

The Position and Roles of the State in the Presence of Public Utilities Regulatory Authorities

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ABSTRACT :

The work of public utilities regulatory authorities differs from that of their counterparts in other sectors in terms of its significance and sensitivity, as it primarily involves the regulation of public services of general interest. Given this importance, and in the context of the existence of these authorities, the end of public monopolies, questions naturally arise regarding the position of the State and its roles in this new landscape, as well as the responsibilities associated with each role.

key words: State, Regulatory Authorities, Public Utilities, Political Character, Trader .

Introduction:

The concept of the public service as a legal phenomenon has long been the subject of contradictions, oscillating between what is produced by legal drafters, jurists, and even the judiciary, and what is dictated by the conception desired by the State or rather, by the political authority. Naturally, this concept is shaped by the prevailing circumstances, conditions, and transformations over time. The notion of public service evolves alongside the transformation of the State, for it is inherently bound to it and cannot be separated from it, regardless of whether the State progresses or declines.

From a technical perspective, the public service emerged as a legal theory¹ towards the end of the nineteenth century, following the decision of the French

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¹ - As well as the theory of administrative liability.

Tribunal of Conflicts in the Blanco case (**Arrêt Blanco**) on 8 February 1873¹. In that decision, the Court established that the liability of the State for damages caused by public services must be governed by special rules, distinct in substance and purpose from those applicable to relationships between private individuals². The Court thereby recognized a distinct sphere of State activity that constitutes the foundation for the application of administrative law and the jurisdiction of administrative courts namely, the public service³.

However, the Blanco decision did not provide a comprehensive and definitive definition of the public service, which subsequently gave rise to what is known as the crisis of the public service concept a crisis that persists to this day⁴.

This definitional ambiguity has also affected legislators, whether constitutional founders, lawmakers, or regulators. Most legal texts, regardless of their hierarchical value, fail to provide a precise and comprehensive definition of the public service due to their conciseness. At best, they merely confer the status of public service on a given activity without further elaboration⁵.

At the doctrinal level, legal scholars have offered varying perspectives on the definition of the public service. Some have inherited the ambiguity stemming from the Blanco decision and have hesitated to identify its constitutive elements, while others have attempted, to some extent, to capture them.

Koechlin defines the public service as an institution established by a public authority, operating under its supervision, for the purpose of serving the general interest.⁶

¹ - The facts of the case date back to an incident involving a young girl named Annis Blanco (**Blanco A.**), who was injured after being run over by a vehicle belonging to a state-owned tobacco factory in the city of Bordeaux, France. Her father filed a lawsuit before the Civil Court of Bordeaux, requesting that the State, as the party civilly liable, be ordered to compensate his daughter in accordance with the general rules of liability. However, the court declared itself incompetent in its judgment issued on 17 July 1872, and the case was subsequently brought before the Tribunal des Conflicts, which ruled that administrative courts had jurisdiction. The tribunal reasoned that the administration, as a public authority, could not be subject to the principles of civil law, which are intended primarily to govern relations between private individuals .

² - Driss Alaoui Ismaili, qualité du service public : composante essentielle du marketing public , *Revue Idara* (*revue de l'école nationale d'administration* , Tunis) numéro spéciale ; renouveau du service public ; volume 2 – 1992 , p18 .

³ - Following this case, the Public Service School (École du service public) was established in France, led by **Léon Duguitt** (L. Duguitt), **Gaston Jèze** (G. Jèze), **Roger Bonnard** (R. Bonnard), **Louis Rolland** (L. Rolland), and **De Laubadère**, who considered the public service to be the foundation of administrative law, alongside the public authority criterion, which had long prevailed. The scholar Maurice Hauriou (M. Hauriou) stated the following: « ... le droit administratif est donc l'ensemble des règles qui président à l'organisation et au fonctionnement des services publics et à la surveillance des services d'utilité publiques ».

⁴ - Since the matter here concerns a concept whose boundaries are difficult to delineate precisely, owing to its complexity, the multiplicity of its elements, and the variation of its meanings and scope of application from one place and time to another.

⁵ - because granting the status of a public service is an extremely difficult task, as it entails numerous consequences for the relationships between the service and those who deal with it.

⁶ - cited by Philippe Jourdan ,la formation du concept de service public , *Revue de droit public et de la science politique en France et à l'étranger*, N02 Mars – Avril 1987,p 110 .

For his part, **Gaston Jèze** defines it as Any activity whose performance, regulation, and supervision must be undertaken by the governing authorities, because such activity cannot be fully realized without the intervention of the ruling power.¹

André de Laubadère, in turn, offers a concise yet meaningful definition, stating that a public service is any activity undertaken by a public person with the aim of satisfying a need that falls within the scope of the general interest².

From this definition, it appears that a public service is an activity which:

- Is undertaken by a public person³, representing the organic criterion, meaning that any institution or body charged with performing such an activity constitutes a public service;
- Aims to satisfy a need within the general interest, representing the material or functional criterion, which focuses on the nature and purpose of the activity.

According to this criterion, any activity intended to meet public needs or provide collective benefits whether in the form of services or goods qualifies as a public service.

Despite the diversity of doctrinal definitions, the concept of public service still requires further scholarly effort to produce a comprehensive and exclusive definition or, at the very least, to establish standard criteria that distinguish public service activities from others in the absence of explicit legal provisions. Indeed, French jurisprudence has recognized this necessity and has established three principal criteria:

- (1) the objective of the activity (the general interest),
- (2) the connection to a public person (particularly the functional link),
- (3) the submission of the activity to public law (administrative law).

While the foregoing reflects the technical and legal dimension of the public service concept, its political dimension predates its formal recognition as a legal theory, granting the State or more precisely, the political authority broad discretion to shape and direct the notion of public service.

From the outset, according to **Léon Duguit**, the public service encompasses any activity supervised by the governing authorities, whose existence and development are essential to ensuring social cohesion among the members of the community. Such cohesion, he argues, can only be achieved through the intervention of the State in the organization, oversight, and regulation of such activities.

Thus, the public service constitutes a tool in the hands of the political authority for managing public affairs, ensuring social satisfaction, and maintaining public

¹ - Jean – Baptiste Geffroy , service public et prérogatives de puissance publique – réflexions sur les déboires d'un couple célèbre, *Revue du droit public et de la science politique en France et à l'étranger* , N02 Mars – Avril 1987 , pp 83 , 84 .

² - André De Laubadere , traité de droit administratif , 8 ème édition – tome 01-1980, p 06 .

³ - This is, in fact and in principle, because the management of a public service is not the exclusive prerogative of public legal entities; it may also be undertaken by private actors.

order and stability. This functional attachment to the State has persisted despite changes in how public services are managed over time¹.

The State itself has evolved in both form and function, particularly with the establishment of regulatory authorities for public utilities (autorités de régulation des services publics), which emerged following the liberalization of various public service activities and the dismantling of public monopolies. Consequently, it has become necessary to eliminate all vestiges of monopoly and to gradually introduce public services into a competitive framework one that is regulated in a way that ensures both the legitimacy of competition and the fulfilment of the multiple requirements of the general interest.

In this new context, questions arise regarding the transformation of the State's position and the roles it assumes, along with the responsibilities associated with each role.

In reality, the State now appears in two distinct roles, each giving rise to multiple and varied functions: a permanent political role (First topic), and an occasional commercial role (Second topic).

THE FIRST TOPIC : An Inherent and Permanent Political Role.

In the midst of the existence of public utility regulatory authorities and the performance of their regulatory tasks, the State rises in its permanent political capacity, which influences the nature of its roles towards both the public utilities under regulation and the regulatory authorities themselves.

First Requirement: Elements of the State's Political Character.

From a technical perspective commonly adopted in constitutional law scholarship, the State is defined as an entity composed of three essential pillars: the people, the territory, and the political authority.

The people constitute the totality of individuals residing within a defined geographical space, linked to the political authority through the bond of nationality.

The territory, in turn, refers to the land, air, and/or maritime space² the living domain of the people, particularly its terrestrial component. As for the political authority, it is a group of individuals and institutions organized for the purpose of managing the affairs of the people in various fields and at different levels, both domestically and internationally.

The political conceptualization of the State, however, rests upon permanent and enduring elements and standards. The State is a permanent political entity that does not cease to exist regardless of the transformations, developments, or innovations occurring in the various sectors under its supervision. The political character of the State is based on three fundamental elements: political authority, political system, and policy.

¹ - This remains the case even when the public service is privatized, as the State retains the authority to regulate the service at the central level.

² - Not all states possess a maritime zone.

1 - Political Authority.

It is noteworthy that the concept of political authority existed in practice even before the emergence of the State as a scientific theory. It was manifested in expressions of power, supremacy, and exclusivity in decision-making within the management of community affairs decisions issued by an individual who led or governed a group of people¹.

This concept evolved and became associated with the State, becoming more structured and methodical in its formation and functions. The authority is described as political because it has always been, and continues to be, the most capable of managing the public affairs of all residents within the State. Its actions are carried out under the rule of law, for the law itself reflects the policies adopted by the State.

2 - The Political System.

The term political system is a variable concept in terms of meaning and definition, depending on the field of study. From a constitutional law perspective, the political system refers to the configuration arising from the legal status accorded to the executive, legislative, and, in some contexts, judicial authorities, as well as the relationships resulting from that configuration².

From a political science standpoint, however, the political system can be defined as a set of societal elements interacting with one another within a specific political and legal framework, in a local, regional, and global environment, through legislative, executive, and judicial institutions, in order to achieve developmental and security objectives in the short, medium, and long term³.

Accordingly, the purpose of the political system, in this sense, is to manage public affairs, promote social development, and safeguard social peace.

3 - Policy.

The Arabic term " سياسة " (policy) derives from the verb ساس (يسوس)⁴, meaning "to manage or govern the affairs of a community in its interest." Policy thus arises from the human need for communal life. Linguistically, among Arabs, it denotes leadership, disposition, and character; **sāsa al-amr** means "to take charge of or manage a matter." Hence, policy refers to the governance of the State and the management of the affairs of its people⁵.

¹ - Whether a tribal chief, a ruler, a feudal lord, or a military commander, and so on.

² - In this sense, the political system differs from the form of government. The latter reflects the origin and nature of the governing body whether it is monarchical or republican, individual or collective, democratic or dictatorial, civilian or military, and so forth.

³ - Definition taken from a website: cte.univ-setif2.dz/moodle/mod/book/view.php?id=7749 (consulted on 20 – 11 – 2025 – at 21 : 37 h) .

defined the political system as: **حسان شفيق العاني** It was also stated on the same website that **Hassan Shafiq Al-Ani**

" محصلة الظروف و المبادئ السياسية التي تفرض اتخاذ سلوك وظيفي تعقيبي في اتخاذ القرارات الملزمة بالاجتماع كليا " .

defined the political system as: **ثروت بدوي** Similarly, **Tharwat Badawi**

" مجموعة من القواعد و الأجهزة المتناسقة المترابطة فيما بينها، تبين نظام الحكم، و وسائل ممارسة السلطة و أهدافها و طبيعتها و مركز الفرد فيها و ضماناتها قبلها، كما تحدد عناصر القوى المختلفة التي تسيطر على الجماعة و كيفية تفاعلها مع بعضها، و الدور الذي تقوم به كل منها " .

⁴ - The Arabic word " سياسة " (politics) corresponds in Greek to the term "polis", which means the civil state. It refers to the gathering of citizens who constituted the city at that time, and it also denotes the organisation of society's affairs and the role of each individual within it.

⁵ - شكاطة عبد الكريم، محاضرات مدخل إلى علم السياسة – موجهة لطلبة السنة أولى علوم سياسية جذع مشترك، كلية الحقوق و العلوم السياسية بجامعة البليدة، السنة الجامعية 2019 – 2020 ، صفحة غير مرقمة .

Policy is both an art and a science. It is an art insofar as it requires the politician's skill in managing the affairs of the population, guiding the State's resources to achieve growth, prosperity, and progress, and reconciling conflicting group interests in a way that preserves security and social harmony.

As a science, it concerns the study of political activity. **David Easton** defines political science as the authoritative allocation of values for a society, that is, the study of how resources are distributed within society through authority¹.

Thus, policy may be considered the spirit of both political authority and the political system, for it embodies the activity that ensures, to at least some extent, the attainment of the aforementioned objectives.

Second Requirement : The State's Role in Its Political Capacity.

When all the previously mentioned elements are present, the State's political character is realized a quality that endures as long as the State exists. In other words, the State remains a sovereign political entity vis-à-vis all its constituent elements and in relation to the components of the international community.

The existence of diverse institutions and bodies of varying hierarchies does not negate the existence of the State as a political entity. On the contrary, all such institutions remain subordinate to this entity, including the public utility regulatory authorities, which are established and operate according to the public policies set by the State in relevant sectors policies that are reflected in legal texts.

The first responsibility assumed by the State, in its political capacity and through its legislative and executive powers, is the enactment of legal provisions establishing public utility regulatory authorities, creating and organizing the public utilities subject to regulation², and providing the general orientation for the functioning of these authorities.

1 - The Establishment of Public Utility Regulatory Authorities.

This refers to bringing such authorities into existence and granting them a legal form consistent with the nature of their functions and objectives. The following legal texts exemplify this:

- Law No. 18-04 of 10 May 2018, setting forth the general rules relating to postal and electronic communications³, applicable to the Postal and Electronic Communications Regulatory Authority.

- Organic Law No. 23-14 of 27 August 2023 on information⁴, and Law No. 23-20 of 2 December 2023 on audiovisual activity⁵, both concerning the National Independent Authority for Audiovisual Regulation.

- Article 102 of Law No. 02-11 of 24 December 2002, containing the Finance Act for the year 2003⁶, relating to the Transport Regulation Authority⁷.

¹ - شكاكطة عبد الكريم، المرجع السابق، صفحة غير مرقمة .

² - The public service constitutes an important stake with political dimensions for the political authority.

³ - Official Gazette, year 2018, No. 27, issued on 13 May 2018, p. 03.

⁴ - Official Gazette, year 2023, No. 56, issued on 29 August 2023, p. 09.

⁵ - Official Gazette, year 2023, No. 77, issued on 2 December 2023, p. 11.

⁶ - Official Gazette, year 2002, No. 86, issued on 25 December 2002, p. 03.

⁷ - In reality, this authority remained confined to Article 102 of the Finance Law for the year 2003 mentioned above, as it was neither established nor were its implementing regulations enacted.

- Organic Law No. 23-14 on information (cited above), concerning the Regulatory Authority for the Written and Electronic Press.

- Law No. 98-06 of 27 July 1998, establishing the general rules relating to civil aviation¹, applicable to the National Civil Aviation Agency.

- Law No. 02-01 of 5 February 2002, on electricity and gas distribution via pipelines², concerning the Electricity and Gas Regulation Commission.

2 - The Establishment and Organization of Public Utilities Subject to Regulation.

Here, the State is the most competent entity to create public utilities as it deems appropriate to meet the needs of individuals for goods and services. It is likewise best positioned to organize them that is, to determine their structural and functional frameworks in a manner that ensures respect for the principles of public service. The State may also transform their nature or terminate their existence whenever it considers it appropriate or necessary.

3 - The General Orientation of the Work of Regulatory Authorities.

Even though public utility regulatory authorities are independent of any administrative body, including the State in its administrative sense, they remain bound by the State's general orientations at the economic and social levels particularly when it comes to vital and strategic public utilities such as electronic communications and the distribution of electricity and gas.

THE SECOND TOPIC : The Incidental Commercial Role of the State .

If it is established that the State retains its political character in relation to all its components, including public utilities even in the presence of regulatory authorities entrusted with missions dictated by the new circumstances marked by the end of public monopoly and the liberalization of the utilities under regulation then³, beyond its permanent political nature that endures as long as it exists, the State assumes another guise and adopts an entirely different role. It appears as an ordinary economic actor, bearing commercial features and subject to the rules and principles imposed by the sectoral regulatory authorities within their respective fields of competence.

Thus, describing the State as a “trader” may seem somewhat unusual, as it appears inconsistent with the State's nature as a public legal person.

First Requirement : The Specificity of this Role between Rejection and Acceptance.

The term 'trader' is generally associated with any natural or legal person engaging in commercial activities that pursue a specific, limited objective of private gain, namely profit. Hence, this description logically applies to private individuals or corporations, whose primary purpose is to achieve personal benefit. However, the State's appearance as a trader may be perceived by many as undesirable or even unacceptable, since the State, by its very nature, is a political and legal public entity whose sole function is to pursue the public interest. It is not intended to embody private attributes or adopt private-sector logic in performing its functions.

¹ - Law No. 98-06, dated 27 June 1998, establishing the general rules relating to civil aviation (Official Gazette, year 1998, No. 48, issued on 28 June 1998, p. 3), as amended and supplemented.

² - Official Gazette, year 2002, No. 08, issued on 6 February 2002, p. 04.

³ - The emergence and gradual establishment of these authorities represent a process of transition from the “total State” (le tout État) to the “minimal State” (le peu d'État), particularly in light of the principles enshrined in the 1989 Constitution concerning economic liberalization and the dismantling of public monopolies.

- - The State's distinct nature as a public legal person.
- - Its sovereign character, as it stands above all persons and entities within its territory.
- - The necessity to preserve its authority in enacting, implementing, and enforcing the law throughout its territory.
- - The State's social function¹, which renders it inappropriate to subject it to purely economic considerations at the expense of its social objectives.
- - Treating the State as a private person would imply equality between it and private individuals, thereby diminishing its status. Instead of being the commanding and controlling authority, it would become subject to the same legal and material treatment as private actors.

The rejection of the commercial character of the State, or of its conduct as a trader, thus arises largely from a misunderstanding of this status and ignorance of its true objectives, as well as from a failure to distinguish between the different positions the State may occupy.

1- Misunderstanding the Notion of Trader .

Legally speaking, the description of 'trader' applies to any natural or legal person who habitually performs commercial activities, regardless of the purpose pursued. The qualification as a trader depends on the nature and continuity of the activities², not on the objective sought by the person engaging in them. The law does not require that profit be the aim of such activities in order to confer the status of trader. Consequently, any person undertaking commercial activities may be legally considered a trader, irrespective of their motive.

Accordingly, the State may rightfully be regarded as a trader, even if its ultimate purpose in carrying out such activities is the achievement of the public interest.

Thus, the State does not assume this seemingly 'strange' status at least from the perspective of those who contest it except to serve a general or public interest. This is what distinguishes it from private traders, whether natural or legal persons.

2 - Failure to Distinguish between Different Positions.

The principle of distinction between situations requires differentiating among the various roles the State may assume³.

The State is generally recognized in its permanent role as a sovereign entity standing above the components of its territory, endowed with authority, coercive power, and both internal and external sovereignty. However, it may also appear as an ordinary person devoid of any sovereign prerogatives, subject to the same treatment as others under the laws governing that particular status⁴.

This situation is clearly reflected in the sphere of regulatory functions in general and in the regulation of public utilities in particular. Whenever the State intervenes as an operator

¹ - Although the intensity of this characteristic varies from one State to another, depending on the political and economic doctrine it adopts.

² - See Articles 1 and 1 bis of Ordinance No. 75-59 containing the Commercial Code (as amended and supplemented).

³ - The distinction between legal situations is a culture that every individual within the legal community should adopt. It implies that individuals should interact with one another according to the legal status they hold at the time and place of such interaction. For instance, a person possesses the status of a public official only within the framework of service from the moment official working hours begin until they end after which that person becomes an ordinary individual. The same applies to other legal situations.

⁴ - Any role or status that the State may assume remains acceptable, provided that its purpose is the pursuit of the public interest.

managing a regulated utility, it becomes subject to all rules and decisions issued by the corresponding regulatory authority within its competence.

A question arises here: if the State is recognized as an ordinary economic actor, subject equally to the same regulatory framework as other operators, who ensures its compliance in this regard?

In reality, two entities guarantee the State's compliance with its role as an ordinary economic actor (or trader): the law and the regulatory authorities.

– The Law.

Every person is legally recognized by virtue of the law. A natural person acquires personality by birth, formalized by law, whereas a legal person exists only through the will of the law itself. It is the law that confers legal personality upon certain entities, and no entity can possess such status except by law.

For instance, the notary, judge, lawyer, bailiff, auditor, or accountant acquire their status only through statutory provisions; the same applies to municipalities, provinces (wilayas), and other public institutions endowed with legal personality.

Likewise, the State acquires the status of an ordinary operator or trader only through a legal text that expressly confers such a capacity, defining its contours and missions. The State must then comply with the provisions of the law and operate within the framework established by the texts granting it this role.

– Regulatory Authorities.

Paragraph (٥) of Article 3 of Ordinance No. 03-03 on Competition¹, defines (الضبط) regulation as follows:

« الضبط : كل إجراء أيا كانت طبيعته، صادر عن أية هيئة عمومية يهدف بالخصوص إلى تدعيم و ضمان توازن قوى السوق، و حرية المنافسة، و رفع القيود التي بإمكانها عرقلة الدخول إليها و سيرها المرن، و كذا السماح بالتوزيع الإقتصادي الأمثل لموارد السوق بين مختلف أعوانها و ذلك طبقاً لأحكام هذا الأمر » .

Although this definition does not delimit the scope of regulation thus covering both economic and public utility activities it outlines its main objectives:

- - Framing the transition from monopoly to liberalization of activities;
- - Protecting the principle of free competition and eliminating barriers to market entry;
- - Ensuring market balance;
- - Protecting consumers in general and users in particular, especially within public utilities.

This last objective is particularly significant for public utility regulatory authorities, which can only achieve it by ensuring that all operators comply with the rules governing the regulated utility rules that reflect the fundamental principles of public service, particularly equality.

Hence, regulatory authorities apply the above objectives equally to all actors within their regulated sectors. The State, when acting as an operator, cannot invoke its political sovereignty to claim special privileges or to evade the regulatory measures enacted by these authorities. Any such transgression would subject it to the same sanctions that the regulatory authority imposes within its supervisory powers.

¹ - Official Gazette, 2003, No. 43, issued on 20 July 2003, p. 25.

Second Requirement : The Manifestations of the State's Commercial Status.

If the law is what confers upon the State, its commercial capacity within the new framework characterized by regulatory authorities, it is also the law that determines the manifestations of this capacity namely, the legal forms through which the State appears as an ordinary operator among others in the management of regulated public utilities.

In this respect, the State may appear in two principal forms:

1. As a Public Industrial and Commercial Establishment (EPIC);
2. As a Public Economic Enterprise (EPE).

1 - The State as a Public Industrial and Commercial Establishment .

The legal foundation of this form lies in Law No. 88-01 of 12 January 1988, constituting the Framework Law on Public Economic Enterprises, particularly in its Chapters 03 and 04¹.

After distinguishing between public economic enterprises and public bodies responsible for managing public utilities (Article 4), the law sets out the characteristics² of public industrial and commercial establishments in Articles 44 and 45, as follows:

- - Commercial production (criterion of activity): concerning both goods and services;
- - Application of tariffs ensuring the partial or total coverage of operational costs (criterion of funding);
- - Submission to general terms of reference defining their rights and obligations and those of users (criterion of organization and functioning).

The distinctive feature of such establishments, compared to purely administrative ones, lies in their dual subjection:

- To public law (administrative law) in certain aspects, as an extension of the State's public authority;
- And to private law (commercial and civil law) in their relations with third parties, whether users or others.

Here, the State appears under its commercial face as what Professor **Mohamed Boussoumah**³ describes as a **public trader** standing on equal footing with other operators before the regulatory authorities when managing a regulated public utility.

Examples include⁴:

- Algérie Poste (Algeria Post), a Public Industrial and Commercial Establishment⁵ subject to the regulation of the Postal and Electronic Communications Regulatory Authority;

¹ - Official Gazette of 1988, No. 02, issued on 13 January 1988, p. 30.

² - Not to speak of a definition in its strict and technical sense, as a definition must be both comprehensive and exclusive, particularly when it appears in legislation establishing categories of institutions, as is the case with Law No. 88-01. This requirement is not fulfilled in Article 44 of the same law and the provisions that follow it.

³ - Boussoumah Mohamed, l'établissement public, offices des publications universitaires , 2012 p 76 .
⁴ - Focus is placed exclusively on national public institutions as examples.
⁵ - Executive Decree No. 02-43 of 14 January 2002, establishing "Algérie Poste" (Official Gazette, 2002, No. 04, issued on 16 January 2002, p. 18).

- The National Broadcasting Corporation¹ and the National Radio Corporation², both public industrial and commercial establishments subject to the Audiovisual Regulatory Authority.

2 - The State as a Public Economic Enterprise.

When the drafters of Law No. 88-01 sought to create an entity distinct from associations, cooperatives, and other forms of public institutions, they opted for the Public Economic Enterprise (EPE) a unit responsible for all activities beyond the scope of traditional public bodies, as provided in Article 4.

Hence, the EPE was not originally created to manage public utilities, but it may do so secondarily or incidentally. However, Article 16 of Ordinance No. 01-04 of 20 August 2001, concerning the organization, management, and privatization of public economic enterprises³, did not specify whether such enterprises may provide public services primarily or incidentally. In practice, several public economic enterprises have indeed assumed public service missions as their principal activity.

Article 2 of the same Ordinance defines a public economic enterprise as a commercial company in which the State or another legal person under public law holds the majority of the share capital, directly or indirectly, and which is governed by common law.

Thus, the State appears here as an ordinary shareholder holding the majority of shares in a commercial company governed by private law.

This model serves two main purposes:

- - Strategic rationale: enabling the State to retain control over vital economic and social sectors, notably network-based utilities such as telecommunications, transport, electricity, and gas⁴.
- - Financial rationale: ensuring stable and sustainable funding for such enterprises, since State ownership of capital provides a safeguard against insolvency.

Examples include:

- Algérie Télécom: established on 10 April 2001 pursuant to Article 12 of Law No. 2000-03 on postal and telecommunications services⁵, following the separation between postal and telecommunications activities. It later created its mobile subsidiary Mobilis.

- Air Algérie: following nationalization, the State inherited all aviation infrastructures from the colonial administration and created the National Air Transport Company under Ordinance No. 74-06⁶ of 1974. In February 1997, the company was transformed into a Public Economic Enterprise (Joint Stock Company) under Law No. 88-01. Though the State remains the majority shareholder, the company operates under the same legal framework as other air carriers and is subject to the supervision of the National Civil Aviation Agency.

– The “Sonelgaz” Company or Group:

Sonelgaz was established in 1969 pursuant to Ordinance No. 69-59, which did not clearly specify its legal form but merely affirmed that it was a commercial company in its relations with

¹ - Executive Decree No. 91-100 of 20 April 1991, converting the National Television Enterprise into an Industrial and Commercial Public Establishment for Television. (Official Gazette, 1991, No. 19, issued on 24 April 1991, p. 618).

² - Executive Decree No. 91-102 of 20 April 1991, converting the National Sound Broadcasting Enterprise into a Public Establishment for Sound Broadcasting. (Official Gazette, 1991, No. 19, issued on 24 April 1991, p. 627).

³ - Official Gazette, 2001, No. 47, issued on 22 August 2001, p. 9.

⁴ - Even if the State appears here as an ordinary legal person, this does not mean that it is devoid of any sovereign or political dimension.

⁵ - Official Gazette, 2000, No. 48, issued on 6 August 2000, p. 3.

⁶ - Official Gazette, 1974, No. 11, issued on 5 February 1974, p. 307.

third parties. This suggests that its relationship with the State is one of public law, similar to the legal framework applicable to Industrial and Commercial Public Establishments (EPIC).

In late 1991, Sonelgaz acquired the status of an industrial and commercial entity in application of Law No. 88-01 (mentioned above). With the enactment of Law No. 02-01 relating to electricity and gas distribution through pipelines (cited above), Sonelgaz was transformed into a Public Economic Establishment in the form of a joint-stock commercial company and classified as a holding company comprising several subsidiaries responsible for the production, transmission, and distribution of electricity and gas.

Presidential Decree No. 11-212¹ subsequently regulated Sonelgaz as a holding company² and changed its name to the “Sonelgaz Group,” encompassing multiple companies under its authority.

Given the State’s majority shareholding in Sonelgaz, it retains decision-making, supervisory, and strategic authority over the Group’s operations. However, like any ordinary legal person, the State is subject to all decisions and rulings issued by the Electricity and Gas Regulatory Commission concerning the electricity and gas distribution service even though this latter sector still lacks competition to date, as it remains naturally monopolistic.

Conclusion :

What can be concluded from this brief research paper, which focuses on examining the position and roles of the State in the context of public utilities regulatory authorities, is that the State, as a legal person recognized constitutionally and internationally, assumes two distinct roles depending on the capacity in which it appears in each situation. Its status varies according to the form it adopts and the nature of the legal or material acts it performs in relation to all its components, including the public utilities regulatory authorities mentioned above.

1 - Its first inherent and fundamental role arises from its character as a political entity that stands above all persons and things located within its territory. In this capacity, it exercises the full scope of powers attached to its sovereign nature, particularly the enactment of laws and regulatory measures, their enforcement, the safeguarding of persons and property, and the management of its relations with the various components of the international community.

In performing this role, the State must be bound solely by the law, so as to preserve its legal character and avoid the invalidation of its actions on grounds of illegality.

In this elevated position, the State is the source of creation of all bodies and institutions existing within it and entrusted with various tasks including regulatory authorities which in turn remain subject to the State and to the policies it establishes at all levels.

¹ – Official Gazette, 2011, No. 32, issued on 8 June 2011, p. 16.

² - In fact, the holding company does not constitute a legally established corporate form in the same sense as the familiar forms recognized under commercial law. Rather, it is merely a structural and organizational designation.

2 - Its second role is that of an ordinary person, appearing as a trader stripped of any political prerogative or sovereign privilege, managing the public utilities subject to regulation. In this capacity, it is equal in all respects to other operators managing these utilities and is bound by all measures, decisions, and regulations adopted by the regulatory authorities, differing only in its ultimate objective, which remains the pursuit of the public interest, whether directly or indirectly, and whether in the short or long term.

to respect its status as an ordinary legal person, the state must refrain from appearing in a sovereign capacity and instead present itself in an ordinary manner, in which it is placed on an equal footing with all other operators involved in the management of the regulated public utilities.

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