

Sources of public procurement in Algeria

Between the components of artificial intelligence and pragmatic philosophy

مصادر الصفة العمومية في الجزائر بين مقومات الذكاء الاصطناعي والفلسفة البراغماتية

Saloua Bezzahi

Abderrahmane Mira University, Bejaia

saloua.bezzahi@univ-bejaia.dz

Date of submission 11/06/2023 Date of final acceptance 26/09/2024 Date of publication : september 2024

Abstract :

Legislative activity is nowadays increasingly flexible and adaptable, it deeply features artificial intelligence and pragmatic philosophy closely related to globalization that has modified the role played by the legislator through the dialogue of sources which has changed the concept of the legal world by creating what is called postmodern scientific law.

The Algerian legislator faces economic, political, and social challenges that force him to change his socialist ideology by activating the dialogue of sources in the field of public procurement, which will allow him to formulate a safe, attractive, and effective legal system for the public procurement in Algeria.

Keywords

Globalization of law; sources; artificial intelligence; pragmatic philosophy and public procurement

ملخص:

يتسم النشاط التشريعي في الوقت الحاضر بالمرونة والقدرة على التكيف بشكل متزايد لتأثره بعمق بالتطور الحاصل في مجال الذكاء الاصطناعي والفلسفة البراغماتية المرتبطين ارتباطاً وثيقاً بالعمولة حيث غيرت العمولة الدور الذي لعبه المشرع في كافة الأنظمة القانونية الرائدة من خلال تبني تقنية تشريعية جديدة تعرف بحوار المصادر مما غير مفهوم العالم القانوني من خلال خلق ما يسمى بالقانون العلمي ما بعد الحدائي، ويواجه المشرع الجزائري تحديات اقتصادية وسياسية واجتماعية تفرض عليه تغيير أيديولوجيته الاشتراكية عن طريق تفعيل حوار المصادر في مجال الصفقات العمومية، مما سيسمح له بصياغة نظام قانوني امن وجاذب وفعال للصفة العمومية في الجزائر.

الكلمات المفتاحية: عمولة القانون، المصادر، الذكاء الاصطناعي، الفلسفة البراغماتية، الصفة

العمومية.

Auteur correspondant : Saloua Bezzahi

Introduction

Professor Brigitte Stern stated in an article she published in the year 2000, in "Project" magazine, entitled "Globalization of law" stating : "In order to control the economy, protect individuals, and maintain values. We need globalization of law."¹ . On the other hand, we proceed from an assumption in the introduction of this research, meaning that in order to overcome legislative and judicial obstacles in the field of public procurement; the law requires selective globalization through the mechanism of the dialogue of legislative and judicial sources.

It probably goes without saying the reference that it is not meant by the globalization² that we suggest, considering it the future vision that each Algerian legislator or judge adopt in the next years, the melting of legislation and the judiciary in the form of global legal rules, formulated by the most powerful legal systems and the most effective in the global economy in general and public procurement in particular, due to our firm belief of the possibility of formulating a global law in the current period, in a way that the imperial countries does not control the power to set legal rules. If it happened metaphorically, it will not comply with the policies of the countries with conflicting interests, competing economies, and different weights.

It is meant by the dialogue of sources³ in the field of public procurement, the necessity that the Algerian legislator exits from the unilateral legislative circle to the space of selective legislative openness on the comparative legal systems. The administrative judge must bypass the limits of the internal sources for his diligence to borrowing comparative judicial diligence, in a manner that suits the ideology of the legislator and the environment of the judge in his philosophy and tools, and all his affiliations, This is by adopting a modern legal philosophy, known in most of the Anglo-Saxon and Latin systems as the "dialogue of sources"⁴.

The research presents a prospective study based on a modern legal philosophy that began to emerge in the most developed legal systems, its foundation, the necessity that the legislator adopts a new vision known as "holistic pragmatism philosophy" through changing the legal thought either related to the sources of the legal rule or the method of legislating it, and language reaching its efficiency in the field of public procurement, resorting in this to the huge development in the field of artificial intelligence.

The whole world is witnessing a transitional period in the history of peoples, as the effect of the law on globalization is the focus of attention of jurists and jurists, the discussion became concentrated on globalization of law In an ideological approach based on creating a borderless society with economic, social, cultural, political and legal effects, after globalization has succeeded in demolition of the Pillars of modern law based on the western Pillars of modern law between 16th and 17th centuries. Its effects did not stop at the exchange of forms and methods of legal control, but it bypassed it to a mandatory change of the "legal thought."⁵

The research poses the dilemma of how to improve the quality of the Algerian legislation and judicial work in the matter of public procurement through activating the dialogue of external sources, which we will procurement with according to a critical analytical approach, while resorting to some comparative curriculum supplies, to review the modalities and results of the application of the sources dialogue in the first countries that adopted it.

The research aims at unveiling a novel mechanism in the Anglo-Saxon and Latin systems, within a prospective vision, mainly aiming at improving the quality of the laws regulating the public procurement in Algeria, through negotiating with the comparative legal systems through the mechanism of the sources dialogue, and we will study this topic according to the following plan:
First: Towards activating the dialogue of the external legislative sources of the public procurement.
Second: Towards a new vision of the public procurement in the Algerian law.

Section I: Towards activating the dialogue of the external legislative sources of the public procurement

It is meant by the external sources of the public procurement, the total foreign legislative texts dedicated in the convergent comparative legal systems in form and content, with the Algerian legal systems, as we suggest in this frame that the Algerian legislator resorts to borrowing the legal provisions related with the public procurement, which proved its efficiency in this field, but this proposition collides, in fact, with the following dilemma:

- Is it possible for the Algerian legislature to adopt new sources for public procurement by utilizing artificial intelligence and pragmatic philosophy?

A. Foreign legislation as a source of public procurement

It is for granted that according to the classic vision of the Austrian jurist “Hans Kelsen” that the sources of the legal rule is graded according to a hierarchy, as each legal rule must respect the legal rule above it in degree⁶. This hierarchical image embodied in the sources of the legal rule stated in the first article of the Algerian Civil Law, represented in legislation and principles of Islamic law, custom, principles of natural law and principles of justice⁷.

The sources of public procurement vary considering it as a solid organizational core, as described by the author “Duval Jean- Christophe”⁸, as represented in the constitution considering it the essential basis for most rules of administrative law⁹. The basis of the rules of the public procurement derives from the outlines drawn by the constitutional founder, through direct and indirect rules¹⁰, then from International agreements¹¹, then ordinary legislation¹², then subsidiary legislation¹³, followed by the remaining sources of Judiciary, jurisprudence, custom, general principles of law and rules of justice.

We notice through what we discussed above, that the foreign legislations are not a source of the legal rule in general, and the public procurement in particular. It is impossible to find a legislator or judge or department that apply the foreign laws in the whole world, because this breaches nationality sovereignty, does this negate the possibility of activating the dialogue of external sources.

Stating that the dialogue of external sources does not mean in any way applying the foreign laws on the national territory, but it means consolidation of authorities and bodies, which means tracking the legislative and judicial development in the convergent legal systems in form and content with Algeria. Those authorities carry out the issue of monitoring the latest developments occurring in the field of public procurements, and it is not a fantasy, given the effective role it plays in French Council of State in monitoring the most important progress points achieved by the comparative systems then it hosts legislative or judicial delegations from the concerned state to exchange opinions, and benefiting from their experiences and avoiding their failures, then the French laws are issued afterwards affected by the most successful and pioneering, according to the advisory role played by the French Council of State.

B. Mechanisms of activating the dialogue of foreign legislative sources for public procurement

Perhaps it is the most important challenge that faces the Algerian legislator in order to activate the dialogue of the foreign legislative sources for public procurement or any other field is responding to a group of inquiries, mainly how to monitor the developments occurring in the field of public procurement in the system of a specific law, and on what basis the legal system to be affected is selected, and how borrowing is made.

1. Appealing to artificial intelligence in order to activate the dialogue of legal resources

The author “Barraud Boris” stated in his book “Legal pragmatism” that normative has become the imprint of the global community more than the non-normative, as the legal rules arise from all directions and it appears necessary that lawmen must provide means in order to observe these unprecedented text phenomena¹⁴. It is meant by the establishment of the legal rules from everywhere, the issuance of the legal rules from several circuits that transcends the boundaries of the legislator internally and nationally, in a manner that calls for employing advanced technological means to monitor what he called unprecedented text phenomena.

Not monitoring the developments occurring in the field of public procurement in the comparative legal systems, which is currently a difficult issue, because the technological development occurring in the field of artificial Intelligence slows the State to create a digital floor for this purpose. France has applied this when it established a digital information bank to monitor all the effective legislative and administrative policies to combat Covid 19. The Office of Science and Technology Policy of the US White House has resorted to technology companies and research centers in order to benefit from artificial intelligence “AI” in order to create a digital space that allows monitoring more than 2000 advanced research on Covid, and suggested treatments in the advanced countries; and also, the dynamics of the Virus¹⁵.

Appealing to the artificial intelligence in the legal field leads to Collecting the largest amount of digital data related to the most effective systems in the field of public procurement as fast as possible, the thing which makes the legislator avoid relying on trial-and-error method leading to the loss of time, on one hand and the risk of adopting outdated legal rules, away from the developments occurring in a field related with quick change economic phenomena, on the other hand.

2. Principle of appropriate selection of comparative legal systems and texts

The selection of the legal system that the legislator must borrow from its rules is not an easy task, because it requires that the political and legislative authority must have an insightful holistic analytical vision, as the legislator cannot converse except with a similar legal system, and it is the Latin system in the field of administrative law, because he cannot rely on the dialogue of sources in the field of public procurement with a state that belongs to the similar legal system, because it contradicts the vision of the Algerian legislator, whether concerning the concept of the administrative law or concerning its sources and also concerning the structure of its judiciary.

The principle of appropriateness imposes on the Algerian legislator the selection of the most appropriate legal system that suits the Algerian community and its administrative, economic, and political circumstances. The legislator must not import legal provisions from different legal and social systems from its environment; otherwise, the approved texts will become ink on paper because of their inadequacy. The best example for this is the failure of the “electronic public procurement” in Algeria, because the effect of legislator with the comparative systems in this field was unintentionally. This is because taking on the challenge of digitalization of the public procurement requires activating an electronic management, which basically does not exist, and he must also study the legal effects produced by the law to be adopted and he must weigh accurately its effect on its social and legal environment in the following years.

The dialogue of the sources in the field of public procurement depends on professional selection of a legal part, the legislator wishes to adopt after a search process called “macro-juridique” which focus on foreign legislative texts of the branches of the law, or in a specific legal system, or a group of rules derived from a law or legalization with effect on the public procurement like the French Administrative Justice Law or the Emirati Auctions and Tenders law for example¹⁶.

3. The legislator must not be “Couch Potatoe”

The term “Couch Potatoe” is one of the modern terms used by the Americans, to refer to that viewer setting before his screen affected mechanically with what he views without selection. The greatest risks threatening the legislator in the frame of his application of the dialogue of resources, that he turns to an affected carrier not an influential literal. “Carcassonne Guy” criticized the behavior of the French legislator, when he resembled him to the impressive spectator¹⁷, of anything and everything in legislating the legal rules.

The legislator must avoid the literal transfer of the text after a poor translation, but he must quote in a selective manner and it is methodology with scientific and linguistic basis, as he must reach the core of the original text and its legal connotation, in order to formulate it afterwards to the rules of the language of the quoting legislator, respecting what the French judge “Pigeon”¹⁸ calls

“les marquees linguistique”. The main dilemma that faces the regulations of the consequent public procurement, its legal none safety because of its ambiguity as a result to the literal translation of the original text according to the rules of the French language, which the lawmen in countries with bilingualism call the term “distorted translation.”

Section II: Towards a new vision for the public procurement in the Algerian law

The main purpose of activating the dialogue of the legislative sources for the public procurement in Algeria is not responding to international pressures and not for being affected with a specific legislative model, rather it is the adoption of the Algerian legislator of a new legislative philosophy based on getting out from his legislative isolation and from unilateral effect of the French legislator, apart from other legislators, to tracking and monitoring the legislative and judicial developments in the field of public requirements, with the purpose of achieving comprehensive economic development in light of a global economic crisis.

The Algerian legislator cannot remain in isolation from intellectual and philosophical currents that have changed the face of the law in the current period, in an influence-affected relationship, as the French legislator is affected to a great extent with the German and Spanish legislators in the field of public requirement. He is also affected a lot with a modern legal current calling for Americanization of the French law “l’americanisation du droit francis,” similar to the American judge that contributes in the law industry, known as the term “judge made law”¹⁹ in America.

A. Towards adopting a pragmatic philosophy in legislating the rules of public procurement.

² Legal pragmatism²⁰ means appealing to actions, facts, and tangible effects, instead of the ideas and intentions and it is a philosophic current with scientific research bases which is increasingly applied currently, in a manner that makes the legal phenomenon closer to the scientific phenomena from Humanities, as it calls the lawman “le scientifique de droit” or “le biologist”. One of its most important pioneers in the field of administrative law in the modern era, the jurist “Leon Dugait” and the jurist “Francois Geny.”

‘The pragmatic legislator’ is identified as the legislator who transcends limits and methods of the traditional legislator closed in on himself, confined to the legislative authority, or each authority that owns a machine for legislating the rules of the public procurement. He is a legislator that takes the quantitative estimates based on statistics and impact studies, like the statistics based on The rate of increase in contracting through procurements, the acceleration of the growth of the national economy and the rate of exclusion from public procurements, reflexive probabilities based on “Algorithmes” for the level of economic development in the following years, the thing which can transfer the legal system of public procurement with all its factors between regulating the public procurements, the investment law, Finance law, Local administration laws, Civil and Administrative Procedures Law, Money and credit law, competition law and other laws revolving in the orbit of the public procurement to what is known as the postmodern scientific law²¹ “le droit scientifique postmoderne”.

Reviewing the comparative legal systems and the legislative institutions in them allow observing the globalization of the economic activities and commercial exchanges, in a manner that weakened the state sovereignty and the strength of the effect of the legislator at the same time. On the other hand, emerged special economic powers as gathering of huge economic companies, and pressure economic groups, controlled by economic operators with a direct impact on the process of enacting legislative rules through the initiative, demand and pressure on the legislator²².

The modern legal pragmatic vision proved that the authority of enacting the legal rules in the economic field in general and the public procurement in particular, cannot be confined in the legislator himself, but formulating the law became in the light of economic globalization a collective process, in which politicians, economic actors, lawmen participate in order to create legal laws, in which the characteristics of products and services achieved by the public procurement are

unified, according to a consensual formulation that guarantees the realization of economic globalization and reducing the potential risks during the implementation of the public procurements, those new actors participating in enacting the laws are called “the global player” .

The practical reality confirms that the process of enacting the legal rules in the economic field has currently become what we call the term “Sovereigns racing”²³. As the law is no longer the output of the national legislative authority only, but a natural output to the competition of economic and technological dominions, national and foreign policy on creating the legal rules. This does not mean in any way that the State waives its sovereignty before other sovereignties, but in reality, it is the dialogue of overlapping dominions to create a law is nothing but a natural result of pressing forces.

The pragmatic vision we put forward in this field does not mean that the Algerian legislator waives his sovereignty in enacting public procurement, but we suggest his openness to the legislative developments in this field. in the comparative legal systems, in a way that guaranteed benefiting from the experiences of foreign legislators with the aim of correcting textual legislative stumbling blocks and renewing the legal thought in this field.

The process of the dialogue of the foreign sources must pass by two stages: First the dialogue with foreign legislative text, to be followed by a stage called “participatory inclusion” in enacting the legal texts, compared to what is in practice in the French environmental law ²⁴, by opening the field before all economic, social actor, politicians, practicing lawmen of judges, advocates, summon servers, notaries and academics to clarify the law of public procurement in order to suit our legal, political, economic and societal system.

The Algerian legislator must adopt a selective approach in his use of the technology of the dialogue of external sources through the good choice of the legal rules that suit his legal system and public policy directions, in a manner that suits the economic and social data in Algeria, so that he will formulate it afterwards after consulting with all Influencing and affected actors in the public procurement, which was best expressed by “Barraud Boris” that “Pragmatism, through inclusiveness, calls for the fusion of what was not yesterday’s law into today’s law²⁵.

The art of legislation must not be assigned to the legislative authority only, or to the total authorities legally authorized of this, but the legislation must become a collective process, in which participates the lawmen, and academics, because they are the best in employing law’s theories in formulating the texts and using the different juristic opinions, in order to enrich it and adjust its legal language. This was well expressed by the French jurist “Gaston Jeze” who stated “ Ignoring the theory means that you will have the courage to say that it will be useless to know what the person states when he speaks or what he does when he acts: ²⁶.

It is allowed to involve the Professionals in the field of law of judges, advocates, summon servers, and notaries in activating the law to its maximum levels, because they are the most cable to polish the rules of the public procurement, because of their knowledge of the secrets of the legal systems, the explicit and implicit legislative errors, legal obstacles, and practical dilemma that face the procurement in practice, the thing which makes them capable of participating in the industry of legal texts intersecting with the public procurement. One of the biggest vices of the legal system for public procurement in Algeria currently is the unjustified estrangement between the legislator and the administrative judge, as the role of the administrative judge is diminished in Algeria, in settling the disputes provided to him, and this is a serious error, because it is not reasonable that the legislator ignores that “qualified professional” ²⁷ to formulate the law indirectly.

The French administrative judge plays a pioneer role in making the law of public procurement in France, by activating his consultative role, on one hand, and this is a convincing way for the dialogue of sources, a through the explicit sources dialogue, on the other hand in renewed discussions that end in most cases by the judge creating the articles of the law. The best proof of this, the interference of the French Council of State in drawing the local jurisdiction rules in the disputes of public procurements disputes on 16/04/1986, in the lawsuit “compagnie Luxembourgeoise de television” differentiating in this, between the dispute lawsuit filed by the

parties of the procurement and this filed by non-party and it is the approach adopted by the French legislator later- apart from our legislator who is completely ignorant of this proposition ²⁸.

We go much further than that, as we think that there is no harm in importing this French judicial legislative approach – if the term importation is valid- and adopting it in the civil and administrative Procedures Act, after consulting the judges, academics, and all legal actors, in order to face the scandalous obscurity that surrounds the rules of local jurisdiction in the disputes of public procurement in the Algerian law. This matter makes us confirm that the administrative judge who settle the disputes of public procurement in France, are not just the mouths pronouncing the law provision, according to the opinion of the French jurist “Montesquieu” but the law makers through the technology of sources dialogue ²⁹.

Legal courtesy and the intelligence of the legislator impose his dialogue with the economic actors, social partners, veteran politicians loyal and opponent, with the purpose of consultation with them about the suitability of the legal rule to be established and the implications of adopting it on the political, economic, and social fields on the long run. The ability of those sects of prediction of the potential future changes is very high, because of their contact with the global market and political elites³⁰ the thing which increases the ability of the legislator of formulating the law with future vision, in a way that makes him capable of adaptation with emerging conditions. This guarantees the stability of the contractual relations in the procurement, and ensuring its security legally and economically.

If the Algerian legislator had resorted to this method before “Covid 19” he would have been able to mitigate the severity of the effects of the current economic crisis.

B. Towards the adoption of the Algerian legislator of capitalist vision

One of the main defects of the Algerian legislator currently, is his endeavor to achieve a comprehensive economic development in a global capitalist market on pure socialist ideology, the thing that we infer through two things. First, is that the criteria for selecting the contractor are not made according to the requirements of the global market, which imposes on the State contracting with the best economic contractors, efficiently and economic solvency. We find that the Algerian legislator intends to award the public procurements according to a margin of preference to Algerian products and national institution, especially the micro institutions.

The selection of the economic contractor is subject to socialist basis, like supporting the product, only because it is Algerian, and preferring the institution for its nationality or headquarter, therefore, the procurements are awarded to contractors with modest capabilities, the thing which leads to the poor quality of the services provided and the poor quality of the public facilities, which is contrary to the Liberal vision depending on the choice of the winners in the public procurement according to pure economic considerations, which imposes according to our opinion affecting with the vision of each of the Algerian and Emirati legislator in this field³¹.

The second evidence that we review in order to infer the socialist ideology of our legislator in the field of public procurement, it is sufficient to take a look at the procedural character of the public procurement in the current civil and administrative Procedures Act, so the viewer will recognize immediately that we are facing a legislator with a classic vision for the public procurement, who is still dealing with the procurement according to the approved general rules in the article of administrative disputes in general. He views the public procurement as an administrative activity, same as the administrative decisions, subject to the control of the cancellation judge concerning conclusion disputes, and the control of the full judge concerning the enforcement disputes, and it is a serious error that must be rectified through activating sources dialogue by adopting modifications derived from the French Administrative Justice Law.

The capitalist ideology and the pragmatic philosophy, at the same time, impose the necessity of allocating the disputes of public procurement with special provisions at the earliest, because the economic efficiency targeted from the procurement, is supposed to push the legislator to dedicating a special procedural legal system for public procurement, same as in the French law. This allows

developing its procedural system and contributes in the emergence of new types of lawsuits that are completely not known by the civil and administrative Procedures Act, like the lawsuit of enrichment for no reason in the field of public procurement, and separating Pre-contractual urgency from contractual urgency, and adopting urgent suspension in procurement article, instead of being subject to the general provisions of enforcement suspension, and adopting the urgent semi-contractual lawsuit and other lawsuits³².

The socialist ideology of the Algerian legislator has affected his perspective on the disputes of public procurements in a disastrous manner, as it results in the invalidity of public procurements in huge amounts, just because of breaching the principle of legality at the stage of conclusion or implementation, which leads to wasting public money and the waste of time and the lack of continuity of public facilities. This is a natural result for being isolated from the development achieved by the French Law in this field.

The French legislator has adopted at the beginning of regulating the disputes of public procurements a “pragmatic capitalist” vision aiming at maintain the continuity of the implementation of public procurement, in spite of the existence of a defect that tainted the legality of its conclusion or implementation, based on the idea of maintaining the stability of contractual centers and the security of the public procurement, and this is in order to maintain achieving the targeted economic efficiency of the implementation of the procurement. The pragmatic capitalist philosophy pushes him to overriding the economic efficiency on protecting the principle of legality³³.

The capitalist ideology imposes on the legislator approving the main procedural strengths of public procurement in France, by the necessity of waiving the appeal with cancellation in the disputes of public procurement in favor of the lawsuit of full judiciary and giving this full judge very wide authorities, we did not know till now in Algeria, of which we mention the consideration authority in the foreign third party appeals for public procurement, known as “Tropic” appeal, and the authority of addressing orders to the management during the implementation stage to rectify illegality, the authority of amending contractual clauses, the authority to waive the mechanism of ruling of invalidity in the event of the illegality of public procurement in favor of achieving public interest, by establishing the principle of legal security of public procurement³⁴, in order to avoid wasting public money in a legal approach, closer to the theory of acquired right in the field of administrative decisions.

Conclusion:

We conclude at the end of this research that there is no way to overcome the legislative and judicial obstacles in the field of public procurement, except through the Algerian legislator adopting a modern technology in the comparative legal systems, represented in the dialogue of the legislative sources, in order to achieve comprehensive economic development in order to exit from a stifling global crisis, the mechanism of sources dialogue in the modern legal systems, has changed the legislation art, either through the concept of the legislative authority or concerning the sources of the legal rule, by exiting from the traditional circles of the classical legislative authority. Sovereignty parallel to the legislative authority floated to the surface, represented basically in the foreign legislator and lawmen whether academic or experienced of judges, summon servers, and notaries, not to mention the role played by all economic actors and experienced politicians, loyal and opponent, in addition to all the social partners.

Adopting the technology of the sources dialogue in the field of public procurement to changing the legal thought through globalization of the law, according to the requirements of artificial intelligence and pragmatic Philosophy, therefore, the law became similar to an experimental lab, in an approach in which the lawman is described with biology and the legislator with the laboratory. This is the approach that the Algerian legislator must follow in consolidation of the legal system of public procurement as a whole.

The state of enacting the laws in the economic field in general and public procurements in particular is similar to an emergency case, no escape from it, except through the change of the

Algerian legislator of its socialist ideology by adopting the capitalist approach by reconsidering the criteria of the winning of the economic contractors with public procurement, and changing the procedural system for public procurement by approving what is known as “ Public Procurement capitalism” and “capitalism of its disputes” through adopting a procedural legal system for procurement in an independent way from the general rules of the administrative dispute, with weighing the philosophy of maintaining the legal status of the contractors in a formula in which overrides the continuation of the implementation of public procurement in order to achieve public interest on the requirements of the principle of legality. Professor Remiche Benoit, is of the opinion that the boundaries separating the utilitarianism and legality in the economic sector tends to be obscure³⁵. We confirm inevitably that economic utilitarian will overturn the general rules of the legal system of public procurement in an intuitive equation in which capitalist pragmatism wins over the obsession in the next few years.

Citations:

¹ - « Pour réguler l'économie, protéger les personnes et sauvegarder les valeurs..., la mondialisation a besoin de droit », **STERN Brigitte**, La mondialisation du droit, Revue Projet, 2 juin 2000, <https://www.revue-projet.com/articles/la-mondialisation-du-droit>, consulté le 04 novembre 2022.

² - Globalization should not be confused with universalization and internalization because globalization is the liberalism of trade and investment, and also the liberalism of international competition in international economics, Refer in this concern the following:

- **GAYLOR Rabu**, « La mondialisation et le droit : éléments macrojuridiques de convergence des régimes juridiques », *Revue internationale de droit économique*, vol. xxii,3, no. 3, 2008, pp. 335-356.

³ - It is meant by the word dialogue in Arabic language, discussion, argument and speech, that takes place between two persons or more, but the word dialogue in Latin with Greek origin is derived from a word with two parts “dia” means “cross” and “between” and the word “logos” has two meaning, first “the word” and second “speech” refer in this concern

-**Dictionnaire El Maany**, sur ; almaany.com/ar/dict/ar-ar/حوار/- lettres.tice.ac-orleanstours.fr/php5/coin_eleve/etymon/etymonlettres/narration/dialogue.htm, consulté le 10/20/2023.

-**CHEVALIER Jacques**. Mondialisation du droit ou droit de la mondialisation ?. Le droit saisi par la mondialisation, Bruylant, pp. 37-61, 2001. Hal-01759953

³ - **FABRE-MAGNAN Muriel**, « Chapitre IV. Les sources du droit », dans : Muriel Fabre-Magnan éd., *Introduction au droit*. Paris cedex 14, Presses Universitaires de France, « Que sais-je ? », 2021, p. 32-73. URL : <https://www.cairn.info/introduction-au-droit--9782715406902-page-32.htm> , consulté le 02/01/2023.

⁴ - The emergence of sources dialogue goes back to the second half of the xx century, as the term dialogue in this stage took new connotation, because it was used in the beginning with philosophic connotations by the philosophers Aristotle and Plato at the beginning of the philosophic argument between philosophers and was used in the spoken French language only in the 16th century, as it was used to mean the speech between the theatre characters, and it extended later to the field of cinema, radio, and television, afterwards it took the modern meaning of negotiation in the political and union fields, then appeared the term of social dialogue, refer in this to:

- **DE LAMY Bertrand**, Dialogue des juges ; cadre, enjeux et perplexité, Document publié en ligne sur ;<https://publication.ut-capitale.fr>, consulté le 07/02/2022.

⁵ - **CHEVALIER Jacques**. Mondialisation du droit ou droit de la mondialisation ?. Le droit saisi par la mondialisation, Bruylant, pp. 37-61, 2001. Hal-01759953

⁵ - **FABRE-MAGNAN Muriel**, « Chapitre IV. Les sources du droit », dans : Muriel Fabre-Magnan éd., *Introduction au droit*. Paris cedex 14, Presses Universitaires de France, « Que sais-je ? », 2021, p. 32-73. consulté le 02/01/2023. URL : <https://www.cairn.info/introduction-au-droit--9782715406902-page-32.htm>

⁶ - **FABRE-MAGNAN Muriel**, « Chapitre IV. Les sources du droit », dans : Muriel Fabre-Magnan éd., *Introduction au droit*. Paris cedex 14, Presses Universitaires de France, « Que sais-je ? », 2021, p. 32-73. URL : <https://www.cairn.info/introduction-au-droit--9782715406902-page-32.htm> , consulté le 02/01/2023.

⁷ - The first article of the Civil Law states that :” The law applies to all matters dealt with in its texts in terms of wording or content, and if there is no legislative text, the judge rules according to Islamic Sharia, and if not, he rules according to custom, and if not the rules according to natural law and the rules of justice”.

⁸- **DUVAL Jean-Christophe**, « Fiche 2. Les sources du droit des marchés publics », dans : , *L'essentiel du droit des marchés publics*. sous la direction de DUVAL Jean-Christophe. Ellipses, « Fiches », 2017, p. 10-12. URL : <https://www.cairn.info/l-essentiel-du-droit-des-marches-publics--9782340017146-page-10.htm> , consulté le 03/01/2023.

⁹ -« La constitution est la base nécessaire des règles dont l’ensemble compose le droit administratif », **VEDEL Georges**, cité par ; **STIRN Bernard**, Constitution et droit administratif, Nouveaux cahiers du Conseil Constitutionnel n°37(dossier ; le conseil Constitutionnel et le droit administratif- octobre 2012.

¹⁰ - Direct rules in the articles of the Constitution that addressed explicitly the regulation of the procurement in the tenth paragraph of the article 139 of the Presidential decree 438-96, dated 7 December 1996, related to issuing the text of amending the constitution approved in a referendum of 28 November 1996, No. (76), issued on 8 December 1996, amended and complementary by the law No. (82), issued on 30 December, that the Parliament legislates in the fields allocated to it by the constitution, including the general rules related with public procurement. In addition to this, the constitution is considered an indirect source for public procurement by stating in an implicit and indirect manner to public provisions that apply to public procurement, including transparency principles, freedom of competition and equality, in concluding and implementing public procurement in its article 26 and 27.

¹¹ - The treaties ratified by the President of the Republic are considered a source for public procurement according to the article 154 of 96 constitutions, and article 71 of 1996 constitution imposes on the Algerian judge. Compliance with the application of international agreements, republic laws and also the decision of Constitutional Court, refer for example to:

- Presidential decree No. 128-04, dated 9 April of the year 2004, including ratification with reservation the United Nations convention for combat

The direct rules in the constitution articles that addressed explicitly with regulating the procurement in the text of the tenth paragraph of article 139 of the Presidential decree 438-96, dated 7 December 1996., related with the text of amending the constitution, ratified in the referendum of 28 November 1996 No. (76), issued on 8 December 1996, amended and complementary according to the law No. (82), issued on 30 December 2020, that the Parliament legislates in the fields allocated to it by the constitution, including the public rules related with public procurement. In addition to this, the constitution is considered an indirect source for public procurements by stating in an implicit and indirect manner to public provisions that apply to public procurement, including transparency principles, freedom of competition and equality, in concluding and implementing public procurement in its article 26 and 27.

¹² - Ordinary legislation with its different types is considered a source for procurement like Supplementary Finance Act for the year 2022, State and municipal laws, and civil and administrative Procedures Act, refer in this context to the following:

- Order No. 01-22, dated 3 August of the year 2022, including Supplementary Finance Act for the year, 2022, No. (53), issued on 4 August 2022, public administration budget and Public works budget considering it a source for public procurement sector.

- Law No. 09-08, dated 25 February 2008, including the civil and administrative Procedures Act No. (21), issued on April 2008, amended and complementary by the law No. 13-22, dated 12 July 2022, including the civil and administrative Procedures Act no. (48), issued on 17 July 2022.

- Law No. 10-11, dated 22 June of the year 2011, related with municipality, No. (37), issued on 3 July 2011.

- Law No. 07-12, dated February 2012, related with the State, No. (12), issued on 29 February of the year 2012.

¹³ - Previous successive constitutions assigned the matter of legislation in the field of public procurement to subsidiary legislation, according to presidential decrees, in addition to the role played by the first Minister and the subsidiary legislations issued by the local groups in the field of procurement.

¹⁴ -« La société mondiale est certainement marquée par la « pannomie » plus que par l' « anomie » ; des normes surgissent de toutes parts et il paraît nécessaire de donner aux juristes les moyens de rendre compte de ces phénomènes normatifs inédits », **BARRAUD Boris**, *Le pragmatisme juridique*, édition l'Harmattan, Document en ligne sur ; [hal.science /hal-01585675/document](https://hal.science/hal-01585675/document), consulté le 8 mars 2023.

¹⁵ - **Alan BOYLE**, « La Maison Blanche demande l'aide de titans de la technologie pour lutter contre le coronavirus et désinformation, 11 mars 2020.

¹⁶ - The research “macro-juridique” is considered contrary to “micro-juridique” in that the later is focused on a public matter that transcends the boundaries of a branch law or a specified legal system, like the law in general, or its philosophy or history

¹⁷ - Refer in this concern the following:

« Les américains ont inventés une expression –Couch Potatoe- pour décrire le comportement du -téléspectateur continument avachi devant son poste, qui se gave machinalement de tous ce qui lui tombe sous les yeux et la main, Notre législateur lui ressemble », **CARCASSONNE Guy**, « Penser la loi », *Pouvoirs*, 2005/3 (n° 114), p. 39-52. DOI : 10.3917/pouv.114.0039. URL : <https://www.cairn.info/revue-pouvoirs-2005-3-page-39.htm>, consulté le 15/03/2023.

-« On est rentré dans un système où la loi devient un mode de communication politique... » - **BARDITER Robert**, cité par **YANIV Caroline Olivier**, « Discours politique, propagande, communication, manipulation », *Mots les langages du politique*, n°94,2010, p.31-37.

¹⁸ - Refer in this concern the following:

- **Gémar, J.-C.** (1990). Les fondements du langage du droit comme langue de spécialité. Du sens et de la forme du texte juridique. *Revue générale de droit*, 21(4), 717–738. <https://doi.org/10.7202/1058214ar>, consulté le 19/03/2023.

- **LAVOIE Judith**, « Le bilinguisme législatif et la place de la traduction », *TTR*, volume 16, n°01, 1 semestre 2003, p.124.(120-139)

¹⁹ -- Refer in this concern the following:

- **DARCY Gilles**, Avant –propos, acte du colloque organisé par le Sénat français sur L'office du juge, Palais de Luxembourg, 29 ,30 septembre 2016.

- **GERGEAL Jean Louis**, Introduction générale, acte du colloque organisé par le Sénat français sur ; sur L'office du juge, Palais de Luxembourg, 29 ,30 septembre 2016.

²⁰ _ Pragmatism “le pragmatisme” is a Latin term derived from the word “pragma” and means action, and it is the opposite of “le dogmatisme” the Latin term derived from the word “dogma” which means faith,

refer in this concern the following:
- **Dictionnaire Larousse** en ligne sur ;[http ;//www.larousse.fr^francais](http://www.larousse.fr/francais), consulté le 7 mars 2023, consulté le 2/04/2023.

W

²¹ - Refer in this concern the following:

- **DE SOUSA SANTOS Boaventura**, « La transition post-moderne : droit et politique », *Revue interdisciplinaire d'études juridiques*, 1990/1 (Volume 24), p. 77-118. DOI : 10.3917/riej.024.0077. URL : <https://www.cairn.info/revue-interdisciplinaire-d-etudes-juridiques-1990-1-page-77.htm> consulté le 28/02/2023.

-**BARRAUD Boris**, op/cit, p.30.

²² - Ibid., p.35

²³ - we borrowed the term Sovereigns racing from the modern French jurisprudence in the field of administrative control, compared to the term racing of control authorities and it is a logical use, due to the competition of different forms of sovereignty that seek to enact the legal rules.

1- There is no harm to borrow the participatory approach in the environmental field by involving all the actors in formulating the environmental legislation, refer in this concern to the following:

²⁴ - There is no harm to borrow the participatory approach in the environmental field by involving all the actors in formulating the environmental legislation, refer in this concern to the following:

- **Véronique MARTIN-PLACE**, La participation associative dans la politique publique d'environnement française, Pyramides (Online), 6/2002, Online since 28 September 2011, connection on 19 novembre 2002, URL ;<http://journal.openedition.org/pyramides/461>, consulté le 28/11/2022.

- **SERIN Ludovic**, « L'environnement, une histoire associative jeune reflétant une préoccupation récente de notre société », *Pour*, 2014/3 (N° 223), p. 35-41. DOI : 10.3917/pour.223.0035. URL : <https://www.cairn.info/revue-pour-2014-3-page-35.htm>, consulté le 28/11/2022.

²⁵ -« Le pragmatisme invite à travers le pan juridisme à fondre le non-droit d'hier dans le droit d'aujourd'hui », **Ibid.**, p.36.

²⁶ -« Faire fi de la théorie, c'est avoir l'outrecuidance de soutenir qu'il serait inutile de savoir ce que l'on dit quand on parle, de savoir ce que l'on fait quand on agit », **JEZE Gaston**, cité par **BARRAUD Boris**, op/cit, p.17.

²⁷ - Law jurists go beyond this to the involvement of the administrative judge in enacting the rules of the law of public procurement, the thing which makes them inquire the utility of assigning the task of legislation to a wobbly amateur instead of giving it to the experienced professional, which is the administrative judge, refer in this concern to the following:

« A quoi servirait de remplacer cet artisan discret, habile et agissant qu'est le juge administratif par cet amateur, bien intentionné, mais parfois mal informé et maladroite qu'est le législateur », **VEDEL George**, « Le droit administratif peut-il rester indéfiniment jurisprudentiel », *EDCE*, n°31, Paris, 1979-1980, p.31.

²⁸ - Refer in this concern the following:

- **LANGELIER Elise**, L'office du juge administratif et le contrat administratif, LGDJ, Paris, 2011, p.18
- **BERGEAL Catherine et LENICA Frédéric**, Le contentieux des marchés publics, 2ieme édition, Le Moniteur, Paris, 2001, p.70.

²⁹ -- Refer in this concern the following:

- « Les juges ne sont que la bouche qui prononce la parole de la loi ». **BOUSQUET Jeremy**, Responsabilité extra contractuelle en droit administratif, thèse de doctorat en droit, université de Montpellier, 2017, p.17.
- Bezzahi Saloua, Control of the administrative judiciary on the disputes of public procurement, a dissertation in the law, University of Badji Mokhtar, Annaba, 2017, Page 358.

³⁰ -The prediction of the Chairman of the French Banking Commission, George Janssen, in the year 1936, of the inability of the legislator to regulate the economic sector alone in the next year, is the best evidence of the ability of the economic actors of predicting the next changes and this is a forward-looking vision that must be employed by the legislator, refer to:

- **REMICHE Benoît**, « Réflexions sur la crise du contentieux économique », *Revue interdisciplinaire d'études juridiques*, 1984/1 (Volume 12), p. 109-133. DOI : 10.3917/riej.012.0109. URL : <https://www.cairn.info/revue-interdisciplinaire-d-etudes-juridiques-1984-1-page-109.htm>, consulté le 08 mars 2023

³¹ -Refer in this concern the following:

- Law 6 of 2008 regarding purchases, tenders, auctions and warehouses, 3rd June 2008.
- **Question écrite n°10276 de M.GAGNAIRE Jean Louis**, publié au J.O Sénat du 01/03/2011. P.169.
- **Réponse du ministre de l'économie et de l'industrie et de l'emploi**, publié dans le J.O du Sénat du 21/01/2010, p.130, sur la question écrite de **M.BAILLY Gérard**, sur la proximité géographique d'une entreprise, publié dans le J.O du Sénat du 12/11/2009, p.2612.

³² -Refer in this concern the following:

- **Loi n°2001-1168** du 11 décembre 2001 portant mesures urgentes de réformes à caractère économiques et financier, JORF n°288 du 12 décembre 2001.

- **Loi n° 2004-809** du 13 aout 2004 relative aux libertés et responsabilités locale, JORF n°190 du 16 aout 2004.

- **Décret n°2000-1115** du 22 novembre 2000 pris pour l'application de la loi n°2000/597 du 30 juin 2000 relative au référé devant les juridictions administratives et modifiant le code de justice administrative, JORF n°271 du 23 novembre 2000.

³³ -French Council of State considered that the judges of the administrative court in Lyon, has made a mistake when they ruled with cancelling the procurement concluded between Bron municipality and AIA architecte Company, instead of preferring the contracted interest with corrective actions in order to guarantee the continuation of implementation of procurement, refer in this concern to the following:

CE, 18 décembre 2013, Commune de Bron, An°365702, publié au recueil Lebon.

³⁴ -« considérant qu'il appartient, au juge lorsqu'il constate l'existence de vices entachant la validité du contrat, d'en apprécier les conséquences, après avoir pris en considération l'illégalité commise, soit en décidant que la poursuite de l'exécution du contrat est possible, éventuellement sous réserve de mesures de régularisation prises par la personne publique ou convenues par les parties, soit en prononçant ...après avoir vérifié que sa décision ne portera pas une atteinte excessive à l'intérêt général, la résiliation du contrat ou son annulation. . ». **CE**, 9 mai 2012, syndicat départemental des ordures ménagères de l'Aude, A, n°355665, publié au recueil Lebon.

³⁵ -**REMICHE Benoît**, op.cit.

Bibliography:

A. Bibliography in Arabic Language

Legal texts:

1. Presidential Decree No. 438-96, dated December 7, 1996, regarding the issuance of the text amending the constitution, approved by the referendum on November 28, 1996, published in the Official Gazette No. 76, dated December 8, 1996.
2. Ordinance No. 22-02, dated August 3, 2022, containing the Supplementary Finance Law for the year 2022.
3. Presidential Decree No. 04-128, dated April 19, 2004, includes the ratification with reservations of the United Nations Convention against Corruption, adopted by the United Nations General Assembly in New York on October 31, 2003, published in the Official Gazette No. 26, issued on April 25, 2004.
4. Law No. 08-09, dated February 25, 2008, containing the Civil and Administrative Procedures Law, published in the Official Gazette No. 21, issued in April 2008, amended and supplemented by Law No. 22-13, dated July 12, 2022, containing the Civil and Administrative Procedures Law, published in the Official Gazette No. 48, issued on July 17, 2022.
5. Law No. 11-10, dated June 22, 2011, containing the Municipal Law, published in the Official Gazette No. 37, issued on July 3, 2011.
6. Law No. 12-07, dated February 2012, containing the Wilaya Law, published in the Official Gazette No. 12.

II. Bibliography in French language:

A. Legal texts

1. **Loi n°2001-1168** du 11 décembre 2001 portant mesures urgentes de réformes à caractère économiques et financier, JORF n°288 du 12 décembre 2001.
2. **Loi n° 2004-809** du 13 aout 2004 relative aux libertés et responsabilités locale, JORF n°190 du 16 aout 2004.

3. **Décret n°2000-1115** du 22 novembre 2000 pris pour l'application de la loi n°2000/597 du 30 juin 2000 relative au référé devant les juridictions administratives et modifiant le code de justice administrative, JORF n°271 du 23 novembre 2000.

B. Books

1. **BERGEAL Catherine et LENICA Frédéric**, Le contentieux des marchés publics, 2^{ème} édition, Le Moniteur, Paris, 2001.
2. **LANGELIER Elise**, L'office du juge administratif et le contrat administratif, LGDJ, Paris, 2011.

C. Theses

BOUSQUET Jeremy, Responsabilité extra contractuelle en droit administratif, thèse de doctorat en droit, université de Montpellier, 2017

D. Journal Articles

1. **BARDITER Robert**, cité par **YANIV Caroline Olivier**, « Discours politique, propagande, communication, manipulation », Mots les langages du politique, n°94,2010, pp.(31-37).
2. **GAYLOR Rabu**, « La mondialisation et le droit : éléments macrojuridiques de convergence des régimes juridiques », *Revue internationale de droit économique*, vol. xxii,3, no. 3, 2008, pp. (335-356).
3. **LAVOIE Judith**, « Le bilinguisme législatif et la place de la traduction », TTR, volume 16, n°01, 1 semestre 2003, pp.(120-139).
4. **VEDEL George**, « Le droit administratif peut-il rester in indéfiniment jurisprudentiel », EDCE, n°31,Paris, 1979-1980,p p.(31-40).

E. Conference Proceedings

1. **DARCY Gilles**, Avant –propos, acte du colloque organisé par le Sénat français sur L'office du juge, Palais de Luxembourg, 29 ,30 septembre 2016.
2. **GERGEAL Jean Louis**, Introduction générale, acte du colloque organisé par le Sénat français sur ; sur L'office du juge, Palais de Luxembourg, 29 ,30 septembre 2016.

F. Documents and Press Articles

1. **Alan BOYLE**, « La Maison Blanche demande l'aide de titans de la technologie pour lutter contre le coronavirus et désinformation, 11 mars 2020.
2. **STIRN Bernard**, Constitution et droit administratif, Nouveaux cahiers du Conseil Constitutionnel n°37(dossier ; le conseil Constitutionnel et le droit administratif- octobre 2012.
3. **YANIV Caroline Olivier**, « Discours politique, propagande, communication, manipulation », Mots les langages du politique, n°94,2010, p.31-37.
4. **Question écrite n°10276 de M.GAGNAIRE Jean Louis**, publié au J.O Sénat du 01/03/2011.
5. **Réponse du ministre de l'économie et de l'industrie et de l'emploi**, publié dans le J.O du Sénat du 21/01/2010, p.130, sur la question écrite de **M.BAILLY Gérard**, sur la proximité géographique d'une entreprise, publié dans le J.O du Sénat du 12/11/2009.

G. Case Law

1. **CE**, 9 mai 2012, syndicat départemental des ordures ménagères de l'Aude, A, n°355665, publié au recueil Lebon.
2. **CE**, 18 décembre 2013, Commune de Bron, An°365702, publié au recueil.

H. Electronic Bibliography

1. **BARRAUD Boris**, Le pragmatisme juridique, édition l'Harmattan, Document en ligne sur ; hal.science /hal-01585675/document, consulté le 8 mars 2023.

2. **CARCASSONNE Guy**, « Penser la loi », *Pouvoirs*, 2005/3 (n° 114), p. 39-52. DOI : 10.3917/pouv.114.0039. URL : <https://www.cairn.info/revue-pouvoirs-2005-3-page-39.htm>, consulté le 15/03/2023.
3. **DE SOUSA SANTOS Boaventura**, « La transition post-moderne : droit et politique », *Revue interdisciplinaire d'études juridiques*, 1990/1 (Volume 24), p. 77-118. DOI : 10.3917/riej.024.0077. URL : <https://www.cairn.info/revue-interdisciplinaire-d-etudes-juridiques-1990-1-page-77.htm> consulté le 28/02/2023.
4. **DUVAL Jean-Christophe**, « Fiche 2. Les sources du droit des marchés publics », dans : , *L'essentiel du droit des marchés publics*. sous la direction de DUVAL Jean-Christophe. Ellipses, « Fiches », 2017, p. 10-12. URL : <https://www.cairn.info/l-essentiel-du-droit-des-marches-publics--9782340017146-page-10.htm> , consulté le 03/01/2023.
5. **Gémar, J.-C.** (1990). Les fondements du langage du droit comme langue de spécialité. Du sens et de la forme du texte juridique. *Revue générale de droit*, 21(4), 717–738. <https://doi.org/10.7202/1058214ar>, consulté le 19/03/2023.
6. **Dictionnaire El Maany**, sur ; almaany.com/ar/dict/ar-ar/حوار/- lettres.tice.ac-orleanstours.fr/php5/coin_eleve/etymon/etymonlettres/narration/dialogue.htm, consulté le 10/20/2023.
7. **-CHEVALIER Jacques**. Mondialisation du droit ou droit de la mondialisation ?. Le droit saisi par la mondialisation, Bruylant, pp. 37-61, 2001. Hal-01759953
8. **FABRE-MAGNAN Muriel**, « Chapitre IV. Les sources du droit », dans : Muriel Fabre-Magnan éd., *Introduction au droit*. Paris cedex 14, Presses Universitaires de France, « Que sais-je ? », 2021, p. 32-73. URL : <https://www.cairn.info/introduction-au-droit--9782715406902-page-32.htm> , consulté le 02/01/2023.
9. **REMICHE Benoît**, « Réflexions sur la crise du contentieux économique », *Revue interdisciplinaire d'études juridiques*, 1984/1 (Volume 12), p. 109-133. DOI : 10.3917/riej.012.0109. URL : <https://www.cairn.info/revue-interdisciplinaire-d-etudes-juridiques-1984-1-page-109.htm>, consulté le 08 mars2023.
10. **SERIN Ludovic**, « L'environnement, une histoire associative jeune reflétant une préoccupation récente de notre société », *Pour*, 2014/3 (N° 223), p. 35-41. DOI : 10.3917/pour.223.0035. URL : <https://www.cairn.info/revue-pour-2014-3-page-35.htm>, consulté le 28/11/2022.
11. **STERN Brigitte**, La mondialisation du droit, *Revue Projet*, 2 juin 2000, <https://www.revue-projet.com/articles/la-mondialisation-du-droit>, consulté le 04 novembre 2022.
12. **Véronique MARTIN-PLACE**, La participation associative dans la politique publique d'environnement française, *Pyramides (Online)* , 6/2002, Online since 28 September2011, connection on 19 novembre 2002, URL ;<http://journal.openedition.org/pyramides/461>, consulté le 28/11/2022.