

The Power of Unilateral Modification on Administrative Contract:

Based on the comparison of German
and French legal system

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Abstract

Administrative contract law, in our legal system, is neglected for a long time, due to the special system of its contentious proceedings undoubtedly. However, the real reason is that our administrative contract law is deeply influenced by the German contract law.

The main difference between the German and the French administrative contract law, roughly speaking, is the fact that the German administrative contract still puts great emphasis on equality between two parties; and yet the French public law gives the administrative authority more privileges because of public interest. Therefore, German law places importance on protection of the people's rights; while the French law emphasis on the instrumental efficiency of the administrative contract.

The Administrative Procedure Act of ROC is very similar to the Germany's Administrative Procedure Act. But the scholars, who drew up the draft, put the spirit of French administrative contract law into our Administrative Procedure Act. Article 146, about the power of unilateral modification, is united the characteristic of German and French law. On one hand, it emphasizes on public interest that the administrative authority represents for; on the other hand, it never forgets the protection of people's rights. This article sets out from the power of unilateral modification in the normal condition. We study the institutional design and theoretical

foundation of the right of unilateral modification; and discuss the field of application and the principle of putting it into practice.

Keywords: administrative contract; power of unilateral modification; *pacta sunt servanda*; public authority; the principle of continuity of public service; the principle of variability of service public; the principle of non-delegation of public authority; the principle of financial equilibrium of contract