

The Principle of the binding force of contract (Pacta Sunt Servanda) and Its Applicability in the Field of Administrative Contracts

Abbes SADEKI

DEAMAPRT Laboratory, Illizi University Center (Algeria),

sadeki.abbes@cuillizi.dz

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Abstract:

This article critically explores the principle of pacta sunt servanda (the binding force of contracts) and its interaction with the administration's unilateral amendment authority within the framework of administrative contracts. It analyzes how administrative contracts balance the need for contractual stability with the flexibility required to address public service demands. Drawing on legal doctrines, judicial precedents, and practical applications, the discussion highlights the distinctive features of administrative contracts, including the administration's prerogative to amend agreements to ensure public interest. The article emphasizes the importance of maintaining financial equilibrium and safeguarding the rights of contracting parties while adapting to evolving administrative needs.

Keywords: *Pacta Sunt Servanda; Binding Force of Contracts; Unilateral Amendment; Administrative Contracts; Public Interest.*

1. Introduction

Civil codes have stipulated provisions regarding the execution of contracts under the title "Effects of the Contract." They affirm that the contract is the law of the contracting parties, and thus cannot be annulled or amended except by mutual agreement. Contracts must be executed in accordance with their terms and in good faith. The codes also specify the effects of contracts on the parties involved, as well as on their general and specific successors, and detail the consequences of breaching contractual obligations.

While a contract is concluded with the intention of being executed, this outcome may not always materialize as expected. Execution may be delayed,

temporarily hindered, or permanently obstructed due to actions by one or both parties or as a result of a foreign cause beyond their control. In all such cases, legislations have prescribed provisions to safeguard the rights of both parties, ensuring balance and stability in contractual obligations.

Furthermore, parties to a civil contract enjoy a "relative" equality in fulfilling their rights and obligations, with neither party possessing the authority to compel the other to perform their obligations. Instead, it is the court's responsibility to intervene, whether by notifying the debtor, compelling performance, reducing obligations in proportion to the creditor's obligations, or annulling the contract when execution becomes impossible.

On the other hand, the execution of administrative contracts may not adhere to some of these provisions, as various theories and principles unique to administrative contracts differentiate their execution phase from that of civil contracts. To what extent, then, does the principle of *pacta sunt servanda* (the contract is the law of the contracting parties) apply during the execution of administrative contracts?

To address this question, the discussion will first explore the position of jurisprudence and judiciary on the application of the principle of *pacta sunt servanda* in administrative contracts (Part One). Then, it will examine the extent to which this principle is influenced by the administration's unilateral right to modify the contract (Part Two)

2. The Position of Jurisprudence and Judiciary on the Application of the Principle of Pacta Sunt Servanda in Administrative Contracts

Jurisprudential opinions and judicial trends regarding the provisions of civil law have examined the implementation of the principle of *pacta sunt servanda* in administrative contracts. While administrative judicial rulings have demonstrated greater consistency compared to doctrinal perspectives, the mutual influence between the two has been evident. Below, we first explore doctrinal opinions (Section One), followed by the judiciary's stance (Section Two).

2.1 Doctrinal Opinions

French scholars who regard administrative contracts (FRIEDRICH, 2016, p. 3) as having a "contractual nature" (GOUNODE, MELLERAY , & YOLKA, 2011, pp. 222-223) have not reached a consensus on whether such

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contracts fall under the scope of Article 1134 of the French Civil Code. For instance, Georges Vedel and Pierre Delvolvé, in their book *Administrative Law*, acknowledge that "earlier editions of this book stated that Article 1134 of the Civil Code did not apply to administrative contracts. This categorical phrasing is excessive. Undoubtedly, the provisions of civil law—while respecting the autonomy of administrative law, particularly in regulating contracts—are not fully applicable to administrative contracts. However, these contracts, as contracts, establish rights and obligations that parties are bound to observe.

The binding force of an administrative contract, while not directly derived from Article 1134 of the Civil Code, is linked to the very concept of the contract itself. A contract is essentially the instrument through which the parties define their relationship: when they conclude a contract, it is to commit to fulfilling their obligations towards one another. Although an administrative contract, as a contract, has binding force, its administrative nature introduces subtle distinctions that diverge from the rigid application of Article 1134 of the Civil Code." (Delvolve, 2001, p. 344)

This is often referred to as the "originality of the rules governing the execution of administrative contracts (LOMBARD, 2001, p. 245).

It is noteworthy that the doctrinal debate in France regarding the implementation of the binding force of contracts in the realm of administrative contracts has intensified following the recognition of another principle that contradicts it: the principle of the administration's unilateral right to amend the contract. This principle has been established as one of the fundamental rules governing the execution of administrative contracts, even when it is not explicitly stipulated within the contract itself (Thunaibat, 2012, p. 141). Regarding the application of both principles, scholars have identified three primary doctrinal approaches (Marion, 2018, pp. 234-237):

- A. **First Approach:** This approach advocates for the submission of administrative contracts to the principle of the binding force of contracts, emphasizing the "unity of the law applied to civil and administrative contracts." One of its proponents, L'Huillier, asserts that the authority to unilaterally amend the contract is only exercised

if expressly provided for by law or in a contractual clause (LEBRETON, 2015, p. 314).

- B. **Second Approach:** This approach prioritizes the principle of the administration's unilateral right to amend the contract, viewing it as a defining characteristic of administrative contracts. Scholars like Gaston Jèze and Georges Pequignot have founded this perspective, which, while acknowledging the binding force of administrative contracts and their adherence to certain civil rules concerning the execution and interpretation of contracts (SALON, 1991, p. 75), seeks to "affirm the independence of administrative contract law." (Marion, 2018, p. 274)
- C. **Third Approach:** This approach seeks to reconcile the principle of the binding force of contracts with the administration's unilateral right to amend the contract. André de Laubadère is among its key proponents (Marion, 2018, pp. 234-235).

Contemporary French scholars predominantly endorse this approach, advocating for a balance between the binding force of contracts and the administration's amendment authority (LEBRETON, 2015, p. 314). They reference Article 1134 when outlining the general principles governing the execution of administrative contracts, followed by affirming the administration's unilateral amendment power (Chrétien, Chiffot, & Tourbe, 2016, p. 516).

The Arab Doctrine Perspective: Professor Hussein Osman explains that "although the principle of the binding force of contracts is well-established in private law doctrine, this principle in its entirety does not apply to administrative contracts. The execution of administrative contracts is governed by exceptional rules unfamiliar in the realm of private law relations: the obligations of the contracting party are subject to unilateral amendments by the administration, which also possesses the authority to impose sanctions on the other party without judicial authorization. Conversely, the contracting party enjoys privileges not typically found in private law contracts, the most significant being the right to financial equilibrium within the contract. Thus, the execution of administrative contracts is governed by two principles that are both contradictory and complementary: the contracting administration's

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extraordinary privileges under general law, and the contracting party's right to financial equilibrium." These principles universally govern administrative contracts (Osman, 2010., pp. 628-629).

Dr. Ahmed Mahyou states that "... inequality often appears in favor of the administration, particularly during contract execution. Article 106 of the Algerian Civil Code, which stipulates that 'the contract is the law of the contracting parties,' is not fully respected. The ordinary rule of private law encompasses three outcomes: the binding nature of the contract, the prohibition of altering its terms, and equality between the parties. However, each of these outcomes can be questioned within administrative law. Nonetheless, it must not be assumed that the interests of the other party to the contract are entirely sacrificed; if this were the case, the administration would find itself without willing partners to contract with." (Mahyou, 1986, p. 372)

Dr. Abd al-Rahman Azzawi adds, "Although an administrative contract—similar to a civil contract—relies on the mutual agreement of two opposing wills formalized through the sequential processes of offer and acceptance, the administration retains a distinct legal position derived from its status as a public authority entrusted with safeguarding the public interest. This grants the administration the authority to incorporate exceptional conditions into the contract that are uncommon in private law contracts or to enforce them even if they are not explicitly stated in the contract clauses. These conditions are connected to the necessities and requirements of managing public services and public funds, rather than merely fulfilling pure contractual obligations as is the case in civil contracts. Examples include the administration's unilateral authority to amend certain contractual clauses without requiring the consent of the other party. However, it should be noted from the outset that such amendments must be made without compromising the value, importance, or economic viability of the administrative contract. This, in turn, necessitates guaranteeing the contracting party's rights through restoring the financial equilibrium of the contract." (Azzawi, 2013, pp. 385-386)

2.2 Jurisprudence and Judicial Perspectives on the Binding Force of Contracts in the Context of Administrative Contracts

The General Assembly of the French Council of State, in its decision dated June 29, 2001, affirmed that the binding force of contracts constitutes a general principle of law (Conseil d'État, Assembly, June 29, 2001, Case No. 222600, published in the Lebon Collection).

The Egyptian Supreme Administrative Court ruled that "... the rights and obligations of a contracting party with an administrative authority are determined according to the terms of the contract. Accordingly, the provisions agreed upon by the contracting parties in the administrative contract bind both parties as a general rule and must be executed, prohibiting any deviation from them. This is because what the contracting parties have agreed upon represents their law, upon which their wills converged and on the basis of which they established their respective rights and obligations." Additionally, the Egyptian administrative judiciary elaborated extensively on the relationship between the parties to administrative contracts, including the administrative authority's rights—such as its right to amend the contract—and the principles upon which these rights are based, as reflected in numerous judgments and decisions (Supreme Administrative Court of Egypt, 1995, p. 153).

3. The Principle of *Pacta Sunt Servanda* (The Binding Force of Contracts) and the Unilateral Amendment of Administrative Contracts

Some argue that unilateral amendments to contract terms are feasible even in private law contracts (Seube, 2006, p. 45), despite being regarded as exceptional provisions. Civil law has introduced a significant exception to the traditional principle prohibiting interference with a contract, allowing potential amendments by a judge (Mahyou, 1986, p. 381).

To distinguish between the two forms of amendment and understand their respective bases, the discussion is divided into two parts: amendments in civil contracts (Section One), and amendments in administrative contracts (Section Two).

3.1 Amendments in Civil Contracts

Professor Al-Sanhouri asserts: "A contract cannot be annulled or amended by the judge. A judge has no authority to annul a valid contract or

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amend it on the grounds of fairness, as fairness supplements but does not override the will of the contracting parties. Similarly, neither party to the contract has the right to unilaterally annul or amend the agreement. A contract is the product of mutual consent, and what is established by two wills cannot be undone by one. This is the general rule. However, annulment or amendment may occur through mutual agreement of the parties or for reasons prescribed by law. In such instances, annulment or amendment becomes a joint act by the contracting parties themselves (Al-Sanhuri, 1952., p. 526).

Additionally, the law may, in exceptional circumstances, allow contract amendments for equitable considerations, as seen in provisions for adjusting penalty clauses (Article 224), granting debtors an extension (Article 346), revoking gifts (Article 500), modifying the agent's fees (Article 709), or mitigating onerous obligations under the doctrine of unforeseen circumstances."

In contrast, legal scholar René Demogue highlights the rigidity of the principle of pacta sunt servanda and argues: "The contract is a living entity, capable of surviving only if it evolves or adapts to circumstances, while retaining its core essence." (Demogue, 1932, p. 46)

Thus, the aforementioned views range from strict adherence to the principle of the binding force of contracts to a more flexible approach, which acknowledges the possibility of changing circumstances and interests during the interval between contract formation and execution. This flexibility paves the way for partial amendments, enabling contracts to adapt to new circumstances that may arise during their implementation (Demogue, 1932, pp. 62-63).

Civil law identifies exceptions that permit contract amendments during execution, categorized as follows:

Protecting the Weaker Party: Amendments such as nullifying unfair clauses, adjusting onerous obligations, or providing judicially determined relief.

Doctrine of Unforeseen Circumstances: Applied under specific legislative provisions, with amendments executed by the competent court.

Unilateral Amendments by One Party: In specific cases, a party may

amend the contract directly, subject to oversight by a competent court in the event of disputes. Examples include property owners modifying construction plans, contractors following engineering instructions, or employers assigning temporary tasks to workers for operational reasons.

The general theory of contracts in civil law is no longer static; it is dynamic, flexible, and adaptive. Developments include reassessing the foundation of contractual obligations and critiquing classical doctrines rooted in the theory of intent. Critics argue, “The rigidity and narrow scope of these doctrines have isolated civil law from the realities and progress of life.” Consequently, this movement seeks to identify the proper basis of contractual obligations (Ayad, 2007, p. 8).

3.2 Unilateral Amendment in Administrative Contracts:

Within his research on the general theory of civil contracts, Professor Abd al-Rahman Ayad advocates for the correction of contractual obligations, establishing the administration's authority for unilateral amendment and other powers within the framework of civil contract theory. According to this view, this authority is not absolute but restricted, as evidenced by administrative law scholars who state that the power of amendment hinges on the necessity of public service operations and contract execution requirements. Ayad further highlights that such amendments are also recognized in civil law, exemplified by a property owner modifying a contractor's work plan (Ayad, 2007, pp. 418-422).

Regarding the administration's right to terminate contracts unilaterally, Ayad argues that “these reasons (referring to reasons for unilateral termination) and similar justifications indicate that, at the time of contract formation, the administration was operating under an influential error that motivated the contract. This error may encompass the entire contract or only certain phases of it, thereby justifying the administration's right to terminate the contract.” He continues, “This right is currently acknowledged in various civil contracts, including partnership, employment, and lease agreements.”

Professor Abdel Fattah Abdel Baki explains: “The annulment or amendment of a contract is not limited to mutual agreement between the parties; one party may achieve this unilaterally despite the objection of the other party, provided it is authorized by law and within prescribed limits.

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This represents the true exception to the binding force of contracts, or the principle of *pacta sunt servanda*.” (Abdel-Baqi, 1984, p. 539)

While acknowledging the differing goals behind contract formation—private contracts primarily serve individual interests, whereas administrative contracts aim to fulfill public interest—the decisions of civil courts regarding unilateral amendments to contract content often pertain to determining or adjusting prices or fees when these are not explicitly stipulated during contract formation, or when the agreed price is disproportionate to the actual services or work completed. This principle has occasionally been expanded to include additional elements (Seube, 2006, p. 46). For example, the French Court of Cassation, in its ruling dated December 1, 1995, held that there was no legal barrier preventing a contractor from modifying the method of fulfilling obligations, provided this does not conflict with the agreed contract terms (Cour de Cassation, Assemblée plénière, du 1 décembre 1995, 91-15.578, Publié au bulletin).

One of the earliest judicial applications of the administration’s authority to unilaterally amend the subject matter of administrative contracts was the landmark ruling by the French Council of State in the case of *Compagnie Nouvelle du Gaz Deville-lès-Rouen*, dated January 10, 1902. In this case, the City of Deville-lès-Rouen granted exclusive rights to the company in 1874 for gas lighting services. However, with the development of electric lighting, the municipality requested the company to provide electric lighting, which the company declined despite its adoption in other municipalities. Subsequently, the municipality unilaterally amended the contract, compelling the company to use electricity instead of gas for public lighting. The Council upheld the municipality’s amendment, affirming its legitimacy despite the original 1874 and subsequent 1887 contracts being mutually agreed upon (Conseil d’État, January 10, 1902, Case No. 94624, published in the Lebon Collection)

Similarly, the Egyptian Council of State has recognized the administration's unilateral authority to modify contract terms, provided the amendment serves the public interest. It ruled that “... the administration has the authority to oversee and direct contract execution, and it always has the

right to modify contract terms or add new conditions it deems more aligned with the public good, without the other party challenging this authority by invoking the principle of *pacta sunt servanda*. However, such modifications must not amount to outright contract annulment.” (The Supreme Administrative Court, 1957, p. 953)

Evidently, public interest remains the primary justification for administrative judiciary rulings that endorse the contracting administration’s authority to unilaterally amend contracts. It is worth noting that the same public interest constitutes the driving—or presumed—motive behind the contract’s formation. Consequently, changes, developments, or cessation of public interest, as assessed by the contracting administration, justify its unilateral amendment authority.

However, this authority is naturally subject to certain boundaries. While public interest may necessitate amending the contract, it cannot disregard the rights and interests of the contracting party. Amendments must not result in fundamental changes to the contract’s essence, nor undermine the financial benefits stipulated in the contract for the benefit of the contracting party (Al-Mutairi, 2012, p. 19).

4. CONCLUSION

In summary, this research delves into the intricate balance between the principle of *pacta sunt servanda* (the binding force of contracts) and the administration’s unilateral amendment authority, particularly in the context of administrative contracts. It analyzes how administrative contracts operate at the intersection of respecting contractual obligations while accommodating public interest considerations. This balance reveals the distinct legal frameworks and exceptional provisions required to address the unique nature of administrative agreements. Furthermore, the study underscores the importance of maintaining contractual stability, safeguarding the financial equilibrium of contracts, and upholding the rights of contracting parties against unilateral amendments.

Results:

- The principle of *pacta sunt servanda* is foundational in administrative contracts, but its application is nuanced to accommodate public service

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demands.

- Unilateral amendments by the administration are justified by evolving public interest needs but must be exercised with clear limits to avoid disproportionate harm to the contracting party.
- Judicial interpretations continue to evolve in delineating the boundaries of administrative authority while emphasizing equitable treatment and financial balance within contracts.

Recommendations:

- **Strengthening Legal Safeguards:** Introduce clearer legal guidelines for unilateral amendments to ensure transparency and fairness in administrative contracts.
- **Public Interest Reassessment:** Establish mechanisms for regular assessment of the necessity and scope of public interest-driven amendments to prevent overreach.
- **Financial Equilibrium Assurance:** Develop legal provisions that require compensation or financial adjustments for affected contracting parties when unilateral amendments impact their rights or obligations.
- **Training for Administrative Authorities:** Implement specialized training programs for administrative officials to improve decision-making regarding contract amendments

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