



REFORMING THE LEGAL SYSTEM FOR PUBLIC SERVICE MANAGEMENT METHODS TO IMPROVE THE QUALITY OF PUBLIC SERVICE: "FROM TRADITIONAL MANAGEMENT TO PARTNERSHIP"

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Abstract:

Administrative activity is tangibly manifested through the public service, which is considered the fundamental aspect of state life, as it provides a public service to citizens. This service has become a priority for public authorities in Algeria, especially in light of the constitutional founder's interest in the public service and the quality of services, with the aim of strengthening citizens' relationship with state institutions.

However, improving the quality of public services provided by the public service depends on the methods developed by the public authorities to manage the public service, especially in light of the diversity of the state's function, in addition to the continuous expansion and development of citizens' needs. This required the establishment of a precise legal framework that enshrines modern methods of management that are in line with current circumstances, in an effort to ensure the quality of service that citizens expect from state institutions.

Keywords: administrative activity, public facility, public service, public institution, concession contract.

Introduction:

The public service is the positive aspect of administrative activity, through the many services provided by the state through the public service. Therefore, the essence of government activity in any country is embodied in the operation of public services. Perhaps what confirms the importance of the public service is that it is considered

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one of the theories that established the specificity of administrative law and on the basis of which the vocabulary of this law was built. For a long time, it remained the axis on which administrative law theories revolved, and within which the jurisdiction of the administrative judiciary to consider administrative disputes was determined (Toumi, 2015, p. 101)

Therefore, administrative law, in the view of the public utility school, is the law of public utilities. The jurist Bonnard defined administrative law as the law of public utilities, on the basis that the state is an integrated group of public utilities organized and supervised by rulers. The jurist Rollon also confirmed that administrative activity is manifested in a tangible way through the public utility, which in his view is considered the only aspect of the life of the state.

It is worth noting that jurisprudence has not been able to define a precise definition of a public service. It is characterized either by its organization (organic meaning) or by its subject (functional meaning). Therefore, it is defined as an institution that serves the public interest and meets the collective needs of citizens, under the supervision of the administration. It is also defined as any activity of public bodies that aims to satisfy public needs. In this context, we find that jurisprudence has focused on the activity of the public service. Which consists of meeting public benefit needs, by providing services to individuals, whether through a public body or under its supervision, and these services may be material (supply of gas, water, electricity, transportation services...) Or moral (education, treatment.....).

While the public facility represents a means in the hands of the state for the purpose of accomplishing and achieving the function of satisfying public needs regularly, with quality and quality, the diversity and continuous development of citizens' needs also requires the necessity of providing several facilities, which has resulted in multiple methods of managing them, in view of the diversity of the state's activities, and in accordance with the circumstances surrounding the scope of the administration's intervention in the public facility.

The emergence of the public service was linked to its classic management, which is represented by direct intervention by the state in the management of the public service. However, despite all the

successes achieved by the interventionist state model in development in most countries, with the state leading the social and even economic development project, the global crisis of the seventies, which was characterized by recession and scarcity of resources, led to the decline of this model and its limitations in carrying out the duty of providing services through the public service.

In addition to all of this, the increasing need of citizens for public facilities and infrastructure, and the weakness of the state's financial capabilities, have prompted it to move from the traditional management of public facilities to resorting to the private sector to establish new public facilities and infrastructure, while getting rid of the burdens of financing or operating expenses and avoiding the negatives of privatization, as well as due to the major imbalance in the public management of public facilities, which requires finding more flexible and effective methods of management at the lowest costs. With the improvement of the quality of public service imposed by increasing civic awareness among citizens in order to advance public service (Drifi, 2015, p. 23)

In this context, Algeria has adopted, since 1989, the date of a new era, new ways to modernize its facilities and bring them to a level playing field from which public facilities had remained far removed for decades. It began issuing new laws through which it attempted to reform the legal system for managing public facilities, in response to the circumstances imposed by Algeria's internal and external framework during that period.

Therefore, an arsenal of legal texts was issued that enshrined the role of the private sector in managing the public facility, through a set of contracts that open the wide scope for partnership between the public sector and the private sector in managing the public facility and achieving the public interest. This led to the state abandoning the management of some public facilities of a commercial and industrial nature for the benefit of the private, within a legal framework represented by the delegation of the public facility. In order to ensure the improvement of public service, which has always been an urgent demand of citizens.

Reforms aimed at ensuring participation in the management of public affairs and improving the quality of public service have



continued, through the constitutional amendment of 2020, by constitutionalizing the principles of public service management, which is considered a qualitative shift in the field of administrative law by upgrading the relationship between management and the citizen, and constitutionalizing the citizen's right to public service by strengthening the principles of public service management, especially the modern ones, and this is in contrast to all successive constitutions (Deboucha F. , 2025, p. 2)

"Partnership between the public and private sectors and the quality of performance of public facilities",

Therefore, given the great importance of public facilities in the life of the citizen, the legislator gave great importance to his principles, and this was confirmed by the advancement of the principles that govern the operation of public facilities according to the constitutional text (Adhimine, Constitutional Promotion of Public Utilities - Constitutionalization of the Provisions and Principles of Their Management - in Light of the Constitutional Amendment of 2020,, 2024, p. 411), especially in light of the criticism and complaints submitted by citizens daily due to the decline or complete interruption of public service. Therefore, it was necessary to address these imbalances in order to improve public service and strengthen the relationship between the administration and the citizen.

Therefore, this topic is of great importance, given the importance of the public facility to the citizen, through the many and varied services provided by the administration through its positive activity represented by the public facility. All of this prompts us to search for the extent to which the legal framework regulating the methods of managing and operating the public facility contributes to ensuring the quality and elegance of the service that the citizen expects from the state.

Therefore, the objective of this study is to address the evolution of the legal system's methods of managing public services, particularly in light of recent constitutional reforms, which have clearly demonstrated interest in public services, participation, and the quality of services. This is intended to evaluate these reforms and demonstrate the extent to which these methods contribute to ensuring

improved services provided to citizens, thereby strengthening the latter's relationship with state institutions.

In order to become more familiar with this topic and cover all its aspects, we pose the following research problem:

Has the constitutional interest in the public facility and the quality of services it provides to citizens been supported by legislative texts that regulate the methods of managing public facilities with the aim of improving the public service that citizens expect from the state?

To answer the problem that was raised, we divided the subject of the study into two axes. In the first axis, we discussed the traditional methods in managing the public facility, which are represented in the management of the public facility by the administration, whether through direct exploitation or through the public institution. As for the second axis, we discussed the involvement of the private sector in managing the public facility, through the most important contracts, which are represented in the public facility concession.

1- Traditional methods of managing the public facility: "Management of the public facility by the state and its bodies"

The traditional management of public facilities is carried out directly by the administration or public authorities. This approach was adopted by Algeria upon its independence, relying on direct exploitation and exploitation by public institutions on a large scale, as they were the most appropriate for managing its facilities during that period, especially in light of the economic, social and political conditions at that time. This required attention to defense, security, judicial and public facilities related to education and health services...Which cannot be ceded to the elite in order to manage it by virtue of its importance and sovereign nature (Boudiaf, 2012, p. 225).

Therefore, if the traditional methods of managing the public facility by the state and its bodies at the central and decentralized levels are represented by direct exploitation and the public institution, but the question raised in this place is about the extent of the success of the public authorities through the activity of the public facility in meeting the multiple services for citizens that are constantly



developing through their direct intervention in the management of the public facility or by the public institution (Habachi, 2015, p. 17)?

1.1- direct management of the public facility (direct exploitation)

Direct exploitation of the public facility is considered the oldest method of managing the public facility to provide services to citizens. It has been associated with the state since its inception (Boudiaf, 2012, p. 226), because it is the most capable of achieving the public interest through the public facility (Habachi, 2015, p. 17). The state has continued for a long time to play this role, which is represented in managing all administrative facilities, and sometimes extends to commercial and industrial facilities.

1.1.1- Definition of the method of direct exploitation of the public facility

Through this method, the central administrative authority (the ministry or one of its affiliated departments) or local authorities take over the management of the public facility with public funds from the state budget, through government employees, and under the responsibility of the central authority, using public law means. This method is considered the oldest method of managing public facilities, and has accompanied the state since its emergence.

It is called direct management to distinguish it from the management of persons with other legal personality, whether public or even private, and all administrative facilities are managed at the present time, because it is not profitable because its activity is usually discouraged by individuals and they refrain from doing it because it does not bring them profit, unlike this activity of economic facilities on the one hand, and on the other hand the state sees that it is dangerous to give it up or delegate it to individuals (Adhimine, Introduction to Administrative Law - Organization, Activity and Its Applications in the Algerian Administrative System, 2025).

The method of direct exploitation may sometimes extend to commercial and industrial facilities. Rail transport is a commercial activity, and despite this, the state may carry it out alone, especially since it has been proven that individuals are unable to carry out this type of project. It is subject to the rules of public law regarding its operation and management. Its employees are considered public employees to whom the system of employees in the government and

administrative bodies applies. Its funds are public funds that are subject in their organization and method of disbursement to the rules of public finance. Its revenues are also added to the general budget resources and its expenses are included in the general budget appropriations as well. The central or local authority bears responsibility for the damages resulting from the management of these facilities to others in accordance with the rules of administrative responsibility.

As for the bodies that manage the public facility according to the direct method, they are represented by the state and its bodies at the central level through the ministries or their external interests: This is with regard to national facilities, as they are activities linked to the existence of the state and are managed by itself through the ministries and their external interests, and their activity extends throughout the territory of the state.

The public service is also directly managed by local authorities, as they are bodies representing the state at the local level. This is achieved by local authorities (municipalities and states) providing common needs and specific benefits to citizens, which fall within their legally defined powers. There are also administrative activities that have a public interest character (for example, the civil status service). They secure it through direct management and cannot give it up to private individuals.

Pursuant to Article 142 of State Law No. 12-07 of February 21, 2012, the Algerian legislator permitted the State People's Assembly to exploit direct public interests, provided that the wills and expenditures related to this exploitation are recorded within the state budget and conducted in accordance with the rules of public accounting, as stipulated in Article 151 of Municipal Law No. 11-10 of June 22, 2011, amended and supplemented. However, the municipality can exploit its public interests through direct exploitation by restricting the revenues and expenses of direct exploitation in the municipal budget.

2.1.1- Justifications for relying on the direct method in managing the public facility.

The direct management of public facilities has been relied upon by the state and its agencies for several reasons, including the following:



-Administrative facilities are considered unprofitable and do not generate any revenue. Therefore, their management cannot be left to individuals. It is also not beneficial to grant them legal personality so that they can be independent in their revenues and expenses, as long as there are no revenues to cover expenses.

-Some of these facilities are considered to be of such importance and danger as a national defense or police facility that it is impossible to leave their management in the hands of individuals, and they must be under the direct control of the government.

-Many of these facilities require a huge administrative and financial apparatus that individuals are unable to manage.

-Some of these facilities need to use public authority means and administrative control methods, so it is preferable to leave them in the hands of the central or local authority (Aribi, 2015, p. 29).

3.1.1- Consequences of direct exploitation of public facilities.

The method of direct exploitation results in the public facility being subject to public law in terms of its management and administration, the appointment of its employees, and the determination of their salaries, promotions and powers, as they are public employees. It is also subject to the rules of public accounting, as its expenditures and revenues are subordinate to and included in the general budget of the state or local authorities. Thus, it is subject to the rules of the budget, its operation and its objectives, which are linked to the general objectives of the state and the general policy of the government. Direct exploitation is carried out by both the state and local authorities.

Direct exploitation also does not have a distinct and independent law, so it does not acquire legal personality. It is an internal organization that is not subject, in its legal system, to what a public person is subject to.

4.1.1- Criticisms directed at the method of direct management of the public facility.

This approach has been criticized with regard to the direct management of public facilities by the state and its agencies, through:

-Government financial methods and complexities are not consistent with the flexibility needed to manage such facilities.

- Employees are subject to restrictive government rules regarding their promotions, bonuses, vacations and working hours
- This leads to weak innovation and a desire to avoid responsibility whenever possible, and so all these rules are ultimately subject to seniority more than activity, innovation and renewal.
- The direct management style can lead to such facilities being subject to various political whims or party affiliations that are not compatible with practical and logical methods when making decisions at the level of these facilities (Aribi, 2015, p. 29).
- Direct management imposes huge financial spending on the state.
- Then the state's attention and interest is directed to creating administrative structures and agencies, without taking into account the effective and comprehensive control of the various requirements of social life, which creates a kind of poor services, given the state's great interest in some sensitive sectors, at the expense of others, with the absent demanding strategies in this regard (Habachi, 2015, p. 18).

2.1- The public institution's method of managing the public facility.

The state and its agencies can directly exploit its facilities, and they can also manage public facilities through other public persons, which are called public institutions. Therefore, it is a more widespread and common means of managing public facilities.

1.2.1- Definition of public institution:

Public institutions, by virtue of their role, number, budget and employees, occupy a prestigious position in the state's economic administrative apparatus. They represent the third form of legal persons subject to public law after the state and local authorities. They constitute an excellent way for the state to intervene to accomplish its tasks. The aim of their establishment was to effectively undertake the tasks of managing various public facilities, and in most sectors of activity, starting from basic public facilities to major public economic facilities such as railways, electricity and gas....In order to meet the urgent needs of citizens.

Public institutions are often considered public economic facilities, which are originally part of private activity. The state has decided to take over these facilities itself through public institutions, by acquiring legal personality. They carry out economic activity and



are responsible for supervising, coordinating, and evaluating the performance of the various economic units affiliated with them. It is a means of managing the public facility, and it is an intermediate method for managing the public facility between direct and delegated management, and it is a public person carrying out a specialized activity, and it is considered a tool of technical or facility decentralization.

It means the existence of a legal person subject to public law who carries out a specialized activity that ensures the management of a public facility (Lebad, 2011, p. 160), i.e. they are public institutions that practice administrative activity and are established by the state or one of its bodies for the purpose of managing its public facilities. They enjoy a legal personality and are subject to the state's supervision through guardianship supervision. Through this definition, the basic elements of a public institution appear, which are:

- Legal personality and independence: The public institution, as it enjoys a legal personality, can carry out legal actions, enjoy the capacity to litigate, have its own financial responsibility and budget allocated to accomplish its tasks, and the law gives it the freedom to manage its affairs and under its responsibility.

- Practicing a specialized activity: Through this, the public institution is committed to respecting the field of work specified for it, and it cannot exceed its field of activity or use its financial liability for other tasks.

- Subjecting it to guardianship oversight by the state and its bodies: This is for the purpose of protecting the principle of legitimacy, by determining the content of the obligations placed on the institution, as well as verifying the implementation of its obligations, in addition to monitoring the appropriations allocated for spending.

Jurisprudence has given the public institution the name of utility decentralization as a counterpart to regional decentralization. They are legal persons subject to public law. Their existence is linked to specialized interests or facilities, i.e. the transfer of powers to administrative persons specialized in a specific interest. Therefore, they are public institutions that enjoy some elements of administrative decentralization. They have been called utility decentralization or utility decentralization, or as Professor Ahmed Mahiou calls it,

decentralization according to the service sectors (Mahiou, 1986, p. 108).

They can also be defined as specialized decentralized institutions, taking the form of a public institution such as a university or a hospital, for example. They are administrative legal persons, based on the existence of specialized public facilities (for example, education, treatment...) The existence of these facilities is not on a geographical basis, but rather based on the criterion of specialization in a specific activity, which takes the form of a public institution, and this is under state control (Deboucha, 2025, p. 89).

2.2.1- Justifications for relying on the public institution's method in managing the public facility.

The justifications for resorting to the public institution to manage the public facility are the search for improving the public service by granting it a kind of legal, administrative and financial independence, giving it a kind of freedom of action and considering its decisions as administrative and its workers as public employees, not employees and its funds as public funds, and it is more widespread and common than the first method, i.e. direct exploitation, and jurisprudence has called it facility decentralization as a counterpart to regional decentralization, and the independence of these institutions from the state results in the following:

- It enjoys financial responsibility independent of the state.
- To have the right to accept gifts and bequests.
- To have the right to contract without obtaining a license.
- To have the right to litigate.
- To be responsible for the results of its work and to be questioned about them in the event of harm to others.

Article 146 of State Law No. 12-07 stipulates that: "The state may establish public institutions that enjoy legal personality and financial independence in order to manage public interests." Article 147 outlines "the form of this institution and the subject of its activities," meaning that it takes the form of either a public institution of an administrative nature or an institution of an industrial and commercial nature, depending on its intended purpose.

Article 153 of Municipal Law No. 11-10, as amended and supplemented, stipulates that: "The municipality may establish public



institutions that enjoy a legal personality and independent financial integrity in order to manage its interests." Article 154 of the same law states that the nature of the institution is: "of an administrative nature or of an industrial and commercial nature."

The institution's system was generally set with two restrictions: the allocation restriction, whereby the institution's activity is specified in its official documents in accordance with the texts of the law and regulation, meaning that every public institution is entrusted with carrying out specific work in the text of its establishment, so it is obligated not to deviate from it. For example, the university is a public institution entrusted by the authority with the task of training in the field of higher education and it cannot deviate from this framework..

The second restriction is that the institution is subject to the administrative guardianship system, as it constitutes a form of decentralization in its attached aspect. This does not mean severing all relationship between it and the guardianship authority. Rather, it remains subject to the guardianship system, as the central administration has the right to monitor its activity in order to ensure that it does not deviate from the scope specified for it.

As for the management of the public service through the public institution, the difference is clear between it and the first method in terms of its positives due to considerations of the principles of specialization and independence (Habachi, 2015, p. 18).

However, this method has been subjected to several criticisms, due to the absence of real independence from the financial, management and functional aspects, which makes the performance of the public service in this manner. It is merely a structural redistribution as long as there is permanent control by the state by imposing its oversight, which negatively affects the provision of good service to the citizen (Habachi, 2015, p. 18).

2- Involving the private sector in the management of public facilities: Public facility excellence as a model

Public utilities in Algeria were owned by the state, directly subject to the management method and financed from the public treasury, given that the state is the owner and the first and last responsible for providing citizens' needs for various public services. However, the administrative management of public utility institutions

revealed its flaws and negatives as a result of the oil rent crisis of 1986, which was manifested in the decline in the level of economic performance there. The motivation was generated to search for the economic effectiveness of all institutions, including public utility institutions. The state was convinced not to interfere in the economic field in depth and to be satisfied with the control authority exercised by its independent bodies and to transfer its public utilities to the private sector, considering its efficiency in free management, renewal, innovation and avoiding administrative complexity.

Algeria, like other countries, and in light of the challenges it is facing in order to modernize its facilities, and in the new global context that is gradually calling for abandoning the public sector, devoting freedoms and enhancing the position of the private sector, Algeria has adopted since 1989, the date of a new era, new ways to modernize its facilities and bring them to a return that public facilities have remained far removed from for decades (Drifi, 2015, p. 26).

This was embodied by the issuance of new laws that kept pace with the developments taking place during that period. These laws enshrined the role of the private sector in managing public facilities through a set of contracts that open up a broad scope for partnership between the public and private sectors in managing public facilities and achieving the public interest. Among these contracts, we find the public facility concession contract, which is the most common form of public facility delegation in Algeria.

1.2- The concept of the concession contract.

Franchising is a method of managing public services. It has spread throughout the world, especially in France, which is considered its cradle. It was established in Algeria through several legal texts, with the aim of involving the private sector in managing public services and ensuring improved quality of public services. Given its importance, its concept must be understood, by defining it, clarifying its characteristics, and distinguishing it from direct management and public institutions.

1.1.2- Jurisprudential and legal definition.

A concession contract can be defined based on the organic, material, financial, formal and temporal criteria: it is a contract or agreement whereby the granting administration, represented by the



state, governorate or municipality, entrusts a natural person (individual) or a legal person from public law (a municipality, for example) or from private law (a company, for example) called the concessionaire, to manage and exploit a public economic facility for a specific period, and the concessionaire manages this facility under his responsibility Using his workers and money and bearing the resulting responsibility, and in return the concessionaire receives a financial compensation specified in the contract, paid by the beneficiaries of the facility's services (for example: the state entrusts a private party to exploit water distribution services, electricity, gas, transportation, beaches..... It receives compensation from the beneficiaries) (Lebad, 2011, p. 165).

Through this definition, the characteristics of a public utility concession contract become clear, which are as follows:

- In terms of the parties to the concession contract: The parties to this contract are represented by the legal person, i.e. the administration, whether central or decentralized (regional or attaché), while the second party benefiting from the contract is represented by either a public or private legal person.
- In terms of the subject of the concession: The concession contract focuses on the management and operation of a public facility, which is usually economic, in addition to the possibility of establishing and exploiting the facility in order to collect what was spent in the construction process.
- Financial compensation: Among the rights of the contractor with the administration is to receive financial compensation in the form of fees from the beneficiaries of the public service, and therefore the financial compensation is considered profits that the contractor with the administration receives from the beneficiaries of the services.
- Term of the concession: The concession contract is not a waiver of the public facility, but rather a contract with a specific term, and even if this term is long compared to other contracts, the length of the contract term allows the concession contract holder to recover the financial burdens he spent in managing the public facility (Drifi, 2015, p. 38).

As for the legislative definition, we find that the legislator has defined the concession contract through several legal texts, including

Law No. 83-17 of July 15, 1983, which includes the Water Law, and through the text of Article 21, this contract has been defined as: "By concession in the concept of this law, it means:

A public law contract whereby the administration assigns a legal person to ensure the performance of services for the public good. On this basis, excellence can only be granted for the benefit of public bodies and institutions, as well as local groups.

- An administrative contract concluded between the administration and a natural or legal person subject to public or private law, with the intention of using public ownership of water.

It is noted from this text that the concession contract that guarantees the performance of services in the public interest is only granted to public persons, and this reflects a certain ideological conception (socialism) and the sanctification of the public sector and its dominance over public facilities (Drifi, 2015, p. 36), and thus the exclusion of the private sector from the management of public services through the concession contract, with the exception of the use of public ownership of water.

However, after the transformation that Algeria witnessed under the 1989 Constitution, many legal texts were reviewed with the aim of involving the private sector in the management of public facilities. In this context, Order No. 96-13 dated June 15, 1996 was issued amending and supplementing Law No. 83-17 dated July 16, 1983, which included the Water Law, which left the scope of managing the public water service to competition and work under the contracting system Article 4 thereof, which amends and supplements the provisions of Article 21 of Law 83-17, mentioned above, states: Privilege in the sense of this law means:

A public law contract, whereby the administration assigns a public or private legal person to ensure the performance of a service of public benefit. In this regard, it may be granted to public bodies and institutions, local authorities, and legal persons subject to private law. These legal persons subject to private law must possess the necessary qualifications, and the methods and conditions for implementing this shall be determined by regulation. This concession may include the construction of irrigation infrastructure for exploitation by the



concessionaire. In all cases, the privilege shall be attached to a terms and conditions book.

It is noted that this text contains several new developments that were not previously enshrined in the aforementioned Law No. 83-17, by emphasizing the involvement of the private sector in the management of the public facility in line with the changes that occurred during that period, in addition to requiring the availability of the necessary qualifications in a legal person subject to private law in order to obtain the privilege of the public facility. However, this condition was limited only to private individuals, not the public sector.

The new Water Law was then issued, pursuant to Law No. 05-12 of August 4, 2005, as amended and supplemented, which is considered a new stage towards the delegated management of water services. Article 101, paragraph 2, stipulates the following: "The State may grant the concession to manage public water services to legal persons subject to public law on the basis of a book of conditions and a service system approved by the organization. It may also delegate all or part of the operation of these services to legal persons subject to public or private law under an agreement."

In application of this text, contracts for the authorization of the management of public water services came into effect. The first partnership between the public and private sectors was in 2006, and concerned the distribution and purification of water in the major cities, namely Algiers. It was assigned to the public institution SEAAL, a branch of the two previously mentioned institutions ADE and ONA, and is managed by the French company SUEZ environnement within the framework of a 5-year management contract. The contract includes the transfer of specialized personnel and technicians. Knowledge transfer (Kessal, 2015, p. 59).

2.1.2- Distinguishing the franchise method from other methods such as direct exploitation and institutions

Through the aforementioned jurisprudential and legal definition, the difference between the method of privilege and other methods of managing public facilities, such as direct exploitation and the method of the public institution, becomes clear to us in the following detail:

- In terms of the state's management and implementation of the activity: The management of a public facility through a concession

contract is not directly by the administration, but rather the right to manage it is granted to legal persons subject to public or private law. This is in contrast to the direct exploitation method, through which the state directly undertakes to carry out the activity with its funds and employees, and it has been entrusted to a public institution while enjoying a legal personality and independence.

In terms of financing: The obligor shall provide financial coverage for the project and the real estate and movables it needs of various types according to what the facility's activity requires, while the state shall provide financial coverage in the event of direct exploitation

- In terms of granting employee status: Workers paid for by the obligated party do not enjoy the status of public employees, but rather workers governed by labor legislation, not public service legislation (Boudiaf, 2012, p. 235).

3.1.2- Development of the legal system for concession contracts in Algeria:

The concession contract is considered the product of liberal ideology in the management of public facilities, but it has been used in Algeria since independence until the present day, but in varying proportions between the stages that the Algerian legal system went through, which was influenced by the various systems that Algeria went through.

The concession was used immediately after independence with nationalizations, and was used to establish a legal relationship between the state and public institutions that were created to manage activities or sectors that were nationalized, and it was also used to frame relations between states and local groups, as is the case in the concession of cinema halls, and properties of a tourist and sports nature This method was abandoned and abandoned by the state, although it was used in some cases and was explicitly enshrined by Order No. 67-24 of January 18, 1967, containing the Municipal Code through Article 220 thereof, as well as by Order No. 69-38 of May 23, 1969, containing the State Code through Article 136 thereof The reason for this decline (the concession method) is due to the gradual replacement of public institutions with socialist institutions that were charged with managing the public service.



The Algerian legislator has once again established the concession system, but this time in a new style as a liberal means of managing public facilities, prior to 1989, pursuant to Water Law No. 83-17 and Decree No. 85-260 of October 29, 1985, approving the model specifications for granting concessions in the management, operation, and maintenance of irrigation equipment in irrigated establishments.

After 1989 and the change of the socialist approach to liberalism, privilege took on a significant status, at least legally, which was enshrined in several texts, including:

- Executive Decree 96-308 of September 18, 1996 relating to the granting of highway concessions.
- Executive Decree 02-40 dated January 14, 2002 ratifying the air transport services concession agreement granted to Al Khalifa Airlines, Article 1 of which explicitly states the phrase "The State shall, pursuant to this agreement, grant Al Khalifa Airlines a concession to operate air services for public transport," and Article 02 sets the concession period at ten years, subject to renewal Article 4 held the concessionaire responsible for managing exploitation, in accordance with Executive Decree 2000-43 dated February 26, 2000. Article 8 also held the concessionaire responsible for price overruns approved by the authority in charge of civil aviation. Article 16 of the Special Conditions Book gave the state the absolute right to purchase in exchange for fair compensation, and Article 17 of the agreement considers the transfer of the concession to be invalid....etc
- Executive Decree No. 02-41 of January 14, 2002 ratifying the concession agreement for the use of air transport services granted to the airline "Antenia Airlines", which was also concluded in the name of the countries, as stated in Article 01 of the above decree, setting its term at 10 years, and Article 02, and the decree regulated the concessionaire, Article 04, and obligated him to respect prices.
- State Law No. 12-07 through Article 149, which stipulates that: "If it is not possible to exploit the state's public interests directly or an institution, the state People's Council can license its use through a concession in accordance with the regulation"
- Municipal Law No. 11-10, through Article 155, which states that: "Municipal public interests may be subject to concession."

It is worth noting that the state law did not mention in detail the scope or field of the concession, contenting itself with the recognition by the state people's council of the license to exploit the facility through the concession, and this is contrary to the municipal law, which specified the activities, services or interests as follows: supplying potable water, wastewater disposal, household waste, road maintenance, traffic signals, public lighting, covered markets, nurseries, slaughterhouses, public transportation, municipal slaughterhouses, funeral services, sports spaces, green spaces...

- The decision of the Algerian Council of State issued on March 9, 2004, Third Chamber, in the case of the passenger transport company against the mayor of Oran, recognized its jurisdiction to consider lawsuits resulting from the concession contract.

2.2- Effects of implementing the concession contract:

The implementation of a franchise contract has several legal consequences, relating to the rights and obligations of the parties to the contract, namely the franchisor, the franchisee, a natural or legal person, and the franchisee, who always desires to receive quality and quality services.

1.2.2- Management privileges towards the contractor:

The contractor contracting with the administration for the purpose of managing a public facility through the concession method has several obligations, which are as follows (Boudiaf, 2012, p. 240):

- Oversight and supervision authority: The administration's responsibility is to ensure the proper functioning of the public facility and provide services to the citizen, so the administration has the right to technical and financial oversight.
- The right to amend the terms of the contract in view of public interest requirements, and to continuously adapt the public facility, while maintaining the financial balance of the contract so that the contractor does not harm the administration:
- The right to recover the public facility before the end of the contract term by administrative decision if the public interest requires it, with compensation to the concessionaire for the damages he suffered:
- The authority to impose penalties on the concessionaire, whether financial penalties, or to terminate the contract of its own free will in the event of his breach of his obligations:



2.2.2- Effects of the contract for the concessionaire contracting with the administration:

The concession contract imposes rights and obligations on the contractor with the administration, which are as follows (Lebad, 2011, p. 167):

- Contractor's obligations to the administration:

- Personal implementation of the obligations arising from the contract: through a primary obligation to ensure the operation of the facility, and therefore he must personally undertake this and may not assign it to others, except with the permission of the franchising authority:
- Respecting the basic principles enshrined in the Constitution that govern the operation of the public facility: equality between beneficiaries, impartiality, ensuring the continuity of the facility's operation, and continuous adaptation.
- Compliance with technical and financial monitoring carried out by the administration, with the aim of ensuring the proper functioning of the public facility in the service of the public interest.

- Rights of the contractor with the administration:

- The right to receive financial compensation in the form of fees from beneficiaries of public service:
- The right to obtain privileges and assistance from the administration, because the service benefits the user.
- The right to ensure the financial balance of the contract: In the event of an emergency circumstance that was not taken into account at the time of contracting, for example: economic circumstances (high wages or prices, or building materials, raw materials...) It may be natural conditions (earthquakes, floods..) It may be political (declaring war..) Which would increase the financial burdens placed on the contracting party with the administration, and may lead to a serious disruption of the financial balance of the contract, which makes it difficult to implement the obligation resulting from the administrative contract and becomes exhausting and difficult, and this requires the administration's temporary intervention to contribute to these losses, and this is to ensure the continuity of the public facility, and not to stop it from performing its services.
- The right to use certain privileges of public authority after the approval of the administration.

3.2.2- Effects of the contract for beneficiaries of the public facility:

The franchise agreement has several effects, both on the relationship between the beneficiary and the franchisee, and on the beneficiary's relationship with the management that grants the franchise.

- As for the relationship between the beneficiary and the concessionaire, the latter is obligated to provide the public service by respecting the constitutional principles governing the operation of the public facility. Given the contractual relationship that links him with the beneficiaries, he cannot refuse to provide the service in implementation of his obligations specified in the concession contract.
- Regarding the relationship between the beneficiary and the concessionaire administration: The concessionaire administration always remains responsible for the proper functioning of the public facility. Therefore, in the event of any breach or negligence in the provision of public service, the beneficiary has the right to ask the administration to intervene in order to correct the breach in the functioning of the public facility. In the event of its refusal, he can resort to the judiciary in order to protect his rights, in addition to filing complaints with the Republic's Ombudsman Authority Who can intervene in such cases.

3.2.2- End of the obligation contract:

- **The concession contract ends in a normal, natural way:** it is considered an administrative contract whose content is a commitment to manage a public facility for a specific period, in accordance with what the contract stipulates, and therefore at the end of this period the concession contract disappears.

- **It also ends in an unusual way:** which is represented by voluntary termination or consensual annulment before the end of the contract term, which is by agreement and consent of both parties to the contract, and it is also through administrative termination, through the administration's use of its privileges, so it terminates the contractual relationship of its own free will, especially in the event of a breach of the contractual obligations agreed upon in the contract or in the terms and conditions book, which results in a serious disruption in the functioning of the public facility Or because the requirements of the public interest require termination of the contract, in application of the



principle of continuous adaptation of the public facility, in order to change the way it is managed.

-In addition to judicial termination of the contract: The two parties to the contract can resort to the administrative judiciary to demand the cancellation of the concession contract, due to one of the parties to the contract breaching its contractual obligations.

Conclusion:

Through this study, we conclude that administrative activity is tangibly manifested in the public service, which is considered the fundamental aspect of state life, as it provides a public service to citizens. This service has become a priority for public authorities in Algeria, especially in light of the constitutional founder's interest in the public service and the quality of services, with the aim of improving citizens' relationship with state institutions.

However, improving the quality of public services provided by the public service depends on the methods developed by the public authorities to manage the public service, especially in light of the diversity of the state's function, in addition to the continuous expansion and development of citizens' needs. This required the establishment of a precise legal framework that enshrines modern methods of management that are in line with current circumstances, in an effort to ensure the quality of service that citizens expect from state institutions .

Given the multiplicity and diversity of public facilities, due to the expansion of public service, this has resulted in diversity in the methods of managing them, and what is suitable for managing one facility cannot be suitable for managing another facility. Public cleanliness or civil status differs from managing electricity, water, or even public markets. Utilities also differ in terms of the connection of activity to the sovereign aspect of the state. The nature of the judicial, defense, security, and tax facilities requires that they be managed by the state. It cannot be operated by other people, unlike some other facilities whose operation can be relinquished to private individuals such as electricity, gas and water.....While state control over this management remains.

The first approach relates to government management of public facilities. Algeria adopted this approach upon its independence,

relying on direct exploitation and exploitation by public institutions on a large scale, as they were the most appropriate for managing its facilities during that period, especially in light of the economic, social and political conditions at that time. This required attention to defense, security, judicial and public facilities related to education and health services...Which cannot be ceded to the elite in order to manage it, by virtue of its importance and sovereign nature.

Therefore, the traditional methods of managing the public facility by the state and its bodies at the central and decentralized levels are direct exploitation, through which the central administrative authority (the ministry or one of its affiliated departments) or local authorities take over the management of the public facility with public funds from the state budget, through government employees and under the responsibility of the central authority, using public law means. This method is considered the oldest method of managing public facilities, and has accompanied the state since its emergence.

The second method is represented by public institutions, which, by virtue of their role, number, budget and employees, occupy a prestigious position in the state's economic administrative apparatus. They represent the third form of legal persons subject to public law after the state and local authorities. They constitute the excellent way for the state to intervene to accomplish its tasks. The aim of their establishment was to effectively undertake the tasks of managing various public facilities, and in most sectors of activity From basic public utilities to major economic public utilities such as railways, electricity and gas....In order to meet the urgent needs of citizens.

The reason for resorting to the public institution to manage the public service is to seek to improve the public service by granting it a kind of legal, administrative and financial independence, giving it a kind of freedom of action and considering its decisions as administrative and its workers as public employees, not employees, and its funds as public funds, which are more widespread and common than the first method, i.e. direct exploitation.

As for other public facilities, especially industrial and commercial ones, they constitute a great burden in terms of their management and financing. This required retreating from direct interference in the management of these facilities and searching for



other ways to ensure reducing the burdens of their management and improving their performance and the quality of their services, through involving the private sector in the management of these facilities, in order to achieve social goals for the state, and economic goals for the people who manage them Other goals for beneficiaries include improving the quality of public service.

Therefore, an arsenal of legal texts was issued that enshrined the role of the private sector in managing the public facility, through a set of contracts that open the wide scope for partnership between the public sector and the private sector in managing the public facility and achieving the public interest. This led to the state abandoning the management of some public facilities of a commercial and industrial nature for the benefit of the private, within a legal framework represented by the delegation of the public facility In order to ensure the improvement of public service, which has always been an urgent demand of citizens.

The concession contract is considered one of the most important partnership contracts between the public and private sectors in the management of public facilities, which has been established since independence until the present day, but in varying proportions between the stages that the Algerian legal system went through, which was influenced by the various systems that Algeria went through. Although it did not receive great importance due to the nature of the socialist state, it was established through several legal texts after changing the ideology, and became a preferred means of managing the public facility In order to ensure quality service to citizens .

However, in order to achieve the goal of the multiple methods of managing the public facility, whether through the administration or through partnership between the public and private sectors, a precise legal framework must be established that ensures the protection of the public interest through:

- The need to move towards developing a legislative text for the concession contract, to ensure the public interest, especially with regard to establishing effective oversight mechanisms over the management of the public facility that contribute to improving the quality of public service.

- The multiplicity of methods of managing public facilities necessarily requires protecting public funds, in order to preserve the facility, which provides many and varied services in the daily life of citizens.
- The necessity of reconsidering the methods of managing the public service in line with the constitutional reforms aimed at ensuring participation in the management of public affairs and improving the quality of public service, through the constitutional amendment of 2020, by constitutionalizing the principles of managing the public service, which is considered a qualitative shift in the field of administrative law by upgrading the relationship between the administration and the citizen, and constitutionalizing the citizen's right to public service by strengthening the principles of managing the public service, especially the modern ones This is contrary to all successive constitutions.
- The necessity of continuous training for managers and users of public facilities in order to perform the service to the fullest extent, and focusing on creating channels of communication between the public facility and the citizen.
- Improving public service also requires ensuring the modernization and modernization of public facilities, especially in light of Algeria's digital strategy.

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