

New constitutional principles for the management of public services in Algeria : an analysis in light of the 2020 constitutional amendment

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Summary

This article examines the impact of the 2020 constitutional amendment on the principles governing public services in the Algerian legal system, focusing in particular on Article 27, which is analysed in order to highlight how the constitution reaffirms the classic principles of public services, foremost among which are continuity, equality between users, and the adaptability of services to change. At the same time, it enshrines modern principles for the management of public services, namely transparency, equitable coverage of the national territory, and quality of services provided, reflecting the trend towards upgrading public services and improving their quality.

Keywords : public service, principle of continuity, principle of equality, principle of adaptability, transparency, equitable coverage

Introduction :

Public services are one of the fundamental pillars on which the state relies to organise society and provide the services necessary for the daily life and stability of individuals. Any disruption in their performance or interruption in their services therefore causes disruption to the daily needs of citizens. Many factors have contributed to the Algerian constitutional legislator's focus on ensuring the proper functioning of these facilities, especially with the increase in criticism in recent years regarding the quality of public services and their declining performance, and even, in some cases, to a complete breakdown in certain sectors or regions, prompting legislators to rethink the legal framework governing public services.

In this context, the 2020 constitutional amendment reaffirmed the status of public services, not only by enshrining their classic principles, but also by introducing new principles for their management, mainly related to the governance of public services, such as transparency, equitable coverage of the national territory, and quality of public service. Hence **the importance of this study**, which attempts to shed light on these principles and explain their role in protecting users from the possibility of being deprived of the service or benefiting from

it under unfair conditions, by highlighting how these principles can serve as a guarantee for improving and upgrading public services.

Based on the above, **the problem of the study** is defined in the following question :

What are the most important service principles that the 2020 constitutional amendment contributed to introducing in order to improve and upgrade public services ?

To answer this question, **a descriptive and analytical approach** was adopted by presenting the various principles established by the 2020 constitutional amendment , explaining their content, and then analysing the constitutional and legal texts that embody them.

The study was divided into two sections.

The first section : The classic principles of public service as new constitutional foundations in the 2020 amendment

The 2020 constitutional amendment reflects the Algerian constitutional legislator's keenness to reaffirm the traditional foundations of public facilities by giving their classic principles an explicit place in the constitutional text. The principles of continuity, adaptability and equality between users, which were originally derived from jurisprudence and case law, are now enshrined in clear texts, which increases their legal value and makes them a guiding framework for the organisation and management of public services. Thus, discussion of these principles is no longer merely theoretical or jurisprudential, but has become a constitutional foundation that binds the legislator when establishing the legal and procedural rules governing the activity of public utilities, ensuring that these principles are addressed in the content of legislation. We will address these three principles as follows

Section I: The principle of continuity

The principle of continuity is one of the oldest and most important principles on which public utilities are based, as it guarantees the uninterrupted provision of essential services on which the lives of individuals and the stability of society depend. This principle is not limited to the level of jurisprudential and judicial theory, but has been gradually enshrined in the Algerian legal system until it was enshrined in the 2020 constitutional amendment within the general framework for the regulation of public utilities. Given its distinguished status, this principle requires an examination of its content and the obligations it expresses towards users, followed by a review of its constitutional enshrinement, before moving on to a review of its most important practical applications in the laws and regulations that govern the operation of public utilities and ensure their continuity.

First: The content of the principle of continuity

The principle of continuity of public services, including economic and administrative services, is one of the most important pillars that require the provision of basic services to citizens on a regular and uninterrupted basis.

It ensures that vital needs are met and guarantees a degree of social, economic and security stability, as any disruption in services has a direct impact on the lives of individuals and economic activities.¹ Administrative jurisprudence has established that the continuity of public services is a well-established rule governing their activity.

The enforcement of this principle does not require an explicit provision in the constitution or law, as the provisions that mention it do not establish it, but rather enshrine a fundamental principle that is firmly established in the legal regulation of public utilities.²

Second : Guarantees of the principle of continuity in the constitution (constitutional enshrinement)

It is understood from the wording of Article 27 of the Constitution that the constitutional legislator in the 2020 Constitution moved the principle of continuity of public services from its traditional status as an implicit jurisprudential and judicial principle to the level of explicit constitutional enshrinement, as it clearly states that "Public services are based on , the principles of continuity, constant adaptation and equitable coverage of the national territory." This choice was not present in this form in the 2016 Constitution, where no separate article was devoted to public services and their multiple principles, but rather the principle was inferred from the generality of the texts (such as the state serving the people, the social nature of the state, certain provisions of social justice, and the reduction of regional disparities) and the work of the administrative judiciary, which considered continuity to be a condition for the facility to remain in the service of the public interest.

This enshrinement of the principle of continuity of public services justifies the responsibility of all administrative bodies. At all administrative levels, it is necessary to ensure that public services are managed and run in a proper and sustainable manner, such as by adhering to working hours and providing the means to ensure that public services run regularly and smoothly. This, of course, applies to the running of all public and economic services without exception.

Third: Applications of the principle of continuity in law (legislative text)

The legal enshrinement of this principle is found in many legal texts, the best example of which is Articles 83³ and 109⁴ of the current municipal and provincial laws, respectively, where the municipal law stipulates that the president of the municipal people's council shall ensure the establishment and proper functioning of municipal public facilities and institutions, which requires the mobilisation of the means necessary to ensure the permanence and continuity of the local public services entrusted to the municipality. The same applies to the local public services entrusted to the province, as Article 109 of the Provincial Law stipulates that the governor shall ensure the establishment and proper functioning of provincial facilities and public institutions.

Another example of the legislator's concern for the continuity of public economic services is Article 2 of Executive Decree No. 02-⁵ 195, which stipulates that Sonelgaz is obliged to provide energy services on a continuous basis.

Section II: Principle of equality

The public interest requires fairness and equality in the provision of public utility services, without any bias or inequality. This classic principle is not only linked to public utilities but extends to the law in general and reflects the objective of the public interest, which is equality before public utilities. Below, we will attempt to outline its legal basis through its content.

First: The content of the principle of equality

The content of the principle of equality in the use of public facilities is based on the obligation of every facility, regardless of its type or mode of operation, to treat all users equally without discrimination, provided they meet the legal requirements⁶. This principle manifests itself in two basic forms: Equality in terms of the benefits of the facility, through the right of everyone who meets the objective conditions to obtain the service and the absence of preference between users or discrimination in the holding of public office; and equality in terms of the burdens of the public facility, through the fair application of tax obligations and service burdens and responsibilities to all⁷. However, equality here does not mean absolute equality in treatment, but is exercised within the limits of the objective conditions and controls established by law.

Second: Guarantees of the principle of equality in the Constitution

This legal basis is in fact twofold. On the one hand, the principle of equality between users of public facilities is simply a direct application of the fundamental principle of equality between individuals before the law in terms of rights and duties, which is one of the constitutional rules enshrined in all constitutions around the world. The legal basis for the principle of equality among users of public facilities is therefore constitutional, given that equality among users is a direct application of the higher constitutional principle of equality before the law. Secondly, Article 27 embodies an explicit constitutional enshrinement of the principle of equality in relation to public facilities, by guaranteeing "equal access to services, without discrimination" for every user, regardless of the type of facility or the entity managing it. This provision does not merely establish a general right to use the service, but also gives it a binding constitutional character that prohibits all forms of discrimination in access or treatment between users.

Third: Applications of the principle of equality in law (legislative text)

There are also laws that stipulate this, such as the Civil Service Law. It should be noted in this regard that equality does not only apply to the relationship between public facilities and their users, but also extends to the relationship between those responsible for managing public facilities, especially economic ones, and their employees and others, such as contractors in the context of public contracts⁸ and the provisions of Law No. 23-12⁹, which sets out the general rules relating to public contracts, emphasising the importance of the principle of competition and equality between candidates. Article¹⁰ 5 of this law stipulates the need for equality. Thus, this law has made the principle of equality a fundamental focus at all stages of the conclusion of public contracts.

Article 3 of Law 02-01 also embodies the practical application of the principle of equality in public utilities, as it classifies the distribution of electricity and gas as a public utility activity and requires operators to ensure fair treatment and equal prices for all non-eligible customers. It also imposes equality of access to and use of the transmission network between distributors, eligible customers and electricity producers, thereby preventing any preference or discrimination in the conditions of use of this service.

Section III: Principle of Adaptability

Algerian positive law does not define the principle of the ability of public utilities to adapt to changes affecting them (¹¹), but merely refers to it by mentioning its most important objectives

and advantages in various legal texts, which we will discuss below, starting with the content of the principle.

First: The content of the principle of adaptation

Given that public facilities are activities whose purpose is to meet public needs and achieve the public interest, which by their nature are predominantly evolutionary in nature, this principle finds its principles in the essence of the concept of public facilities, whereby the latter must be in a state of constant movement and development,¹² This is due to the connection between public facilities and the political, economic and social life of the state, which requires facilities to evolve, change and adapt to all developments.

What is meant by the adaptability of public service rules to change and development is granting the administration the right to amend the legal rules and regulations governing the operation of the public facility. This principle aims to enable the administration to update and develop the types of services it provides in line with developments in the public interest and the requirements of the modern era. This principle allows the administration to provide its services to users at the lowest possible cost and in the most efficient and effective manner, thereby enhancing the quality of services and ensures their continuity and their ability to meet the evolving needs of society.¹³

Second: Guarantees of the principle of adaptation in the Constitution

The 2020 Constitution enshrined the principle of continuous adaptation of public services within explicit guarantees when Article 27 stipulated that *"public services shall be based on the principles of continuity, continuous adaptation, equitable coverage of the national territory and, where necessary, the guarantee of a minimum level of service."* This constitutional provision elevates the principle of adaptation from a mere jurisprudential rule or judicial precedent to the status of a constitutional guarantee binding on both the legislature and the executive in the organisation and management of public services. The administration is no longer free to modernise the facility's working methods and practices, but is bound by a constitutional duty to adapt to economic, social and technical changes in order to ensure that public services keep pace with the changing needs of society, within a framework of constitutional and judicial oversight of compliance with this obligation.

Third: Legal applications of the principle of adaptation

The principle of the adaptability of public services to change and development is one of the most important foundations and principles on which public services are based. This principle aims to enable the administration to keep pace with social, economic and technical developments, and the Algerian legislator has enshrined this principle in numerous legislative and regulatory texts . This comes within the framework of the state's keenness to improve the quality of services provided to citizens. The following are some of the texts that stipulate this

Article (06) of Decree No. (88-131) stipulates that the administration is committed to continuously developing its tasks and updating its organisational structures in line with the needs and changing requirements of citizens. It must also provide citizens with high-quality services and make every effort to ensure that these services are easily accessible and meet their needs. In other words, the administration must strive to keep pace with changes and provide the best possible performance and services to citizens.¹⁴ It must also constantly update and

develop its procedures to keep pace with new developments in technology and administrative organisation.¹⁵

In the field of public service delegations, Article 209 of the Law on the Regulation of Public Transactions and Public Service Delegations mentions this principle among the basic principles governing delegation agreements, emphasising that all types of agreements, including concessions, leases and others, must be adaptable.¹⁶ The legislator also highlighted the role of the National Observatory of Public Utilities in improving the quality of services provided to citizens, and obliged it to seek to ensure that public utilities are adapted to successive economic, social and technical developments¹⁷. Not only that, but Algerian legislation includes many other texts that emphasise the importance of this principle, although there is not enough space to mention them all.

Second requirement: new constitutional principles for the management of public facilities

Under the 2020 Constitution, the regulation of public services is moving towards the adoption of new principles that focus primarily on improving governance and strengthening trust between the administration and users, alongside traditional classical principles. In this context, the principle of transparency has emerged as a mechanism for revealing management methods and ensuring that public services are subject to accountability and oversight, alongside the principle of equitable coverage of the national territory, which aims to achieve fairness in the distribution of public services across the country's various regions (). This requirement therefore addresses the content of these two principles and how they can be enshrined in the Constitution and implemented legislatively and practically in the management of public services.

Section I: The principle of transparency

We will address this by including its content in the first section and its legislative enshrinement in the second section, as follows

First: The content of the principle of transparency

Public transparency is one of the fundamental principles that reflect the extent to which political systems are committed to the principles of good governance and democracy. Transparency in general refers to the procedure through which institutions are committed to making information related to their internal operations, decisions, and results of their work available. Administrative transparency refers to a set of legal measures aimed at enabling those dealing with the administration to access the administrative system and limiting the administration's right—which is often an obligation—to maintain confidentiality. In this context, administrative transparency acts as a counterbalance to the principle of confidentiality of administrative procedures and is a crucial element in achieving the desired effectiveness of administrative activity (¹⁸).

In its dimension relating to public services, administrative transparency requires that all actors involved in the service (users, employees, and others) be informed of the legal and factual reasons justifying the decisions taken, whether those related to the organisation and operation of the public service or those directly related to these partners. Transparency also requires that they be given access to administrative documents relating to the facility or their personal situation¹⁹.

Second: Legal regulation of the principle of transparency

Despite the prominent place occupied by the principle or requirement of transparency within the Algerian legal system, the legislator has not devoted specific provisions or independent definitions to it, but has instead sought to establish and reinforce it in various constitutional and legislative contexts. The presence of transparency is clearly evident in the system of laws and regulations, particularly in areas related to the regulation of public transactions (), the fight against corruption, and the management of public funds. We will address this briefly as follows

1 - Constitutional enshrinement of the principle

The constitutional founder enshrined the principle of transparency as one of the major constitutional objectives that popular institutions seek to achieve, through Article 5/9 of the 2020 constitutional amendment. This principle has also been reinforced through various mechanisms aimed at consolidating its application on the ground, most notably the renaming of the National Authority for the Prevention and Combating of Corruption to become the "High Authority for Transparency and the Prevention and Combating of Corruption". In accordance with Articles 204 to 206 of the same amendment, the latter emphasised and insisted on the need to adopt and reinforce the principle of transparency. In addition, Article 03/26 of the constitutional amendment provides for the constitutionalisation of the principle of reasoning behind administrative decisions issued by the public administration, which in turn aims to maintain transparency and credibility in the work of the administration.

2 - Legal enshrinement of the principle

Article 17 of Executive Decree 05-174²⁰ highlights how the Algerian legislator has enshrined the principle of transparency in regulating the relationship between telecommunications service providers and subscribers. where the first paragraph stipulates that access to the network and services must be guaranteed under objective, transparent and non-discriminatory conditions, reflecting the legislator's concern to achieve equality between all customers and prevent any unjustified preference or discrimination. Article 17, paragraph 4, also requires the licensee to provide a copy of the contract to each new subscriber or interested party upon request before the start of service provision or upon receipt of any payment, which reinforces the customer's right to information and prior knowledge of their rights and obligations and prevents ambiguity in the contractual relationship.

The Algerian legislature also established in Law No. 06-01²¹ on the prevention and combating of corruption, establishing the principle of transparency across various areas of public and private services. Among the legal texts that have sought to apply this principle since their enactment is the Public Service Act , which refers to it in all its provisions, and even its detailed provisions, which are regulated by the regulations, have followed the same approach (regulating the method of recruitment, the method of promotion, how to discipline public employees, etc.). This principle has also been embodied in the field of administrative contracts; all public transaction procedures aim to promote the principle of transparency, and even in the field of the relationship between the administration and the citizen, the legislator has attempted to codify it with many provisions that refer to the principle of transparency.²²

Section II: The principle of equitable coverage of the national territory

In order to enshrine the principle of equality between users in benefiting from public services, it was necessary to achieve fairness in the coverage of the national territory by public facilities and their distribution throughout the national territory, This would enable all users, wherever they may be, to benefit from public services of the same quality and under the same conditions as other citizens. We will address this below by discussing its content, its constitutional enshrinement, and its practical applications.

First: The content of the principle of equitable coverage of the national territory (universality)

This principle is based on the state's commitment to distribute public facilities and services fairly throughout the national territory so that every citizen, wherever they live, in cities, rural areas or remote areas, can benefit from the same service, with the same quality and under conditions and terms that are as similar as possible to those of other citizens. Therefore, "equitable coverage of the national territory" is seen as a practical extension of the principle of equality between users, as it prevents the concentration of basic public services in some regions at the expense of others and links public facilities to the requirements of social justice and the reduction of "shadow areas" and unbalanced development within the state.

Second: Constitutional enshrinement of the principle of equitable coverage of the national territory in the 2020 Constitution

The 2020 Constitution explicitly enshrines this principle in Article 27, which stipulates that public services "are based on the principles of continuity, constant adaptation, and equitable coverage of the national territory," after the first paragraph of the same article establishes the equality of users in accessing services without discrimination. The principle of equitable coverage has thus evolved from a jurisprudential and political concept to a binding constitutional rule, obliging both the legislature and the administration to organise and manage public services in such a way as to ensure their presence and services throughout the country and not only in the major states. In addition, Article 9, paragraph 6 of the constitutional amendment states that "the people shall choose for themselves institutions whose purpose is to eliminate regional disparities in development."

The rationale for enshrining the principle of equitable coverage of the national territory is evident in the quest to achieve effective equality between beneficiaries in the use of public services. The reality of disparities between regions, particularly in sensitive sectors such as health, has revealed stark inequalities in access to public services, exacerbated by the existence of *shadow areas* where large segments of the population live on the margins of development, without basic facilities or the essentials for a decent life. This has highlighted the need to ensure that public services reach remote, isolated and marginalised areas under the same conditions and with the same quality as in other areas, and to integrate them into the national development process. Furthermore, rapid demographic growth has increased the urgency of redistributing public facilities equitably throughout the country so that the state can respond to the needs of the entire population in a balanced and fair manner.²³

Third: Legal applications of the principle of equitable coverage of the national territory

This principle is embodied in several texts regulating facilities that are essential to daily life, including:

1. The postal and electronic communications sector

Executive Decree 18-246 on universal postal and electronic communications services goes further, requiring:

"regular collection and distribution of mail in sparsely populated or inaccessible areas, as well as postal presence in every population centre".

2 Electricity and gas distribution sector

Law 02-01 on electricity and gas distribution was introduced to address previous problems, including the lack of electricity and gas networks covering all areas, which prompted the legislator to reorganise the sector on the basis of a public utility subject to regulation, with the aim of improving service quality and expanding its coverage across the country. The mission of the public utility in this area is not limited to supplying "ineligible customers" under the best conditions of fairness and continuity, but also, in practice, to gradually extend the networks to disadvantaged areas in line with the constitutional obligation of equitable coverage of the national territory

24.

Conclusion

Based on the above, the study shows that the 2020 constitutional amendment did not merely reaffirm the concept of public service, but also *elevated its principles to the status of binding constitutional rules*. The classic principles of public service, namely continuity, adaptability and equality between users, have been enshrined as the basic framework guaranteeing the permanence, fairness and adaptability of public service. At the same time, the amendment gave rise to a new generation of principles related to the governance of public services, foremost among which are transparency, equitable coverage of the national territory, and quality of services, reflecting a gradual shift from simply providing services to ensuring how they are provided, their comprehensiveness, fairness, and credibility in the eyes of users. However, the effectiveness of this constitutional framework remains dependent on the extent to which these principles are implemented in ordinary legislation and in both administrative and judicial practice.

On this basis, a number of recommendations can be proposed, including:

- The need to complement constitutional enshrinement with legislative and regulatory reforms that explicitly incorporate these principles into the laws governing public services, with clear mechanisms for monitoring compliance and holding service managers accountable for violations.
- It is also advisable to strengthen the role of the administrative judiciary, the Court of Auditors and independent authorities in protecting the principles of equality, transparency and regional equity by expanding their powers to monitor the actions of the administration and the management of public funds.
- Ensure fair and equitable coverage of the entire national territory with public services, especially basic services, by creating and establishing bodies specialised in achieving the principle of equity and monitoring its application throughout the national territory, especially in marginalised and remote areas.

- Promoting citizen participation as an active partner in local development, particularly with regard to improving public services and the functioning of public utilities.
- The adoption of objective measures to assess the quality of public services and the publication of the results to the general public is also an essential step in translating the principles of quality and transparency into reality. In addition, much remains to be done to establish a culture of public service within the administration itself by training and qualifying staff in the principles of good governance and ensuring that citizens are not merely recipients of services but partners in evaluating and demanding improvements. Only under these conditions can constitutional principles be transformed from declared texts into real guarantees for a public that deserves effective and fair public services.

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² Ahmed Abdelazim, *Legal Regulation of the Administrative Authority for the Management of Public Economic Facilities*, Dar Al-Ma'arifa Publishing and Distribution, first edition, Alexandria, 2022. p. 248.

³ Law No. 11-10 of 22 June 2011 on municipalities

⁴ Law No. 12-07 of 21 February 2012 on the province.

⁵ Dated 1 June 2002, containing the basic law of the public industrial and commercial institution "Sonelgaz", amended and supplemented, "Sonelgaz undertakes to provide electricity and gas continuously, except for interruptions that may occur as a result of accidents, bad weather or force majeure

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⁸ Zamal Saleh, "Principles of Public Service Delegation in Algerian Legislation: A Reading of the Provisions of Article 209 of Presidential Decree 15-247," *Annals of the University of Algiers I*, Issue 32, Part I, 2018, p. 507

⁹ Article 5: To ensure the efficiency of public contracts and the proper use of public funds, the conclusion of public contracts shall be subject to the following principles - Freedom of access to public tenders - Equal treatment of candidates

¹⁰ Law No. 23-12 of 18 Muharram 1445, corresponding to 5 August 2023, sets out the general rules governing public procurement

¹¹ Before proceeding, it should be noted that the principle of the ability of public services to adapt to changes has many legal names, such as its names and synonyms, the principle of adaptation, or the principle of the adaptability of public service rules to change and development, or the principle of changing public services, or the principle of developing public services, or the principle of adaptability to change and development, among other names

¹² Bashir al-Sharif Shams al-Din, Laqabi Samiha, *Public Facility Law: A Study of the Conceptual Structure and Legal System of Public Facilities*, First Edition, Dar al-Huda Publishing and Distribution, Ain Mlila, 2023, p. 157

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¹⁴ Article 06 of Executive Decree No. (88-131) regulating relations between the administration and citizens, dated 4 July 1988, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 27, dated 6 July 1988.

¹⁵ Article 21, Executive Decree No. (88-131)

¹⁶ "Agreements on the delegation of public services shall be subject to ... principles, ... including adaptability."

¹⁷ Presidential Decree No. 16-03 dated 26 Rabi' al-Awwal 1437, corresponding to 7 January 2016, provides for the establishment of the National Observatory for Public Utilities, Official Gazette of the Algerian Republic, No. 2, issued on 10 January 2016, where Articles 3 to 6 contain several provisions in which the Algerian legislator enshrines the principle of adaptability. For example, it stipulates the need to adapt the organisation and operation of public services to economic, social and technological developments and to keep pace with the needs of their users. These texts also emphasise the importance of coordination between administrations to promote innovation and increase the effectiveness of services provided to citizens. They also pay clear attention to improving the quality of services and simplifying administrative procedures in line with the requirements of the times. They do not overlook the need to modernise public services by introducing new technologies and improving communication with citizens.

¹⁸ Al-Sharif, Bashir Shams al-Din, and Laqabi, *Law on Public Services*, op. cit. p. 166.

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²⁴ Khadim Hamza, op. cit., p. 185