

最高行政法院有關行政契約案例之 分析－ 2013&2014 年案例

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關鍵詞：行政契約與行政處分並立、不當併存、承諾、基本權、法定行政契約

Keywords : administrative contract coexist with administrative sanctions, improper coexist, commitment, fundamental rights, statutory administrative contract.

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* 法國巴黎第二大學法學博士，銘傳大學法律系副教授。由於筆者自行研究整年度（或 1 年，或 2 年）裁判，受相關學識認知限制，疏漏之處在所難免，尚請不吝指教。

摘要

2013 及 2014 行政契約案例數量雖有略減，仍然值得參考研究，只是結果值得再檢視。例如，在當事人提出之承諾書（或切結書），有時看作要約（102 年判字第 243 號），有時認為是準負擔附款（103 年判字第 167 號）。再如行政契約與行政處分同時存在的情況下，有些可以認為是「並立」（真正併存），有些則屬「不當併存」，前者如 102 年判字第 80 號，後者如 102 年裁字第 1926 號、102 年判字第 184 號。尤其在不當併存情況，若是行政契約可以解決相關爭議，似無必要再以行政處分介入。另外，在立法上直接認定當事人間之契約為行政契約，可視為「法定行政契約」值得稱讚。最後，103 年裁字第 790 號承認隸屬同一公法人之行政機關間可以成立行政契約，這一結果非常不妥當。此問題可參照行政程序法第 19 條「行政機關相互協助」方式解決。

An Analysis of Administrative Supreme Court Decisions in 2013 and 2014 Concerning Administrative Contracts

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Abstract

Although the case quantity of 2013 and 2014 concerning administrative contracts slightly decreases, they are still worth studying, except that those case decisions are in need of review again. For example, the commitment (or affidavit) that the parties proposed, they are sometimes regarded as offers (ruling 243 in 2013), sometimes considered a quasi-burden riders (ruling 167 in 2014). Another example is the case of an administrative contract and administrative sanctions coexist, and some can be considered as "side by side" (really coexisting), while others belong to "improper co-existence", for example, the former as ruling 80 in 2013, the latter as the ruling 1926 in 2013, as well as the ruling 184 in 2013. Especially in the case of improper co-existence, if the administrative contract can solve relevant disputes, it seems unnecessary to intervene again the administrative sanctions. In addition, administrative contracts directly identified in the legislation of contract between the parties can be viewed as "statutory administrative contract" that is worthy of praise. Finally, the ruling 790 In 2014 admitting the institutions under the same administrative authority can form an administration contract whose decision is very inappropriate. Nevertheless, this problem can be solved by referring to "the executive mutual assistance" under the Article 19 of Administrative Procedure Act.