

The role of public service delegation contracts in financing local authority budgets in Algerian legislation

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Abstract:

Within the framework of satisfying local needs, local communities undertake many activities through the services they provide to the public associated with their local public facilities, which constitute an important financial resource to finance their budget within the framework of the desired local development. However, the profitability of these facilities is also related to the method of exploitation, especially if we know that the traditional methods of managing public facilities have proven to be limited, especially facilities of industrial and commercial nature, as they generate profits and thus create wealth, which prompted the legislator to search for other more effective ways to finance the budget.

The political and economic orientations adopted by the state have helped in resorting to more efficient methods in the management of local public utilities, with the liberalisation of the market from state intervention and the reliance on the private sector in the management and financing of local public utilities through public utility delegation contracts since 2015.

Keywords: Facility authorisation - budget financing - local authorities - wealth creation.

Introduction

The constitutional and legal recognition of the existence of local authorities is aimed at achieving development in various fields thanks to the financial resources available at local level, and this objective can only be achieved if these groups have sufficient financial resources to carry out local affairs in accordance with the powers granted to them in their laws, without needing to rely on the State

budget, which is mainly dependent on oil revenues, and which has experienced a number of fluctuations that have had a negative impact on the financing of the budget.

Consequently, local public services of all kinds constitute an important mechanism for financing local authority budgets, and while recourse to traditional methods has proved limited in achieving the desired efficiency, given the technological advances observed in various aspects of life and the provision of quality services to local citizens, it has become necessary for the legislator to look for new methods to achieve the aforementioned objectives, and despite the legislator's recourse at certain times to the concession method, whether as an exceptional method to be used in cases where it is not possible to manage the services.

Consequently, local public services of all kinds are an important mechanism for financing local authority budgets. if the use of traditional methods has proved limited in achieving the desired efficiency given the technological advances observed in various aspects of life and in providing quality services to local citizens, it has become necessary for the legislator to seek new methods to achieve the aforementioned objectives, and despite the fact that the legislator has for some periods relied on the concession method as an exceptional method to be used in cases where it is not possible to manage local facilities according to traditional methods.

With the policy of opening up to the global economy and liberalising the market for state intervention mechanisms, the legislator has pushed to rely on the private sector to finance local authority budgets through the management of local public services by means of new techniques hitherto unknown, namely public service delegations. These regulations allow local authorities to rely on the private sector to manage their various public facilities according to their needs.

Thanks to these mechanisms, local authorities are targeted by creating wealth and encouraging investment, thereby creating jobs, helping to eliminate unemployment and, consequently, enabling local authorities to find important alternatives for financing their budgets by relying on the private sector, which has the technical and technological skills needed to manage local public services.

Problematic : To what extent do public service delegation arrangements help to finance local authority budgets ?

This problem can be solved by the following plan :

The first theme : the general framework of the public service delegation contract

The second theme : the contribution of public service delegation contracts to the financing of local authority budgets.

The first part : The general framework of the public service authorisation contract

Determining the general framework of public service delegation contracts requires providing a definition in case law and legislation, explaining the formal and substantive elements of this type of contract, setting standards to distinguish them from similar concepts, and addressing the legislative evolution of delegation contracts in public and private texts, according to the following elements :

The first requirement : Define the local public service delegation contract and distinguish it from similar concepts

The public service delegation contract has received a great deal of attention from case law and the courts, and has been enshrined in legislation in a number of legal texts, particularly in France since 1993, where this contract has been governed by Law N° 93-122 of 29 January 1993 on the prevention of corruption and transparency in economic and public procedures, known as the SAPIN Law, in articles 38 to 47¹.

Public service delegation in Algeria has not been granted by an independent law, except with the promulgation of presidential decree n° 15-247², amended and supplemented in article 207, and repealed by law N° 23-12³, which was followed by executive decree N° 18-199⁴ in article 53, and in the same vein instruction No 006 from the Ministry of the Interior followed suit in its definition of public service delegation⁵.

¹ - Erzel Al-Kahnah, on the use of public service delegation in Algerian law, Journal of Legal and Political Research, vol (02), N° (01), Mohammed Sadiq Ben Yahya University, Jijel, 06-15-2017, p. 15

² - Presidential Decree N° 15-247 of 2 Dhou El Hidja 1436, corresponding to September 16, 2015, regulating public procurement and public service delegations, Official Journal N° (50) of 09-20-2015, p 46

³ -It should be noted that the part relating to the Public Procurement Law was canceled under Law N° 23-12 of 08-05-2023 in application of Official Journal N° 51 of 08-06-2023, but the provisions relating to public procurement and public service authorizations are still in force, pending the promulgation of a similar law relating to public-private partnership contracts, which is still under study at the level of the Ministry of Finance.

⁴ - Executive Decree N° 18-199 of 20 Dhou El Kaâda 1439 corresponding to August 2, 2018, concerning the delegation of public service, Official Journal N° 48 of 05-08-2018, p 10.

⁵ - Instruction N° 006 of June 9, 2019 implementing the provisions of Executive Decree N° 18-199 of August 2, 2018 relating to the delegation of public services, taken by the Ministry of the Interior, Local Authorities and Urban Planning, p 01.

The delegation of a public service is defined as a legal act by which the management of a public service is transferred from the public authority to a private person. It also reflects the result of legal action in the way a public service is managed, which allows a person governed by private law to perform a task that is primarily the responsibility of the public authorities¹. This means that the delegation of a local public service has an investment dimension aimed primarily at financing the local authority budget with financial income through a partnership with the private sector, without ruling out the idea of delegating the management of the facility to a person governed by public law².

On the basis of the above, the basic elements on which the local public service delegation is based can be determined as follows :

Section One : The essential elements of a public service delegation contract

These elements are the need to have a delegable public service linked to the achievement of the public interest, and this can be briefly detailed as follows :

First : local public facilities that can be delegated

To delegate a public service, the activity delegated must be a public service. In fact, the work carried out by the administration does not concern all the public facilities that can be delegated to others, which means that there is a public facility that can be delegated³. As for the nature of the delegable public facility, it was specified, with reference to the text of article 207 of Presidential Decree N° 15-247, that the public facilities concerned by the delegation were of a general nature, which means that the delegation includes all types of public facilities, whether administrative, industrial or commercial, provided that they are delegable.

Article 02 of Executive Decree N° 18-199 dealt with the idea of delegating public services under the term non-sovereign facilities, which was limited to the instruction issued by the Ministry of the Interior and Local Authorities under no. 006 of 09 June 2019, which includes the implementation of the provisions of Executive Decree N° 18-199 of 02 August 2018 on the

¹ - Sohaila Founas, The delegation of public service in Algerian law thesis for obtaining a postgraduate doctorate in legal sciences, Faculty of Law and Political Sciences, University of Algiers Mouloud Mammery, Tizi-Ouzou, 2018, p 14.

² - Majnah Hussein, Delegation of public service in Algerian law, journal Research Professor of Legal and Political Studies, Volume (06), N° (03), Mohamed Boudiaf University, Msila, 2021, p 344.

³ - Salami Soumaya, the legal system of public service delegation contracts in Algeria, thesis for obtaining a postgraduate doctorate, specialization in administrative law, Faculty of Law and Political Science, Mohamed Boudiaf University, M'sila, 20-09-2021, p 04.

delegation of public services, which was limited to the issuing of identity and travel documents, civil status, electoral processes, tax collection, prevention, risk and disaster management and the protection of people and property¹.

In view of the above, public services of an industrial and commercial nature are the most important area for delegation contracts, as they are designed to make a profit and therefore to finance local authority budgets. However, it is also possible to delegate certain services of an administrative nature that are not covered by the directive mentioned above.

Second : Achieving the public interest

The existence of a public service is closely linked to the idea of public interest, and this idea remains relevant even if the task of managing this public service is entrusted to private legal entities. The principles governing the operation of a public service are respected, and this is what is stipulated. This is explicitly stated in article 03 of Executive Decree no. 18-199, as well as in article 209 of Presidential Decree no. 15-247, and so public facilities must be authorised in compliance with the principles of equality, continuity and adaptation².

For a public service to be authorised, local groups must express their wish to carry out an activity in the public interest as a public service³.

Section Two : Formal elements of the public service authorisation contract

The public service delegation contract is made up of a set of formal elements, which are the contracting parties (the delegatee and the delegator), the financial compensation and its link with the operation of the facility, and the duration for which the contract remains in force :

First : the delegation parts

The public service delegation agreement constitutes an administrative contract in accordance with the text of article 6 of executive decree N° 18-199, which comprises two parties in accordance with the text of article 4 of the same decree, the first party of which is the public legal entity or the so-called delegated

¹ - Instruction N°006, previous reference, p 04.

² - Benchenaf Manal, Participatory local governance as a mechanism for public service reform in Algeria, thesis for obtaining a postgraduate doctorate, specialty : Administrative activity and administrative responsibility, Faculty of Law and Political Science, University Mohamed Lemine Debaghine Sétif 2, 2019/2020, p 221.

³ - ZOUAÏMIA Rachid, Public service convention on the occasion of the president's birthday on September 16, 2015, Review of the Academy of Legal Research, Volume (07), N° (01), Abderrahmane Mira University of Béjaia, 17- 07-2016, p14.

authority, which is the local authority¹, or the public administrative establishments affiliated to it and responsible for a public facility. The delegated authority may also take the form of a grouping of several persons governed by public law in accordance with the text of article 05 of the same decree.

It should be noted that municipal law no. 11-10, in its article 151/2, explicitly granted the latter the possibility of entering into a public service delegation agreement, which contrasts with state law N° 12-07, in its article 149, which did not include the expression public service delegation but rather approved one of its forms, i.e. the concession.

As for the second party, it is either a public legal entity or a private legal entity, and must be subject to Algerian law, and as the term mentioned in the text of article 04 of the executive decree is generic, this means that public or private legal entities also extend to institutional economic public establishments or public establishments of an industrial and commercial nature, which are originally commercial companies capable of managing services².

Secondly - Financial compensation and its link with the operation of the public service :

The Algerian legislator, through the text of Article 210 of Presidential Decree N° 15-247 and Articles 53-54-55-56 of Executive Decree N° 18-199, has given different names to the financial compensation that the delegate receives, since it has called the financial conditions in the concession and lease contracts "Royalties", and the management and profit-sharing contracts "Tariffs" and "Prim" subsidies³.

For a contract to be considered a delegated contract, it is important that the remuneration of the delegatee is linked in some essential way to the results of the operation. Financial compensation or salary is therefore a decisive criterion in distinguishing a delegated contract from a public procurement contract, especially if the latter involves a mission of general interest⁴.

¹ - According to the text of article 17 of the 2020 constitutional amendment, regional authorities designate the commune and the wilaya, but the term used in this article is that of local authorities, unlike the 2016 amendment which used the term regional authorities, which explains the wording of article 1 of executive decree N° 18-199.

² - Frejat Ismail, Mechanisms for the development of regional communities in Algeria, thesis for obtaining a postgraduate doctorate, specializing in administrative organization, Faculty of Law and Political Sciences, Mohamed Khedir University, Biskra, 2019- 2020, p 358.

³ - Salami Samia, Financial Consideration in Public Utility Delegation Contracts, The Voice of Law, Volume (07), N° (02), Khemais Melliana University, 09-11-2020, pp. 839-840.

⁴ - ZOUAÏMIA Rachid, op.cit, p 15.

The delegatee also seeks to make a profit by entering into the delegation agreement, particularly in services of an industrial and economic nature¹. Financial compensation is also linked to the investment risks borne by the delegatee, given that the management and operation of the service are his responsibility. When it takes the form of financial remuneration, it is a payment received by the delegatee from the beneficiaries of the public service. Whereas the delegated authority is the one that pays the financial remuneration to the delegated person in the *régie intéressé* contract and in the *La gérance* contract, in the form of a subsidy determined by a percentage of turnover, in addition to a productivity subsidy if necessary, The difference lies in the share of profits received by the delegatee in the incentive agency contract².

III. Duration of the delegation

The agreement on the delegation of the public service makes it possible to determine the period of validity of the operation of the public service by the delegatee, because this period constitutes the essence of the contract, and it is a reasonable period proportionate to the nature of the contract concluded, allowing the parties to realise their different interests, while the concessionaire seeks to make a profit by operating the infrastructure, this period prevents it from owning the infrastructure, which means that it is subject to the competent authority that owns the infrastructure, and on the other hand, it offers financing alternatives to the local authority's budget.

With reference to Executive Decree no. 18-199, which specified a maximum authorisation period of thirty (30) years for concession contracts, an average period of between fifteen (15) and ten (10) years for the lease contract and self-governing contract respectively, and a minimum period of five (05) years for the management contract, and this period may be extended in the event of material investments not stipulated in the delegation agreement, by means of an appendix to the agreement, on an ad hoc basis and for reasons of continuity of the public service³.

¹ - Diaf Yasmina, The governance of local finances as a basis for the sustainable development of local authorities in Algeria, thesis for obtaining a postgraduate doctorate, administrative law major, Faculty of Law and Political Science, Mohamed Boudiaf University by M'sila, 2022-2023, p 233.

² - Tayab Nadia, The delegation of public services is a new concept for the evolution of the state function in the Algerian system, Proceedings of the first international Forum : New transformations in the management of public services in Algeria, November 29-28, 2018, Faculty of Law and Political Sciences, Yahia Fares University of Médéa, Algeria, p 21.

³ - Diaf Yasmina, op.cit, p 234

Section II : Distinguishing between the delegation of public utility and similar concepts

There are many overlapping concepts, similar to the delegation of public services, and the research must understand the synergies and the most important differences some of these concepts can be mentioned according to the following elements :

First : delegation and public procurement contracts

Public contracts and public service delegations are classified as administrative contracts and are also subject to the principles of competition and transparency. They are subject to the principles of competition and transparency. In addition, they have been grouped together in a single law, Presidential Decree N° 15-247, with the aim of subjecting public procurement and delegation contracts to a convergent and homogeneous legal regime, since their objective is to seek new means of financing and creating wealth by concluding contracts at the lowest cost and rationalising public expenditure¹.

But that doesn't mean there aren't differences between them:

- If the delegatee obtains the financial compensation by operating the public service, then the payment of the financial consideration of the public contract is paid through a price determined by the Authority after the submission of bids by the participants, and this price is specified in the contract and paid by the Authority and has nothing to do with the profitability of the operation².
- An authorisation contract is intrinsically linked to the use of a public service, as no delegation contract can be considered to exist if the object of its activity is not a public service, whereas the object of public contracts is the provision of works, services and supplies required by local authorities³.

Secondly : Licensing and partnership agreements between the public and private sectors

¹ - Jalil Mounia, The delegation of local public service as an effective local financing mechanism under Presidential Decree N° 15-247, *Ijtihad Review for Legal and Economic Studies*, Volume (08), N° (04), Faculty of Law and of political sciences, Hadj Moussa Akhmouk University, Tamanrasset, 06-15-2019, p 96.

² - Rubash Salima, The economic function of local authorities, postgraduate doctoral thesis in administrative law, Faculty of Law and Political Science, Mohamed Boudiaf University, Msila, 2023-2024, pp. 173-174.

³ - Marwan Mohieddin Al-Qutb, Methods of privatization of public services (Franchising - Joint companies - BOT - Public service delegation), out of print, Legal Publications Al-Halabi, Beirut, 2008, page 470.

Public-private partnership (PPP) contracts are the latest legal development in the management of public services. The aim of a partnership contract is to achieve a specific objective, namely the implementation and maintenance of an infrastructure project by the private sector in exchange for a fee¹.

The Algerian legislator introduced public-private partnership contracts by ratifying the Partnership Charter of 23 December 2017, Contracts for the delegation of a public service are a form of partnership, and this charter took into account contracts whose scope is a public service when a public establishment assumes the function of a public service by virtue of a legislative, regulatory or contractual text².

Partnership contracts differ from authorisation contracts in the degree of risk tolerance, the law applicable to the partner and the financial consideration received by the partner.

- **Risk tolerance criterion** : Risk tolerance is spread across partnership contracts, where the delegator and his delegate bear the degree of risk according to the type of delegation, in concession and lease contracts, the delegated authority bears no risk ; in self-managed contracts and management contracts, the delegatee bears no risk.
- **Applicable law** : In contracts for the delegation of a public service, the delegator is subject to Algerian law, while the foreign partner in partnership contracts is given preference because of the technical and technological qualifications it possesses.
- **Financial compensation** : The delegating authority obtains financial compensation directly from the beneficiaries of public utility services in concession and lease contracts, as it is the delegating authority that evaluates and finances the project itself. Whereas financial compensation in partnership contracts consists of financial shares or instalments on a periodic basis that the public sector undertakes to provide to the private sector for the duration of the contract³.

The second requirement : legal consolidation of authorisation for local public facilities

¹ - Sohaila Founas, op.cit, p 73.

² - Tripartite Meeting Tripartite Meeting, Relative Chart to Corporate Partnership December 23, 2017, [Review transport and port activities](#). Volume (05), N° (02), University of Oran 2 Mohamed Ben Ahmed Oran, 12-31-2018, p 08.

³ - Yasmina Diaf, Op.cit, p.225.

By enshrining delegation in the law on local authorities and by enshrining it in the related laws, we mean Presidential Decree 15-247 and its regulations.

The first part : enshrining the mandate in local government law

The texts relating to local authorities have seen a remarkable development in the use of the method of delegating public services to manage them in line with the political and economic conditions that Algeria has experienced since independence. Under the previous laws on local government, the State remained conservative in its use of techniques for delegating public services, with concessions being considered as an exceptional way¹, due to the country's political and economic trends, which were based on the socialist approach.

Following the 1989 Constitution and the political changes that Algeria underwent as it moved towards capitalism as an economic option, Algeria signed an agreement with the World Bank in 1994 that obliged it to move towards a market economy and to undertake legal reforms that reduced state intervention by moving towards privatisation. During this period, the Ministry of the Interior issued Directive N° 3.94/832 on the management of public services, which introduced a new contracting method, the affermage contract, as an alternative means of managing local services, and identified certain services that could be delegated, such as funeral services, healthcare and assistance for the destitute and disabled².

In a final stage, several laws relating to local authorities were enacted, enshrining the delegation of public services, since article 155 of law N° 11-10³ relating to the commune gave the possibility of managing the services mentioned in article 149 by concession, just as it made delegation one of the methods of managing local services without any comparison between it and other methods of management, leaving the discretionary power to the local authority to choose the most effective method of managing its public services. While article 149 of law N° 12-07⁴ relating to the wilaya has made the concession method a method of managing the public services mentioned in the text of article 146 thereof if it is

¹ - See: Article 220 of Ordinance No. 67-24 on the municipal code, Article 136 of Ordinance N° 69-38 on the wilaya code, Article 138 of Law N° 90-08 relating to the municipality and Article 130 of Law N° 90-09 relating to the wilaya.

² - Rubash Salima, op.cit, p 139.

³ - Law N° 11-10 of 20 Rajab 1432 corresponding to June 22, 2011 relating to the municipality, published in the Official Journal N° 37 of 3 July 2011.

⁴ - Law N° 12-07 of 28 Rabie al-Awwal 1433 corresponding to 21 February 2012 relating to the Wilaya, published in the Official Journal N° 12 of 29 February 2012.

not possible to operate them using traditional methods, the wilaya law has made the concession method an exceptional method.

Second section : Consolidation of the delegation in Presidential Decree N° 15-247

Due to economic and political developments in Algeria in the 1990s, as well as the existing legal vacuum, the Algerian legislator was forced to reconsider the legal system of public service delegation, resulting in the promulgation of Presidential Decree N° 15 -247 containing the public operations and public utility delegations. This decree specifies that the delegation of the public inspectorate is carried out in conjunction with public contracts, just as the delegation of public utility was defined in article 207 of the same decree. It also specifies the elements and forms of the delegation contract.

Pursuant to the provisions of the seventh paragraph of Article 207, Executive Decree N° 18-199 was issued concerning the delegation of public facilities, which sets out the legal regime for the delegation of public facilities.

The second theme : The contribution of public service delegation contracts to the financing of local authority budgets

Public service authorisation agreements take four forms, as stipulated in article 210 of Presidential Decree N° 15-247 and confirmed by article 52 of Executive Decree N° 18-199 concession, lease, interested management and management. The paragraph of this article leaves room for other forms to be added by regulation, and in the light of this, these forms can be classified as contracts partially subject to control and contracts fully subject to control, as set out below.

The first requirement : Delegation contracts partially subject to control

In this type of contract - the concession contract in particular - the delegatee is responsible for the creation, management and maintenance of the public service, whereas the delegatee in the lease contract is responsible for management and maintenance without collecting the fee directly from the beneficiaries of the public service, and therefore bears the risks resulting from the management of this service, which means that these contracts are subject to partial control by the delegated authority, imposed by the requirements of the public interest, and this can be detailed as follows.

Section One : Public Service Concession Contract

This type of contract is considered to be the most widespread method of managing a public service, whereby the task of management is transferred to a person governed by public or private law. Concession contracts are of great financial and developmental importance to local authorities, as they effectively

help to reduce the financial burden on local authority budgets by making individuals responsible for creating and operating public services at their own expense¹.

The Algerian legislator has adopted this contract in several legal texts, the most important of which are : Article 64 bis of law N° 90-30 on the national domain, as amended and supplemented, article 155 of law N° 11-10 on the commune, and article 149 of law N° 12-07 on the wilaya. Texts relating to the delegation of public services can be found in article 53² of executive decree N° 18-199, and in instruction N° 006 issued by the Ministry of the Interior.

A concession contract can be defined as follows: A mandate from the delegated authority to the delegator to complete or construct the public service and operate it, or to operate the public service only, where the concessionaire operates the public service in its own name, under its own responsibility and under the control of the delegated authority, and receives fees from the users of the services of the public facility, and may self-finance the completion and acquisition of the facilities and the operation of the public service for a specified period of time³.

From this it is possible to deduce the most important elements that make up the public service concession contract, which are as follows :

- The person delegated in a public service concession contract receives financial compensation in the form of fees that it collects directly from the users of the public facility and that are directly linked to the results of the operation of the public facility⁴.

- The public service concession contract is not limited to the management and operation of the facility alone, but the delegated entity is also responsible for setting up the public service and operating it under the delegated public service concession contract.

¹ - Benaissa Nassira, "The absence of municipal autonomy in law 11-10 relating to the municipality", a dissertation for obtaining a master's degree, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi -Ouzou, 21-10-2020, p 338.

² - This article added a new concept to the delegation of the public service by way of concession, namely that the delegatee can create local public services, contrary to the provisions of the law on local authorities, which focused on management.

See: Rubash Slima, op.cit. p 188.

³ - Mazouz Delilah, Public service delegation in Algeria, Proceedings of the first international forum "New transformations in public service management in Algeria", November 29-28, 2018, Faculty of law and political science, Yahia Fares University of Médéa (Algeria), p 133.

⁴ - Salami Samia, op.cit, p 847.

- Considering that the person delegated under the public service concession contract is the one who bears the costs of setting up and building the facility, and therefore fully bears the risks resulting from its operation.

- Article 53 of Executive Decree N° 18-199 sets the duration of the concession contract at a maximum of thirty (30) years, which may be extended once for a maximum of four (04) years.

One of the most important areas in which local authorities can resort to the management of local services through concession contracts is the management of household and similar or partial waste, as well as bulky waste and special waste resulting in small quantities from household work, notably with the promulgation of law N° 01-19 relating to the management, control and disposal of waste, as stipulated¹ in article 33 of this law, which gave municipalities the option of delegating waste management to the private sector, and this is in line with the directives of the 2002-2004 National Integrated Urban Solid Waste Management Programme for Large Cities, which stipulated the need to accelerate the move away from waste management through the installation. The general trend is to manage them through concession contracts, where the State grants privileges and incentives to those who continue in this field².

Part Two : Lease of a public facility

The public service lease contract is one of the contracts considered to be a model for the delegation of public services, because it has long been linked to the concession. It is defined as a contract by which a public legal entity called the lessor delegates the task of managing a public service to another person called the lessee, on condition that it provides the necessary equipment and that the lessee receives financial consideration linked to the fees paid by the beneficiaries of public utility services.

It should be noted here that the contract for the lease of a public service in Algeria has not attracted the attention of the legislator. It is clear from an examination of the legal texts that there is no definition of a public service lease contract, with the exception of the provisions of Ministerial Instruction N° 94.3-842 issued by the Minister of the Interior in 1994. Article 210/02 of Presidential

¹ - Law N° 01-19 of 12 December 2001 relating to the management, control and elimination of waste, Official Journal N° 77 of 15 December, 2001.

² - Khedir Ahmed, The municipal public service in the management of household waste A study in the light of law 01-19 relating to waste management in Algeria, Review of economics and business administration, Volume (12), N° (06), Ahmed Draya University, Adrar, 2018, p. 40.

Decree N° 15-247 specified the elements that make up its legal system, such as the parties to the contract and the financial return. The same proposal adopted Article 54 of Executive Decree 18-199¹.

The characteristics of a public equipment lease contract can be deduced from the following elements :

- The delegated entity (the lessee) collects fees from the beneficiaries of the public facilities, and at the same time the lessee is required to pay the delegated entity an annual fee for its use of the facilities, so that it can recover the value of the equipment and buildings it has installed².
- The public entity granting the concession bears the cost of installing the utilities or basic facilities that belong to it. The utilities are then delivered ready for use to the concession holder (the lessee), who manages and operates them.
- In accordance with Article 54 of Executive Decree 18-199, the duration of this contract has been set at a maximum of fifteen (15) years, and may be extended for a maximum of three (3) years.

This is due to the lower level of expenditure and risk compared with the concession contract. Local authorities use this method in particular for the public services mentioned in article 149 of law 11-10 relating to the commune, including : the rental of shops, party headquarters, municipal markets, as well as parking rights, altars and swimming pools.

These local public facilities contribute to the financing of the budget of local communities outside the appropriations of the public treasury, which are included in the private property of local communities that generate revenues. However, many municipalities exploit this type of property on the basis of social rather than economic considerations, far from the modern principles of local public facility delegation, whether in terms of free access to public requests, equality between applicants, or transparency in procedures, and rental prices remain symbolic and undefined³, and Memorandum N° 00096 dated 10-03-2016. However, the practical reality does not reflect this, especially for municipalities, which do not resort to this method except for a few aspects related to the rent of the weekly market, car parks or school transport buses, especially after the promulgation of Executive

¹ - Founas Sohaïla, op.cit, p 95.

² - Salami Samia, op.cit p. 848.

³ - Jalil Mounia, Conferences on local public utility law, publication presented to Master 1 students specializing in in-depth public law, Faculty of Law and Political Science, Department of Law, M'hamed Bougherra University, Boumerdes, 2020-2021, p 34.

Decree N° 18-199¹, However, the practical reality does not reflect this, especially for municipalities, which only resort to this method in a few aspects related to the rent of the weekly market, car parks or school transport buses².

Second requirement : Delegation contracts fully subject to control

There is a range of contracts under which the operator is responsible for installing and maintaining the facility at its own expense and bears the risk alone. In exchange, the operator receives financial compensation and is subject to total control. Case law differs as to whether they are considered delegated contracts, and the administrative judiciary has recognised them. These contracts are :

The first part : self-governance³ (Shared Exploitation Contract)

As stipulated in Article 55 of Executive Decree N° 18-199, it is also known as a shared-use contract as a mechanism for the management of public utilities, a contract entered into by a public authority qualified to delegate a public utility with a natural or legal person of private law.

When the delegatee assumes the task of managing and maintaining a public service on behalf of the delegated public authority and receives a salary determined as a percentage of the turnover generated by the operation of the establishment, in addition to a productivity bonus and a share of the profits⁴.

There is a clear link between the interest-based contract as a governance mechanism for public services and its role in motivating and encouraging customers to participate in the management of public services. What confirms this link is the high turnover and productivity in return for financing the remuneration it receives for managing, administering and maintaining the public service. This contract is therefore dedicated to the partnership between the public and private sectors⁵.

Section Two : The management contract

¹ - Diaf Yasmina, op.cit, p 241

² - Salami Soumaya, The legal system of public service delegation contracts in Algeria, thesis for obtaining a postgraduate doctorate, specialization in administrative law, Faculty of Law and Political Sciences, Mohamed Boudiaf University, M 'sila, 20-09-2021, p 49.

³ - In addition, the object of management is not limited to the operation of the public work and may include other tasks such as public works, contrary to the contract of delegation of the public work, of so that the Algerian legislator failed to qualify the contract as incentive management. See : Founas Sohaila, op.cit, p 102.

⁴ - Moghaddam Yassine, Delegated management contract, Review of legal studies and research, Volume (04), N° (02), Mohamed Boudiaf University, Msila, January 2020, p 141.

⁵ - Ayman Yassin, Catalytic Agency as a Modern Mechanism for Public Utilities Governance, International Journal of Legal and Political Research, Volume (07), Issue (01), Hammal Lakhdar University, El Oued, 31-05-2023, p 366.

This type of contract is mentioned in article 56 of executive decree no. 18-199, and refers to the contract by which a person governed by public law, whether an individual or a legal entity, delegates the task of managing a public service on behalf of the local authority entity in exchange for lump-sum financial compensation, thereby guaranteeing the normal, day-to-day management of the public service with all its elements¹.

Under this contract, the delegating authority entrusts the delegatee with the task of operating the public service, while retaining responsibility for the financing and investment, including the financial equilibrium of the project, on condition that the delegatee receives lump-sum financial compensation that varies from period to period, as well as incentives linked to operating results. In the management contract, the delegatee also assumes the status of agent, which is the same position in the *régie intéressée* contract, where the delegatee operates the facility on behalf of the delegated authority, and the delegated authority resorts to partnership with the private sector in this type of contract to benefit from the expertise and technical competence that enable it to increase the efficiency of the facility's operation and maintenance.²

One of the benefits of the management contract is to improve the efficiency of the operation and maintenance of the project by drawing on the capabilities and technical expertise of the private sector³.

Conclusion :

It is clear from the above that the role and place of public service delegation contracts in the financing of local authority budgets, and given their great importance at local level, have been established by Presidential Decree No. 15-247 in its part relating to public service delegations, as well as Executive Decree N° 18-199.

¹ - Moghaddam Yassin, op.cit, p 142.

² - Suhaila Boukhamis and Hassoun Mohamed Ali, Delegation of public service agreements to local authorities : analytical study of executive decree 18-199, National forum on delegation as a mechanism for managing public services between the imperative of economic orientation and rationalization of public expenditure, Department of Legal and Administrative Sciences, Faculty of Law and Political Sciences, El Hadj Lakhdar University, Batna 1, 27-9-2018, p 06.

³ - Ben Draghi Othman, The delegation of public facilities as a modern mechanism for managing public facilities, Review of scientific horizons, Volume (11), N° (04), Hadj Moussa Akhmouk University, Tamanrasset, 08-09-2019, p 197

This is demonstrated by allowing local authorities to compare the types of contract linked to the delegation of a local public service, depending on the nature of the service and the needs of the local authority, and by linking the financial compensation to the extent of the delegated capacity to operate the facility optimally, thereby encouraging local investment and wealth creation, aiming to ensure that local groups obtain significant income to finance their budgets.

Relying on the capabilities of the private sector to manage the local public service by taking advantage of technical and technological skills, including the creation, maintenance and management of local public facilities, helps to rationalise the volume of expenditure and increase revenue, while ensuring that the facility is returned to the local authority at the end of the contract.

Despite the importance of the aforementioned legal texts, they remain incomplete unless they are reinforced by a new law that replaces Presidential Decree 15-247, which includes a law on public-private partnership contracts, through which funding from the budget of local groups is guaranteed by the use of innovative contracts to complement existing technologies.

Recommendations

- The need to speed up the promulgation of the law on partnership between the private sector and the public sector, and to incorporate the texts of Executive Decree no. 918-199 into its provisions.
- The need to revise Executive Decree no. 18-199 and clarify the cases in which each contract is invoked separately, in particular incentive agency contracts and management contracts.
- Draw up standard contracts for each type of authorisation contract in the form of appendices to Executive Decree no. 18-199.
- Activate public-private partnership contracts in the field of household waste management by recycling and developing it as an important economic resource for local authority budgets.
- Amend the laws governing local authorities to include the forms of public utility authorisation stipulated in the regulatory texts of the contract, namely: concession, lease, incentive agency and management.
- To amend State law by adopting a delegation system for the management of State public facilities, with the aim of unifying and making consistent the texts relating to local authorities.

Bibliography List :**Legal texts :**

- Law N° 11-10 of 20 Rajab 1432 corresponding to 22 June 2011, relating to the commune, published in the Journal Officiel N° (37) of 3 July 2011.
- Law N° 12-07 of 28 Rabi' al-Awwal 1433 corresponding to 21 February 2012, relating to the wilaya, published in the Journal Officiel N° (12) of 29 February 2012.
- Law N° 01-19 of 12 December 2001 on waste management, control and disposal, Journal Officiel N° 77 of 15 December 2001.
- Presidential Decree N° 15-247 of 2 Dhou El Hidja 1436, corresponding to September 16, 2015, regulating public procurement and public service delegations, Official Journal No. (50) of 09-20-2015.
- Executive Decree N° 18-199 of 20 Dhul-Qi'dah 1439 corresponding to 2 August 2018 relating to the delegation of public utility Official Gazette N° (48) published on 5 August 2018.
- Instruction N° 006 dated 9 June 2019 includes an embodiment of the provisions of Executive Decree N° 18-199 of 2 August 2018 on the delegation of public services issued by the Ministry of the Interior, Local Authorities and Town Planning.

Journal article :

- Ayman Yassin, Catalytic Agency as a Modern Mechanism for Public Utilities Governance, International Journal of Legal and Political Research, Volume (07), Issue (01), Hammal Lakhdar University, El Oued, 31-05-2023
- Ben Draghi Othman, The delegation of public facilities as a modern mechanism for managing public facilities, Review of scientific horizons, Volume (11), N° (04), Hadj Moussa Akhmouk University, Tamanrasset, 08-09-2019.
- Erzel Al-Kannah, on the use of public service delegation in Algerian law, Journal of Legal and Political Research, vol. (02), N° (01), Mohammed Sadiq Ben Yahya University, Jijel, 06-15-2017.
- Jalil Mounia, The Delegation of Local Public Service as an Effective Mechanism for Local Funding under Presidential Decree 15-247, Ijtihad Journal for Legal and Economic Studies, Volume (08), N° (04), Faculty of Law and Political Science, Hadj Moussa Akhmok University, Tamanrasset, 15-06-2019.

- Khedir Ahmed, The municipal public service in the management of household waste A study in the light of law 01-19 relating to waste management in Algeria, Review of economics and business administration, Volume (12), N° (06), Ahmed Draya University, Adrar.
- Majnah Hussein, Delegation of public service in Algerian law, journal Research Professor of Legal and Political Studies, Volume (06), N° (03), Mohamed Boudiaf University, Msila, 2021.
- Moghaddam Yassine, Delegated management contract, Review of legal studies and research, Volume (04), N° (02), Mohamed Boudiaf University, Msila, January 2020.
- Salami Soumaya, The legal system of public service delegation contracts in Algeria, thesis for obtaining a postgraduate doctorate, specialization in administrative law, Faculty of Law and Political Sciences, Mohamed Boudiaf University, M'sila, 20-09-2021.
- Tripartite Meeting Tripartite Meeting, Relative Chart to Corporate Partnership December 23, 2017, Review transport and port activities. Volume (05), N° (02), University of Oran 2 Mohamed Ben Ahmed Oran, 12-31-2018.
- ZOUAÏMIA Rachid, Public service convention on the occasion of the president's birthday on September 16, 2015, Review of the Academy of Legal Research, Volume (07), N° (01), Abderrahmane Mira University of Béjaia, 17- 07-2016.

Dissertations and theses :

- Benaissa Nassira, The absence of municipal autonomy in law 11-10 relating to the municipality”, a dissertation for obtaining a master's degree, Faculty of Law and Political Science, Mouloud Mammery University, Tizi-Ouzou, 21-10-2020.
- Benchenaf Manal, Participatory local governance as a mechanism for public service reform in Algeria, thesis for obtaining a postgraduate doctorate, specialty : Administrative activity and administrative responsibility, Faculty of Law and Political Science, University Mohamed Lemine Debaghine Sétif 2, 2019/2020.
- Diaf Yasmina, The governance of local finances as a basis for the sustainable development of local authorities in Algeria, thesis for obtaining a postgraduate doctorate, administrative law major, Faculty of Law and Political Science, Mohamed Boudiaf University by M'sila, 2022-2023.

- Frigat Ismail, Mechanisms for the development of regional communities in Algeria, thesis for obtaining a postgraduate doctorate in administrative organization sciences, Faculty of Law and Political Sciences, Mohamed Khaider University, Biskra, 2019/ 2020.
- Rubash Salima, The economic function of local authorities, postgraduate doctoral thesis in administrative law, Faculty of Law and Political Science, Mohamed Boudiaf University, Msila, 2023-2024.
- Salami Samia, Financial consideration in public service delegation contracts, the voice of law, Volume (07), N° (02), Khemis Miliana University, 09-11-2020.
- Sohaila Founas, The delegation of public service in Algerian law thesis for obtaining a postgraduate doctorate in legal sciences, Faculty of Law and Political Sciences, University of Algiers Mouloud Mammery, Tizi-Ouzou, 2018.

Seminar article:

- Mazouz Delilah, Public service delegation in Algeria, Proceedings of the first international forum “New transformations in public service management in Algeria”, November 29-28, 2018, Faculty of law and political science, Yahia Fares University of Médéa, Algeria.
- Suhaila Boukhamis and Hassoun Mohamed Ali, Delegation of public service agreements to local authorities : analytical study of executive decree 18-199, National forum on delegation as a mechanism for managing public services between the imperative of economic orientation and rationalization of public expenditure, Department of Legal and Administrative Sciences, Faculty of Law and Political Sciences, El Hadj Lakhdar University, Batna 1, 27-9-2018.
- Tayab Nadia, The delegation of public services is a new concept for the evolution of the state function in the Algerian system, Proceedings of the first international Forum : New transformations in the management of public services in Algeria, November 29-28, 2018, Faculty of Law and Political Sciences, Yahia Fares University of Médéa, Algeria.

Courses and conferences :

- Jalil Mounia, Conferences on local public utility law, publication presented to Master 1 students specializing in in-depth public law, Faculty of Law and Political Science, Department of Law, M'hamed Bougherra University, Bumerdes, 2020-2021

