for the year 1939, Law No. (10) for the year 1940 and the National Safety Law No. (4) for the year 1965, the last of which is Legislative Order No. (1) for the year 2004, the Order for Defense of National Safety called the order Legislative, because the prime minister at the

time has legislative and executive authority, and the matter was published in the Al-Waqa'iq newspaper, issue No. 3987, in September / 2004.

7- See: Judge Salem Roudhan Al-Mousawi, Total or Partial Curfew and the Constitutional Position, an article published in the Civilized Dialogue page, issue (6396) on 11/1/2019 on the website: www.ahewar.org.

8- Article (61 / IX) of the Constitution of the Republic of Iraq of 2005.

9- Article (1) of the French Emergency Law of 1955 amended stipulates that public disasters are considered among the risks that necessitate the declaration of a state of emergency, as well as Article (1) of Law No. (162) of 1958 regarding the declaration of a state of emergency in Egypt to consider wars or threats of their occurrence and unrest. Interior, public disasters, and the spread of epidemics are a reason for declaring a state of emergency. For more details, see: Dr. Ahmed Talal Abdul Hamid Al-Badri, The Impact of the State of Emergency on Expanding the Powers of the Executive Authority, 1st Edition, Law and Judicial Library, Baghdad, 2013, p.7.

10- Opinion of researchers d. Maher Faisal Saleh and Dr. Intisar Hassan Abdullah and Mustafa Talaa Khalil, The State of Emergency Under the Constitution of the Republic of Iraq of 2005, Solutions and Treatments, a research published in the Journal of Legal Sciences, College of Law, University of Baghdad, a special issue of the researches of the Public Law Branch Conference held under the title "Constitutional and Institutional Reform Actual and Expected For the period from (13-14/11/2018) p. 162.

11- Article (2) of the National Safety Defense Order No. (1) of 2004.

12- Article (9) of the National Safety Defense Order No. 1 of 2004.

13- Article 61 / IX of the Constitution of the Republic of Iraq for the year 2005, and on judicial oversight of the state of emergency under the Defense of National Safety Order No. (1) for the year 2004 and the criticisms directed at it. On National Safety No. (1) for the year 2004 and its judicial control, a research published in the Journal of the Center for Studies of Kufa, University of Kufa, Issue (9), 2008, p. 182 and later.

14- Article (101) of the Constitution of the Republic of Iraq of 2005.

15- Article (100) of the Constitution of the Republic of Iraq of 2005.

16- For more details on the regulations of necessity, see: Dr. Abdel Azim Abdel Salam Abdel Hamid, The Relationship between Law and Regulations, a comparative study of the development of the relationship between them in France, the United States of America and the Arab world, without a publishing house, Cairo, 1985, pp. 137 and later.

17- See: Dr. Muhammad Fawzi Nouji, Theoretical and Practical Aspects of Administrative Control, A Comparative Study, 1st Edition, Dar Al-Fikr and Law, Egypt, 2016, pg.

18- See: Dr. Sami Gamal El-Din, The Fundamentals of Administrative Law, Knowledge Foundation, Alexandria, 2004, p. 501.

19- Article (44) of Public Health Law No. (89) of 1981 amended defines a communicable disease as (a transmissible disease is a disease resulting from infection with an infectious agent or the toxins generated by it, which results from the transmission of that agent from the source to the host, directly or indirectly.).

- 20- Article (45) of Public Health Law No. (89) of 1981 amended.
- 21- Articles (46), (47), (49), (51), (52) and (54) of Public Health Law No. (89) of 1981 amended.
- 22- Articles (496 to 499) of the Penal Code No. 111 of 1969 as amended.
- 23- Article (58 / First / E) and (58 / Second / Third) of Public Health Law No. (89) of 1981 amended.
- 24- Article (60) of Public Health Law No. (89) of 1981 amended.
- 25- See the book of the forensic medicine department of the Iraqi Ministry of Health, issue / Dr. I. P / 2 / a. P / (10347) on 3/15/2020 under the title (Burial procedures for patients who died as a result of infection with the emerging corona virus (Covid-19), the book is published on the Shafak website: www.Shafaaq.com.
- 26- See the World Health Organization (WHO) website in Arabic at the electronic link: www.who.int.
- 27- A fatwa by Mr. Sistani prohibiting the burial of the dead of Corona in public cemeteries, published on the website: www.aa.com.tr.
- 28- It was published in the Iraqi Al-Waqi'a newspaper, issue (4041), on 06/17/2007.
- 29- See the professional conduct instructions issued under Article (22) of the Medical Association Law No. (81) of 1984, Shafiq Press, Baghdad, 1985.
- 30- See the guide to medical behavior and medical ethics issued in cooperation between the World Health Organization (WHO) and the Iraqi Doctors Syndicate in 2010.
- 31- See: Dr. Khaled Khalil Al-Zahir, Administrative Law, a comparative study, Dar Al-Masirah for Publishing, Distribution and Printing, 1st Edition, Amman, 1997, p.105.
- 32- See: Dr. Muhammad Rifat Abd al-Wahhab, Principles and Provisions of Administrative Law, Al-Halabi Legal Publications, Beirut - Lebanon, 2005, p. 492.
- 33- See: Dr. Naguib Khalaf Al-Jubouri, Administrative Law, Yadkar Library for Selling and Publishing Legal Books, Sulaymaniyah, 2014, p. 322.
- 34- See: Dr. Mazen Lilo Radi, The General Theory of Administrative Decisions and Contracts, Shehab Press, Erbil, 2005, p. 18, p.19.
- 35- Technology is defined as (following up the use of modern day data from means, devices and innovations, applying their modern uses and making use of them in various aspects of human life, including its influence in the field of information and communication in its various means, channels and devices). First Edition, Arab Center for Studies and Scientific Research for Publishing and Distribution, Cairo, 2018, p. 103.
- 36- See: Dr. Abu Bakr Mahmoud Al-Hosh, E-Government, Reality and Prospects, 1st Edition, The Arab Nile Group, Cairo, 2006, p. 452.
- 37- See: Dr. Abdel Fattah Bayoumi Hegazy, E-government and its legal system, Arab Thought House, Alexandria, 2004, p. 21.
- 38- See: Dr. Dawood Abdul Razzaq Al-Baz, Introduction to E-Commerce in the United Arab Emirates, 1st Edition, Dar Al-Fikr Al-Jami`, Alexandria, 2003, pp. 84 and beyond.

- 39- See: Dr. Muhammad Amin Youssef, Administration and e-government, a study on administration and e-government, with light on the experience of e-government in the United Arab Emirates, 1st Edition, House of Books and Arab Studies, Cairo, 2017, p. 36 and beyond.
- 40- See: Dr. Hamdi Al-Qubeilat, Electronic Public Administration Law, 1st Edition, Wael Publishing and Distribution House, Amman, 2014, p.93.
- 41- See: Dr. Adnan Mustafa Al-Baz, Electronic Administrative Decision, a research published on the CIO website, on the electronic link: [www. arab. cio. org.](http://www.arab.cio.org)
- 42- See: Dr. Alaa Mohiuddin Mustafa, Electronic Administrative Decision, a paper published in the Electronic Transactions Conference (E-Commerce - E-Government), p. 111.
- 43- See: Dr. Dawood Abdul-Razzaq Al-Baz, Electronic Public Administration (Government) and Its Impact on the Legal System of the Public Utility and the Work of Its Employees, Scientific Publishing Council, Kuwait University, 2004, p. 293, p. 294.
- 44- See: Dr. Safaa Fattouh Jumaa, Governance Principles in the Civil Service Law No. (81) for the year 2016, i1, c2, the National Center for Legal Publications, Cairo, 2018, p.162 and beyond.
- 45- See: Dr. Nawfal Aqeel Al-Ajarmah and Nasir Abdul Halim Al-Salamat, Enforcement of the Electronic Administrative Decision, a research published in the Journal of Studies of Sharia and Law Sciences, Volume (40) Appendix (1), Amman, 2013, p. 1027 and beyond.
- 46- See: Zainab Abbas Mohsen, Electronic Administration and its Impact on Administrative Decision, a research published on the website: [www. iajs. net,](http://www.iajs.net) p. 312.
- 47- For more details, see: Ahmad Talal Abdul Hamid Al-Badri, Governance Strategy for Administrative Legislations in Iraq, a Comparative Study, PhD Thesis, University of Baghdad, College of Law, 2019, p. 352 and beyond.
- 48- Article (1 / Fourth) of the Electronic Signature and Electronic Transactions Law No. (78) of 2012.
- 49- Article (4 / Second) of the Electronic Signature and Electronic Transactions Law No. (78) of 2012.
- 50- Article (5) of the Electronic Signature and Electronic Transactions Law No. (78) of 2012.
- 51- See: Dr. Mossadegh Adel Taleb, E-government and its applications in Iraqi legislation, Al-Sanhuri Library, Beirut, 2020, p.50.
- 52- See: Dr. Anas Jaafar and Dr. Ashraf Anas Jaafar, Administrative Contracts, 5th Edition, Arab Renaissance House, Cairo, 2011, p. 17.
- 53- See: Dr. Mazen Lilo Radi, Administrative Law, 4th Edition, Dar Al Masalla Printing, Publishing and Distribution, Lebanon, 2017, pg. 277 and beyond.
- 54- Article (101) of the Constitution of the Republic of Iraq of 2005.
- 55- For more details, see: Dr. Ahmed Talal Abdul Hamid Al-Badri, The Contract Rule of Sharia Contractors in the Field of Administrative Contracts, A

Comparative Study, First Edition, Mesopotamia House, Dar and Adnan Library for Printing, Publishing and Distribution, Baghdad, 2013, p. 175 onwards.

56- For more details, see: Dr. Ghazi Abdul Rahman Naji, The Economic Balance in the Contract During Its Implementation, Publications of the Legal Research Center, Ministry of Justice, Baghdad, 1986, p. 122 and after.

57- Pandemic means the distress that engulfs money or what affects crops and fruits from the sky, such as cold and wind, or from a pest such as mold, thirst, and locusts, and the actions of human beings if they are prevalent, such as an invasion of the army. For more details, see: Dr. Safaa Taqi Al-Issawi, Force Majeure and its Impact on International Trade Contracts, A Comparative Study, 1st Edition, Encyclopedia of Iraqi Laws, Baghdad, 2012, p. 30 and beyond.

58- See: Dr. Omar Al-Siwi, Administrative Contract and Force Majeure, published research in the Journal of Legal Studies, Vol. (13) Years (14), Tariones University, Benghazi, 1994, p. 25.

59- See: Muhammad Majid Al-Hajri, Force Majeure and its Impact on Contracts and Rights, an article published on Al-Watan website at the link: www.al-watan.com, further see: Dr. Yunus Salah al-Din Ali, The Force Majeure Requirement in English Law, An Analytical Comparative Study with Iraqi Civil Law, a research published in Al-Mohaqiq Al-Hilli Journal of Legal and Political Sciences, Issue (4), Year (10), 2018, p. 245.

60- It was published in the Iraqi newspaper Al-Waqae 'issue (4325) on 16/6/2014.

61- Such as the Government Contract Law issued by the Coalition Provisional Authority (dissolved) Order No. (78) for the year 2004, and the Instructions for the Implementation of Government Contracts No. (1) for the year 2008 (canceled) and the Instructions for the Implementation of Government Contracts No. (2) for the year 2014 in force and the controls attached to it.

62- See: Ahmed Shaaban Ali Al-Jaloudeh, Public Tender in the Shadow of Electronic Government, Dar Al-Fikr Al-Jami`, Alexandria, 2016, p. 122 and beyond

63- See: Dr. Khaled Al-Tawil and Others, Introduction to the Internet and Personal Computer Technology, The Arab Science House Publishers, Without Place of Publication, 2000, pp. 156 ff.

64- See: Dr. Khaled Mamdouh Ibrahim, Concluding the Electronic Contract, A Comparative Study, 1st Edition, Dar Al Fikr University, Alexandria, 2006, p. 251.

65- See: Dr. Kedar Abdel Qader, Conclusion and Evidence of the Electronic Administrative Contract, a research published in Al-Rafidain Journal of Law, Volume (10), Issue (37), year 2008, p. 168 and later.

66- For more details, see: Dr. Faisal Abdul-Hafiz Al-Shawabkeh, the legal system for the electronic administrative contract, a research published in the Journal of the Islamic University for Economic and Administrative Studies, Volume (21), Issue (2), Amman, 2013, p. 351.

67- For more details, see: Dr. Hamdi Suleiman Al-Qubeilat, The Legal System for Concluding Electronic Administrative Contracts, a research published in the journal

- 68- Sharia and Law Studies, Volume (34), Supplement, Amman, 2007, (pp. 661 - pg. 665), available on the website: www.journals.ju.edu.jo.
- 69- Article (1 / tenth) of the Electronic Signature and Electronic Transactions Law No. (87) of 2012.
- 70- Article (18 / First) of the Electronic Signature and Electronic Transactions Law No. (87) of 2012.
- 71- Article (18/3) of the Electronic Signature and Electronic Transactions Law No. (87) of 2012.
- 72- Article (19,20/21) of the Electronic Signature and Electronic Transactions Law No. (87) of 2012.
- 73- Article (3 / Second / 5) of the Electronic Signature and Electronic Transactions Law No. (87) of 2012.
- 74- See: Dr. Abbas Al-Aboudi, Explanation of the Provisions of the Electronic Signature and Electronic Transactions Law, No. (78) of 2012, Al-Sisban Library, Baghdad, without a year of printing, pp. 84, p. 87, p. 128, and beyond.

University theses:

- Al-Badri, Ahmed Talal Abdul-Hamid, Governance Strategy for Administrative Legislations in Iraq, a Comparative Study, PhD Thesis, College of Law, University of Baghdad, 2019.

Third: Research and Articles:

- 1- Al-Baz, Adnan Mustafa, Electronic Administrative Decision, a research published on the Arab Informatics Supervisors Association (CIO) website, on the electronic link: www.arab.cio.org.
- 2- Hatem, Faris Abdul-Rahim and Sanan Talib Abdul-Shahid, The State of Emergency Under the Defense of National Safety Order No. (1) of 2004 and its Judicial Supervision, a research published in the Journal of the Center for Studies of Kufa, University of Kufa, Issue (9), 2008.
- 3- Al-Siwi, Omar, Administrative Contract and Force Majeure, a research published in the Journal of Legal Studies, Vol. (13) years (14) University of Tariones, Benghazi, 1994.
- 4- Shawabkeh, Faisal Abdul Hafez, the legal system for the electronic administrative contract, a research published in the Journal of Islamic Sciences for Economic and Administrative Studies, Volume (21), Issue (2), Amman, 2013.
- 5- Salih, Maher Faisal and others, The State of Emergency Under the Constitution of the Republic of Iraq of 2005, Solutions and Treatments, a research published in the Journal of Legal Sciences, College of Law, University of Baghdad, a special issue on the research of the Public Law Branch Conference held under the title "Constitutional and Institutional Reform - Reality It is hoped for the period (13-14/11/2018).
- 6- Abd al-Qadir, Qidar, Conclusion and Evidence of the Electronic Administrative Contract, a research published in Al-Rafidain Journal of Law, Volume (10), Issue (37), 2008.
- 7- Al-Ajarmah, Nawfal Aqeel and Nasser Abdel Halim Al-Salamat, The Enforcement of the Electronic Administrative Decision, a research published in the Journal of Studies of Sharia and Law Sciences, Volume (40) Appendix (1) Amman, 2013.

- 8- Ali, Yunus Salah al-Din, Conditions of force majeure in English law, an analytical study comparing with Iraqi civil law, a research published in the investigator Al-Hilli Journal of Legal Sciences, Issue (4), Year (10), 2018.
- 9- Al-Kabilat, Hamdi Suleiman, The Legal System for Concluding Electronic Administrative Contracts, a research published in the Journal of Studies of Sharia and Law Sciences, Volume (34), Supplement, Amman, 2007.
- 10- Mohsen, Zainab Abbas, Electronic Administration and its Impact on Administrative Decision, a research published on the website: www.iajs.net.
- 11- Al-Mousawi, Salem Rawdan, Total or Partial Curfew and the Constitutional Position, an article published on Al-Hiwar Al-Muddin page, issue (6396) on 11/1/2019 on the website: www.ahewar.org.
- 12- Al-Hajri, Muhammad Majed, Force Majeure and its Impact on Contracts and Rights, an article published on Al-Watan website at: www.al.watan.com.

Constitutions:

- Constitution of the Republic of Iraq for the year 2005.

Laws:

- 1- Emergency Decree No. (57) of 1939.
- 2- Law No. (10) of 1940.
- 3- The French Emergency Law of 1955 as amended.
- 4- Egyptian Emergency Law No. (162) of 1958.
- 5- National Safety Law No. (4) of 1965.
- 6- Penal Code No. (111) of 1969, as amended.
- 7- Public Health Law No. (89) of 1981, as amended.
- 8- National Safety Defense Order No. (1) of 2004.
- 9- The Public Contracts Law issued pursuant to the Coalition Provisional Authority (dissolved) Order No. (87) of 2004.
- 10- The Electronic Signature and Electronic Transactions Law No. (78) of 2012.

Fifth: Instructions:

- 1- Instructions for identifying communicable diseases No. (1) of 2007.
- 2- Instructions for implementing government contracts No. (1) for the year 2008 (canceled).
- 3- Instructions for the implementation of government contracts No. (2) of 2014.

Sixth: websites:

- 1- World Health Organization website: www.who.int.
- 2- Shafaq website: www.shafaq.com.

References:

- 1- Ibrahim, Khaled Mamdouh, Concluding the Electronic Contract, A Comparative Study, 1st Edition, Dar Al Fikr University, Alexandria, 2006.
- 2- Al-Baz, Dawood Abdul-Razzaq, Electronic Public Administration (Government) and its Impact on the Legal System of the Public Utility and the Work of its Employees, Scientific Publishing Council, Kuwait University, 2004.

- 3- Al-Baz, Dawood Abdel-Razzaq, Introduction to E-Commerce in the United Arab Emirates, 1st Edition, House of Thought University, Alexandria, 2003.
- 4- Al-Badri, Ahmad Talal Abdul-Hamid, The Impact of the State of Emergency on Expanding the Authority of the Executive Authority, 1st Edition, Law and Judicial Library, Baghdad, 2013.
- 5- Al-Badri, Ahmad Talal Abdul-Hamid, The Contract Base, Sharia Contractors in the Field of Administrative Contracts, A Comparative Study, First Edition, Mesopotamia House and Adnan Library for Printing, Publishing and Distribution, Baghdad, 2013.
- 6- Badir, Ali Muhammad and others, Principles and Provisions of Administrative Law, University of Baghdad, College of Law, Directorate of Dar Al-Kutub for Printing and Publishing, Baghdad, 1993.
- 7- Al-Jubouri, Maher Saleh Allawi, Administrative Law, 1st Edition, Memory for Publishing and Distribution, Baghdad, 2017.
- 8- Al-Jubouri, Najeeb Khalaf, Administrative Law, Badkar Library for Selling and Publishing Arabic Books, Sulaymaniyah, 2014.
- 9- Jaafar, Ashraf Anas, Administrative Contracts, 5th Edition, Arab Renaissance House, Cairo, 2011.
- 10- Aljloda, Ahmed Shaaban Ali, Public Tender under the E-Government, Dar Al Fikr University, Alexandria, 2016.
- 11- Jamal Al-Din, Sami, The Principles of Administrative Law, Al Ma'arif Institute, Alexandria, 2004.
- 12- Friday, Safa Fattouh, Governance Principles in the Civil Service Law No. (81) for the year 2016, i1, National Center for Legal Publications, C2, Cairo, 2018.
- 13- Hijazi, Abdel Fattah Bayoumi, E-government and its legal system, Arab Thought House, Alexandria, 2004.
- 14- Khaled, Hamid Hanoun, Human Rights, Sanhoury Library, Beirut, 2015.
- 15- Radi, Mazen Leilo, Administrative Law, 4th Edition, Al-Masalla Printing, Publishing and Distribution, Lebanon, 2017.
- 16- Rady, Mazen Lillo, The General Theory of Administrative Decisions and Contracts, Shehab Press, Erbil, 2005.
- 17- Sorour, Ahmed Fathy, The Constitutional Protection of Rights and Public Freedoms, 1st Edition, Dar Al Shorouk, Beirut, Lebanon, 1999.
- 18- Soliman, Fouad Ahmed, Modern Communication Technology in Activating Parliamentary Oversight, 1st Edition, Arab Center for Studies and Scientific Research for Publishing and Distribution, Cairo, 2018.
- 19- Student, Mossadegh Adel, E-Government and its Applications in Iraqi Legislation, Al-Sanhoury Library, Beirut, 2020.
- 20- Al-Taweel, Khaled et al., Introduction to the Internet and Personal Computer Technology, Arab Science Publishers, without a place of publication, 2000.
- 21- Al-Zahir, Khaled Khalil, Administrative Law, A Comparative Study, 1st Edition, Dar Al Masirah for Publishing, Distribution and Printing, Amman, 1997.

- 22- Abdel-Hamid, Abdel-Azim Abdel-Salam, The Relationship between Law and Regulations in France, the United States of America and the Arab World, without a publishing house, Cairo, 1985.
- 23- Abd al-Wahhab, Muhammad Rifat, Principles and Provisions of Administrative Law, Al-Halabi Legal Publications, Beirut, Lebanon, 2005.
- 24- Al-Aboudi, Abbas, Explanation of the Provisions of the Electronic Signature and Electronic Transactions Law No. (78) of 2012, Baghdad, without a year of reprint.
- 25- Al-Issawi, Safa Taqi, Force Majeure and its Impact on International Trade Contracts, 1st Edition, Encyclopedia of Iraqi Laws, Baghdad, 2012.
- 26- Al-Qibilat, Hamdi, Law of Electronic Public Administration, 1st Edition, Wael Publishing and Distribution House, Amman, 2014.
- 27- Naji, Ghazi Abdul-Rahman, The Economic Balance of the Contract During Its Implementation, Publications of the Legal Research Center, Ministry of Justice, Baghdad, 1986.
- 28- Noyji, Muhammad Fawzi, Theoretical and Practical Aspects of Administrative Control, A Comparative Study, 1st Edition, House of Thought and Law, Egypt, 2016.
- 29- Al-Hosh, Abu Bakr Mahmoud, Electronic Government, Reality and Prospects, 1st Edition, Arab Nile Group, Cairo, 2006.
- 30- Youssef, Mohamed Amin, Administration and E-Government, 1st Edition, House of Books and Arab Studies, Cairo, 2017.