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ADMINISTRATIVE CONTRACTS. DISTINGUISHED BY THEIR PURPOSE OF PUBLIC ORDER AND BY THE EXORBITANT REGIME OF CIVIL LAW TO WHICH THEY ARE SUBJECT.

The administrative nature of a contract concluded between a State body and private entites may validly be deduced from the public policy objective pursued, also identified as public utility or social utility, as well as the exorbitant regime of civil law to which it is subject. It follows that contracts concluded by a State body with private entites are governed by private law where their subject matter is not closely and necessarily linked to the performance of the public functions of the State and, for the same reason, the satisfaction of collective needs is not prejudiced because in those acts the State does not make use of the means authorized by its special regime. By contrast, where the object or purpose of the contract is closely linked to the performance of State functions, so that the satisfaction of collective needs is not indifferent to the manner of performance of contractual obligations, then it will be in the presence of an administrative contract, being valid to stipulate exorbitant clauses that, from the perspective of private law, could be null, but that in the administrative field they are not, in view of the need to ensure the regular and continuous functioning of the public service.

Ordinary federal civil lawsuit 1/2000. Jesús Guillermo Puente Cutiño. February 20, 2001. Unanimity of ten votes. Absent: Genaro David Góngora Pimentel. Speaker: Juan Díaz Romero. Secretary: Silverio Rodríguez Carrillo.

The Plenary Court, in its private session held today March twenty nine, 2001, approved, under number IX/2001, the above isolated thesis; and determined that the vote is suitable to integrate a jurisprudential thesis. Mexico City, Federal District, March twenty-ninth, two thousand and one.

