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ACQUISITIONS, LEASING AND SERVICES OF THE PUBLIC SECTOR. DIFFERENCES BETWEEN ADMINISTRATIVE RESCISSION AND EARLY TERMINATION OF ADMINISTRATIVE CONTRACTS REGULATED BY THE RELATED LAW.

Although both the administrative rescission and the early termination of administrative contracts, regulated by articles 54 and 54 Bis of the Law of Acquisitions, Leasing and Services of the Public Sector, pursue a more timely and efficient performance of the public administration under circumstances that make clear the need to safeguard the public interest or to avoid its detriment, and are actualized in the conclusion of the obligations set forth in a contract, prior to the date agreed for the end of its term, the truth is that the administrative termination of the contract in the terms established therein does actualize a privative act that requires full respect for the right of prior hearing recognized in Article 14 of the Political Constitution of the United Mexican States, since it is triggered by the breach of obligations of the supplier, to whom this measure is imposed as a sanction, which in turn may result in other types of sanctions, such as the application of conventional penalties, the prohibition to enter into contracts with the State for a certain period of time and others provided by law or in the respective contract. On the other hand, the early termination of an administrative contract occurs for reasons of general interest, or when, for justified reasons, the need to require the goods or services originally contracted is extinguished, and it is demonstrated that continuing with the performance of the agreed obligations would cause some damage or harm to the State, or the nullity of the acts that gave rise to the contract is determined, due to the resolution of a disagreement or ex officio intervention issued by the Ministry of Public Administration. Hence, the early termination of a contract does not derive, in principle, from the breach of an obligation acquired by the supplier, but from external reasons that may even be beyond the control of the contracting agency or entity. Such termination basically implies that the supplier will only be affected with the inconvenience of no longer being able to exercise the rights over which, under the terms of the contract signed, it had mere expectation of carrying out if a resolutory condition had not arisen, so in reality it is not deprived of any right acquired or that would have entered its legal sphere, Moreover, the early termination entails the obligation of the State to reimburse him for the non-recoverable expenses that he may have incurred prior to the termination, and does not prevent him from being paid for the services already rendered or for the goods delivered or leased during the term of the respective contract, and even less, from subsequently going to the respective jurisdictional instances to fight the measure or to demand a prior hearing on other rights that he may deem appropriate. Thus, while in the administrative termination it is indispensable to provide for the right of prior hearing in favor of the supplier, which even Article 54 does, this cannot be extended to the case of the early termination of a contract, in which case it is not constitutionally necessary to do so.

Contradiction of thesis 192/2016. Between those sustained by the First and Second Chambers of the Supreme Court of Justice of the Nation. February 15, 2018. Seven-vote majority of Justices Alfredo Gutiérrez Ortiz Mena, José Ramón Cossío Díaz, Arturo Zaldívar Lelo de Larrea against the considerations, Jorge Mario Pardo Rebolledo, Norma Lucía Piña Hernández, Javier Laynez Potisek and Luis María Aguilar Morales against some considerations; voting against: Margarita Beatriz Luna Ramos, José Fernando Franco González Salas, Eduardo Medina Mora I. and Alberto Pérez Dayán. Speaker: Jorge Mario Pardo Rebolledo. Secretary: Guillermo Pablo López Andrade.

Contending criteria:

The one sustained by the First Chamber of the Supreme Court of Justice of the Nation, when resolving amparo in review 976/2015, and the different one sustained by the Second Chamber of the Supreme Court of Justice of the Nation, when resolving amparo in review 1139/2015.

The Plenary Court, on April 9 of this year, approved, with the number 6/2018 (10th), the preceding jurisprudential thesis. Mexico City, April ninth, two thousand eighteen.

This thesis was published on Friday, April 20, 2018 at 10:24 a.m. in the Semanario Judicial de la Federación and, therefore, it is considered of mandatory application as of Monday, April 23, 2018, for the effects provided in the seventh point of the Plenary General Agreement 19/2013.