Lease-by-delegation Technique, a Method for Managing Local Public Services, in light of the Provisions of the Executive Decree no. 18/199 bearing Delegation of Public Services: Foundations and Procedures

تقنية التفويض بالإيجار كأسلوب لتسيير المرفق العام المحلي على ضوء أحكام المرسوم التنفيذي رقم 199/18 المتضمن تفويض المرفق العام: الأسس والإجراءات

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Abstract:

This research paper tackled the Algerian state's endeavours to modernise its services, by establishing the delegation technique as a modern method of administration and management. Thanks to it, the private sector can participate in the management of public services affiliated with the state and regional communities, through various forms of contracts. The study highlighted a type of delegation, i.e. the lease contract, where all its legal controls were covered, especially at the local level, by identifying the conceptual and legal framework of the lease-by-delegation contract and its specificities. The methods and procedures for concluding it were also addressed, in accordance with the Executive Decree No. 18/199.

Keywords : the delegation،regional communities،Lease-by-delegation contract، local public services.

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Introduction:

Given the inability of public entities to directly manage all public services due to the management irregularities observed in this area, which have resulted in a decline in the quality of services provided and consequently appurtenant dissatisfaction, it has become necessary today to resort to introducing fundamental changes to management systems.

Accordingly, these new transformations in the state have forced it to rely on new technologies in managing its services in order to achieve greater returns and thus provide the opportunity for services to achieve development and improve their quality. Most legislation has adopted the delegation technique, which is considered a novelty thanks to jurisprudential and judicial efforts, establishing the legal frameworks for its implementation.

With the prominent role of delegation technique in eliminating the phenomenon of financial drain while improving the level of public service, the need to apply it at the local level has increased, as regional communities are suffering from heterogeneity in their financial resources and the burdens assigned to them. The experience that local administration has gone through in the process of managing public services using classical methods clearly highlights the latter's inability to achieve the desired goals, which are primarily related to realising sustainable development.

At the local level, the delegation technique was established as a strategic option, and several categories of reforms were implemented. In this way, the financial drain and the problem of the low level of local public service can be eliminated, thus advancing sustainable development.

As local services witness poor public service and developmental problems, the legislator is always looking for mechanisms to support them as the basis of administrative organisation. In fact, the delegation technique touched on local services in order to improve their performance and profitability. Accordingly, Executive Decree No. 18/199 granted local communities methods to conclude delegation contracts in various fields, thus providing options for selecting the best managers. Based on the above, the following question is raised:

To what extent has the Algerian legislator encompassed the legal aspects of concluding a delegation contract as one of the methods of managing public services at the local level?

To address this problem, the study was structured according to the following plan:

Firstly: The extent of adopting the lease-by-delegation technique in the local service.

secendly: Procedural controls for concluding a lease-by-delegation contract for a local service.

Firstly: The extent of adopting the lease-by-delegation technique in the local service

Keeping pace with development and attempting institutional reform related directly to the public services themselves and the methods of managing them in particular, the role of the private sector appears. This is to move from regulatory decisions with a dual relationship between management and citizens to a more complex one, that is, a three-dimensional relationship: management.-properties - citizen[1].

This applies to the delegation contract as a method of managing public services, leading to freeing the administration from the restrictions and complexity of direct management.[2] This is adopted by the Algerian legislator, especially at the level of local communities within the municipal and provincial laws.

The latter resorted to working with a lease contract for their services, in order to manage them since the first years of its establishment, to make the local service successful and thus improve the provision of public service on the one hand, and the image of the service satisfying appurtenants on the other hand. The delegation contract is also among the guarantees that motivate building a strong partnership between the public and private sectors through the delegation technique in various fields, except for the stipulations of the law[3].

The Algerian legislator has highlighted the distinct nature and significance of the lease contract as a means of managing local public services by addressing it separately in Article 54 of Executive Decree No. 18-199 concerning public service delegation. This article defines the lease as the arrangement through which the delegating authority entrusts the delegate with the management and maintenance of the public service, in return for annual royalties paid to the authority. The delegate operates on their own behalf, assumes all associated risks, and is subject to partial oversight by the delegating authority. In light of this, the unique features of the local public service lease contract in Algeria will be examined, focusing on its legal and jurisprudential definitions, its key characteristics, and the scope of its application within local community services.

1- Legal and legislative definition of the local service lease contract

The public service lease contract represents a model for the delegation of the public service, as it remained for a long time linked to the concession, but thanks to the efforts of jurisprudence and the legal trend, it is emerged and its application is spread, especially at the level of the base of administrative organisation (municipality and province).

-Jurisprudential definition of a lease-by-delegation contract

Professor “Boiteau” defined the public service lease as a contract through which a public entity entrusts another party—whether public or private—with the operation of a public service, while excluding the lessee from undertaking any investments. The lessee's revenue is generated through royalties paid by the beneficiaries, directly linked to the operation of the service.[4]

A lease is a contract in which a public entity (the lessor) grants another party (the lessee) the right to operate a public service for a defined period. The lessee is responsible for managing and operating the service using their own staff and financial resources, while the necessary utilities and equipment are provided. In return for delivering the service, the lessee receives a fee specified in the contract, which is paid by the beneficiaries through royalties. Additionally, the lessee may pay a fee to the legal entity to recover the initial costs of establishing the public service.[5]

It is also defined as a contract by which a public body delegates another person, whether public or private, to exploit a public service, excluding the lessor from making investments. The return comes from royalties paid by the appurtenants directly related to the exploitation of the service.6.

- Legislative definition of the lease-by-delegation contract

After initial hesitation, the Algerian legislator eventually took steps to explicitly recognize the delegation of public services—an approach both traditional and modern—for managing such services, particularly at the local level. Previously, the legislator had acknowledged the principles outlined in Instruction No. 94.03/842 issued by the Ministry of the Interior and Local Communities, which addressed the concession of local public services. In this context, the lease was defined as: "a contract through which a public entity authorizes another party to manage a public service, ensuring its operation under the latter's responsibility, in exchange for rent paid by the lessee to the lessor."[7] It is noteworthy that the importance and content of the ministerial instruction, establishing a complete system for concessions and lease, has not been regulated by any law before.[8]

However, according to Municipal Law 11/10 dated June 22, 2011, the legislator never included the lease contract, although the instruction preceded the issuance of the law and was explicit regarding the adoption of the lease contract. This raises a question in this regard and it would have been more appropriate for the Algerian legislator to address this issue within the texts of the new law.

While the two aforementioned laws clearly endorsed the delegation method, they also preserved traditional management approaches—specifically direct management and concession—by referring to both "concession and delegation of public services." In this framework, the legislator distinguished delegation as an independent method, as stated in Article 156: "The municipality may delegate the management of public interests mentioned in Article 149 above through a program contract or a performance-based agreement, in accordance with the applicable laws and regulations." However, this approach was not extended to the provincial level. Instead, the Algerian legislator confined the management of provincial public services to the conventional methods of direct management and concession.

Although the legislator relied on the delegation technique at the local level, it is the real approval of the local service lease contract according to the Presidential Decree N: 15/247 in accordance with the provisions of Article 210, defining the lease contract for the public service as: "A contract of commitment by the delegated

authority to the authorised to manage and maintain a public service with its funds, in exchange for annual royalties paid to it. The authorised undertakes to manage and maintain the service in his name, with his funds, and under his responsibility in exchange for specific royalties that he collects from users of the public service."[9]

Executive Decree No. 18/199 of August 2, 2018, concerning the delegation of public services, defines delegation in the form of a lease under Article 54/01 as follows: it is a form in which the delegating authority entrusts the authorized party with the management and maintenance of a public service, in return for annual royalties paid to the authority. The authorized party operates in their own name, assumes all associated risks, and is subject to partial oversight by the delegating authority.[10]

Based on the previous definitions, the public service lease contract can have a set of characteristics that distinguish it from other contract forms, which are as follows:

-The public entity is responsible for covering the costs of establishing the essential infrastructure and services that are the subject of the contract. Therefore, the public service lease agreement primarily focuses on the maintenance and management of the local public service. The lessee, or the authorised party, is not responsible for creating or installing the foundational elements of the service, as the public entity hands over a fully operational service. The lessee is then tasked with managing and operating it. Regarding the costs of expanding or upgrading the service, these are generally borne by the lessor. However, the contract may include provisions that allow these costs to be shared between both parties, based on mechanisms outlined in the specifications.

As for the parties involved in a public service lease contract, it is primarily concluded between the delegating authority—the owner of the service—acting on behalf of the legal public entity responsible for the service (such as local authorities or related administrative institutions), and the authorised party, who assumes responsibility for leasing, managing, and maintaining the public service.

It is worth mentioning that Presidential Decree No. 15/247 does not specify whether the authorised party must come from the private sector, such as an individual or a company, or the public sector, while the Executive Decree No. 18/199 equates the public and private sectors.

- **Financial compensation**: Under the public service lease contract, the authorised party is required to pay an annual royalty, as stipulated by Presidential Decree No. 15-247 and Executive Decree No. 18-199. This payment is made in exchange for the right to use the public service facilities, the establishment and related costs of which have been borne by the delegating authority.

In return, the authorised receives a fee for collecting royalties from users of the public service. According to Article 48 of the Executive Decree the delegating authority undertakes the fee for the delegation in all its forms. It is considered an

organisational clause in the contract that the administration establishes by its sole will, not a contractual one.

-Term of the public service lease contract: Given that the lessee's financial contributions under a public service lease contract are limited to covering operational and maintenance expenses—without bearing the initial costs of establishing the public service—the duration of such contracts was initially designed to be relatively short. A ministerial instruction had originally set the maximum term for these contracts at 12 years, reflecting the limited investment burden placed on the lessee. However, this approach evolved with the issuance of Executive Decree No. 18-199, which, in accordance with Article 54, paragraph four, extended the maximum allowable duration of a lease-by-delegation contract to 15 years.

This adjustment acknowledges the practical need for longer terms to ensure continuity and efficiency in service management. Furthermore, the decree provides for the possibility of a one-time extension of the contract period. Such an extension may be granted at the request of the delegating authority, but only on the basis of a substantiated and reasoned report. This report must justify the need for additional time to complete certain material investments that were not originally included in the contract. Even in such cases, the extension is strictly limited and may not exceed a maximum of three additional years.[11]

It is noteworthy in this regard that the lease term is rather long, and the legislator's intention in extending the terms is as if he is implicitly relinquishing the management of the service. It would have been more appropriate for him to shorten the term so that the lease contract could be updated, since the price is linked to economic changes and thus achieves more funding resources.

2- Scope of application of the local service lease contract

In recent years, the lease of public services has experienced notable growth and evolution, particularly when compared to traditional concession arrangements. This trend is especially evident in countries like France, where leases have been increasingly utilized across various sectors, including tourism, entertainment, and cultural services. Public authorities, seeking more cost-effective and flexible management solutions, have turned to lease contracts as a means of operating a wide range of public services—particularly those of a cultural, social, or community-oriented nature. By doing so, they aim to reduce operational expenses while maintaining service quality and accessibility for citizens. However, the development of public service leases in Algeria has followed a different trajectory. For many years, this contractual form remained relatively underutilized and lacked a clear legal framework, especially when compared to the more widely adopted concession model. It was not until the issuance of the 1994 instruction by the Minister of the Interior that the lease of public services began to receive formal recognition and attention. This instruction represented a significant turning point, as it provided a legal and administrative distinction between lease contracts and concessions. By clearly delineating the lease as a separate and valid method for managing public services, the

instruction laid the groundwork for its broader application and helped to define its scope within the Algerian legal and institutional context.

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- **Persons authorised to conclude a lease-by-delegation contract**

As mentioned above, this represents an approval of the delegation of public services, where the management and operation of these services are entrusted to individuals or entities under private law to serve the public interest. In accordance with municipal and provincial laws, authorities are empowered to delegate the management and operation of public services to private entities, thereby allowing them to handle these services on behalf of the public.

However, by referring to Article 1 of the Executive Decree the delegation of public services, it limited determining the methods for delegating public services to local regional communities alone.

Furthermore, according to Article 4 of the aforementioned Executive Decree, regional communities and the administrative institutions affiliated with them, which are responsible for a public service and referred to as the "delegating authority," have the right to delegate the management of that public service to a public or private legal entity subject to Algerian law. This entity, referred to in the text as the "authorised person," assumes responsibility through a delegation contract.[12]

Here, the Algerian legislator approved explicitly through the executive decree that the application of delegation contracts is specific to local communities alone.

- Missions subject to a lease contract under the local communities law

This section will discuss the responsibilities that provinces and municipalities undertake when implementing the lease-by-delegation contract. Referring to Article 149 of Law No. K 11/10, dated June 22, 2011, the lease model can be applied to various missions, including:

- Covered markets, open markets, and public scales
- Parks and parking lots
- Green spaces
- Municipal slaughterhouses
- Leasing of cultural and sports spaces
- Transportation services

However, according to provincial law and Article 141 of Law No. 12/07, dated February 21, 2012, which pertains to municipal law, this scope is limited to transportation and green spaces only.

This approach reflects the Algerian legislator's ongoing commitment to strengthening the administrative framework at the municipal level, which is the government tier closest to the citizens. By granting municipalities the authority to manage their own services and assets, the legislator aims to enable them to generate their own revenue, thus fostering local development

Secendly: Procedural controls for concluding a lease-by-delegation contract for a local service

The lease of a local public service has been given sufficient attention by the Algerian legislator, compared to the concession contract, and later to the instruction No. 842/3.94 bearing the concession and leasing of public services, which outlined a set of developmental objectives to restore the reputation of the local public service, imposing within the texts to be implemented again by activating the mechanism of concession and leasing as two effective methods in managing the local public service. Yet, the legal framework for this type of contract was not very successful, as its absence is almost completely legally organised, whether in the previous provincial law No. 90-09 or the current law No. 11-10. The same method is also in the provincial law No. 12-07. The question to be raised here: Is the public service lease contract regulated in the form of Ministerial Instruction sufficient to achieve its intended objectives? If so, is it free from any defects that could affect a local public service?

It appears that the Algerian legislator has addressed a legislative gap regarding the lease contract as a method for managing local public services through the issuance of Executive Decree No. 15-247 on public procurement and public service delegation. In this context, Article 210 introduces the lease contract, under which the delegating authority assigns the management and maintenance of a public service to the authorized party in exchange for an annual royalty paid to the authority. The authorized party operates independently and assumes full responsibility, while the delegating authority remains responsible for financing the establishment of the public service. The authorized party recoups their fee by collecting royalties from the service users.

Within this framework, the Algerian legislator emphasized the distinct nature and importance of the lease contract as a means of managing local public services by explicitly addressing it in Article 54 of Executive Decree mentioned above, which governs public service delegation. The decree outlines the methods and procedures for concluding such contracts, applying them to all forms of public service delegation. The legislator established a special legal regime for public service delegation contracts, inspired in part by the French legal system, but adapted to fit the specific characteristics and context of public services in Algeria.

1- Methods of concluding a lease contract by delegation

- Public service delegation contracts in Algeria are, as a general rule, concluded through the call for tender process. This method ensures a competitive selection of service providers based on public bidding. However, in situations where the delegating authority deems the call for tender process to be futile—meaning no suitable or qualified bids were received, or the bidding process was unsuccessful, as defined in Executive Decree No. 18/199—the contract may be concluded through mutual consent between the delegating authority and the selected service provider. This mutual consent method is considered an exception to the standard procedure of

open tendering, allowing for flexibility in cases where a competitive bidding process does not yield viable result.

- **Call for tender:**The call for tender is a procedure aimed at obtaining the best offer by placing several operators in competition with the aim of ensuring equal treatment, transparency and impartiality in the decisions taken, while granting the delegation of the public service to the candidate who submits the best offer, which is the one who provides the best professional, technical and financial guarantees according to the evaluation scale specified in the specifications.[13]

In accordance with the provisions of Article 12 of the Executive Decree, the call for tender process is conducted in two stages. The first stage involves the preliminary selection of candidates based on their nomination files. The documents included in the nomination file, as outlined in the first part of the specifications booklet titled "Nomination File Booklet," must be displayed on the tender announcement board. These documents will be used to assess the candidates according to specific selection criteria, particularly regarding their professional, technical, and financial capabilities. The second stage consists of inviting the candidates who were selected in the first stage to collect the "Bid Booklet," which contains the administrative, technical, and financial terms of the tende.

- **Cases of futility :**After announcing the call for tender to conclude the delegation contract in general and the lease contract in particular, the delegating authority may not submit any offer or submit only one offer or receive offers that do not conform to the specifications. Here, the law obliges the delegating authority to declare the futility of the call for tender and to re-conduct it for the second time before resorting to concluding the contract in accordance with the consent procedure. The cases can be highlighted as follows[14]:

- In the first stage: If, after the call for tender is made for the first time, no offer is received, one offer is received, or no offer complies with the the specifications.

- In the second stage: If, after the call for tender, no offer is received, no offer is in compliance with the specifications, and when an offer received after the call for tender for the second time, it is in conformity with the specifications, then the procedures are carried on.

- Mutual consent: The conclusion of a delegation contract in accordance with the consent procedure is an exception to the general rule of the call for tender. This is a procedure that aims to grant the delegation to a single operator without resorting to tender. The consent may take the form of consent after consultation or simple consent.

- **Consent after consultation**: Article 17 of the aforementioned Executive Decree defines the delegation of public services as a procedure through which the delegating authority selects an authorized party from at least three qualified candidates.

- The authorized party to undertake the consent process will be chosen after consulting the candidates in the following manner: Among the qualified candidates

who participated in the initial call for tender before it was declared futile for the second time, or from a list prepared by the delegating authority, provided that their financial and professional capabilities are verified and deemed sufficient to manage the service in question. This process applies to services that do not require a call for tender, and these services are determined by a joint decision between the Minister in charge of local communities and the Minister of Finance.

-Simple consent: According to Article 18 of Executive Decree No. 18/199 on public service delegations, the procedure involves the delegating authority selecting a qualified authorized party to manage a public service after thoroughly evaluating their financial, professional, and technical capabilities. The use of a simple contract is reserved for very specific cases, such as when the service can only be offered by a single candidate holding a monopolistic position, or in urgent situations that require immediate action as follows:

- When the public service delegation contract is in effect and is subject to a termination procedure
- Impossibility of ensuring continuity of the public service by the authorised person
- The authorised refused to sign the amendment bearing the extension of deadlines. In all cases, the delegating authority must take all necessary measures to ensure the continuity of the operation of the public service

It is noteworthy that the legislator has set the frameworks and controls that must be respected by the delegating authority within the framework of the simple consent procedure.

2- Mechanisms for concluding a lease-by-delegation contract

The modern approach to structuring public service delegation contracts has established a set of principles and guidelines that must be observed when selecting the authorised party, to ensure both a sound selection process and effective implementation. As a result, the lease contract must undergo several procedures and stages before reaching its final form, known as the "lease contrac."

- Preliminary stages of concluding a lease contract: The delegating body, in concluding the delegation contract, is committed to respecting a set of procedures that ensure transparency and equality among the bidders, with the aim of selecting the authorised. After adopting the aforementioned contractual forms, the latter resorts, in accordance with the provisions of Article 13 of the Executive Decree No. 18/199 in its last paragraph, to preparing a list of offers arranged according to objective criteria, and summoning qualified candidates, which is the preliminary stage for concluding the delegation contract.

-The stage of selecting candidates: Following the preliminary announcement, the call for tender, and the submission of nomination files, the Envelope Opening and Bid Evaluation Committee—established in accordance with Article 75 of the aforementioned Executive Decree—carries out the initial envelope opening in a

public session. During this session, all submitted documents are recorded in line with the requirements outlined in the first part of the specifications.

The following day, the Bid Evaluation and Selection Committee meets in a closed session to review and assess the nomination files. This assessment is conducted based on the qualification criteria defined in the first part of the specifications and those outlined in the call for tender. Upon completion of the evaluation, the committee compiles a list of candidates who meet the required qualifications and are accepted for the next stage of the process.

Once the committee has reviewed the bids submitted by the accepted candidates, it proceeds to evaluate them based on the scoring scale outlined in the specifications. Following this evaluation, the committee compiles a detailed list ranking the offers according to the scores each candidate has received.

However, it is important to note that the criteria used in this evaluation process often lack sufficient clarity and detail. This represents a shortcoming in the legal framework governing public service delegation contracts, as the Algerian legislator has not provided comprehensive guidance on the matter. This stands in contrast to the more structured approach found in the regulation of public procurement contracts—particularly Article 78 of Presidential Decree : 15/247 which clearly defines the criteria for selecting the contracting operator in public contracts.[15]

-The stage of inviting accepted candidates to submit their offers and negotiating with them: This is in the second part of the specifications, which is called the bid book. The delegating authority invites accepted and qualified candidates in writing by all appropriate means to withdraw the specifications and submit their offers according to the size and activity of the public service.

The committee is responsible for inviting each accepted and qualified candidate individually, in writing, to negotiate their submitted offer or offers. Following the negotiation process, the committee prepares a detailed report outlining the offers reviewed and presenting them in a ranked order based on their evaluation.

Subsequently, the committee recommends to the head of the delegating authority the president of the municipal council or the governor, depending on the case the candidate who submitted the most favorable offer. However, this recommendation is not binding, and the final decision rests solely with the official in charge of the delegating authority.

It is worth noting that the evaluation method outlined in Article 35 of the aforementioned Executive Decree has raised some concerns, as it introduces the potential for favoritism through the negotiation process. Article 35 specifically states that the Selection Committee shall invite the accepted and qualified candidate or candidates, each separately, to engage in negotiations, accompanied by a detailed list of the offers reviewed, which may open the door to subjectivity and a lack of transparency.

If the term "negotiation" implies the possibility of modifying the offer in a way that could impact competition, it would have been more appropriate for the Algerian

legislator to use terms such as "clarification," "inquiry," or "detail," as outlined in Article 80 of Presidential Decree No. 15/247 for exceptional cases. This is because the general principle is that there should be no negotiation with contractors during the tendering process.

- **Stage of granting and concluding the lease contract**

The announcement of results, negotiations, and granting of delegations are the final stages of the public service delegation contract process. The Executive Decree has given this stage great importance, as it demonstrates the transparency and integrity of the previous stages, which in turn reflects the optimal management of the public service by the person authorised to lease.

- **The stage of announcing the results**: The announcement of the results, the issuance of the provisional award decision, or the confirmation of the contract is the culmination of all the procedures that preceded the announcement and continued until the provisional winner was reached.

Article 41, paragraph 1, of Executive Decree No. 18/199 states that the official in charge of the delegating authority must issue the decision to award a temporary lease-by-delegation in accordance with Article 73 of Presidential Decree No. 15/247, which regulates Public Contracts and Public Service Delegations. This provision implies that the award may be canceled or withdrawn during the contract conclusion phase if it is considered to serve the public interest. Moreover, candidates have no right to claim compensation from the delegating authority in the event of such a decision.

During this stage, a candidate may object to the decision to grant or cancel, issued in accordance with Article 41 of the Executive mentioned above by filing an appeal with the Public Service Delegations Committee, as stipulated in Article 78 of the Decree, within 20 days from the date of publication.

The committee is required to review the appeal file and issue a decision within twenty days from the date the appeal is received. This decision must be reasoned and formally communicated to both the delegating authority and the appellant.

This raises the question of whether appeals can be lodged against decisions related to the temporary granting of public service delegation under both mutual consent procedures, or whether this right applies only to one of them. An analysis of the Executive Decree indicates that appeals are indeed allowed in the case of consent after consultation, as this procedure involves multiple candidates, thereby introducing a competitive element that justifies the right to contest the outcome.

In contrast, simple consent typically involves only a single candidate, often due to monopoly or urgency, which eliminates the possibility of competitionand consequently, the opportunity for appeal by other parties. Additionally, the decree requires the publication of the temporary granting decision in the case of consent after consultation, reinforcing transparency. However, this requirement does not apply to the simple consent procedure, further highlighting the differences between the two methods

. Actually, the legislator did not indicate this obligation to publish the decision to grant the temporary delegation of the public service in the case of simple consent.

- Approval of the public service lease-by-delegation contract: Completing all stages and procedures for concluding a public service delegation contract until the announcement of the temporary grant decision in accordance with Article 41 of the Executive mentioned above is not the final stage, as the most important final procedures must be undertaken, lying in defining and implementing this contract on the ground.

The delegating authority prepares the delegation contract in accordance with Article 48^{16} of the Executive Decree, bearing in particular the following information:

- Designation of the contracting parties, the identity, and capacity of the persons legally qualified to sign the contract
- The subject of the delegation is precisely the lease
- Nature of the conclusion
- Form of delegation
- Form of financial compensation
- Mechanisms for updating and reviewing it
- Determining payment cases and compensation calculation mechanisms...etc.

Also, in the event of resorting to sub-delegation or through handling, it must be specified in the contract.

The announcement of the temporary grant of the delegation shall also be published in accordance with the procedure for announcing the call for tender specified in the provisions of Article 25 of the aforementioned Executive Decree. The delegating authority may, if the candidate who benefits from the temporary grant of the delegation rejects it, choose the next candidate included in the list of offers recorded in the minutes of negotiations and evaluation of the offers.

It is noted in this regard that the legislator has unified the various forms and types of delegations, including the delegation of lease, and it would have been more appropriate to allocate procedures to each form of delegation according to the specificity of each delegation contract. The legislator also came up with the same methods and ways of concluding delegation contracts and public contracts, which is impossible as it is not a purchase of supplies or establishment of projects, but rather, management of services that is more dangerous as some of powers are transferred to individuals. Thus, the private sector will be facing citizens.

In light of the above, the leasing of local public services is considered one of the key methods that offers significant benefits to the state and the delegating local authorities. Under this arrangement, the local community is responsible for constructing and equipping the public service, but is fully relieved from the burden of operational costs, while retaining full ownership of the service. Additionally, the lease arrangement provides a source of revenue through the payments made by the authorised party to the delegating local authority. Moreover, leasing can enhance the

quality of the public service by leveraging the advanced technologies and expertise available in the private sector.

Conclusion:

The lease contract is one of the methods used to manage public services and is widely utilized in Algeria, particularly at the level of local communities, due to its simplicity and ease of procedure. It is essentially a contract for the delegation of a public service, where the delegating authority—comprising regional communities and public institutions of an administrative nature affiliated with them—entrusts an authorized party, whether a private or public entity, with the management and maintenance of a public service on its behalf and under its responsibility. In return, the authorized party collects fees from the service users and pays the delegating authority an annual royalty, since the delegating authority bore the initial construction costs of the public service. This method of investment is particularly attractive to the private sector, as it does not require large investments for establishing the public service, offering a significant advantage over other forms of delegation. Based on the above, the following results can be highlighted:

- The ambiguity of the legislator's position regarding the lease contract within the delegation contracts and its consideration as a new mechanism that allows the private sector to participate in the management of public services is evident from the municipal and provincial law, where the legislator made management through direct exploitation and the public institution the principle, and subject of the concession and delegation the exception, while there is no reference to the lease contract, which is inconsistent with the current executive decree, that explicitly states the lease-by-delegation contract. Therefore, it is necessary to amend the provisions related to the methods of managing the local service.

- In order to ensure proper management and optimal use of public services through the lease delegation technique, it is necessary to specify the basic needs that are included in the lease premise within the executive decree, which does not apply on the ground and came in general terms. It would have been more appropriate for the legislator to provide details form within a complete chapter.

- In many cases, the local public service is exposed to neglect its assets by the operating contractor. This may, therefore, lead to significant financial losses for the delegating local authority, especially when the public service is recovered after the expiry of the term or when it was subject to termination or recovery for reasons of public interest.

- This method has another drawback related to the social protection of workers in public services managed on a lease basis. This is because the contractor is not committed to employ the same previous workers. This could result in extremely serious social problems, particularly high unemployment rates.

Suggestions:

- Under the lease-by-delegation technique, it is preferable to give more opportunities to private law entities than to those subject to public law, as they are

more keen on better management and optimal exploitation in order to achieve greater profit.

- The Algerian legislator must establish a general and comprehensive legislative framework for the method of awarding public service delegation contracts through a law that rises to the level of legislation rather than regulation, given the state's focus on this technique and its importance to the national economy.
- Establishing an e-portal to process the conclusion of delegation contracts in general and delegation-by-lease in particular, to process concluding and implementing these contracts.
- The necessity of amending and including everything related to the method of delegation, especially the Anti-Corruption Law.

Margins:

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[5] Nadia Dharifi, Public Service Management and New Transformations, Dar Belqis, Algeria, 2010, p. 118.
[6] Ibid., p. 172.
[7] Instruction No. 94.03/842, bearing the concession and leasing of local public services, dated December 7, 1994, issued by the Minister of Home Office, p. 3.
[8] Nadia Dharifi, op.Cit, p. 147.
[9] Article 210 of the Presidential Decree No. 15/247, dated September 16, 2015, regulating public contracts and public service delegations, Official Gazette of the Algerian Republic, No. 50, issued on September 20, 2015.
[10] Article 54 of the Executive Decree No. 18/199, dated August 2, 2018, bearing the delegation of public services, Official Gazette of the People's Democratic Republic of Algeria, No. 48, issued on August 5, 2018.
[11] Article 54/04/05 of the Executive Decree, mentioned above.
[12] Article 04 of the Executive Decree, mentioned above.
[13] See Article 11 of the Executive Decree, mentioned above.
[14] See Article 15 of the Executive Decree, mentioned above.
[15] Sabrina Brarma, Transparency of Public Service Delegation Procedures as a Legal Guarantee to Fight Administrative Corruption in Accordance with the Provisions of the Executive Decree No. 18/199, Journal of Arts and Social Sciences, Volume 17, Issue 03, 2020, p. 363.
[16] Article 48 of the Executive Decree mentioned above.