



“THE ADMINISTRATIVE CONTRACT IGNORED IN CUBA SINCE 1959”

“O CONTRATO ADMINISTRATIVO IGNORADO EM CUBA DESDE 1959”

**“EL CONTRATO ADMINISTRATIVO IGNORADO EN CUBA DESDE
1959”**

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ABSTRACT:

this article analyzes the importance of the administrative contract for the jurisdiction in cuba, its importance in the economy. related to changes in the economy at the international and national level. a vision of trends and notes on legal theories and comparative law and the existence of deficiencies in cuban legislation for the conclusion of contracts, from the conceptualization and classification, solving this, the efficiency and quality of the contracting will be gained. and the use of resources. the administrative contract is now assumed as an economic contract, and the resolution of the conflict is entrusted to the economic jurisdiction, which is a quality evaluator, obviously the process can be improved, a fundamental result to restore the administrative contract, since cuba is the first latin american country, which had it in its laws for more than 400 years. the change is mandatory the inclusion of the talent of natural persons, the inclusion in the small and medium-sized company of the administrative contract.

keywords: administrative contract; civil, economic; courts; socialist.

RESUMO:

este artigo analisa a importância do contrato administrativo para a jurisdição em cuba, sua importância na economia. relacionado a mudanças na economia nos níveis internacional e nacional. uma visão das tendências e notas sobre teorias jurídicas e direito comparado e a existência de deficiências na legislação cubana para a execução de contratos, desde a conceituação e classificação, resolvendo isso, obter-se-á a eficiência e qualidade da contratação. e o uso de recursos. O contrato administrativo passa a ser assumido como Contrato Econômico, e a resolução do conflito é confiada à Jurisdição Econômica, que é um avaliador de qualidade, obviamente o processo pode ser melhorado, resultado fundamental para restabelecer o contrato administrativo, já que Cuba é o primeiro país da América Latina, que a teve em suas leis por mais de 400 anos. A alteração é obrigatória a inclusão do talento das pessoas físicas, a inclusão na pequena e média empresa do contrato administrativo.





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Palavras-chave: contrato administrativo; civil, econômico; tribunais; Socialista.

RESUMEN:

Este artículo analiza la importancia del Contrato Administrativo para la jurisdicción en Cuba, su importancia en la economía. Relacionado con cambios en la economía a nivel internacional y nacional. Una visión de las tendencias y apuntes sobre teorías jurídicas y derecho comparado y la existencia de deficiencias en la legislación cubana para la celebración de contratos, desde la conceptualización y clasificación, solucionando esto, se ganará la eficiencia y calidad de la contratación. y el uso de recursos. El contrato administrativo ahora se asume como Contrato Económico, y la resolución del conflicto se encomienda a la Jurisdicción Económica, que es un evaluador de calidad, obviamente se puede mejorar el proceso, resultado fundamental para restituir el contrato administrativo, ya que Cuba es el primer país de América Latina, que lo tuvo en sus leyes desde hace más de 400 años. El cambio es obligatorio la inclusión del talento de las personas físicas, la inclusión en la pequeña y mediana empresa del contrato administrativo.

Palabras-clave: contrato administrativo; civil; económico; tribunales; Socialista.

1 INTRODUCTION

The Administrative contract is a tool and we can attribute the important tool to it for any State, fulfill its social order of the generalized common good or enforce it under its direction in a transparent and efficient way, it is an agreement with natural persons, provision of services or the performance of work, so we must start from the analysis of the concept of various theorists and writers to give a successful conclusion in accordance with the sciences.

In Cuba as an island belonging to the Caribbean, and Latin America with a very similar civilization with the influence of Spain since October 27, 1492, in the case of Cuba and the evidence of the different criteria of researchers on the subject in the literature review, with very few references by Cuban authors in this regard, in addition to a silence in the first 50 years after the 1959 stage. Aspects previously expressed by Matilla Correa, researcher and professor at the University of Havana, who is practically The first one that precisely takes up the subject, to which we resort in all its allegations and in corresponding to the recommendations, justified by the absence is that we carried out the investigation,





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contributing on the subject in Cuba, making different edges that were debated and analyzed, and as results converge in the need to defend the vitality of said contract¹.

Fortunately in Cuba, there is an administrative Chamber in the provinces and in the Supreme Court, however, there is no specialized court to resolve breaches of administrative contracts, but it would currently be inoperative because the figure of the administrative contract is null.

Undoubtedly the figure of the economic contract, typical of socialist countries when dealing with relations between state companies that respond to a single plan of the socialist state economy to satisfy the needs of the people, in the case of Cuba, for different reasons it has carried out a rearrangement and has inserted the figure of natural persons as a new subject, and we can see natural persons "self-employed", subcontracting and undertaking the construction or reconstruction of a hospital, at the discretion of the investigation, the relationship has come out of the framework of the economic contract and we are in the presence of an administrative, public or state contract, within which it is considered that the defense of the Public or Administrative Contract², and the rights of the parties, is implicit³.

This work aims to encourage researchers to continue these studies in a general way and to recognize how the Administrative Contract is present, the understanding of such an important legal institution, the importance of the historical background in Cuba, the first to name an administrative contract under the influence of Spain for 400 years, unchanged only in Cuba, in Latin America it has much more movement in theory and in practice.

In this research it is important, due to the analysis from the Theoretical and Doctrinal point of view of the concept of the Administrative Contract, to its classification and comparative notes with Latin American countries and the role and its practical

¹ Matilla Correa A. (2007). “Consideraciones mínimas sobre el Contrato Administrativo y el Derecho Administrativo Cubano”. Libro: Contencioso Administrativo, Culturas y Sistemas Jurídicos comparados. páginas 231 s. ISBN: 970-32-3935-8 disponible en: <http://ru.juridicas.unam.mx/xmlui/handle/123456789/11360>.

² Martín A F. (2019). “El (Nuevo) contrato de servicios que proporciona beneficios directos a los ciudadanos. consolidación o interrupción del contrato de servicios públicos?. Revista General de Derecho Administrativo. (Un concepto más actualizado).

³ Villabella Armengol C.M. (2019). El control de constitucionalidad en Cuba: Reflexiones a tenor de la constitución de 2019”. Revista cubana de derecho, numero 53. “Habana, Cuba. pps. 59.



incidence of faces to the Economy, in the In the case of Cuba, the impact on the transformation in this case to improve in line with the current world.

2 MATERIAL AND METHOD

This research responds to a qualitative design, using the content of the historical analysis as the main technique to understand the relationship of the object of study with its environment. The historical-analytical method of investigation, and the interpretive method is used. Both helped to understand and interpret the dimensions of the story, a process around the phenomenon of the study: the administrative contract. The review of the documentary literature was the main technique used to analyze the discourse on the subject of study. In addition, diverse bibliography was consulted on the development of the administrative contract from its inception to the present in some Latin American countries, but specifically in Cuba, as well as the incidence of the Economic contract currently in Cuba.

3. RESULTS AND DISCUSSION

3.1 THE ADMINISTRATIVE CONTRACT FOR THE COURTS IN CUBA.

In Cuba there is no administrative court for public procurement, based on the basis that for Cuba the Public or Administrative Contract is an institution of law based on a theory, which has been forgotten and practically annulled by researchers in general and is a figure to which we must rescue and recognize its importance, in this sense we find that there are few works and little Cuban literature that addresses the institution, so it is



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interesting and fair that from the beginning this investigation delves into the doctrinal theories and the antecedents of this contract in Cuba⁴.

Going back to the History of the Administrative Contract as an instrument within the Sciences of Administrative Law, it is worth noting three figures for Cuba⁵ who speak of this contract José María Morilla, forerunner of Administrative Law, in the same way we consider Dr. Matilla Correa, as admirable analysis in this legal instrument in Cuba⁶.

In Cuba the jurisdiction for administrative decisions and acts, only referring to the administrative decisions of housing, these are the only acts that protect such jurisdiction and competence, these knowledge rooms in each of the provinces and a room at the national level in the People's Supreme Court. In practice, public procurement is ignored, which has disappeared since 1959. Appearing a strong influence of socialist law of the Union of Soviet Socialist Republics and the German Democratic Republic and appearance of economic law and with it the economic contract. We appreciate a superficiality in the exposition of the differences between the relations regulated by economic law and administrative law, there is a difference between the subjects, since in economic relations the socialist organizations and their structural units participate fundamentally, while the subjects of administrative relationships can be individual citizens⁷.

The state is offering natural persons the services of water, electricity and liquefied gas, then the economic reality change at present there are the so-called Non-Agricultural

⁴ Villalobos González S.S. (2021). “Memorias: 1ra Conferencia Internacional del Contrato Administrativo”. “Nacimiento del contrato en Cuba y México”. celebrada desde Moscú los días 11 y 12 de septiembre del 2020. Disponible en:

Internet, con ISBN-13: 978-620-3-03744-9, ISBN-10: 6203037443, EAN:9786203037449, entrevistado ese propio día 12-09- 2020. 2021

⁵ Villalobos González, S.S. (2020). “Fundamental Legal Bases of the Administrative Contract: A Legal Institution in Cuba and México”. “Revista de Investigacion en Ciencias Sociales”. Online ISSN: 2411-9458 – Print ISSN: 2413-6670.Volumen 6, Numero 11, noviembre 2020-pps. 969-974.

⁶ Revista CLIO, Academia Dominicana de la Historia.

Henríquez Ureña, M, "preface", in Morilla, José María, Siete Biografías Dominicanas, introduction and notes by Max Henríquez Ureña, Academia Dominicana de la Historia, Imprenta "San Francisco", Ciudad Trujillo, S. D., 1946, pp. 1 and sigs.

Matilla Correa A. (2011). "The first steps of the science of Administrative Law in Cuba"" In the topic Apuntes biográficas sobre José María Morilla. pps. 207-223.

Sánchez Valverde, A. (1947). Dominican. Idea of the value of the Spanish island", in the preface that speaks of this author of the work insists on the authorship of this in the important biography of Morilla. p. 7.

⁷ Rodríguez Grillo, L. (1984), Apuntes derecho económico, La Habana, Facultad de Derecho-Universidad de La Habana-Ministerio de Educación Superior, 1984. p. 16.





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Cooperatives (all-natural persons associated) that provide public services⁸ and even the state in construction and communal services, among others, and all under the name of economic contracts.

As Professor Matilla Correa so well States, the category of economic contract (proper to economic law) emerges in the light, which, among other forms, has been referred to as “an agreement of a planned nature between socialist organizations, aimed at fixing their economic rights and duties”. The main architect was imposed by Decree Law 15 of 1978, “Basic Rules for economic contracts”; in the third section it is called “of the contract of supplies”, the fifth section” of the contract of execution of works “and the seventh section «of the contract of services». Certainly until the 90s it had significance and results because it was organized and the copy was literal of the socialist capo to the point that eminent professors gave courses, seminars and many of the Cuban jurists came and took experiences of the operation of the materialization of the contract and its link with administrative and jurisdictional bodies such as Professor Dr. Ekaterina Guendsejades, professor at Lomonosov University⁹, however, for us from the fall of the socialist camp turned out to be artificial, the artificiality of the economic contract is exposed—which starts from its very name, because, at least, it can be questioned: which contract is not economic— and its dysfunctionality as a legal technique for ordering voluntary bilateral relations directly linked to administrative activity and the public interest, it is defining and objective that as a rule all contractual relations have an economic basis and in fact are economic, since this classification criterion is to be very clear when referring to the concept and classifications of bilateral relations.¹⁰.

⁸ Pere Simón Castellano. (2020). “Inteligencia Artificial y administración de Justicia”. Revista de Internet de los estudios de Derecho y ciencias Políticas” de ala “Universidad Internacional de La Rioja. p.4

⁹ Guendsejades Ekaterina. (Abril del 1981), “Brochure cycle of lectures on the contract for the execution of works in the Union of Soviet Socialist Republics, offered by Dr. Ekaterina Guendsejades, professor at Lomonosov University in Moscow.

¹⁰ Matilla Correa, A. (2011). “Consideraciones mínimas sobre el Contrato Administrativo y el Derecho Administrativo Cubano”. Libro: Contencioso Administrativo, Culturas y Sistemas Jurídicos comparados. páginas 231-233 s. ISBN: 970-32-3935-8 disponible en: <http://ru.juridicas.unam.mx/xmlui/handle/123456789/11360>.





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As can be seen by the disappearance of the category of public or administrative contract¹¹ in Cuba, and under the new conceptions arises the economic contract which has been the protagonist of many transformations since its birth. Being copied from the socialist camp the state arbitration bodies who were in charge of knowing and settling the conflicts of breaches of economic contracts, however with the disappearance of the socialist camp and having diminished economic relations and disappearance of the Single Plan of Economic Development, existed and was part of the concept of the previous policy, disappears the state arbitration body that settled contractual conflicts, and with this disappearance, the, as first instance in the provincial courts and Chambers of the economic in the Supreme People's Court, so, that was added to the law of Civil, Administrative and Labor procedure, (LPCAL), the book for the procedure of the economic, ceasing to be LPCAL, now LPCALE, in terms of contracting expressly says so:

.....Of the economic procedure, chapter I of jurisdiction and competence, Article 739. On the other hand, in the case of telephone and electricity service contracts they are called economic contract of accession, in fact, these will also be known by The Economic room. This contract whose clauses are drawn up by only one of the parties, while the other is limited only to accept or reject the contract in its entirety. In this case it could be said exorbitant mandatory, because for this reasoning, in our opinion it is much better the presence of administrative contracts

An entity sells a good or provides the service (the seller) who submits the offer through a non-negotiated binding contract, you take it or leave it, mandatory contract¹². It is in this case the customer, buyer or consumer who must decide between accepting the good with all its clauses or not doing so. Clauses not negotiated individually. This type of contract allows large entities, companies and services supplies and banking to the public administrations can achieve a wide recruitment and enter the amounts economy, without any difficulty, however, can be seen a significant elevation in the terms which may be

¹¹ Martín A F. (2019). “El (Nuevo) contrato de servicios que proporciona beneficios directos a los ciudadanos. consolidación o interrupción del contrato de servicios públicos? Revista General de Derecho Administrativo.

¹² Alejos, O. (2019). “Convenios arbitrales desequilibrados en los contratos públicos bajo la ley de contrataciones del Estado”. Revista de Derecho de la Pontificia Universidad Católica del Perú. Denominada Derecho PUCP. P. 347-370. (Mandatory Contract)





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unfair to the detriment of the customer. In theory these contracts must have direct and very clear clauses¹³ of an absolute understanding from the first reading.

In Cuba and as budgeted by the law of economic contracts, in this case Decree Law 304, article 17.-3).- Adhesion contracts, which must not contain abusive clauses. As can be analyzed the Law of economic contracts in Cuba, defines the contracts of adhesion in this case the contracts of electricity, running water, gas, telephony, and banking contracts, as well as others provided by law.

The accession contract¹⁴ it is legal, as a rule, but in order to protect the consumer, who is the weak party, abusive clauses are prohibited, which have to be null and void by right, and generally it is up to public institutions to monitor the performance of companies, in these cases, the state has to intervene to favor a balance between the parties.

Summarizing briefly, according to the research, the new system of government in Cuba, from the year 1959, he was aware of the elimination of contractual relationships with individual people, but in practice, the state continued to have contractual relations with natural persons, as the state offered the services of water, electricity and liquefied gas, and even the construction of housing to natural persons and natural persons as individual used to have criteria in this regard, workers, repairers of shoes, barbers in their homes all work according to the population because the state was not sufficient for these activities, and these individuals who were also approved by the state or government to carry out these activities contributed their taxes for offering these services. With time, the environment was changing because of the economic conditions continue to be difficult since the collapse of the socialist camp, and the escalation of the economic measures imposed on Cuba, force you to increase alternatives to help the economy recover, and therefore the reality is another, and many of these workers are associated with Production

¹³ Palermo, Fernanda Kellner De Oliveira. (2020) “Escorzo histórico del contrato administrativo”. Revista Jus Navigandi. ISSN 1518-4862, Teresina, año 7, n. 54, 1ro de febrero 2002. Disponible en: <https://jus.com.br/revista/edicoes/2002/2/1>.

¹⁴ [Álvarez Estrada, J.](#) , [Herrera Tapias, B.](#) (2016). “Contrato de adhesión y relaciones con el consumidor en el derecho del consumidor colombiano estatuto del Consumidor”. [Revista de Ciencias Sociales](#) 22 (1) , pp.166-178 «Contrato de adhesión». Enciclopedia jurídica. Consultado el 14 de febrero de 2015. Asimetrías de Información y Análisis Económico de los Contratos ... Los contratos cuyo contenido ha sido previamente definido por una de las partes de la negociación y que son presentados a la otra con la única opción de aceptarlos o rechazarlos, han recibido generalmente la denominación de contratos de adhesión. Es un contrato obligado y parecen cláusulas exorbitantes.





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Cooperatives Non-Agricultural activities for the provision of services to state entities, based on economic contracts, perverting the nature and conceptualization of the public contract or administrative, because at present there are individual workers and Cooperatives of non-agricultural production even assume objects of important works in the field of construction to state institutions such as hospitals and health centers¹⁵, etc., in our opinion, it is commendable that the institution of the public or administrative contract is assumed in accordance with its true nature, since it fulfils the important and universal role of contributing to increasing the quality of life and human and public health and their medical treatments, among its fundamental and central lines in the sciences of administrative law. Real and Free trade must be resumed, and the development of the contract must be increased with the real and potential possibility of taking advantage of the personal, manual and talent skills of natural persons¹⁶. markets must operate in the legal and social sphere that guarantees a wide dispersion of property, that could put a limit on the hereditary transmission of wealth, all measures conducive to well-being and citizen equality, but as the scenario of realization of freedoms that would be threatened by redistributive policies that guarantee a public provision of public services, this is a latent and effective need. It is clear that states need to increase the flow and entry of businesses and free markets to increase the welfare of the population¹⁷.

3.2 BRIEF REFERENCE FROM OTHER COUNTRIES CONCERNING THE JUSTICE OF THE ADMINISTRATIVE CONTRACT.

The regulation of TCP is contained in articles 22 to 27 LBCA of the Public Administration that in 1998 approved a reform program to the procurement and contracting system; in addition, the free trade agreements with the United States and the European Union in 2003 also provided impetus for their creation, as can be seen from the point of view that there is a positive point of reference on this issue, and this is undoubtedly

¹⁵ Noguera Peña, Alfonso. y Del Castillo Rodríguez, Carlos. (2021). “Equilibrio entre la innovación y el gasto público sanitario”. Revista Derecho del Estado n.º 48, enero-abril de 2021, p. 279-290.

¹⁶ Rojas, Héctor David. (2021). “La estrategia de la agregación en las constituciones y la ausencia de una voluntad general”. Revista Derecho del Estado n.º 49.. P. 203-205.

¹⁷ Ibid.





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the case in European Union legislation has designed a number of institutions, procedures and remedies aimed at enforcing the right to effective judicial protection¹⁸. As recognized by the eminent professor and researcher in his work “the system of resources in Italian public procurement, procedures and litigation control”, Enrique Diaz Bravo in this year 2020. In the field of public procurement through directives 89/665 and 2007/66, the structure of the resource procedures for the award of public supply and works contracts has been regulated, which has been incorporated by national systems through several institutes. Without a doubt, the experience incorporated in Chile is very positive and novel, which will result in greater return to the economy and the care of its funds.

If we look at Europe, we see that, in the Italian case, the transposition of European law has been carried out with respect to their legal culture, so that the resources of the public procurement are subject to the contentious-administrative jurisdiction, giving competence to the regional administrative courts and also to the Council of State, through a special procedure. Similarly, the existence of a pre-litigation procedure before the ANAC is relevant, with strong anti-corruption measures, as well as the creation of preventive measures to control disputes, such as the existence of access fees to jurisdiction and sanctions against reckless litigants. Finally, the tools for the restoration of the law will be analyzed, where the powers for the procedures after the award of the contract are contemplated¹⁹.

In Chile, the validity of the creation of courts in administrative litigation is raised²⁰. In Costa Rica the existence of public contracts is recognized, highlighting the body that controls these in the public treasury in addition to the existence of the administrative court. In the case of Panama, it also recognizes the existence of a public or administrative contract and also has an administrative court for public procurement, which exists by rule of law No. 22 of June 27, 2006.

¹⁸ Cano Blandón, L.F. (2021) Los límites de la justicia dialógica en la protección de los derechos sociales en Colombia. *Revista Derecho del Estado* n.º 49, P.144.

¹⁹ Díaz Bravo, E. (2020). “El sistema de recursos en la contratación pública italiana procedimientos y control de litigiosidad.” *Revista General de Derecho Administrativo*, ISSN-e 1696-9650, N.º. 54. pps. 1-5.

²⁰ Vergara Blanco, A. (2016). “Tribunal de contratación pública: bases institucionales, organización, competencia y procedimiento”. *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso XLVI* (Valparaíso, Chile, 1er semestre, página. 350.





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Unlike all the countries of Latin America, Cuba does not know the administrative contract, and these relations are sometimes included in the Economic Contract, in this case the theories and the practice indicate the need to put this institution of law in its proper place within of the iusadministrativistas sciences.

We consider that without a doubt the administrative contract constitutes an auxiliary tool of the economy, these contracts are transversal and are located within the sciences of administrative law and Cuba must consider their impact and could call them administrative economic contracts. For this reason, nothing would in any way hinder its impact on the economy and it would be important for the State to carry out analyzes and eliminate deficiencies in this type of contract.

3.3 PROCEDURE FOR THE AWARD OF PUBLIC CONTRACTS IN THE GENERAL SENSE.

The procedure for the award of public contracts and its incidence is important for administrative contracting, in this sense it can be said that all procedures share to a greater or lesser extent fundamental milestones in the processing of the file, since their importance is inextricably associated to the fulfillment of the essential legality²¹. The analysis of the adjudication procedures is a regulation that involves a composition exercise consisting of the embroidery of the pieces in the articles of the law, and that makes a masterful closing of everything related to the security of the contracting in the review of all its elements²².

It must produce an informative advertisement that explains in detail the need of the administration, this propaganda must be directed to the market, competition and business competitiveness, they are qualifying adjectives indicate a quality of the noun for this research, in this case it is in the process of awarding the administrative contract, which

²¹ Huepe Artigas F. (2021). “Técnicas y propuesta metodológica para el control de legalidad de los actos administrativos reglados y discrecionales”. Revista de Derecho Administrativo Económico, Nº 33.p. 101-103.

²² Royo, Manero, M.T. (2018). “Los procedimientos de adjudicación de contratos públicos”. Revista Aragonesa de Administración Pública 356 ISSN 1133-4797, XVIII, Zaragoza. pps. 365-373.





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provides transparency and increases the level of security and avoids bias and corruption²³.

As we can see it is very important to the process of computerization and digitization of the recruitment from application of the service until the display of the bidders who intend to hire, because we are practically in the Fourth Industrial Revolution provides new opportunities for companies and societies related to the use of the intellectual capital of business, the solution stimulates new opportunities for companies and societies based on the tremendous progress of the information, which puts a causal transparency to good practices, what results is an aspiration of all societies in order to ensure the honesty and transparency of the process²⁴.

It is very important to know some concepts related to the language of the references related to the process of digitization and conformation of digital data ²⁵. Undoubtedly, these data allow us to define the essence of our analysis, which is the need to make a public or administrative contract from the technological offer, it will allow us to measure failures in the process to eradicate them.

It is inevitable not to address what is related to exorbitant clauses in the institution of the public or administrative contract, from the origins of the public service, which even determined that administrative law was competent, to be called the regulatory regulations for such services.

3.4 IN CUBA THE AWARD OF ADMINISTRATIVE CONTRACTS IN CUBA.

²³ Garrido Mayol, V. (2020). “El principio de buena administración y la gobernanza en la contratación pública”. Revista Estudios: “Deustos”, P.119. Universidad de: “Deusto”.

Disponibile en: <https://revista-estudios.revistas.deusto.es/article/view/1947/241>.

²⁴ Villalobos González, S.S., y Morevab E. L. (2019). Revista digital Управление Знаниями / Knowledge Management, con el tema “The Enterprise’ ic Management Under the Digitalization”.

²⁵ Floridi, Luciano. (2015). “Die 4. Revolution: Wie die Infosphäre unser Leben verändert”. Reino Unido, Inglaterra. ISBN: 3418742175, 9783518742174

Pasando la era d los Zettabytes: ¿qué sigue para Internet?”. Ahora. Desarrollado por Northrop Grumman. TechTerms. "Zettabyte".

Rodríguez Escanciano S. (2017). “Implicaciones jurídico-laborales de la reasunción de servicios públicos: La aplicación del principio de subrogación empresarial y sus excepciones”. Revista: Trabajo y Derecho: 29.





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In Cuba, the non-existence of investigations is evident, but in the last decade some changes favor the basis of this investigation on the need to place the public or administrative contract in its rightful place in Cuba, with the need for a mandatory reference. in the constitution²⁶, but for this research, without a doubt, in the last decade all these changes favor the foundation of this research on the need to place the public or administrative contract in its rightful place in Cuba, with the need for an obligatory reference in the constitution²⁷.

The recent changes in the economy at the International and national level involve several challenges for all societies and especially for Cuban society, and specifically for the legal framework that regulates the procedures for the award of public contracts. This research shows the need for an increase and deepening of the topic and a vision compared to demonstrate the lack of theoretical valuations and practices that they expose the need to regulate proceedings in the case of the doctrine that would permit a celebration and rescue of the figure of the institution of the public contract or administrative in the case of Cuba from its theoretical training to put it in its right place, and the need to regulate the procedure²⁸ in the celebration of the tender and of a specific law on public contracts or administrative., without a doubt, this will allow us to meet under the same circumstances that in the rest of the countries in terms of challenges, and current and future prospects, especially in the quality of these, and in addition the prevention and confrontation of administrative corruption²⁹, and in fact in compliance with specific of what has been agreed and a decisive increase in the efficiency-seeking, and the fair employment of public funds and the necessary quality, because I could cite cases, but I will limit myself to specify the quality of the recruitment, in the case of Cuba it is the economic contract, but when building with private and non-state forces, it should be a public or administrative contract and in fact should have an impact on the quality of the

²⁶ Pavó Acosta, R. (2015) “La adjudicación de los contratos en el sector público cubano”, Edición de la Revista Estudios de Derecho, de la Universidad de Antioquia, de Colombia pp. 90-91.

²⁷ Durán Smela, Diana. y Cruz Gutiérrez, David. (2021). “El “fast track”: ¿un mecanismo de flexibilización de la Constitución de 1991”. Revista Derecho del Estado n.º 48, pp.6-7.

²⁸ Flores Rivas, J. C, (2020). “¿Es la licitación pública la regla de general aplicación en contratación administrativa?”. Revista de Derecho Administrativo Económico, Nº 31, (enero-junio 2020). pp. 93-124.

²⁹ Pulido Ortiz, Fabio Enrique. y Barreto Moreno, Antonio Alejandro. (2021). “Los principios jurídicos y sus demonios. Un análisis de los documentos tipo en el mercado de compra pública colombiano”. Revista de Derecho Administrativo Económico, Nº 33. p. 172.





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contract, and in other aspects at the international level, the increase in foreign investment and international trade.

For Cuba, and for any country, it is very important to the increase in technology and the level of computerization of all the processes, and in particular of the contract to the enterprise level, because it is a need of increased levels of quality in the same, and from the point of view of transparency and increased levels of visualization of the operations and the presentation of the need for a service to offer, with the prices, which allows appreciating and valuing the best opportunities, among other activities, to conclude a public or administrative contract without risk. The negotiations and renegotiations, and the claims before the breach, and being able to go beyond, in the fulfilment of the obligations, and in the knowledge of the alleged demands, corresponding to the courts to make a process visible and available from the act of appearances until the decision of the judgment and enforcement of the judgment willing, everything is more transparent and accessible to all, which requires in the case of Cuba, an investment, to achieve the aspiration to be more agile task and the procedure.

3.5 CLASSIFICATION OF PUBLIC CONTRACTS.

Another important aspect is the correct classification of public or administrative contracts, with a content of the correct concept in law, to follow in a straight line with a literal interpretation of the content of this concept and in addition to achieving its correct historical interpretation and preserving the legal nature of this institution, to achieve an adequate location in a clear and diaphanous context that tribute to the economy of its states and in fact will be an institution respected and heard by its rulers to which they must put much effort. In the case of Cuba, in the study program and in the literature of administrative law, public or administrative procurement does not appear as an issue, which gives us the measure of the exclusion of this important institution.

Since the classification of contracts by the Romans, in verbal, literal, real and consensual, nominated or unnamed, in general there is a classification which seems to us the most correct to refer to the features and nuances that allow sub classification in the sense of appreciating the most effective distinction, historically it has wanted to solve the





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problem through the system of selection of the state contractor, however, apparently this is not the problem the most important thing is reasonableness is the object and the price of contracting, and verify objectively the efficiency of the expenditure incurred, the fairness of the rates, we cannot comply with the criteria of expediency or convenience, and become ethical criteria in the topic of values above policy with respect to domestic law, are above legal and supranational, of each of the countries, immediately of the operation or rapidly that it requires in some cases, as it arises, among other texts, the inter-American Convention against Corruption, to be examined in-depth by Hector To Mairal, about the roots of legal corruption, making an assessment of how public law fosters corruption, rather than fight it, in this sense, chapter four is devoted to the corruption in the public procurement, which provides a criterion of the stages incident in corruption: The public tender, the execution of the contract, the payment and the final solution of the dispute³⁰. It is necessary to emphasize that it is not only in the small ones that acts of corruption are carried out, since the large administrative hires are highlighted in a negative way. This is a reason to take into account in each of the administrative contracts that are concluded and avoid losses due to this cause of monetary sums, which affect the economies and also the image of the contract and the stakeholders³¹.

For the research it is necessary to define the classification of the types public sector contracts, certainly would be, construction, supply and service contracts. it defines these types of contractual relations: Public Works Contract. Public Works concession contract.

3.6 THE CLASSIC DISTINCTION BETWEEN CIVIL AND ADMINISTRATIVE CONTRACTS.

³⁰ Mairal Héctor A. (2007). op. cit., quien dedica el cap. IV a la corrupción en la contratación administrativa (en las 4 etapas que menciona: “La licitación pública, la ejecución del contrato, el pago y la solución final de las controversias.”) Además de la Convención Interamericana contra la Corrupción, recordar la Convención de las Naciones Unidas contra la Corrupción, 2007, Buenos Aire. ley 26.097.

--Gordillo, A. (2007). “Libro Clasificación de los Contrato Administrativos”. Capitulo XI, p. XI-3.

--Rejtman, Farah Mario, (2010). “Régimen de Contrataciones de la Administración Nacional”, op. cit., especialmente cap. V, “El principio de transparencia” y cap. VI “El principio de transparencia: un abordaje preventivo,” paginas. 111-188; KODELIA, Gonzalo, en Rejtman Farah (dir.), Buenos Aires, Abeledo Perrot. p. 11;

--Fernández Jenjo, J.A. (2011) “El control de las administraciones públicas y la lucha contra la corrupción, Madrid,” Civitas/Thomson Reuters Madrid, Civitas/Thomson Reuters.

³¹ Fernández, Jenjo J.A, ibid..., quien recuerda en sentido similar a Sánchez Morón, Edición de España. 34, nota 10. p. 34



It is the most basic and primary distinction between contracts concluded by the administration, contracts governed by private law and administrative contracts. The most elementary are: civil Act and administrative act. the private domain and the public domain, among others. There is talk of a purely civil contract of the state. There are authors pose several ideas, but I particularly agree that there are that the civil contract is elementary and primary, but the exception may be the administrative contract, however at present it has become a thematic axis, and critical to any state, because that is a mandatory intervention of the state in ensuring the functioning of the public services in a nation³², for which this shall be subject to the special rules of administrative law, and supplement could avail themselves of the common law.

In Latin America and in other places of the world it is important to pay special attention and concentration to it, because the subjects involved in the administrative contract it turns out that it could be called a source of care in administrative corruption, before civil or commercial law, even.

3.7 THE ADMINISTRATIVE CONTRACT IN THE FIELD OF ECONOMIC ADMINISTRATIVE LAW.

In the case of economic administrative law, it is important to emphasize that this corresponds to invariably responds to several basic principles that are within the general theory of Administrative Law. However, the greater or lesser positive expression of these principles is found above all in the sectoral systems³³, composed of laws and regulations that regulate sectors of the economy shaping a peculiar statute of the operating companies and including guarantees of defense of the interests of the recipients of their goods and services. The regulation of matters such as banking, the stock market,

³² Loo Gutiérrez, M. (2021). “La responsabilidad patrimonial de los concesionarios de obras públicas por los daños sufridos por terceros durante la fase de explotación de la concesión”. Revista de Derecho Administrativo Económico, N° 33 [enero-junio]. p. 144.

³³ Evgeny Komlev (2021). “La legislación rusa sobre el autogobierno local”. Revista Derecho del Estado n.º 48, enero-abril de 2021. p. 245.



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gambling, private television, transport, gas, industry, private insurance, agriculture or telecommunications is the subject of this discipline³⁴.

We could say that there is an economic administrative contract, because there are also contracts that have an “economic” basis, which undoubtedly in our opinion cannot guide and decide their classification, and in this case Cuba maintains contracts that are classified within economic contracts and yet are executed by legally recognized natural persons with self-employed workers and non-agricultural cooperatives that are outside the, to the relevance of the investigated these contractual relations are framed within the public or administrative contract, which defend an important economic foundation and which should take their place according to the doctrine and practice that this reality assumes.

Without a doubt, the economic subject in Cuba and the institution of the contract of that matter defend the economy from its optical and relevance, however, is the concept contrary sense to the reality proved the existence of a real administrative contract which indeed also defend the common good³⁵, but that its nature is covered undeniably by the doctrine that states that it is a contract of relevance prevails, and also exists in many latitudes.

This research coincides with what was investigated and reflected by K. V. Khodakovskiy, who considers the state contract as an administrative contract, since in this case the public interest is ensured, regardless of whether it is regulated by the norms of civil law³⁶. And also rightly the research is conclusive in that the state contract contributes to meet public needs and interests³⁷. But the conclusion of a contract is regulated not only by the norms of civil law, but also by the norms of special legislation, in particular, the law

³⁴ Rivero Ortega, R. (2015). Es catedrático de Derecho Administrativo, su Libro de Derecho Administrativo Económico. séptima edición, Unidad de Salamanca, España. p. 17.

³⁵ López Escarcena S. (2018) “Contextualizando el derecho administrativo global”. Revista ADCI Anuario Colombiano de Derecho Internacional. p. 288.

--Rojas, H.D. (2021). “La estrategia de la agregación en las constituciones y la ausencia de una voluntad general. Revista Derecho del Estado n.º 49, mayo - agosto, pp. 199-213.

³⁶ Khodakovskiy K. V el objeto del contrato administrativo // Derecho administrativo y proceso. 2010. N 4. pp. 51-53 // ATP “Consultor”.

El Contrato Estatal como Tipo especial de Contrato Administrativo, de Kirill Egorovich Maraev, de Rusia, 2018. Boletín de la Universidad de Moscú del Ministerio del Interior de Rusia. Disponible en:

<https://cyberleninka.ru/article/n/gosudarstvennyy-kontrakt-kak-osobyy-vid-administrativnogo-dogovora>

³⁷ Arancibia Mattar, J. (2019) “Naturaleza y Justicia de los contratos administrativos”, Revista de Derecho Administrativo Económico, N° 30 [julio-diciembre]. p.30.





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on the contractual contracting system, and for these reasons the institution of the administrative contract which in its essence has under its recognized authority the state contract is determined by independent authority and autonomy³⁸.

There are generally and in accordance with the legal nature of administrative Contracts, 6 essential institutions that are classified as types of administrative contracts and that come from the doctrine and from the practical vision, the public works contract, whether involved or not in the execution of the project, and the execution of that work meets the parameters of the public entity. The contract of concession of the work is only the repair conservation and / or maintenance of buildings. Service contract is when the Company assumes a publicly owned service. Supply contract, to obtain and lease (financial or not) movable goods or products, you may have a choice to buy or not. The contract of services (successive and single price, agreed) is the provision of services for a work or supplies of products included. The mixed contract can assume two or more of the above.

In this case we can see that it is a definition that could be said to be universal, however, to Cuba, these contracts are referred to as economic, term very recurrent for the economy in Cuba, however, it is important to highlight the existence of an administrative contract and the trends³⁹ and new names appeared in the sciences that require us to make the distinction between contracts administrative, civil contracts, and to Cuba the contract value, which no doubt will result in a common good⁴⁰ that tributary to the economy, and the just and necessary recognition of this contractual institution.

3.7.1 Classification and prospects of the administrative contract.

³⁸Егорович Мараев Кирилл, Государственный Контракт как особый вид Административного Договора, (Contrato Estatal como un tipo especial de Contrato Administrativo), Юридические Науки, Вестник Московского университета МВД России. Rusia 2018.páginas 180.S. Disponible en:

<https://cyberleninka.ru/article/n/gosudarstvennyy-kontrakt-kak-osobyi-vid-administrativnogo-dogovora>

³⁹Helfmann Martini C. (2021). “Indemnización por actos ilegales o arbitrarios generados en la adjudicación de una licitación pública: Comentario a la Sentencia de la Corte Suprema González con Ilustre Municipalidad de Dalcahue (2019)”. Revista de Derecho Administrativo Económico, Nº 33 [enero-junio]. p. 257.

⁴⁰ Rojas, Héctor D. (2021). “La estrategia de la agregación en las constituciones y la ausencia de una voluntad general”. Revista Derecho del Estado n. 949, mayo - agosto, p. 203.





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It seeks to improve the classification and distinction of the administrative agreements from the rest of the contracts, to accurately arrive at a definition more accurate and widespread that distinguish this category of contract for Latin America and achieve a reference, updated for the world of law, demonstrating its importance and validity, the rationality of the economic agents will have to be very careful in the classification according to the concept, the administrative contracts belong to the public law, while civil contracts, are subject to private law⁴¹. ([Annex 1](#))

In administrative contracts the competence of bodies is regulated by administrative law and within the same administrative law special form requirements and solemnities in their creation are regulated, which are different from those required by civil law.

A summary of the research it is necessary to stimulate the capacity of analysis in other sciences and its relationship with the administrative contract, closely linked to the economy, and in this sense, we need to increase research in the doctrine to practice, it is very interesting to refer to professor, Department of economics, Harvard University, Center Littauer 220, Cambridge, Oliver Hart, who won the award because of his contributions in the theory of contracts incomplete. In the example of the mixed ones we concluded that the contracts serve to make clear what each one did and thus each one had specific functions. However, Hart contributed to the theory of contracts by adding that in some cases it is impossible to specify in a contract everything that can occur⁴²

Because in contracts it is complicated to include everything that can happen, what should be done is to make clear who is in charge of making a decision when these types of events happen. For example, a contract is not going to stipulate what to do in the event that a tree falls right over the electrical wiring leaving the company without electricity. However, what the contract should define is who would be the right person to make a decision in the event of such an event. On the other hand, Hart⁴³ he also contributed by studying what type of companies should join, what is the ideal combination of debt and equity when it comes to financing, and when institutions such as schools or prisons should

⁴¹ Note: Table with some differences in the civil, administrative and economic contract.

⁴² Maqueda, A. Oliver Hart y Bengt Holmström, **Premio Nobel** de Economía. (2016). Diario “El País, 10 de octubre de 2016”. Reportaje que devela y narra la posibilidad de ocurrencia de situaciones que pueden ocurrir en los contratos. España.

⁴³ Hart O, Shleifer A and Vishny R. (1996). The Proper Scope of Government: Theory and an application to prisons. Quarterly Journal of Economics. 1997; 112 (4): 1126-1161.





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be managed by the private or public sector. The latter is one of Hart's most outstanding contributions, so much so that, for example, in the US. UU. private prisons in North America are being phased out because conditions there are worse than those managed by the public sector⁴⁴.

Finally, we appreciate that the construction of the new society, in any country, must carry a very deep analysis, and should respect the legal and should not supplant the ability of others, the research shows the need to boost the social and economic programmes in Cuba and, in this sense, the guidelines of the economic strategy unequivocally pronounced by the necessary quality required by the contract and the economic and economic relations in order to promote development of the country, so to implement that policy is enacted Law on economic Contracts, and immediately the Supreme people's Court issued the Instructions 215 of the Council of Government that guarantees the obligation to comply with the applicable requirements, we emphasize that it is a correct perspective that seems simple, but there is research in the socialist camp that point in the decade of 60, a need to recognize the figure of the administrative contract, what is happening today in Cuba. It is incorrect to cite for example that the contract for the execution of Public Works is a clearly economic contract even with the intervention of a self-employed worker or a Non-Agricultural Cooperative, it is a question of being a small private company, in fact, they are not socialist state companies.

4 CONCLUSIONS

Cuba must define, put in a fair and appropriate place the administrative contract, encouraging researchers to study it, then have modern theory and doctrine, make an efficient classification of these and recognize the role they play in the country's economic policy.

Achieve effective control over economic progress, together with the administrative contract. The investigations carried out by Matilla Correa are correct, who has not

⁴⁴ Elliot, L. **Nobel economics** prize winners' work unlocks issues around executive pay. The Guardian, October 10th, de EE. UU, 2016.





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forgotten the administrative contract in Cuba, which serves as the basis for more than 5 decades of silence regarding this institution of current and modern law at the world level.

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