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The Contractual Relationship as an Exceptional Rule in the Public Service System

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Abstract

The Algerian legislator introduced the contract system in public employment for positions that were, until recently, exclusively held by public employees. This was done to achieve a fundamental goal: ensuring the continuity of public services by drawing on the flexibility of contractual mechanisms compared to traditional recruitment procedures. Functions such as conservation, maintenance, and services are considered vital across various public facilities.

However, this system is characterized by two major shortcomings. The first lies in restricting the administration's discretion, as it does not have complete freedom in selecting the contracting party. A set of regulatory procedures imposes constraints that limit its discretionary authority, thereby undermining the system's primary value—swift recruitment to fill vacancies and ensure service continuity.

The second flaw is the violation of the principle of equality. We find that contractual agents occupy the same positions as public employees but do not have the same rights, such as the right to promotion or access to legal statuses like secondment or attachment. This creates a form of disparity within public administrations and institutions, where it becomes unacceptable to have two categories of personnel bearing the same professional obligations yet differing in their rights.

Keywords: *Contractual employment in public service, public facility, administrative flexibility, principle of equality, contractual agents, public employees, recruitment procedures.*

Introduction

Practical experience has demonstrated that human resources management is one of the most important and challenging aspects of public resource management. This highlights the significance of studying the nature of the employment relationship within the public administration and its applications in Algerian legislation. The scope of this study is limited to the executive branch administration, as stipulated in the provisions of Article 2 of Ordinance No. 06-03, which comprises the General Basic Law of the Public Service in Algeria.

The mechanism governing the nature of the employment relationship, as established by the Algerian legislator, combines a statutory regulatory relationship as the general rule and a contractual relationship as an exceptional procedure, in accordance with Articles 7 and 19 through 25 of Ordinance No. 06-03. While the domains and means of implementing each type of relationship differ, the oversight bodies and methods applied to both are the same.

A significant observation is that the statutory relationship has influenced the contractual relationship by restricting the administration's authority to protect the public agent. This results in a convergence and coexistence between the two types of employment relationships, which is essential to ensure the continuous management of public facilities in line with their fundamental principles.

Referring to the provisions of Article 4 of Ordinance No. 06-03, it states: "A public employee is any agent appointed to a permanent public position and established in a rank on the administrative scale..." Thus, the legislator has undertaken to define a public employee. Unfortunately, this definition is contradicted when addressing a category of personnel in public institutions and administrations, namely contractual agents. Article 20 of the same ordinance stipulates: "Recourse may be had, on an exceptional basis, to the recruitment of contractual agents for positions allocated to public employees in the following cases:

- Pending the organization of a recruitment competition or the creation of a new corps of public employees.
- To compensate for the temporary vacancy of a position."

Furthermore, Article 21 of the same law provides: "On an exceptional basis, contractual agents other than those provided for in Articles 19 and 20 above may be recruited to undertake tasks of a temporary nature."

The Algerian legislator introduced this category on an exceptional and exhaustive basis. However, in practice, their numbers increase year after year, to the extent that many have accumulated years of experience in the same status. Article 22 has deprived them of the status of a public employee by stating: "The agents mentioned in Articles 19 to 21 above are recruited, as the case may be and according to the needs of public institutions and administrations, through fixed-term or open-ended contracts, on a full-time or part-time basis.

Holding these positions does not confer the right to acquire the status of a public employee or the right to integration into a rank of the public service."

The Algerian legislator resorted to the contractual mechanism to maintain the regular operation of public facilities and to develop and improve services for users. This was embodied in Presidential Decree No. 07-308 of September 29, 2007, which implements the provisions of Article 24 of Ordinance 06-03, defining the methods of recruiting contractual agents, their rights and duties, the components of their salaries, the rules governing their management, and the disciplinary system applicable to them.

The legal employment relationship of contractual agents in the administration is governed by a contractual relationship. The multiplicity of concepts, the differing effects, the variety of legal domains and instruments, and the dual judicial system responsible for oversight all raise the following research question:

To what extent has the Algerian legislator succeeded, through the provisions of Ordinance No. 06-03 and its implementing regulations, in defining the nature of the employment relationship for contractual agents in the public administration?

Positive laws have stipulated that public service is a right for citizens based on the principle of equality, considering public office a national heritage, as provided for in Article 51 of the 1996 Constitution, Article 63 of the 2016 constitutional amendment, and Articles 66, 67, and 68 of the 2020 constitutional amendment. This right is exercised within the framework of a functional employment relationship, the general and original rule of which is the statutory relationship. However, the legislator has granted the public administration the right to resort to the contractual relationship as an exceptional rule to establish an employment relationship when needed, due to the nature or specificity of certain positions or the time constraints related to the work. This is a necessary tool for the public administration.

Therefore, this study will examine the legal framework of the contractual relationship (Part I) and analyze the contractual relationship between legislation and the judiciary (Part II).

Part I: The Legal Framework of the Contractual Relationship

The legal framework of the contractual relationship will be studied by understanding its specificity and effects (Chapter I), defining its scope and areas of application (Chapter II), and identifying its legal instrument and oversight (Chapter III).

Chapter I: Specificity and Effects of the Contractual Relationship

The functional contractual relationship has a specific meaning related to recruitment and employment, and this relationship has legal effects. These aspects are detailed in the following sections.

The precise and specific meaning of the contractual relationship is functional, i.e., it is related to the process of recruitment and employment. It is the legal contractual employment relationship between the contractual agent and the employing administration.

First: The Specific Meaning of the Contractual Relationship

Legal scholarship has addressed the contractual relationship through various legal characterizations, concluding that it is a functional relationship subject to public law. Consequently, the public service contract is an administrative contract related to the management of a public facility, a view now settled in jurisprudence, judicial precedent, and comparative legislation.

This study of the contractual relationship is conducted within the framework of public service law, according to Ordinance No. 06-03. Therefore, it excludes contractual employment relationships in the economic sector, which are governed by labor legislation under Article 3 of Law No. 90-11 of April 21, 1990.

Recourse to the contractual relationship in the employment context is exceptional, occurring when the public administration needs this approach to complement the statutory regulatory relationship and address its shortcomings.

Second: Characteristics of the Contractual Relationship

From the above, it is clear that the functional contractual relationship is characterized by the following:

1. An employment relationship within a subordinate legal framework between the public administration and the contractual agent.
2. An exceptional relationship resorted to out of necessity.
3. A relationship that complements the statutory relationship.
4. It is established through an administrative contract.

It can be said that the contractual relationship is a subordinate legal relationship formed between the two parties of the employment relationship to perform work in exchange for a salary paid according to the wage system specified in the laws governing contractual agents.

The establishment of a functional contractual relationship produces the following legal effects or consequences:

1. The contractual relationship is subject to the provisions of the Public Service Law and its implementing texts specific to contractual agents.
2. The rules of the contractual relationship are mandatory and cannot be deviated from, as the organizing law is classified under public law provisions.

3. The contractual relationship is subject to modification, renewal, and termination to serve the public interest, while respecting the principle of balance between rights and interests.
4. The functional contractual relationship is subject to review by the administrative judiciary, ensuring the protection of the contractual agent and defining the responsibility of the employing administration.
5. The contractual agent does not acquire the status of a public employee and is not integrated into the public service, as per Article 22, paragraph 2 of Ordinance No. 06-03.

It is evident from the foregoing that personnel working under a contractual relationship are termed "public contractual agents," in contrast to the statutory system where the employee is called a "public employee."

Chapter II: Scope of Application of the Contractual Relationship

The scope of application of the contractual system applies primarily to the public administration as defined in Article 2 of Ordinance 06-03. The specific areas where the contractual relationship applies are:

- The domain of contractual agents ("The Contractual System").
- The domain of foreign employees.

These two domains are examined in the following sections.

This section aims to identify the categories of contractual relationships and the legal nature of this system.

First: Categories of Contractual Relationship

The Algerian legislator, in Ordinance No. 06-03, provided for four (04) categories within the contractual system, which are as follows:

1. Recruitment for positions involving specialized activities.
2. Temporary recruitment for permanent positions.
3. Undertaking temporary work.
4. Contracting for technical consultation.

A legal analysis indicates that these categories of contractual agents share three essential characteristics:

- These categories are stipulated in the provisions of Articles 19-25 of Ordinance 06-03.
- These categories share the requirement of national citizenship.

- The contractual relationship for these categories pertains to the management of a public facility.

It should be noted that positive laws differ in defining contractual categories. For instance, Kuwait recognizes three main types of contracts: "First Contract," "Second Contract," and "Third Contract."

Second: The Legal Nature of the Contractual System

Based on Articles 19 to 25 of Ordinance 06-03, contractual recruitment was organized by Presidential Decree 07-308, which was further detailed by the Ministerial Order of April 7, 2008, concerning the recruitment, management, and disciplinary system of contractual agents. The contractual system will be examined by briefly reviewing the legal provisions for each category:

A. Positions with Specialized Activities

This category of contractual relationship is stipulated in Article 19 of Ordinance 06-03 and pertains to positions with specialized activities as defined in Article 8 of Presidential Decree 07-308. It covers three specialized activities:

- Conservation activities.
- Maintenance activities.
- Service activities.

According to Article 9 of Presidential Decree 07-308, the list of positions corresponding to these specialized activities includes:

- Professional Workers
- Service Agents
- Drivers
- Depot Managers
- Prevention Agents
- Guards

The nature of these positions suggests they are permanent, making them more suitable for open-ended contracts. However, the Algerian legislator, in Article 8, paragraph 3 of Presidential Decree 07-308, stipulated that recruitment for this category can be through fixed-term or open-ended contracts, based on a joint ministerial order that specifies the number of positions, their classification, and the contract duration for the concerned public administration body.

Temporary Recruitment for Permanent Positions

This category of contractual relationship is used in the cases listed in Article 20 of Ordinance 06-03, which are:

1. Pending a recruitment competition, which involves lengthy legal procedures that could affect the regular functioning of the public facility. Contracting is used as an exceptional measure.
2. When a position lacks a professional corps defining recruitment methods and procedures. Contracting becomes a necessary, exceptional, and temporary recruitment method until a professional corps for the position is established.
3. In the event of a temporary vacancy in a permanent position, contracting is used to fill the vacancy temporarily. This is an exceptional case aimed at ensuring the continuity of the public service. This type of contract is temporary, thus the employment contract is fixed-term. Recruitment is generally conducted through selection procedures, a method particularly prevalent in the education sector.

C. Contracting to Undertake Temporary Work

This category is exceptional and applies to temporary work carried out under a fixed-term contract, which automatically expires upon completion of the agreed-upon work, as stipulated in Article 21 of Ordinance 06-03.

D. Contracting for Technical Consultation

This category of contractual agents is established for technical advisory roles, as provided in Article 25 of Ordinance 06-03. This type is applied in areas of technical expertise related to expert analysis, studies, and technical consultations, through agreements based on required conditions. Recruitment in this domain is subject to regulations, which has led to this category not being covered by Presidential Decree 07-308. It is not explicitly mentioned, and it is expected that the legislator will regulate this category in a new regulatory text, as indicated in Article 25, paragraph 2 of Ordinance 06-03.

Third: Common Provisions for the Categories of the Contractual System

Several common provisions apply to the categories of the contractual system, the most important of which are:

1. The open-ended employment relationship is the general rule in the contractual system, pertaining to permanent positions. The fixed-term employment relationship is the exception, applicable in the following cases:
 - Filling a temporary vacancy.
 - Pending a recruitment competition.

- Recruiting for a position without an established corps.
 - Recruiting to perform temporary work. Recruitment methods are selection for fixed-term employment and testing for open-ended employment.
2. A contractual agent does not acquire the status of a public employee and is not integrated into the public service, as stipulated in Article 22 of Ordinance 06-03, unlike under Ordinance 66-133.
 3. The deadline for assuming a position in the contractual system is 15 days, after which the position is forfeited, according to Article 19 of the Ministerial Order of April 7, 2008.
 4. The probationary period for a contractual agent is six (06) months for open-ended contracts, and between one (01) and two (02) months for fixed-term contracts, depending on whether the contract duration is less or more than a year, as stipulated in Article 21 of Presidential Decree 07-308.
 5. An administrative inquiry is mandatory for guard and prevention agent positions. For other positions in the contractual system, the inquiry is at the discretion of the employing administration, as stated in Article 22 of Presidential Decree 07-308.
 6. Positions with specialized activities are subject to the reference grid for salaries specified in Article 14 of Presidential Decree 07-308, while other positions in the contractual system are subject to the salary grid established by Presidential Decree 07-304.
 7. The obligation to not hold dual employment, work at night, or perform overtime applies only to the full-time contractual system and legal working hours, according to Articles 7 and 12 of Presidential Decree 07-308.

The employment of foreigners is regulated by Law No. 81-10 of July 11, 1981, and Decree No. 86-276 of November 11, 1986, as amended and supplemented by Executive Decree No. 04-315 of October 2, 2004, in addition to international agreements.

It should be noted that the employment of foreigners is subject to its own specific law, as mentioned above, in accordance with Article 76 of Presidential Decree No. 07-308. The scope and domains of application for the employment of foreigners are defined, along with the fundamental principles associated with this type of employment.

In summary, the employment of foreigners is an exceptional recruitment process for a temporary period through fixed-term contracts in specific fields, according to legally defined principles and conditions.

Chapter III: The Legal Instrument of the Legal Relationship and its Oversight

The contractual relationship is implemented through legal instruments, namely the employment contract, which is subject to legal oversight by competent bodies. These points are addressed in the following sections.

To understand the legal instrument for contracting, the following can be considered:

First: Definition and Characteristics

A. Terminological Meanings

B. In legal scholarship, the employment contract is variously referred to as public service contract, employment contract, recruitment contract, functional contract, service lease contract, agency contract, and public law contract.

C. Definition:

Moving beyond the doctrinal debate, the scholarly definition of the employment contract can be based on the opinion of Dr. Majed Ragheb El-Helw as follows: "An agreement between the administration and an individual whereby the latter undertakes, under its supervision, a specific public function, from which he obtains a number of rights, the most important of which is the salary, in return for his commitment to the burdens and requirements of this function."

The scholarly terminological meaning of the public service contract can also be defined as: One of the administrative contracts entered into between the public administration and a contractual agent for the performance of a functional task within a subordinate relationship in exchange for a salary determined by the basic statutes of the contractual system.

B. Characteristics:

From these doctrinal definitions, the public service contract may be characterized by the following features:

1. The effect of the contract is primarily confined to the parties of the relationship, unlike the statutory relationship.
2. The temporary nature of the contract does not foster loyalty to the position, especially in temporary work or for open-ended contracts, unlike the statutory relationship.
3. The administrative employment contract may grant the contractor participation in public authority based on delegation or the nature of the position, in pursuit of the public interest, which highlights the privileges of the public facility.
4. It is a legal act of an consensual nature, meaning a legal act involving more than one party for its issuance, unlike an administrative decision, which is a unilateral act.

Second: Characterization of the Public Service Contract

The characterization of the public service contract has evolved in legal scholarship from a civil contract and a contract of adhesion to being considered an administrative contract. This characterization has been settled in jurisprudence, judiciary, and legislation in comparative systems. However, some scholars, including Dr. Zohdi Yakan, argue that the status of an employee through a contract is not purely contractual but has a mixed status, meaning the public service contract has a composite nature, combining both contractual and regulatory aspects.

In Algeria, the public service contract has been regulated by the legislator through three main legal texts:

- Ordinance No. 06-03, the General Basic Law of the Public Service, especially Articles 19-25.
- Presidential Decree No. 07-308 concerning contractual agents.
- Executive Decree No. 86-276 concerning foreign employees.

It is noteworthy that the Algerian legislator was explicit in using the term "contractual agent" for all categories of Algerian contractors, while foreigners were termed "foreign employees." This contrasts with some scholarly works that use the term "contractual public employee," which might align with contracting for specialized activities mentioned in Article 19 of Ordinance 06-03 due to the permanence of the position and the possibility of an open-ended contract.

The contractual system is subject to oversight by competent authorities, particularly with respect to recruitment procedures, the main oversight mechanisms are:

First: Oversight by the Financial Controller

According to Executive Decree No. 92-414, as amended and supplemented, the oversight of the Financial Controller is limited to the public administration subject to the public service law. A recent development in this area is that municipalities are now subject to the Financial Controller's oversight for all their financial commitments, including recruitment through contracting, in accordance with Executive Decree No. 09-374 of November 16, 2009.

The financial control process concludes with either granting an endorsement (visa), a temporary refusal, or a final refusal, according to legally required procedures. A refusal memo must be justified and reasoned, noting that a temporary refusal can be rectified if documents or certain details are missing.

Second: Oversight by the Public Service Authority

The Public Service Authority, through its central and external services, is responsible for overseeing the recruitment process under the contractual system through ex-post control, in line with the new public service reform introduced by Executive Decree No. 95-126.

To ensure legality, the oversight of the Public Service Authority is conducted within the public administration as defined in Article 2 of the Public Service Law (Ordinance No. 06-03). The scope of this oversight pertains to the following procedural operations:

- Providing an opinion of conformity on the decision to open a recruitment process, according to Article 5 of the Ministerial Order of April 7, 2008.
- Validating the records of selection or the final results of the professional test within 8 days of their signing, as stated in Articles 9 and 15 of the aforementioned Ministerial Order.
- Mandatory notification of a copy of the employment contract within a maximum of 10 days from the date of signing, as per Article 20 of the same Ministerial Order.

Part II: The Contractual Relationship between Legislation and Judiciary

The importance of the contractual relationship necessitates studying the Algerian legislator's stance on it (Chapter I), as well as examining this relationship according to judicial rulings and decisions (Chapter II). Finally, the influence and interaction between the contractual and statutory relationships will be clarified (Chapter III).

Chapter I: The Contractual Relationship in Algerian Legislation

The Algerian legislator addressed the contractual relationship first during the single-party system period and second during the pluralist period after the 1989 Constitution. These aspects are discussed in the following sections.

The contractual relationship addressed by the legislator during the single-party period, associated with a socialist economic system, was regulated through several legal texts, the most important of which are:

- Ordinance 66-133, especially Articles 3 and 74, and the implementation of Decree 66-136 of June 2, 1966, concerning the rules applicable to contractual and temporary agents.
- Law 78-12, the General Basic Law of the Worker, especially Articles 50 and 53.
- Law 82-06 of February 27, 1982, concerning individual labor relations, especially Articles 7, 26, 27, and 34.
- Decree 85-59, the Model Basic Statute for Workers of Public Institutions and Administrations, especially Articles 6 and 143.

It is clear from these legal texts that temporary recruitment included several categories of public agents:

- Temporary agents.
- Seasonal agents.
- Technical advisor agents.

The change in Algeria's constitutional system with the 1989 Constitution influenced the legislator's stance, which was marked by a liberal ideology shaping political and economic thought, unlike the previous system. The legislator's position is evident in several legal texts issued during this period, including:

- Ordinance 06-03, Articles 19-25.
- Executive Decree No. 04-315 concerning foreign employees.
- Presidential Decree 07-308 concerning the new contractual system.
- Ministerial Order of April 7, 2008, on the organization and recruitment of contractual agents.
- Instruction No. 10 of January 14, 2008, on the application of the new classification system for contractual agents and the payment of their salaries.
- Instruction No. 07/K.KH/M.A.W.A./2009 of February 8, 2009, on the utilization of financial positions allocated to contractual agents.

Several new aspects related to the contractual relationship can be deduced from these texts, summarized as follows:

- Unification of the legal systems for temporary employment into a single framework called the contractual system.
- Consolidation of the contractual system by prohibiting integration into the public service system, meaning that contractors do not acquire the status of public employees, unlike in the previous system.
- The management of personnel with specialized activities is characterized by flexibility and a margin of discretion through the contractual system, which may involve open-ended contracts depending on the existence of a joint ministerial order.
- Creation of new specializations classified and included within the contractual system as part of modernizing the administration and developing human resources.

Chapter II: The Contractual Relationship According to Administrative Court Rulings

The contractual relationship has been the subject of judicial application by the administrative judiciary in Algeria through various types of cases that have included several judicial interpretations.

Most administrative judicial disputes related to the contractual relationship present procedural issues in the submitted petitions, such as the absence of the contested decision regarding the termination of the employment contract, the legal deadlines for filing an administrative lawsuit, and the administrative judicial jurisdiction, which has been frequently raised, especially for contractual agents who lack the status of public employees.

Some cases handled by the administrative judiciary in the context of the contractual relationship are mentioned below, by way of example:

1. Administrative Actions Require Respect for Legal Deadlines

A case concerning the termination of an open-ended employment contract by the employing administration was dismissed on procedural grounds for failure to respect the legal deadline of four months, as per Article 829 of the Code of Civil and Administrative Procedure No. 08-09. The plaintiff's claim was limited to reinstatement without specifying the contract termination decision and without respecting the time limit. Although he had certain knowledge of his dismissal, he did not act until 11 months later. This was an administrative action for annulment concerning the contract termination decision. This occurred in a case of termination of an open-ended contract by the Wilaya of Ouargla, in a judgment issued by the Administrative Court of Ouargla on November 30, 2012, under No. 15/00418, upheld by a decision of the Council of State, which dismissed the lawsuit on procedural grounds for non-compliance with the legal deadlines for an action for annulment, meaning the action was time-barred. This ground is a matter of public policy and can be raised by any party at any stage of the proceedings.

2. Labor Disputes in Public Bodies and Administrations fall under the Jurisdiction of the Administrative Judiciary

Embodying the dual judicial system established by the 1996 Constitution and confirmed by the 2016 Constitution, and in accordance with Organic Law No. 98-01, as amended and supplemented by Organic Law No. 11-13 and Law 98-02, the issue of lack of subject-matter jurisdiction may arise in labor cases where a contractual agent is employed by a public administration. This occurred in the case of *Driss Gouider v. the Directorate of Education of the Wilaya of Tissemsilt* on May 3, 2009. Some scholars attribute this issue to a poor translation of Article 7 bis of Law 90-23 of August 18, 1990.

3. A Person Cannot Benefit from Compensation for Harm They Caused

A contractual agent whose contract is terminated by the employing administration cannot claim compensation for the harm suffered from the termination before its specified term if

it is proven that the termination resulted from the contractor's breach of one of his obligations, such as misconduct. This applies the well-known principle that a person cannot benefit from a fault they committed, meaning the harm was caused by the injured party. This was the ruling in a judgment issued by the Administrative Court of Tébessa, upheld by a decision of the Second Chamber of the Council of State on April 9, 2014, under No. 001205, which involved a contract termination without compensation due to the absence of administrative abuse of power.

4. Illegality of a Dismissal Decision during Annual or Sick Leave

The administrative judiciary has addressed cases concerning the illegality of decisions taken against public agents, even if they are contractual. This includes the illegality of dismissal or termination during annual or sick leave, as such a decision contradicts the legally established purpose of the leave. In this situation, a disciplinary measure cannot be taken against a contractual agent until after they return to work. This rule has been established by the judiciary and is considered a legal disciplinary guarantee protecting public agents from the abuse of power by the employing administration. This was affirmed by a decision of the Second Chamber of the Council of State on April 20, 2013, under No. 009898.

Chapter III: The Influence of the Statutory Relationship on the Contractual Relationship

The evolution of legal systems has led to a duality in the functional employment relationship, resulting from the points of convergence and similarity between the two types of employment relationships, despite their differences. These aspects are studied in the following sections.

The public service system has come to rely on a dual system for the employment bond. The legislator primarily relied on the statutory relationship, which ensures stability and guarantees the continuity of public service, as well as protecting the rights and privileges of public employees. This system has been adopted by all recruitment legislations, following the model of major international systems, but with a flexible approach depending on the nature and specificity of the position and the conditions of work performance, which may be for a fixed duration. In this context, the temporary nature of the employment relationship, i.e., the contractual system, has been recognized as an additional, exceptional method to be used when necessary for managing public facilities.

This flexible approach shows that the statutory regulatory relationship, despite its primary nature, is not complete without the application of the contractual relationship. This is required by the desire for economic development and growth.

Despite coexistence and convergence, differences distinguish the statutory and contractual relationships. Therefore, it is necessary to identify the points of difference as well as the points of agreement, which are studied below.

First: Points of Difference

The statutory regulatory employment relationship differs from the contractual relationship in several points, mentioned in the following aspects:

- The statutory employment relationship concerns permanent recruitment to ensure the continuity of the public facility, whereas the contractual employment relationship concerns temporary recruitment, regardless of whether the position is permanent or temporary.
- The statutory employment relationship is the general rule in recruitment, while the contractual employment relationship is the exceptional rule, resorted to out of necessity.
- The statutory relationship establishes the administration's liability for the actions of its employees based on service-related fault or the idea of combined liability, with the contractual agent's fault being personal fault.
- The statutory relationship leads to the employee being considered a public employee, whereas the contractual relationship does not confer the status of a public employee on the contractual agent, nor are they integrated into the public service.
- The statutory relationship entails a commitment to civil service, whereas the contractual relationship does not.
- The statutory relationship is implemented through administrative decisions or decrees, while the contractual relationship's instrument of implementation is the administrative contract.

Second: Points of Agreement

As a result of the evolution and change in laws, the contractual relationship has been influenced by the statutory relationship. This is rooted in the state's legal organization philosophy and its approach to handling legal situations, based on the experience gained by the Algerian legislator from changes in the constitutional and governance systems throughout the country's historical phases. These developments have led to the influence of the statutory relationship on the contractual relationship through points of agreement that appear in several common aspects, the most important of which are:

1. Contractual relationships are established through contracts in pre-prepared template documents according to circulars or administrative decisions.
2. Both are subject to the General Basic Law of the Public Service as the general legal source of the employment system.
3. Both the contractual and statutory relationships are subject to the provisions of hierarchical authority because they are characterized by a subordinate legal relationship.

4. Both are subject to modification and changes in legal statuses and positions without the ability to claim acquired rights.
5. Both share the source of the legal act that produces the legal effect.
6. Both are subject to the legal oversight apparatus through the control of the Public Service Authority and the Financial Controller.

It is clear from the above that there is a convergence, coexistence, and similarity between the statutory and contractual relationships, with a common denominator in both formal and substantive aspects.

Conclusion

In conclusion, the contractual relationship in the public service system confirms that the contractual system is an exceptional procedure resorted to out of necessity. It has been regulated according to new legislation issued by Presidential Decree No. 07-308, implementing Articles 19-25 of Ordinance No. 06-03. Contractors have been classified into four categories that share in contributing to the management of public facilities and the requirement of national citizenship.

The contractual system also includes another aspect, which is foreign employees, who are subject to special legal texts as stated in Article 76 of the aforementioned Presidential Decree 07-308. Among the most important legal texts organizing foreign recruitment is Decree No. 86-276, as amended and supplemented by Executive Decree No. 04-315.

It is noted that the contractual system differs from the previous system before the 1989 Constitution in many aspects. The legislator has worked to unify all patterns of temporary recruitment and has stipulated non-integration into the public service system, thereby consolidating the contractual system to be a complementary approach to the statutory relationship system. However, the difference between the contractual and statutory relationships is clear on several points. Yet, the prominent feature in this context is the convergence, combination, and coexistence between the two types of employment relationships, due to the needs of managing public facilities.

What underscores the importance of the contractual relationship is that the Algerian legislator has subjected this relationship to the oversight of competent bodies for financial control and the Public Service Authority, in addition to its subjection to the review of the administrative judiciary, as the characterization of the public service contract has become that of an administrative contract. The application of this characterization has appeared in the judgments and decisions of administrative courts and the Council of State.

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- The term "substitution" (*istikhlaf*) has been used in many legal texts, including Article 27 of the Individual Labor Relations Law No. 82-06 of 27/02/1982, Official Gazette No. 09 of 02/03/1982. The term "substitution" corresponds to the term "filling a vacancy" (*pourvoir*), which is mentioned in Article 20, paragraph 4 of Ordinance 06-03, and also in Article 4 of Presidential Decree 07-308. I believe that the term "substitution" is more appropriate in the context of contracting because it is temporary.
- The Algerian legislator considered the open-ended employment relationship as the general rule, through the legal provisions contained in Article 50 of Law 78-12 of 05/08/1978, concerning the General Basic Law for Workers, Official Gazette No. 32 of 08/08/1978; Article 7 of Law 82-06 (op. cit.); Articles 19 and 25 of Ordinance 06-03 (op. cit.); and Article 3 of Presidential Decree 07-308 (op. cit.).
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