

Introduction: The Civil Code defines a contract as an agreement according to which one or more persons undertake to give, do or not to do something (art. 54). A contract is a meeting of consistent will and can be expressed either orally or in writing. The contract is formed as soon as the parties have expressed their concurrence of will (art. 59). If an agreement contains an offer but no acceptance deadline, the offer must be accepted immediately to bind the debtor (art. 61). So What are the key characteristics that distinguish administrative contracts from private law contracts, and how do these characteristics impact their execution and enforcement? Administrative contracts are distinct from private law contracts due to several key characteristics that influence their execution and enforcement. These differences primarily arise from the nature of the parties involved, the purpose of the contract, and the specific legal framework under which these contracts are governed. Below are the key characteristics that distinguish administrative contracts from private law contracts, along with their impacts on execution and enforcement:

1- Parties Involved: Administrative Contracts: These are agreements where at least one of the parties is a public authority (e.g., government, public institution, or local government). Private Law Contracts: These are agreements between private individuals or entities, where both parties are governed by private law. Impact: The involvement of a public authority in administrative contracts means that these contracts are designed to serve the public interest, and the public body often has special powers that are not available to private parties, such as the ability to impose regulations or obligations unilaterally.

2. Purpose of the Contract: Administrative Contracts: These contracts generally aim to serve the public interest, such as the construction of public infrastructure, provision of public services, or management of public resources. Private Law Contracts: Private law contracts are usually entered into for the mutual benefit of the parties involved, such as the sale of goods or services between private individuals or businesses. Impact: Since administrative contracts are made to fulfill public functions, they are often subject to more oversight and regulation. The public purpose often allows the public authority to modify or terminate the contract if necessary to protect public interest, which is not typically the case in private law contracts.

3. Legal Regime and Governing Law: Administrative Contracts: These are primarily governed by public law (e.g., administrative law, public procurement regulations), and special statutes may apply to ensure that public resources are used efficiently and in compliance with public policy. Private Law Contracts: These are governed by civil law or commercial law, based on principles like freedom of contract and mutual consent, without any special rules for public policy considerations. Impact: The public law framework for administrative contracts gives public authorities significant flexibility to make unilateral decisions (e.g., changes to contract terms or termination) to ensure that the contract continues to meet public objectives. Private law contracts, by contrast, emphasize the autonomy of the parties and are less susceptible to unilateral modifications by one party.

4. Modification and Termination: Administrative Contracts: Public authorities have the power to unilaterally modify or terminate the contract if it serves the public interest or if it is necessary to address changes in circumstances (e.g., changes in regulations, emergencies). Private Law Contracts: In private law, contracts can only be modified or terminated with the consent of both parties, unless explicitly allowed for by the contract terms or applicable law. Impact: The ability to unilaterally modify or terminate an administrative contract allows for greater flexibility in responding to changes in public policy or unforeseen events. However, this also

places private contractors at a disadvantage, as they may be unable to predict the terms of contract enforcement with the same certainty as private contracts.

5. **Public Interest Considerations:**

Administrative Contracts: Public authorities must consider the broader public interest, such as protecting taxpayers' money, ensuring transparency, and promoting social and economic welfare, which may sometimes override the terms of the contract.

Private Law Contracts: The primary concern in private law contracts is the mutual benefit of the parties involved, without direct consideration of the broader public interest.

Impact: The focus on public interest in administrative contracts can lead to greater scrutiny and regulation, ensuring that these contracts do not serve the private interest of one party at the expense of the public. In contrast, private law contracts are typically governed by the parties' mutual goals, leading to fewer external constraints on their execution.

6. **Jurisdiction and Dispute Resolution:**

Administrative Contracts: Disputes arising from administrative contracts are usually handled by administrative courts or special tribunals that deal with public law matters.

Private Law Contracts: Disputes in private law contracts are resolved through civil courts or commercial courts, depending on the nature of the contract.

Impact: The distinction in jurisdiction means that administrative contracts are subject to a different set of procedural rules and remedies, which are often more focused on the public interest. This can affect the speed and manner of resolving disputes, often providing a more public-oriented approach, such as the possibility of overriding a private party's interests for the sake of public needs.

7. **Imbalance of Power and Public Procurement Rules:**

Administrative Contracts: There is often an imbalance of power between the public authority and the private contractor. Public procurement regulations (e.g., bidding processes) govern the award of contracts, ensuring fairness and transparency, but these rules may also favor the interests of the public authority.

Private Law Contracts: There is generally a more balanced negotiation between parties, and the contract is based on their voluntary agreement without as much external regulation.

Impact: The imbalance of power in administrative contracts can lead to increased control by the public authority, limiting the private party's ability to negotiate favorable terms. This can lead to a more rigid and less flexible contract framework compared to private law contracts, which allows for more equal bargaining.

8. **Execution and Enforcement:**

Administrative Contracts: Public authorities often have the power to enforce the contract through coercive measures (e.g., using administrative sanctions, imposing penalties, or taking actions to protect public interests).

Private Law Contracts: Enforcement in private law typically involves seeking compensation or specific performance through civil courts.

Impact: The ability of public authorities to use administrative measures provides a broader range of enforcement tools in administrative contracts, allowing for more proactive steps to ensure compliance. In contrast, enforcement in private law contracts relies more on legal remedies, such as damages or court orders.

Algerian law also distinguishes between private law contracts and administrative law contracts. The first is based on the principle of strict equality between the parties and the fact that they are persons governed by private law. The second is concluded either between two public persons, or between a public person and a private person. The law that applies is administrative law, the related litigation is devolved to the administrative courts.

Conclusion: In summary, administrative contracts differ from private law contracts in terms of their purpose, parties involved, legal regime, and flexibility. These differences impact the execution and enforcement of the contract, with administrative contracts being

more subject to the public interest and providing public authorities with greater flexibility to modify or terminate the contract. On the other hand, private law contracts emphasize mutual consent and the autonomy of the parties, leading to fewer unilateral modifications and a more balanced bargaining process.