

The Principle of Alternation of Power: A New Strategy for Achieving Public Utility Effectiveness in Algeria

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Abstract---Public utilities are considered among the most important legal mechanisms relied upon by the state to satisfy general needs. For these services to be of high quality and effective, they must be managed according to international principles and standards that ensure greater transparency and democracy. The principle of alternation of power represents an aspect of democratic practice. The more this principle is embodied in the management of public utilities, the more effective and functional these utilities become. State policy has recently focused on materializing this through various legislations, starting with the 2020 constitutional amendment.

Keywords---Public utilities, standards, alternation, functionality, democracy.

Introduction

International and national legislations guarantee various human rights—civil, political, economic, social, and cultural—through numerous legal mechanisms, such as public and private utilities. Private utilities are licensed to provide services to the public in exchange for fees, operating under commercial and economic legal texts (service for profit). Alongside these, public utilities are established with the aim of achieving public interest by providing specific public services defined in their regulating legislative texts. However, in some cases, these public utilities are exploited to achieve personal interests; this occurs through the formation of an organized network led by the administration managing the public utility, leading to an abuse of public authority. This often happens when a person or a group of individuals monopolizes the leadership and management of a particular utility for a long period, preventing others from accessing leadership and administrative positions within the utility. This phenomenon is more prevalent in countries with non-democratic systems, unlike those adopting democratic systems where the issue of alternation of power is more deeply embodied.

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The topic of alternation of power is among the important subjects, given that individuals' need for public services, and the effectiveness, quality, and excellence of these services, are enhanced when these utilities perform their assigned role in the best possible way. Due to the importance of embodying the principle of alternation of power for leadership positions and those related to the management of public utilities, the state, led by President Abdelmadjid Tebboune, has moved to achieve this and work to provide all conditions for its realization.

Given the importance of the principle of alternation of power in public utilities of all types, several legal problems arise when studying this topic: What are the legal guarantees provided by the higher authorities to embody the principle of alternation of power in Algeria? And how has this been implemented in various public utilities?

To answer this problem, we have divided our study into two axes. The first deals with the conceptual framework of public utilities and the principle of alternation of power. In the second axis, we discussed the embodiment of the principle of alternation of power and its impact on the functionality of various public utilities in Algeria. This was achieved by employing various research methodologies. We used the descriptive method when discussing various concepts and definitions, and the comparative method when we addressed comparing the conviction of the constitutional founder in various national legislations regarding the adoption of electoral terms and the issue of their embodiment. This applies to the horizontal comparative method. As for the vertical comparative method, we examined various applications and embodiments by the Algerian constitutional founder of the principle of alternation of power in successive constitutions and the amendments that have occurred to them.

First Axis: Conceptual Framework of Public Utilities and Alternation of Power

I. The Concept of Public Utility

To understand the concept of public utility, it is essential to first define what a public utility is and then deduce and clearly explain its various constituent elements.

1. Definition of Public Utility:

The definition of public utility has undergone several interpretations through various stages and from different jurists, each according to their perspective. It remains a subject of conflicting jurisprudential opinions. Nevertheless, comparative administrative judiciary tends towards settling on a comprehensive definition for "utility," attempting to avoid all criticisms leveled against the organic and functional (objective) criteria concerning the definition of public utility.

A. The Organic Meaning of Public Utility:

According to the proponents of this theory, a public utility is defined as the administrative apparatus or body established by the state to fulfill public needs. However, this definition has been criticized, as adherents of this view argue that a public utility is sometimes not undertaken by an administrative body but is entrusted to individuals or private legal entities, such as the provision of public transport services by privately owned vehicles and private companies¹.

B. The Objective Meaning of Public Utility:

This refers to the activity that aims to satisfy public needs and is subject to the regulation, supervision, and control of the state. This definition has also faced criticism because it is based on the idea of satisfying public needs and being subject to state regulation and control. Meanwhile, the provision of public needs is not limited to the state alone; it can be realized through free initiatives from individuals or private legal entities, such an example is the voluntary campaigns undertaken by private individuals for the public good.

C. The Composite Meaning:

This refers to considering a public utility as an activity undertaken by the state or other public legal entities directly, or entrusted to other parties such as individuals and private legal entities,

¹ Baali Mohamed Seghir, *Al-Wajiz fi Al-Qanun Al-Idari, Al-Nasha' Al-Idari* [The Concise in Administrative Law, Administrative Activity], Dar Al-Ulum lil Nashr wal Tawzi', Annaba, 2002, p. 205.

under its supervision, control, and guidance, with the aim of achieving the public good. It is observed that the definition of public utility according to the composite meaning resulted from the integration of the definitions proposed by both the proponents of the objective criterion and the proponents of the organic criterion, thus avoiding the criticisms directed at them. It is considered a culmination of the evolution witnessed by the idea of public utility. This idea was initially linked to direct subjugation to administrative authority, but over time, the concept of public utility evolved and extended to commercial, economic, and social activities. Consequently, it became possible for the management and operation of these utilities to be carried out by individuals and private legal entities, with the necessary adherence to state control and supervision².

2. Elements of Public Utility:

From the definition of a public utility, we deduce the following four constituent elements³:

A. The Element of Purpose: Achieving Public Interest

The primary goal of establishing a public utility is to achieve public interest by satisfying public needs. These needs can be material (e.g., water, gas, electricity, transport services) or intangible (e.g., security, health, justice). Public utilities are inherently free of charge in principle. However, the pursuit of profit by some of them does not necessarily mean they lose their public utility status. If citizens pay a financial fee for the supply of water and gas, the utility's aim here is not so much to achieve profit as it is to distribute public burdens among citizens and have them bear a portion of public expenditure. Regardless, the criterion of public interest remains imprecise, and both the administration and the administrative judge have a margin in its assessment.

B. The Element of Administration:

The state and its affiliated public legal entities retain their right to establish utilities and to exercise control, supervision, regulation, and guidance over them. Here, the element of administration is clearly evident in the establishment, and in the administrative activity if the state directly manages it, or in the matter of contract conclusion and the process of control, regulation, and guidance if the utility is managed by private entities.

C. The Existence of Public Authority Privileges:

For projects aiming to achieve public benefit to be considered public utilities, they must be subject to public authority, whether it is the state or other public administrative entities. Subjection to public authority does not merely mean exercising control over the project or canceling it. This subjection is realized either by the right of guidance concerning the establishment and organization of the project through the administrative authority directly managing the project itself, or by its undertaking the task of supervising and guiding the project if it is managed indirectly.

Based on this element, the entity entrusted with managing the public utility enjoys all privileges uncommon in private law that are consistent with the nature of the public utility in terms of its establishment, management, cancellation, determination of its activity's nature, and its use of special means to conduct its activity.

However, this element remains subject to criticism in light of economic developments that have, alongside administrative public utilities, produced industrial and commercial public utilities that utilize private law instruments despite being subject to state control and supervision and achieving public interest. Therefore, it can be said that currently there are traditional administrative public utilities that are absolutely subject to administrative law, and public utilities of an industrial and commercial nature that are subject to a legal system combining provisions of private and public law, due to these utilities being subject to state control and supervision and striving to achieve public interest.

² Dannoun Samir, *Al-Khat' Al-Shakhsi wal Khat' Al-Mirfaqi fi Al-Qanun Al-Madani wal Idari* [Personal Fault and Public Utility Fault in Civil and Administrative Law], *Al-Mu'assasa Al-Haditha lil Kitab*, Lebanon, 1999, p. 163.

³ Aouabdi Ammar, *Al-Qanun Al-Idari, Al-Juz' Al-Thani, Al-Nasha' Al-Idari* [Administrative Law, Part Two, Administrative Activity], 3rd ed., Algeria, 2005, pp. 61-62.

D. Subjection of the Public Utility to Public Law Rules:

The public utility, at the beginning of its emergence, was subject to public law. However, with the evolution of the concept of public utilities and their functions, from traditional ones such as security, health, and justice, to modern industrial and commercial functions that require private law rules to ensure their smooth operation, if a utility is of an industrial and commercial nature, it is subject to a mixed system between public law and private law. Regardless of the method of establishing the utility, it is primarily subject to constitutional principles related to public utilities, such as the principle of equality.

II. The Concept of Alternation of Power:

1. Definition of Alternation:

Alternation of power refers to the non-monopolization of the exercise of a certain authority by a specific individual. Instead, it is exercised by different individuals across varying time periods or terms defined by law. There are some legislative texts that permit the exercise of a specific authority for a defined period, which may be renewable once; examples of this include the presidential terms stipulated in the 2020 Constitution.

"Authority" here refers to the prerogative granted to an individual according to the legislative texts regulating a position. This position may be political, such as that of a president of a republic, or a leadership position in a party, or leadership in a professional syndicate, or even a position in an economic institution that must be subject to the principle of alternation. This is because the perpetuation of authority in one person may lead to abuse of power, consequently harming the public interest of the public utility in general, whether it is administrative or economic in nature.

2. The Legal Basis for Alternation of Power in Algeria:

2.1 The Algerian Constitution:

Article 88 of the 2020 Constitutional Amendment enshrined the principle of alternation of power, as previously stated. It also demonstrated the constitutional founder's orientation towards embodying the strategy of political actors in Algeria in consecrating the principle of alternation of power. According to this, no Algerian can hold the position of President of the Republic for more than two terms, whether consecutive or separated. The duration of the presidential term is five years, and if interrupted during one of the terms for any legal reason, that term is counted as a full term⁴.

The constitutional founder's restriction of the presidential term in Article 88 of the constitutional amendment is consistent with other articles in the Constitution that ensure the necessity of exercising legally authorized powers for officeholders and term holders in state institutions, and prevent these positions from being a source of wealth or a means to serve private interests. It also prohibits the exploitation of public authority privileges, such as influence, to fulfill private interests.

2.2 The Electoral Law:

Ordinance 01/21 concerning elections enshrined the principle of alternation of power when discussing how the head of the Independent National Election Authority (ANIE) is appointed. This is stipulated in Article 201 of the constitutional amendment, which states that the head of the Authority is appointed by the President of the Republic for a single, non-renewable six-year term. From this, the Algerian legislator recognized the alternation for the presidency of the ANIE for a six-year period, allowing the President to exercise his duties in organizing various elections (presidential, legislative, local). These duties have a significant impact on the political scene. Therefore, the principle of alternation is paramount, as the perpetuation in this position opens the door to abuse of power in the political sphere, thereby affecting the guarantee of the authority's integrity and transparency, which are the objectives for which it was established⁵.

2.3 Law No. 23/02 on the Exercise of Trade Union Rights:

⁴ Articles 24, 25, 88 of the Constitutional Amendment of 2020, dated 30/12/2020, Official Gazette No. 82, dated 30/12/2020.

⁵ Article 201 of Organic Law No. 21/01 concerning Elections, dated 10/03/2021, Official Gazette No. 17, dated 10/03/2021.

Professional utilities are considered among the most important public utilities that work to achieve stability in the professional sphere and ensure public order and the continuity of public service. This is done by ensuring the provision of an appropriate environment for workers or employees, as the case may be, and striving to create a balance in labor relations between workers and employers, or between employees and the employing entity, depending on the situation. This type of public utility with a social and professional character (trade unions for workers or employees, as the case may be) requires leadership or management to oversee its operation and achieve the professional goals for which it was established. To install representatives for these workers and employees as union leaders, the labor base must ensure the election of its representatives according to democratic methods whose modalities are defined by the union's basic law. To guarantee the principle of alternation of power, or in the presidency of this union at its various local or national levels, the Algerian legislator, in Law No. 23/02 on the exercise of trade union rights, mandated adherence to the union term, which is defined in the basic law and must not exceed five years for a single term, renewable once. The renewal process for these leadership bodies or the management of the trade union organization is carried out through an official report of observation, and no representative for the leadership or management of the organization may exercise the same administrative or leadership duties for the organization for more than two union terms, whether these terms are consecutive or separated⁶.

Considering the text of Article 56 of Law 23/02, the legislator specified the maximum duration of the union term; it set it at five years but did not oblige the trade union organization to adhere to the maximum duration if it deemed it appropriate to set it for less than five years. That is, union members can specify the union term, whether it is five years or less, in the union's basic law, but the term duration must not exceed five years.

3. Guarantees for the Alternation of Power:

The principle of alternation of power is considered one of the most important modern principles that have emerged in democratic systems, which constantly strive to achieve greater effectiveness for public utilities in serving the public good. Algeria is among the countries that adopt this in its policies, and this has been enshrined in various articles of its Constitution. However, these general legislative texts require sufficient guarantees to achieve their objective. Among these guarantees, we mention party pluralism, which we will discuss in the first point, and the union or parliamentary term, as the case may be, as a second point.

3.1 Party Pluralism:

The constitutional founder's shift from a single-party system to a multi-party system in the 1989 Constitution and subsequent constitutions and constitutional amendments is considered among the most important guarantees for achieving democracy, and thus the principle of alternation of power. This applies whether in executive bodies, headed by the President of the Republic and various public utilities, or at the level of legislative, union, and party bodies. The idea of transitioning from the necessity for the guardian of public interest to belong to a single party to the possibility of any individual with certain criteria and specific competence running for a leadership and administrative position in a public utility in the state, public institutions, parties, and unions is considered a crucial factor in embodying the principle of alternation. This principle, in its essence, calls for the necessity of change and the renewal of competencies occupying leadership positions to achieve public interest and prevent monopolization, which leads to abuse of power and, consequently, authoritarianism, which is contrary to the democratic direction that Algerian authorities seek to embody.

Party pluralism has been enshrined in numerous international and national legislative texts, which have elucidated the importance of pluralism in protecting the public interest. It is considered one of the means that work to protect civil and political rights and freedoms. Article 20 of the Universal Declaration of Human Rights affirmed the freedom to participate in various public utilities, and no one shall be compelled to belong to a utility. Article 21 of the International Covenant on Civil and Political Rights further emphasized this. As for the Constitution, the Algerian constitutional founder, as

⁶ Article 56 of Law No. 23/02 concerning the Exercise of Trade Union Rights, dated 05/04/2023, Official Gazette No. 29, dated 02/05/2023.

previously mentioned, adopted this in various constitutions starting from the 1989 Constitution in its Article 40, which affirmed political pluralism. Furthermore, Article 178 of the 1996 Constitution stipulated this, making the democratic system and pluralism an immutable provision that cannot be subject to any constitutional amendment, which was reaffirmed by Article 212 of the 2016 constitutional amendment.

Party pluralism has also been consecrated in various legislative texts, especially the successive organic laws regulating political action in Algeria. This is what Article 2 of Organic Law No. 89/11 concerning pluralism and associations of a political nature, and Law No. 12/04, stipulated in its Article 02, where the right to establish a political party was considered a guaranteed and recognized right in the Algerian Constitution⁷.

3.2 Parliamentary and Union Terms:

To guarantee the alternation of power and prevent its monopolization by a single individual when leading a public utility, whether at the central level (represented by the position of the President of the Republic and the legislative authority) or in union bodies, political parties, and even for public utilities, it is essential to specify a fixed term during which the authority of leadership and administration is entrusted to the person selected through fair and transparent elections. Legislations often stipulate the necessity of defining this term to give the administration sufficient opportunity to achieve its planned programs. Therefore, in this point, we will address two issues: the duration of the parliamentary/union term and the issue of its renewal. These parliamentary and union terms are also referred to as electoral terms, as they result in the desired person for leading the public utility through elections, the procedures for which are detailed in legislative texts.

3.2.1 Duration of the Electoral Term:

Constitutional doctrine and modern political systems hold that the sovereign differs from the practitioner of sovereignty, where the latter's powers are tied to the sovereign who grants them tasks for a predetermined period. The sovereign can grant them a new opportunity if they gain their trust through re-election to leadership and administration. All national legislations support the view of constitutional doctrine but differ in each legislator's conviction regarding this duration, whether it is five or three years. In determining the duration, they consider the position to be filled and the scientific and technical foundations related to the position and the programs to be achieved and worked upon. For example, regarding presidential election terms, some national legislations set the duration of the presidential election term at five years, such as the constitutional founder, as stipulated in Article 88 of the Algerian Constitution. Others set it at four (4) years, such as the American constitutional founder. There are also constitutional systems that set it at seven (7) years. These varying durations may be insufficient for the elected president to fulfill all their commitments and programs outlined in their election campaign, requiring another electoral term to implement their commitments, which we will discuss in the next point.

As for other public utility leadership and administrative positions, we find that the head of the Independent National Election Authority and its members are appointed by the President of the Republic for a single term of six (6) years to prepare, organize, and manage electoral operations in their various forms and stages, whether those related to presidential, legislative, and local elections, as well as the referendum process determined by the authority.

The constitutional founder stipulated that the parliamentary term for members of the National People's Assembly is five years, while the term for the Council of the Nation is six years, in Article 122 of the 2020 Constitutional Amendment⁸. Furthermore, Article 56 of Law No. 23/02 on the Exercise of Trade Union Rights stipulated that the union term shall be a maximum of five years⁹.

3.2.2 Renewal of the Electoral Term:

⁷ Organic Law No. 89/11 concerning Pluralism and Associations of a Political Nature, dated 05/07/1989, Official Gazette No. 27, dated 05/07/1989. See also Article 02 of Organic Law No. 12/04 concerning Political Parties, dated 12/01/2012, Official Gazette No. 02, dated 15/01/2012.

⁸ Article 122 of the Constitutional Amendment of 2020.

⁹ Article 56 of Law No. 23/02.

The opportunity for an incumbent in a leadership and administrative position of a public utility to run for the same position for an unlimited or limited number of terms is a contentious issue. Some argue that the continuity of the public utility is linked to the continuity of the same administration and leadership, because programs, especially major and national ones, require many years to be achieved, and a period of five, six, or even seven years specified for a term is not enough to ensure the success and implementation of major projects. On the other hand, the opposing team to the idea of unlimited renewals believes that this leads to the monopolization of power in the hands of one person, which results in authoritarianism and abuse of power, aiming to achieve personal interests without achieving the public interest for which the public utility was established. Furthermore, this does not realize the principle of alternation of power, which is considered one of the most important modern principles advocated by democratic systems. Regarding presidential elections, some national legislations are against limiting the number of electoral terms; instead, they advocate for unlimited terms, and here we mention the Egyptian Constitution, which set the term at six years renewable without specifying the number of terms. Others have prohibited the re-election of the president, arguing that the constitutional term of six years is sufficient for the president to implement their program, as found in the Argentine and Brazilian constitutional frameworks. There are also countries that have limited the renewal of the term to a single instance, such as the United States of America, whose constitution set the presidential term at four years¹⁰. This is also what the Algerian legislator stipulated in the Constitution, where the presidential electoral term was set at five years with the possibility of renewal for one time, whether consecutively or separately.

Second Axis: Embodying the Principle of Alternation of Power and Its Impact on the Functionality of Various Public Utilities in Algeria

Under the wise presidency of President Abdelmadjid Tebboune in 2019, the Algerian state adopted a direction to embody the principle of alternation of power in most administrative and leadership positions of various public utilities. This was contrary to the principle of monopolizing power that existed during the era of the late President Abdelaziz Bouteflika, who opened up presidential electoral terms, which resulted in a great deal of administrative and financial corruption by those who claimed to be loyal to the President of the Republic and to be the real actors in all economic, social, and cultural fields. As a result, the current President, Mr. Abdelmadjid Tebboune, outlined his policy to embody a more democratic system than its predecessor, one that prevents the abuse of power through the principle of alternation of power. Therefore, in this axis, we will first present how the leadership and administration of public utilities were before President Abdelmadjid Tebboune's amendments, and how they became during his era. Then, we will discuss the effects of monopolization in some administrative positions on the functionality of public utilities.

1. The Position of President of the Republic:

The position of President of the Republic is considered the highest position in the state and the executive authority due to the extensive powers it holds in shaping state policy in various political, social, and economic fields. This is done by preparing programs in each area and striving to implement them within a specific period, which may be realized during one presidential electoral term or more. Hence, the conviction of the constitutional founder in various successive constitutions, or even the amendments interspersed therein, ranges between allowing multiple terms and limiting them to the possibility of renewal only once. In the 1963 Constitution, the term was set at five years by Article 39¹¹; however, without limiting the number of terms. Here, we might agree with the conviction of the constitutional founder, given that the country was in the process of construction and required a certain degree of stability. The legislator affirmed the same approach of open terms through Article 108 of the

¹⁰ Abdelilah Belkiz, *Al-'Unf wal Dimuqratiyya* [Violence and Democracy], 2nd ed., Dar Al-Kunooz Al-Adabiyya, Lebanon, 2000, p. 14.

¹¹ Article 39 of the 1963 Constitution, dated 10/09/1963, Official Gazette No. 64, dated 10/09/1963.

1976 Constitution, which stipulated a six-year term with the possibility of re-electing the President of the Republic¹².

Article 71 of the 1989 Constitution also stipulated a five-year presidential term with the possibility of unlimited renewal. Here, we observe that despite the constitutional founder's move towards adopting a democratic system through party pluralism, he did not adopt the principle of alternation of power by allowing the president the possibility of re-election for open terms¹³. However, with the 1996 constitutional amendment, Article 74 saw a shift in the constitutional founder's conviction to adopt the principle of alternation after limiting the presidential term to five years with the possibility of renewal only once¹⁴. Yet, through the 2008 constitutional amendment, there was a return to adopting the possibility of monopolizing power by the elected president through opening up presidential terms, via the amendment of Article 74 to the Constitution through Article 4 of the 2008 constitutional amendment. In the 2016 constitutional amendment, the constitutional founder returned to adopting the principle of alternation of power through Article 88, where the renewal of terms was limited to one time, and the same Article 88 of the 2022 constitutional amendment confirmed that the presidential term is for five years, renewable once.

2. Leadership of the Electoral Process:

As previously stated, democratic systems are those that ensure the proper functioning of public utilities in a democratic manner so that public services are provided with quality and excellence. The individuals leading these public utilities attain their positions through election, making them more democratic. This is especially true when these positions have a specific, time-limited term that allows for the alternation of power in these roles, thereby moving away from abuse of power and authoritarianism. This ensures that the intended goal, which is to achieve the public interest, is realized. Regarding the leadership and administration of the electoral process in Algeria, it was previously entrusted to the Ministry of Interior at the central level, and to the province and municipality at the local level. From this, we observe that the management of the electoral process was not optimally democratic; rather, it was through executive authority bodies, which affected the issue of alternation of power. On the one hand, central authorities like the minister and even local authorities like the governor could be changed, which ensured a kind of alternation of power in the management of the electoral process. However, this did not negate the characteristic of subordination and loyalty to the executive authority, which held the power of appointment. But for the heads of offices and agents tasked with this mission, most remained in their positions, making the principle of alternation difficult to achieve.

However, under the 2016 constitutional amendment, the Independent High Authority for Election Monitoring was established by Article 194 of the 2016 Constitutional Amendment. This represents a good change by the executive authority in removing the suspicion and constant accusation of influencing the fate of the electoral process in the previous period. This Authority is considered independent because it possesses financial independence and independence in management. However, the Algerian legislator did not recognize its legal personality, which negatively affects its independence and its non-subordination to a specific entity. In addition, the members of this Authority are not elected but are appointed by the President of the Republic, representing the executive authority. 205 members, who are judges, are appointed upon the proposal of the Supreme Council of the Judiciary, and the other 205 members are national cadres selected from civil society, such as doctors, lawyers, and university professors. This is for a five-year term, renewable once, which ensures the issue of alternation of power in this public utility that affects all areas as long as it oversees all presidential, legislative, and local elections, as well as referendums¹⁵.

These changes related to the administration and leadership of the electoral process represent a direction by the country's highest authorities to achieve the greatest degree of democracy through several mechanisms. This is explicitly stated in Article 06 of Organic Law No. 19/07 concerning the Independent National Election Authority, which stipulates that among the most important powers of

¹² Article 108 of the 1976 Constitution, dated 22/11/1976, Official Gazette No. 94, dated 24/11/1976.

¹³ Article 71 of the 1989 Constitution, dated 28/02/1989, Official Gazette No. 9, dated 01/03/1989.

¹⁴ Article 74 of the 1996 Constitution, dated 22/11/1976, Official Gazette No. 76, dated 08/12/1996.

¹⁵ Article 194 of the Constitutional Amendment of 2016, dated 06/03/2016, Official Gazette No. 14, dated 07/03/2016.

the Independent Election Authority is to embody and deepen constitutional democracy and promote the electoral system aimed at achieving peaceful and democratic alternation of power. Furthermore, Article 23 of Organic Law 19/07 embodied the principle of alternation by setting the term for each member of the Independent Authority at four years, non-renewable, with half of the council members being renewed every two years by lot¹⁶.

3. Achieving Alternation in Trade Union Leadership Positions:

Professional public utilities are among the most important public utilities that aim to achieve public interest by providing a suitable environment for the worker or employee through the workers' union or employees' union, as the case may be. To manage this utility, there must be a leadership and administration that supervises its operation and the achievement of the objectives set by the authority that established this utility. This administration, whether central or local, to be effective, must have assumed its positions through democratic methods such as election. In addition, it must ensure the application of the principle of alternation in these positions to achieve greater democracy and prevent the monopolization of positions by specific individuals. Such monopolization leads to the weakened performance of the professional public utility and consequently the realization of personal interests and the emergence of manifestations and practices of authoritarianism and corruption. There are many examples of union leaders who entrenched themselves in their positions and were consequently accused and pointed to as corrupt, working to achieve personal interests, even if these accusations were not true. The monopolization of power and the failure to provide opportunities for others to assume positions and exercise the authority of managing union bodies invite suspicion about the intentions of the monopolist and usurper of power and trade union leadership authority. Hence, the Algerian legislator, in line with the directions of the supreme authority, led by the President of the Republic, in consecrating the principle of alternation of power, embodied this in Law No. 23/02 concerning the exercise of trade union rights, where Article 56 thereof stipulated that the union term shall be a maximum of five years and renewable once¹⁷.

Conclusion

The principle of alternation of power in general, and within public utilities in particular, is of paramount importance as one of the democratic approaches adopted by various democratic political systems. This is due to its role in providing opportunities for innovation in the leadership and management of public utilities, as these utilities are undergoing a qualitative leap in modern management methods through the use of various technological and automated programs on the one hand, and the need for modern public services, which are themselves evolving and keeping pace with the modernity and technology that public utilities are experiencing, on the other hand.¹⁸

Through this study, we have addressed some positive and negative findings, the traditional ones of which must be addressed and solutions found for them. Therefore, we will present them as follows:

Regarding the various positive outcomes for the constitutional founder and the Algerian legislator in embodying the principle of alternation of power in various public utilities, we note:

- ❖ The embodiment of the principle of alternation for the presidential term by setting its duration at five years, which is a medium-length term, neither too short nor too long compared to other legislators (4, 6, 7 years), and allowing the re-election of the same person for the position of President of the Republic once.
- ❖ The embodiment of the principle of alternation for the position of head of the Independent Election Authority, where their term was set at a single six-year term.
- ❖ The embodiment of the principle of alternation for the central and local leadership positions of professional trade union bodies.

¹⁶ See Articles 06 and 23 of Organic Law No. 19/07, dated 14/09/2019, Official Gazette No. 55, dated 15/09/2019.

¹⁷ See Article 56 of Organic Law No. 23/02, dated 18/05/2023, Official Gazette No. 35, dated 21/05/2023.

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As for the various negative points taken against the constitutional founder and the Algerian legislator in embodying the principle of alternation of power in various public utilities, we note:

- ❖ While setting the electoral term for the head of the Independent Election Authority is a positive step towards achieving public interest and more democratic management, the appointment of the head of the Authority by the President of the Republic introduces a degree of impartiality to the Independent Authority. On the contrary, this is considered a motive for the loyalty of the head of the Independent Authority to the President of the Republic who appointed them.
- ❖ The Independent High Authority for Elections does not enjoy legal personality, which affects its independence and thus impacts the functionality of this body. The principle of alternation here offers no benefit if this utility is not independent, and this is evidenced by the submission of final reports on every election or referendum to the President of the Republic.
- ❖ There are some public institutions of an economic nature that do not adopt the principle of alternation in the leadership and management of these public institutions. Furthermore, the assumption of these positions is not through democratic means, i.e., by election, but rather through appointment and loyalty to the appointing person.
- ❖ Administrative positions in the higher education sector do not adopt the principle of alternation in the leadership and management of these public utilities, where democratic mechanisms for filling the position through election are not used. This leads to the monopolization of power, authoritarianism, and abuse of power.
- ❖ Access to leadership positions in public utilities is among the goals that every ambitious worker or employee aspires to, but everyone has a purpose and reason for it. A person of good faith wants to reach the utility they belong to in order to serve it and improve its management methods, while a person of bad faith aims to achieve personal interests for themselves and the person they follow. Therefore, the constitutional founder and the legislator in general must work to embody the principle of access to leadership positions through democratic methods by electing the most competent by their peers, on the one hand. On the other hand, they must define the electoral term and make it renewable once to ensure the embodiment of the principle of alternation of power, which is one of the principles adopted by democratic systems in managing public utilities, and this is the direction of the country's highest authorities, led by President Abdelmadjid Tebboune.

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