

THE NECESSITY OF TRANSFORMING FROM A PUBLIC INSTITUTION OF AN INDUSTRIAL AND COMMERCIAL NATURE TOWARDS A PUBLIC ECONOMIC INSTITUTION

YOUSOUF SELLAOUI

Lecturer class A, Laboratory of Mechanisms for Achieving Integrated Development, faculty of Law, University of Algeriers 1, Benyoucef Benkhedda, (Algeria).

Email : y.sellaooui@univ-alger.dz

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Abstract:

In this article, I discussed the public institution of an industrial and commercial nature as one of the most effective methods of managing a public facility.

However, taking care of the public economic facility has become a burden on the state budget, and in the same context, the form of the state has changed from an intervening state to a controlling state that does not directly interfere in economic activity in application of the rules of the market economy. Add to that the administrative aspect, which limits its purely economic nature. All of these previous data add to the current orientation of Algeria in the economic field and therefore the institution of an industrial and commercial nature and considering the latter as a real economic operator with the aim of achieving profit, but this reality clashes with the legal nature of the public institution of an industrial and commercial nature, which has become an inevitable necessity for it to take the form of the economic field and to search for effectiveness in performing public service in the field of economic that affected the legal nature of the national company. For Electricity and Gas.

Keywords: *Public institution, Industrial and commercial nature, Public economic facility, Profit, Electricity and gas.*

INTRODUCTION:

The economy has become the backbone of states and the basis of their progress. The latter have begun to attach utmost importance to its reform and development. This has increased the state's responsibilities and obligated it, in return, to contribute to reviving economic activity and economic decision-making. This is only possible for it through intervention tools, the most important of which are the public institution as a mechanism for managing the public facility. Algeria has sought to give great importance to the economic field, through economic efforts and reforms, the results of which include the creation of new categories of profitable public institutions, the most prominent of which is the public institution of an industrial and commercial nature, through which the state began to complete with individual projects, especially after adopting a market economy policy. The public institution of an industrial and commercial nature was considered the ideal tool of reviving the national economy and reducing crises due to the peculiarity of the duality of the law applied to its transactions, as it is subject to the rules applied to the administration in its relations. With the state and has the status of a merchant in its relations with others. ¹

Since the public institution of an industrial and commercial nature was the cornerstone that Algeria took to guarantee the public economic facility after adopting the market economy system after 1989, the latter absolutely rejects the idea of the state interfering in economic activity and controlling it, but rather allows it to exist in the economic field as a dealer. Economical like other private traders (does not enjoy any special privileges), this an application of the most important principles of the market economy, which is free and fair competition and equal access to markets among dealers. However, in light of the economic crises that Algeria has experienced and the unstable political conditions that have particularly affected the income and revenues of the public treasury, the responsibility for the public economic facility has become all of them burden the state

budget, and also in the same context, a change in the form of the state from an intervening state to a controlling state that does not directly interfere in economic activity in application of the rules of the market economy. In addition, the nature of the public institution is of an industrial and commercial nature, which is considered profitable, just like a private institution, but the contradiction that exists in the administrative aspect of its legal nature, which requires it to perform the public economic utility service, and this limits its purely economic nature.

These previous data add that Algeria's current trend in the economic field is towards abandoning direct support of public economic utility services and thus the public institution of an industrial and commercial nature and considering the latter as a real economic operator aiming to achieve profit. However, this reality clashes with the legal nature of the public institution of that nature. Industrial and commercial. An example of this is the change that affected the legal nature of the National Electricity and Gas company, which transformed its legal system into a public economic institution (a purely commercial company). From the above, the problem of this research paper can be presented as follows:

The nature of the legal system of a public institution of an industrial and commercial nature does not serve its economic (profitable) objective.

To answer this problem, we suggest the following:

The first topic: The existence of a public institution of an industrial and commercial nature to guarantee the public economic facility.

The first requirement: The classical concept of a public institution of an industrial and commercial nature.

The second requirement: The public economic facility as a goal for the public institution of an industrial and commercial nature.

The second topic: The modern form of public enterprise of an industrial and commercial to achieve profit.

The first requirement: The necessity of changing the legal nature of the public institution of an industrial and commercial nature.

The second requirement: The National Electricity and Gas company is an example.

The first topic: The existence of a public institution of an industrial and commercial nature to guarantee the public economic facility

The concept of a public institution of an industrial and commercial nature, like other types of public institutions, is closely linked to the concept of a public facility, with its classical concepts as: "a public administrative facility subject to the management and supervision of the public authority in order to achieve public benefit." However, with economic development and the traditional concept of public utility expanded as it became defined as: "It represents every activity undertaken by the administration itself or undertaken by an ordinary individual under the direction, control and supervision of the administration with the intention of satisfying the needs of the general public."²

In this section, we will discuss the existence of a public institution of an industrial and commercial nature to guarantee the public economic facility. To the classical concept of the public institution of an industrial and commercial nature (the first requirement), then to the public economic facility as a goal for the public institution of an industrial and commercial nature (the second requirement).

The first requirement: the classical concept of a public institution of an industrial and commercial nature

The methods of managing and arranging public facilities vary depending on the difference, diversity and specialization of these facilities and the nature of the public, which is considered a person of public law.³ The public institution of an industrial and commercial nature is considered among the most important methods used to manage public facilities, which are difficult to study due to the lack of establish a unified definition for it.⁴

The first section: Definition of the public institution of an industrial and commercial nature

First: Definition of a public institution of an industrial and commercial nature

Legal jurisprudence has defined a public institution of an industrial and commercial nature based on four criteria, which are: the standard of activity practiced, the standard of the applicable law, the standard of purpose, and the standard of the project's form of external appearance. However, this opinion has been subject to criticism, as nothing prevents the public authority from also managing economic and commercial facilities.

As for the legislative definition at the beginning of independence, the Algerian legislator gave the public institution a classical concept as a public person, defining it as " every public person entrusted with the task of managing a public facility, subject to the supervision of a regional body." The Algerian legislator assigned the public institution of an industrial and commercial nature a dual role that combines the management Public facilities and contributing to economic development, or as researcher VirginieDunier described it, " the two -faced facility"⁵

With the issuance of order N°74-71,⁶ dated November 16, 1971, relating to the socialist management of enterprises, the public enterprise of an industrial and commercial nature was merged with national companies within the framework of the socialist enterprise. With the issuance of law N° 01-88,⁷ dated January 12, 1988, as amended, which includes the directive law for public economic institutions, article N° 44 defined a public institution of an industrial and commercial nature as very public body that is able to finance its exploitative burdens partially or completely. Through the revenue from the sale of commercial production carried out in accordance with a pre-prepared tariff and the book of general conditions. It also granted it duality in the nature of its transactions, subjecting it to the rules applied to the administration in its relations with the state and granting it the status of a trader in its relations with others.

Second: The development of the concept of a public institution of an industrial and commercial nature

1- The establishment of a public institution of an industrial and commercial nature with the end of facilities appeared, known as industrial and commercial facilities, after the state was forced to intervene in the economic field as a result of the needs of the war. There is no doubt that the most famous issue closely linked to this radical shift in the concept of public facilities is the (Bac D'Eloka) case, in which, according to the decision issued by the French court of conflict, it recognized the existence of public facilities that are managed according to the same conditions that govern the operation of private institutions. This has made it possible for the administration to return to exploiting public facilities according to this method. However, in order to describe public institutions as having an economic and commercial nature, the judge is not satisfied with the description contained in the texts only, but looks for the availability of several criteria, the most important of which are: the subject of the activity and sources of financial resources and management methods.

2-The public institution of an industrial and commercial nature in the period between 1962-1988 During the period extending from 1962-1988 b, the public industrial enterprise had several legal forms: the public enterprise of an industrial and commercial nature, the national company, and the socialist enterprise.

1- The public institution of an industrial and commercial nature after the 1988 reforms

Algeria built the transition towards a market economy and initiated reforms that allowed the public institution, starting in 1988, to achieve a kind of independence by approving a legal arsenal aimed at moving towards economic openness. The public institution of an industrial and commercial nature, became one of the effective tools in embodying the policy of change, especially since the law has come to separate the right of ownership of capital by the institution on the one hand, and the authority to manage and arrange it on the other hand, as the institution has a legal personality distinct from the state, meaning that the state has become an owner and shareholder in the institution's capital, but it does not manage it.⁸

Section two: Principles of public enterprises of an industrial and commercial nature

The public institution of an industrial and commercial nature is based on three basic principles, which are: the principle of public facility management, the principle of acquiring legal personality, and the principle of specialization.

1- The principle of public utility

The concept of a public institution of an industrial and commercial nature is closely linked to the concept of a public facility, as it is considered one of the methods of achieving a specific goal, which is to increase the capabilities of the public facility and make it capable of competing with individual private projects active in the same sector.

2- The principle of discovering legal personality

A public institution of an industrial and commercial nature enjoys a legal personality in accordance with its establishment contracts and basic laws,⁹ and it is one of the essential pillars of the institutions' existence in itself. This is mainly due to its being considered a public law person, which requires it to be uniquely public with a public legal personality through which it requires the necessary independence. To achieve the purpose its establishment is to acquire rights and assume

OBLIGATIONS.

3- The principle of specialization

Specialization is a concept very closely related to the goal for which the institution was established, and this is what makes it a specialized and independent body that enjoys economic effectiveness in its field of activity.

The second requirement: the public economic facility as a goal for the public institution of an industrial and commercial nature

The subject of public utility is one of the most important topics of great importance in administrative law, as its emergence is essentially linked to the establishment of the state, as it is the means used by the state in order to achieve the general benefit of the public,¹⁰ as it aims to achieve purposes in various social, political, economic requires it to carry out a commercial or industrial activity, so jurisprudence and judiciary called it public industrial and commercial facilities. This is what we will try to clarify in this requirement through the following sections.

The first branch: Definition of public economic facility

The emergence of public economic facilities is due to the contemporary state beginning to intervene in areas of economic activity that had previously been the domain of the private sector.¹¹ This idea has undergone remarkable change over the ages and has been associated with the function of the state, which has undergone several transformations throughout history and the impact of this associations on the development and emergence of public utilities and the emergence of so-called economic public utilities.

The public economic facility is, above all, a public facility for a public purpose, and therefore we must, as a preliminary step, develop a definition of the public facility first and then try to develop a definition of the public economic facility second.

First- Definition of public facility

The public facility is defined based on two basic criteria: organic and functional, according to the organic or formal criterion: It is considered an organization whose work is limited to providing services and satisfying public needs. An example of this is: the administrative apparatus in general, such as hospitals, universities, etc.¹²

It is also defined as: a public apparatus or body, that is, the apparatus that manages public affairs and needs.¹³

As for the functional or material criterion: the proponents of this trend believe that the public facility means the activity issued by the administration with the aim of satisfying public needs and which is subject to the organization, supervision and control of the state, and private projects and institutions are excluded from this and those that aim to achieve profit.¹⁴ In other words, it is the activity, job, or service that meets individuals' general needs.

Second- Definition of the general economic facility

The economic public facility, or what is called the industrial and commercial public facility, means that facility that is based on practicing a commercial or industrial activity. Examples of this include: transportation facilities by railway, automobile, or aircraft, postal and transportation facilities, water and gas supply facilities, and electricity.

The Algerian legislator enshrined this concept in the text of article 137 of the amended municipal law N° 10/11 of June 2011, where it indicated that municipalities can establish this type of economic public facilities, but it did not explicitly define it.

Some define public economic facilities as: industrial and commercial projects that carry out activities similar to those of individuals and private groups, and at the same time have all the distinctive characteristics of public facilities and are subject to the provisions of both public and private law within one scope.¹⁵

Accordingly, it can be said that the legal system of these facilities is characterized by a mixed nature in that is subject to a dual system in which the rules of administrative law, which is characterized by the use of public authority methods in terms of organization and the relationship between individuals, administration and guardianship authority, are mixed with the rules of private law, that is, the law. Business through relationships with suppliers and customers.

Section Two: Elements of the general economic facility

There are basic elements that must be present in the general economic facility, which are:

First- The public economic facility is a public organization project

It is an organized activity or integrated administrative structure carried out by a human group using material and technical means and includes a group of departments, branches and sections in order to achieve a specific purpose.

Second- The public economic facility is subject to the authority of the state

This element is considered one of the most important elements because it is what distinguishes the public economic facility from private projects, as there are many private projects that achieve the public interest and are not classified as public facilities like private institutes, for example. Therefore, the public economic facility is subject to state control because it touches strategic and vital sectors.

Third - The goal of the public economic facility is to achieve public economic interest

The establishment of the public economic facility aims primarily to achieve the public interest or public benefit, since the latter is the goal of every administrative function, and even institutions run by the state and whose purpose is purely commercial, such as economic institutions.

Four- The public economic facility is subject to a distinct

This is a result of its mixed nature, which is subject to public and private law at the same time.

The third section: The idea of achieving public industrial and commercial utility for the sake of making profit is reviewed

The principle is that any public facility aims to achieve the public interest, so that the purpose of undertaking any activity must not be merely to achieve profit, since a project that aims to achieve profit cannot be considered a facility, and this is specific to administrative public facilities.

Unlike public economic facilities or so-called industrial and commercial facilities, opinions differed on this matter, especially with regard to the issue of price, as there are those who support the idea of a symbolic price, and there is another opinion who supports a fair price, especially in the field of water and energy, and its goal in that is to avoid...Waste and excessive consumption, given that the public utility aims to ensure the supply of gas and electricity throughout the entire national territory.¹⁶

The most prominent example of this is: Sonelgaz company, which was transformed from a public industrial and commercial institution into a stock according to law 01-02.¹⁷ However, this transformation does not mean that the company does not achieve public service, as it aims behind all of this to achieve public benefit. The public in exchange for a profit, given that the state cannot bear everything related to facility's expenses and make use of it for free.

Summary of the first study:

We touched on the public institution of an industrial and commercial nature as one of the most effective methods of managing public facilities, and the development of its concept since its inception and what distinguishes it from other public bodies and institutions active in the management of public facilities, whether economic, administrative, or of a scientific and

technological nature. In addition, we discussed the definition of the economic public facility, mentioned the most important elements on which it is based, and addressed the idea of its decline as an industrial and commercial public facility, which is mainly linked to price and aims to achieve profit.

The second topic: The modern form of public enterprise of an industrial and commercial nature aims to achieve profit

Public enterprises of an industrial and commercial nature are subject to the provisions of public law and private law, each within a specific scope,¹⁸ and it is considered a temporary form of management because the state can decide to change its legal character, whenever it deems it necessary, to a public economic institution.¹⁹ This what distinguishes it from the rest of the legal systems and the basic laws of the rest of the categories of public institutions. In this second section, which is characterized by the modern form of the public institution of an industrial and commercial nature to achieve profit, we will address the necessity of changing the legal nature of the public institution of an industrial and commercial nature (the first requirement) and then the company. The National Electricity and Gas Company is a mode. (The second requirement)

The first requirement: The necessity of changing the legal nature of the public institution of an industrial and commercial nature

Pursuant to article 44 of law N° .01/88, we note that a public institution of an industrial and commercial nature is a form of public institution defined by the capitalist economic system, and when the latter is able to operate in accordance with the rules of the market economy, and the conditions for that are stipulated in the National Development Plan. It turns into a public economic institution, i.e. a company with shares or a limited liability company.²⁰ This is what we will discuss in the following sections:

The first section: Definition of the public economic institution

The idea of a public institution of an economic nature was introduced pursuant to law N° 01-88 containing the directive law for the economic public institution. Two principles were established for it: the principle of independence and the principle of commercialization.²¹

Order 01-04 defined public economic institutions in Article 2 of it as: "commercial companies in which the state or any other legal person subject to public law owns the majority of social capital, directly or indirectly. They are subject to public law." We conclude through this article that the Algerian legislator considered the public economic institution to be a commercial company, and precisely a financial company, which is what was stipulated in Article 1/5 of this order, which stated that: " The establishment, organization, and operation of public economic institutions are subject to the forms to which they are subject." Capital companies stipulated in the commercial law...."

The legislator also allocated it with some exceptions required by its special nature in paragraph 2 of article 5, which states: "However, the board of directors or the supervisory board, as the case maybe, must include two seats for the benefit of workers and employees" This applies to institutions. In which the state or a public law person owns a part or majority of its capital.

Section Two: Characteristics of the public economic institution

The institution has several characteristics

First: Generality

Public economic institutions constitute the main instrument of state intervention in the economic sector, in addition to the social capital possessed by the state or a public law entity, which are public funds represented in the form of quotas, shares, investment certificates, shareholding bonds, or any other movable value, which are subject to the law.²² N° 30/90 of 12/1/1990 containing the National Property Law, especially with regard to the management of the state's private property in accordance with article 3/3 and article 01/04 of order 01/04 mentioned above.

Second: Trading

It means that the public economic institution is subject to the provisions of the commercial law, whether from an organizational standpoint,²³ which is either a joint-stock company or a limited liability company..... and specifically a financial company according to article 5 of order 01/04 mentioned above. From a functional standpoint: The public economic institution carries out commercial activities in accordance with article 3 of the commercial law, as it carries out commercial activities according to the form, and this results in several results:

It is obligated to register in the commercial registry to acquire a legal personality, as well as to maintain commercial books in accordance with article 549 and 9 of the commercial code.²⁴

Its funds are subject to the procedures to which the merchant's funds are subjected, and therefore they are subject to seizure, alienation and bankruptcy.²⁵

Third: Independence

The public economic institution has an independent legal personality in terms of rights, duties and responsibility.

The form of the public economic institution is the effective and appropriate form that serves and achieves profits for economic projects, even if they are within public economic facilities, because the continuity and adaptation of these facilities with the development of the economic needs of customers is linked to achieving capital in order to reinvest it to develop services and goods, and this it cannot be achieved in light of a market economy that limits direct state intervention in economic activity, which makes the form of the private commercial company the most effective for achieving a balance between providing public industrial and commercial facilities, also achieving profit, and this can only be in the form of a public economic institution, and to confirm this, we will study the example of the National Electricity and Gas Company, which changed its legal form from a public institution of an industrial and commercial nature to a public economic institution, as follows:

The second requirement: The National Electricity and Gas Company as an example

Algeria has paid attention to the electricity and gas sector and made it among the important strategic sectors that have been subject to reform and change since the first years of independence. The National Electricity and Gas Distribution Company has become among the most important strategic public organizations that want to adapt to various economic developments, and therefore in this requirement we will try. He discussed its definition in the first section, and mentioned its most important tasks in the second section.

The first section: Definition of The National Electricity and Gas Company

The National Electricity and Gas Company is known as a public company whose activity is the production, transmission and distribution of energy. Its new basic law enables it to intervene in other sectors of importance to it, especially in the field of marketing electricity and Gas as an example.²⁶

The economic reforms in light of the transformation of the market economy have affected the historical economic operator "Sonelgaz Corporation", which was established as a national company in 1969 and which is granted the exclusive right to produce, transmit and distribute electricity and gas.²⁷

Pursuant to Executive Decree N° 280-95, Sonelgaz was transformed into a public institution of an industrial and commercial nature (EPIC),²⁸ then after that to a joint -stock company starting in 2002, then to holding company with shares, after the issuance of Law N° 01-02 related to electricity andGas distribution through channels,²⁹ and presidential Decree N° 195-02 containing the basic law of the Sonelgaz Corporation.³⁰

The new master plan prepared by the public authorities approved the establishment of the Algerian Electricity and Gas Company affiliated with Sonelgaz complex, which in 2017 was established with a capital exceeding 64 billion Algerian Dinars and its headquarters in Blida, it operates through 52 distribution directorates in 48 states distributed across the national territory.³¹ Sonelgaz is considered one of the largest employers in the industrial arena, and over the past thirty -five years, the number of its employees of all categories has increased from 15 760

assistants in 1980 to more than 84 416 at the end of 2014, of whom 60 691 are permanent workers. These numbers are developing in harmony with the growth and development of Sonelgaz.³²

It is worth noting that this company carries out a number of diverse works and activities related to the field of purchasing electricity and gas energy and selling them to final customers, as well as the activities of producing, transporting and distributing gas according to the conditions stipulated in law N° 01-02 and its regulatory texts. It also manages the growth, development Electrical and gas networks and installations, ensuring that all requests for connection to medium and low voltage are met within the framework of the books of conditions and the applicable system.³³ It also works to provide and supply electricity and gas to all consumers across the national territory through the supply contract, or what is called the electricity supply contract mystification.

Section Two: Tasks of the National Electricity and Gas Company " Sonelgaz"

The most important tasks and objectives of Sonelgaz Company are as follows:

- 1-Ensuring the production, transmission and distribution of quality electrical energy.
 - 2-Meeting requests for connection to electricity and gas in the best conditions.
 - 3-Ensuring a balance between demand and supply in the field of energy.
 - 4-Marketing electricity and gas.
 - 5-Ensuring good conduct and developing distribution networks.
 - 6-Creating branches and taking shares in companies located in Algeria and abroad.
 - 7-Conceive and establish the commercial policy for the general conditions book.
 - 8-Meeting customer's needs with good quality and the lowest cost.
 - 9-Securing structures and infrastructure to cope with increasing consumption, especially energy consumption in Algeria or abroad.
 - 10-Transporting gas for the needs of the national market and distributing it through channels, whether in Algeria or abroad.
 - 11-Study the markets, follow their development, and plan the annual production program.
- Developing every activity that has a direct or indirect relationship with the electrical and gas industry, and every activity that results in a special benefit in relation to the field of hydrocarbons, their discovery and production.

Summary of the second section

In this section, we discussed the modern form of the public institution of an industrial and commercial nature to achieve profit, by examining the definition of the public and economic institution and mentioning its most important characteristics of publicity, commercialization, and independence. We then discussed the National Electricity and Gas Company as a model and devoted ourselves to that. Sonelgaz company, as one of the oldest basic enterprises known in Algeria, by addressing its definition, mentioning its most important tasks, and emphasizing that the form of the public economic institution constitutes the most appropriate model for achieving economic goals, especially profit, and therefore the necessity of moving towards changing all forms of public institution of an industrial nature and abandoning. This model does not serve economic goals.

CONCLUSION

The decision of the French Court of conflict, in accordance with the decision it issued in the case of (Bac D'Eloka) of the existence of public facilities that are managed according to the same conditions that govern the operation of private institutions, has left a significant impact on the economic activity of the state, as it is the birth certificate of the public institution of an industrial and commercial nature. Which is considered one of the most important categories of public institutions in Algeria.

These institutions, as a general principle, are subject to private law in order to acquire the status of a merchant, and they are also subject to the provisions of public law as an exception in their relations with the state. The public economic facility is also considered the primary mission of these instruments, through the elements and principles on which it is based, and the crisis that

struck the idea of the facility, public and its decline as a public industrial and commercial facility and the state's abandonment of its provision and delegation to private individuals to take the form of private projects that are primarily linked to price and aim to achieve profit.

In addition to economic development and the adoption of the free liberal system, the decline of the idea of free economic and social public facilities on the one hand, and the search for achieving the economic goals of these economic projects on the other hand, especially profit, so that they can create their own capital that can be invested in developing the industrial and commercial public facility. Abandoning the search for financial advertisements for the state. All of these data made it necessary to change the form of the public institutions of an industrial and commercial nature, and abandoning it became an inevitable necessity in order to achieve economic goals.

Whereas the public economic institution is considered the most appropriate model through the principles on which it is based, especially the principle of commercialization and independence, which give it the status of a private company, and as an actual example of the status of a private commercial company, and as an actual example of the necessity of changing the legal nature of the National Electricity and Gas Company as a model, which is considered one of the oldest basic institution and public utilities. The same economic nature that Algeria has known by addressing the development and change of its legal form from a public institution of an industrial nature to a public economic institution by achieving its tasks more effectively and emphasizing that the form of the public economic institution constitutes the most appropriate model for achieving economic goals, especially profit, and therefore the necessity of moving towards changing all forms of a public enterprise of an industrial and commercial nature. Abandoning this model, which does not serve economic goals.

GENERAL CONCLUSION

The decision of the French Court of conflict, in accordance with the decision it issued in the (Bac d'Eloka) case, to have public facilities operated according to the same conditions that govern the operation of private institutions, has left a significant impact on the economic activity of the state, as it is the birth anniversary of the public institution of an industrial nature and commercial, which is considered one of the most important categories of public institutions in Algeria.

As a general principle, these institutions are subject to private law due to their acquisition of the status of merchant, and they are also subject to the provisions of public law as an exception in their relations with the state, which is reflected in the disputes that arise from the contracts they conclude. The ordinary judiciary is concerned with others in its capacity as a merchant. Administrative judiciary in contract disputes concluded by the institution with the state. As for the disputes existing as a result of the implementation of public contracts concluded by the institution, we have touched upon adopting the objectives standard in adapting this type of disputes.

Regardless of the nature of the legal system of the public institution of an industrial and commercial nature and its mixed nature, and regardless of the legal problems that arise on the occasion of this category of public institutions resorting to litigation, it is absolutely necessary to recognize the status of this category of institutions side by side with other public economic bodies in preserving the role of the state in economic activity and providing public economic and commercial facilities for individuals, preventing the invasion of the private economic sector, which is essentially built on the principle of profit rather than the profit, without taking into account the societal dimension, public interest, or achieving benefit.

CITATIONS:

- ¹ See Article 45 of Law No. 88-01, dated January 12, 1988, as amended, which includes the Directive Law on Public Economic Enterprises.
- ² Jaber Waleed Haider, *Methods of managing public utilities: Public Enterprise and Privatization*, Halabi Juridical Publications, Lebanon, 2009, p 02.
- ³ Article N° 04 Law N° 88-01, dated January 12, 1988, as amended, containing the Directive Law on Public Economic Enterprises, Official Gazette of the Republic of Algeria, N° 02 of 1988, p31.
- ⁴ DE LAUBADERE André, VENEZIA Jean-Claude and GAUDEMET Yves, *Treatise on Administrative Law*, LGDJ, Paris, 1999, p 305.
- ⁵ DENIER Virginie, "the rights of the user and those of the citizen", French journal of Administrative Law, University of Franche-Comté, January, February 2008, p 18.
- ⁶ Order N° 71-74, dated November 16, 1971, concerning the socialist management of enterprises, Official Gazette of the People's Democratic Republic of Algeria, N° 101 of 1971, p. 1736.
- ⁷ Law N° 88-01, dated January 12, 1988, as amended, containing the Directive Law on Public Economic Enterprises, Official Gazette of the Republic of Algeria, N° 02 of 1988, p. 31.
- ⁸ Labad Nasser, *Administrative Law, Part II: Administrative activity*, Dely Brahim Press, Algeria, 2004, p 291.
- ⁹ According to the provisions of Article 46 of Law No. 88-01, dated January 12, 1988, Official Gazette of the People's Democratic Republic of Algeria, No. 02 of 1988, p. 31. In the same context, Article 50 of Ordinance No. 75-58, dated September 26, 1975, containing the Civil Code, as amended and supplemented.
- ¹⁰ Rim Hajar Bakkar, Abdelkader Bouras, The legal regime of public utilities under the market economy system, *Journal of Research in Law and Political Science*, Vol. 8, No. 2, 2023, p. 180.
- ¹¹ Mohamed Saghir Bouali, *Administrative Law) Administrative Organization, Administrative Activity*, Dar al-Alam Publishing and Distribution, Algeria, 2004, pp. 210, 211.
- ¹² Ammar Boudiaf, *Al-Wajeez in Administrative Law*, 3rd edition, JSour Publishing and Distribution, Algeria, 2013, p. 414.
- ¹³ Nasser Labbad, *Al-Wajeez in Administrative Law*, 4th edition, Dar Al-Majd Publishing and Distribution, Algeria, 2010, p. 192.
- ¹⁴ Alaeddine Ashi, *Introduction to Administrative Law*, Dar Al-Huda for Printing, Publishing and Distribution, 2010 edition, Algeria, p. 9.
- ¹⁵ Marwan Mohieddine Qutb, *Methods of privatizing public utilities: Imtiaz - Mixed Companies - BOT - Authorization of Public Utilities - A Comparative Study*, Manshurat al-Halabi al-Huqawiya, first edition, Beirut, 2009, p. 33.
- ¹⁶ Abdelkarim Mansour, A conceptual view of the public utility in Algeria, *Algerian Journal of Historical and Legal Studies*, first and second issues, June 2016, p. 173.
- ¹⁷ See Law No. 02/01 of 22 Dhu al-Qa'dah 1422, corresponding to February 05, 2002, concerning electricity and gas distribution by conduit, Official Gazette No. 08 of February 06, 2002.
- ¹⁸ Nasser Labad, op. cit. p. 188.
- ¹⁹ See Article 47 of Law No. 88-01, dated January 12, 1988, containing the Directive Law on Economic Public Enterprises, Official Gazette of the Republic of Algeria, No. 02 of 1988, p. 31.
- ²⁰ Iman Baghdadi, The legal framework of the public economic institution in Algerian law, *Afek Journal of Political and Legal Research*, Volume 3, Issue 5, Ammar Thlégui University of Aghouat, 2020, p. 475.
- ²¹ Law No. 88-01, dated January 12, 1988, as amended, which includes the Directive Law on Public Economic Enterprises.
- ²² Asmaa Chaouch, *Lectures on the Measurement of Economic Public Enterprises*, Master 2, Business Law Specialization, Jillali Bounaama University of Khemis Miliana, academic year 2023/2024, p. 12.
- ²³ Oum El Saad Ben Ziadé, "The Public Economic Institution under Directive 88/01," thesis for the degree of Master of Laws, Faculty of Law, Ben Aknoun, 2002, p. 64.
- ²⁴ Ordinance No. 75-59 on the Commercial Code, of September 26, 1975, amended and supplemented by Ordinance No. 15-20, JR, No. 71, of December 30, 2015.
- ²⁵ Umm Saad Bin Ziada, op. cit. pp. 65, 70.
- ²⁶ Karima Haji, Souad Dooley, Using Pareto 80-20 analysis as a tool for continuous improvement, a case study of the National Company for Electricity and Gas Distribution - Bechar Branch, *Noor Journal of Economic Studies*, Vol. 2, No. 2, 2016, p. 143.
- ²⁷ Ordinance No. 69-59 of June 28, 1969, dissolving the Electricité et Gaz de l'Algérie and creating the National Electricity Company, JR, No. 65, dated August 1, 1969.

²⁸ Executive Decree No. 95-280 of September 17, 1995 containing the organic law of the public corporation of industrial and commercial character Sonelgaz, JR, No. 54 of September 24, 1995.

²⁹ Law No. 02-01 of February 5, 2002, relating to electricity and gas distribution by conduit, JR No. 8 of February 6, 2002.

³⁰ Presidential Decree No. 02-195 of June 1, 2002 containing the Organic Law of the Algerian Electricity and Gas Company Sonelgaz S.A., JR No. 39 of June 2, 2002, amended and supplemented by Presidential Decree No. 11-212 of July 02, 2011, JR No. 32 of June 08, 2011, as amended and supplemented by Presidential Decree No. 11-212 of July 02, 2011.

³¹ Sara Garabassi, Elham Yahiaoui, Using modern technology to streamline the customer management system in an economic organization - the case of the Algerian Electricity and Gas Distribution Company, *Journal of Standard*, Vol. 10, No. 2, p. 59.

³² www.sonelgaz.dz 17/09/2020, 18h:45 min.

³³ Sara Garabassi, Elham Yahyaoui, op. cit. pp. 59, 100.

Bibliography:

1/ Books:

1. Ahmed Mahiou, *Lectures on Administrative Institutions*, translated by Mohamed Arab Sassila, fourth edition, Algeria, Bureau of University Publications, 2006.
2. Al-Shatnawi Ali Khattar, *Jordanian Administrative Law*, Wael Publishing House, Jordan, 2002.
3. Aouabdi Amar, *Administrative Law: Administrative activity*, Office of University Publications, Algiers, 2000.
4. Baali Mohamed Saghir, *Administrative Law () Administrative Organization, Administrative Activity* (, Dar al-Alam Publishers and Distributors, Algeria, 2004.
5. Baali Mohamed Saghir, *Administrative Law*, Dar Al Uloom for Publishing and Distribution, Annaba, Algeria, 2013.
6. Bousmah Mohamed Amine, *The Public Utility in Algeria*, translated by Rahal Ben Amer, Rijal Moulay Idriss, Diwan of University Publications, Algeria, 1995.
7. CARBAJO Joel, *public services law*, 3rd edition, Dalloz, Paris, 1997.
8. DE LAUBADERE André, VENEZIA Jean-Claude and GAUDEMET Yves, *Treatise on Administrative Law*, LGDJ, Paris, 1999.
9. Jaber Waleed Haider, *Methods of managing public utilities: Public Enterprise and Privatization*, Halabi Juridical Publications, Lebanon, 2009.
10. Khaloufi Rachid, *Administrative Disputes Law: Claims and Appeals, Part II*, second edition, Bureau of University Publications, Algiers, 2013.
11. Khaloufi Rachid, *The Law of Administrative Disputes: Organization and Jurisdiction of the Administrative Judiciary*, second edition, Bureau of University Publications, Algiers, 2013.
12. Labad Nasser, *Al-Wajeez in Administrative Law*, 3rd edition, Labad Publishing, Algeria, 2002.
13. Labad Nasser, *Administrative Law, Part II: Administrative activity*, Dely Brahim Press, Algeria, 2004..
14. Marwan Mohieddine Qutb, *Methods of privatizing public utilities: Imtiaz - Mixed Companies - BOT Authorization of Public Utilities - A Comparative Study*, Manshurat al-Halabi al-Huqawiya, first edition, Beirut, 2009.
15. Maurice Nakhleh, *Al-Mukhtar in Administrative Jurisprudence*, Halabi Juridical Publications, Lebanon, 1998.

2/ Theses:

1. Doctoral theses:

- 1- Zaghoud Ali, *Public Institutions of an Economic Character in Algeria*, PhD thesis in Public Law, University Printing Corporation, University of Algiers, 1987.

2. Master's theses:

1. Ait Wareth Hamza, *The legal nature of the contracts of public institutions of industrial and commercial nature in the framework of the public procurement law*, Master's thesis in law,

public law branch, specializing in public business law, Faculty of Law and Political Sciences, Abdelrahman Meira University, Bejaia, 2012.

2. Chaieb El-Rass Abdelkader, The Public Enterprise and the Principle of Competition, Master's Thesis in Economic Public Law, Faculty of Law and Political Science, University of Oran 2, 2017.
3. Draghi Chaoua, The reorganization of the Algerian industrial public enterprise and the adoption of the ISO 2000/2001 standard, Master's thesis, Faculty of Economic and Management Sciences, Colonel El Hadj Lakhdar University, Batna, 2008.
4. Ghalabi Bouzid, The concept of public enterprise, Master's thesis in Public Law, Faculty of Law and Political Science, Larbi Benmehidi University, Oum El Bouaghi, 2010-2011.
5. Nouri Souad, The legal system of contracts of public economic institutions in Algeria, Master's thesis in business law, Faculty of Law, Baji Mokhtar University, Annaba, 2000.

3. Master's diary:

1. Akoura Jillali, Delegation of the public utility in the light of Executive Decree N° 18-199, Master's thesis in Public Law, Faculty of Law and Political Science, Abdelrahman Meira University, Bejaia, 2018-2019.
2. Bedirina Osama Abdelfattah, Ben Sidi Yassine, The legal system of public institutions of industrial and commercial nature, Master's thesis in Law, Faculty of Law and Political Science, Ziane Achour University, Djelfa, 2019-2020.
3. Maddah Youssef, Categories of public institutions in Algeria, Master's thesis in Administrative Law, Faculty of Law and Political Science, Mohamed Boudiaf University, Msila, 2015-2016.
4. Mamouni Naja, Methods of operation of public utilities in Algeria, Master's thesis in Administrative Law, Faculty of Law and Political Science, Abdelhamid Ben Badis University, Mostaganem, 2020-2021.
5. Odehat Saleh, Boukroui Yogarta, The specificity of the legal system of public institutions of industrial and commercial nature in Algerian legislation, Master's thesis in Public Business Law, Faculty of Law and Political Science, Abdelrahmane Meira University, Bejaia, 2015-2016.

3/ Articles:

1. Abdelkarim Mansour, A conceptual view of the public utility in Algeria, Algerian Journal of Historical and Legal Studies, first and second issues, June 2016.
2. Brahimi Mouhamed, "Some questions to the reform of the public company (law N°88-01)", Algerian Journal of legal, economic and political sciences, volume 2052, N°01, 1989.
3. Denier Virginie, "the rights of the user and those of the citizen", French journal of Administrative Law, University of franche-comté, January, February, 2008.
4. Kadia Abdallah, The legal framework of the public institution in Algeria as an economic aid, Journal of Legal Sciences, Volume 16, Issue 01, University of Sharjah, United Arab Emirates, 2019.
5. Iman Baghdadi, The Legal Framework of the Public Economic Organization in Algerian Law, AFAC Journal of Political and Legal Research, Vol. 3, N°5, Ammar Thaligi University of Aghouat, 2020.
6. Kadia Abdallah, The legal framework of the public corporation in Algeria as an economic agent, Journal of Legal Sciences, Volume 16, Issue 01, University of Sharjah, United Arab Emirates, 2019.
7. Karima Haji, Souad Dooley, Using Pareto 80-20 analysis as a tool for continuous improvement, a case study of the National Company for Electricity and Gas Distribution - Bechar Branch, Noor Journal of Economic Studies, Vol. 2, Issue 2, 2016.
8. Rim Hajer Bakkar, Abdelkader Bouras, The legal regime of public utilities under the market economy system, Journal of Research in Law and Political Science, Vol. 8, N° 2, 2023.
9. Saahi Fouzia, Economic reforms in the Algerian public institution -causes and consequences-, Journal of Development and Human Resources Management -Research and Studies-, Volume 08, Issue 02, Lounissi Ali University-Blida 2, Blida, 2021.

10. Sara Garabassi, Elham Yahiaoui, The use of modern technology to streamline the customer management system in an economic organization - the case of the Algerian Electricity and Gas Distribution Company, Journal of Standard, Vol. 10, N° 2.

4/ Legal texts:

1. Constitutions

1- The Constitution of the People's Democratic Republic of Algeria of 1976, promulgated on November 24, 1976, Official Gazette N° 94 of 1976.

2- The Constitution of the People's Democratic Republic of Algeria of 1989, promulgated on February 23, 1989, Official Gazette N° 09 of 1989.

3- The Constitution of the People's Democratic Republic of Algeria of 1996, promulgated on November 28, 1996, Official Gazette N° 76 of 1996.

4- The Constitution of the People's Democratic Republic of Algeria for the year 2020, promulgated on December 30, 2020, Official Gazette N° 82 of 2020.

2. Legislative texts:

1- Order N° 62-157, dated December 31, 1962, extending, until further notice, the French legislation in force until December 31, 1962, Official Gazette of the People's Democratic Republic of Algeria, N° 02 of 1963, p. 18.

2- Order N° 65-320, dated December 31, 1965, containing the Finance Law for 1966, Official Gazette of the People's Democratic Republic of Algeria, N° 108 of 1965, p. 1521.

3- Ordinance No. 69-59 of June 28, 1969, dissolving the Electricité et Gaz de l'Algérie and creating the National Electricity Company, JR, No. 65, dated August 1, 1969.

4- Order N° 71-74, dated November 16, 1971, concerning the socialist management of enterprises, Official Gazette of the People's Democratic Republic of Algeria, N° 101 of 1971.

5- Law N° 88-01, dated January 12, 1988, as amended, containing the Directive Law on Public Economic Enterprises, Official Gazette of the Republic of Algeria, N° 02 of 1988.

6- Law N° 90-11 of 21 April 1990 on labor relations, amended and supplemented, Official Gazette of the People's Democratic Republic of Algeria, N° 17 of 1990, p. 562, amended by Law N° 91-29 of 21 December 1991, Official Gazette of the People's Democratic Republic of Algeria, N° 68 of 1991, p. 2654, and supplemented by Legislative Decree N° 94-03 of 11 April 1994, Official Gazette of the People's Democratic Republic of Algeria, N° 20 of 1994.

7- Law N° 90-21, dated August 15, 1990, on public accounting, as amended, Official Gazette of the People's Democratic Republic of Algeria, N° 35 of 1990.

8- Order N° 95-20, dated July 17, 1995, as amended, concerning the Accounting Council, Official Gazette of the Algerian Democratic and Popular Republic, N° 39 of 1995, p. 03, amended by Order N° 10-01, dated August 26, 2010, containing the supplementary finance law for the year 2010, published in the Official Gazette of the Algerian Democratic and Popular Republic, N° 49 of 2010.

9- Ordinance N° 95-27, dated December 30, 1995, as amended, containing the Finance Law of 1996, Official Gazette of the People's Democratic Republic of Algeria, N° 82 of 1995.

10- Law N° 99-05, dated April 04, 1999, containing the Directive Law on Higher Education, as amended, Official Gazette of the People's Democratic Republic of Algeria, N° 24 of 1999.

11- Ordinance N° 01-04, dated August 20, 2001, concerning the organization, management and privatization of public economic institutions, Official Gazette of the People's Democratic Republic

of Algeria, N° 47 of 2001, p. 09, and approved by Law N° 01-17, dated October 21, 2001, Official Gazette of the People's Democratic Republic of Algeria, N° 62 of 2001.

12-Law No. 02-01 of February 5, 2002, concerning electricity and gas distribution by conduit, JR No. 8 of February 6, 2002.

13- Ordinance N° 06-03, dated July 15, 2006, containing the General Statute of the Public Service, Official Gazette of the People's Democratic Republic of Algeria, N° 46 of 2006, p. 03, and approved by Law N° 06-12, dated November 15, 2006, Official Gazette of the People's Democratic Republic of Algeria, N° 72 of 2006.

14- Law N° 07-11, dated November 25, 2007, amending the financial accounting system, Official Gazette of the People's Democratic Republic of Algeria, N° 74 of 2007.

15- Law N° 08-09, dated February 25, 2008, amending the Code of Civil and Administrative Procedure, Official Gazette of the People's Democratic Republic of Algeria, N° 21 of 2008.

16- Law N° 11-10, as amended, dated June 22, 2011, concerning the municipality, Official Gazette of the People's Democratic Republic of Algeria, N° 37 of 2011.

17- Law N° 12-07, dated February 21, 2012, concerning the governorate, Official Gazette of the People's Democratic Republic of Algeria, N° 12 of 2012.

18- Law N° 15-21, dated December 30, 2015, containing the Directive Law on Scientific Research and Technological Development, Official Gazette of the People's Democratic Republic of Algeria, N° 71 of 2015.

3. Organizational texts:

1- Presidential Decree No. 02-195 of June 1, 2002 containing the Organic Law of the Algerian Electricity and Gas Company Sonelgaz S.A., JR No. 39 of June 2, 2002, amended and supplemented by Presidential Decree No. 11-212 of July 02, 2011, JR No. 32 of June 08, 2011

2- Executive Decree No. 95-280 of September 17, 1995 containing the Organic Law of the Public Enterprise of Industrial and Commercial Character Sonelgaz, G.R. No. 54 of September 24, 1995.

4. Judicial rulings:

1-Decision of the Council of State, Fourth Chamber, File N° 332, dated May 14, 2001, in the case of the Oran Real Estate Management Bureau v. Ain Timochent Works Corporation.

5/ Lectures

1- Asmaa Chaouch, Lectures on the Measurement of Economic Public Enterprises Master 2, Business Law Specialization, Jillali Bounaama University in Khemis Miliana, academic year 2023/2024.

2-Dkhnissa Ahmed, Lectures in Public Facility, National School of Administration, Algeria, 2016-2017.

5/ Electronic references:

1- Website of the Official Gazette issued by the General Secretariat of the Government: www.joradp.dz.

2- The website of the Accounting Council: www.ccomptes.dz.

3- Ministry of Finance website: www.mf.gov.dz.

4-Algerian Scientific Journal website: www.asjp.cerist.dz.