

## Research Article

## THE ROLE OF ADMINISTRATIVE CONTRACTS IN THE FIELD OF PUBLIC ADMINISTRATION

**Ahmet Imami\* and Mirlinda Batalli**

### ABSTRACT

**Background:** This scientific paper aims to delve deeply into the concept of administrative contracts and their importance in the field of public administration. Therefore, our goal is to provide a clear and detailed analysis and interpretation for readers, ensuring that all those interested have the opportunity to gain a foundational understanding of the importance and legal consequences of administrative contracts. By means of this paper, treating administrative contracts broadly regarding their development, meaning and importance in the theoretical aspect will positively influence and facilitate their application in practice by the public administration. These contracts, often similar to classical ones, with their content and purpose, are so differentiated that now it is no longer possible to speak of their belonging to one of the existing groups of contracts but of new, independent types of contracts.

**Methods:** This paper employs analytical, normative, historical and comparative methods. The analytical method will be used to analyse administrative contracts in the Republic of Kosovo and their application by state bodies. The normative method will treat the legal provisions that regulate administrative contracts, starting with those within administrative law and extending to provisions in other legal domains. The historical method will illustrate the history of the development of administrative contracts, detailing their past and how they work today. Lastly, the comparative method will compare the development and operation of administrative contracts in the Republic of Kosovo with those in other democratic states mentioned in the paper.

**Results and conclusions:** The administrative contract holds significant importance in public administration, as its primary objective is always to serve the general state interest. Despite being a bilateral legal act, an administrative contract typically involves a public or state administration body as the contracting party, which inherently holds greater power or authority in relation to the other legal entity involved. This power disparity means there is no equal footing between the contracting parties, contrary to the principle of equality observed in civil law and generally required for concluding private contracts.

## 1 INTRODUCTION

Administrative contracts, along with their characteristics, types, and importance, are universally known. These contracts are important for all democratic countries by enhancing the efficiency and effectiveness of public administration within the legal system of a given country.

In most democratic countries, administrative contracts are important since their primary purpose in public administration is the realisation of the general state interest by the public administration body as a contracting party in relation to any given legal subject. They represent modern legal creations of institutional and business practice, which have emerged from the need for economic development to be shaped or performed legally in national and international terms. The administrative, economic and legal elements are deeply intertwined, defining the essence of each administrative contracting work.

Despite being bilateral legal acts, administrative contracts often exhibit a power disparity, with the public or state administration body as the contracting party wielding greater authority over the other legal entity involved. This inequality contrasts with the equality principle upheld in civil law, which is a general condition for concluding civil-private contracts.

The institute of administrative contracts in administrative law, namely in regulating administrative activity, is of great importance. Therefore, through this topic, we aim to contribute initially to public administration bodies in addressing administrative issues of general state interest and then to all those interested in gaining knowledge about administrative contracts.

For the reasons mentioned above, we consider this topic related to the role of administrative contracts in public administration necessary. We hope that it will be treated scientifically and serve our society, researchers in the legal field, researchers in political sciences and public administration, scientific workers, judges, prosecutors, lawyers, and others in related fields.

## 2 THE HISTORY OF ADMINISTRATIVE CONTRACTS

Administrative contracts in their historical context were first introduced in the civil laws of states at the end of the 19th century and the beginning of the 20th century, notably starting in France. The theory of administrative law and its essential elements originated in France, making it a pivotal influence in this legal domain. In today's contemporary democratic systems, administrative contracts are widely recognised by most continental European systems, especially in those that have been under the influence of French law.<sup>1</sup> Consequently, many terms and notions in the field of administrative law derive from the French state.

---

1 Bajram Pollozhani and other, *Administrative Law: Comparative Aspects* (Skopje 2010) 75.

The appearance of administrative contracts at that time confirms their long history of development and implementation in public law. As the complexity of public administration increased in the 20th century, administrative contracts in public law gained even greater importance.

Historically, administrative contracts were considered simple because they clearly defined the rights and duties of the contracting parties. While the parties were responsible for providing services and goods, the state body was competent only for implementing the contract.

In the past, high state officials or persons close to the king were tasked with conducting concession procedures by means of administrative contracts, or they became concessionaires, covering the expenses personally. To realise the goals of the concessions, such as mining concessions, construction of new cities, urbanisation of rural areas, etc., the contracts were financed by a contractor related to the king or a high state official.

Concessionaires could also lease the concessioned assets to create assets for the state, fill the state treasury and develop their country's economy.<sup>2</sup> The privileging of state officials was a common practice of the governments of that time. Still, the importance of administrative contracts was special even in the time of the king, since the state developed the country's economy and filled the treasury precisely based on administrative contracts.

In the Republic of Kosovo, administrative contracts were recognised for the first time in 2017, respectively with the entry into force of the new law on general administrative procedure. In the legal system of the Republic of Kosovo, the institution of administrative contracts has yet to be regulated in detail because there are only a few articles, respectively only nine of them, which determine the regulation of the procedure for concluding administrative contracts.

### 3 THE MEANING OF THE ADMINISTRATIVE CONTRACT

An administrative contract is a mutual agreement between two or more parties or legal subjects, where at least one contracting party is a public body whose purpose is to create, change or end a concrete relationship of administrative law. As a contracting party, the public body has the right to enter into an administrative contract to realise any general public or state interest when such a thing is provided for in a tax manner by law, as well as on the condition that the public body, by concluding the administrative contract, does not violate the legal interests of third parties.<sup>3</sup> So the basic conditions for concluding an

---

2 François Lichère, 'L'évolution du Critère Organique du Contrat Administratif' (2002) 2 *Revue Française de Droit Administratif* 341.

3 Law no 05/L-031 of 25 May 2016 'On the General Administrative Procedura' [2016] *Official Gazette of the Republic of Kosovo* 20/1, art 60 <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=12559&langid=2>> accessed 12 December 2023.

administrative contract are at least one contracting party must be a public or state body, not excluding the possibility that two or more contracting parties may be public bodies. The purpose of concluding the administrative contract must be to realise the general social interest, respecting the provisions of the laws that belong to the field of administrative law.

Also, the administrative contract is a two-way legal act concluded between the state or any other legal-public body and the natural or legal person under the conditions defined by the special legal provisions.<sup>4</sup> The character of the contract as a bilateral act means that its conclusion requires the expression of the will of both contracting parties, the state on one side and the natural or legal person on the other. Also, regulating the administrative contract with special provisions means that a special procedure is required for its conclusion, such as the announcement of public tenders by the state body, to conclude the administrative contract with any legal entity to realise the general social interest. Due to its importance, the administrative contract is usually concluded in written form, but provided that the law does not explicitly foresee any other form.

In administrative contracts, the signing of the contracting parties is done by the parties themselves or their representatives. The use of electronic signatures is subject to specific laws governing their validity. When a person signs on behalf of a public body, it must be based on some important certificate of the body on the basis of which it is known the identity of the public body<sup>5</sup> on whose behalf the administrative contract is signed.

It is worth noting that the Republic of Kosovo has undergone significant reforms over the years, resulting in the approval of several important laws related to electronic signatures, documents, and communications.<sup>6</sup>

Administrative contracts belong specifically to administrative law, as evidenced by numerous legal principles such as the ability of state bodies to unilaterally modify administrative contracts.<sup>7</sup> These contracts constitute a distinct aspect of administrative law due to their unique characteristics and the backing they receive from state entities. Unlike contracts under civil law, administrative contracts are always related to the realisation of some public interest specified by law, with the enduring involvement from public authorities.<sup>8</sup>

When concluding administrative contracts, state bodies must maintain state authority and sovereignty. Respecting sovereignty is important to ensure the effectiveness of administrative contracts in realising the general state interest.

---

4 Pollozhani and other (n 1) 76.

5 Law no 05/L-031 (n 3) art 61, para 1.

6 Kastriot Dërmaku and Ardian Emini, 'Digitisation of Administration and Legal Basis in Kosovo' (2024) 7(1) *Access to Justice in Eastern Europe* 245, doi:10.33327/AJEE-18-7.1-a000107.

7 Fabrice Melleray, 'L'exorbitance du Droit Administratif en Question(s)' (2003) 37 *Actualité Juridique Droit Administratif* 1961.

8 Sokol Sadushi, *E drejta administrative procedural* (Botimet Toena 2017) 352.

In general, an administrative contract is a bilateral legal act involving a public body and a private person (natural or legal) aimed at advancing specific public interests. Administrative contracts are governed by special norms of public law, somewhat different from those governing civil contracts under private law.<sup>9</sup> The special norms of public law aim to protect public interests and regulate the relations between the contracting parties, respectively, between the public body and the private person. By means of special laws of public law, the procedures for concluding the administrative contract, the mechanisms for its implementation, and the rights and duties of the contracting parties are regulated.

Regarding the name of the administrative contract, legal doctrine, English and American jurisprudence often use the term "government contracts" to encompass both central and local administration<sup>10</sup> as public bodies. This broader term helps fulfil the body's criterion so administrative contracts can be identified as efficiently as possible.

It is important to clarify that not only one of the contracting parties must always be a public body in administrative contracts. There are cases where both contracting parties are public bodies, such as administrative contracts between two ministries. To define the notion of administrative contracts, it is first necessary to distinguish them from other forms of administrative activity. Secondly, it is necessary to identify and define the criteria that give a contract an administrative character. This involves analysing the subjects of the contract, the object of the contract and the legal norms that regulate administrative contracts.

Additionally, it is important to conduct a legal analysis of new mechanisms in the law of administrative contracts, including how administrative contracts replace administrative-legal acts in the field of administrative law.<sup>11</sup>

## 4 CHARACTERISTICS OF ADMINISTRATIVE CONTRACTS

The administrative contract has these basic characteristics:

- the subjects of the contract - which means that one of the contracting parties must always be the state or public body;
- the purpose of the contract - the administrative contract always aims to realise the general public or state interest;
- the special conditions for the conclusion and realisation of the contract - which means that for the conclusion of the administrative contract, a special procedure

---

9 André de Laubadère, Franck Moderne et Pierre Delvolvé, *Traité des Contrats Administratifs*, vol 1: *La Notion de contrat administratif, la formation des contrats administratifs, l'exécution des contrats administratifs (principes généraux)* (2e éd, LGDJ 1983); Laurent Richer, *Les Contrats Administratifs* (DALLOZ 1991), et al.

10 Anne CL Davies, *The Public Law of Government Contracts* (OUP 2008) 200-20.

11 Erajd Dobjani, *Kontrat administrativ: traktat teorik dhe praktik i kontratave administrative në të drejtën shqiptare* (Emal 2017) 140.

must always be conducted, such as the opening of the public call or the call for certain offers;<sup>12</sup>

- the legal inequality of the parties, as a determining element for an administrative contract;
- contractual freedom of the public authority limited by law;
- the expanded interpretation of the contract, which always gives priority to the public interest of the administration, which appears in cases where the administration cancels the contract, provided that the damage to the other contracting party is compensated;
- suitability in execution of contract obligations by the private party, which in case of delay, may be charged with a penalty for delay;
- the specific character of the contract, where it can be terminated only when permitted by the public authority or the state;
- when it is in the public interest, the unilateral dissolution of the contract by the state;
- the capability of the state to unilaterally change the rules of the contract;
- that the two contracting parties have the same goal, which is the provision of public service;
- the administrative contract, according to its drafting, is a solemn contract with a standard written form, but not ignoring the complex form of the drafting.<sup>13</sup>

The aforementioned characteristics are considered fundamental elements for identifying an administrative contract since if one does not exist, then it cannot be an administrative contract. Based on the characteristics or elements of the administrative contract, a distinction is made between the administrative contract and the civil-private contract, which, unlike the administrative contract, is decisively regulated by the provisions of civil law.

It is important to emphasise that the third characteristic, related to the inequality of the contracting parties, applies only to those administrative contracts where one of the contracting parties is a private entity. In these contracts, the public body has the right to unilaterally cancel or change the contract if, after the conclusion of the contract, the circumstances determined by the legislation of the relevant state appear, which make it impossible to fulfil the contractual obligations. As for the other types of administrative contracts that will be elaborated below, where the contracting parties can only be public entities, then we have contracting parties with more equal rights and each party, at the time of presenting certain circumstances, has the right to unilaterally cancel or change the concluded contract.

---

12 Pollozhani and other (n 1) 76.

13 Sadushi (n 8) 355-6.

## 5 TYPES OF ADMINISTRATIVE CONTRACTS AND THEIR LEGAL FUNCTION

*The administrative contract that replaces the administrative act (substitute contract)* refers to a contract between a public body and another party, established when the public body, aiming to serve the general public interest, is obliged to issue an administrative act by which it obliges the party to undertake or not to undertake a certain action and deems it reasonable that to achieve the specific purpose it is better to enter into an administrative contract with the party herewith the administrative act will be replaced for which the body is obliged to issue to protect the general public interest.

In cases where an administrative contract substitutes for an administrative act, the public body is obliged to justify this decision within the contract, explaining why opting for a substitute administrative contract is preferable over issuing an administrative legal act.<sup>14</sup> The term *substitute contract* signifies that this contract replaces the administrative act when such a replacement is reasonable for achieving the goal set by the public body to advance the state's general interest.

*An administrative contract of compromise* is a contractual arrangement where a public body, uncertain about the content of an administrative act it must issue to a designated party, seeks to eliminate this uncertainty through agreement with the party. Both parties – the public body and the party – acknowledge that despite their efforts to evaluate the factual and legal circumstances, the situation remains uncertain and objectively unclarifiable.<sup>15</sup>

In the past, when an administrative body lacked sufficient evidence for any administrative matter, it was obliged to issue an administrative act. However, under the new LPA, the administrative body can now enter into an administrative contract by assigning the rules to the party within the contract. After concluding the contract, the administrative body is obliged to issue the administrative act. The conclusion of the administrative contract of compromise enables the public body to avoid uncertainty and empowers the administrative act addressed to the party for any specific administrative issue.

*Administrative contracts between public bodies* are established when these bodies share a common interest in carrying out certain activities and regulating their relationships. Examples of such contracts include public-private partnership contracts, concession contracts, public procurement contracts, and others that encompass elements similar to those found in contemporary administrative contracts. Nevertheless, we consider that the term “administrative contract” is more accurate and precise because its elements are more binding than memoranda or agreements with different designations, as administrative contracts between public bodies have their form and content defined expressly according to the law.

---

14 Law no 05/L-031 (n 3) art 62.

15 *ibid*, art 63.

A **coordinated administrative contract** is concluded between two public bodies with common interests in regulating relations and carrying out activities to achieve their goals. An example of a coordinated administrative contract is when two or more administrative bodies enter into a partnership contract to build much-needed schools in municipalities.<sup>16</sup> This contract falls under the category of administrative contract between public bodies.

For example, a coordinated administrative contract can also be called a contract that can be concluded between the Ministry of Culture, Youth and Sports in Kosovo on one side and the Football Federation of Kosovo on the other side to announce their partnership for financing of building a football stadium with European standards.

A **dependent administrative contract** is a specific type of administrative contract concluded between contracting parties where one party holds a superior position over the other, who is considered dependent. An example of such a contract is when an administration body concludes a contract with a citizen or any other legal entity that is a dependent, and such contract is made under the exercise of a judgment of an official authority. For example, the contract that is given to the enterprise for construction.<sup>17</sup> A dependent contract can also be any contract of the other type mentioned above, such as the contract for the licensing of games of chance, where with the licensing of those games the public body enters into an administrative contract by exercising unilateral authority towards the entity that requests the licensing of any games of chance by determining in the contract decisively the criteria that must be met for obtaining a license for the exercise of the activity of games of chance. With such a contract, we always understand the priority of the superior as a contracting party (administrative body) on one side to the dependent -entity (physical or legal person) on the other.

**Active and passive administrative contracts** refer to two distinct categories based on their impact on the state benefits and financial resources. An active administrative contract is one that benefits the state by generating revenue or positive economic outcomes. In these contracts, all rights specified in the agreement belong to the state, while the other party bears the obligations. For example, an active administrative contract is considered when the state signs a contract with a private contractor to construct a highway. With the execution of the project, namely with the construction of the highway, the state develops the country's economy. In this case, it is considered that the state is the beneficiary.

Conversely, a passive administrative contract is one that results in a cost or financial burden for the state without generating direct economic benefits.<sup>18</sup> In these contracts, the rights belong to the other contracting party, while the obligations belong to the state. For instance, when the state engages in contracts that require payment for services, it fails to bring direct economic benefits to the country and even causes a loss of its resources.

---

16 Esat Stavileci, Mirlinda Batalli dhe Islam Pepaj, *Pjesa e posaçme e drejtës administrative* (Universiteti i Prishtinës "Hasan Prishtina" 2017) 30.

17 ibid.

18 ibid.



Active and passive administrative contracts are identified based on their impact on the state budget. Active contracts positively affect state financial revenues, while passive ones negatively affect them.

Administrative contracts can be concluded by three or more contracting parties to achieve their interests. However, it should be noted that in these contracts, where there are many contracting parties, their rights are equal, except for the parties that are private entities. Giving more rights to public entities, in relation to private ones, means that public entities always aim to achieve the general state interest, whereas the purpose of private entities is to achieve their private interests.

The classification of the types of administrative contracts varies depending on the legislation of the specific country. Still, their classification elaborated above is made in a general category based on their characteristics.

## 6 THE DIFFERENCE BETWEEN ADMINISTRATIVE CONTRACTS AND CIVIL-PRIVATE CONTRACTS

While significant differences exist between administrative and civil-private contracts,<sup>19</sup> their commonalities must not be overlooked.

Understanding the concept and significance of administrative contracts within the field of administrative law necessitates a detailed classification that distinguishes them from other types of contracts falling under different branches of law. According to international literature, administrative contracts involve at least one contracting party, which is a public body. Disputes arising from administrative contracts are typically resolved by administrative courts – either specialised courts or regular courts – depending on the state as which system is recognised by their legislation. The unique setting of these contracts results from their regulation by specific laws or provisions of public law.

In contrast, private law contracts are fully subject to the norms of private law and, therefore, disputes concerning them are adjudicated by judicial bodies operating under civil jurisdiction. On the other hand, administrative contracts are fully subject to the norms of administrative law, and their legal oversight occurs within the administrative jurisdiction.

It is generally accepted that administrative contracts are one of the most problematic areas of administrative law,<sup>20</sup> particularly due to difficulties distinguishing them from private contracts. The criteria to differentiate between administrative and private

---

19 Marcel Waline, 'İdari Mukaveleler' (1944) 1(4) Ankara Üniversitesi Hukuk Fakültesi Dergisi 566, doi:10.1501/Hukfak\_0000000034.

20 M Ayhan Tekinsoy, 'İdari Sözleşmelerde Ölçüt Sorunu' (2006) 55(2) Ankara Üniversitesi Hukuk Fakültesi Dergisi 183, doi:10.1501/Hukfak\_00000000351.

contracts often prove insufficient, especially when one of the contracting parties is a public administration body.<sup>21</sup>

Despite their differences, administrative contracts and private contracts are also related to each other. An administrative body has the authority to conclude an administrative contract as well as a private contract. Private contracts in which one of the contracting parties is the administration body have the same legal basis as private contracts, which are concluded between private entities. With the conclusion of the private contract, the administration body only administers its property; that is, it creates, changes or terminates a civil legal relationship.

In private contracts, the rights and duties of the contracting parties – whether the administration body or a private entity – are generally equal. Unlike administrative contracts, private contracts lack the exercise of state power by the public or state body over the designated private entity. Instead, private contracts emphasise the principle of coordination between contracting parties. Although, in principle, there are cases where the nature of the administrative contract is determined by law, in most cases, the administration is authorised by law to enter into a contract for a certain issue, but it is not specified that the concluded contract is an administrative contract or a contract of civil-private law. In these cases, two criteria (organic and material) determine whether the concluded contract is an administrative or civil-private contract.<sup>22</sup> The organic criterion is related to the parties in the contract, whether one of the parties to the administrative contract is a public body, while the material criterion is related to the content and provisions of the contract, which means that the object of this contract must be the general public interest or the contract shall contain provisions that go beyond the provisions that regulate civil - private contracts.<sup>23</sup> Based on these two criteria, it is determined whether a contract is administrative or a civil-private contract. The organic criterion is related to the parties participating in the contract (the public body is inalienable). In contrast, the material criterion is related to the content and purpose of the contract (realisation of the general state interest). The rules for the conclusion of private contracts between the administration body and the private entity are determined by the field of civil law, where even in the event of a dispute between the contracting parties, the competent courts to resolve the case are the regular courts<sup>24</sup> which adjudicate cases related to civil matters.

Administrative or public contracts and private ones also differ in terms of the procedure for concluding them, since a more complicated and special procedure is required for the conclusion of administrative contracts, such as: the announcement of a tender by the public body for a specific issue, recruiting applicants, announcing the winner of the tender, and many other conditions. For private contracts, an easier procedure is required because the

21 Vedat Buz, *Kamu Çhale Sözleşmelerinin Kuruluşu ve Geçerlilik şartları* (Yetkin Yayınları 2007) 51.

22 Kemal Gözler, *İdare Hukuku*, C 2 (Ekin Kitabevi 2003) 18.

23 ibid 24.

24 Sokol Sadushi, *E Drejta Administrative*, 2 (BOTIMEX 2008) 348.

purpose of concluding the contract is not the general public or state interest but the private interest between the contracting parties. Of course, even with the conclusion of private contracts, the contracting parties are obliged to adhere to general legal rules, but not in a complicated procedure such as in the case of the conclusion of administrative contracts.

Therefore, in the end, administrative contracts belong to public law, whereas civil contracts belong to private law.

## 7 ADMINISTRATIVE CONTRACTS AT INTERNATIONAL ASPECT

One of the elements that distinguishes administrative contracts from those of an international character is their connection with public-state institutions in which the general public interest prevails concerning private interest. For this reason, international administrative contracts have some special features that distinguish them from administrative contracts with a national character because the foreign contracting party is obliged to draw up some documents related to the legislation on what an international administrative contract means. After the conclusion of the contract, the parties are obliged to implement the same in accordance with international norms.<sup>25</sup> It is important to emphasise that the public interest should not prevail only in administrative contracts with an international character but also in those with a national character because the subject of the contract itself has to do with the execution of the general state-public interest.

The international element of administrative contracts is also important considering the legislation it regulates them, including which body is competent to resolve the conflicts of the contracting parties in case of any eventual dispute. For any disputes between the parties in international administrative contracts, international arbitration is competent for their resolution, which develops dispute resolution procedures based on international norms. Within the European legal systems, in addition to the differences in their concepts, there are also common features and interests between them in relation to administrative contracts. In principle, the legislation must always find a proper balance between public and private interest, in the case of presenting a circumstance where by applying any private law, the general public interest will be violated.<sup>26</sup> In the absence of legislation to give priority to the public interest, it should be left to the discretion of the judges to give priority to the public interest when adjudicating such disputes, but being conscious of finding a balance between the freedoms and rights of the other contracting party should not be violated. It is important to create legal systems with relevant legislation so that administrative contracts have legal certainty, to protect the public

25 Munir Abbasi, 'Arbitration in International Administrative Contracts' (Memorandum Master's Law, Khamis Miliana University 2013-2014) 22.

26 Márta Várhomoki-Molnár, 'A közigazgatás szerződési és a koncessziók Európában' (doktori értekezés, Eötvös Loránd Tudományegyetem 2020) 5.

interest and guarantee the realisation of the rights and legal interests of the parties included in the contract, because due to the nature of complexity in administrative contracts with an international element, various challenges related to their implementation and management have been presented, including cultural differences and legal systems between the entities that have concluded administrative contracts. For this reason, negotiations for the conclusion of these contracts require a high level of specialisation and expertise in the field of international legislation, diplomacy and public administration.

In the Republic of France, considered the cradle of administrative law, several norms go beyond French legislation, respectively the French Civil Code, by which administrative contracts are regulated. The main characteristic of administrative contracts in the French system is that the contracting parties are not equal, and the law recognises certain privileges for public bodies as contracting parties.<sup>27</sup>

In addition to France, most European legal systems related to administrative contracts have foreseen the need for the legislation of their states to provide public bodies as administrative contracting parties greater freedom of action in relation to the private contractor. The largest space given to the public entity is related to the unilateral resolution and modification of the contract.<sup>28</sup>

This phenomenon has also been confirmed by the European Court of Human Rights (ECHR) in its decision no. 13427/87, dated 9 December 1994, concerning the *Stran Greek Refineries and Stratis Andreadis v Greece*. The court assessed that the change of the contract by the public body unilaterally as a contracting party of the administrative contract, in principle does not violate the property right as defined by Article 1, Protocol 1, of the European Convention on Human Rights (ECHR), reasoning that: "International jurisprudence and arbitration courts recognise that each state has the sovereign power to change a contract entered with the private individuals, provided that a compensation is made." This solution reflects the idea that the highest interests of the state prevail over contractual obligations and considers the need to maintain a fair and reasonable balance of the contract.<sup>29</sup>

This decision underscores the extraordinary importance of the general public interest within a state against the interests of the private contracting party. Moreover, the public entity, even based on this international practice to realise the general state interest, has the right to unilaterally terminate the administrative contract in relation to the other private contracting party but is obliged to pay the full compensation to the private party for the damage caused.

---

27 *ibid* 5.

28 *ibid* 9.

29 *Stran Greek Refineries and Stratis Andreadis v Greece*, App no 13427/87 (ECtHR, 9 December 1994) <<https://hudoc.echr.coe.int/eng?i=001-57913>> accessed 12 December 2023.

Judicial practice concerning administrative contracts varies based on each country's legal system and context. However, as discussed earlier, it is more important to point out some common topics and practices observed in many European legal systems. These include assessing the legality of administrative contracts, overseeing contract implementation and interpretation, managing complaints of contracting parties, and addressing arbitration in international administrative contracts.

Administrative courts play a crucial role in resolving administrative conflicts by increasing judicial control over administrative bodies and expanding and strengthening specialised models of judicial control. This increased control not only ensures administrative activities comply with relevant laws but also impacts the division of powers within a democratic society, contributing to the democratisation process. Furthermore, guaranteeing the independence and impartiality of judges within these courts is essential to strengthen the principle of legality in judicial bodies and uphold constitutional standards in resolving administrative disputes.<sup>30</sup> Increasing judicial control over administrative bodies is important because it ensures that the administrative activity and decisions of administrative bodies are compatible with the relevant laws.

Whereas the expansion and strengthening of specialised mechanisms of judicial control foster expertise that enables efficient and effective handling of administrative cases. This increased judicial oversight is significant in maintaining the balance of powers, as administrative conflicts are adjudicated independently by courts, ensuring adherence to constitutional principles and legality. Likewise, guaranteeing the independence and impartiality of judges ensures that the decisions or verdicts taken in the conflict procedure of the administrative contracting parties are based on the law and not on external political or nepotistic influences.

## 8 CONCLUSIONS

In conclusion, we consider that the administrative contract is extremely important in the field of public administration, where their primary purpose is to serve the execution of the general state interest. Unlike private contracts governed by principles of equality between parties, administrative contracts are bilateral legal acts involving a public or state administration body that typically holds greater authority or power compared to the other contracting party. This power disparity means that there is no equal footing between the contracting parties, contrary to the principle of equality observed in civil law and generally required for concluding private contracts.

---

30 Fejzulla Berisha dhe Jusuf Zejneli, *E Drejta Administrative* (Universiteti "Haxhi Zeka" 2015) 169.

Administrative contracts were first introduced in the law of civil states at the end of the 19th century and the beginning of the 20th century, notably in France, and then distributed to other democratic states.

The specifics that distinguish administrative contracts from other contracts include the requirement that at least one contracting party must be a public body, the overarching purpose of serving the general state interest, the special conditions for their conclusion that differ from the conditions for the conclusion of ordinary contracts and the inherent inequality between the contracting parties. When entering into an administrative contract, not only must special conditions pertinent to administrative contracts be met, but general conditions prescribed by civil law for private contracts must also be satisfied.

Given these complexities, further scientific research is essential to better understand the implementation and implications of administrative contracts. This research will provide professionals in the field with exactly what administrative contracts are and how they are developed and implemented in the field of public administration.

We remain hopeful that this scientific research will enrich the legal literature on administrative contracts in the field of public administration and, more broadly, as a matter that needs research and scientific studies for the current and subsequent generations.

## REFERENCES

1. Abbasi M, 'Arbitration in International Administrative Contracts' (Memorandum Master's Law, Khamis Miliana University 2013-2014).
2. Berisha F dhe Zejneli J, *E Drejta Administrative* (Universiteti "Haxhi Zeka" 2015).
3. Buz V, *Kamu Ğhale SözleĞmelerinin KuruluĞu ve Geçerlilik ğartları* (Yetkin Yayınları 2007).
4. Davies ACL, *The Public Law of Government Contracts* (OUP 2008).
5. Dërmaku K and Emini A, 'Digitisation of Administration and Legal Basis in Kosovo' (2024) 7(1) *Access to Justice in Eastern Europe* 245, doi:10.33327/AJEE-18-7.1-a000107.
6. Dobjani E, *Kontratet administrative: traktat teorik dhe praktik i kontratave administrative në të drejtën shqiptare* (Emal 2017).
7. Gözler K, *İdare Hukuku*, C 2 (Ekin Kitabevi 2003).
8. Laubadère A, Moderne F et Delvolvé P, *Traité des Contrats Administratifs*, vol 1: *La Notion de contrat administratif, la formation des contrats administratifs, l'exécution des contrats administratifs (principes généraux)* (2e éd, LGDJ 1983).
9. Lichère F, 'L'évolution du Critère Organique du Contrat Administratif' (2002) 2 *Revue Française de Droit Administratif* 341.

10. Melleray F, 'L'exorbitance du Droit Administratif en Question(s)' (2003) 37 *Actualité Juridique Droit Administratif* 1961.
11. Pollozhani B and other, *Administrative Law: Comparative Aspects* (Skopje 2010).
12. Richer L, *Les Contrats Administratifs* (DALLOZ 1991).
13. Sadushi S, *E Drejta Administrative Procedural* (Botimet Toena 2017).
14. Sadushi S, *E Drejta Administrative*, 2 (BOTIMEX 2008).
15. Stavileci E, Batalli M dhe Pepaj I, *Pjesa e posaçme e drejtës administrative* (Universiteti i Prishtinës "Hasan Prishtina" 2017).
16. Tekinsoy MA, 'İdari Sözleşmelerde Ölçüt Sorunu' (2006) 55(2) Ankara Üniversitesi Hukuk Fakültesi Dergisi 181, doi:10.1501/Hukfak\_0000000351.
17. Várhomoki-Molnár M, 'A közigazgatás szerződési és a koncessziók Európában' (doktori értekezés, Eötvös Loránd Tudományegyetem 2020).
18. Waline M, 'İdari Mukaveleler' (1944) 1(4) Ankara Üniversitesi Hukuk Fakültesi Dergisi 563, doi:10.1501/Hukfak\_0000000034.

## AUTHORS INFORMATION

### Ahmet Imami\*

Ph.D. (Law), Assistant Professor at the Faculty of Law, University of Gjilan "Kadri Zeka", Gjilan, Republic of Kosovo

ahmet.imami@uni-gjilan.net

<https://orcid.org/0000-0003-1394-3334>

**Corresponding author**, responsible for conceptualization, data curation, funding acquisition, resources, software, validation and writing – original draft.

### Mirlinda Batalli

Ph.D. (Law), Assistant Professor at the Faculty of Law, University of Pristina "Hasan Prishtina", Prishtina, Republic of Kosovo

mirlinda.batalli@uni-pr.edu

<https://orcid.org/0000-0003-1832-8728>

**Co-author**, responsible for formal analysis, methodology, project administration, investigation, writing – review & editing and supervising.

**Competing interests:** No competing interests were disclosed.

**Disclaimer:** The authors declare that their opinions and views expressed in this manuscript are free of any impact of any organizations.

## ABOUT THIS ARTICLE

### Cite this article

Imami A and Betalli M, 'The Role of Administrative Contracts in the Field of Public Administration' (2024) 7(3) Access to Justice in Eastern Europe 1-17 <<https://doi.org/10.33327/AJEE-18-7.3-a000303>> Published Online 16 May 2024

Submitted on 18 Dec 2023 / Revised 10 Feb 2024 / Approved 25 Mar 2024

Published ONLINE: 16 May 2024

DOI <https://doi.org/10.33327/AJEE-18-7.3-a000303>

**Managing editor** – Mag. Yuliia Hartman. **English Editor** – Julie Bold.

**Summary:** 1. Introduction. – 2. The History of Administrative Contracts. – 3. The Meaning of the Administrative Contract. – 4. Characteristics of Administrative Contracts. – 5. Types of Administrative Contracts and their Legal Function. – 6. The Difference between Administrative Contracts and Civil-Private Contracts. – 7. Administrative Contracts at International Aspect. – 8. Conclusions.

**Keywords:** *administrative contract, public administration, development and purpose.*

## RIGHTS AND PERMISSIONS

**Copyright:** © 2024 Ahmet Imami and Mirlinda Batilli. This is an open access article distributed under the terms of the Creative Commons Attribution License, (CC BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

## РОЛЬ АДМІНІСТРАТИВНИХ ДОГОВОРІВ У СФЕРІ ДЕРЖАВНОГО УПРАВЛІННЯ

**Ахмет Імамі\* та Мірлінда Баталлі**

### АНОТАЦІЯ

**Вступ.** Пропонована наукова стаття має на меті глибше зануритися в концепцію адміністративних контрактів та розкрити їхнє значення у сфері державного управління. Іншими словами, наше завдання полягає в тому, щоб надати читачам чіткий і детальний



аналіз і тлумачення щодо зазначених питань, щоб усі зацікавлені особи мали можливість отримати базове розуміння важливості та правових наслідків адміністративних контрактів. За допомогою цього дослідження широке трактування адміністративних договорів щодо їхнього розвитку, значення та важливості в теоретичному аспекті матиме позитивний вплив та полегшить їхнє застосування на практиці державними адміністраціями. Ці договори, часто подібні до класичних, за своїм змістом і метою набули такого рівня диференціації, що зараз уже можна вести мову не про їхню належність до однієї з наявних груп договорів, а про новий, самостійний вид договорів.

**Методи.** Дослідження виконано за допомогою аналітичних, нормативних, історичних та порівняльних методів. Аналітичний метод застосовано для аналізу адміністративних контрактів у Республіці Косово та їхнього використання державними органами. За допомогою нормативного методу розглянуто правові положення, що регулюють адміністративні договори, починаючи з адміністративного права та поширюючись на положення в інших правових сферах. Історичний метод проілюструє історію розвитку адміністративних договорів, деталізує їхнє минуле та те, як вони діють нині. Нарешті, порівняльний метод дасть змогу порівняти розроблення та дію адміністративних контрактів у Республіці Косово з аналогічними в інших демократичних державах, згаданих у статті.

**Результати та висновки.** Адміністративний договір має важливе значення в державному управлінні, оскільки його основною метою завжди є служіння загальним інтересам держави. Незважаючи на те, що адміністративний договір є двостороннім правовим актом, він зазвичай передбачає державний або державний адміністративний орган як договірну сторону, яка за своєю суттю має більші повноваження чи повноваження щодо іншої залученої юридичної особи. Ця розбіжність у повноваженнях свідчить про відсутність рівності між договірними сторонами, що суперечить принципу рівності, якого дотримуються у цивільному праві та який зазвичай необхідний для укладання приватних контрактів.

**Ключові слова:** адміністративний договір, державне управління, розвиток та мета.