RESEARCH ARTICLE

The Legal Framework of Public-Private Partnership Contracts: A Comparative Study

Dr
Khalid Bouzidi
Senior lecturer « A », University Centre of Maghnia
Algeria
Email: k.bouzidi@cu-maghnia.dz
https://orcid.org/0009-0001-9856-719X

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Abstract
This study examines the legal aspects of public-private partnership contracts within the Algerian and French legal framework, as a new mechanism for financing, managing, and operating public utilities. It does so by clarifying the conceptual framework of these contracts and their characteristics that distinguish them from other traditional contracts. It also explains their legal nature and objectives, which are based on balancing two basic requirements: ensuring and improving the quality of public service, on the one hand, and achieving economic efficiency by providing funding for the establishment and management of infrastructure projects at the lowest possible costs, on the other hand. It also presents practical models of partnership contracts in both Algerian and French law, and comes up with results and recommendations that enhance confidence in this type of contract to achieve development goals and attract investments.

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Introduction:

The economic transformations witnessed in recent years, coupled with the expansion of public services provided by states to their citizens through various public facilities for the common good, have imposed unprecedented financial burdens and challenges that have strained and burdened state budgets. This has rendered states unable to effectively manage, administer, operate, or develop the numerous and diverse public projects and facilities.

On this basis, and in order to ensure public service and improve its quality to ensure greater management effectiveness at the lowest possible costs, countries have tended to reconsider the traditional mechanisms for managing and running public projects and facilities, by adopting new management methods that allow the public sector to cooperate with the private sector to achieve the state's development programs, by involving it and granting it the privilege of financing, building, managing, running, operating, or developing infrastructure projects, with the exception of the state's sovereign facilities, as is the case with the judiciary, security, and defense facilities, within the framework of Public-Private Partnership (PPP) contracts, which are enshrined in Algerian law, similar to what has been adopted by comparative legislation, including French law.

It is worth noting in this context that Public-Private Partnership (PPP) contracts are relatively recent, having first appeared in Britain in 1992 under the name of the Private Finance Initiative (PFI)[1]. France did not adopt this

[1]- Carsten Greve ،Graeme A. Hodge, The Challenge of Public-private Partnerships Learning from International Experience, Edward Elgar Publishing, Incorporated, United Kingdom, 2005, p 99

type of contract within an independent legal framework until 2004, with the issuance of Ordinance No. 2004-559 on partnership contracts. This followed several legal reforms, unifying partnership contracts and integrating them into concession contracts under Ordinance No. 65-2016. This transformation was later fully embodied with the issuance of the French Public Procurement Law of 2018[2]. Meanwhile, the Algerian legislature has enshrined public-private partnership contracts in various legal texts, such as the National Property Law, the Water Law, and the Public Procurement Law, under the title of concession contracts and public utility delegation contracts.

The importance of this study lies in the significant role that Public-Private Partnership (PPP) contracts can play in rebalancing spending and management. This is achieved by controlling and rationalizing public expenditures, while simultaneously ensuring the provision of public services and serving the public interest.

Furthermore, these contracts represent a shift away from the traditional model of managing and operating public facilities. They introduce a new concept of contracting that fosters cooperation and partnership between the public and private sectors in all aspects, including the exchange of expertise, modern technology, and resources. This collaboration ultimately leads to a higher quality, more efficient, and more comprehensive public service, aligning with established development goals.

Based on the above, the problem of this study is as follows: What are the legal provisions and rules governing public-private partnership contracts? What is their legal nature and the impact thereof on the rights and obligations of the parties? And how effective are they in achieving development goals?

To answer this problem, the study relied on the analytical approach, analyzing various legal texts, jurisprudential opinions, and some judicial interpretations related to public-private partnership contracts, in order to determine the provisions and rules regulating this type of contract, starting with its concept and characteristics, then its legal nature, and arriving at its models. We also used the comparative approach, through which we attempted to understand the position of both Algerian and French legislation on public-private partnership contracts, by comparing and contrasting the dimensions and objectives of the legal texts regulating this type of contract in both legal framework, linking and harmonizing them.

Based on the above, we divided this study into two sections. In the first section, we addressed the conceptual framework of public-private partnership contracts and their legal nature. In the second section, we addressed practical models of public-private partnership contracts.

I- The conceptual framework of public-private partnership contracts and their legal nature

The conceptual framework for public-private partnership contracts is of paramount importance, as it serves as the reference that defines the basic elements and features of partnership contracts and clarifies their legal nature. This helps define the rights and obligations of the parties and achieve the stated development goals.

1- The concept of public-private partnership contracts

Defining the concept of public-private partnership contracts requires us to first define what is meant by this type of contract, as well as to clarify its characteristics that distinguish it from other traditional contracts.

A- Definition of public-private partnership contracts

The issue of defining public-private partnership contracts has received considerable attention from jurisprudence, legislation, and international organizations, given their growing prevalence as a strategic option and advanced model for implementing various public projects and achieving economic and social goals. The definitions offered have varied and varied, making it difficult to agree on a comprehensive and unified definition that reflects the complex and evolving nature of these contracts.

[2]- Boeing Laishram ،Ganesh Devkar ،Tharun Dolla, Revisiting Public-Private Partnerships Lessons from COVID-19, Springer International Publishing, Switzerland, 2023, pp. 251-252

Accordingly, defining what is meant by public-private partnership contracts requires us to address the definition of these contracts in jurisprudence, then legislation, as well as the definitions set by international bodies, in accordance with the details explained below.

A-1 The jurisprudential definition of public-private partnership contracts

Jurisprudence has differed regarding the definition of public-private partnerships (PPP), depending on the perspective and angle from which they are viewed, whether from a formal, organic, or administrative perspective, or from a functional, economic, social, or legal perspective[3]. Some jurisprudence defines PPPs as "the latest form of cooperation between the public and private sectors, through which public services are provided to citizens through a long-term contractual relationship. Risks, roles, and responsibilities are distributed among the two partners, representing these sectors, according to the superior capabilities and expertise of each, within a framework of achieving the public interest"[4]. This definition appears to focus on the fundamental principles of PPP, identifying the primary objective of the partnership as providing public services and achieving the public interest, as well as the roles, responsibilities, and benefits that this contractual relationship creates. However, it is criticized for neglecting one of the most important elements of partnership: financing, which is the primary motivation for concluding this type of contract. Furthermore, it does not generally address the forms of PPP.

While other jurisprudence defines it as "contracts provided by the private sector as public services on behalf of and under the supervision of public authorities"[5]. This definition appears to be so brief and simplistic that it overlooks many of the fundamental aspects of partnership, focusing solely on the role of the private sector as the provider of public services through agency within the framework of this legal relationship, and the role of the public sector as a public authority in oversight, thus highlighting the traditional shift in roles, without highlighting the fundamental elements of this partnership, such as the time element, the financing element, and the risk distribution element.

In more detail, another branch of jurisprudence defines public-private partnership contracts as "an administrative contract whereby a public legal entity entrusts a private sector entity with financing the investment related to the necessary works and equipment of the public facility, as well as its management, independence, and maintenance throughout the specified contract term, in exchange for sums of money that the contracting authority undertakes to pay to the entity in installments throughout the contract period. Institutions from the public and private sectors work together to implement projects or provide services to citizens, particularly in infrastructure projects"[6]. This definition is clearly more comprehensive than its predecessors, encompassing all aspects of public-private partnerships, However, it would have been more precise and clear to explicitly highlight the financing element.

A-2 - Legislative definition of public-private partnership contracts

Most national legislations have been keen to allocate a specific definition for public-private partnership contracts. We mention among these the French legislator, who has tended to define them under Article 1, Paragraph 01 of

[3]- Jurisprudence acknowledges the difficulty of reaching consensus on the precise meaning of public-private partnerships. Some scholars have even dismissed the concept as futile, arguing that it has no established definition and that it is extremely difficult to examine the origin of this obscure English word. See:
Zhongju Meng ،Xiaohong Dang ،Yong Gao, Public Private Partnership for Desertification Control in Inner Mongolia, Springer Nature Singapore, Singapore, 2019, p 05

[4]- Muhammad Muhammad Abu Saree Ali, The Role of Public-Private Partnerships in Providing Public Services, Egyptian Publishing and Distribution, Egypt, 2020, p. 38

[5]- Haitham Abdullah Dheeb, Fundamentals of Strategic Planning, Al-Yazouri Scientific House, Jordan, 2017, p. 120

[6]- Haitham Abdullah Dheeb, Fundamentals of Strategic Planning, Al-Yazouri Scientific House, Jordan, 2017, p. 120

Ordinance No. 2004-559, as amended and supplemented, regarding partnership contracts[7], as follows: (A partnership contract is an administrative contract by which the State or a public institution of the State entrusts a third party, for a period determined by the amortization period of the investments or the financing methods chosen, with a global mission for the construction or transformation, upkeep, maintenance, operation, or management of works, equipment, or intangible assets necessary for the public service, as well as all or part of their financing, with the exception of any equity participation.

It may also cover all or part of the design of these works, equipment, or intangible assets, as well as the provision of services contributing to the exercise, by the public entity, of the public service mission for which it is responsible.)

Unlike the situation with the Algerian legislator, which has not defined what is meant by public-private partnership contracts, given the lack of a unified and comprehensive law regulating such types of contracts in Algeria, this does not mean that the Algerian legislator does not recognize this type of contract. Rather, it has regulated certain types of them under separate legal texts, such as Presidential Decree No. 15-247 regulating public procurement and public service delegations[8], as well as Executive Decree No. 18-199 of August 2, 2018, relating to the delegation of public services. This requires the Algerian legislator to intervene in a comprehensive legal framework that includes a precise definition of public-private partnership contracts, keeping pace with the rapid development and growing interest in these contracts.

A-3 - Definitions of Public-Private Partnership Contracts by International Bodies

As part of the tireless efforts made by international bodies to standardize and regulate the concept of public-private partnership contracts at the international level, the Organization for Economic Co-operation and Development (OECD) has defined these contracts as: (An agreement between the government and one or more private partners « which may include the operators and the financers » according to which the private partners deliver the service in such a manner that the service delivery objectives of the government are aligned with the profit objectives of the private partners and where the effectiveness of the alignment depends on a sufficient transfer of risk to the private partners)[9].

The World Bank also paid great attention to public-private partnership contracts, defining them as: (A long-term contract between a private party and a government agency for providing a public asset or service, in which the private party bears significant risk and management responsibility)[10].

For its part, the European Commission defined public-private partnership contracts as: (refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service)[11].

In turn, the United Nations defined public-private partnership contracts as: (a cooperative arrangement between public sector authorities "such as governments or governmental agencies" and private sector companies or

[7]- Ordinance No. 2004-559 of June 17, 200 on partnership contracts, JORF No. 141 of June 19, 2004, Repealed by Ordinance No. 2015-899 of July 23, 2015 - art. 102, Amended by LAW No. 2009-179 of February 17, 2009, Repealed by Ordinance No. 2015-899 of July 23, 2015

[8]- Presidential Decree No. 15-247 of September 16, 2015, regulating public procurement and public service concessions, Official journal of the People's Democratic Republic of Algeria, No. 50, of October 1, 2015

[9]- OECD, Organisation for Economic Co-operation and Development, Dedicated Public-Private Partnership Units A Survey of Institutional and Governance Structures, OECD Publishing, France, 2010, p 16

[10]- World Bank, Caribbean Infrastructure Public Private Partnership Roadmap, World Bank Publications, 2024, p6
Cenay Babaoğlu ،Elvettin Akman ،Onur Kulaç, Handbook of Research on Global Challenges for Improving Public Services and Government Operations, IGI Global, United States, 2020, p 224

[11]- Richard M Scheffler, World Scientific Handbook Of Global Health Economics And Public Policy (A 3-volume Set), World Scientific Publishing Company, Singapore, 2016, p 352
Domenico Sorace ،Ippolito Piazza ،Leonardo Ferrara, The Changing Administrative Law of an EU Member State, The Italian Case, Switzerland, 2020, p 250

entities. These partnerships are typically established for delivering and managing public services or infrastructure projects, where both parties contribute resources and share risks, responsibilities, and rewards)[12].

In general, what can be concluded from the previous definitions is that defining what is meant by contracts requires that it includes a set of basic elements, especially in terms of the necessity of identifying the parties to the partnership, represented by both the public and private sectors, as well as defining the primary objective of the partnership, which is to provide public services and achieve the public interest, in addition to the roles, responsibilities and advantages that this contractual relationship creates, such as the element of risk distribution, the element of financing, and the time element.

B- Characteristics of public-private partnership contracts

Public-private partnership contracts have a set of unique characteristics that distinguish them from other traditional contracts concluded by the state or one of its public administrations, which are as follows:

B-1 -Multiple contracting parties between the public and private sectors

Public-private partnership contracts are characterised by the multiplicity of parties involved in their implementation, as they bring together two parties: one of them is a public legal entity, represented by the state or one of its public administrations, and a private legal entity, whether national or foreign.

The public sector here refers to all the institutions and bodies affiliated with the state[13], which seek to provide public services as a primary objective and not to make a profit. According to Article 49 of the Algerian Civil Code[14], and Article 1 of the French General Law on the Property of Public Persons[15], this includes the state, regional groups, and public institutions of an administrative nature. The private sector includes persons subject to private law, such as civil and commercial companies and institutions.

Undoubtedly, the multiplicity of parties as previously explained presupposes a conflict of interest among them. The public sector, as a general principle, aims to provide public services and achieve the public interest, while the private sector's primary goal is to generate profit. This makes public-private partnership contracts an effective means of reconciling these conflicting interests. This is achieved by improving the level and quality of services provided to individuals at the lowest possible costs, thus alleviating the financial burdens on the public sector, on the one hand, by involving the private sector in financing project implementation, and contributing to improving the economic efficiency of the private sector by ensuring profit and distributing risks and responsibilities within the framework of this contractual relationship based on partnership[16].

B-2 -The multiple stages of public-private partnership contracts and their complex nature

Public-private partnerships are characterized by multiple stages. They begin with the preparation and design phase, during which the project's needs are identified and feasibility studies are conducted. This is followed by the selection phase, where the partner is selected based on specific criteria and conditions, following a call for proposals and evaluation. This is followed by the implementation and operation phase, during which the private partner assumes responsibility for the design, construction, financing, operation, and maintenance of the project. The public entity oversees and monitors the private partner's compliance with the terms of the PPP contract. The

[12]- United Nation, Public-Private Partnership : A new Concept for Infrastructure Development, Economic Commission for Europe, New York, 1998, p 03
[13]- Mahmoud Ali Al-Sharqawi, Economic Growth and the Challenges of Reality, Ghaida Publishing and Distribution House, Jordan, 2015, p. 70
[14]- Ordinance No. 75-58, dated September 26, 1975, containing the Civil Code, official journal, No. 78 issued on September 30, 1975, amended and supplemented
[15]- Ordinance No. 2006-460 of April 21, 2006 relating to the legislative part of the general code of public property, JORF April 22, 2006
[16]- Al-Naimi Abu Bakr, Ahmed Othman, Modern Methods of Private Sector Participation in the Implementation of Infrastructure Facilities, A Comparative Analytical Study, Dar Al-Hamed for Publishing and Distribution, Jordan, 2012, p. 29

ownership transfer phase concludes with the end of the agreed-upon term, during which the project is handed over and its ownership transferred to the public sector[17]. The importance of this feature lies in its ability to effectively guarantee the sustainable implementation of projects, as these multiple, sequential phases contribute to establishing a fair and transparent partnership relationship, enhancing the protection of public funds and the long-term effectiveness of the project.

As a result of the multi-stage feature, public-private partnership contracts are characterized by a long duration, as each of the stages mentioned above requires a specific period of time to complete. Instead of each stage being concluded under a separate contract, these stages are combined into one long-term contract, which makes partnership contracts long-term contracts, extending for a period of time ranging from 20 to 30 years[18].

B-3 - Risk distribution

Public-private partnerships are based on the principle of risk sharing between the contracting parties, unlike other traditional contract models concluded by the public sector, where the majority of the risk falls on the public sector. This principle is based on the idea of creating an integrated mechanism to ensure contractual balance and achieve harmony between the conflicting interests of the contracting parties. Each party bears responsibility for project-related risks that it can manage, such as risks arising from delayed implementation and the excess of actual costs over estimated project costs.

However, risk sharing does not necessarily mean distributing them equally, but rather means that each party bears the risks that it is able to manage, provided that these risks are determined and distributed within the framework of the terms of the partnership contract, which is what the French legislator stipulated in Article 11 of Ordinance No. 2004-559, as amended and supplemented, which emphasized that the partnership agreement must include clauses related to the conditions for risk sharing between the public sector and the participating contractor[19]. Such as the private sector bearing the risks of construction, erection and operation, in exchange for the public sector bearing the regulatory, legal and political risks, or an agreement to share the risks related to the market, demand or force majeure[20]. In general, it is recommended that, regarding the distribution of risks in public-private partnership contracts, the public sector bear the external risks of the project, in exchange for the private sector bearing the risks related to the project, and that other remaining risks, which neither partner can control, be shared[21].

As a result, the failure to define responsibilities in the terms of public-private partnership contracts, or their poor distribution or mismanagement, makes these partnerships a source of many disputes, which may disrupt project implementation and hasten its failure.

B-4 - Multiple areas of application of public-private partnership contracts

Public-private partnerships are flexible enough to accommodate various vital fields and sectors, encompassing a wide range of applications. This reflects the growing interest of countries in using PPPs as a strategic option for providing public services and achieving public interest in various infrastructure projects. According to the

[17]- Germà Bel ‹Rui Cunha Marques ‹Trevor Brown, Public-Private Partnerships : Infrastructure, Transportation and Local Services, Taylor & Francis, United Kingdom, 2016, p 74
[18]- Neeta Baporikar, Public Private Partnerships for Social Development and Impactp, IGI Globaln, United States, 2015, p 190
[19]- Article 11 paragraph 1 -b of Ordinance No. 2004-559 of June 17, 2004 on partnership contracts, JORF No. 141 of June 19, 2004, Repealed by Ordinance No. 2015-899 of July 23, 2015 - art. 102, Amended by LAW No. 2009-179 of February 17, 2009, Repealed by Ordinance No. 2015-899 of July 23, 2015
[20]- Al-Wasl Kamal Amin, Infrastructure and Public Investment in the Arab World: Between the Necessity of Development and the Dilemma of Financing, Arab Center for Research and Policy Studies, First Edition, Qatar, 2018, p. 51
[21]- Trends and Theory, Public Private Partnerships in Transport, Athena Roumboutsos, United Kingdom, 2015, p 228

Organization for Economic Cooperation and Development (OECD)[22] and the Asian Development Bank (ADB)[23], PPPs focus on transportation infrastructure projects, including highways, airports, ports, railways, bridges, tunnels, and other infrastructure facilities that provide public services. This also applies to water and sanitation facilities, power generation plants, fuel, educational, healthcare, entertainment and sports facilities, and parking lots.

It is concluded according to multiple application models, such as the build-operate-transfer (BOT) model, the build-own-operate (BOO) model, the design-build-finance-operate (DBFO) model, the design-build-finance-maintenance (DBFM) model, and the design-build-finance-maintenance-operate (DBMFO) model[24].

2- Legal adaptation of public-private partnership contracts

Public-private partnership contracts raise a fundamental legal problem, namely determining their nature and legal classification. This issue is of paramount importance, as it forms the basis for determining the legal framework regulating public-private partnership contracts, from the conclusion stage to the implementation stage and any disputes that may arise therefrom. This then clarifies the legal positions of the parties involved, particularly in terms of determining the applicable law, describing mutual contractual rights and obligations, and appointing the competent judicial authority to adjudicate disputes arising therefrom.

This issue has sparked widespread juristic debate, between those who consider public-private partnership contracts to be administrative contracts, those who consider them to be private contracts, and those who see them as having a special nature. This is what we will attempt to highlight in some detail in the following points.

A- Public-private partnership contracts are administrative contracts

Some jurisprudence[25] considers public-private partnership contracts to be administrative contracts. This is the approach adopted by the French legislator, who explicitly stipulated that "the partnership contract is an administrative contract..." in his definition of partnership contracts under Article 1, Paragraph 01 of Ordinance No. 2004-559, as amended and supplemented, relating to partnership contracts. The Algerian legislator also adopted this approach by classifying the public service delegation agreement as an administrative contract under Article 06 of Executive Decree No. 18-199 relating to the delegation of public services[26], which is originally one of the applied models for public-private partnership contracts in Algeria.

An administrative contract is defined as (a contract concluded by a legal entity under public law for the purpose of managing a public facility or in connection with its operation, and which demonstrates its intention to adopt the public law method by including in the contract an exceptional condition or conditions unusual in private law, or by authorizing the contracting party with the administration to directly participate in the management of the

[22]- OECD, Public-Private Partnerships In Pursuit of Risk Sharing and Value for Money, OECD Publishing, France, 2008, p 28
[23]- Asian Development Bank, Public–Private Partnership Monitor Georgia, Asian Development Bank, Philippines, 2024, p 48
[24]- Rohit Manglik, Public Administration, Volume - 3, EduGorilla Publication, India, 2024, p 67
[25]- Among them, see:
Jean-François Boudet, Public Finance Reports - 2nd edition, ELLIPSES, 2015, p. 265
Niels Bernardini, Valentin Lamy, The Essentials of Administrative Contracts, ELLIPSES, Paris, 2016, p. 54
Christiane Féral-Schuhl, Christian Paul, Commission for Reflection and Proposals on Law and Freedoms in the Digital Age, Information Report on Law and Freedoms in the Digital Age, National Assembly, Paris, 2015, p. 42
Adamou Issoufou, The New Public Procurement Law and the Rationalization of Public Spending in Niger and Senegal, Volume 1, Éditions L'Harmattan, Paris, 2017, p. 38
Jean-Claude Ricci, Frédéric Lombard, Administrative Law of Obligations, Sirey, Paris, 2018, p. 103
Issakha Ndiaye, Partnership Contracts public-private and infrastructure development in Senegal, Editions L'Harmattan, Paris, 2015, p 15-16
[26]- Executive Decree No. 18-199 of August 2, 2018, relating to the delegation of public services, official journal, No. 48, of August 5, 2018

public facility)[27]. It is understood from this that for a contract to be administrative, it must be connected to the implementation of a public facility and contain exceptional conditions unusual in private law; otherwise, the contract is considered a private law contract, which the administrative judiciary is not competent to consider and adjudicate[28].

These are the arguments and justifications on which the proponents of this view relied when they argued that public-private partnership contracts are administrative contracts. This is because one party to the partnership contract is a public entity, represented by the state, regional groups, or public institutions of an administrative nature. The subject of the contract is related to a public facility, whereby a public entity entrusts a private entity with financing the investment related to the necessary works and equipment for the public facility, as well as managing, operating, and maintaining them. It also includes exceptional, unusual conditions, such as the public entity's right to amend the contract unilaterally in accordance with the public interest, without requiring the approval of the second party to the contract, represented by a private entity. This departs from the principle that the contract is the law of the contracting parties established in private-law contracts. There are also other advantages whereby the public entity relinquishes some of the privileges of public authority to the private entity, enabling the latter to achieve the objectives of the partnership, such as tax concessions and customs duties. If a company contract lacks one of these elements, the contract is considered a private, not an administrative, contract.

B- Public-private partnerships are private contracts

Another trend in jurisprudence[29] holds that public-private partnership contracts are considered private contracts, subject to the rules of civil and commercial law, and that jurisdiction over disputes arising from them lies with ordinary courts, not administrative ones.

The argument of the proponents of this view is that this type of contract is subject to the principle of the sovereignty of the will and the principle that the contract is the law of the contracting parties, which is regulated by the rules of private law. The exceptional and unusual conditions that distinguish administrative contracts from private contracts are absent, given that in partnership contracts between the public and private sectors, the terms and conditions of the contract are negotiated between the two parties in advance, and based on that, risks, responsibilities and profits are distributed. This is inconsistent with the unilateral authority enjoyed by the public person in the field of administrative contracts, which makes the administration's authority to amend the

[27]- Abdul Aziz bin Muhammad Al-Saghir, Administrative Law between Egyptian and Saudi Legislation, National Center for Legal Publications, First Edition, 2015, Egypt, p. 220

[28]- This is what the French State Council settled on in its decision issued on June 10, 1988, which stated the following: (Considering that the provision of services relating to the survey work, provided by the General Inspection of Quarries to the company, gave rise, in the form of an exchange of letters, to a contract which did not have as its object the execution of a public service or the carrying out of public works or structures, and which did not contain any clause exceeding common law; that it was therefore a private law contract; that consequently, the administrative court does not have jurisdiction to hear the claim for compensation insofar as it is based on the execution of this contract). See Council of State, 1 SS, of June 10, 1988, 92778, unpublished in the Lebon collection, Published on the following website: https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007737161/

[29]- See:
Shamel Hadi Najm Al-Azzawi, Contractor Obligations in Construction and Ownership Transfer (BOT) Contracts, National Center for Legal Publications, First Edition, Egypt, 2016, p. 72
Muhammad Ahmad Kasab Khalifa, Investment Contracts within the Framework of Principles, Guarantees, and Applicable Law, Dar Al-Fikr Al-Jami'i, 2020, Egypt, p. 109
Jihad Zuhair Deeb Al-Harazin, The Effects of the Concession Contract, A Comparative Theoretical Study, Dar Al-Fikr and Al-Qanoon for Publishing and Distribution, First Edition, 2015, Egypt, p. 56

partnership contract by its unilateral will or impose penalties, an idea that is unlikely to be applied in the field of partnership contracts between the public and private sectors.

The objective of concluding public-private partnership contracts differs from the primary objective of concluding administrative contracts, which is limited to the idea of achieving the public interest. This is in contrast to the situation with partnership contracts, which are based on the idea of achieving profit for the benefit of the private sector. The provision of public services and the achievement of the public interest are linked to a guaranteed financial reward and return for the benefit of the private sector under the partnership contract. This makes them private contracts rather than administrative contracts.

In addition, the nature of public-private partnership projects is linked to economic and commercial dimensions, which requires them to be subject to the rules of private law in order to ensure their effectiveness and encourage and attract investment and investor confidence.

C- Public-private partnership contracts are a special nature

A section of jurisprudence[30] has adopted a modern approach that removes partnership contracts from the traditional legal classifications that classify the latter as administrative contracts or private contracts. This jurisprudential trend sees partnership contracts between the public and private sectors as having a special nature, due to their enjoyment of distinctive characteristics that combine within them elements of administrative contracts and private contracts. This makes it difficult to classify these contracts as administrative contracts or private contracts in advance. Rather, to determine their legal nature, each contract must be considered separately. In this case, partnership contracts between the public and private sectors are considered administrative contracts when their elements and pillars are present, and they are considered private contracts when their terms and conditions are present.

The argument of those who hold this view is that public-private partnership contracts are modern contracts that include a set of contractual elements of a special nature that go beyond and are distinct from those elements found in traditional contracts, due to their flexibility, which enables them to adapt to the various stages of the project, such as the element of ownership of the land or facility on which the project is built, the element of revenues and fees, the method of which is stipulated in the contract for sharing and determining them, and the element of risks and responsibilities distributed between the two parties to the contract from the public and private sectors, which can change according to each stage of the project, in addition to the element of financing and the duration of the contract, through which the source of financing for the project and the duration of the contract are determined. All of these elements differ from one contract to another according to the objectives that the will of the parties seeks to achieve, which makes it difficult, as it was, to establish a general classification that applies to all types of partnership contracts. This leads to the necessity of determining the legal nature of each contract separately, according to its elements and the circumstances surrounding it, which ensures that the legal classification of each public-private partnership contract is consistent with the content and reality of the contract[31].

In light of these jurisprudential tensions, the researcher favors the first opinion, which classifies public-private partnership contracts as administrative contracts, given that the second and third jurisprudential opinions, which

[30]- See:
Aqeel Karim Zaghir, Civil Liability of Foreign Investors, Dar Al Fikr Wal Qanun Publishing and Distribution, Egypt, 2015; p. 80
Zakaria Al Masri, Administrative Contracts: Between Legal Obligation and Practical Reality, A Comparative Local and International Study, Dar Al Fikr Wal Qanun, Egypt, 2014, p. 533
Bashar Rashid Hussein Al Mazuri, Contractual Liability of the Administration in the Implementation of Administrative Contracts, A Comparative Study, Arab Center for Publishing and Distribution, Egypt, 2018, p. 119
[31]- Yousef Saadoun Muhammad Al-Maamouri, The Legal Regulation of Maintenance Contracts in Infrastructure Projects, A Comparative Study, Arab Center for Publishing and Distribution, Egypt, 2020, pp. 115-116

advocate the civil and private nature of partnership contracts, have endeavored to adapt them in the absence of a legal framework that regulates and governs this type of contract. However, in light of the successive issuance of legal texts, this issue has become almost settled, as we saw in the first opinion mentioned above, as national legislation in both Algeria and France, for example, tends to classify them as administrative contracts.

II- Practical models for public-private partnership contracts

There are various models for public-private partnership contracts depending on the nature and requirements of the project, including financing, construction, operation, and maintenance phases. Perhaps the most prominent models established by Algerian and French legislators are build-operate-transfer (BOT) contracts, in addition to public utility concession contracts.

1- Build-Operate-Transfer (BOT) contracts

Build-operate-transfer (BOT) contracts derive their legal basis in Algerian law from several legal texts. The Algerian legislator has implicitly recognized this type of contract without explicitly using the term "BOT." This can be inferred from Article 17 of the 2005 Water Law[32], which subjects artificial public water properties to this type of contract, specifying all the stages of a BOT contract: construction, operation, and transfer of ownership. This can also be inferred from Article 64 bis of the 1990 National Property Law, as amended and supplemented[33], which uses the term "concession grant" to refer to a BOT contract, given that the concept and meaning of granting a concession to use national property includes construction, operation, and transfer of ownership.

This is the same legal situation prevailing in French legislation, whose legal texts do not recognize a specific term called Build, Operate, and Transfer (BOT) contracts. However, its components, namely Build, Operate, and Transfer (BOT), have been regulated within the legal framework governing concession contracts, which is governed by the French Public Procurement Law.

However, to elaborate on the provisions and rules governing build-operate-transfer contracts, we must first define this type of contract, and then address its forms, as explained below.

A- Definition of Build-Operate-Transfer contracts

Returning to the entirety of the legal texts regulating this type of contract in Algerian law, we can hardly find a legal definition for build-operate-transfer contracts. This position is consistent with the orientation of other comparative legislation, such as French legislation, which did not provide a single definition for them. This is primarily due to the lack of a specific and detailed legal framework regulating this type of contract, with the exception of some scattered legal texts that focused on the procedural aspect rather than the conceptual one.

Leaving the field to international bodies and jurisprudence, which provided several definitions of build-operate-transfer contracts, as the United Nations Model Law Commission (UNCITRAL) defined it as: (form of project financing where a government grants a concession for a period of time to a private consortium (hereafter referred to as the "project company") for the development of a project; the project company then builds, operates and manages the project for a number of years, recoups the construction costs and derives its profit from the

[32] Law No. 05-12 of August 4, 2005, relating to water, published in the official journal of the Algerian Republic, No. 60, issued on August 28, 2005

[33]- Law No. 90-30 of December 1, 1990, containing the National Property Code, published in the official journal of the Algerian Republic, No. 53, issued on December 5, 1990, amended and supplemented by Law No. 08-14, dated July 20, 2008, official journal, No. 44, issued on July 27, 2008

proceeds generated by the operation and commercial exploitation of the project. At the end of the concession period, the project is transferred to the government)[34].

On the other hand, the jurisprudence side has defined build-operate-transfer contracts as (those projects that the government entrusts to a company, whether national or foreign, whether a public or private sector company, and is called a project company to establish a public facility and operate it on its behalf for a period of time, then its ownership is transferred to the state or the administrative authority)[35].

Others in jurisprudence defined it as (a contractual process through which a number of private companies come together under the name of the project company, which undertakes the financing, construction and operation of a public facility granted by the state for a specific period, on the condition that the project company is obligated to return the project to the party granting the obligation at the end of the contract period)[36].

Another aspect of jurisprudence defined it as: (Type of project delivery framework in which a private entity designs, finances, builds, and operates a facility for a specified period. After the operational period, the facility is transferred back to the public sector or the project sponsor)[37].

The above definitions appear to be precise and clear, as they accurately identify the parties to the contract, the purpose of establishing the project, its duration, and its final outcome, which is the transfer of ownership. Furthermore, they address all the main stages of a BOT contract, namely construction, operation, and transfer of ownership. However, what is flawed about them is their failure to address the potential risk element that can arise from BOT contracts, such as the risks associated with construction or operation. They also do not clarify the details related to the company's recovery of its profits in exchange for operating the public facility.

There are some scholars of jurisprudence who define build-operate-transfer contracts as: (an agreement between two parties, one of whom is the owner of the property and the other is responsible for establishing a project on it, in exchange for owning it for his benefit for a specified period)[38]. What can be noted through this definition is its extreme simplicity and its reduction of BOT contracts to two basic ideas: the first is the establishment of the project, and the second is the benefits of the project. As a result, it neglects the basic elements upon which the contract is based, particularly the element of project financing, the element of transferring ownership of the project at its end, and the element of risks associated with establishing the project.

Based on the above definitions of build-operate-transfer (BOT) contracts, what we can conclude is that defining what is meant by this type of contract requires encompassing all the basic elements upon which the contract is based, particularly in terms of identifying the parties to the contract, the purpose of establishing the project, its duration, the potential risks that may arise from it, and the financial details. In addition, it must encompass all of its main stages, namely construction, operation, and transfer of ownership.

B- Forms of build-operate-transfer contracts

The development and practical application of build-operate-transfer contracts have led to the emergence of numerous new forms derived from the original model, each with its own unique characteristics that distinguish it from others. It is necessary to be familiar with these forms in order to choose the form that best suits the

[34]- UNITED NATIONS, GENERAL ASSEMBLY, A/CN.9/414, 3 March 1995, Published on the following website: https://docs.un.org/en/A/CN.9/414

[35]- Issam Ahmed Al-Bahji, BOT Contracts, the Way to Build Modern State Facilities, An Analytical Study of the Legal and Contractual Regulation of Privately Financed Infrastructure Projects Using the Build, Own, Operate and Transfer of Ownership to the State Method, Dar Al-Jamia Al-Jadida, Egypt, 2008, p. 13

[36]- Saddam Muhammad Abboudi Al-Awaisheh, Arbitration in Administrative Contract Disputes: A Comparative Study, Egyptian Publishing and Distribution, Egypt, 2020, p. 79

[37]- Saji Daniel, Legal aspects of Construction, SGSH Publications, India, 2025, p 45

[38]- Khalid bin Saud bin Abdullah Al-Rashoud, Innovative Contracts for Financing and Investment with Islamic Sukuk, Dar Kunuz Ishbilia for Publishing and Distribution, Saudi Arabia, 2013,p. 95

requirements of the project to be implemented and achieve its objectives efficiently and effectively, according to the following details:

B-1 - Build, Own, Operate, and Transfer (B.O.O.T) Contract

It is a contract whereby the state grants a private sector company the concession to build a project, establish its structures and equipment, manage it, and operate it throughout the duration of the contract at its own expense, in return for obtaining the agreed-upon profits from the revenues of fees paid by users of the facility, with the right of the company holding the concession to own the project throughout the duration of the contract; provided that its ownership is transferred at the end of the contract period to the state granting the concession[39].

This B.O.O.T contract differs from the Build, Operate, and Transfer (B.O.T) contract in that it allows the project company to own the project during the contract period, provided that it is transferred to the state at the end of this period. Whereas in B.O.T contracts, the state or one of its public entities is the owner of the project from its beginning until its end, since in this type of contract the project is established in the name and on behalf of the public entity.

B-2 - Build, Own, Operate (B.O.O) contract

It is a contract by which the state undertakes to an investor to establish, establish, operate and own a project, allowing the project company to fully and permanently exploit the facility. The ownership of the project is transferred to the company pursuant to this contract after its construction and erection, and it proceeds to operate it on that basis, without this being linked to a specific time period, and without the company having any obligation to subsequently transfer ownership of the project to the state.

Accordingly, the B.O.O. contract differs from the previous B.O.T. and B.O.O.T. contracts in that the ownership of the project does not transfer to the state after the expiration of the contract term. Rather, the project company retains ownership and manages it indefinitely. On this basis, this type of contract can be considered a form of complete privatization of the public facility, which makes it rarely used, as most countries are reluctant to conclude it, especially in the sector of constructing major public facilities[40].

B-3 - Build, Rent, and Transfer (B.R.T) Contract

It is a contract by which the state pledges to an investor to build and establish a project or facility at his own expense, operate it, and lease it to others during the term of the contract, enabling him to cover the costs of the project and achieve a percentage of the profits from the rental value, provided that he is committed at the end of the contract to transfer ownership of the project to the state[41].

B-4 - Build, Own, Lease and Transfer (B.O.L.T) Contract

It is a contract whereby the state allows an investor to build a project and lease it to a third party to operate it for the duration of the contract, provided that the investor is committed at the end of the concession period to transfer ownership of the project to the state granting the concession[42].

Based on the above, we conclude that both the Build-Own-Lease-Transfer (BOLT) and the Build-Rent-Lease-Transfer (B.R.T) contracts share the same cost-recovery element, whereby a percentage of the profits are realized from the rental fees paid by the project operators, pursuant to the lease agreement concluded between the project company and third parties, rather than being recovered from the total fees paid by the users of the facility, as is

[39]- Muhammad Ahmad Kasab Khalifa, op.cit, pp. 78-79
Céline Nauges ،Jean-Daniel Rinaudo ،Katherine A. Daniell ،Noel Wai Wah Chan ،Quentin Grafton, Understanding and Managing Urban Water in Transition, Springer Netherlands, 2015, pp. 448-449
[40]- Ruwantissa Abeyratne, Law and Regulation of Aerodromes, Springer International Publishing, Switzerland , 2014, p 157
[41]- Muhammad Ahmad Kasab Khalifa, op.cit , p. 79
[42]- Bhavesh Patel, Project Management, Vikas Publishing House, India, 2024, p 742

the case with other forms of BOT contracts. However, they differ in the ownership element, which allows the company temporary ownership of the project in the B.O.L.T. contract, while the B.O.L.T. contract grants the company the right to lease or use the property without ownership.

B-5 - Build, Transfer, Operate (B.T.O) Contract

It is a contract whereby the state pledges to an investor to build a project and transfer its ownership to the state upon completion of construction as a first phase. The state then concludes a second agreement with the investor as a second phase to operate and exploit the project during the contract period, in exchange for an agreed-upon percentage of profits that covers construction costs[43].

What distinguishes this type of contract from others is that the state becomes the owner of the project from the outset, not at the end of the concession period. Thus, the state owns the project throughout all its phases, since the project in the Build, Transfer, Operate (B.T.O.) contract is established on behalf of the state.

B-6 - Modernization, Ownership, Operation, and Transfer (M.O.O.T) Contract

It is a contract by which the state pledges to one of the investors to modernize one of the existing projects, in a way that makes the facility capable of efficiency, by providing it with the latest technological equipment and modern management and operation framework, as well as owning and operating it during the term of the contract, provided that ownership of the project is transferred to the state at the end of the concession[44].

B-7 -Design, Build, Finance and Operate (D.B.F.O) Contract

It is a contract by which the state pledges to an investor to build a project and finance it at his own expense, and to manage and operate it with machinery, equipment and devices, in accordance with the technical conditions, designs and controls specified by the state[45].

B-8 -Lease, Renew, Operate, and Transfer (L.R.O.T) Contract

This is a contract whereby the state leases an existing project to an investor to renovate, maintain, and operate it for a specific period of time, charging fees for the service provided. At the end of the contract, the investor undertakes to transfer ownership of the project to the state[46].

2- Public utility concession contracts

Public utility concession contracts are one of the most prominent and important forms of public-private cooperation, and the most widely used. They are regulated by Algerian law under Presidential Decree No. 15-247 and Executive Decree No. 18-199, and by French law under the French Public Procurement Law of 2018. Accordingly, in this section, we will attempt to define what is meant by this type of contract and then explain its forms.

A- Definition of public utility delegation contracts

The general principle is that the task of defining terms is not at the core of the legislator's priorities, as much as the organizational aspects, as this task is usually left to jurisprudence and the judiciary. However, in the field of contracts for the delegation of public services, we find that the legislator has broken this rule, given the

[43]- Volker Birken, BOT-Models as Instrument for Strategic Competitive Advantages in the Automotive Industry, Diplom.de, Germany, 2004, p 30
[44]- Hassan Al-Bannan, The Principle of the Susceptibility of Public Utilities Rules to Change and Development: A Comparative Study, National Center for Legal Publications, First Edition, Egypt, 2014, p. 209
[45]- Jihad Zuhair Deeb Al-Harazino, op.cit, p. 53
[46]- Adrian J. Smith, Privatized Infrastructure, The Role of Government, Thomas Telford, United Kingdom, 1999, p 74

importance of the contract itself on the one hand, and its novelty as a new method of management and administrative contracting on the other hand.

These are the foundations upon which the French legislator relied, as he defined the public service delegation contract through Article 38 of Law No. 93-122, which was repealed[47], stating that: "A public service delegation is a contract by which a legal entity governed by public law entrusts the management of a public service for which it is responsible to a public or private delegate, whose remuneration is substantially linked to the results of the operation of the service. The delegate may be responsible for constructing works or acquiring goods necessary for the service".

However, amid legislative developments in French laws regulating this type of contract, Order No. 65-2016 changed the term "public utility concession contracts" to "concession contracts," in compliance with the 2014 European Union Directive on Concession Contracts, as part of efforts to standardize terminology and legal rules across the European Union.

The evidence for this is what is stated in Article 1411-1 of the French General Law of Regional Communities[48], which states: (A public service delegation is a concession contract within the meaning of Ordinance No. 2016-65 of 29 January 2016 relating to concession contracts, concluded in writing, by which a delegating authority entrusts the management of a public service to one or more economic operators, to whom a risk linked to the operation of the service is transferred, in return either for the right to operate the service which is the subject of the contract, or for this right accompanied by a price).

Based on this new approach, the French legislator, in its definition of the public utility concession contract pursuant to Article 5 of the repealed Ordinance No. 65-2016[49], stated that: (Concession contracts are contracts concluded in writing, by which one or more granting authorities subject to this ordinance entrust the execution of works or the management of a service to one or more economic operators, to whom a risk linked to the operation of the work or service is transferred, in return either for the right to operate the work or service which is the subject of the contract, or for this right accompanied by a price).

This change was finally confirmed with the issuance of the French Public Procurement Law of 2018[50], which combined public utility concession contracts under the term “concession contract,” defining it under Article 1121-1 as: (A concession contract is a contract by which one or more granting authorities subject to this code entrust the execution of works or the management of a service to one or more economic operators, to whom a risk linked to the operation of the work or service is transferred, in return either for the right to operate the work or service which is the subject of the contract, or for this right accompanied by a price)

As for the Algerian legislator, he did not provide a definition for public service delegation contracts within the texts of Presidential Decree 15-247, but he referred regarding his definition to the texts of Executive Decree No. 18-199, which stipulated in Article Two that (the delegation of public service, in the concept of this decree, means transferring some non-sovereign tasks of the public authorities, for a specific period, to the delegate, with the aim of the public interest).

By carefully reading the definitions above, we can clearly see the difference between the definition provided by the French and Algerian legislators. The French legislator was more precise and specific in its definition of the

[47]- Law No. 93-122 of 29 January 1993 on the prevention of corruption and transparency in economic life and public procedures, Amended by Law No. 2014-873 of 4 August 2014 - art. 16, Repealed by Ordinance No. 2016-65 of 29 January 2016 - art. 77

[48]- Article L 1411-1 of the General Code of Local Authorities, Consolidated version of April 16, 2018, Amended by Ordinance No. 2016-65 of January 29, 2016 - art. 58

[49]- Ordinance No. 2016-65 of January 29, 2016 relating to concession contracts. Official Journal of the French Republic, No. 0025, January 30, 2016. Repealed by Ordinance No. 2018-1074 of November 26, 2018

[50]- Ordinance No. 2018-1074 of November 26, 2018 containing the legislative part of the public procurement code, JORF No. 0281 of December 5, 2018

public utility concession contract, as it included all the elements upon which the contract is based, such as the duration of the concession, the form of the concession, and the parties to the concession, while emphasizing the criterion of transferring economic risks to the concessionaire, the owner of the concession. This is in contrast to the Algerian legislator, who was content to focus on the form of the public utility concession agreement and its objectives, without specifying the element of transferring economic risks.

By carefully reading the definitions above, we can clearly see the difference between the definition provided by the French and Algerian legislators. The French legislator was more precise and specific in its definition of the public service delegation contract, as it included all the elements upon which the contract is based, such as the duration of the delegation, the form of the delegation, and the parties to the delegation, while emphasizing the criterion of transferring economic risks to the delegatee. This is in contrast to the Algerian legislator, who was content to focus on the form of the public service delegation agreement and its objectives, without specifying the element of transferring economic risks.

However, this does not prevent us from saying that the intervention of the Algerian legislator by setting the provisions applicable to public utility delegation contracts, under Presidential Decree No. 15-247 and Executive Decree No. 18-199, is a real bet and gain for the administrative legal framework in Algeria, given that it includes new provisions, as it stipulates the principles governing the public utility delegation contract, as well as the forms of delegation, and the formulas for concluding the public utility delegation agreement.

B- Forms of public utility delegation contracts

The Algerian legislator, through Article 210 of Presidential Decree No. 15-247 and Article 52 of Executive Decree No. 18-199, has provided several forms that the delegation of a public service may take, taking into account the level of delegation, the risk borne by the delegatee, and the oversight of the delegating authority. The delegation may take the form of a concession, a lease, an incentive agency, or management. The delegation of a public service may also take forms other than those listed above, in accordance with the terms and conditions specified by the regulations.

While these traditional forms are no longer classified as public utility concession contracts under the French Public Procurement Law of 2018, they have been merged as a form of concession contracts into two forms, based on the criterion of transfer of operational risk. The first form is the works concession contract, which primarily aims to:

1° Either the execution, or the design and execution of works listed in a notice annexed to this code;

2° Either the execution, or the design and execution, by any means whatsoever, of a work meeting the requirements set by the contracting authority[51].

The second form is the service concession contract, the purpose of which is: (Management of a service. It may consist of granting the management of a public service. The concessionaire may be responsible for constructing a structure or acquiring goods necessary for the service)[52].

Taking into consideration in this context that a concession contract relating to works and services is considered a concession for works when its main purpose is to carry out works[53].

Returning to the forms of public utility delegation contracts in Algerian legislation, they include:

B-1 Concession

[51]- Article L1121-2 of the 2018 Public Procurement Code
[52]- Article L1121-3 of the 2018 Public Procurement Code
[53]- Article L1121-4 of the 2018 Public Procurement Code

In Algerian law, a concession means the form through which the delegated authority entrusts the concessionaire with either the construction of facilities or the acquisition of property necessary for the establishment of the public facility, or it entrusts him only with the exploitation of the public facility[54].

Accordingly, the public utility concession contract allows the licensee to exploit the public utility in his own name and on his own responsibility, under the supervision of the delegating authority, provided that the licensee finances the construction, acquisition of property, and exploitation of the public utility himself, in exchange for receiving royalties from the users of the public utility.

B-2 Lease Contract

It is the entrusting of the delegated authority to the delegatee to manage and maintain a public facility, in exchange for an annual fee paid to it. The concessionaire then acts on his own behalf and under his own responsibility. The delegating authority itself finances the establishment of the public facility. The concessionaire's wages are paid by collecting fees from users of the public facility.[55].

Hence, the concession differs from the lease in terms of their subject matter. This is based on the fact that in the concession method, the licensee undertakes the tasks of constructing facilities or acquiring property necessary for the establishment of the public facility at their own expense, while in the lease method, these tasks fall upon the delegating authority, such that the lessee (licensee) is solely responsible for the exploitation and provision of the service. They also differ in that in the concession method, financing falls upon the licensee, while in the lease method, the financing burden falls upon the delegating authority itself. They also differ in terms of the commitment period, which we find to be somewhat long in the concession method, such that the maximum concession period ranges within the limits of 30 years, extendable once by an addendum at the request of the delegating authority on the basis of material investments not stipulated in the agreement, provided that the extension period does not exceed a maximum of 4 years, compared to the lease method, whose period does not exceed a maximum of 15 years, extendable once by an addendum at the request of the delegating authority on the basis of material investments not stipulated in the agreement, provided that the extension period does not exceed a maximum of 3 years[56].

B-3 Incentivized Agency Contract

It is that the delegated authority entrusts the delegatee with managing or managing and maintaining the public facility, and the delegatee exploits the public facility on behalf of the delegated authority, which itself finances the establishment of the public facility and maintains its management. The concessionaire's wages are paid directly by the delegating authority through a grant determined as a percentage of the turnover, to which a production bonus and a share of the profits are added, when necessary. The delegating authority, in conjunction with the concessionaire, determines the rates paid by users of the public facility, and the concessionaire collects the rates on behalf of the concerned delegating authority.

Compared to the concession and lease methods, the maximum term of a public utility concession agreement in the form of an incentive agency is set at 10 years, extendable once by an addendum at the request of the delegating authority on the basis of material investments not stipulated in the agreement, provided that the extension period does not exceed a maximum of two years[57].

B-4 Management Contract

[54]- Article 210, Paragraph 1 of Presidential Decree No. 15-247, as well as Article 53, Paragraph 1 of Executive Decree No. 18-199
[55]- Article 210, Paragraph 02 of Presidential Decree 15-247 and Article 54 of Executive Decree No. 18-199
[56]- Article 54, paragraphs 4 and 5 of Executive Decree No. 18-199
[57]- Article 210, Paragraph 03 of Presidential Decree No. 15-247 and Article 55 of Executive Decree No. 18-199

It is that the delegated authority entrusts the delegatee with managing or managing and maintaining the public facility, and the delegatee uses the public facility on behalf of the delegated authority, which itself finances the public facility and maintains its management. The concessionaire's wages are paid directly by the delegating authority through a grant determined as a percentage of the turnover, to which a production bonus is added. The delegating authority determines the rates paid by users of the public facility and retains the profits. In the event of a deficit, the delegating authority compensates the manager, who receives a lump sum fee. The concessionaire collects the rates on behalf of the relevant delegating authority.

In any case, the duration of the delegation agreement in the form of management may not exceed 5 years[58].

Conclusion:

Through our study of the legal framework for public-private partnership contracts, we have reached a number of conclusions that can be summarized in the following points:

- Defining the precise meaning of public-private partnership contracts in light of jurisprudential and legislative positions requires, through a comparison between them, to include a set of basic elements, particularly in terms of the necessity of identifying the parties to the partnership, represented by both the public and private sectors, as well as defining the primary objective of the partnership, represented by providing public services and achieving the public interest, in addition to the roles, responsibilities and advantages created by this contractual relationship, such as the element of risk distribution, the element of financing, and the time element.

- Both Algerian and French legislators have adopted public-private partnership contracts within their legal framework. This allows the public sector to benefit from the expertise of the private sector, particularly with regard to the transfer of modern technology, energies, and resources. This is achieved by granting the private sector the privilege of financing, constructing, managing, operating, or developing basic infrastructure projects.

- The adoption of public-private partnership contracts by the Algerian and French legislators came under different synonymous names, whether in terms of meaning, structure, constituent elements, nature, purpose and objective. While the French legislator combined partnership contracts within concession contracts in the form of works concession contracts and services concession contracts, the Algerian legislator adopted this type of contract under the name of concession contracts and public utility delegation contracts, which requires the legislator to intervene to unify the terminology to avoid any ambiguity or contradiction.

- The feasibility of a public-private partnership (PPP) project hinges on the fulfillment of a set of important elements and principles, most notably the risk element, which should be identified and distributed within the terms of the PPP contract, similar to other elements. This has implications that could impact the rights and obligations of the parties, whether due to failure to identify them, poor distribution, or poor management. This could make this partnership a source of many disputes, which could disrupt the project's implementation and hasten its failure.

- Jurisprudence has found it difficult to settle on a single legal classification for public-private partnership contracts, given their novelty and complex nature, which combines elements of both public and private law. Some classify them as administrative contracts, others as private contracts, and others as special in nature. However, both Algerian and French legislators have settled this issue by classifying public-private partnership contracts as administrative contracts. This makes the practical models of these contracts administrative contracts by law, and administrative disputes are the domain of the administrative judiciary.

- The absence of a comprehensive and unified legal framework regulating public-private partnership contracts in Algeria, which requires the issuance of a special and detailed legal framework for this type of contract, similar to what has been established in comparative state legislation, as is the case with the French legislature.

[58]- Article 210, Paragraph 4 of Presidential Decree No. 15-247, as well as Article 56 of Executive Decree No. 18-199

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