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THE SPECIFITY OF THE ADMINISTRATIVE CONTRACT IN GENERAL EDUCATION

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ABSTRACT

The paper explores the nature of the administrative contract, its unique features and application possibilities in general education. The aim of the study is to analyze how the administrative contract can be applied in the general education of Latvia, emphasizing it's importance in managing the responsibilities of pupils and institutions. The results show that these contracts provide a framework for clarifying the responsibilities and rights of educational institutions, pupils and parents. The content of the administrative contract can be characterized incategorized under two parts: mandatory and optional. The mandatory part provides an agreement on learning in the general education program. It's content derives from the specifics of the educational program and educational institution's daily practice, respectively determining the obligations in the learning and nuture processes, as well as informing and delegating responsibility in case of problematic situations. The optional part allows agreement onfor any additional services or support from the educational institution, for example accommodation in a service hotel etc. The contract is signed by the educational institution, one of the learner's parents and also by the learner (from the age of fourteen). This contract may be particularly effective in offering support measures to pupils and for those dealing with disciplinary issues. In addition, incorporating administrative contracts in education may significantly contribute to overall management within an educational institution. This approach offers a novel solution for improving pupils' outcomes and handling administrative challenges. The study's findings highlight the importance of rethinking traditional administrative practices in education, so as to include administrative contracts as an innovative tool for fostering both better educational experiences and cooperation between school and family.

Keywords: *administrative contract, education law, school governance, pupils support, teacher-pupils-parents relationship.*

Introduction

At the beginning of the article, we mention the following case study. In one of the general educational institutions, a fifth-grade student, X, systematically violates the internal rules of the educational institution. The student tends to harm weaker classmates, use

swear words, ignore teachers' reprimands, often arrives late to lessons, fails to prepare homework, and tends to disrupt the lessons. Although the pupil is academically successful, their behavior in the educational institution can be burdensome for both other students and for teachers. The student comes from a middle-income family. The student's mother mainly cooperates with the educational institution, while the father rarely visits the institution. The pupil's mother admits that she struggles to manage the student and is therefore looking for ways to resolve the situation. This description raises the question of whether the solution could involve not only the disciplinary, control, and work organization methods accepted in pedagogy but also, from the authors' perspective, whether the student's behavior in the educational institution should be assessed and addressed from a legal standpoint. In this context, the authors propose the thesis that the administrative contract could be one of the forms of cooperation between the educational institution and the student/parents (legal representatives), as a way to collaborate within the educational institution. The creation of such a contract does not exclude other forms of cooperation between the educational institution and the legal representatives, such as parent teacher meetings, email communication, the use of the educational institution's website and digital education system platforms (Mykoob, e-klase), participation in events organized by the educational institution, parent meetings ect. Accordingly, the administrative contract would be used to define the student's obligations, rights, responsibilities and additional support measures as well as addressing specific problem situations. Examples of the latter would be systematic violation of the internal regulations of the educational institution, such as being undisciplined, violent, missing lessons, etc.

The purpose of this article is to clarify the specifics of the administrative contract in general education and to evaluate its applicability in solving various problem situations.

Contractual obligation and administrative contract

In legal science, the term "contract" is understood as an agreement between several persons to establish, modify, or terminate a relationship (Dubure et al., 1998). Specifically, in the Roman-Germanic legal system, a contract is understood as an agreement between two or more persons resulting in the creation, alteration, or termination of rights and obligations for these persons (and sometimes for third parties). In Anglo-Saxon law, a contract is understood as an agreement that is sufficiently sets out what is to be done or not done. That is, a promise given by one party to another, who in turn accepts this promise. If it is in written form, it serves as evidence of the commitment. In common parlance, the term is used interchangeably with agreement, bargain, undertaking, or deal; but whatever the word, it embodies our notion of freedom to pursue our own lives together with others (Hosmanek, 2022).

Therefore, a contract is the harmonious expression of will by two or more persons, which establishes an obligation between them, and the subject of the obligation can only be something possible, as otherwise the transaction is not valid. (Civil Law, 1937).

In present day, the term "contract" carries at least three different meanings. Firstly, this term is used in the sense of "agreement". This article will elaborate on this, whilst analyzing the legal relationship between educational institutions and the parents of pupils Secondly, it is used to indicate the legal relationship that arises from a contract. For example, in situations where it is presumed that a contract can be terminated in a certain way, it is generally understood that the legal relationships resulting from the contract can be terminated within the framework of the contract. Thirdly, a contract is defined as a specific document outlining the terms of the agreement in the sense of an agreement. The aforementioned meaning of "agreement" is undoubtedly the dominant meaning in which this term is currently used (von Bar et al., 2009).

Meanwhile, the Latvian Education Law specifies the rights of parents (or persons exercising guardianship) to enter into a contract with an educational institution for the education and care of a child in the educational institution. As seen, the legislator has determined that: 1) parents have the right to enter into a contract with the educational institution; 2) the subject of the contract should be considered the education and care of a child in the educational institution; 3) it is a right, not an obligation. In the Republic of Latvia, only general requirements for the behavior and upbringing of pupils in educational institutions have been established to date, leaving to the autonomous competence of educational institutions the choice and respective regulation of several essential issues of upbringing, discipline, and behavior. That is, the legal regulation, determining the actions of the head of the educational institution if pupils endanger their own or others' safety, health or life, currently does not fully achieve its goal and is subject to revision, seeking new ways (including legal) to ensure the safety of pupils and prevent disciplinary violations in educational institutions. One of such solutions is the need to improve the regulation of the contract for the education of a child in educational institutions in the normative acts regulating education, as well as to promote the practice of applying this contract. In the authors' view, one of such means would be the so-called administrative contract.

It should be addedis important to note that an administrative contract cannot be entered into, if the form of the contract is not suitable for regulating the specific legal relations (State Administration Structure Law, 2003). An educational institution has the subjective right to enter into a contract with a child's parents because the legal regulation stipulates the possibility for the legal subject, the educational institution, and the child's parent to establish contractual obligations. For example, in one of its judgments, the Senate indicated that public legal relations can also be based on a contract, even if, at first glance (prima facie), it seems like a classic civil law contract (the Senate Decision in case no. SKA-78., 2007). There is no doubt that in the field of civil law, the contract is the most common form of legal subject action, but in the field of public law, the most frequently used legal instrument is an administrative act issued by the authority. For instance, an order for a child's admission to a general education institution is an administrative act (Balodis, 2007). That is, it establishes new legal relations – the child becomes a person subject to the educational institution. Although educational institutions are granted

the right to issue administrative acts by regulatory acts, the purpose is not the issuance of administrative acts per se, but rather to ensure education as effectively as possible, i.e., the fulfillment of state administration tasks. One of the means by which greater efficiency can often be achieved is the administrative contract (Briede, 2014). Meanwhile, the administrative contract is one of the public law contracts, i.e., to ensure the effective performance of state administrative functions, the institution has the right, in the manner prescribed by law, to conclude public law contracts (State Administration Structure Law, 2003).

In the administrative process, legal relations between a private individual and an institution are most often affected by an administrative act issued by the institution or factual actions taken by the institution. At the same time, in addition to the two mentioned instruments of the administrative process, there is also the possibility to regulate legal relations using an administrative contract. The authors believe that such contracts can also be used in the legal relations between general education institutions and parents, providing general education to the educatee (child). Especially in situations where a minor educatee in an educational institution or in events organized or supported by it endangers their own or others' safety, health, or life, and the education institution's manager needs to ensure the development of a support measure plan appropriate to the needs and situation of the educatee and the supervision of the implementation of included support measures.

Parents' rights to enter into contracts or agreements with educational institutions are legitimized in the legal regulation of the United Kingdom. Researchers Mike Coldwell, Kathy Stephenson, Ihsan Fathallah-Caillau and John Coldron have found that the mutual relationships between educational institutions and parents (families) provide evidence that parental involvement in the educational process offers many advantages – a better understanding of the teaching process, encouragement for teachers to improve the expectations of both pupils and parents, as well as increased self-esteem for pupils, enhanced social contacts, and a stimulated desire to achieve better academic results (Coldwell et. al., 2008). In Anglo-Saxon countries (United States, United Kingdom, Australia etc.), it is possible to prepare agreements or contracts for cooperation between parents and educational institutions (in English – parental agreements; parent-school contracts). Specifically, a written contract can be prepared between the parent and the school or local authority (in English – local authority; the governing body). For example, with its help, situations can be addressed when pupils attend the educational institution irregularly, has various kinds of behavioral issues, or there is a risk that the pupils may be expelled from school for serious violations of internal rules (The Key Support, 2024). A parent cannot be obliged to enter into such a contract or agreement, as it is considered a so-called support measure or supportive intervention (in English – supportive intervention) and is not considered a punitive measure against parents (Evans et al., 2008).

However, UK legislation specifies situations in which a contract or agreement can be entered into. This means the possibility of entering into a contract between the educational institution and the parent in situations where there is reason to believe that as

a result of the child's behavior: a) significant disruptions to the educational process of other pupils may have occurred or may occur; b) significant harm to the pupils themselves or the well-being, safety, health of other pupils or school staff may have occurred; c) there is a risk that the pupils could be expelled from the educational institution (Education and Inspections Act 2006). The behavior of the pupils is to be assessed both in school and in other circumstances where it would be reasonable for the educational institution to regulate the behavior or actions of those under its authority. Therefore, the educational institution or local authority can enter into a contract with the child's parents or the pupils themselves. In such a contract, it is specified that the parents agree to adhere to certain requirements for a specified period, and the school or local authority certifies that it commits to supporting the parent in situations that were previously indicated. The contract may include a requirement for parents to attend a so-called psychological and pedagogical counseling program (in English – a counselling or guidance programme). The inclusion of such a requirement in the contract is necessary to promote improvement in the pupils behavior, as well as to ensure the pupils regularly attend the educational institution. The contract must be mutually signed – by the parent and a representative of the local authority. At the same time, such a contract does not give rise to liability under contract law or liability arising from a tort or legal infringement (in English law – *tort*) (Anti-social Behaviour Act 2003). It should be mentionedis worthy of note that such a contract is not considered as a classical basis for the creation of obligations, i.e., from a legal transaction or an unauthorized act (Ibid, 2003). That is, in carrying out its contractual functions, the local authority must observe any instructions given from time to time by the legislator. At the same time, such a contract is a significant aid in improving mutual relationships, understanding, and cooperation between parents, pupils and the educational institution, as it promotes a productive and positive learning environment. Such a contract must not include provisions and conditions that could be unlawful or unjustified, for example, a financial demand or an obligation to wear a specific type of school uniform if the pupils not wear it due to religious beliefs. The fulfillment of such a contract cannot be submitted for judicial review, nor can the pupils be expelled from the educational institution or punished if parents fail to comply or only partially comply with it due to specificparticular circumstances (the Department for Education, UK, 2013).

As such a contract is defined in the specific regulation that determines the rights and obligations of educational institutions and parents, it is only understandable that this is not a civil law contract, but rather a contract determined by law in the field of education. Accordingly, the legal regulation in the United Kingdom provides for the possibility in situations where the pupils systematically violates the internal rules of the school, unjustifiably fails to attend the educational institution, or their behavior endangers other pupils etc. In this case the educational institution can propose to enter into an agreement or contract with the parent regarding what is to be done, observing the child's best interests. In Germany, for example, in Baden-Württemberg, in order to fulfill the educational and pastoral tasks of the educational institution, comply with the obligation to attend

the educational institution, adhere to the internal rules, as well as to protect people and property, so-called educational and order measures are implemented if pedagogical educational measures are insufficient. These include agreements on behavior change with the pupils and their parents/persons who have custody rights. These measures must consider fundamental human rights. The educational institution may cease the use of educational and disciplinary measures if the pupils improve the situation in cooperation with social service (Latvian Association of School psychologists, 2012).

In this context, it should be noted that in Latvia, the issue of whether norms, which usually regulate private law relationships, are applicable in the regulation of public law relationships, has not been resolved. At the same time, for example, in Germany, it has been recognized that the use of such norms is permissible, because the norms regulating public law relationships are not always complete (Danovskis, 2012). This means that a contract in education is a specific contract aimed at regulating both public law and private law relationships between the educational institution, pupils and parents.

Sometimes legislative acts may specifically stipulate that, before the conclusion of a private law contract, a public entity should issue an administrative act. However, in these cases, when a decision is made in the realm of private law, it means that the legislator evaluates considerations of expediency, determining that the legality of the respective decision is to be examined in the administrative process. E. Danovskis has identified typical cases where decisions, contracts, or actions of state administration create private law relationships: 1) decisions or actions related to the property of a public person and its management; 2) decisions or actions related to already concluded private law contracts; 3) decisions on the establishment, amendment, or termination of employment legal relations; 4) decisions on the management of a public person's capital companies. Accordingly, a public law decision is first made, followed by the conclusion of a private law contract (duration of applicability of public use conditionsasset can be used, etc.) (Briede et al., 2016).

In the authors' view, within the framework of the two-stage theory, public legal relationships arising from Section 57, Paragraph 3 of the Education Law, which stipulates that parents have the right to enter into a contract with an educational institution for the provision of their child's education, are also addressed. Such contracts can be concluded by preschool education institutions with the parents of a child. Judicial practice shows that the execution of such contracts is resolved within the framework of civil procedure (Valmiera District Court Judgment in case no. C-0141-18., 2018). For instance, municipalities or private law entities handle small claims against individuals for the recovery of money for children's education and care in an educational institution in a civil law manner. Moreover, private educational institutions enter into a contract for cooperation in the field of general secondary education, whereby one party undertakes to prepare the pupils within the framework of the general secondary education program, while the other party commits to pay the tuition fees. Furthermore, the head of a private educational institution has the right to issue an order for the expulsion of pupils from

the educational program, if the payment for preschool, basic general education or general secondary education is not made for more than three months within a calendar year.

In a judgment of the Riga City Latgale District Court dated May 20, 2014, it was claimed that a private educational institution had provided general secondary education to a student, whose legal representatives had incurred a debt for failing to pay the full amount arising from the contract. Consequently, the educational institution filed a lawsuit to recover the debt from the student's parents (The court of the Latgale suburb of the city of Riga. Judgment in case no. C29844213.2014).

As indicated, public law contracts are concluded in writing, adhering to the provisions of the Civil Law and the restrictions set forth in regulatory acts. Accordingly, public law contracts are prepared in writing based on: a) civil rights; b) restrictions defined in legal regulation. It should be added that there are so-called interdisciplinary public law contracts, namely contracts through which a public law entity delegates public authority to a private individual. Senator and legal scholar I. Višķere points out: "[T]his contract is not considered a classic administrative process instrument, as it does not affect the subjective public rights of private individuals in the sense of administrative process, but rather expands the circle of public authority holders. Simultaneously, it cannot be considered as a purely internal administrative contract (such as a delegation agreement between entities that are public law subjects), because one of the contracting parties, by its status, is a private individual." (Višķere, 2008). It is emphasized that the Republic of Latvia, as an original public law legal entity, has its own will. That is, it may choose to conclude or not to conclude a contract, or select the type, form, and participants of the contract (Ozoliņš, 2018). Such freedom of contract, based on private autonomy in civil law, is not possible in public law. This means that the public administration must strictly follow the public law norms that establish the legal order, and therefore, cannot deviate from them in principle (Paine, 2002).

Conversely, the essence of this regulation is to emphasize that in entering into a public law con-tract, an institution must consider the legal regulation that is binding upon it as an implementer of public power. Accordingly, the application of Civil Law provisions in the conclusion of a public law contract is permissible insofar as it is consistent with the legal norms regulating the insti-tution's activities in the realm of public administration and the specific nature of the particular public law contract (the Senate Judgment in case no. A420234817, SKA-149/2021, 2021). Professor J.Briede highlighted that, unlike a civil law contract, the concept of admissibility is applied to an administrative contract, and evaluated according to two criteria: 1. the admissibility of the public law contract as a form of action, and 2. the compliance of the content of the public law contract with regulatory acts (Briede, 2014). An institution can act in the domain of private law only if a specific authorization is included in a legal norm (Danovskis, 2009).

The limits and requirements for the content and form of a contract are specifically determined by the legislation of each particular state. This means that general education institutions, as subjects of public administration law, are bound by the principles of public administration. They must adhere not only to the specific regulations but also

to the legal acts regulating public administration. Moreover, in its activities, the public administration also respects legal principles that are explicit, derived, and developed in the practice of institutions or courts, as well as in legal scholarship (State Administration Structure Law, 2003). This aspect relates to situations where it is necessary to justify the use of not only legal science principles but also principles of pedagogical science in the acts and activities of educational institutions.

Public law contracts are concluded to ensure the effective execution of state administrative functions. They are concluded by the consenting authority in the manner prescribed by law. Although so-called classical administrative law did not recognize the admissibility of a public law contract as a form of action between the executor of state power and the citizen, i.e., such denial was based on the view that the state and citizens are in a relationship of subordination, where the possibility of concluding contracts was not admitted (theory of subordination), but the essential characteristic of contract conclusion is precisely the equality of the contracting parties, i.e., both sides (in bilateral contracts) equally influence the content of the contract. F. J. Paine points out that the previously existing understanding of the relationship between the state and the individual, or "superior and subordinate", has been overcome in legal doctrine. That is, nowadays, the state is the one that assumes the duties of service that individuals themselves do not want or cannot undertake, thereby no longer excluding public law contracts as a form of action, indicating their necessity. Accordingly, the contract is a means by which legal relations between partners are regulated (Paine, 2002).

E. Levits emphasizes that public contracts are "concluded by the administrative authority with a private individual. An administrative contract is fundamentally a civil law contract that is 'covered' by elements of public law. Therefore, it must comply with both civil law prerequisites (for example, the authenticity of will, etc.) and, additionally, public law regulations. The elements of public law are intended to prevent the state, when applying the contract as a form of action, from freeing itself from the restrictions imposed by public law. It has a mandatory written form." (Levits, 2002). The purpose of the enumeration of types of public law contracts specified in the State Administration Structure Law is to typify the types of public law contracts concluded by state administration and to determine specific, judicially reviewable prerequisites for admissibility and content for each of them, as well as to set known conditions for the types of public law contracts allowed by law, to which they are subject. The public law contract is considered a classic tool of the administrative process because it affects the subjective public rights of private individuals in the understanding of the administrative process (Krampuža, 2020). I. Višķere emphasizes that contracts in which a public law entity delegates public authority to a private individual are not exactly counted among these, even though one of the parties is a private individual (Višķere, 2008). The conclusion of an administrative contract does not occur often, especially in cases where the conclusion of an administrative contract is not specifically provided for in special regulatory acts (Smiltēna & Kukle, 2016).

On the other hand, the administrative contract is considered the most useful and flexible way of operating to regulate atypical cases (Briede, 2014).

Violation of the internal rules of general education institutions, especially in cases where the behavior of the pupils is violent, rude, and disciplinary breaches are systematic, is considered atypical behavior. Consequently, the authors suggest that it might be possible to offer to conclude an administrative agreement (consensus) with the parents and the general education institution regarding the necessary support measures for preventing behavioral disorders. This type of agreement would be useful in situations where the head of the educational institution must ensure the development and implementation of a support measures plan appropriate to the needs and situation of the pupils, as well as to inform the founder of the educational institution about the measures taken and planned support measures. Latvian legislation stipulates that the headteacher must send information to the parents in writing (in paper or electronic document form) about the pupils behavior and the necessary cooperation of the parents with the educational institution (Cabinet of Ministers of the Republic of Latvia. Regulations No. 474, 2023). At the same time, it is not specified what type of written document should be sent to the parents. Therefore, it can be presumed that the legislator is leaving to the discretion of the head of the educational institution, which type of document they will use to define the cooperation between the educational institution and the parents, as well as how to involve (observing the obligation set out in Article 58(1)2 of the Education Law, to cooperate with the educational institution where the child is studying, including with teachers and other persons involved in the implementation of the educational process, as well as in matters of ensuring the child's education – with the municipality) parents in the implementation of support measures.

Methodology

The study employed the following fundamental methods: analysis and synthesis, comparison, historical analysis. The authors used a comparative law method to examine the specific characteristics of laws in Latvia and other countries (the US, UK, Australia, and Canada), focusing on those aspects of the laws that are important for the research. By employing a historical research method, we have determined how the administrative contract has evolved over time. This enables us to understand the significance of these contracts today and the laws that govern them. A grammatical analysis is necessary to determine the precise legal provision defining the term "administrative contract." This analysis should consider the meanings of the individual words comprising the term and their interrelationships. "A systematic approach is employed to determine the significance of administrative contracts within the framework of educational law. As a specific norm of educational law (an institution of educational law), the administrative contract is a component of administrative law and is analyzed within the context of the broader legal framework. A teleological method of law interpretation shows, the specific educational and administrative legal norms that define the concept and purpose of an 'administrative

contract,' align with the purpose of these legal norms, both from a historical and contemporary perspective.

Conclusion

The authors of the article believe that in addressing unconventional situations in the provision of general education and in implementing support measures for pupils, it would be prudent to utilize administrative agreements (akin to the approaches of the United Kingdom or Germany). Essentially, through administrative agreements, a more precise scope of rights, duties, and responsibilities is established, as everyone involved in a child's education, on actions to support a child in difficulty, defining the content of cooperation with educational institutions and parents.

Within the legal framework of Latvia governing general education, there is no direct reference to the types of contracts educational institutions are authorized to use. This raises a question regarding the admissibility of administrative contracts within the legal relations between the parents and the educational institution. From the authors' perspective, the administrative contract would be particularly suited for the legal relationships between general education institutions and parents when there is a need to agree upon a collective action plan to provide support for pupils who violates the internal regulations of the educational institution, or potentially endangers their own or others' safety, health, or life, or has behavioral disorders that cannot be adequately addressed with the resources of the educational institution alone. This approach is predicated on the notion of equitable relationships between parents and the educational institution, not one of subjugation and submission, but rather one of equal collaboration partners.

The general contractual content of the administrative agreement established within the Education Law, there are two main components: mandatory and optional. The mandatory section entails agreements on education and support within the general education program. The content of this section is derived from the specifics of the education program and the daily practice of the educational institution, accordingly determining the obligations in the teaching and pastoral ca process, as well as information sharing and responsibility in case of problematic situations. The optional section allows for agreements on additional services provided by the educational institution, including supplementary support measures, extracurricular education, accommodation in a service hotel (if applicable), among others.

This contract would be particularly effective in resolving disciplinary issues and ensuring support measures for pupils, while also fostering cooperation with the parents. Furthermore, the administrative contract promotes a more efficient implementation of the respective support measures for the pupils, as the individual (the student or their legal representative) has agreed to them, and ensures the execution of the state administration's (the general education institution's) tasks in a manner acceptable to both the educational institution and legal representatives, whilst respecting the best interests of the child (children).

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