

Criteria for Distinguishing between Administrative and Civil Contracts

Zhang Tianlin

Southwest Petroleum University, Chengdu, Sichuan, China

Keywords: Administrative Contracts, Distinguishing Criteria, Civil Contracts, Right-to-Use Contracts

Abstract: From two judgments issued by the Supreme People's Court, it can be seen that there are differing opinions in practice regarding the nature of state-owned construction land use right transfer contracts (hereinafter referred to as “use right transfer contracts”). By analyzing the nature of the contract for the transfer of state-owned construction land use rights in light of the specific circumstances of the case, we can determine the criteria for distinguishing between civil contracts and administrative contracts from multiple perspectives, including the main elements, purpose elements, and content elements of the contract.

Article 1 of the Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases Involving Administrative Agreements provides a definition of an administrative agreement and lists the types of administrative agreements in article 2, with an underpinning clause. However, the judicial interpretation of the concept of administrative agreement is too vague and broad^[1], the academic recognition of the administrative agreement standards are also controversial, the practice of a contract for administrative contracts or civil contracts have different trial results, from the supreme court on the right to use the contract to analyze the nature of the contract of the two judgments, and from this to summarize the difference between the administrative contract and the civil contract, so that we can identify the two to find the best remedy. This will help us to recognize the difference between administrative contracts and civil contracts, so that we can find the best channel of relief for both of them.

1. The merits of the two Supreme Court judgments

Case 1: X Real Estate Development Company, City of A Department of Natural Resources Resource Administration Revisited

Company X purchased a plot of land in City A through a land auction and entered into a contract for the transfer of the right of use with the Bureau of Resources of City A. The contract provided for the payment of the price and the time of delivery of the land. The contract stipulated the amount and time of payment of the concession price by Company X, as well as the conditions and time of delivery of the land by the A Municipal Resources Bureau, and agreed on the corresponding liability for breach of contract. After the signing of the contract, Company X paid the premium for the right of use of the land in question, but the Bureau did not bring the land to a leveled state in accordance with the contract,

and Company X sued the Bureau, requesting the termination of the right of use contract between the two parties, the return of the premium for the land, and the payment of liquidated damages.

The Supreme People's Court held that, in accordance with the Urban Real Estate Management Law and other relevant provisions, the contract for the granting of the right to use signed between Company X and the Natural Resources Bureau of City A should be an administrative agreement. From the element of subject matter, one of the parties to the contract in question is the land administration department, which is an administrative subject; from the element of purpose, the contract in question is for the realization of the public interest or the state's management of the rational and effective utilization of land resources; from the relationship of rights and obligations between the two parties, the contract in question is closely related to the performance of administrative duties by the administrative organ, which enjoys the right to unilaterally recover the land based on the public interest of the society or statutory reasons, etc., in the signing and performance of the contract. In the conclusion and fulfillment of the contract, the administrative organ enjoys the right to unilaterally take back the land on the basis of public interest or legal reasons.

Case 2: Dispute over the contract for the granting of the right to use by Y Home Co., Ltd. and the Department of Natural Resources of the City of H.

Company Y won the land through public bidding and signed the Confirmation of Transaction with H City Reserve Center. Later, Company Y and H Municipal Resource Bureau signed a contract for the transfer of the right of use, and both parties made clear agreements on the location, area, delivery time and liability for breach of contract, etc. After the contract was signed, H Municipal Resource Bureau delivered the land in question in accordance with the contract, and Company Y failed to fulfill its obligation to pay the transfer price according to the contract. Later, the Higher People's Court of H City made a civil mediation, and Company Y and H City Reserve Center reached a mediation agreement, in which it was agreed that Company Y would pay liquidated damages in accordance with the standard of 1 per cent, and Company Y filed a lawsuit requesting that the liquidated damages be adjusted to 1 per 10,000 per day, and that the date of commencement of the adjustment be adjusted.

The Supreme People's Court held that, although the contract in question was signed by one party as the subject of H City Resources Bureau, Y Company was not subject to the coercion of unilateral administrative acts in the process of signing the contract, following the principle of equality, voluntariness and compensation. At the same time, according to the provisions of the Property Law, take the bidding, agreement and other concessions to establish the construction land use right, the parties shall take the written form to conclude the right to use concessions contract; Civil Case Case Provisions in the fourth part of the provisions of the construction land use right concessions contract disputes; and the latest regulations on the administrative agreement does not explicitly include the right to use concessions contract in the scope of the administrative agreement. Therefore, in accordance with the provisions of the above-mentioned laws and judicial interpretations, the party in question considered the contract in question to be a civil contract, and sued the court as a contractual dispute and claimed the corresponding rights, which had a legal basis.

2. Analyze and summarize how to distinguish administrative contracts from civil contracts from two cases

In Case I, the contract for the granting of the right of use was recognized as an administrative contract, summarized in three aspects, namely, the subject matter, the purpose and the content of the contract. The mainstream viewpoints embodied in the following: (1) the main body. One of the parties to the administrative contract must be an administrative subject, including administrative organs, organizations authorized by laws and regulations and organizations entrusted by the administrative organs in accordance with the law.^[2] 2) Purpose. The purpose of the administrative contract is the

administrative organ in order to fulfill the legal administrative duties, to safeguard the public interests of society. (3) Content. Different types of contracts are distinguished by the legal relationship involved in the contract, depending on whether the rights and obligations established in the contract reflect an administrative legal relationship.

The contract for the granting of the right of use was recognized as a civil contract in Case 2 for the following reasons: (1) the parties to the contract followed the principles of equality, compensation and voluntariness in the process of signing the contract, which are the principles of civil law. (2) Disputes over construction land use right grant contracts are clearly stipulated in the civil case. (3) The latest regulations on administrative agreements issued by do not explicitly include the contract for the granting of the right of use in the scope of administrative agreements.

Summarizing the above two judgments, although the Supreme Court recognized the contract for the transfer of usage rights as being of a different nature in the two judgments, the differences between administrative contracts and civil contracts can be summarized from the court's reasoning, thereby distinguishing between the two contracts. In the subject of the contract, the administrative contract must be an administrative subject, including administrative organs and organizations authorized by laws and regulations.^[3] In terms of the purpose of the contract, it must be for the purpose of satisfying the public interest or administrative management.^[4] An administrative contract is a means by which administrative agencies implement administrative management, i.e., perform official duties to achieve the aforementioned objectives.^[5] In terms of the content of the contract, the administrative contract is concluded with the administrative relative in order to fulfill the rights and obligations stipulated in administrative laws and regulations and other relevant provisions. Distinguish between administrative contract and civil contract is the essence of the administrative legal relationship and civil legal relationship, in which the administrative contract of the "administrative factor" is always dominant. Due to the public interest nature of administrative contracts, their content must comply with the provisions of laws and regulations, and neither party has complete freedom of disposal.^[6] In short, civil contracts and administrative contracts should be distinguished from the "contract content standards" as the main criterion, while adopting the "contract subject standards" and "contract purpose standards".^[7] In practice, the first step in identifying a contract is to look at the subject of the contract, then at the purpose of the contract, and finally to draw a final conclusion based on the legal relationship embodied in the rights and obligations agreed upon in the contract.

The different nature of the contract determines the differences in its applicable rules and channels of relief. The existence of a large number of contracts in practice is often a mixture of administrative contract and ordinary civil contract elements. The points of contention in the above two cases are different. The reason for the lawsuit in the first case was that the administrative agency failed to deliver the land as stipulated in the contract and was unable to continue to perform its obligations, which constituted a breach of contract by the administrative agency. And case two is the administrative party default, only in the calculation of liquidated damages on the disagreement. Therefore, case one of the right to use the contract is recognized as an administrative contract is more convenient for a comprehensive review, case two is recognized as a civil contract is more convenient for dispute resolution. Regardless of whether the administrative contract or civil contract perspective for litigation, the rights can ultimately get relief. Therefore, it is important to recognize whether a civil contract or an administrative contract, but it is also more important to focus on how the contract should be remedied after a dispute arises.

3. Certification of the administrative characterization of a contract for the granting of a right of use

3.1 Content analysis of the right-to-use concession contract

A land use right grant contract is a contract whereby the land administration department grants land use rights and the administrative counterpart pays land grant fees. The essence of a land use right grant contract is the grant of this legal relationship, and the grant itself constitutes an administrative permit. Signing the right to use the contract before the need for permission, is the state licensing the relative to enjoy the right to use a piece of land, the administrative department to be implemented in the law within the scope of authority and procedures. The Provisional Regulations on the Granting and Transfer of State-owned Land Use Rights in Towns and Cities and other relevant provisions contain detailed provisions on matters such as the procedure for granting land use rights, which are clearly different from the procedure for entering into civil contracts. In addition, the terms and conditions stipulated in the model contract for the transfer of usage rights reflect the rights and obligations of administrative legal relations. The model contract can be said to have made relatively clear and specific provisions in all aspects, allowing for few modifications by the parties. The counterparty can only sign and comply with the terms and conditions stipulated in the model contract.

3.2 Analysis of the subject matter of the contract for the granting of the right of use

The main body of the contract for the granting of the right of use is the land administration department on one side, and the land winner on the other. The land administration department not only signs the contract as an administrative subject, but also guides and supervises the fulfillment of the contract as an administrator after the contract is signed, which is different from the civil contract in which both parties have equal rights and status and supervise each other. Judgment of the administrative organs in the contract: if the subject of the contract must be an administrative organ to produce the contract effect, the contract is an administrative contract. If the subject of the contract is anyone who can realize the effects of the contract, the contract shall be recognized as a civil contract.

3.3 Analysis of the purpose of the right-to-use concession contract

The purpose of signing civil contracts is mostly for personal economic gain, while the purpose of signing land use rights transfer contracts is to achieve administrative management goals or public interests. Although this is done through market-based methods such as bidding and auctions, the real goal is to make sure land resources are used in a reasonable way. The land management department as the grantor, based on the needs of the public interest, can exercise the unilateral change, the right to cancel, the right belongs to the government's responsibility. However, civil contracts are governed by the basic principles of freedom of contract and autonomy of will during their conclusion and performance, which clearly differs from the requirements of law-based administration.

In practice, by incorporating the right-to-use concession contract into the administrative agreement, the court will inevitably review the legality of the government's land acts and the entire process of the right-to-use concession contract. However, if it is recognized as a civil contract, using civil trial, the court will only in accordance with the rules of autonomy in civil law to review the contract, and can not be effectively supervise the violations of the administrative act. Although the latest regulations on administrative agreement does not explicitly the right to use the contract into the scope of the administrative agreement, but the practice of the intention is to use the right to use the contract to the administrative agreement to trial, the use of administrative litigation means that the need for the administrative agreement of the formation, fulfillment of the whole process, all-round review. The

contract for the transfer of usage rights is intended to restrict the arbitrary exercise of administrative power. Contractual behavior, contract formation methods, transfer prices, and usage purposes are all subject to strict restrictions. The “administrative” nature of such contracts is prominent and overwhelming, and they are by no means ordinary sales contracts. The above characteristics determine that ordinary civil procedures cannot touch the intensity of the examination required by the contract for the transfer of State-owned land use rights.

4. Conclusions

To sum up, the right to use the contract is the administrative subject to realize the value of land ownership and land efficient use, use control, land market regulation and other administrative purposes, the process of determining the nature of the contract is also to identify the process of administrative contracts and civil contracts. The characterization of a contract for the transfer of usage rights directly affects the determination of the contract's validity, its performance, its termination, and the resolution of disputes arising from its termination. Therefore, exploring the characterization of contracts for the transfer of usage rights has important practical significance. The characterization of such contracts concerns the remedies available to the parties, the protection of their rights, and the court's approach to adjudication, as well as the criteria for distinguishing between administrative contracts and civil contracts.

References

- [1] Wang Liming, *On the Scope of Administrative Agreements - Commenting on Articles 1 and 2 of the Provisions on Several Issues Concerning the Trial of Administrative Agreement Cases*. [J]. *Global Law Review*. 2020(1).
- [2] Xu Hongxin, Si Wanting, Hao Liqin, Xue Lingzhi, *Identifying the Nature of Public Housing Lease Contracts*, [J]. *Hebei enterprise*. 2022.(4).
- [3] Jiang Ming'an, ed., *Administrative Law and Administrative Procedure Law*, Peking University Press [M], Beijing: Higher Education Press, 2003; 87.
- [4] Yang Xin, *on the criteria for distinguishing administrative contracts from civil contracts*, [J]. *Administrative law research*. 2004.(3).
- [5] Lu Jing, *Identification of civil contract and administrative contract*, [J]. *Journal of party cadres*. 2014.(1).
- [6] Wang Ping, *Comparison of civil contract and administrative contract and its revelation*, [J]. *Wuhan university journal (humanities and social sciences edition)*. 2000.(3).
- [7] Lei Lei, *on the demarcation between administrative contracts and civil contracts*, [J]. *Network wealth*. 2009.(2).