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# Maritime Transport Services Concession in Algeria: A Privatisation Mechanism or a Restrictive Tool?

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**ABSTRACT:** The Algerian legislator approaches the maritime transport sector with considerable sensitivity due to its strategic nature. However, rather than encouraging investment to enable Algeria to build a fleet for its foreign trade, the legislator's awareness of this sector's importance has resulted in a cautious approach to opening it up to private entities. This has resulted in the sector remaining public property, thereby limiting private investment opportunities to public service delegation contracts. Of these, the Algerian legislator has chosen the concession contract for the privatisation of the maritime transport sector, widely considered to be the most rigid, particularly given that the regulations governing the concession of maritime transport services are far stricter than those in other sectors. These regulations reinforce the administration's dominance over the contract, at both the conclusion and execution stages. Furthermore, the conditions for obtaining a concession for maritime transport services are onerous for the average investor. In terms of expertise, the regulations indirectly restrict the scope of maritime transport subject to concession to regular line transport, which requires significant financial resources and expertise. Consequently, it can be inferred that the caution exercised by the legislator in dealing with this sector has had a counterproductive effect.

**Keywords:** maritime transport, concession, public service, privatization.

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## Introduction

Following its independence, Algeria recognised the importance of the maritime transport sector and the link between the size of its national fleet and its sovereignty[1]. This realisation led to the creation of the National Shipping Company, specialising in maritime transport and related activities. Given the socialist orientation of the Algerian economy at that time, the company enjoyed a monopoly on maritime transport activities and ship chartering from 1969 onwards, as confirmed by the subsequent issuance of Ordinance 76-80[2], which incorporated the Algerian Maritime Law under Article 571.

However, Algeria experienced a new phase in the 1980s when it retreated from its socialist economic approach amid a global trend driven by donor institutions included in what is known as the Washington Consensus[3]. The 1986 oil crisis left Algeria in dire economic straits, forcing it to turn to the International Monetary Fund (IMF) for assistance. This assistance was only granted on condition that Algeria adhere to the IMF's terms and conditions, as set out in standby credit agreements[4]. These conditions aimed to lead Algeria to abandon its directed economy and adopt a more open economic system, allowing the state to withdraw from the economic sector and opening the door to private initiatives.

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1- KHEYAR, Mohamed & ZEROUKLANE, Nourdine. The Algerian Maritime Policy After the Liberation of International Trade. University of Bejaia, Bachelor's thesis, Economic Sciences, 2008, p. 43.
2- Ordinance No. 76-80, dated October 23, 1976, concerning maritime law, Official Gazette No. 29, 1977.
3- Ben Hamou, Ismat Mohamed. The Importance of Evaluating Institutions in the Success of Privatization in Algeria. Journal of Finance and Markets, Issue 1, Volume 1, Algeria, 2014, p. 52.
4- Bari, Abdel Latif. Algerian Economic Reforms Under the Guidance of International Financial Institutions. Journal of Political and Administrative Research, Issue 1, Volume 7, 2018, p. 290.

The maritime transport sector was not insulated from changes in the Algerian economy. The National Maritime Transport Company underwent restructuring in preparation for eventual privatisation. Additionally, amendments to the maritime law under Law No. 98-05[5] lifted the monopoly on maritime transport, opening the field to private investment in the sector. However, this opening was not absolute, as it was dependent on entering into a public service delegation contract with the relevant authority. This was due to the retention of the public service character of the maritime transport sector as public property under Article 20 of the Algerian Constitution[6]. Among the public service delegation contracts in Algeria, the Algerian legislator opted for the concession contract as a mechanism for the privatization of maritime transport, in the context of the sectoral strategy pursued by the legislator in dealing with concession contracts. To this end Executive Decree 2000-81[7] was issued to define the conditions and methods for providing maritime transport services. This decree was later repealed by Executive Decree 08-57, which specified the conditions for granting concession to exploit maritime transport services and the associated procedures[8].

If the aim of privatising and opening up the maritime transport sector to private investment was to rejuvenate and develop it, it is clear that the opposite has happened. While the fleet covered 23% of foreign trade transported by sea during the monopoly[9], its post-liberalisation role does not exceed 2%[10]. This calls into question the effectiveness of the concession contract as a mechanism for privatising maritime transport.

To study the effectiveness of the concession for exploiting maritime transport services as a mechanism for privatising the sector, it is necessary to revisit the regulations governing this concession, as set out in Executive Decree 08-57 relating to the specification of conditions and methods for exploiting maritime transport services. Through this lens, one can observe the sensitivity with which the legislator approaches this sector, treating interested investors with considerable rigidity. Consequently, the concession applicant is subject to complete administrative control over the contract from initiation to execution. Furthermore, the legislator imposes technical requirements on the concession applicant that may exceed the capabilities of small-to-medium-sized enterprises (SMEs), effectively excluding a large segment of potential investors due to a lack of financial resources or expertise.

**Section One: The Provisions of Maritime Transport Services Concession as an Entrenchment of Administrative Dominance**

The administration's delegation of a public service through a concession contract is not an abandonment of it. Rather, it is a management method, with the administration remaining accountable to users for the proper functioning and continuity of the facility. This responsibility underpins the administration's dominance over the contract in relation to the concessionaire. Therefore, if the provisions governing concession contracts generally do not aim to create a balance between the concessionaire and the administration, it is unlikely that the situation would differ for a concession to exploit maritime transport services, particularly given the strategic nature of the maritime transport sector. This may explain why

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5- Law No. 98-05, dated June 25, 1998, amending and supplementing Ordinance No. 76-80 concerning maritime law, Official Gazette No. 47, 1998.

6- Presidential Decree No. 20-442, dated December 30, 2020, concerning the issuance of the constitutional amendment approved in the referendum of November 1, 2020, Official Gazette No. 82, 2020.

7- Executive Decree No. 2000-81, dated April 9, 2000, specifying the conditions and methods for operating maritime transport services, Official Gazette No. 21, 2000.

8- Executive Decree No. 08-57, dated February 13, 2008, specifying the conditions for granting a concession to operate maritime transport services and methods, Official Gazette No. 09, 2000.

9 - Belasbat, Soumia. Concession for Maritime Transport Services, Master's thesis, Faculty of Law, University of Oran, Academic Year 2012-2013, p. 24.

10- Ministry of Transport. The People's Democratic Republic of Algeria, Maritime Transport Development Strategy, 2020, p. 08. https://www.mt.gov.dz/doc/strategie_transport_maritime_ar.pdf / Accessed on : 20:56 2025/08/02

the legislator deals with applicants for maritime transport services concession so rigidly, as evidenced by the fact that the latter are subject to the principle of the personal criterion in its traditional sense, as well as the regulatory character that predominates in the contract conditions.

**Subsection One: The Subjection of Maritime Transport Services Concession to the Personal Criterion**

Even when public services are delegated, the administration remains responsible for users, as the delegate acts on its behalf to fulfil public needs. This is why the person of the delegate is significant in the concession contract, and explains why the administration enjoys such wide discretionary authority in selecting the delegate. The concept of personal criterion also applies to the execution phase of the contract: the concessionaire must fulfil their obligations personally.

**Branch One: The Subjection of the Selection of the Maritime Transport Services Concessionaire to the Traditional Personal Criterion**

While the administration previously enjoyed broad discretionary authority in choosing the concessionaire based on the principle of personal criterion, the significance of this criterion has diminished with the subjection of the selection process to competition rules. This is evident in the specific texts of each concession contract and the more general provisions. However, it is noteworthy that applicants for maritime transport services concession have not benefited from this shift.

**First: The Algerian legislator's approach to regulating the selection of the concessionaire excludes the maritime transport services concession.**

In the 1990s, the Algerian legislator was influenced by the French legislator's findings through "la loi Sapin"[11], which organised the process by which the administration selects the concessionaire. Consequently, the Algerian legislator began to enact specific procedures for selecting concessionaires, starting with Instruction No. 94.3-842[12] concerning concession for leasing public and local facilities. This instruction stipulated that tenders must be used to select concessionaires. This was followed by various texts regulating different concession contracts, for which the legislator relied on the method of submitting offers after announcing the competition. The legislator even organised the selection process for concessionaires involved in local activities and handling at ports — the area closest to maritime transport — through Executive Decree 06-139[13], which dedicated three articles to regulating the selection of contractors through competition. Following an amendment in 2008 under Executive Decree No. 08-363[14], direct negotiation was added as an alternative to the competitive method, leaving the choice between the two to the minister responsible for ports. Furthermore, other texts specified the procedures that the administration must follow to select the concessionaire.

Despite the clear trend among legislators to organise the selection process for concessionaires by defining procedures for administrations to adhere to in order to achieve transparency, this trend has not been extended to all concession contracts. Some recent concession contracts do not address the stage of selecting the concessionaire, leaving the administration free to choose the method it deems appropriate, including direct negotiation, which has a significant impact on the transparency of the process. One such text is Executive Decree 08-57, which sets out the conditions for granting concession for the exploitation of maritime transport services and their methods. However, this text does not reference any of the

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11- Drifi, Nadia. Public Facilities Between Guaranteeing Public Interest and Profitability: The Case of Concession Contracts, PhD thesis, Faculty of Law, University of Algiers 1, Academic Year 2011-2012, p. 253.

12- Drifi, Nadia. Same Reference, p. 194.

13- Executive Decree No. 06-139, dated April 15, 2006, specifying the conditions and methods for carrying out ship towing activities and handling operations in ports, Official Gazette No. 24, 2006.

14- Executive Decree No. 08-363, dated November 8, 2008, amending Executive Decree No. 06-139, which specifies the conditions and methods for carrying out ship towing activities and handling operations in ports, Official Gazette No. 64, 2008.

procedures followed by the administration in selecting the concessionaire, nor does it address the selection stage, except for Article 5. This merely states that the concession application is sent to the minister responsible for maritime commerce, accompanied by a file listing the documents it must include. There is no indication of whether the application submission is based on a public announcement.

Due to the absence of a regulatory text for public service delegation contracts, it can be concluded that the method and procedures for selecting the concessionaire were at the sole discretion of the administration. The administration determines the method that suits it, including direct negotiation, whereby the contractor, i.e. the concessionaire, is chosen directly without adhering to the contracting procedures followed in tenders or bids[15]. The administration typically uses this method in cases of urgency or when tendering is not feasible, for example when the contract requires specific technical skills possessed by only one individual[16]. While the direct agreement method serves the administration by exempting it from certain procedures, it does not benefit potential concession applicants, as it does not provide them with the opportunity to compete in a transparent and equal manner.

**Secondly, the general provisions did not contribute to regulating the selection procedures of maritime transport services concessionairen.**

Following the issuance of Presidential Decree 15[17]-247, which governs public contracts and public service delegations, the status of concession contracts in Algeria has changed. It can no longer be described as an unnamed contract as defined in Article 210 of the aforementioned law. This article is the first to address the general rules for public service delegation contracts, including concession, and is similar to the French law known as 'la loi Sapin'. However, the Algerian legislator did not exhibit the same level of boldness. While the French legislator provided clarity regarding the procedures for selecting the concessionaire through the 'Sapin' law, the Algerian counterpart lacked this clarity.

Article 38 of the 'Sapin' law explicitly states that public service delegation contracts are subject to public announcement procedures, through which competing offers are presented. According to the Sapin law, the general rule is that the administration must make public announcements, while direct negotiation is only permitted in the circumstances set out in Article 41 of the same law. By contrast, the position of the Algerian legislator is not as clear when reviewing the law on public contracts and public service delegation. Rather than providing a ruling that clarifies its stance on the selection of the delegate, the legislator has chosen to remain silent on the matter and leave it to specific texts, or to decisively regulate it in order to avoid ambiguity. Instead, in Article 209, the legislator refers to Article 5 of the same decree, which states: '...the principles of free access to public requests, equality in the treatment of candidates, and transparency of procedures must be observed in public contracts, while respecting the provisions of this decree.'

It could be argued that the legislator did not specify the procedures for selecting the delegate, but rather outlined the principles that should govern the selection process. Article 5 establishes general principles that the administration must adhere to when selecting the concessionaire, rather than mentioning any specific procedures. Consequently, the administration's previously unrestricted freedom in choosing the concessionaire has diminished. Whereas the norm was the administration's freedom, with legislator intervention to restrict this freedom through certain transparent selection procedures being the exception, the situation has changed following the issuance of the law on public service delegations. Now, the principle is that the process of selecting the concessionaire is subject to the same principles that govern the selection of contractors in public contracts.

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15- Jabouri, Mahmoud Khalaf. Administrative Contracts, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2010, p. 99.

16- Jabouri, Mahmoud Khalaf. Same Reference, p. 104.

17- Presidential Decree No. 15-247, dated September 16, 2015, concerning the organization of public contracts and public facility delegations, Official Gazette No. 50, 2015.

Therefore, even if the legislator was not precise in defining the procedures to be followed, the administration can no longer, at the very least, rely on opaque and inequitable procedures, such as the direct selection method that was previously permissible, unless a specific text prohibited it as in the case of handling and storage.

**Branch Two: The Personal Character of the Concession Contract Requires the Concessionaire to Conduct Transportation Operations Personally**

The practical reality of the maritime transport business may necessitate that transport operations are not carried out solely by the contracting carrier. Often, these operations are performed by another carrier in addition to the contracting one. However, the personal nature of the concession contract for maritime transport services may conflict with this practice.

**Firstly, subcontracting is a common practice in the maritime transport sector.**

If the concession contract is considered an agreement between the administration and a private entity to manage a public facility, according to Executive Decree 08-57, the scope of the concession for maritime transport services is limited to activities involving the transportation of passengers and goods by sea. Article 2 of the decree states: 'Maritime transport services refer to the set of activities for transporting passengers and goods by sea.' Therefore, the essence of the concession for maritime transport services lies in the concessionaire carrying out activities related to the transportation of passengers and goods by sea.

It is common practice in the maritime transport sector for the carrier to entrust the execution of the transport contract with a shipper to another carrier. Often, carriers find themselves unable to undertake the maritime journey due to circumstances beyond their control, such as when the type of goods requires specific ships that are unavailable[18]. According to Algerian maritime law, there is no prohibition against the contracted maritime carrier using other carriers to fulfil transport contracts. In fact, Article 764 explicitly mentions 'multiple carriers', which is considered as a form of subcontracting.

If utilising an actual carrier is regarded as subcontracting in the relationship between the contracted carrier and the shipper under maritime law, what about the regulations governing the concession on maritime transport services? Is the concessionaire's engagement of another carrier also considered subcontracting in administrative terms?

Administrative law defines subcontracting as 'the legal act through which a contractor delegates the execution of part of the original contract to another party'[19]. Therefore, whenever the concessionaire for maritime transport services enters into an agreement to delegate the execution of part of the concession contract with the administration to another person, subcontracting occurs. As the concession for maritime transport services involves the transportation of passengers or goods by sea and the concessionaire entering into transport contracts, it can be inferred that assigning the execution of the maritime transport contract to another carrier constitutes subcontracting if bills of lading are issued in the latter carrier's name.

**Second: the legislator's silence does not necessarily mean permitting subcontracting by the maritime transport services concessionaire**

Despite the Algerian legislator attempt to align with the French legislator by issuing a text—Presidential Decree 15-247—that serves as a general framework for public service delegation contracts, this text makes no mention of subcontracting by the concessionaire. Similarly, the specific decree for maritime transport services concession does not address subcontracting with third parties, unlike other texts for different concession types, such as water. While the Algerian legislator intended to follow the French

[18]- Belasbat, Soumia. Previous Reference, p. 125.

[19]- Karmouz, Refah Karim Merzouki. Personal Consideration and Its Impact on the Implementation of Administrative Contracts: A Comparative Study. Al-Muhakik Hali Journal for Legal and Political Sciences, Issue 03, 2016, p. 599.

approach by creating a general text for public service delegation contracts, the issue of subcontracting was not addressed. This omission suggests that the matter was left to the specific texts governing each concession contract based on the sector.

Upon reviewing the provisions of the executive decree regarding the concession for maritime transport services, it was found that subcontracting is not mentioned at all. Instead, Article 11 of Executive Decree 08-57 emphasises the personal caracter of the concession for exploiting maritime transport services: 'The concession is personal and cannot be assigned or leased in any form...' From this text, we can infer that the legislator does not consider subcontracting to contradict the personal nature of the concession for exploiting maritime transport services. The formulation of this article pits assignment and leasing against the personal caracter of the contract, but does not mention subcontracting. This suggests that subcontracting does not constitute an assignment of the concession, since the concessionaire remains accountable to the granting administration — unlike in the case of assignment, where accountability lies with the assignee[20].

Therefore, it can be said that nothing prevents the concessionaire from subcontracting maritime transport services, especially since Article 19 of Executive Decree 08-57 states that the concessionaire is responsible for managing and operating the concession. As subcontracting by the concessionaire does not contradict this responsibility, it is not prohibited. However, legal scholars emphasise the necessity of obtaining the administration's approval for such subcontracting. It would be unthinkable for the concessionaire to subcontract without notifying the administration and obtaining its consent[21], particularly given that public service delegation is one of the administration's management tools and it remains responsible for ensuring the facility operates properly for users.

While the requirement for the administration's approval for subcontracting may not cause problems in other sectors, it lacks the flexibility required by the maritime transport sector. It would be unreasonable for the concessionaire to notify the administration every time subcontracting was required and than wait for approval, as this would not align with the nature of the maritime transport sector. The legislator has overlooked an important issue, particularly given the nature of the sector where subcontracting is commonplace, if not essential. It is unrealistic to expect the carrier to avoid reliance on other providers in the maritime transport sector. Therefore, the legislator should have established a specific provision that regulates subcontracting procedures in a flexible manner, aligning them with the activities of maritime transport.

**Subsection Two: The Regulatory Nature of the Maritime Transport Services Concession**

Considering that the terms of reference represent an invitation to tender from the administration, this invitation is not favourable for private entities regarding the concession for maritime transport services, as it does not serve the interests of the concessionaire. Examining the conditions of this concession reveals that the regulatory nature predominates. The broader the scope of these regulatory conditions, the greater the authority enjoyed by the administration during the execution phase.

**First: The regulatory aspect predominantes in the terms of maritime transport services concession**

Following extensive discussions about the nature of the concession, legal doctrine has concluded that it is a mixed act comprising two types of conditions: regulatory and contractual. This distinction in the nature of the conditions stems from the objective of the concession, which is to strike a balance between two conflicting interests: the public interest, represented by the provision of public service, which the administration seeks to fulfil; and the private interest, embodied by the profit that the concessionaire aims to achieve. Regulatory conditions specifically protect the public interest and are non-negotiable; the

[20]- Belasbat, Soumia. Previous Reference, p. 126.

[21]- Al-Tamawi, Suleiman. General Principles of Administrative Contracts, Dar Al-Fikr Al-Arabi, Cairo, Egypt, 5th edition, 1991, p. 678.

concessionaire must adhere to them. Furthermore, their nature empowers the authority granting the concession.

Conversely, the private interests of the concessionaire are safeguarded by negotiable contractual conditions, subject to the principle that contracts constitute the law of the parties.[22] Although legal doctrine distinguishes between regulatory and contractual conditions, the concession documents (the standard terms of reference and the standard agreement) do not explicitly separate these conditions, leaving this distinction open to legal interpretation. This interpretation relies on two criteria: the relationship of the provisions to the organisation and operation of the public facility, and the possibility of unilaterally amending the clauses by the administration.[23]

Since the premise of the concession is to balance public and private interests, and since concession encourage private entities when they allow greater leeway for contractual conditions, it is evident that maritime transport service concession documents are dominated by regulatory conditions. The standard terms of reference contain approximately 17 articles that scholars unanimously consider to be regulatory in nature, based on their relevance to the operation of the public facility[24]. However, although Article 1 of the standard terms states that the document defines the rights and obligations associated with the concession for maritime transport services, the remaining articles primarily outline the concessionaire's obligations without reference to their rights. This emphasises the absence of contractual conditions and, consequently, a lack of consideration for the concessionaire's interests.

It is noteworthy that the regulatory nature extends to the duration clause, which is usually negotiable. However, when it comes to the concession for maritime transport services, there is limited scope for negotiating the concession's duration. Although Article 2 of the standard agreement suggests that the duration may be negotiable, Article 9 of Executive Decree 08-05 stipulates that the maximum duration for maritime transport services concession is ten years. Therefore, while negotiation is possible[25], it can only take place within the confines of this ten-year limit, which calls into question the status of the duration clause as a contractual condition.

Moreover, ten years is a relatively short period for an investment of this magnitude in maritime transport services. The negotiation of the contract duration is expected to take into account the burdens placed on the concessionaire, allowing them sufficient time to recoup their investment and achieve the desired profit. Ten years is widely accepted as inadequate for a concessionaire to recover the value of their investment in maritime transport services, particularly given that owning a ship constitutes a significant investment in itself. The harm that may befall the concessionaire does not merely stem from the limited scope for negotiation, but from the fact that ten years is too short a period for such an investment. It is almost impossible for the concessionaire to recoup their investment within this timeframe, which makes the field unappealing for private entities due to the substantial risk of loss when the term ends, particularly if the concession is not renewed.

Alongside the duration clause, another condition typically classified as contractual is the set of privileges granted to the concessionaire, comprising financial aid and other forms of support, such as exclusivity. However, referring to the standard terms of reference and standard agreement for maritime transport services, there is no mention of such a condition. In light of this, some argue that the maritime transport services concessionaire should benefit from the privileges granted under investment development law, specifically Ordinance No. 01-03.

**Secondly, the administration's powers arising from the regulatory nature of the conditions**

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[22] Drifi, Nadia. Managing the Public Service and New Transformations, Master's Thesis, Faculty of Law, University of Algiers 1, Academic Year 2007-2008, p. 116.
[23] Drifi, Nadia. Public Facilities Between Guaranteeing Public Interest and Profitability: The Case of Concession Contracts, Previous Reference, p. 194.
[24]- Belasbat, Soumia. Previous Reference, p. 116.
[25]- Drifi, Nadia, Managing the Public Service and New Transformations, Previous Reference, p. 118.

The aspects of public authority privileges enjoyed by the granting authority can be identified in three rights: the right of oversight, the right of amendment and the right to impose penalties.

**A. The Right of Oversight**

Since the fundamental principle is that the administration is responsible for managing the public facility, it remains accountable for its proper functioning and organisation when it delegates this management to a private entity[26]. Therefore, the administration has the right to oversee the concessionaire under the terms of the concession. In the context of administrative contracts, oversight has both broad and narrow meanings.

Broadly speaking, it refers to the administration's right to ensure the contract is executed appropriately by issuing work orders[27], obliging the contractor to fulfil their obligations in a specific manner. In its narrower sense, oversight means that the administration merely monitors the contractor's compliance with their contractual obligations. This type of oversight does not need to be explicitly mentioned in the contract, as it is a general principle of administrative contracts[28].

Concession contracts are subject to this narrower form of oversight, as confirmed by Article 29 of Executive Decree 08-57 for maritime transport services concession, which explicitly subjects the maritime transport service concessionaire, along with its employees, crew and vessels, to state oversight. Article 14 of the standard terms of reference stipulates that the concessionaire must facilitate the entry of agents from the granting authority to their vessels and facilities, and provide them with free transport while they carry out their oversight duties.

**B. The Right to Amend Regulatory Conditions**

Unlike contractual conditions, which can only be amended by mutual agreement due to the principle that contracts are the law of the parties, the regulatory conditions of the concession contract can be modified at the sole discretion of the granting authority during the execution of the contract, without the need for the concessionaire's consent[29]. This right does not need to be explicitly stated in the contract.

The granting authority modifies the concession contract through a unilateral administrative decision. Whether the decision involves an increase or decrease in the concessionaire's obligations, they have no option but to argue that the conditions allowing the administration to modify the contract are not met. These conditions include a change in the circumstances of the contract; no change to the subject of the contract; no disruption to the contract's financial balance; and the modification being limited to regulatory conditions. Additionally, the amendment must be legal, as it is carried out in the form of an administrative decision. This enables the concessionaire to challenge the amendment on the basis of one of the defects associated with administrative decisions, such as lack of jurisdiction, procedural defects, violation of the law or abuse of power.

**C. Imposing Penalties on the Concessionaire**

As an administrative contract, the concession for maritime transport services is subject to the administration's right to impose penalties on the concessionaire in cases of non-compliance with their contractual obligations. This includes situations where the concessionaire refuses to execute the contract, performs it in a manner contrary to the agreed terms, or assigns the contract to a third party[30].

According to Executive Decree 08-57, the penalties that can be imposed on the concessionaire for maritime transport services are limited to cancellation or suspension of the concession. Cancellation of

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[26]- Osman, Aboubakr Ahmed. Public Facility Delegation Contracts: A Comparative Analytical Study, Dar Al-Jamia Al-Jadida, Alexandria, Egypt, 2015, p. 198.
[27]- Baali, Mohamed Al-Saghir. Administrative Contracts, Dar Al-Uloom for Publishing and Distribution, Annaba, Algeria, 2005, p. 73.
[28]- Jabouri, Mahmoud Khalaf. Previous Reference, p. 126.
[29]- Jabouri, Mohamed Khalaf. Previous Reference, p. 163.
[30]- Osman, Aboubakr Ahmed. Previous Reference, p. 213.

the concession is considered the most severe penalty that the administration can impose on the concessionaire and refers to termination of the contract by the administration due to faults on the part of the concessionaire. This is classified as a contractual penalty for the concession of maritime transport services, as explicitly stated in Decree 08-57, which outlines the conditions for cancellation in Articles 34 and 35. Article 34 details the circumstances in which cancellation is mandatory, including abandonment of the concession, bankruptcy of the concessionaire, premature dissolution of the legal entity and failure to comply with the provisions of Article 11.

The circumstances under which the administration may cancel the concession at its discretion are specified in Article 35. These include: failure to meet the conditions under which the concession was granted; operating the maritime transport services under conditions different from those specified in the standard terms of reference; non-compliance with the obligations to respect the terms of the standard reference; bankruptcy of the concessionaire; the imposition of a severe disciplinary penalty on the concessionaire or the manager of the legal entity; transferring the concession or part of it to others; and when there is no justification for maintaining the concession. The last condition is particularly broad, giving the administration significant discretion, which could result in recovery — a severe measure that could be imposed on the concessionaire as it involves the cancellation of the concession even if they are not at fault, provided the administration's intention is to serve the public interest[31].

Regarding the suspension of the concession, Article 33 of Executive Decree 08-57 states that the administration may penalise the concessionaire for serious and repeated breaches of their obligations by temporarily suspending the concession without compensation. This could result in significant losses for the concessionaire.

**Section Two: The Burdensome Technical Conditions Governing Maritime Transport Services Concession.**

Although the regulations governing the concession primarily require the possession of a single vessel, either as an owner or lessee, closer inspection reveals that these regulations indirectly limit the scope of the concession to regular line transport. This presents particular challenges for inexperienced Algerian investors, as this type of service demands greater capabilities.

**Subsection One: Requirement for Vessel Equipment**

An applicant for a maritime transport services concession must be a shipowner with at least one vessel. To attain this status under Algerian maritime law, the applicant must first acquire the vessel and then operate it in their name.

**Branch One: Acquisition of a Vessel for Usage Rights**

The regulations governing the concession for exploiting maritime transport services do not specify the status through which the applicant must acquire the vessel. Instead, they stipulate the vessel's specifications to ensure its suitability for navigation.

**A. Methods of acquiring the vessel**

Article 4 of Executive Decree 08-57 states that applicants for a concession must either own a vessel or have the right to use one through other means.

**1. Using the Vessel through Ownership**

A vessel, like other assets, can be owned, and ownership can be acquired through various means[32]. Ownership of a vessel can be acquired through well-known legal means, such as donation, inheritance or bequest. While the maritime legislator does not explicitly mention these methods, they are alluded to in Article 49, which states that "contracts that establish, transfer, or extinguish ownership rights..." This

[31]- Belasbat, Soumia. Previous Reference, p. 150.
[32]- Sharqawi, Mahmoud Samir. Maritime Law, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1993, p. 76.

implies that the legislator did not intend to delve into the specific ways in which vessel ownership can be transferred. However, Article 50 mentions two methods of acquiring ownership of a vessel: purchase and construction. Thus, ownership can be obtained either through transfer from a previous owner or by original means[33], such as construction or abandonment of the vessel, or leaving it to the insurer in accordance with insurance law.

It is important to note that under Algerian maritime law, there is no possibility of acquiring ownership of the vessel through prescription, as the vessel is subject to a registration system. Transfer of ownership does not occur for either party or third parties unless it is recorded in the registry[34].

The forms of ownership have evolved alongside the increasing value of vessels[35]. In the past, a vessel was usually owned by one operator. As their value increased, joint ownership became more common, enabling multiple individuals to co-own a vessel. Subsequently, as vessels became more valuable, companies became better able to own and equip them, making ownership a burden for average investors.

**2. Other legal statuses granting the right of use**

The phrase '...through other qualities granting them the right to use it...' in Article 4 of Executive Decree 08-57 raises questions about the characteristics that enable applicants for a concession to operate a vessel. However, it can be inferred that these qualities include possession through leasing and through a lease loan. The first paragraph of Article 7 of the same Executive Decree states: '...certificate of ownership of the vessel, or lease loan agreement, or lease agreement...'

Regarding the leasing of a vessel, Article 640 of Maritime Law states that it is an agreement whereby the lessor makes their vessel available to the lessee in exchange for a fee paid by the latter. As per Article 642, the lease agreement must be documented in writing[36], and the document that records the lease agreement is referred to as a 'charter party'. A vessel may be leased on a voyage basis, for a specific duration or in its entirety. However, as the legislator requires applicants for the concession to have operator status, not all three methods are compatible with this condition.

In the case of voyage-based leasing, Article 650 explicitly states that the lessor retains operational management and commercial control of the vessel. Therefore, the lessee does not have operator status. Therefore, applicants for the maritime transport services concession should avoid this type of leasing for the vessel through which they wish to obtain it, as while this method allows them to use the vessel, it denies them operator status.

Conversely, leasing the entire vessel allows the operator status to be transferred from the lessor to the lessee, as stipulated in Article 730 of maritime law. Regarding leasing the vessel for a specific duration, the lessor retains navigational management while transferring commercial management to the lessee, as set out in Articles 700 and 701 of maritime law. This arrangement is unsuitable for applicants for the concession as they must possess both powers to qualify as an operator. However, some argue that, if the lease duration is long, it is permissible for the lessor and lessee to agree that both managements be transferred to the lessee[37].

Regarding the use of the vessel through a lease loan, although the legislator has included this among the qualities that allow the holder to use the vessel and thus obtain the maritime transport services concession, Algerian maritime law does not address this in detail.

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[33]- Al-Arini, Mohamed Farid & Al-Faqi, Mohamed Said. Maritime and Air Law, Halabi Legal Publications, Beirut, Lebanon, 2011, p. 109.
[34]- Al-Baroudi, Ali & Dweidar, Hani Mohamed. Maritime Law, University Printing and Publishing House, Beirut, Lebanon, n.d., p. 60.
[35]- Al-Baroudi, Ali & Dweidar, Hani Mohamed.Same Reference, p. 61.
[36]- Taha, Mostafa Kamal. New Maritime Law, Dar Al-Jamia Al-Jadida for Publishing, 1995, p. 223.
[37]- Belasbat, Soumia. Previous Reference, p. 76.

**B. Conditions required for the vessel**

While the legislator requires the applicant for the concession to possess at least one vessel, this does not imply that any vessel is acceptable regardless of its condition. Article 4 of Executive Decree 08-57 outlines the conditions that vessels used by applicants for concession must meet. These conditions fall into two categories: those concerning the vessel itself, and those concerning the crew that must be on board.

Regarding the vessel itself, it must be seaworthy and comply with applicable national and international standards and regulations designed to protect individuals, property and the environment. While the general rule is that vessels should be less than 15 years old, the legislator allows the Minister responsible for maritime affairs to grant permits for older vessels, provided their technical condition is verified by an authority designated by the Minister.

As for the second category of conditions relating to the crew, the legislator emphasises the nationality of the crew and distinguishes between two situations. The first situation relates to operating a vessel flying the national flag, for which the general principle is that the crew should primarily consist of Algerian sailors. However, the Minister responsible for maritime affairs may authorise the inclusion of a percentage of foreign sailors in the crew. Conversely, if the vessel operates under a foreign flag, the Minister specifies the minimum percentage of Algerian sailors that must be included in the crew. This percentage is to be determined within the concession agreement, as indicated in Article 5 of the standard agreement concerning the granting of concession for maritime transport services (included in Annex 1 of Executive Decree 08-57).

**Branch Two: The Condition of Operating the Vessel in One's Own Name**

It is customary for the owner of the vessel to be responsible for equipping it with the necessary maritime navigation equipment and supplies for the journey. The owner also usually employs the captain and crew[38]. However, the evolution and complexity of maritime transport have led to a departure from this simplistic view, with a distinction now being made between the concepts of owner and operator. A person does not need to own the vessel to be considered its operator, nor does the owner need to be the actual operator. Algerian maritime law accepts this principle according to Article 572, which defines the operator of the vessel as anyone who exploits it in their name, i.e. under their responsibility[39].

However, according to Article 573 of the Maritime Law, the actual operation of the vessel cannot commence until it has been declared in the ship registry with a notarised signature. If the operator is using the vessel on a rental basis rather than owning it, it is necessary to indicate the owner. This implies that, to acquire the status of operator, it is sufficient for the applicant for the maritime transport services concession to acquire a vessel in a manner that allows them to use it, enabling them to operate it directly. Nevertheless, according to Article 573, the operator cannot use the vessel until they have declared it in writing with a notarised signature in the ship registry and provided information about the owner, stating the capacity that permits them to use the vessel and the document proving this. Therefore, the applicant for the concession is not considered to be in the position of operator until this procedure has been completed.

It is important to note that, in order to maintain their status as concessionaire, operators must keep this status throughout the entire term of the concession. Loss of this status may result in the concession being cancelled by the administration, in accordance with Article 35 of Executive Decree 08-57. Additionally, the concessionaire must personally fulfil their contractual obligations in accordance with the principle of personal consideration. Failure to fulfil these obligations could result in the concessionaire losing their operator status, which could exclude them from conducting transport through vessel leasing. This is

[38]- Al-Arini, Mohamed Farid & Al-Faqi, Mohamed Said. Maritime and Air Law, Halabi Legal Publications, Beirut, Lebanon, 2011, p. 187.
[39]- Belasbat, Soumia. Previous Reference, p. 101.

because certain forms of vessel leasing may strip the concessionaire of their operator status, putting them at risk of concession cancellation.

**Subsection Two: Limiting the Exploitation of Maritime Transport Services to Regular Lines Places a Burden on Investors**

While the regulations governing the concession for exploiting maritime transport services do not explicitly exclude transport activities under charter agreements from the scope of services covered by the concession, it can be inferred that Algerian maritime law delegates the organisation of such transport to regulations that have yet to be issued. This effectively limits the scope of the concession to regular lines, thereby excluding many investors due to the expertise and resources required for investment in this type of maritime transport.

**Branch One: Exclusion of Transport by Charter Agreements from the Scope of the Concession for Exploiting Maritime Transport Services**

The regulations governing the concession for maritime transport services do not explicitly exclude transport under charter agreements. However, Algerian maritime law refers this matter to regulations that have not yet been issued.

**First: Absence of implementing regulations related to transport by charter agreements.**

Initially, maritime transport took the form of charter agreements, whereby the cargo owner would rent a vessel, or part of one, to transport their goods, or those of others, on a specific journey or over a set period[40]. Jurisprudence considers that, if the purpose of renting the vessel is to transport goods, this constitutes a specific form of cargo transport rather than merely a lease agreement[41]. Despite the overlap between the two contracts — namely, the transport contract and the vessel lease contract — distinguishing between them is not a new concept. A clear distinction was made in 1942 with the issuance of Italian maritime law, followed by French law in 1966 concerning vessel leases and maritime transport[42]. The former allocated the first chapter to the vessel lease contract and the second chapter to cargo transport. Algerian legislation similarly organises vessel leasing and cargo transport separately.

However, it is noteworthy that Algerian maritime law has delegated the regulation of vessel leasing activities to as yet unissued regulations. Article 649(6) of Algerian maritime law states that 'The provisions of this article shall be determined by regulation'. In the absence of this regulation, engaging in transport activities through vessel leasing is not possible in Algeria[43].

It is important to note that not all charter agreements are suitable for transport activities, as the legislator requires an operator's status to engage in vessel leasing. Some charter agreements transfer the operator status to the lessee, thereby negating the carrier status of the lessor.

**Secondly, transport by tramp vessels is conducted through vessel charter agreements.**

Maritime transport can be divided into two types based on the routes followed. The first type is transport via regular lines, while the second type is transport on tramp services. Transport via regular lines is conducted by specific vessels between designated ports at fixed and previously announced freight rates, with scheduled sailing times[44]. In contrast, transport on tramp services is conducted by tramp vessels,

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[40]- Komani, Latif Jabr.Maritime Law, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 1998, p. 86.
[41]- Dweidar, Hani. Concise Maritime Law, Dar Al-Jamia Al-Jadida for Publishing, Alexandria, Egypt, 2001, p. 186.
[42]- Hamdi, Kamal. Maritime Law, Manzilat Al-Ma'arif, Alexandria, Egypt, 2007, p. 363.
[43]- Belasbat, Soumia. Previous Reference, p. 89.
[44]- Al-Nahrawi, Ayman. Economics and Policies of Maritime Transport, Dar Al-Fikr Al-Jami, Alexandria, Egypt, 2015, p. 215.

which do not adhere to fixed sailing schedules or specific routes, but instead operate based on contracts to transport particular shipments[45].

Transport using tramp vessels is conducted through vessel charter agreements. However, given the inability to engage in this activity in Algeria, as previously stated, the applicant for the maritime transport services concession is limited to investing in maritime transport via regular lines.

**Branch Two: regular lines require significant resources.**

One of the most critical requirements for vessels operating on regular lines is their sailing velocity which, constitutes a fundamental factor in determining the efficiency of this type of transport, as it ensures the vessel can adhere to the scheduled routes[46]. Speed is essential not only during the journey between the departure and arrival ports, but also during docking. Vessels must be equipped to facilitate the safe and efficient loading and unloading of goods. Therefore, vessels on regular lines should have multiple openings in their holds to allow for the safe stowage of goods and ensure easy access for loading and unloading.

Regular line vessels are often equipped with refrigeration systems because the goods transported tend to be more diverse and valuable than bulk cargo. This requires special care, so companies engaged in this type of transport must provide diverse vessels suitable for various types of cargo. In contrast, the value of bulk cargo transported by tramp vessels is generally lower and they do not require vessels with specialised specifications. Consequently, ships used for bulk transport tend to be medium-sized with simpler designs, leading to lower costs[47].

The regularity and stability of voyages, along with companies operating on regular lines adhering to fixed schedules, can sometimes result in losses. It is not uncommon for a regular line vessel to depart from a port even if it has not loaded enough cargo to reach its capacity[48], meaning it must accept additional cargo at lower prices than initially advertised[49].

One of the key distinguishing features of companies operating on regular lines is their large administrative apparatus compared to companies engaged in transport via tramp vessels. Operating regular line ships requires a network of service offices at all ports they enter[50]. This makes a joint-stock company particularly well-suited to this type of maritime transport[51], in contrast to transport conducted by tramp vessels, where the companies involved tend to be smaller[52].

**Conclusion:**

The maritime transport sector monopoly in Algeria was lifted amid a wave of changes imposed by the International Monetary Fund. However, the Algerian constitution has granted this sector special treatment, preserving its public service nature. Consequently, private investment can only occur through a concession contract, the foundational contract for public facility delegation in Algeria.

Nevertheless, the regulations governing concession for exploiting maritime transport services have not been effective enough to revitalise the sector. In fact, the percentage of the Algerian fleet covering Algerian maritime trade has significantly declined. This is due to the strictness of these regulations for investors interested in the sector. Firstly, investors must accept the administration's dominance over the contract, as evidenced by its absolute discretionary power in selecting the concessionaire. Furthermore,

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[45]- Al-Nahrawi, Ayman. Same Reference, p. 227.
[46]- Swaifi, Mokhtar.Essentials of Maritime Transport and Foreign Trade, Madkour Printing, n.d., n.d., p. 229.
[47]- Belasbat, Soumia. Previous Reference, p. 88.
[48]- Al-Nahrawi,Ayman. Previous Reference, p. 215.
[49]- Belasbat, Soumia. Previous Reference, p. 85.
[50]- Swaifi, Mokhtar. Previous Reference, p. 236.
[51]- Sharqawi, Mahmoud Samir. Previous Reference, p. 182.
[52]- Belasbat, Soumia. Previous Reference, p. 87.

the immense resources and expertise required for investing in regular line maritime transport complicate matters, especially given the indirect exclusion of transport activities under charter agreements.

As the contract is executed, the scope of regulatory conditions increases at the expense of contractual conditions, resulting in greater administrative control during implementation. This gives the administration powers over the concessionaire. Consequently, the maritime transport sector has failed to attract investor interest, leaving Algeria unable to transport its foreign trade without resorting to foreign maritime transport companies. This poses a threat to its food security as it is an importing country.

Therefore, it is urgent that this sector is addressed in order to establish a legal framework that encourages private initiatives while taking into account the sector's strategic importance.