

COMMENT ON ART. 1767 CIVIL CODE

by George Krzeczunowicz*

ART. 1767. CONTRACTS WITH A PUBLIC ADMINISTRATION

- (1) THE COURT MAY VARY A CONTRACT MADE WITH A PUBLIC ADMINISTRATION WHERE THE CIRCUMSTANCES IN WHICH IT WAS MADE HAVE CHANGED THROUGH AN OFFICIAL DECISION IN CONSEQUENCE OF WHICH THE OBLIGATIONS ASSUMED BY THE PARTY WHO CONTRACTED WITH THE ADMINISTRATION HAVE BECOME MORE ONEROUS OR IMPOSSIBLE.
- (2) THE PROVISIONS OF THE TITLE OF THIS CODE RELATING TO 'ADMINISTRATIVE CONTRACTS' SHALL APPLY TO CONTRACTS MADE WITH A PUBLIC ADMINISTRATION (Art. 3191-3193).

This provision calls for the following observations:

1. According to this writer's recollection, the text of what is now sub-article (1) was drafted in the form of an article in 1954, well before the decision to include a lengthy Title on Administrative Contracts in the Civil Code (Title XIX) was taken. Later in the codification process, the proposed article was renamed sub-article (1) of article 1767, and was supplemented by sub-article (2). In the latter, "3191" (instead of 3190) reflects an obvious typing error to be corrected.

2. Pursuant to this (late ladded) sub-article (2), the provisions applicable to contracts made with an administrative body are those of the *Acts of Government* sub-paragraph (arts. 3190-3193) of the Title on Administrative Contracts, which happens to be inconsistent with sub-article (1).** Sub-article (1) should therefore be abrogated, and sub-article (2) should be reworded to form the following single provision:

ART. 1767. CONTRACTS WITH ADMINISTRATIVE BODIES

THE PROVISIONS OF THE TITLE ON ADMINISTRATIVE CONTRACTS CONCERNING ACTS OF GOVERNMENT (Arts. 3190-3193) APPLY TO ANY CONTRACTS MADE WITH ADMINISTRATIVE BODIES.

Avoiding circumlocution, this single provision makes it clear that in the Title on Administrative Contracts *only* the 'Acts of Government' sub-paragraph applies to both administrative contracts (as defined by art. 3132) *and* non-administrative contracts made with an administrative body. It will free the courts from the unnecessarily obscure dilemmas created by the whole present version of article 1767.

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** Incidentally, see re-translated version of Administrative Contracts law in Krzeczunowicz, *Revised Translations* (mimeo.), Addis Ababa, Faculty of Law, 1974.