

Abstract

This thesis aims to study the *clausula rebus sic stantibus* principle in administrative contract which is an exception of the *pacta sunt servanda* principle (pacts must be respected) in case of change of circumstances after conclusion of the contract which the parties cannot foresee at the time agreeing to make a contract. Such change also affects the fairness between parties if there has still strictly enforced the compliance with a contract. With regard to administrative contract, public interest is a foundation of contract. After conclusion of the contract, either legal or factual change of circumstance is unfair to parties as well as has an unavoidable effect on public interest. In some cases, there is a conflict between binding effect of the contract and protection of public interest which requests for an amendment or cancellation of contract. Hence, in the administrative contract, it inescapably accepts the *clausula rebus sic stantibus* principle. This principle applies in administrative contract by granting a special right to an administrative party because the administrative party is a public interest protector.

In German legal system, the *clausula rebus sic stantibus* principle is mentioned in Article 60 of the Law on Administrative Procedure 1976 (VwVfG). It allows an amendment or cancellation in case of change of circumstance after conclusion of the contract. With regard to the French legal system, the *clausula rebus sic stantibus* principle is accepted as the privilege of the administrative party to amend or cancel the contract unilaterally. The unforeseeable cause theory (Théorie de l'imprévision) and the theory on undertakings not mentioned in contract (La Théorie des sujétions imprévues) are important legal concepts in the French administrative law system.

Concerning Thailand, legal principle on administrative contract is mostly influenced by the French administrative law system as seen in the Complaint Committee's ruling and the Administrative Court's judgments. From the study, it finds that in the event of legal or factual change of circumstances after conclusion of the contract which the parties cannot foresee, the administrative party in the Thai legal system has a unilateral privilege to amend or cancel the contract if it is for public

interest. However, in case of change of circumstances making the private party unreasonable burdensome exceeding the expectation and in case of change of legal provision which affects the existing contract, neither party is entitled to file a case to the Administrative Court asking for an order or judgment to amend the administrative contract because the Court cannot issue a decree beyond or different from what the parties agreed in the contract according to Subsection (3), Article 72 paragraph 1 of Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). Therefore regarding the acceptance of the *clausula rebus sic stantibus* principle in the abovementioned case of Thai legal system, the Administrative Court will not issue a decree to directly amend the administrative contract but it will issue a decree to order the payment of money or the delivery of property or the performance or omission of an act where a dispute is arisen from complying with the contract after change of circumstances.

After considering details in various issues, this author recommends prescribing legal provisions concerning administrative contract particularly the case of change of circumstance after conclusion of the contract. It should elaborate clear criteria or rule concerning amendment or cancellation of administrative contract in the aforementioned event so the administrative and private parties can know about rights to comply with the contract in case of change of circumstance after conclusion of the contract. Moreover, the Administrative Court can have a rule to adjudicate in the same manner. This can be done by adding another chapter on administrative contract as an integral part of law on administrative procedure.