Revision of the general theory of administrative contracts

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Short Summary

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We confirm that we have read the thesis written by Ivan Balakhashvili entitled: "Revision of the General Theory of Administrative Agreements" and we recommend its consideration by the Dissertation Council of the Faculty of Law and Social Sciences of the East European University for obtaining the academic degree of Doctor of Law.

This thesis is presented on 181 pages and consists of introduction, 2 parts, 4 chapters, conclusion and bibliography.

Introduction

Relevance of the topic. The revision of the general theory of administrative contracts in Georgia was facilitated by the development of state procurement legislation. So, a new horizon for research was created. Such a study is necessary to deepen the knowledge of positive law and to test some doctrinal doctrines. In 2010, the French author Yves Godmé wrote an article entitled "Towards a New General Theory of Administrative Contract Law: Assessing the Necessary Complexities of the Enterprise". Then, he asked the question of the possibility of "developing - or trying to develop - a new general theory of administrative contracts that takes the past into account in order to integrate the present into it and to include the future". Almost twelve years later, the need is the same, and the questions have become more pressing: Is there a general theory of administrative contracts? Can and is it useful to study it further? Is a new general theory possible and will it be relevant? Administrative contract law as a whole is no longer at the center of doctrinal discussions. The works are increasingly focused on special administrative contract law, in particular on public procurement contracts. The concept of administrative contract loses its relevance and is no longer sufficient to explain the positive law regarding contracts concluded by administrative bodies. Public activity has actually transformed, and the unity of public contract law can no longer be based on the traditional concept of administrative contract, which is understood as contracts concluded by administrative bodies that have a sufficient connection with public services. In addition, the growth of legal qualifications has led us to the point where this concept has lost part of its explanatory function: the connection between administrative contract and public service (exercise of public authority) or public authority has been misunderstood. However, the concept of an administrative contract is closely related to its legal regime. It was designed to justify the application of norms that avoid private law. Thus, this connection between the concept of an administrative contract and its specific legal

regime explains that questioning this concept has consequences for the definition and scope of the general theory of administrative contracts. Along with this, the constituent elements of this theory, as before, are given in the doctrines of administrative law, as well as in the works devoted to the legislation on agreements concluded by administrative bodies. Therefore, general theory, regardless of whether it is presented as such or only through its content, is of undoubted pedagogical interest. In its classical conception, it is structured around two sets of rules - theories and/or principles. The first includes the specific rights and obligations of the parties to the agreement. Basically, these are the rights recognized in favor of the administrative body participating in the contract: management and control authority, the authority to impose sanctions, the authority to unilaterally change and terminate the contract based on the common interest, and to refuse to object to the non-fulfillment of contractual obligations by the contractor. On the other hand, the administrative body participating in the agreement enjoys the right to protect the financial balance of the agreement. The second set of rules includes the basic "theories" that go into the general theory. These are the theories of unforeseen circumstances, unforeseen technical obligations, governmental act and administrative force majeure. However, we must remember that this general theory remains a doctrinal construct. The French author George Pequino was one of the first to try to formulate a general theory of administrative contracts. But, then, the authors did not continue the work started by Pekino regarding the general theory. This can be explained both by the reluctance on the part of the doctrine to allow the existence of a general theory, and by the fact that the theory has already been defined and created by the leading authors. Furthermore, it is very difficult to create a theory that is truly satisfactory from both a practical and a theoretical point of view. In his article, Yves Godmé explains that “a good theory - at least for law - is one that takes facts and positive decisions of law, organizes them, forms them into a system, and thus develops a proper cognitive and explanatory function; This grounded knowledge itself develops a critical function, the maintenance of order." He questions whether administrative

contract law obeys the theory, especially since "administrative contract law has never been voluntarily and consciously constructed outside the contract law of the Civil Code."

In addition, the scope of application of the general theory of administrative contracts raises certain questions. In it, special attention is paid to the stage of performance of administrative agreements through the above-mentioned two sets of rules - theories and principles. Thus, the entire pre-contractual stage is ignored. Matters relating to the competence or nature of the contract are generally dismissed insofar as they have no relation to the contractual issues. Similarly, the rules applicable to the stage of conclusion of administrative contracts are not traditionally considered to be included in the general theory of administrative contracts. This is explained by the fact that the stage of conclusion of the contract "for a long time was considered a secondary stage, which carries a technical and procedural character and, ultimately, was completely alien to administrative contract law". Currently, the stage of conclusion of the contract is becoming increasingly important in administrative contract law, but it is usually considered through special administrative contract law, the idea of which is that the rules of conclusion of the contract are not general and are intended for a specific category of administrative contracts. Davit Gabaidze talks about the need to establish all general norms in the General Administrative Code of Georgia, which will take into account the general rules of concluding, changing and canceling administrative contracts. This explains why it is not easy for the authors to convey a general theory. Indeed, the general theory is no longer approached as such, but only through its constituent elements. Moreover, some authors, such as François Brené, have long supported the theory of special administrative agreements. However, the specific rights and duties of the contractors have not been waived by either the doctrine or the judicial practice. However, their use is sometimes questioned, the elements of the general theory of administrative contracts continue to be studied, and the administrative court always relies on them. Therefore, there is no longer any representation of a general theory as if it had disappeared, and its content continues

to be studied, even if it is often limited in application. The situation becomes confusing, and the general theory of administrative contracts even loses its pedagogical function.

Reason of research. The purpose of this study is the scope of the general theory of administrative contracts. The general theory of administrative agreements is a set of definitions and principles organized around a defined object. However, it is not about the general study of the concept of the general theory of administrative agreements, but about the analysis of its definition and further use by the administrative court and doctrine as a legal concept. The subject of this study will have a spatial limitation, as only Georgia and France will be discussed here. Therefore, the comparative method will be used. This choice can be justified because practical reasons, the main of which is the format of the thesis paper, do not allow us to analyze the general theory of administrative contracts in the legal texts, jurisprudence and doctrine of many countries. The choice of France is due to the fact that French administrative law is the founder of continental administrative law. The administrative contract and the constituent elements of its concept have become the subject of many works outside of Georgia. Doctrinal works in Georgia mainly concern the specifics of the administrative contract and focus on its separation from the private law contract. We offer an analysis of positive law, case law and doctrine and a reassessment of the traditional approach to administrative contracts.

Research object. It is obvious that the general theory of administrative contracts cannot and should not be presented as it was in the middle of the 20th century. A question arises, and there is a general theory. Indeed, it can be assumed that a general theory of administrative contracts no longer exists, and that it may never have existed. Nevertheless, the existence of such a theory is not insignificant. The general theory refers to the specifics of public activity, including in cases where administrative bodies act in a contractual manner. Therefore, the support of a general theory of administrative contracts - or, more broadly, of public contracts - is not without interest. Assuming that a general theory is necessary, the question arises as to its scope,

to determine whether it represents a general theory of administrative contracts, a general theory for certain special administrative contracts, or, on the contrary, a general theory applicable to all public contracts. Therefore, using an inductive approach, it is necessary to investigate whether it is possible to define a general theory of contracts concluded by administrative bodies. In order to do this, we must first consider the traditional definition of a general theory and its foundations. In the classic view, the specific regime of administrative contracts is based on the logic of public service. George Pekino's work is indicative of such an approach, in which public service is used to justify all the features of administrative contract law. Nevertheless, the public service suffers the same fate with regard to administrative contracts as with regard to the discipline as a whole. It has long ceased to be the sole basis of administrative law. Thus, the current legal regime of administrative contracts is based on different grounds, the results of which do not necessarily coincide with those that could be derived from the public service when it was used as the only general justification. Thus, it is necessary to define what the modern foundations of administrative contract law are in order to understand how they challenge the general theory of administrative contracts. Secondly, it is these new foundations that should allow us to revise the general theory. New developments in this field leave no room for doubt: the classical definition of the general theory of administrative contracts cannot be maintained. Without giving up the specifics of legislation on contracts concluded by administrative bodies, it is therefore necessary to support the renewal of this general theory or even the creation of a new theory.

Research methods. The presented research process includes several stages: studying the literature related to the topic, determining the guiding ideas, posing problems, building an analysis model, developing a plan, composing an argumentative and supported text. As far as the research of the general theory of administrative agreements and the normative principles of its constituent elements is concerned, the main material will naturally be doctrinal opinions, normative texts, judicial practice. If necessary, other material will be considered, for example, comments to court

decisions, decisions of international courts. Legal literature will often be used, either from an explanatory point of view to better understand legislative and judicial practice, or from a critical point of view, to consider the existence of alternative solutions to a decision made by an administrative court, or when a given study recognizes an approach that differs from that of some authors. To carry out the research, we will first analyze and interpret the normative texts, each court decision, legal literature, which will be included in the research material, and then we will systematize this analysis.

Part 1. Questioning the general theory of administrative contracts

According to Article 2, Part 1, Sub-paragraph "g" of the General Administrative Code of Georgia, "an administrative contract is a civil-legal contract concluded by an administrative body with a natural or legal person, as well as with another administrative body, for the purpose of exercising public authority." The judicial practice of Georgia, without additional explanation, for the separation of public-legal and private-legal contracts, assigns essential importance to the purpose of the contract, which is the exercise of public authority. However, questions arose in the Georgian legal literature about the universality of the general theory of administrative contracts, "there are many life examples when a person does not necessarily feel that by his actions, by concluding a contract, even with a private person, he is exercising public-legal authority, it arises from the norms of public law defined rights and duties". According to Professor Maya Kopaleishvili, the issue is not easy: "Certainly, satisfying the public interest through an administrative transaction is one of the important features of this type of transaction, but it is not decisive. That is, it is still disputed - whether all the deals concluded by the administrative body aim to achieve a socially important result, to satisfy the public interest." Some authors talk about the need to develop a new theory for the effective separation of administrative contract and civil contract. Here we are not talking about a superficial revision of the general

theory of administrative agreements. The revision is deeper and will touch on the basics of the general theory of administrative contracts. Although public service (exercise of public authority) - a constituent element of the general theory - was presented as the alpha and omega of the general theory of administrative contracts, today this is no longer the case. It competes with other foundations and loses its importance. Therefore, such a movement to revise the general theory has important consequences for some classical components of the general theory. First, questioning the general theory of administrative contracts involves affirming different competing logics of public service as a fundamental element of the general theory, which completely replace the general theory (Chapter 1). Secondly, the questioning of the general theory of administrative contracts is manifested in the breakdown of public service as the essential basis of the general theory (Chapter 2).

Chapter 1. Validation of different competing logics of public service

Public service is understood as a mechanism aimed at meeting needs motivated by common interest. Due to its specificity, public service is subject to a special legal regime, public-legal process, compared to private activity. The legal concept of public service is offered by the Law of Georgia "On Public and Private Cooperation", Article 2, subsection "c" of which explains: public service - service included in the field of public interest, which, in accordance with the legislation of Georgia, is usually carried out by a state body, a municipality body and A legal entity under public law for a wide circle of society. Whereas, public interest is the benefit received by a wide circle of society by providing public infrastructure or public services within the territory of Georgia (subsection "k"). Public service, as the main element of the general theory of administrative contracts, which was idealized for a long time, one might even say immovable, is no longer popular. This is confirmed by the fact that today it is competing with different logics, which have different goals: it is the contractual logic on the one hand, and the competitive logic on the other hand. The first strives to make

the administrative contract banal, ordinary, similar to the civil contract, that is, to deprive it of its uniqueness. First of all, an administrative contract must be conceived as a contract and, therefore, can express its "administrative nature" only as an exception. The second goes further: it is not interested in the possible specificities of the legal regime of administrative agreements, whether positive or negative. The competitive logic actually appears as a superior logic that prevails over the traditional logic of public services and can lead to a simple rejection of the latter.

1.1. Contractual logic: secondary logic

Historically, the general theory of administrative contracts was developed to confirm the specificity of some contracts entered into by administrative bodies compared to contracts entered into by private law entities. It is a doctrinal construct. Thus, classical authors hid or reduced the contractual part in the administrative contract, largely because "administrative contract is not born as a contract". Nevertheless, contractual logic has long been present in studies devoted to the general theory of administrative contracts, even if it has been replaced by public service logic. From this point on, administrative contracts are treated as real contracts. However, even though contractual logic is increasingly present, it is unlikely that contractual logic will prevail over administrative logic. Therefore, this logic must remain secondary.

1.2. Competing logic: an insurmountable logic?

Competitive logic was not central to the development of the general theory of administrative contracts. However, it should not be concluded from this that this logic did not exist in the beginnings of legislation on contracts concluded by administrative bodies. The idea of selection on the basis of competition appears very early, but, initially, the procedures aimed at selecting contractors did not respond to "competitive logic": they aimed only at correct spending of public money. The modern concept of

administrative contract - developed in the 20th century - was developed around the specific logic of public service and public authority. Ultimately, the goal remained the same: to protect administrative bodies and, more broadly, to protect public finances. Therefore, competitive selection existed, but it did not serve a competitive purpose. In Georgia, the competitive logic in administrative contracts was legally strengthened in 2005 by Article 2 of the Law "On State Procurement". The questioning of the concept of an administrative contract by EU law in EU Member States resulted in the integration of a new logic into the legislation on contracts concluded by administrative bodies. Competitive logic is integrated at the top of the hierarchy of norms through the fundamental principles of public procurement (1.2.1). And on the contrary, this special place explains why the logic of public service retreats before competitive principles. However, this movement may have its limits (1.2.2).

Chapter 2. Disruption of the basis of the general theory of public service as administrative contracts

2.1 of the General Administrative Code of Georgia. The article indicates that an administrative contract is a civil legal contract concluded for the purpose of exercising public authority. The issue is complicated by the fact that there is no legal definition of public authority. Regarding the exercise of public authority, the Supreme Court of Georgia explains that the administrative body exercises public authority on the basis of legislation, at which time the rights of a person guaranteed by the legislation of Georgia give rise to the public obligation of persons performing public functions - to fully ensure the creation of conditions conducive to the realization of the rights of a person. Georgian judicial practice strictly follows the definition of an administrative contract given by the Court of Cassation: "In this case, the contract between the parties was concluded by the administrative body for the purpose of exercising public legal authority, which is the main element determining the legal nature of the administrative contract... The purpose of the administrative contract is to achieve a

socially significant result, public- Exercise of legal interest. When separating an administrative contract and a private-legal contract, the emphasis should be on whose interests are in the foreground in the legal relationship regulated by the contract: the private interests of the entities, or - public interests." The development of new and different logics within administrative contract law is accompanied by an increasing revision of the basis of public service as a general theory. Whereas, in the classical approach, public services provided a general justification for the various components of the general theory, now public services can no longer be used in this way. However, the classical approach has not completely disappeared. Public service continues to be used to justify some elements of the general theory that are emblematic of the general theory, although in reality, its use is often artificial. Public service as a basis is often automatically used, which cannot scientifically substantiate the various components of the general theory. Furthermore, it is no longer used to justify all elements of this theory. Therefore, its maintenance as a basis is conditional. In fact, modern public contract law opens a new approach to the general theory of administrative contracts. The latter does not question public services, but requires new foundations that replace or accompany public services in the justification of the components of the general theory. Therefore, the public service appears as a threshold for the banalities of the legal regime of administrative contracts.

2.1. Partial preservation of the classical approach: public service as a basis

As a result of the development of different competing logics, public services are less and less put forward to justify the existence of specific rules applicable to administrative contracts. Thus, assuming it still exists, it would now be difficult to explain the general theory of administrative contracts using public services. However, the situation is not as simple as we think. In fact, the public service continues to be used for the clarification of some of the rules applicable to administrative contracts or at least some of them (2.1.1). However, we are talking about accurate and appropriate

use of public services, which should not overshadow reality. From a demonstrative point of view, its use is quite unsatisfactory and explains why public service regularly precedes other grounds in its explanatory function or is supplemented by these other grounds (2.1.2).

2.2. Developing a new approach: public service as a secondary element

The classical approach is no longer sufficient to justify all the elements of the general theory of administrative contracts. The relationship between public services and different contracts varies by contract category and, in some cases, this relationship is weakened, if not absent. This explains why other grounds have now come to the fore to justify the legal regime of administrative contracts, by replacing or adding to public services. Nevertheless, this does not mean that public services will disappear, but rather that they are outdated and can no longer be used as the sole basis for all components of the general theory (2.2.1). In connection with such an increase in the foundations of the general theory of administrative contracts, the public service aspires to take on itself a new function. Now this allows us to preserve the specificity of the legal regime of administrative agreements, which is one of the elements protecting the legal regime of such agreements from the movement of banalities (2.2.2).

Part 2. Revision of the theory

The general theory of administrative contracts is breaking down and cannot remain as it is. The development of new different logics and the weakening of the public service logic lead to the point that it loses its integrity and effectiveness. Now, the general theory of administrative contracts is used only in complex and nuanced ways. Therefore, a new understanding seems inevitable and necessary. This is inevitable, since the development of public procurement legislation hinders the actual

application of the general theory as a whole. This leads to a distinction between agreements within and outside the competition sphere in order to determine whether and in what form the components of the general theory are used. However, in reality, these components are significantly questioned (Chapter 1). Therefore, in order for a general theory to be maintained, its foundations must be strengthened and rethought to form a new system. Thus, the revision of the theory presents an unprecedented opportunity to transform public contract law around the idea of the predominance of the common interest (Chapter 2).

Chapter 1. Inevitable new understanding

The application of the general theory of administrative contracts has always led to discussions and questions, namely whether all administrative contracts can apply all the rules, principles and theories included in the general theory. However, new developments in public contract law lead to new questions. The development of public procurement legislation will completely regroup contracts, and the general theory does not remain out of play. The question is no longer whether its various components apply to all administrative contracts, but whether there is a general theory. In fact, the study of positive law shows that to ensure its survival, a revision of the general theory is necessary. The current structure of public contract law leads to a distinction between public procurement contracts and other administrative contracts. Currently, the former dominate this field, while the latter occupy only the remaining space. However, the general theory of administrative contracts is applied differently according to the category of contracts concerned. It is currently difficult to apply it effectively within the framework of public procurement legislation: competitive restrictions prevent the application of some components of the general theory. The general theory of administrative contracts seems capable of being maintained only outside the scope of public procurement. However, its application is not clear for contracts in this category. The field of competition goes beyond the scope

of public procurement, and contracts that do not fall within it are genuine exceptions to which the general theory has a weak connection.

1.1. Difficult application of general theory in the field of public procurement

Georgian legislation on state procurement is partially integrated into administrative contract law - state procurement contracts concluded by administrative bodies are in some cases administrative contracts, in some cases - private law contracts. First of all, the legislation on public procurement develops according to its own logic, according to the logic of European origin, which is not related to the approach traditionally accepted in administrative contract law. This indifference of public procurement legislation to the classical understanding of administrative contract law is also sought in connection with the general theory. The legislation on public procurement does not directly contradict the existence and application of this theory. On the contrary, it explicitly or implicitly allows the use of its constituent rules, principles and theories (1.1.1). However, this assumption is only theoretical. Practice reveals inconsistencies with some components of the general theory of administrative contracts of public procurement legislation, which essentially limits the scope of its application (1.1.2).

1.2. The relative preservation of general theory outside the realm of public procurement

As public procurement legislation contradicts the application of some fundamental elements of the general theory of administrative contracts, it is logical to think that the future of the latter will be shaped outside the scope of public procurement. Thus, the general theory remains unchanged, but only for administrative contracts that do not fall within the scope of public procurement. However, the situation is not so simple, and in fact the future of the general theory seems highly doubtful. Indeed, at first glance, various components of the general theory remain largely outside the

realm of public procurement. Even if certain changes were made, the legislator and the court did not question the rules, principles and theories traditionally integrated in the general theory of administrative contracts (1.2.1). However, positive law presents a less reliable situation for the general theory. The limitations of the legislation on state procurements apply not only to those administrative contracts that fall under the scope of the Law of Georgia "On State Procurements". Therefore, if the general theory of administrative contracts holds, it is only in a residual form (1.2.2).

Chapter 2. An ambitious redefinition of general theory

The immensity of administrative contract law can be preserved only by proposing a redefinition of the general theory. As the existing theory has not been able to adapt to the changes in this area, it is necessary to find out whether there is still a "specific legal regime of public law" that is "documented". These difficulties of adaptation do not mean ipso facto that there is no longer a difference between administrative contract law and private contract law. As François Brené points out, “the limitlessness of administrative contract law does not appear in a dubious principle; It is questionable only in its forms.' A new definition of the general theory can be ambitious only if it reinforces the distinction between administrative or public contracts on the one hand and private law contracts on the other. Indeed, the general theory is justified only by virtue of the specificity of administrative contracts compared to private law contracts. Therefore, its redefinition should allow us, first of all, to confirm the specificity of governmental measures. However, such redefinition should not be an end in itself. This should lead to a better understanding of public contract law and the specifics of public contracts. Therefore, secondly, it is necessary that this redefinition allows us to develop a more comprehensible theory.

2.1. Confirmation of the specifics of official events

The general theory of administrative contracts was developed in doctrine in order to distinguish between contracts that serve governmental measures and ordinary contracts that are subject to private law. However, the traditional approach of the general theory no longer allows this specificity to be noted. The question is how to confirm this specificity with the help of a new version of the general theory. For this, first of all, it is necessary to find a justification for maintaining a legal regime that is very different from civil law. Traditionally, the justification for such speciality was that administrative contracts are concluded for the purpose of providing public services, but now it has become clear that only public services are no longer enough. Therefore, it is necessary to find a new basis for the general theory of administrative or public contracts. In fact, perhaps only the common interest constitutes a sufficiently broad basis to be satisfactory, provided, however, that it is sufficiently precisely defined (2.1.1). After defining this basis, it is necessary to define the content of the new general theory. It is not about taking the inadequate content of the theory as it is now, but rather about defining through positive law the elements that reflect the specificity of governmental measures and therefore that can be integrated into the new theory (2.1.2).

2.2. Developing a more acceptable theory

Revision of the general theory of administrative contracts cannot be done in the abstract. It should take into account the current state of the issue and offer a more accessible key to understanding public contract law. First, the new general theory must be written in positive law, without complicating the latter. For this, it must take into account the multitude of categories of special administrative agreements and the special legal regimes derived from them. This leads to the creation of "special theories" that exist alongside the general theory. Thus, the general theory is part of a wider whole and forms a multi-level theory together with various "special" theories, the

structure and content of which must be taken into account (2.2.1). In the second stage, taking into account the prospective approach, the development of a new general theory can become an opportunity to propose a broader renewal of the issue. Indeed, it is possible to propose a more comprehensible and orderly theory (2.2.2).

Conclusion

The general theory of administrative contracts is disputed and questioned. Although it was "an institution typical of administrative law" based on "a regime with its own dynamics", it has now lost its luster. But is such an observation fair? Can administrative contract law be considered simply a special law in relation to common law, in the same sense as insurance contract law? The development of public procurement legislation is one of the reasons for weakening the general theory. Currently, administrative contract law is primarily based on public procurement contracts. However, administrative contract law goes beyond the separation of administrative law and private law and enforces rules common to contracts that may be called public procurement contracts or concession contracts. Under these conditions, it is difficult to imagine a general theory only for administrative contracts. Or it will be used as a waste - ie. only to those administrative contracts that are outside public procurement - or it will concern all administrative contracts, but it will establish an essential and unjustified division between administrative contracts on public procurement and private law contracts in terms of their legal regime. In addition, public procurement legislation, by virtue of its European origin, places the competitive logic at the center of public contract law. This logic has become the main component of the contractual common interest, has gained the upper hand over the traditional foundations of the general theory and questioned some of its components. Furthermore, the decline of general theory can be explained by a more general movement towards the trivialization of the role of the state. The method lies in the approximation of legal regimes between administrative contracts and private law

contracts. Thus, the general theory is reversed and the qualification of the administrative contract, as a rule, becomes the only key to determining the court's jurisdiction. But, we should not make a mistake: such a convergence of administrative contract law and private contract law leads to the rejection of the specificity of contracts concluded by administrative bodies. This confirms the view that the state, when it acts through a treaty, does not use specific means of influence. In accordance with the movement of transition of public activities to contractual relations, which testifies to a sharp reduction of unilateralism, this decision leads to the minimization of the role of public authorities in society. Fortunately, this decision is not inevitable. One could imagine an update of the general theory that would allow him to restore his reputation. However, such an approach involves breaking free from the shackles developed by the doctrine in the first half of the 20th century, without denying its merits. A new general theory of administrative contracts cannot be developed from scratch. It must be developed on the basis of positive law. However, the latter represents experience, which means that it is necessary to consider the roots of administrative contract law. Thus, we can start again with the idea that administrative contracts are different from private law contracts and should be considered in accordance with the "institutional" approach, while each contract is "perceived as a whole, a legal act in the interests of administrative activity, as well as a unilateral act". Therefore, updating the general theory of administrative contracts requires a reminder about the specifics of governmental measures, regardless of the applied method of action. This specificity can easily be based on the classical concept of administrative law - the concept of common interest. For this, it is enough to redefine the common contractual interest, which includes both the traditional logic of administrative contractual law and the new logic, including the competitive logic. Thus, common interest allows us to justify the use of a special legal regime, different from private law, which can be reorganized by maintaining some classical elements of the general theory of administrative contracts and adding new ones.

Creating a new general theory would allow us to completely rethink this issue. In so far as the common interest is used as a basis, one can indeed imagine an extension of the general theory so that it becomes not a general theory of administrative contracts, but a general theory of public contracts as a whole. The specificity of governmental measures is expressed not only in contracts, which are currently called administrative, but also in some private law contracts concluded by persons who are in the public sphere or under public influence when they act in the common interest. The development of a general theory of public contracts will lead to profound changes, but it will allow us to restore the order and coherence to the subject that we so lack. These are clearly promising proposals that may be considered excessive, but the move towards private contract law and the trivialization of administrative law may be subject to the same criticism. The search for a new general theory is, in essence, a purely doctrinal ambition, and it is characteristic of the doctrine to take steps that do not limit positive law to explanatory analysis. As the classic administrativeist Gaston Jesy wrote, “Hesitation is impossible. We must engage in science, not professional training', to avoid that 'with every change in legislation or case law, a great deal of our knowledge is lost', and that 'nothing remains'. Regardless of whether we are talking about public contracts or administrative contracts, it is from this point of view that a new general theory should be developed.

Published articles:

- "Clarifying the logic of public authority in the concept of an administrative contract with the existence of a competitive logic" - International scientific journal of the European University Law Institute "Law and the World" - 2022, journal N21; - "Questioning the general theory of administrative contracts" - National University of Georgia SEU scientific journal - 2022, journal N12 - "Disruption of the basis of public service as a general theory of administrative contracts" - International Scientific Journal of the New Higher School "Diplomacy and Law" - 2021, Journal N1-2(8);

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