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The Public Service Delegation Between Theory And Practice

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Abstract

The phenomenon of public service delegation has garnered substantial global attention as an instrumental approach demonstrating notable efficacy in the administration of facilities. This research endeavors to elucidate this method, which requires urgent consideration against the backdrop of the global oil price crisis. The apparent inadequacies of conventional systems, such as direct exploitation and public institutions, which Algeria has adhered to since gaining independence, are starkly exposed by the prevailing circumstances.

Our investigation aims to delineate the key attributes of the public service delegation paradigm, accentuating its constituent elements. Additionally, the study delves into practical facets of implementing this novel management approach.

Key words: the public service delegation, concession, Governance. Start-ups. Life cycles. Growth.

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1. INTRODUCTION

The public establishment is the essence of administrative activity and the most important manifestation of state intervention to meet the general needs of citizens.

This position has therefore been monopolized for many years for the State. However, with the expansion of the areas of life and the multiplicity of public needs, commercial and industrial facilities appear, which were used as direct operations and public establishments.

Given the successive crises that Algeria has experienced, and the increasing proportions of the population which have shown a serious inability to cover the general needs of citizens, and the poor services provided by the State due to the above-mentioned methods, which have proven their inability to keep pace with developments in various regions of the world. Force the state to give up some of its functions for the benefit of individuals, as part of a new misfortune called "delegation of public utility" as a new technology to cede some of its functions, and reduce its interference in many areas, which previously represented sensitive sectors that could not be abandoned for the benefit of individuals.

To embody this type of management, the Algerian legislator intervened to frame it by laws guaranteeing the equality of relations between the commissioner and his delegate, the administration in its form granting the mandate, and the individuals in the form of holders of the mandate, which leads us to ask several questions about the theoretical frameworks of the technology for authorizing public services, and what are the most important aspects of application in Algeria for these techniques?

To answer this problem, we had to study the theoretical framework of the delegation of public utility (first theme), while highlighting the applications of this technology in Algeria, (second theme)

The first theme: the theoretical framework of public utility delegation technology

We can only study the theoretical framework of this type of management by defining the main characteristics of the concept of technology of delegation of public utility (first requirement), and by reviewing the components of this type of management (second requirement)

The first requirement: the main characteristics of the concept of public utility delegation technology

The idea of delegating the public establishment has roots that extend to the beginning of the last century, but jurisprudence and diligence are still developing this concept and defining the foundations on which it is based, as the mandate of the public establishment has several images, it is difficult to find a complete definition of blockage (Marwan Mohiuddin, 2009, P. 440).

Consequently, the control of the concept of authorization of public utility obliges us to seek the doctrinal definitions (first section), then to clarify and to study the definitions of the legislation (second section).

The first section: Legal definition:

Under legal authority, the delegated authority assumes what falls within its powers and responsibilities towards the delegate. Manage and operate public facilities with or without the

completion of facilities and the acquisition of goods. Implement and operate the public facility. For a determined period with total or partial supervision to which the authorization is subject. All this in exchange for a financial return linked to the operating results (Al-Masoud Mamari and Debaih, 2020, page 339)

Some have defined it as: "The process which allows persons under public law to renounce the powers and tasks necessary to operate a public establishment and use it for persons under private law" (Amel Aouij, 1998, p. 129) .

Professor G. Drau defined it as a contract between a public and a private person, based on personal consideration, in order to implement a public establishment. Consequently, it takes many forms which have the status of diligence: excellence, commitment, indirect management, management of public utility "(Walid Haider, 2009, p. 58).

As for Algerian jurisprudence, try to give a definition of this technology, taking into account the novelty of this system in the Algerian system. We see the definition of Professor Nadia Darifi according to which "the mandate of the public establishment is the contract by which it empowers a common law person (the State, local communities, public administrative institutions), By exploiting and exploiting a public service, with all the responsibilities and the profits and losses it incurs, different from the general agreement in terms of operation, and the method of collecting the financial compensation when the delegate obtains financial compensation for the management and the exploitation of the royalties of the comrades in exchange for the provision of the service, or by the management, but it must be The return is linked to the exploitation of the installation, and because of its exploitation, and this exploitation is for a certain period which may include public administrative, industrial or commercial equipment and the delegate is chosen according to clear procedures, which include both transparency and competition to choose the best "best offer". In order to ensure a better and better public service to the comrades According to a contract specifying the rights of the delegatee and his obligations with all the restrictions of the installation, in terms of equality, continuity and the need to adapt to the 'internal and external environment' (Darifi, 2010)

The second section: the legislative definition:

The Algerian legislator responded to this technology and exposes the ambiguity which surrounds it, and defined it according to the presidential decree n ° 15-247 in the text of article 207 which stipulates: "A legal person of public law the head of a public establishment can delegate its management to its delegate.

And that is, unless there is a different statutory provision. The delegate's remuneration is mainly ensured by the operation of the public establishment.

The delegated authority, which acts on behalf of a legal person governed by public law, delegates the operation of the public establishment by virtue of an agreement.

As such, the authority of the Commissioner may entrust the delegate with the completion of the facilities or the acquisition of the goods necessary for the operation of the public establishment" (Presidential Decree No. 15-247, 2015)

By examining the executive decree to which the aforementioned presidential decree referred, we find its article 02 describing this technique by saying: "The delegation of the public establishment is understood in the concept of this decree. Transfer of certain non-sovereign tasks from the public

powers For a limited period, to the delegate mentioned in article 4 below, for the public good "(Executive Decree No. 18-199, 2018)

Referring to the text of article 4 to which we refer to article 2 of the same decree, we note that it says: "It is possible for regional groupings and public institutions of an administrative nature which are affiliated to them. of a public establishment. At the heart of the text "delegated authority" claims to manage a public establishment for a legal person, public or private, subject to Algerian law, called "delegated" text within the framework of an agreement (executive decree n ° 18-199, 2018)

The second requirement: the constituent elements of the delegation of public utility

The delegation of a public establishment is necessary to establish the availability of several elements of which, if one element is left aside, we will not fulfill the mandate of a public establishment. Some of them are related to the subject of the delegation (the first section), and some are related to the contractual characteristic (the second section).

The first section: elements related to the subject of delegation

All the activities that the State abandons for the benefit of individuals are not always a public service. Consequently, it is necessary to determine the type of activities that make up public establishments (first), to study the confidentiality of each establishment and to subject it to criteria related to the power to delegate (second).

" les collectivités locales, et en particulier les communes, peuvent ainsi recourir à la gestion délégation non seulement pour leurs services publics industriels et commerciaux mais également pour certains de leurs services publics administratifs. Cette faculté n'implique pas évidemment que la gestion de tout service public administratif susceptible d'être délégation a une personne privée doive l'être nécessairement".(walid hyder, 2009, p. 223(

First: the need for a public establishment:

The need to have a public establishment as a basis for establishing the authorization technique makes it an essential axis that obliges to represent an activity to achieve a public benefit, because it is not late, we are not in the process of contract for authorizing or setting up a public establishment, the latter based on its creation on the basis of two criteria or criteria, the former considers the public establishment as an organization and an institution It meets the needs of public, such as public administration and administrative institutions. On the basis of the second criterion, installation is considered an activity which deserves the public interest and meets the needs of citizens, whether public or private.

This is what some have mentioned by defining the installation as "... an activity exercised by the public authority towards citizens directly or indirectly, that is to say under its control (and sometimes c 'is the same public body which exercises this activity) in order to achieve the public interest ". And subject, in part, to rules of public law (Nasser Labbad, without year of publication, page 112)

Second: the validity of the public authorization facility:

We are not in the process of implementing this technology, unless the public establishment agrees to be subject to and subject to delegation (1), but there are establishments which are not delegated (2) are not suitable for be an area for this technology because of its specificity.

1- Authorization facilities:

Originally, the ability of all utilities to delegate technology. Except for what is excluded by a text which makes its mandate impossible or taking into account its specificity and its nature.

As we find economic public services at the forefront of this system and public services of a commercial nature due to their large profit margin which is not available in other facilities, such as administrative public services, including most are not seeking profit, but are in the public interest. The latter does not attract the investor category.

This opinion was consecrated and interpreted in a circular to the Minister of the Interior dated August 7, 1987, in which it is written: "Local authorities, in particular municipalities, can use delegated management not only for their public facilities industrial and commercial, for public administrative equipment. But this possibility will not lead to making each public administrative establishment necessarily delegable to an individual"

"local authorities, and in particular municipalities, can thus apply to delegation management not only for their industrial and commercial public services but also for some of their administrative public services. This option does not imply any obvious service administrative public likely to be delegated to a private person must be supported ". (Walid Hyder, 2009, p. 223)

In turn, case law has expressed its perception in this regard. Like Professor G. MARCOU, he noted that there was no appropriate technique between delegation technology in the management of public services on the one hand and administrative public services on the other. Considering that public investment facilities are the most important and only example of the applications of delegation technology (Walid Hyder, 2009, page 224)

From the above, it becomes clear to us that the application of a public utility authorization technique is suitable for all installations, whether investment or administrative, but the field shows us practically the efficiency of this technology in investment facilities, given its profitable nature, which remains the fertile field for the implementation of this type of management, unlike administrative facilities.

2- Installations not subject to delegation technology:

Case law has unanimously recognized that all public services have the power to delegate, regardless of their administrative or commercial type. However, we find exceptions to this principle. Given the nature and specificity of certain facilities, which are sometimes closely linked to the public authority of a state, such as the establishment of justice which prosecutes criminals and criminals and applies justice, it is inconceivable that the State puts it in the hands of individuals. And the security system whose work is linked to the internal and external security of a country and due to the sensitivity of this sector, we note that the majority of countries agree not to delegate these facilities to individuals. This is what we call sovereign installations (a). In addition to the non-sovereign facilities (B), they agree with her predecessor that she is not eligible for delegation.

A: Sovereign installations

We mean facilities that are closely linked to state sovereignty. The principle is that it is not appropriate to be the subject of a mandate, because it is inconceivable that it delegates the management of the army, considered as a sovereign constitutional facility. In addition to the judiciary, the police and other facilities that the state monopolizes its mandate and leaves the Department of Public Services, which the state can abandon in its management to the private sector while it executes it and manages it himself.

However, we do note the emergence of a recent trend in some countries, such as Switzerland and the United States of America, which allows the private sector to undertake some of the tasks undertaken by the police service through 'private companies. The State of Francisco allowed individuals to benefit from the police services in particular, for a sum of money. (Al-Masoud Mamari and Debih, 2020, page 343)

B: Non-sovereign public facilities:

It is a set of administrative public services which are not suitable for authorization because they do not have the necessary elements to establish this technology, among which is the essential element, which is the return on investment linked to the result of the exploitation in the administrative installations, which is not profitable, and whose aim was to establish it Public interest, even if it obtained no return, and therefore cannot be subject to authorization.

Examples include social security facilities, prisons, etc.

The second section: elements linked to the contract function

According to the Sapin law of 1993, the delegation of a public establishment can only be done through a contractual relationship between the State granting the mandate and the beneficiary of the mandate, so that the unilateral method issued by a single will, known as the method authorization, does not come under the concept of delegation that the French legislator has joined. (Abu Bakr Ahmed, 2014, page 89)

First: the nature of the relationship between the two parties to the contract:

The relationship between the commissioner and the commissioner is a relationship based mainly on the contract, the parts of which are subject to the clauses of the contract, and with reference to Algerian law, we find Decree 18-1999 regulating the provisions to be applied.

The public service delegation contract has its own legal system. It differs from the system for other administrative contracts such as public contracts. Therefore, to determine the nature of the contract, the applicable law must be determined. (Al-Masoud Mamari and Debih, 2020, page 343)

Consequently, the administrative judiciary had to determine the nature of the contract, examine the conditions of its establishment and implement its own legal system.

Thus, the implementation of delegation technology finds its place only in the availability of its elements, among which are the parties to the contractual relationship.

It is customary to conclude technical contracts to delegate public utility between the departments in its general form commissioner in his own form. However, in the implementation of the agreed operating, management and investment conditions, the delegate can take several forms, such as commercial and mixed companies.

Licensor:

The convening of a delegation of public utility is linked to the conclusion of the conclusion, to which the authorities to whom jurisdiction must be entrusted proceed with the implementation and operation of a public establishment. However, a public establishment cannot be delegated by a licensor who does not have both management and administration.

2: The authorization holder (his delegate)

He is the person responsible for the execution of the implementation of the public utility delegation in the agreed manner and operation. However, it can take several forms and forms: it is envisaged that the delegate is a public or private, legal or physical person, a commercial company or an association.

Second: financial compensation is linked to operating results

The forms of the financial report for the management contractor are presented in two forms. The first is based on revenues based on production costs, such as public works contracts and supply contracts called prices. However, there is another image of the financial report which is invoiced to it by the commissioner according to the results of the exploitation, which is called a royalty, because we find a request in the contracts for the delegations of public utility. Therefore, the financial compensation in them is closely linked to the operating results. On the contrary, it is considered to be the fundamental criterion for determining the quality of the contract when most of the case law.

The requirement that the financial consideration be linked to the operating result does not mean that the latter is entirely linked to the operating result. It may be envisaged that this consideration will include procurement for more than one source. Some of them are linked to operating results, while others are in the form of a price that the contractor obtains from the administration or other sources. The French judiciary was then supported by the legislator in law of 2001 requiring that the monetary compensation that the contractor receives is essentially linked to the results of the operation, which means that the acquisition by the contractor of a additional compensation amounts to obtaining declarations from the administration such as assistance or support in the event of the existence of a loss resulting from the operation, loan guarantees or the guarantee of a minimum amount of product which would not affect the nature of the authorization contract. (Al-Masoud Mamari and Debih, 2020, page 345)

The second theme: aspects of the practical application of public service authorization technology

To study this aspect, we will examine the applications of this technique in unilateral delegation (first requirement) without neglecting the applications of this type of delegation in its contractual form the agreement (second requirement).

First requirement: aspects of practical application in a unilateral delegation

A unilateral delegation is understood to mean the unilateral transfer of the management of a public establishment. Unlike the agreement authorizing both parties to a contractual relationship and the provisions agreed in the contract.

However, a unilateral delegation takes two forms, a unilateral delegation through legislative texts (first section) and a unilateral delegation through administrative decisions (second).

The first section: the unilateral authorization of public facilities according to legislative texts:

This means the presence of an earlier text which allows the delegate, whether a public or private person, to be given the mandate to operate a public establishment.

First: a unilateral delegation with legislation for the public sector

Algeria knew this genre when it adopted the socialist system and in order to impose its hegemony on all facilities, it took two methods in its management, the public establishment and the commercial industrial corporation.

Among the applications of this mandate, we find the Algerian Water Company, which was created by the Algerian street and authorized to manage this public service, where the Algerian Water Company was created by executive decree n ° 01-101 of April 21, 2001, which is a national public industrial and commercial institution under the tutelage of the Minister in charge of resources Watercolors and the institution have legal personality and financial independence (Executive Decree No. 01 - 101, 2001).

Within the framework of the national development policy, the Company is mandated to ensure the implementation of the national drinking water policy throughout the national territory by undertaking activities to carry out production, transport and treatment operations. , storage, circulation, distribution and supply of drinking water and industrial water, as well as renewing its basic structures and developing them, and mandating the institution by delegating tasks The following:

Public drinking water service aimed at ensuring the availability of water for citizens under internationally acceptable conditions and striving to meet the maximum demand of users of the public water network and this task is carried out in consultation with local authorities.

- Operation (management and maintenance) of the systems and installations responsible for the production, treatment, transfer, storage and distribution of drinking water and industrial water.
- Initiate all actions aimed at saving water, in particular by improving the efficiency of transport and distribution networks, introduce all water conservation technologies, fight against water waste by developing processes for information, training, education and awareness-raising among users, viewing study programs. Each procedure falls under the water pricing policy and suggests it to the voluntary authority.
- Develop extraordinary sources of water if necessary. (Executive Decree No. 01 - 101, 2001)

It appears from the above that the Algerian Water Company exercises its functions within the framework of a unilateral mandate in accordance with legal texts. That is mandate conferred by law.

However, this institution can delegate part of its functions in favor of private partnerships for the management of this service, although it has received unilateral authorization from the State. In accordance with article 104 of the same law, the administration responsible for water resources which acts on behalf of the State or the concessionaire can delegate part of the conduct of public service or cleaning activities to public concessionaires or to properties with sufficient professional qualifications and financial guarantees.

The concessionaire may also delegate all or part of these activities to one or more section of the establishment's work for this purpose. (Law No. 05-12, 2005)

Just as Algerian water benefits from a legal concession allowing it to carry out a public water distribution service, the street allows it to delegate this service to distributors, provided that it obtains tribal approval. of the guardian ministry, which is confirmed by article 108 of the law n ° 05-12 on water, that is to say when the concessionaire initiates the delegation of public service in its quality of delegated body, and he must ask for the prior agreement of the administration in charge of water resources before submitting it to the competition.

Among the requests for authorization of public establishments with a legislative text, we find the air transport installation, which is a vital device which contributes to social and economic service, by extending this network to reach points impossible to reach.

Consequently, all the countries concerned by the regulation of this field and the organization of investments in it, as we note the Algerian legislator, like all its counterparts, organized this sector with the law 64-166 relating to services , paving the way for the national and foreign private sector to invest in it.

However, the sector knew no investments and remained a monopoly on the Algerian company because of the important sums to invest.

This monopoly was produced by Algerian Airlines, which supplied the fleet and destroyed the runways which were negatively impacted on the public treasury and cost enormous sums.

This did not last long due to the increasing number of travelers and it became impossible to maintain this monopoly.

This policy was reconsidered by the State to exploit this sensitive installation with the promulgation of law 98-06 which opened the door to privileges thanks to the privilege. But things remain as they were, no trader or investor took advantage of it and things returned to their time.

In examining Law 06/98, we note the tendency of the State to abandon the monopoly of this sector. By granting his privilege for certain tasks, including the completion and operation of airports and air service activities, which are stipulated in article 108 of Law 98-06 which authorizes the authorization of air services to customers private companies such as Khalifa Aviation Company and Equire International.

1: The Khalifa Aviation Company:

In order to attract investment and manage the installation of air services and promote it to improve the performance of this service, several companies have obtained the operating concession, including the Khalifa Aviation Company according to specifications in 2001 with a period of 10 years allocated to the operation of 30 international lines added to 12 lines within the maritime network, but this did not continue. The mandate has passed and a dispute has broken out between the director general of this partnership and the Algerian authority.

2: International Require:

The concession for the operation of air transport services was granted to Equire International in accordance with Executive Decree 02-42 for a period of ten years, which resulted in 18 international lines, including 16 to Europe and two lines to the Middle East.

We can see this after the State abandoned the monopoly of air transport services in favor of private

companies, which developed in the movement of traffic with a growth rate of 11.3% compared to 1999, which contributed to an increase in the number of passengers by 664,235 passengers, or 11.4, the number of passengers reaching 2,779,059 passengers. (Fonas, 2018, page 158)

Second: a unilateral delegation with legislation in favor of the private sector

Faced with changes in the state and its policy of involving the private sector in the management of public facilities, it was forced to regulate this area by establishing a legal framework which defines the work of this type of management.

1 National sports federations and professional unions

Examples of unilateral authorization in a legislative text in favor of the private sector are what the State has retained for these people, we find sports federations, professional organizations and social associations.

As the latter undertakes the establishment of a public establishment through its activities for which it has been found, from the promotion of sportsmanship and the fight against drug addiction to the preparation of athletes for international and other partnership .

And by examining article 53 of law 10-4, which includes physical education and sports, we note that he compared the practice of the delegation in the conduct of this service with the prior recognition of the minister in charge of sector.

Because “the national sports federations exercise their activities by delegation. When the Minister responsible for the public good and the public good recognizes them ”.

The conditions of recognition of the public good and the public good of the national federations, as well as their fundamental laws, are fixed by regulatory means. "(Law n ° 04-10, 2004)

As for professional cooperatives, which have been entrusted with the management of a public establishment which is subject to monitoring and supervision for certain activities, mention is made of the organization of lawyers, doctors and 'engineers etc.

The second section: the unilateral authorization of public facilities according to administrative decisions:

The legislator authorized the delegation of certain establishments by a unilateral administrative decision without passing through any of the usual practices among individuals exercising the function of public establishment. According to legal formulas, which take the form of licenses and credit?

Among the applications of this type of delegation, we find public network equipment such as the installation of Sonelgaz (electricity + gas) and the telecommunications installation, and public equipment not connected to the network such as the healthcare establishment. And public facilities related to the field of education.

First: network installations:

1: Installation of electricity and gas:

The operation of this public service installation is guaranteed by persons of public or private law, as it is practiced within the framework of the implementation of the public installation and guarantees a public service represented in the supply of electricity and gas at the Republic level, investigating all quality and safety standards.

To delegate the part linked to the production of electricity, it is subject to a concession regime granted by executive decree on the proposal of the Minister of Energy after consultation with the supervisory authority for the electricity and gas sector. (Fonas, 2018, page 177)

The competition system in this sector is subject to numerous controls which have led the legislator to regulate and legalize it, this sector is therefore subject to the licensing system because of the sensitivity of this sector in part or part of his activities.

We find what it confirms in article 82 of the law on electricity and gas, "The activity of the commercial agent of gas or electricity is subject to licenses in practice granted by the commission ... "(Law n ° 02-01, 2002)

2: Post-attachment and telecommunications:

The Post and Transport Facility has been a monopoly in its practice and conduct of the affairs of a country since independence, using this direct mode of operation, and because of its sensitivity, it has abandoned its management only with the promulgation of Law 2000-03, which defines the general rules relating to posts and telecommunications. Through which a public enterprise, which is the Algerian post office, is responsible for carrying out the telecommunications activity of the Algiers public telecommunications company.

In addition to the private initiative to operate the wireless communication installation in the field of mobile telephony, we note that customers benefit from operating licenses according to an executive decree, including the sign "Orascom and Nejma ".

Second: non-networked public equipment:

1: Health facility:

The legislator has granted the public authority the right to authorize health establishments to create and create private health establishments, with a view to modernizing and promoting the sector. To this end, an arsenal of laws has been put in place in this regard. Among them is Executive Decree No. 88-204, which defines the conditions for opening and operating private hospitals.

The second requirement: practical application in the (contractual) agreement

After having addressed the aspects of practical application in the unilateral delegation and its study, we also had to shed light on the role of the legislator in the renunciation of the State to the management of certain services and facilities for the benefit of individuals, through the application of a contractual agreement, of which we will deal with its forms in order. The first section: the concession contract and its scope

Franchising is the most important and most important contract in the range of administrative contracts in general, and public service delegation contracts in particular. It is considered a model

widely used in the operation of public services. (Al-Masoud Maamri and Debih, 2020, page 345)

Article 53 of Executive Decree 18-1999 defined it as follows: "Concession is the form in which the delegate's delegated authority undertakes either to complete the installations or to acquire the goods necessary for the creation and operation of the public establishment, or it is only committed to operate the public establishment".

The Commissioner uses public utility in his name and under his responsibility, under the partial supervision of the delegated authority. The commissioner personally finances the realization, the acquisition of goods and the operation of the public establishment, and royalties are collected from the users of the public establishment.

The maximum duration of the concession may not exceed thirty (30) years.

This period may be extended by a single supplement, at the request of the delegated authority, on the basis of a reasoned report for making material investments not provided for in the agreement, provided that the extension period does not exceed maximum four (4) years. "(Executive Decree No. 18-199, 2018)

It was found that this type of contract applied to him in all areas, including the management of the water installation in accordance with Law 05-12 and the public purification service and its associated service system, in accordance with decree n ° 08-53, as well as the means of realizing the motorways and their accessories, the management, maintenance, preparation and extension works, which Its foundation is in the executive decree 96-308 relative the granting of road concessions and other areas.

The second section: a public utility lease contract

This contract is one of the most important applications for facility management with delegation technology (Al-Masoud Mamari and Debih, 2020, page 346)

As defined in article 210 F2 of the presidential decree, "the delegated authority undertakes with the commissioner to operate and maintain a public establishment, in exchange for an annual fee paid to him. The commissioner will therefore act in his name and under his responsibility".

The delegated authority finances the establishment of the public establishment itself and pays the delegate's costs by collecting fees from users of the public establishment

A definition is found for him in Executive Decree 18-199 relating to the delegation of the public establishment, whose article 54 stipulates that "... is the form in which the delegated authority undertakes to manage and maintain the public establishment, in return for an annual fee paid to it". Self-employed, bearing all risks and under partial control of the delegated authority.

The delegate may be exposed to commercial risks linked to operating income, as well as to industrial risks linked to operating costs and expenses linked to the operation of the public establishment.

The delegated authority itself finances the creation of the public establishment and the delegate collects a fee to collect fees from the users of the public establishment.

The duration of the General Delegation Contract for Installations in the form of rent is limited to a maximum of fifteen (15) years. (Executive Decree No. 18-199, 2018)

The third section: the catalytic agency (sharing of operations)

The incentive agency contract includes characteristics, elements and conditions that make it a typical and effective tool for managing the public establishment.

Article 210 of 3 of the Presidential Decree defines it as "the authority delegated to the company delegated to operate and maintain the public installation, and the delegate to operate the public installation on behalf of the delegated authority which personally finances the establishment of the public installation and maintains its management".

The delegate's remuneration is paid directly by the delegated authority by means of a subsidy determined by a percentage of the number of works, to which is added, if necessary, a production subsidy and a share of the profits.

The delegated authority determines, in collaboration with the delegate, the tariffs paid by users of the public service.

The delegate receives the tariffs of the delegated authority concerned "(Presidential Decree No. 15-247, 2015)

It is defined by Executive Decree No. 18-199 with the text of Article 55 "... which is the form in which the delegated authority undertakes to delegate to manage, operate and maintain the public establishment. "

The statutory auditor may face commercial risks linked to operating revenues, as well as industrial risks linked to operating charges and expenses linked to the operation of the public establishment.

The Commissioner uses public facilities to report on the delegated authority which finances public facilities and maintains its general management and oversight.

The delegate receives a direct fee from the delegated authority in the form of a subsidy determined by a percentage of the number of works, to which is added a production subsidy and, if necessary, a share of the profits.

The delegated authority, in collaboration with the delegate, determines the tariffs paid by users of the public establishment, and the delegate obtains the tariffs of the delegated authority concerned.

The duration of the authorization agreement of the general facility, in the form of a catalytic agency, is limited to a maximum of 10 (10) years "(Executive Decree No. 18-199, 2018).

The Commissioner takes charge of the management of the installation and sticks to it for maintenance and all the requirements for the proper functioning of the public service, without carrying out the construction of the installations, because this is guaranteed by the delegated power, allowing direct operation of the delegate directly, in exchange for a sum of money to be paid to the delegated authority following the operation, collected on the fees which the users of the installations adhere to.

The fourth section: the management contract

Jurisprudence and legislation have agreed that the management contract is one of the contracts that is of great importance in the management and operation of public services (Masoud Mamari and Debih, 2020, page 347).

Given that the delegated authority has undertaken to operate and maintain the delegate's public facilities, the latter would use them for the benefit of the delegated authority which established the public facilities. Anyone who retains his administration and pays him fees for this management is called a subsidy determined by a percentage of the number of works added to a production subsidy.

Conclusion:

It is clear from the above that we are clearly and clearly pursuing Algeria and its orientation towards new options, which have become the best option to keep pace with the transformations that the world has known of globalization and liberalization of trade. worldwide. In addition to the collapse of the oil price on the world market in 2014, which prompted the State to reduce its interference in many sectors and to abandon some, which until recently represented sensitive strategic installations, allowing them to go to the private sector. This withdrawal resulted in the publication of Presidential Decree 15-247, which provides for the organization of public contracts and the delegations of the public establishment, which was the starting point for a new approach which put an end to the 'Old Testament by adopting traditional management methods, such as direct exploitation and public institution, which clearly demonstrated a catastrophic inability to meet the general needs of the citizens. Then read executive decree No. 18-199 of 20 Dhul Qi'dah 1439 corresponding to August 2, 2018, relating to the delegation of the public establishment. Where the state systems renounce some of their functions for the benefit of individuals for the establishment and equipment of public facilities and the maintenance of their continuity, and to eliminate the financial crisis and economic instability that the country.

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