

Governance of Public Utilities and the Enhancement of Public Service: A Constitutional Perspective

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Abstract:

The existence of public utilities is inextricably linked to the state, having evolved through various conceptual frameworks to attain their current significance within the realm of administrative law. As a fundamental mechanism through which public administration exercises its functions, the governance of public utilities—when structured in accordance with constitutional principles—fortifies the efficient regulation of administrative bodies and ensures the optimal functioning of public institutions. This governance model fosters heightened transparency, equity, and excellence in service provision, thereby reinforcing the integrity and efficacy of public administration.

Keywords: *Public utility governance, Constitution, Principle of quality, Digital administration.*

Introduction:

Public administration constitutes the entity responsible for implementing policies outlined by the government, exercising its powers with a degree of autonomy and discretion to execute its programs in a manner it deems appropriate to serve the public interest. It seeks to ensure the efficient management of daily service operations aimed at fulfilling the needs and aspirations of the populace. To effectively fulfill its role in advancing the public good, the administration employs various mechanisms, including administrative regulation and public utilities—an institution that gained prominence in the late nineteenth century (Shata, 1984, p. 25). Consequently, public utilities have emerged as a fundamental aspect of administrative activity, alongside regulatory control, serving as a cornerstone of administrative law principles and a benchmark for delineating the jurisdiction of administrative courts.

The evolving role of the modern state, particularly in the economic sphere, has significantly expanded its functions, facilitated by its increasing ownership of industrial and economic enterprises. Furthermore, contemporary transformations have necessitated a strategic shift in the management of state institutions, whether administered directly or indirectly. This shift has underscored the imperative of adopting an appropriate framework for the governance of public utilities.

In response to these developments, Algeria—like many other nations—has undertaken substantial efforts to establish an institutional framework for the governance of its public utilities, within the broader paradigm of what is commonly referred to as the "**sound administration of institutions.**" Governance has thus become an essential prerequisite for the development of the public sector and for meeting citizens' expectations. Since the fundamental objective of public utilities is to serve the common good, contemporary shifts driven by market economies have necessitated the implementation of public utility governance through the establishment of a legal framework that aligns with its objectives. This framework is embedded within various legal texts, including the constitution.

Against this backdrop, our research paper seeks to address the following central question:

How can the governance of public utilities contribute to the improvement of public service?

To explore this issue, the paper will examine the following key points: **First:** The Concept of Public Utility Governance, **Second:** Constitutional Principles of Public Utility Governance, **Third:** The Contribution of Public Utility Governance to Improving Public Service

1. The Concept of Public Utility Governance:

The notion of public utility is a fundamental pillar in the construction of administrative law theories. It initially emerged within the framework of the French administrative law doctrine and has undergone various stages of evolution. Initially, administrative law was primarily founded on the concept of public authority, which prevailed until the second half of the 19th century (Labbad, n.d., p. 144). However, in contemporary legal discourse, the governance of public utility has become one of the most extensively studied and legally regulated topics. This is due to its critical role in ensuring the efficiency and effectiveness of public service delivery, as well as its intrinsic link to governance as a key determinant of institutional performance.

To delve deeper into this subject, the following key aspects must be examined:

1.1. Definition of Public Utility Governance:

Several definitions have been proposed for public utility governance, among which the following stand out (Daylam & Karsawi , 2021, p. 9):

- Public utility governance, also referred to as institutional governance, embodies the capacity to steer (wisdom), control, and regulate behavior (governance), ensuring justice within state institutions and public services, particularly in cases of power misuse.
- It encompasses a set of mechanisms designed to enhance transparency and oversight over financial and administrative performance within institutions, thereby safeguarding state interests and reinforcing their financial stability (Al-Wabil, 2002, p. 4).
- Public utility governance aims to align the operations of public institutions with governmental strategies and societal needs (Madoun, 2021, p. 75). This is achieved through a system of oversight and guidance exercised by the state, ensuring that public utilities function in accordance with both collective and individual interests across economic, social, and political spheres (Bassim, 2019, p. 5). Moreover, it upholds the principles of participation and accountability, ultimately fostering comprehensive administrative development.

Drawing from these definitions, public utility governance can be understood as an organized methodology for the prudent exercise of administrative authority. It entails the equitable distribution of rights and responsibilities among various stakeholders within state institutions, thereby ensuring a balanced and transparent framework for public administration (Daylam & Karsawi , 2021, p. 10).

Public utility governance is fundamentally a concerted effort by public sector institutions to avert administrative crises that could jeopardize public funds and lead to a loss of control

over the administrative system in the event of regulatory failures. It is a mechanism designed to safeguard the public interest, which inherently holds a higher moral and legal standing than private interests (Shata, 1984, p. 140). Governance, therefore, involves adherence to a set of legally established procedures and regulations, including constitutional provisions that mandate democratic principles in managing public service projects. These projects are either directly administered by public authorities or supervised by them to deliver essential services or fulfill public needs (Al-Sharaa, 2017, p. 24).

1.2. Foundations of Public Utility Governance:

The effective implementation of governance in public institutions is contingent upon a set of fundamental pillars, which include (Abu Surah, 2016, p. 20):

1.2.1. The Legal Framework:

The legal dimension of governance is embodied in the existence of binding legislative texts that regulate the management and organization of public utility. This legal framework plays a pivotal role in defining the powers and responsibilities of key institutional actors, stipulating penalties for violations, and designating governmental entities responsible for monitoring governance compliance. The adoption of governance principles (Abu Surah, 2016, p. 21) in public institutions serves to (Boumaaza, 2020, p. 37):

- Ensure financial, administrative, and behavioral discipline.
- Foster ethical conduct and create an environment of transparency.
- Prevent administrative and financial corruption while eliminating unlawful practices.

1.2.2. The Institutional Framework:

This aspect pertains to the existence of structured entities responsible for delivering public services, as well as regulatory bodies that oversee institutional operations. These include state financial oversight agencies and independent supervisory authorities, along with non-governmental organizations that support public institutions without pursuing profit, such as professional and academic associations. Establishing governance within public services necessitates an institutional framework that ensures the proper functioning of public organizations and contributes to economic openness and service enhancement.

1.2.3. The Organizational Framework:

The organizational structure of a public institution encompasses its administrative body, delineating the roles and responsibilities of its leadership, board members, and executive committees. Clearly defined tasks and hierarchical accountability within the institution

(Boumaaza, 2020, p. 21) are essential for ensuring operational efficiency. A well-organized governance framework involves

guarantees the optimal functioning of administrative bodies. Plus, it prevents mismanagement and inefficiencies in public service delivery as well as It reinforces accountability, discipline, and rigorous oversight at all levels of administration.

By integrating these legal, institutional, and organizational dimensions, public utility governance emerges as a vital instrument for fostering transparency, efficiency, and integrity within state institutions, ultimately serving the collective welfare of society.

1.2.4. Participation:

Participation entails ensuring that all members of society have the opportunity to engage in decision-making processes, express their opinions freely, and contribute to the formulation of regulations and policies (Bassim, 2019, p. 52). This principle is closely tied to transparency, as it requires access to information and the right of individuals to be informed. Encouraging participation within public institutions fosters a culture of governance, enhances institutional performance, and maximizes public value. Governance principles should be actively promoted and implemented in accordance with legal provisions, including constitutional mandates. This is explicitly affirmed in Article 26 of the Constitution, which states that:

"The administration is directed towards serving citizens and must interact with the public with neutrality, within the framework of legality, and without undue delay in service delivery."

2. Constitutional Principles of Public Utility Governance:

Public utility operate under a dual legal framework, as they are governed by administrative law when carrying out their functions, yet remain subject to constitutional provisions that regulate their activities and prevent misconduct or disruptions in their operations. Given that public services primarily exist to serve the community, their governance must be structured in accordance with fundamental constitutional principles.

The Algerian Constitution places great emphasis on the principles of sound governance in public service management, as demonstrated by successive constitutional amendments, particularly since the 1996 Constitution. This commitment was reinforced in Law No. 16-01 of March 6, 2016 (Law No.16-01, 2016), which established the legitimacy of the state based on the will of the people, as stated in Article 12:

"The state derives its legitimacy and reason for existence from the will of the people".

Similarly, this principle was reaffirmed in Article 13 of the 2020 constitutional amendment (Presidential Decree No. 20-442, 2020).

The constitutional principles underpinning public utility governance can be categorized into two main groups:

- **Fundamental Principles**, which must be upheld in the management of public services and are emphasized in administrative law.
- **Complementary Principles**, which apply to varying degrees depending on the nature and significance of the public service, and are embedded in constitutional provisions to ensure the practical implementation of good governance in state institutions.

2.1. Fundamental Principles of Public Utility Governance:

Since the goal of public utilities is to serve the public interest—a common objective shared by all public utilities—despite the differences and diversity in their activities, they are all subject to fundamental rules and principles that have been established in administrative law doctrine (Al-Sharaa, 2017, p. 33). Based on this, we will discuss the most important constitutional principles governing the functioning of public utilities, including, for example, the following:

2.1.1. The Principle of Equality in Access to Public Utility:

The fundamental objective of public services is to serve the public interest, a common goal across all public institutions (Kanaan, 1993, p. 330), regardless of the nature and diversity of their activities. As such, they are governed by fundamental legal and constitutional principles established in administrative law.

One of the foremost constitutional principles guiding public service governance is **the principle of equality**, which ensures that all citizens have equal access to public services without discrimination based on origin, gender, religion, or any other personal or social factor. This principle is deeply rooted in the constitutional provisions of various nations that uphold equality in rights and obligations. It is also derived from general legal principles established through administrative jurisprudence.

Equality among service beneficiaries is a cornerstone of a legitimate state, as affirmed by successive Algerian constitutions. The **2020 Constitutional Amendment**, under **Article 37 of Presidential Decree No. 20-442**, explicitly states:

"All citizens are equal before the law and are entitled to equal protection. No discrimination based on birth, race, gender, opinion, or any personal or social condition shall be invoked."

According to this provision, public utility governance ensures that all citizens can access services on equal terms (al-Qutb, 2009, p. 46). However, this **equality is not absolute** but rather **relative (legal equality)**, applying only to individuals who meet the required conditions for

benefiting from public services and bearing the associated obligations and costs. This means that distinctions may be made among service beneficiaries **based on objective, not personal, criteria.**

An example of this principle can be found in **Article 67 of the same decree**, which states:

"All citizens are equal in their right to hold public office, except for positions related to national sovereignty and security".

This principle applies universally across administrative and economic public services. It also places a responsibility on the administrative authorities to **oversee and regulate public service operations** in accordance with legal provisions, ensuring fair and efficient service delivery to all citizens.

2.1.2. The Principle of Continuity of Public Utility:

The fulfillment of public needs does not merely require the establishment of public services but also **their continuous and uninterrupted operation** (Bdeir & Al-Barzanji, 2007, p. 256). Authorities are responsible for ensuring the consistent and efficient delivery of services, as public welfare depends on the stability of these institutions.

However, **the nature of continuity varies across different public services**. Some institutions, such as **emergency medical services**, must operate round the clock without interruption, whereas others may function according to fixed schedules and regulated working hours (al-Qutb, 2009, p. 47).

This principle is explicitly enshrined in **Article 27 of Presidential Decree No. 20-442**, which states:

"Public services operate based on the principles of continuity, adaptability, and equitable territorial coverage".

This constitutional provision **obligates public institutions to maintain uninterrupted operations**, preventing any disruptions that could harm citizens or undermine public interest. Ensuring continuity is particularly critical in sectors such as **healthcare, security, and infrastructure**, where service suspension could lead to significant social or economic consequences.

Public service governance, therefore, imposes a duty on the state to adopt **adaptive and resilient management strategies** that ensure **service reliability, even in times of crisis**, while upholding fairness, efficiency, and accessibility for all citizens.

Article 112 of the same decree emphasizes ensuring the proper functioning and continuity of public utilities, stating that *"The Prime Minister, in addition to the activities granted to him by the provisions of the Constitution, ensures the proper functioning of public administration*

and public utilities". This highlights the significance of this principle in the governance of public utilities and guarantees their efficient operation.

2.2. New Principles for the Governance of Public Utility:

The 2020 constitutional amendment introduced new rules specifically for managing public utilities. These principles have contributed to the realization of public utility governance and the improvement of public services, in contrast to previous amendments, which overlooked the regulation of many of these principles. Consequently, the amendment aimed to regulate the role of public utilities to eliminate various issues related to poor performance in managing public services (Khadem, 2023, p. 175).

Among the principles that have an actual role in implementing governance of public utilities in Algeria are the following:

2.2.1. The Principle of Quality in Providing Public Services:

The principle of quality has a comprehensive applied approach aimed at meeting and exceeding customer needs and expectations by continuously improving public services and processes. This was enshrined in the 2020 constitutional amendment in Article 26, which states in its second paragraph, "The administration is impartial and treats the public with neutrality while respecting legality." It is also referenced in Article 65, which guarantees the right to education and ensures the state's continuous efforts to improve its quality.

Regarding administration, Article 112 of the 2020 constitutional amendment ensures that the Prime Minister is responsible for overseeing the proper functioning of public administration and public utilities. This demonstrates the constitutional concern for achieving a high level of efficiency in the operation of public utilities, imposing performance standards and service quality. This becomes a critical factor in determining the level or competitiveness of services within state institutions. By applying the principle of quality in public utilities, sound management of public services can be achieved through (Amer, 2018, p. 12):

- Enhancing the performance of public sector employees.
- Developing employees' skills by involving them in the development of work methods and procedures.
- Ensuring customer satisfaction.
- Creating a work environment that supports and maintains continuous development.
- Working to improve and develop working methods and procedures.

2.2.2. The Principle of Transparency in Public Utility Operations:

The principle of transparency is one of the fundamental and essential principles that must be adhered to in the organization of administration. The administration, primarily political in nature, derives its rules from the Constitution before administrative law. The Constitution determines the administrative divisions of the state and the nature of the administrative system (centralized, decentralized, etc) (Bdeir & Al-Barzanji, 2007, p. 77), making this type of principle contribute to achieving good governance in managing and administering state institutions in all their forms.

Transparency, as a legal term, briefly means the necessity of disclosing information to the public, informing them of the general policy and how the state is managed by those in charge (Mehdawi & Ben Si Hamou , 2018, p. 373). It is based on providing an environment where information regarding public administration policies is clear and easily understood by the public through dissemination. With this principle in place, the administration is obliged to take all measures that allow citizens to access accurate data and information about its policies and projects, primarily aimed at serving the public.

Thus, the principle of transparency is based on integrity and clarity in managing public affairs, indicating that citizens can access administrative information (Madoun, 2021, p. 87). This principle is fundamental in establishing a system of governance that seeks to represent all segments of society comprehensively and is accountable to them to ensure the interests of all citizens. Several mechanisms support this, with transparency being one of its most essential elements.

The adoption of the transparency principle in public administration across various sectors has become necessary due to the significant expansion of service-providing institutions and their growing activities, which led to the emergence of negative phenomena (such as administrative corruption, bribery, favoritism, abuse of power, and misuse of authority). Tackling these issues requires state intervention to improve public service performance and eliminate these negative practices, thereby achieving a high level of transparency and effectiveness in satisfying citizens. This is enshrined in the constitutional framework, which has made transparency one of the major constitutional goals (Boualshaour, 2023, p. 7). Article 10, in its sixth paragraph, emphasizes the importance of transparency in managing public affairs and ensuring its application.

We also find the principle of transparency implicitly reflected in Article 24 of the 2020 constitutional amendment, which states: *"The establishment of any public position or the making of any public request that does not aim to serve the public interest is prohibited. Public*

functions and mandates in state institutions cannot be a source of wealth or a means to serve private interests".

The Constitution imposes penalties on those who exploit their position or influence and abuse power for their personal benefit or to favor certain groups over others, which aligns with the principle of transparency as stipulated in Article 25 of the 2020 constitutional amendment. Additionally, the constitutional enshrinement of transparency is reflected in Article 55, which affirms that *"Every citizen has the right to access and obtain information, documents, and statistics, and to circulate them"*.

In fact, many constitutional provisions emphasize Algeria's commitment to the principle of transparency to achieve good governance and participatory democracy, which the country strives to implement. The state is based on the principles of democratic representation, the separation of powers, and the guarantee of rights and freedoms. Moreover, the state encourages participatory democracy at the local level, particularly through civil society (Presidential Decree No. 20-442, 2020). Therefore, following the principle of transparency in administrative work and state institutions ensures the effective implementation of constitutional provisions in practice, guaranteeing transparency in the governance process across the different state authorities.

3. The Contribution of Public Utility Governance to Improving Public Service:

Since Algeria is one of the countries striving to achieve participatory democracy and adopts this approach in its legal texts, starting from the Constitution and a set of rules and principles aimed at preserving the democratic gains achieved through legal reforms, the 2020 (Mehdawi & Ben Si Hamou , 2018, p. 371) constitutional amendment and various related laws have brought about the application of good governance across its public bodies, including public utilities. These reforms provide all citizens with the opportunity to participate in elected national and local councils, enabling them to express their views freely.

This is fundamentally based on the freedom to establish associations, political parties, and organizations, the freedom of elections and expression, and ensuring respect for the freedoms guaranteed by the Constitution. As emphasized in Article 10 of the 2020 constitutional amendment, which states that *"The state ensures the activation of civil society's role in managing public affairs"*, and Article 34, which obligates public authorities and bodies to uphold constitutional provisions related to fundamental rights and public life and ensures the clarity, stability, and accessibility of legislation concerning rights and freedoms.

Adhering to the various constitutional provisions and the methods they advocate for the governance of state institutions and public utilities as a whole contributes to achieving the primary goal of applying governance within state institutions: ensuring real public oversight that helps combat abuses of power. With citizens being regularly informed and aware of the policies followed by state institutions and public utilities, their participation in decision-making at the local level plays a key role in applying public utility governance (Ben Daas & Raqoub, 2019, p. 277). This, in turn, subjects the entire government apparatus to a set of laws and standards that ensure institutional discipline in managing the public sector, enhancing the performance of government entities, establishing accountability, and improving the oversight system in the public sector.

Thus, governance of public utilities contributes significantly to the improvement and development of public service performance. Key contributions to the governance of public utilities include:

3.1. Applying the Electronic Management System as a Mechanism to Improve the Quality of Public Utility Services:

Modern technology has compelled the administration to seek the application of the principles enshrined in the Constitution. Information services are now provided interactively, allowing beneficiaries to participate and engage with service providers through technologies and applications brought about by current changes (Bamfalah, 2012, p. 15). This has enhanced the administration's ability to innovate and improve the quality of public utility services. As a result, various administrations have shifted their methods and approaches in dealing with individuals, transitioning from direct interaction in service delivery to digital (virtual) interactions.

Electronic management represents the newly introduced means to enhance performance and efficiency based on information and communication technology systems, particularly the internet (Benouda, 2018, p. 82). The internet has revolutionized the information services provided to beneficiaries, enabling traditional services to be delivered remotely and adding new services that can be utilized on various levels, including public administration and state institutions (Bamfalah, 2012, p. 83). Essentially, it represents the electronic application of services that allow interaction and communication between the administration and individuals to facilitate and improve the quality of services based on technological requirements that ensure communication and the transfer of information between administrative offices and their beneficiaries.

The Algerian legislator's commitment to the use of internet technology in various public sectors, including administration, is reflected in several legal texts and executive decrees. One such example is Executive Decree No. 98-257, dated August 25, 1989, which was established to regulate the conditions and procedures for providing and utilizing internet services (Executive Decree No. 98-257, 1998). Article 2 of this decree addresses internet services, and Article 14 discusses the infrastructure required for providing electronic services.

Since the management and organization of public utilities are essential to the public life of society, they are crucial for fulfilling the general needs of citizens and beneficiaries by ensuring the proper and consistent functioning and organization of services (Benouda, 2018, p. 90). By relying on new legal concepts and rules that align with transactions introduced by the electronic system, individuals can access public services or official information at any time they desire, instead of having to wait for office hours, dealing with employee delays, or other slow administrative practices.

Referring back to Executive Decree No. 15-204, dated July 27, 2015, it exempts citizens from providing civil status documents available in the national automated civil status registry (Executive Decree No. 15-204, 2015). Article 1 of this decree states that "*the implementation of electronic administration requires the exemption of citizens from presenting civil status documents*", and emphasizes adopting electronic administration for public administrations, administrative authorities, and local communities linked to the national automated civil status registry within the framework of administrative procedures. Therefore, adopting electronic management continuously within public utilities helps relieve citizens from long queues to obtain services or information. As a result, many sectors in Algeria have embraced the modernization of administration to bring services closer to citizens, ensuring quality service performance. One example is the postal sector (Law No. 20-03, 2000), particularly Algeria Post, which now offers electronic services like withdrawal, balance checking, and requesting postal check forms using electronic payment cards. Law No. 20-03, dated August 5, 2000, emphasizes transparency and objectivity in providing postal and communication services.

Similarly, electronic administration has been implemented in the judicial sector, where informational systems have been introduced to serve litigants and improve public services. Examples include the automated judicial file management system and judicial archive management system. Law No. 15-03, dated February 1, 2015, related to the modernization of the judicial sector, emphasizes the establishment of a central information system for the automated processing of data related to the judicial sector and its affiliated institutions (Law No. 15-03, 2015), sending judicial documents and procedures electronically, and using audio-

visual communication during procedures. These measures were included in the amendments made to the Code of Criminal Procedure in 2020. In addition, other state sectors, if not all, have worked on improving their public service offerings.

3.2. Contribution of Governance in Achieving Administrative and Economic Reforms:

The effective governance of public facilities in the state contributes to the actual organization and development of the administrative and economic aspects of state institutions. This is especially important as most countries aim for development and progress in their policies through various initiatives and projects that focus on reforming administrative and operational systems in diverse public services. It allows for the activation of the internal audit role within the services and ensures their independence, without being linked to the executive authority. Additionally, it enables the ability to organize the value of the facility and strengthen its competitiveness in markets, aiming to attract both local and international funding sources, thereby achieving the required efficiency and economic development (Madoun, 2021, p. 82).

Thus, the governance of public facilities ensures transparency, fairness, and accountability for state institutions. This, in turn, provides protection for administrators and officials responsible for documents, taking into account the interests of the service and its users while reducing the misuse of authority and preventing harm to the public interest, which is the foundation of the existence of public facilities.

Moreover, adherence to the provisions of laws and the constitution ensures oversight over the financial and administrative performance of facilities by establishing administrative structures that lead to holding the administration accountable for violations of legal provisions. For instance, the Public Service Law contains constitutional principles, such as the principle of equality, as stipulated in Article (28) of Law No. 06-03 dated July 15, 2006, concerning the general public service law, which emphasizes non-discrimination between employees based on their opinions, gender, origin, or any personal or social circumstances. Article (74) explicitly states that public employment must adhere to the principle of equality in access to public positions (Law No. 06-03 , 2006).

Referring to Presidential Decree No. 15-247, which includes the amended and supplemented Public Procurement Law, its focus was on the principle of equality among candidates. As for the principle of transparency, the Algerian legislator addressed it in Law No. 06-01 dated February 20, 2006, on the prevention and fight against corruption (Law No. 06-01 , 2006). Article (11) of this law stipulates that, to ensure transparency in the management of public affairs, institutions, administrations, and public bodies must adhere to:

- Adopting procedures and rules that enable the public to access information related to their organization, functioning, and decision-making processes.
- Publishing information to raise awareness about the risks of corruption in public administration and responding to citizens' petitions and complaints.

The actual embodiment of public facility governance is reflected in the important role that the administrative judge may play in the reform process and the application of governance in managing local and regional municipalities. This occurs through the oversight they exercise over administrative decisions issued by these bodies, ensuring their compliance with the constitution and legal provisions. This guarantees that the administration is impartial and relies on the principle of equality in benefiting from public services. The judge's commitment to upholding the principle of neutrality in public employees is exemplified in the Council of State's decision No. 001192 issued on April 3, 2001, which required employees to respect the principle of reserve even outside their work (Daylam & Karsawi , 2021, p. 10). This decision was based on Article (26) of the aforementioned Public Service Law, which guarantees freedom of opinion for public servants, provided that it respects the duty of reserve imposed upon them. Thus, the application of constitutional principles that embody the governance of public facilities and various state institutions is widespread and addressed in various legal texts across different areas.

Conclusion:

From the above, we can conclude that state institutions and public services, if they rely on the actual application of the principles outlined in the constitution and administrative law, can achieve effective governance and sound management in the public services they provide to citizens. The better the application and performance of these principles in practice, the more likely it is to reach administrative and economic development, guiding state institutions to face new challenges, especially in the context of a market economy and the reforms and modernization of administrative management systems within state institutions.

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