

The Consensus Approach is an Exception in Concluding Agreements for The Delegation of Public Utilities in Algerian Law

أسلوب التراضي كإستثناء لإبرام اتفاقيات تفويض المرافق العامة في القانون الجزائري

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The date of Submission: 2023-09-18

The date of acceptance: 2024-05-25

Abstract:

The delegated authority utilizes the mutualization procedure as an exceptional approach to finalize public utility delegation agreements. This method stands in contrast to the general contracting principle based on the competition demand method. It is employed for specific objective reasons and is subject to the provisions of Executive Decree No. 18-199, which governs public utility delegation. When selecting the delegate, the delegated authority either does so directly or through limited means, prioritizing speed and flexibility in contracting to serve objective considerations and meet public interest requirements. Nevertheless, they operate within the boundaries established by the Algerian legislator to prevent corruption and safeguard public funds when adopting this contracting method. To prevent any form of deviation or abuse that may arise during the preparation, conclusion, and implementation stages of the contract, the Algerian legislator has implemented various oversight mechanisms for public utility delegation agreements.

Keywords: The Mutualization Procedure, The Simple Agreement, The Agreement After Consultation, The Principle of Competition, The Prevention of Corruption.

الملخص:

تلجأ السلطة المفوضة إلى إجراء التراضي كطريق استثنائي لإبرام اتفاقيات تفويض المرافق العامة، خلافا للأصل العام في التعاقد والمتمثل في أسلوب الطلب على المنافسة، وذلك لأسباب موضوعية، وفي حالات محددة ضمن أحكام المرسوم التنفيذي رقم 18-199 المتعلق بتفويض المرفق العام. تختار السلطة المفوضة، المفوض له بطريقة مباشرة أو بإجراءات تنافسية محدودة بهدف السرعة والمرونة في التعاقد لاعتبارات موضوعية وتحقيقا لمقتضيات المصلحة العامة، ولكن في حدود الضوابط القانونية التي وضعها المشرع الجزائري عند اعتماد هذا الأسلوب من التعاقد، بهدف الوقاية من مظاهر الفساد، حفاظا على المال العام. أخضع المشرع الجزائري اتفاقيات تفويض المرافق العامة لعدة آليات رقابية بهدف الوقاية من كل أشكال الانحرافات والتجاوزات التي تتخلل مراحل إعداد وإبرام وتنفيذ العقد. الكلمات المفتاحية: إجراء التراضي، التراضي البسيط، التراضي بعد الاستشارة، مبدأ المنافسة، الوقاية من الفساد.

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I- Introduction :

The Algerian legislator's adoption of the technique of delegating public utility services aims to modernize and improve their management, with a focus on achieving the public interest and ensuring quality services for users. This is achieved by attracting private sector funds through entrusting the delegated authority to a public or private legal entity responsible for managing the public utility in exchange for financial returns resulting from its operation¹. This approach is firmly established within the framework of Presidential Decree No. 15-247, which regulates public deals and public utility delegations. Its implementation is governed by Executive Decree No. 18-199, specifically designed for public utility delegation. The delegated authority predominantly relies on the method of requesting competition as the primary means of concluding public utility delegation agreements. This ensures adherence to integrity, competition, equality, and transparency in procedures, serving the requirements of the public interest. However, the legislator recognizes exceptional cases where the method of mutual consent is adopted, subject to specific controls and conditions justified by objective reasons to meet the needs of the general facility.

The delegated authority, which includes regional groups and associated administrative public institutions, selects the delegated entity, whether a public or private legal person under Algerian law, based on technical, professional, and financial qualifications. The mutual consent method is preferred over the competition approach due to its simplicity in procedures and time and effort efficiency. While employing the mutual consent technique in contracting, the Algerian legislator is attentive to ensuring compliance with legal controls to mitigate risks. This raises the question of the effectiveness of consensual provisions as an exceptional procedure for concluding delegation agreements in line with the public interest. This inquiry is addressed through an analytical examination of the legal provisions related to the consensual method as an exception to the conclusion of public utility delegation agreements, as enshrined in Executive Decree No. 18-199. The study explores its impact on administrative corruption, evaluating the status of the competition principle within the mutual consent procedure and its influence on manifestations of corruption. In summary, the Algerian legislator places significant importance on the mutual consent method in public utility delegation agreements, understanding its potential benefits and limitations. The study delves into the efficacy of this approach in achieving the public interest while safeguarding against administrative corruption.

1. The First Topic: Devoting the Method of Mutual Consent as an Exception to The Conclusion of The Public Utility Delegation Agreement

The delegated authority aims to harmonize the imperatives of the public interest with the principles of economic freedom through the execution of public utility delegation agreements². This endeavor seeks to enhance the quality of services provided to the public beneficiaries while concurrently promoting the advancement of the national economy. As specified in Article 2 of Executive Decree No. 18-199, the delegation of public service refers to the transfer of certain non-sovereign functions of public authorities to the designated delegate for a limited duration, with the overarching objective of serving the public interest.

¹ FRANCOIS Benchendikh, *l'essentiel de la délégation de service public*, lextenso editions, p19.
² — ZOUAMIA Rachid, *la délégation de service public au profit des personnes privées*, p 57.

The technique of delegating public utility to territorial collectivities operates under two modalities of conclusion: competitive bidding, representing the general norm, and mutual consent, which is applied in specific circumstances and justified by legally prescribed cases as an exception. The delegated authority resorts to the mutual consent method to conclude public utility delegation agreements, which embodies the freedom vested in the contracting authority. This method allows the delegated authority to directly select the delegate, particularly in situations where contracting with a private entity holding a monopolistic position is necessary¹. The formalities mandated in competitive bidding procedures are bypassed in such cases.

However, the mutual consent method is subject to legal restrictions and controls, exclusively governed by the provisions outlined in Executive Decree No. 18-199. Professor Ammar Boudiaf defines the consensual procedure as an exceptional method necessitated by objective reasons. It grants the administration the prerogative to choose the contracting party under specific circumstances as specified in the text, without the need for publicizing or informing others, making it an ancient contracting practice (2021). The consensual method is distinguished by its simplicity, sparing the delegated authority from adhering to the lengthy and intricate procedures associated with competitive bidding while enabling greater freedom in selecting contracting partners.

Referred to as both the method of direct agreement and the method of mutual consent, this approach allows the public administration more flexibility in choosing its contracting counterpart (Bouanaq 2021/2022). The conclusion of the authorization agreement for public utility occurs through mutual consent, following either the simple mutual consent method or mutual consent after consultation, as the first requirement. Additionally, the process is governed by the principles and rules prescribed in Decree No. 18-199, serving as the second requirement.

1.1 The First Requirement: The Forms of Mutual Consent in The Public Utility Delegation Agreements

The consensual contracting procedure stands apart from the competitive bidding method, as it grants the authority responsible for delegating the contract a degree of autonomy from procedural and formal regulations when selecting the delegate. This mutual consent approach takes two forms: the first is simple mutual consent, employed in legally specified situations (Part One), and the second is mutual consent after consultation, which is based on objective justifications and reasons (Part Two), as stipulated in Article 16 of Executive Decree No.18-199 (Lebad 2021).

1.1.1 The First Section: Simple Mutual Consent as a Manifestation of The Delegated Authority's Freedom to Conclude Delegation Agreements

Simple mutual consent represents an exceptional approach utilized by the delegated authority for concluding local public utility delegation agreements, aimed at fulfilling the requirements of the public interest. Unlike formal invitations to competition, this method dispenses with such procedures, but it adheres to legally defined conditions and is applicable exclusively to specific cases specified in the governing regulation. This method is also referred to as the direct agreement technique, recognized for its heightened flexibility, as it

¹ CHRISTOPHE Mondou, les conventions de délégation de service public, édition le moniteur, p 56

grants the public administration greater latitude in selecting the contracting party. Article 18 of Executive Decree No. 18-199 elucidates the process, stating that simple mutual consent entails the delegated authority selecting a qualified delegate capable of effectively managing a public utility. This necessitates an evaluation of the delegate's financial, professional, and technical competencies¹. Through an analysis of this article, it becomes evident that the Algerian legislator places a significant responsibility on the delegated authority to diligently verify the financial, professional, and technical capacities of the delegate when resorting to this type of contractual arrangement. This ensures both the proper implementation of the contract and the mitigation of potential obstacles hindering its successful execution.

1.1.2 The Second Section: Consent After Consultation as a Method of Contracting with Special Procedures:

The procedures involved in concluding public utility delegation agreements under the method of mutual consent significantly diverge from those employed in the competitive bidding method. Within the mutual consent approach, the delegated authority enjoys a degree of freedom in selecting the delegate, although this freedom is not absolute. It must adhere to several conditions and principles specified in Executive Decree No. 18-199. The Algerian legislator has demonstrated a keenness to impose legal restrictions on the authority responsible for granting the delegation, specifically concerning both types of mutual consent procedures. The legislator has delineated the cases in which the conclusion of a public utility delegation agreement by mutual consent after consultation is permitted (the first requirement), as well as the cases in which resorting to simple mutual consent to conclude public utility delegation agreements is permissible (the second requirement).

2. The Second Requirement: Cases of Resorting to Mutual Consent After Consultation

The Algerian legislator has bestowed upon the delegated authority the autonomy to engage in contracting through the mutual consent procedure after consultation, deemed an exceptional approach for concluding agreements that authorize public utilities. This method deviates from the convoluted formalities associated with the competitive bidding process, offering a more streamlined alternative. However, it is essential to recognize that the authority's freedom to select the delegate remains constrained, as this procedure is subject to meticulous legal oversight and conditions meticulously delineated in Article 19 of Executive Decree No. 18-199².

2.1 The First Case: when The Application for Competition is Declared Unfeasible for the Second Time

In accordance with Article 14, paragraph 2, of the aforementioned Executive Decree No. 18-199, it is stipulated that should the application for competition be deemed ineffective on two separate occasions, the delegated authority shall then opt for the mutual agreement procedure.”³

The Algerian legislator has elucidated the circumstances under which the application for competition is deemed futile, as outlined in Article 15 of Executive Decree No. 18-199. Such

¹ Refer to Article 18 of Executive Decree No. 18-199, mentioned earlier

² See Article 19/1 of Executive Decree No. 18-199, previous reference

³ See Article 14/2, *ibid*.



instances include the absence of any received offers, the reception of only one offer, or the lack of conformity of any offer with the specified book of conditions.

However, in cases where the legal prerequisites for implementing the mutual agreement procedure after consultation are met, the delegated authority selects the delegate from among the qualified candidates who participated in the competitive bidding process.

It is essential to emphasize that when a solitary bid is received during the second attempt at requesting competition, and it aligns with the book of conditions, it is accepted, and the procedures are then initiated accordingly.

2.2 The Second Case: The Case of Delegated Public Utilities that are not Subject to the Competition Application Procedure

The delegated authority adopts the practice of concluding agreements to delegate public utilities to regional groups through a consensual process after consultation, which differs from the competitive bidding procedure. This approach is implemented while adhering to specific legal conditions, with a primary focus on verifying the qualifications of the authorized person. The pertinent information regarding this is detailed in Article 19, second paragraph, of Executive Decree No. 18-199, which states:

"...when the delegation pertains to certain public utilities necessitating the application for competition, these specific public utilities are determined through a joint decision involving the Minister of Finance and the Minister responsible for regional collectivities, authorizing them to manage the respective public utility"¹.

The delegated authority is bound by various procedures when engaging in the conclusion of a public utility delegation agreement using the mutual consent procedure after consultation. These procedures encompass the mandatory requirement to delegate the public utility to a legal entity subjected to Algerian law, possessing the capacity to assume responsibility. Furthermore, the selected entity must adhere to the principles of public utility while effectively meeting the diverse needs of the users.²

The delegated authority bears the responsibility of meticulously assessing the professional, financial, and technical competencies of the candidates through all appropriate means during the selection process³. The Bids Examination and Selection Committee extends invitations to a minimum of three (03) qualified candidates, urging them to submit their offers in accordance with the specified book of conditions.⁴

Moreover, any candidate who engaged in the process through mutual consent and consultation has the right to raise objections concerning the decision to grant temporary authorization. They are entitled to file an appeal with the Public Service Authorizations Committee within a reasonable deadline of 20 days, commencing from the date of publication.⁵

The reality is that the monopolistic nature of the service provider justifies the need for mutual consent. In such cases, where the contracting administration's requirements can only be fulfilled by a single monopolistic institution, it becomes pertinent to question the insistence on formal procedures and lengthy processes. Instead, why burden the contracting party with

¹ See Article 19/2 of Executive Decree No. 18-199, Previous reference

² See Article 22/1, *ibid*

³ See Article 22/2, *ibid*.

⁴ Article 37, *ibid*

⁵ Article 42, *ibid*



unnecessary delays when there is only one contractor possessing the essential technical capabilities and meeting the required service standards (**Boudiaf 2021**)

In Article 20, the first paragraph of Executive Decree No. 18-199, the case of a monopoly is addressed, providing clear justification for adopting the method of simple mutual consent, which states: "Simple mutual consent is applicable in situations where services can only be delegated to a single candidate holding a monopoly position..."¹

3. The Second Case: Urgent Cases

Dr. Ammar Boudiaf provides a compelling rationale for the sense of urgency in this context, stating: "...within the realm of contracting, the contracting parties may face urgent situations, where the need to swiftly establish a contractual bond is paramount to prevent the loss of their financial investments." (Boudiaf 2021). The Algerian legislator has outlined specific urgent cases that necessitate the activation of the simple mutual agreement procedure when entering into public utility delegation agreements. These provisions can be found in Executive Decree No. 18-199. The situations warranting such action include when the public utility delegation agreement is currently in effect, subject to a revocation procedure, or when ensuring the continuous operation of the public facility by the authorized party becomes impossible. Additionally, it applies when the delegate refuses to sign the relevant appendix, leading to the need for extending deadlines. Evidently, the Algerian legislator has shown a commitment to ensuring the uninterrupted provision of essential public services, thus safeguarding the interests of the public beneficiaries. When employing the procedure of simple mutual consent for concluding agreements that delegate public utility to regional collectivities, several procedural steps are involved:

4. Checking the capabilities of the delegate

According to Article 54 of Presidential Decree number 15-247, it is stipulated that the contracting party holds the responsibility to thoroughly verify the technical and professional capabilities of the candidates and contractors, as well as their financial standing, before proceeding to evaluate their technical proposals".²

5. Not calling for competition

In contrast to the overarching principle of promoting competition, which aims to enhance the selection of the most economically advantageous offers from candidates through negotiations, Article 54 of Presidential Decree number 15-247 places the emphasis on the contracting party's duty to ensure the technical and professional competencies of candidates and contractors before evaluating their technical proposals.³ In this context, the contracting interest has the authority to invite the contracting customer to submit an offer that offers economic advantages without being bound by specific formalities for the invitation. The invitation can take various forms, including direct communication with a customer with whom they have previously engaged or through a formal summons. The focus is on facilitating an open and flexible approach to ensure the consideration of economically advantageous offers from potential customers (Mursili and Lounis 2022).

¹ Article 20/1 of Executive Decree No. 18-199, previous reference.

² Subject 54, From Presidential Decree No. 15-247 regulating public procurements and public utility mandates, dated September 16th, 2015, Official Gazette No. 50, issued on September 20, 2015.

³ **Francois Berghendikh**, *essentiel de la délégation de service public*, extended editions, P64-



As per Article 39 of Executive Decree No. 18-199, “when a simple compromise method is applied, the Bid Selection and Selection Committee is responsible for inviting the selected candidate to submit their bid”.¹

Article 46 of Executive Decree No. 18-199 stipulates the following: "Any candidate who objects to the decision regarding the delegation of the public utility has the right to file an appeal with the Public Service Authorizations Committee. The appeal must be submitted within a period not exceeding ten (10) days from the date of the announcement of the cancellation decision".²

6. The Second Topic: Applying the Principle of Competition and Anti-Corruption Mechanisms in The Consensual Method

The principle of competition in the realm of concluding public utility delegation contracts is geared towards enhancing the overall quality and competence of the authorized personnel. By fostering competition, this principle allows for a broader pool of potential contractors, thereby expanding the management's options in selecting the most suitable contractor to carry out the delegated public utility services. Ultimately, this approach seeks to ensure the highest standards of performance and efficiency in the management of public utilities (OUENAS and Al-Fassi 2021).

Indeed, the principle of competition is crucial in preventing corruption and misuse of public funds in the context of public utility delegation contracts. The Algerian legislator recognized the potential risks associated with resorting to mutual consent and took measures to limit its application. By doing so, they aimed to mitigate the chances of corruption and implemented various legal mechanisms dedicated to safeguarding public funds from any detrimental impact caused by corrupt practices. Ensuring transparency, accountability, and fair competition in the contracting process is essential to uphold the integrity of public services and the responsible use of public money, which stands as a paramount concern (the second requirement).

6. 1 The First Requirement: Disrupting Competition when Concluding Consensual Delegation Agreements

The delegated authority utilizes the mutual agreement procedure to conclude public utility delegation agreements, driven by the need to serve the public interest and based on specific legally defined cases. This approach is adopted for its simplicity in procedures, speed, and flexibility, which ultimately leads to time and effort savings.

The process of mutual agreement occurs in two distinct parts. In Part One, the authorization agreement is directly and simply reached without formal competition. The contracting parties engage in direct negotiations to reach an agreement. In Part Two, the agreement is still based on mutual consent, but after consultation and through limited competition. The delegated authority selects the delegate from a particular category of candidates and follows special procedures to ensure a fair and informed decision.

By employing this dual approach, the delegated authority aims to efficiently and effectively manage public utility delegation while balancing the necessity of achieving public interest objectives with the advantages of streamlined contracting procedures.

¹ See Article 39 of Executive Decree No. 18-199, previous reference.

² See article 46, ref. Himself.



6.1.1 The First Subsection: The Absence of Competition in The Delegation Agreement in a Simple Consensual Manner

The delegated authority chooses to conclude public utility delegation contracts through a straightforward and consensual approach, deviating from the complexities and formalities involved in the competitive application method. This grants the Algerian delegated authority the flexibility to contract freely, allowing them to address the requirements of the public interest and tackle specific objective situations, such as cases of monopoly or urgent needs. However, it is crucial to emphasize that this is done while adhering to the legal controls specified in the provisions governing the delegation of public utilities.

Article 18 of Executive Decree No. 18-199 outlines the process known as "simple compromise." Under this procedure, the delegated authority selects a qualified delegate to manage a public utility after conducting thorough assessments of the candidate's financial, professional, and technical capabilities. This ensures that the selected delegate is competent and suitable for managing the designated public utility.”¹

Indeed, the Algerian legislator has set clear legal conditions to restrict the delegated authority when resorting to the procedure of simple mutual consent for concluding public utility delegation contracts. These restrictions aim to ensure the qualified capabilities of the delegate, thereby guaranteeing the uninterrupted provision of public utility services.

Article 22, second paragraph of Executive Decree No. 18-199 explicitly states that the delegated authority must thoroughly assess the professional, financial, and technical capabilities of the candidates through appropriate means while selecting them. This requirement is put in place to prevent any deviations or misuse of authority that may lead to financial losses and harm public funds.

By granting the delegated authority the flexibility to use the procedure of simple mutual consent when the competitive method fails or for objective reasons, the legislator strikes a balance between efficient contracting and safeguarding the public interest. The legal conditions serve as checks and balances, ensuring that the contracting process is carried out responsibly and transparently, while mitigating the risks of corruption and abuses that could potentially harm public finances.

6.1.2 The Second Section: The Limited Application of The Principle of Competition in The Delegation Agreement by Mutual Consent After Consultation

The method of mutual consent after consultation involves specific procedures, particularly the application of limited competition when concluding the authorization agreement. In this process, the delegate is selected from a particular category of candidates who possess the necessary technical, professional, and financial qualifications to execute the required services. The choice may be based on previous dealings with the candidates or due to their unique qualifications or monopoly over the service.

Article 17 of Executive Decree No. 18-199 provides the definition of "Consensus after consultation," wherein the delegated authority is required to select a delegate from a pool of at least three (03) qualified candidates. This ensures that a fair and informed decision is made, promoting transparency and accountability in the selection process.”²

¹ See Article 18 of Executive Decree No. 18-199, previous reference

² See Article 17, *ibid*.

You have keenly observed the key concern with the method of mutual consent after consultation. The specific category of candidates selected by the authority based on an advisory procedure may raise doubts about the extent of adherence to the principles of fair competition. It is essential for the delegated authority to demonstrate transparency and avoid any appearance of bias in the selection process.

To ensure a non-discriminatory evaluation, it is vital that the authority adopts clear and objective criteria for assessing the qualifications of candidates. Such criteria should be based on relevant qualifications, technical capabilities, financial stability, and professional expertise, ensuring an equitable assessment of all candidates. In contrast to the simple compromise method, the procedure of mutual consent after consultation involves multiple procedures and formalities. These may include the mandatory press release or announcement of the consultation. By publicly disclosing the process and making it known to all, the aim is to achieve a higher level of clarity and non-confidentiality. This approach promotes accountability and helps prevent any potential attempts to conceal information or manipulate the selection process. In summary, the procedure of mutual consent after consultation must adhere to non-discriminatory evaluation criteria and maintain transparency through proper disclosure of all relevant procedures and formalities. This approach will help ensure a fair and just selection process that upholds the principles of competition and minimizes doubts about the authority's adherence to the rules (Founas 2018).

According to Article 37 of Executive Decree No. 18-199, in cases where mutual consent after consultation is pursued, the Bids Selection Committee is mandated to extend invitations to a minimum of three (03) qualified candidates. These invited candidates are then requested to submit their offers in alignment with the guidelines outlined in the book of conditions. This requirement ensures that a fair and competitive process is maintained, promoting transparency and accountability throughout the selection process. By inviting multiple qualified candidates, the committee aims to evaluate various proposals thoroughly, enabling an objective assessment and selection of the most suitable candidate to undertake the delegated public utility service.”¹

Upon evaluating the candidates' offers, the Bids Selection Committee selects the delegate offering the most advantageous economic benefits. Subsequently, the committee announces the temporary grant of the delegation agreement, providing all candidates with the opportunity to review the decision. If any candidate deems it necessary, they can lodge their appeals before the competent authorities for further consideration. This meticulous process ensures transparency, accountability, and fairness, enabling all parties to express their views and seek resolution if required.

7. 2 The Second Requirement: Mechanisms for Preventing Corruption in Light of The Application of The Mutual Consent Method

The Algerian legislator has established several mechanisms and procedures for the prevention of corruption in the field of delegating public utilities, through the provisions of Law No. 06-01 related to the prevention and control of corruption, and the content of Presidential Decree 15-247 related to the organization of public transactions and public utility delegations, as well as the text of Executive Decree No. 18-199 related to the delegation of

¹ See Article 37 of Executive Decree No. 18-199, previous reference.



the public utility. Within these legal frameworks, administrative control has been activated over the delegated authority as a party to the contract, ensuring the strict observance of rules for concluding the delegation agreement when adopting the method of mutual consent as a mechanism for delegation (Part One). Conversely, the delegate has the right to exercise an appeal in the case of practices that are contrary to the rules for concluding the delegation agreement (second section). These measures showcase the Algerian legislator's unwavering dedication to combatting corruption, promoting transparency, and fostering accountability in public utility delegation, thus reinforcing trust and confidence in the delegation process.

7.2.1 The First Subsection: Administrative Oversight of Public Utility Delegation Agreements

The Algerian legislator has surrounded public utility delegation agreements with legal protection through several control mechanisms in order to preserve public funds from manifestations of corruption, especially when concluding the delegated authority for public utility delegation contracts in a consensual manner. This approach allows the delegated authority the freedom to contract without resorting to complex formal procedures adopted in the case of the method of demanding competition.

One of these protective mechanisms is the administrative oversight of the public utility delegation agreement, which effectively works to reduce the phenomenon of administrative corruption. This oversight function is considered an administrative duty and stands out as one of the most prominent mechanisms for safeguarding public funds. By incorporating administrative oversight into the process, the Algerian legislator showcases their commitment to promoting transparency and accountability in public utility delegation. This proactive approach demonstrates a dedicated effort to combat corruption and maintain the integrity of public service management (Chebab 2021).

Article 74 of Executive Decree No. 18-199 stipulates that public utility delegations undergo both pre- and post-control measures once the delegation agreement becomes effective. In addition to external oversight mandated by the applicable legislation, the delegated authority itself exercises oversight over the delegation of public utility. This comprehensive approach reinforces transparency and accountability, ensuring diligent management of public funds and services¹

The delegated authority establishes a committee known as the "committee for selecting and selecting bids." This committee receives and evaluates the candidates' files, thoroughly examining their bids, and ultimately recommends the candidate offering the most favorable economic benefits. In cases of a simple agreement, the delegated authority directly selects the delegate based on objective considerations deemed beneficial to the public interest. On the other hand, when an agreement is reached after consultation, the authority limits competition to a specific category of candidates. However, it is important to recognize that self-censorship exists in this oversight system. The delegated authority effectively monitors itself through these committees it sets up. While each committee has a designated role, it is evident that they maintain a level of subordination to the authority, which may impact the selection and evaluation processes. To enhance transparency and impartiality, it is advisable to include members representing neutral parties within the committees and invite contractors and

¹ See Article 74 of Executive Decree No. 18-199, previous reference



candidates to attend sessions at all stages. This approach fosters a fairer and more objective evaluation process, instilling confidence in the public utility delegation system¹

Regarding external oversight, the delegated authority creates the Public Service Authorizations Committee. This committee is responsible for approving the books of conditions, monitoring delegate selection procedures, endorsing draft annexes to delegation agreements, and granting visas to the concluded agreements. Additionally, it reviews appeals filed by rejected candidates and makes appropriate adjudications².

As per Article 213 of Presidential Decree No. 15-247, which pertains to the organization of public procurements and public utility delegations, the Minister in charge of Finance is vested with the authority to regulate and oversee these processes. Operating with independent management, this ministerial role encompasses the establishment of the public procurement observatory and the national authority for dispute resolution. These provisions empower the Minister to ensure efficient and transparent management of public procurements and utility delegations while also facilitating resolution mechanisms for any arising disputes.³

The authority overseeing deals and public utility mandates performs essential tasks, including developing a code of ethics for involved public agents and analyzing data related to public service. However, it lacks effectiveness in addressing contract violations as it lacks reporting, auditing, and investigative powers. Empowering the authority with these capabilities would enhance transparency and accountability in public utility delegations (Ben Djilali 2019).

In the same context, Dr. Rachid ZOUAIMIA highlights the significance of adhering to the applied texts of the reference document and the necessity of activating control mechanisms. Failure to do so may lead to the authorities being labeled as "imaginary control authorities." This situation is notably observed in three controlling authorities, namely the authority to control transport, the authority to control public transactions and service mandates, and the power to control the written press. Implementing the appropriate measures and ensuring active control functions are essential to avoid such perceptions and uphold the effectiveness of these controlling authorities (ZOUAIMIA 2021).

On the other hand, public agents are also required to sign a declaration stating the absence of any conflict of interest. This important procedure aims to eliminate suspicions of corruption concerning the agents and employees engaged in concluding public service mandate contracts, particularly in cases of mutual consent method, which grants the delegated authority greater contracting freedom.

Article 08 of the Prevention and Combating of Corruption Law stipulates the obligation of public officials to inform the presidential authority to which they are subject if any conflicts arise between their private interests and the public interest. This legal provision further reinforces transparency and accountability, promoting a higher level of integrity in public service management and contract conclusion processes⁴.

¹ See Articles 78 and 79, *ibid*.

² See Articles 82 and 83, *ibid*

³ Article 213, From Presidential Decree No. 15-247, previous reference

⁴ Article 8 of Law No06-01 related to preventing and combating corruption, dated February 20, 2006, Amended and supplemented by Order No. 10-05, of August 26, 2010, amended and supplemented by Law No. 11-15, dated 02 August 2011.



It is worth noting that Executive Decree No. 18-199, which concerns public utility delegations and is referenced in Presidential Decree No. 15-247 related to organizing public contracts and utility authorizations, does not provide any guidelines on cases of incompatibility in membership within the Public Service Authorizations Committee and the Bid Selection and Selection Committee. Such omissions, particularly when it involves studying the same file submitted by a candidate, can raise suspicions of corruption.

In contrast, Article 92 of Presidential Decree 15-247 addresses the issue of post-employment restrictions for the contracting interest. It explicitly states that the contracting interest cannot grant any form of public deal to its former employees who have ceased to perform their duties for a duration of four years, except in cases stipulated by applicable legislation and regulation. This provision aims to curb potential corrupt practices and maintain the integrity of public service management and contract allocation.¹

8. Section Two: The Right to Appeal in the Event of Practices Contrary to The Rules for Concluding the Authorization Agreement

The right to appeal is constitutionally recognized, as per the 2020 constitutional amendment in Article 168. It explicitly grants individuals the right to appeal administrative authority decisions, ensuring a fair and just recourse through the judiciary². "

Building upon the Algerian constitutional institution's commitment to ensuring this right, the Algerian legislator grants candidates the authority to appeal against decisions of temporary mandate granting. Candidates who participated in the competition or mutual consent after consultation have the right to file an appeal with the Public Service Authorizations Committee within 20 days from the decision announcement. The committee thoroughly reviews the appeal and issues its justified decision within 20 days of receiving it, notifying both the delegated authority and the appellant. This process reinforces transparency and accountability, safeguarding the integrity of public service delegation.³

Article 09 of the Law on "Prevention and Combating Corruption stipulates the right for each party to appeal in cases of non-compliance with the rules for concluding public procurements."⁴

Upon analyzing the article, it is evident that the Algerian legislator empowers candidates who protest against the violation of rules for concluding administrative contracts and public utility authorization contracts to seek recourse before the competent judiciary by filing an appeal.

Article 946, first paragraph of the Civil and Administrative Procedures Code, affirms this right, permitting individuals with an interest in concluding the contract or those affected by the procedural breach to notify the administrative court with a petition. This applies to both state representatives at the regional or local level when contracts are involved.

Should a lawsuit be filed, the Administrative Court possesses the authority to order the administration responsible for the breach to comply with applicable texts within a specified timeframe. Additionally, the court may impose a threatening fine applicable from the expiration date, and it may postpone contract signing until procedures are completed. This

¹ Article 92 of Presidential Decree No. 15-247 related to regulating public procurement and public utility delegations, previous reference.

² ⁴¹- See Article 168 of the Constitution issued by Presidential Decree No. 20-442 of December 30, 2020, approved in a referendum on November 1, 2020, Official Gazette No. 82, issued on December 30, 2020.

³ See Article 42 of Executive Decree No. 18-199, previous reference

⁴ Article 09 of Law No. 06-01, previous reference.



provision has been referred to as "a slap at the spoilers" by some researchers, indicating its significant impact in promoting adherence to regulations and deterring misconduct (Boudiaf 2021).

II- Conclusion:

Based on the preceding information, it can be inferred that the delegated authority employs the method of mutual consent to conclude public utility delegation agreements in situations where the competition application, the general rule, is ineffective or when certain objective criteria necessitate flexibility and expediency in contracting.

However, the Algerian legislator has placed restrictions on the delegated authority when opting for the mutual consent method to ensure the preservation of the public interest and safeguard against corruption, which may threaten public funds. This approach involves formalizing both Simple Mutual Consent and Mutual Consent after Consultation, with limited reliance on the principle of competition to mitigate potential manipulation of public money.

In light of these concerns, the Algerian legislator has carefully implemented various legal mechanisms to prevent corruption manifestations in public utility delegation agreements. This underscores their commitment to promoting transparency, accountability, and the responsible management of public funds.

Based on the previous findings, we strongly recommend reinforcing control mechanisms, particularly in the field, during the implementation of authorization agreements. Extending the duration of such mechanisms would aim to curb corruption that undermines the national economy. To address these concerns, the Algerian legislator should provide clearer and more precise procedural guidelines for the simple consensual approach to delegation agreements. Additionally, investing in the formation and training of staff involved in concluding public utility delegation agreements would enhance their technical, procedural, and practical expertise. Furthermore, adopting electronic transactions for communication, information exchange, and publicity would significantly save time and effort while promoting transparency and competition principles. By implementing these measures, the authorities can effectively combat corruption and ensure more efficient and accountable management of public utility delegations.

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