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The Administrative Contract in German Law

SUMMARY

(Umowa administracyjna w prawie niemieckim)

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The development of the idea of participatory democracy, the growth in importance of the communicative conception of law and the managerial approach to process management in administration are just some of the factors determining the unflagging interest in consensual forms of administration activity in Germany among both practitioners and theoreticians of the functioning of public administration. One of this forms is the administrative contract, which is a flexible instrument of cooperation between the individual and the state, and the following arguments, among others, are in favour of the cooperative dimension of administrative functioning:

- reducing and saving costs,
- pooling the knowledge of those involved in cooperation,
- strengthening administrative authority,
- increased acceptance of the actions taken by the administration,
- increased efficiency and other synergies resulting from actions taken by the public administration in cooperation with other actors (outside the public administration).

It is clear from the above-mentioned arguments that the success of the administrative contract in the activity of public administration is determined not only by legal, but also extra-legal determinants, which include political, historical and economic conditions and the level of legal culture of society derived from them. It is not uncommon in the literature on the subject to point out that it is now difficult to imagine the efficient functioning of public administration without the possibility of concluding an administrative contract.

This thesis distinguishes between administrative contracts *sensu largo* and *sensu stricto*. Administrative contracts *sensu largo* are all public-law contracts that can be concluded by public administration bodies (so, among others, contracts concluded under international law, contracts concluded by the state with churches and religious associations) and public-law contracts concluded by private entities. On the other hand, administrative contracts *sensu stricto* are subordination and coordination contracts. The subject of this dissertation is administrative contract *sensu stricto*.

The main aim of the study of a cognitive nature is to identify the determinants of the development of the administrative contract in German federal law, to explain the role of this institution in contemporary administrative proceedings, as well as to indicate the theoretical and practical problems arising in this context, together with proposals for their solutions. For the purpose of achieving the main objective of the work, specific objectives of methodological, applied and utilitarian nature have been adopted.

The methodological aim of the work is to identify methods complementary to the dogmatic-legal method, which are the most suitable for studying the factors influencing the development of the administrative contract - both in administrative practice and at the normative level. The variety of methods should ensure the relevance, completeness and integrity of the consideration of the title institution.

The applied aim of the dissertation is to formulate recommendations for the Polish legislator for the inclusion of the administrative agreement in the legal framework and to present the conditions enabling its functioning in administrative practice.

The utilitarian objective is to gain knowledge about consensual forms of public administration in Germany, with particular emphasis on the administrative contract.

The realisation of the above research objectives will make it possible to show the significance of the analysed institution in administrative practice. In order to achieve the objectives formulated above, an attempt will be made to answer the following questions:

1. Why has the administrative contract become the focus of German doctrine?
- 2 To what extent have the socio-political changes over the past centuries (from the police state to the present day) influenced the doctrine of legal forms of administrative activity in terms of the institution of the administrative contract?
- 3 How has the institution of the administrative contract been regulated under positive law?
4. Whether and to what extent the German model of administrative contract can serve as an inspiration for Polish science and practice?

The thesis of this paper is as follows: The administrative contract is an institution that allows the public administration to perform increasingly diverse and complex (comprehensive) public tasks in a progressive and effective manner.

The work consists of five chapters.

The first chapter presents the genesis of the administrative contract through the prism of considerations presented by proponents and opponents of this institution. The evolution of this form of administrative activity is linked to the prevailing conception of the state in a particular period and to the main research methods used on the ground of legal sciences, i.e. dogmatic and socio-legal methods. The Württemberg project for the codification of administrative law is also analysed, as within the framework of the work on this project an attempt was made for the first time to normativise the administrative contract.

The subject of consideration in the second chapter was the institutional determinants of the development of the cooperative state. To this end, the phases of the development of German public administration are systematised, making it possible to show the changes taking place in

the relationship between the administration and the citizen. The growing importance of the administrative contract in the cooperative state is pointed out and the psychosocial attractiveness of the administrative contract is explained.

The third chapter is devoted to the broad issue of the normativisation of the administrative contract. The course of legislative work is presented and the views of the doctrine in this respect are discussed. The legal construction of the administrative contract is considered, in order to distinguish various types of administrative contracts and to analyse them in detail. Within the framework of the dogmatic-legal analysis of the code norms of the examined institution, the issues of adjustment and termination of the administrative contract and its invalidity are also presented. The chapter concludes with a consideration of the amendment to § 54 VwVfG, aimed at extending the catalogue of named administrative contracts to include a cooperation contract.

Chapter four presents the administrative contract against the background of other forms of administrative action, such as the civil law contract, the administrative act, informal agreements. This comparison made it possible to distinguish the material-legal and procedural-legal functions of the administrative contract.

The fifth and final chapter was devoted to the activities aiming at the normativisation of the administrative contract on our ground. The evolution of the idea of an administrative contract in the Polish doctrine of administrative law was presented, the borderline of administrative-civil law was analysed, and then the attempts to date to include an administrative contract in a legal framework were discussed.

The historical-legal method of analysis, the method of analysis and criticism of the literature, and the dogmatic-legal method were used to achieve the stated objectives.

As the historical context of the development of the institution of the administrative contract has remained on the margins of considerations in the majority of previous studies, the first and, to a large extent, the second chapter were developed on the basis of the historical-legal method, enriched by elements of the method of analysis and criticism of the literature, thanks to which the title institution was set in the context of the historical relations occurring between the state and the law on the one hand, and between the administration and the citizen on the other. The aim was to establish how the implementation of certain concepts of the state (police state, rule of law, cooperative state) conditioned the functioning of the administration and the research carried out on administrative law.

The work on the remaining chapters was based on the dogmatic-legal method, through which it was possible to both decode the provisions, which are fundamental from the point of

view of this thesis, concerning the functioning of the administrative contract in German administrative proceedings, and to interpret them. For the institution under study, the links with the social sciences, manifested in the discussion of the possibility of steering society by means of law, as well as with the economic sciences, visible not only at the level of efficiency and effectiveness of the legal forms of administrative activity, but also their influence on the transformation (modernisation) of the administration. For this reason, the leading dogmatic-legal method has been enriched with elements of social and economic sciences, which has found its expression in the application of selected elements of the institutional paradigm (in particular in Chapter 2). In this way, the administrative contract has been portrayed not only as an element of statute law, but also as a social phenomenon in which various feedbacks in the application of the law take place between the parties to the contract.