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The Management of Public Service in Administrative Law

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ABSTRACT:

Public service appears as one of the relevance factors in the heart of administrative law, thus influencing the development of the public administration systems as a whole. The mode of management of public service is very important because it defines the functions and impacts of the state entities on the population due to the fact that the state cannot succeed without the participations of the citizens. The main goal of public service is to satisfy the general interest. Traditional legal writers considered that public service was an activity of general interest managed by a public person. Even though the management of public service is mostly handled by public entities, to a certain extent it can be transferred to a private person under some special conditions. This is due to the diversification of public services, and mainly the creation of public services of an industrial and commercial nature, has led to their management being entrusted to private persons, either exclusively or in collaboration with the public authorities. This qualification presupposed a management style comparable to that of a private company, in particular the financial equilibrium. Today, the concept of public service is confronted with the evolution of French society as well as the expectations of the European Union. It must therefore be flexible and adaptable so as not to become complex and uncomplicated. The major purpose is to analyze how can the public service be managed by public establishment and public enterprises and to what extent can the management of a public service be entrusted to a private person. This research will be examined under the sociological positivism method which does not focus solely on the legal rule, but considers that the social environment is necessary to draw the sources of inspiration from the legislator, or to verify the effectiveness of the application of formal law and thus its adequacy to the needs of the law. Thus, the management of public service is not based on legal norms but also involves the participation of social norms.

Keywords: Management, Public Service, Administrative Law.

RESUME

Le service public apparaît comme l'un des facteurs de pertinence au cœur du droit administratif, influençant ainsi le développement des systèmes d'administration publique dans leur ensemble. Le mode de gestion du service public est très important, car il définit les fonctions et l'impact des entités étatiques sur la population, car l'État ne peut réussir sans la participation des citoyens. L'objectif principal du service public est de satisfaire l'intérêt général. Les juristes traditionnels considéraient que le service public était une activité d'intérêt général gérée par une personne publique. Même si la gestion du service public est principalement assurée par des entités publiques, elle peut dans une certaine mesure être transférée à une personne privée sous certaines conditions particulières. Cela est dû au fait que la diversification des services publics, et principalement la création de services publics à caractère industriel et commercial, a conduit à confier leur gestion à des personnes privées, soit exclusivement,

soit en collaboration avec les pouvoirs publics. Cette qualification supposait un style de gestion comparable à celui d'une entreprise privée, notamment l'équilibre financier. Aujourd'hui, la notion de service public est confrontée à l'évolution de la société française, ainsi qu'aux attentes de l'Union Européenne. Il doit donc être flexible et adaptable pour ne pas devenir complexe et simple. L'objectif majeur est d'analyser comment le service public peut être géré par un établissement public et des entreprises publiques et dans quelle mesure la gestion d'un service public peut être confiée à une personne privée. Cette recherche sera examinée sous la méthode du positivisme sociologique qui ne se concentre pas uniquement sur la règle juridique, mais considère que l'environnement social est nécessaire pour puiser les sources d'inspiration du législateur, ou pour vérifier l'efficacité de l'application du droit formel et ainsi son adéquation aux besoins de la loi. Ainsi, la gestion du service public ne repose pas sur des normes juridiques, mais implique également la participation de normes sociales.

Mots-Clés: *Gestion, Service Public, Droit Administratif*

Introduction

The creation of public service is the responsibility of a territorial public person, but it is not necessarily the one who will ensure the day-to-day management of the public service created. To this end, it can either manage the service itself or call on the intervention of a private entity in the case of a concessionary contract. However, this management is subject to control, which has the aim of ensuring the respect of the rules and regulations of the state. The public entity cannot lose interest in its management because it has always been able to manage it. The notion of "public service" has been defined in regard to the emergence of various types of "public services," such as the former sovereign services (army, police, justice, finance, etc.), which have been, and are still the instruments of the public power of the state. The social services, which were considered in 1789 by the state, assumed the previous functions devolved to the church (education, assistance, and health) and extended with the development of new needs.

There are different classifications of public services, which are the public administrative service and the industrial and commercial public services. It was the case law stated in “Arret Bac d’Eloka’’ of the ‘‘*Tribunal de conflits*’’ of January 22, 1921, on the commercial company of West Africa. This Tribunal de conflits made a clear distinction between administrative public services and industrial and commercial public services. The facts of the case state that a truck vehicle managed by the colonial administration had sunk, causing the death of one person and damaging vehicles belonging to the company in question. "The tribunal de conflits," which is competent to decide on which court can hear a matter, which can be an administrative or judicial court. The Government commissioner highlighted the distinction between the services concerned in a public administration that are observed in accordance with the nature of the service rendered and are essential to the state and its administration. To arrive at this distinction, the State Council, with the help of its government commissioner, operated an identification technic based on a set of three clues to support the industrial and commercial nature of the mission. The first concerns the objectives of the service (it must be an activity of production and sale of goods and services), and the second criteria is related to the origin of the resources, which must be from the state. This finally landed on the two main services involved

in public service, which are the public administrative service and the industrial and commercial public service.

The definition of the concept of management in Latin which means *"action of managing, execution"*. Management is the set of techniques for organizing resources that are implemented for the administration of an organization, including the art of leading people, in order to obtain satisfactory performance. According to Larousse dictionary, management is defined as the action or way of managing, administering, directing, or organizing something. According to George R. Terry and Stephen Franklin, management is defined as a specific process consisting of planning, organizing, impetus, and control activities aimed at determining and achieving defined goals through the employment of human beings and the implementation of other resources. According to Léon Duguit, public service is conceived as the foundation of a theory of the state, it is a system of legitimation of the state and also a system of production of the state. It is a polysemic term that expresses at the same time a desire ("what one wants to do"), the target that one must expect, and the result to be expected.

The legal regime governing public service is based on several parameters. The legislature took into account several criteria in order to determine the applicable legal regime with regard to public administrative services that do not carry out commercial or industrial activities. It should be noted that they are of the highest degree as far as the concept of public service is concerned, since they manage vital sectors of the country such as defense, justice, education, energy and the environment. Unlike a private company, the public service operates at a loss, its reason for being is the satisfaction of the general interest with a non-profitable aim, with the exception of private institutions or companies whose main objective is profit making. It is for this reason that free service is retained as one of the fundamental rules for the operation of public service. This collaboration between the public and private entities consists of a reciprocal consideration of the objectives and imperatives of Europe and France. France began to deregulate its monopolies in the aviation sector in 1994, as well as in telecommunications and the energy sector, in order to allow the effective implementation of the principle of free competition. In addition, the legislator has set up a system of transparent regulation of public service operators by separating the sectors that are from the public service operators. This participation of both sectors also intervenes at the level of public private partnership contracts, which is a major activity of public management in administrative law.

There are rules that should not be misunderstood with the ways or methods in which public services are managed, thus, this calls for the intervention of the principles regulating public service in administrative law. These principles will be examined by stating the principle of continuity, which is defined as the punctual and regular operation of public services, which implies the permanent functioning of the continuity of the state (health, firefighting, water distribution, etc.). Hence, despite the havoc that may occur in a nation or state, the public service authorities must take other precautions for the better continuity of the activities of public service so as to maintain the standard of public management in the state. The next principle is the principle of equality, which has a constitutional value due to the fact that Article 6 of the Universal Declaration of Human Rights and of Citizens clearly states that the law must be the same for all, meaning people in the same situation should have fair treatment at the same rate. This principle of equality doesn’t intervene in all cases due to the fact that principles always have exceptions. This may be seen in cases of social activities such as

employment, where the management involved, may place some specific requirements and criterias for the service to be rendered. This is very common with the arm force in some special domains, such as the Rapid Intervention Battalion, which is considered an elite military force. In addition to this, there are other vital principles of public service, which will be examined below.

The principle of free of charge for public service is also one of the principles of public service, which presupposes that no financial contribution is required from the user of the service taken as such in return for direct payment. This assessment remains at the discretion of the creative authority but may be subject to judicial review. It should also be noted that there is a certain degree of interest in the requirements of the general public. The public authority may consider that the public interest requires that the total responsibility for the required service be at the full attention of the management. Even though this principle of free of charge is necessary for better management of public service, it cannot be fully considered in all situations. In certain conditions, the users of the public service are called to pay some charges, such as taxes, registration fees, and some participation fees in some competitive exams, which creates some exceptional rules in the management of public services. This principle of free of charge has always called for concern in public management in general.

The principle of neutrality of public service, as a corollary, consists of placing all users of the public service at the same level, thus avoiding the act of discrimination, which is very sensitive for the management of public service. Indeed, the principle of neutrality consists in not discriminating between users of public service on the basis of their political, religious, philosophical opinions, race, etc. The principle of transparency in public service appears today as one of the elements that tends towards the efficiency of public service. It implies that the various partners in the public service (users, staff, civil servants, etc.) are informed of the legal and factual reasons for the decisions on the organization and operation of the service and of those of which they are directly concerned by the said decision, so that they should be informed of the procedural act that preceded the decision-taking. This principle of transparency might not be common at all times because public service management has some discretionary powers, which give them right over professional secrets.

The principle of adaptability of public service means reflecting in its organization and operation of the variations and developments affecting the general interest, the legal, economic, and social environment in which any public service lives, which is also considered as the principle of mutability or efficient operation. The principle of constant adaptation of public service is defined in relation to the purpose of the public service, i.e., the satisfaction of the public service. The consequences of adaptation with regard to users of public service are reflected in the constraints imposed on the users in the name of adaptation (absence of the acquired right to maintain a given service or a legal regime of public service) by the rights granted to the user, which are the right to normal functioning and the right due to legal functioning. The consequences of constant adaptation with regard to the administration and the manager of public service can be explained, by the prerogatives recognized with regard to the bodies effectively managing the public service, and the obligations imposed on the administration and the manager of the public service.

On this basis, the problem statement to which it is addressed is structured around the following question: can we say today that the management of public service is the sole responsibility of public

entities? If so, what are the other bodies in charge of the management of public service under administrative law? From this central question, two subsidiary questions are derived, namely, what is the role of public entities in the management of the public service? In other words, under what conditions can the management of the public service be entrusted to a private person? Such questions constitute the backbone of this reflection. The methodological approach of this article is a sociological positivism method, which demonstrates that the society functions based on a set of general laws. Therefore, this will lead us to the partitioning of the different parts involved in this article. In part 1, the management of public service by public establishments and public enterprises will be examined, in section one, the management of public service by public establishments (Section 1), and in the next section, the management of public service by public enterprises will be demonstrated (Section 2). In Part 2, the management of public service by private persons will be illustrated, this will be subdivided into two sections, such as the demonstration of the unilateral delegation observed in the first section (section 1), and in Section 2, the contractual delegation of the public service will be examined (section 2).

I. PUBLIC SERVICE MANAGED BY PUBLIC ESTABLISHMENTS AND PUBLIC ENTERPRISES

The public person in administrative law is a moral person of public law, which is characterized by its various prerogatives of public power. The constitution, being the fundamental and supreme law of the state, reserves the right of the legislature to create new categories of public institutions and to lay down their constitutive rules. It should be noted that some categories of public institutions include establishments with the same affiliation as territorial guardianship and a similar specialty, such as high schools, hospitals, etc. Thus, the management of public service can be handled by a public establishment.

A. The management of public service by public establishments

The management of public service by a public establishment can be examined from two angles. On the first angle, it will be illustrated through the direct management of public service, and on the second angle, the indirect management of public service will be examined.

1. The direct management of public service

The management of public service has always been a fundamental factor when talking about public administration. In most cases, this direct management is under the full control of public entities. Direct management is therefore referred as the management of public service, in which the community exercises maximum control over the organization, its functioning, and probably the funding of the service concerned. Direct management is still largely preferred to indirect management due to the fact that it allows local authorities to exercise efficient supervision or control over the organization and operation of the services concerned. In regard to management, there are two doctrinal approaches.

The first approach reflects on the conception of governance, which is characterized by the direct management of public service by a public entity, either a local authority, which in most cases is the decentralized territorial collectivities, or a public institution accompanied by adequate human, technical, material, and financial resources. This transfer of powers is governed by regulatory texts voted by the national assembly and promulgated by the President of the Republic. In Cameroon, the decentralized territorial authorities, which are made up of regions and councils, have two major legal statutes. The first are those that benefit from direct constitutionality because they were created by the Constitution of January 18, 1996, in the case of Cameroon, and the second are those created by the law, which is consecrated in Article 55 of the Constitution of Cameroon, stating that the constitution allows the legislator to create any other type of decentralized territorial authority. The direct management of public service has two major specificities from a legal and political standpoint. When considering the legal point of view, the public institution creates the public service, which will be managed by itself with the legal consequences that may arise from it. From a political point of view, direct management is handled by the municipal council, which exercises managerial powers over state activities even though it is under the control of the state.

The second approach, which is different from the technic of direct management, is without the participation of an intermediary. This highlights two different categories of authorities: personalized management endowed with legal personality and financial autonomy (establishment distinct from local authorities). The second category is observed at a point where a public authority entrusts the management of a public service to a private person by contract, this private person might be a private institution that does not receive direct remuneration from the users of the said service. In addition to the direct management of public service, there is also the indirect management of public service, which will be examined below.

2. The indirect management of public service

Indirect management simply refers to situations where the state or local authority decides to delegate its management to a second party having competency over the required service. According to the law of July 12, 2017 on the general status of public establishments in Cameroon, which states in Article 2(3) that "*Public establishments shall determine the type of each public establishment, such as administrative public establishments, social public establishments, technical public establishments, scientific public establishments*". These various forms of management are indeed good management due to the development of relative independence, but they also permit the withdrawal of some services from the hierarchy of local authorities in regard to the budgetary constraints of this community, and certain requirements of the civil service and public accounting. The procedure for the creation of a new public institution is generally set out in the fundamental law of the state, which is the constitution of the state. The creation of a public establishment falls under the power of the legislator, and in some other cases, the creation of a new public institution falls within the sole competence of the regulatory power for national public establishments. In the next section, the management of public service by public enterprises will be examined.

B. Public service managed by public enterprises

The notion of public enterprise has been studied in different aspects of law, such as business law, private law, as well as in other disciplines, such as economics. A company is defined as a "*legal autonomous economic unit whose main function is to produce goods or services for the market."* In other words, an enterprise can be created when people gather and exercise their talents by gathering their financial and material necessities to produce goods and services for the population. According to Jean Rivero, a public enterprise is an industrial and commercial enterprise that is not subject to appropriation by private capital and is ultimately the responsibility of the state. In addition to this, Pierre Devolve, a renowned public law jurist, defined public establishment as a company over which the public authorities can directly or indirectly exercise a dominant influence by virtue of ownership, financial participation, or the rules that govern it. All companies can be divided into three major economic sectors that broadly define the field in which they operate and provide their expertise. The primary sector, which concerns everything related to the exploitation and collection of natural resources such as fishing, agriculture, mining, livestock, etc. The secondary sector includes raw material processing activities such as construction and agro-production, and finally, the tertiary sector deals with the distribution of services to clients.

In other words, a public enterprise can be examined at different levels, which are extensive and restrictive conceptions. In the restrictive conception, the public establishment is an organ that does market production with the aim of making maximum profit. In its extensive conception, public enterprise is considered as an economic unit of production. From a legal standpoint, the study of public enterprise calls for concern due to the fact that the word "enterprise" is considered as a legal person involved in an economic activity. If we are to believe "Gilles Guglielmi", the legal vagueness surrounding the status of public enterprise is not necessarily negative. It was perhaps, at the end that the best protection of the notion of public enterprise is not to have been defined in a homogeneous way, thus preventing the complete and uncontrollable control of the state over this part of the productive economic sector, both to extent it and, at the whim of the majorities, abolish it". In spite of their once considerable importance in the economic public sector, and perhaps even because of it, public enterprise has never been the subject of a comprehensive legal definition in a general text. A public enterprise is an enterprise over which the state can directly or indirectly exercise a dominant influence by virtue of ownership or financial participation by disposing of either the majority of the capital or the majority of the votes attached to the shares issued. Under community law, a public undertaking is *"an undertaking over which the public authorities may exercise, directly or indirectly, a dominant influence by reason of ownership, financial participation, or the rules governing it*." However, it is accepted that in order to be a public enterprise, it must have a legal personality that is not the same as that of the company.

1. The creation of public enterprise

The diversity of national public enterprises depends on the diversity of their origins, which are linked to the diversity of procedures similar to those of a public establishment. Their missions and functions vary depending on the goods and services to be rendered in case of need. The law creates public enterprises such as national hydrocarbon companies, insurance companies, and other enterprises with the aim of profit-making. There are different kinds of public enterprises, such as public industrial and commercial establishments and parastatal enterprises. In regard to public enterprises, the choice

of governance system involves three questions relating to the area of use, the elements of the choice, and the procedure. In regard to the nature or usage of the enterprise, the industrial and commercial executives in the field of public service (national printing press, for example) are at the center of management. As regards the elements of the choice to manage a given public service, they are based on freedom of choice. At this point, the choice of management is the sole discretionary power of competent authority. Finally, with regard to the procedure of choice, whether at the national or local level, it concerns the competent authority and the legislator. However, when the creation of the public service is made by an administrative act, it is up to the regulatory authority to determine the mode of management of the public service. The creation of public enterprise sets up fundamental rules and regulations to be implemented. In the case of public enterprise managed by state authorities that are directly under their supervision, it is assumed that these services are directly taken over and managed by state bodies, the country's leading political and administrative organizations, since political action and administrative action are intimately linked, even if by nature they are not the same.

2. The modes of management of public service by public enterprise

Public enterprise was gradually losing the link with the state, however, if the link was loosened, it was never broken because of a regular contractual agreement serving to guarantee the public service missions assigned to it. A public enterprise, whatever its form, has legal personality and financial autonomy. In regard to their functioning, public enterprises are endowed with the management bodies (deliberative and executive) and a staff in an individual situation under private law, except the staff of the general management and the accounting officer of the company governed by a statute whose legal support is by a decree. The public enterprise has three preliminary remarks. Firstly, the public enterprise is not limited to its function due to the fact that it is a legal entity. According to law no. 2017/011 of July 12, 2017 on the general status of public enterprises, which establishes the rules of the creation of public enterprises, the constitution, the functioning, the dissolution, and the liquidation of the company, this can be observed at the level of two major companies, which are state-owned companies and semi-public enterprises. According to the OHADA uniform act relating to commercial companies and economic interest groups, which are acts issued with a view of adopting the common rules of the treaty on the harmonization of business law in Africa, the management of the public service by a public enterprise is done by a natural or legal person who is a member of the board of directors of a company appointed to implement the rules governing the public corporation and who participates in the administration of the company. These public enterprises operate under both technical and financial supervision. As concerns the technical supervision, it ensures that the resolution of the board of directors which is compliant with the laws and regulations in force and consistent with the sector-specific policy orientation. Referring to financial supervision, it ensures compliance with the resolutions on the decisions of the board of directors, the sustainability of financial commitment, and the overall consistency of performance, plans, and prerogatives.

II.PUBLIC SERVICE MANAGED BY PRIVATE PERSONS

There are some situations where a public authority can hand over the management of the public service to an individual even though it exercises full control over it. This can be seen in the case

of an association or a company. This is a long-standing situation that involves identifying the legal nature of the manager of the public service and the use of private persons to manage a public service. The first example of the management of public service by a private person date back to the beginning of the twentieth century and have given rise to famous judgments (CE, 10 January 1902, Compagnie Nouvelle du Gaz de Deville-lès-Rouen; 11 March 1910). This brought out the legal nature of the management of public service. There are three different criterias for identifying the existence of an activity of management of public service, the existence of a mission of general interest entrusted by a public person, the provision of exorbitant prerogatives under ordinary law, and the exercise of control by the public entity over the activity of the delegatee.

There exists a legal regime in the management of public service. The maintenance of a hard core of public law is the use of a prerogative of public authority, which is the possibility for a private person to make use of the prerogatives of public authority. Where a decision taken by a private person, in the context of the management of public service, on the basis of a public authority, it constitutes an administrative act. This is the solution that was clearly found by the State Council in"Magnier judgment (CE Sect., 13 January 1961)". In some special cases where the private person has been given some prerogatives to manage the public service for the general interests, they are still subject to the control of public authorities. The central question is to what extent can a private person be entrusted with a public service mission? In addition to this question, if a private person can manage a public service, is the management absolute or partial? These various questions lead us to examine the various forms of management of public service by private individuals. This is seen under the unilateral delegation of public service to a private person, and in the next section, the contractual delegation of public service will be demonstrated.

A. The Unilateral Delegation

In administrative law, the unilateral delegation of public service has multiplied at the national and local levels. When public authorities decide to unilaterally resort to delegated management, they are part of a very specific legal framework that raises questions about the notion of virtual public service. Unilateral delegation of public service exists in various ways, including the legislative delegation, which is the transfer of the power to legislate from one authority to another, and the delegation by unilateral administrative act. This will be examined below.

1. The Legislative Delegation

Public service has always existed in various forms during the legal phase. For a long time, unilateral delegation of public service conferred by law or regulation was rare, since preference was given to the contractual technic. When considering the concept of unilateral delegation of public authority to a private person, a private person is unilaterally entrusted by the public authorities with the management of a public service mission. This type of investment is for a few reasons, since it is not only for private persons but also for public persons, and it is essentially for services. The general principles on unilateral delegations call for the definition of unilateral delegation and the implementation of its legal regime. When public authorities decide to unilaterally use delegated management, they are part of a very specific legal framework that is different from collaboration,

contribution, or simple cooperation, since the decision may be taken by the legislator or may result from a simple transformation of a delegated authority. This system is used by the legislature to enable the executive branch to implement the law.

First of all, the law may entrust the management of a public service to a private person (CE 13 Mai 1938, Caisse primaire "Aide et protection"). It later developed with the professional or corporative orders charged by the law by ensuring the management of a public service relating to the organization and control of the profession. (CE sect., 28 Juin 1943, Morand). Nowadays, there are several private bodies in charge of the management of public service, such as industrial services, social services, and many others, which require the expertise of private bodies. Most often, public entities and private persons are involved in some public activities through collaboration, contribution, or simple cooperation. These situations exist where there is not yet a material transfer of a coherent part of the operational management of the public service to a private person.

2. Delegation by way of an administrative unilateral act.

A unilateral administrative act is a legal act adopted unilaterally by an administrative authority that modifies or refuses to modify the rights or obligations of citizens, regardless of their consent. If we deconstruct this definition, the unilateral administrative act is an act affecting the legal order that lays down new rules intended to produce legal effects, i.e., rights or obligations with regard to them regardless of their consent. The unilateral administrative act is the primary expression of the prerogatives of public authority. Indeed, it is the action of the administration that best expresses its powers beyond the ordinary law, due to the fact that it consists of imposing its will on the citizens through the enactment of legal norms that will be applicable to them without their consent. Unilateral administrative acts create rules and regulations that are implemented by an administrative authority unilaterally. Administrative law cannot exist without administrative litigation. In cases where the users of the public service contest the decision of the public authority, certain procedures will be applied to settle the disputes. In cases where it goes beyond the normal administrative procedure, a judicial procedure will be implemented. The unilateral administrative act is also one of the basic elements of the French model of administration. It is in fact the expression of the most significant of the exorbitant prerogatives available to the administration, which constitutes the power of unilateral decision-making. This ability to take decisions that bind individuals without their consent marks the unequal nature of the administrative relationship.

Even though the unilateral administrative act is very pertinent, it is necessary to note that there exist some phenomena without forgetting the legal difficulties that may hinder the proper management of the public service concerned. The phenomenon emphasizes on the fact that a private person is not presumed to manage a public service mission. The legal difficulties related to the identification of the private nature of the person, the public service mission of his activity, and the search for its legal consistency. When handling aspects of contribution, the delegation by the public authorities of the management of public service missions to associations and professional orders testifies to the diversity of delegated management in a unilateral framework. In addition to the unilateral delegation there equally exist the contractual delegation, which will be examined below.

B. The Contractual Delegation

Contractual public service is an agreement having a specific legal regime attached to it. A delegation is a contract of a legal agreement between both parties with an offer that must be materialized by an acceptance having rules and regulations binding them. According to the legal definition, a contract is concluded by a legal person governed by public law, which is responsible for the public service. The delegating authority may therefore be the state, a local authority, or a territorial or specialized public establishment. The delegate is either a public or private, legal or natural person. Administrative contracts are categories of contracts concluded by the administration, which may also sign contracts under private law. Administrative contracts constitute, along with unilateral administrative acts, the second means of action of the administration in its relations with the citizens. The concept of a public contract is commonly used in France, but it is not officially enshrined in the texts. It makes it possible to consider the changes that took place in European Union law and to bring together under a single concept all the contracts awarded by persons in the public sphere, whether they are contracting authorities or procuring entities. It therefore makes it possible to go beyond the traditional distinction between administrative contracts and contracts.

The concept of public service is conceptualized it was clear from an administrative case law that certain public service activities could not be delegated. This is the case with public authority activities. These*"regalian*" activities, which reveal the very exercise of prerogatives of public authority, cannot be delegated and must be carried out by the government. The delegation is made by a legal person governed by public law. Public service delegation is a functional legal concept that largely reflects the long-standing practice of delegated management of public services (different from the concept of public procurement). Entrusting the management of a public service to a delegate therefore presupposes that the conditions of the delegation. The contractual delegation has some characteristics which are the remuneration of the co-contractor, which shall be paid primarily by the user. The contract under which the remuneration of the administration's co-contractor is substantially ensured by the results of the operation constitutes a public service delegation contract, the remuneration of the delegate must be substantially covered by the profit or loss of the operation.

The problem of judicial review in the field of public contracts is very common in the management of public service due to the fact that it does not simply involve going beyond the distinction between public contracts and private law contracts. It also requires mastery of the structure and functioning of contractual litigation because the legal procedure of a public contract is very different from that of a private contract. Thus, competent jurisdiction in the case of administrative contracts is the administrative judge, and in the case of a contract signed with a private person will be under the jurisdiction of the judicial judge. In the next section of this article, the various kinds of contractual contracts will be demonstrated below.

1. Concessionary Contract

A concessionary contract is concluded in writing and for pecuniary interest in which one or more contracting authorities or contracting entities, entrust the provision and management of services

other than the execution of works to one or more economic operators. In Cameroon, an example of a concession contract is at the level of the operation of railways, which is primarily based on a commercial component. It specifies the service granted, the origin of financing, and the provision of the services. The most common technic in the field of contractual delegation is that, the concession allows the public entity (the delegating authority) to entrust, under its control, to a private or possibly public person (the concessionary operator) the performance of a public service. However, as in the case of public procurement, it is linked to the obligations of transparency and publicity imposed by law. The administration remains free to choose its co-contractor. The concessionary operator is responsible for operating the structure and manages it at his own risk. From a legal point of view, a public service concession is made by means of a contract, with a set of specifications that contain both contractual clauses relating to the financial or duration of the concession as well as regulatory clauses that affect the organization and operation of the service. It is by means of these clauses that, inter alia, the concessionary operator is required to comply with the famous laws of public service.

Unlike leasing, the concessionary operator must construct the structure and then operate the structure at his own cost. In return of these significant investments and the service provided, the concessionary operator will collect a fee (and not a price as in the context of a public contract) from the users of the service as well as have the right to the financial balance of the contract. The licensor shall indemnify the concessionary operator against the charges imposed on it in the course of the execution of the contract. At the end of the concession, the concessionary operator shall hand over freely to the delegating public entity the works and equipments necessary for the proper functioning of the service.

2. Leasing

This contract is very similar to the concession contract, even though it differs in one way or the other. According to "Guglielmi and Koubi's "definition, *"it is a contract by which the public entity responsible for the service entrust to a third party, called a leasee, the management of the public service, possibly through works that it hands over to it, in return for the payment of the public entity deducted from the fees paid by users*". The lessee does not bear the costs of first establishing work necessary for the operation of the public service for which he is responsible. This characteristic explains why leasing contracts are generally concluded for shorter periods than concession contracts. Nevertheless, the lessee may make an advance payment of financial working capital. The distinction between leasing and concession also has consequences in terms of liability. Where the delegation is limited solely to the operation of the work, as is the case of leasing, liability for damage attributable to the existence, nature, and size of the work lies with the delegating public entity. It is only in the case of a public service concession, i.e., a delegation of its construction and functioning. A good example of a lease agreement is the case of the services, production, transportation, distribution, and marketing of drinking water in the urban and peri-urban perimeters, which were then entrusted to" Camerounaise des Eaux (CDE)", a company incorporated under Cameroonian law created in December 2007 by a group of Moroccan companies under a leasing contract.

The legal regime governing the delegation of public service is subject to conditions of transparency, with a certain prerequisite relating to negotiation such as collection and publication of

tenders, followed by the negotiation of the delegation contract (freedom), but above all, the choice of the delegatee. In this case, the equipment costs (known as initial establishment costs) are borne by the delegating authority. The lessee is remunerated by royalties but must pay taxes to the public authority corresponding to the right to manage the public service and the use of the facilities. In addition to the lease agreement and the concession agreement, there are partnership contracts that are still operated under contractual contract.

3. **Partnership contracts**

A partnership contract is an administrative contract by which a local authority or a local public establishment entrusts to a third party, for a determined period in accordance with the execution period of the investments, the financial arrangements chosen, a global mission relating to the construction or transformation, upkeep, maintenance, operation, or management of works, equipment, or intangible assets necessary for the public service. The partnership contract allows a public authority to entrust a company with the overarching mission of financing, building, maintaining, and managing public works, facilities, and services contributing to the public service missions of the administration, in a long-term context and in return for payments made by the public entity and spread over time.

4. **The "*Regie Interresé*"**

According to"*Guglielmi and Koubi"*, a"*regie"*which is also an English word in administrative law, is a contract of transfer of operational management of public service, in which a public person responsible for the service entrusts the management of the service to a third party, called a manager, who acts on behalf of the public entity and receives from it a remuneration indexed to the financial results of the service. These public services are managed by local authorities. In this case, the management of the service is fully under the control of the organizing authority, including cases where the authority decides to set up a company with legal personality. The local authority manages the service with its own human, material, and financial resources.

On the one hand, unlike the concessionary operator, who acts on his own account, the manager concerned acts on behalf of the contracting public authority, which is responsible for the management of the operation. On the other hand, however, the manager enjoys management autonomy, which brings this type of contract closer to the concession and differentiates it from the management company. The link between remuneration and operating profit must only be "substantial", it is accepted that the remuneration linked to the operation has various modalities.

In the case of service rendered, the executive has sole financial autonomy, which can be defined as an individualized body that does not have a legal personality since it is integrated into the legal personality of the community that created it. Its incomes and expenditures are subject to a budget annexed of a community. Unlike the agency, which has only financial autonomy, the personalized agency has legal personality. Two powerful fundamental movements are prompting many public authorities to reflect on the ways in which they manage the services for which they are responsible. Decentralization changes the decision-maker and therefore, the economic and political context of the decision-making. The development of intercommunity leads local elected officials to seek coherence of services within the inter-municipal perimeter. It is imperative for the local authority to monitor the

performance of the public service. This control covers not only the terms and financial results of the commitments made by the delegatee but also the quality and conditions of the service provided.

In general, the law imposes a limitation on the contractual delegation of public service, regardless of the persons, public or private, to whom they are assigned. The free choice of delegating public entities is then constrained by the procedures concerning the award of the contract. The new category of administrative contracts, public service delegation contracts, constitutes a radical challenge to the principle of the free choice of the contracting party, but it is only an indirect limit to the free choice of management method. Technical and special limits, which are few in number, are imposed by other laws, depending on the specificities of some certain public services. For example, the household waste collection service may only be conceded or leased to a private operator under specific conditions must be financed by the fee provided in the municipalities code. If it is collected directly by the private manager from users, the latter must ensure both collection and processing. However, when such conditions, in addition to the legal provisions, are imposed by regulations in the form of a circular, their legality may be challenged. These difficulties, presented by a change in management methods or a lack of knowledge of alternative management methods, may encourage an elected official to maintain a service under management. The risk of litigation linked to the public service procedure and the use of litigation initiated either by competitors, user associations, or local residents has increased the fear of the resulting costs and significant delay.

Conclusion

In all developed countries, public service account for a considerable share of national wealth and employment. Thus, any change in the productivity of this sector automatically leads to a significant change in the productivity of the national economy as a whole. Public service plays a role in the development of other economic activities. As concerns the management of the public service which has the aim to satisfy the general interest despite the level concerned which might be at the central government or at the local level such as regions and councils which constitutes the decentralized local collectivities. It has been observed that the modes of management of public service can be examined in different ways. The administration has the choice to manage the public service itself or alternatively, the administration can outsource the public service by entrusting its management to a third party with different legal formulas depending in particular on the nature of the service provider and its links with the community.

Public service like all services continue to pose difficult problems for researchers, but also for national and international statistical agencies, which have not yet been resolved, despite great progress in formulating the difficulties and proposing a certain number of responses from the pioneering work in this field. The activities of a public service are subject to a specific legal regime in certain respects which may differ with the activities of private enterprises mode of management. Hence the general consideration in the managerial activities of public service are to implement and enforce the administrative laws regulating the various actors and organs managing public service by insisting on the fact that their activities are in compliance with the rules and regulations of the state.

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