



Legal and Regulatory Gaps in Executive Decree No. 21-219 Approving the General Administrative Clauses for Public Procurement

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Abstract:

This study aims to examine the legal and regulatory gaps related to Executive Decree No. 21-219 approving the General Administrative Clauses for public works contracts, by analyzing its ability to keep pace with recent legislative and administrative developments in Algeria, particularly in light of Law No. 23-12 on public procurement and public service delegations. The analysis shows that, despite its importance in regulating the execution phase of public works contracts, the decree suffers from several shortcomings, including the lack of clarity regarding the binding nature of its provisions, the weak and limited integration of the environmental dimension, and deficiencies in addressing digital transformation within the public procurement system.

Introduction

Public procurement constitutes one of the most important legal instruments through which the State implements its development projects, particularly in the field of public works. It provides the legal framework governing the contractual relationship between the contracting authority and the economic operator. Its role has evolved from being merely a means of meeting administrative needs into a strategic instrument for achieving economic, social, and environmental development, promoting the principles of good governance, ensuring transparency, and rationalizing public expenditure.

In this context, Executive Decree No. 21-219 approving the General Administrative Specifications Applicable to Public Works Contracts was adopted as a key regulatory instrument governing the implementation phase of public works contracts. It defines the reciprocal rights and obligations of the contracting parties and regulates the technical, financial, and operational aspects related to the execution of public projects.

However, the legislative developments witnessed in this field, particularly following the enactment of Law No. 23-12 on Public Procurement and Public Service Delegations, which introduced modern principles aimed at strengthening transparency, promoting competition,



advancing digitalization, and integrating environmental considerations and sustainable development, have revealed a gap between the new legislative framework and the regulatory framework that continues to govern the implementation of public works contracts, foremost among which is Executive Decree No. 21-219.

This gap is reflected at several levels. The Decree has not undergone a comprehensive revision to ensure that its provisions are aligned with recent legislative developments, resulting in inconsistencies between legislative and regulatory texts, particularly with regard to the organization of oversight mechanisms, the allocation of responsibilities, the guarantee of transparency, and the adaptation of the public procurement system to digital transformation. Another issue concerns the binding legal force of the General Administrative Specifications and whether such force derives from contractual incorporation or from their regulatory nature, a matter that directly affects legal certainty and the stability of administrative transactions.

Furthermore, there is a clear deficiency in the effective and binding integration of environmental considerations into the implementation of public procurement contracts. Although the legislator has provided supervisory mechanisms related to environmental protection and sustainable development, their practical effectiveness remains limited. In addition, the system governing financial advances reveals shortcomings in control and accountability mechanisms during contract execution, together with weaknesses in both financial and technical oversight.

Moreover, although digital transformation has become a strategic choice for the Algerian public administration, this evolution has not been adequately reflected in Executive Decree No. 21-219, which continues to rely primarily on the traditional paper-based approach without establishing a clear legal framework for the use of electronic means or integrating the electronic public procurement platform into contract implementation procedures.

In light of this disparity between legislative progress and regulatory delay, this section addresses the following research question:

To what extent does Executive Decree No. 21-219 approving the General Administrative Specifications Applicable to Public Works Contracts keep pace with the legislative and administrative developments introduced by Law No. 23-12, particularly with regard to the binding nature of its provisions, the integration of environmental considerations and digitalization, and the effectiveness of oversight and control mechanisms during contract implementation?

1. Shortcomings Related to the Legal Nature and Content of Executive Decree No. 21-219

Executive Decree No. 21-219 approving the General Administrative Specifications Applicable to Public Works Contracts constitutes one of the most significant regulatory instruments introduced into the Algerian public procurement system in recent years, given its central role in regulating the implementation phase of public works contracts and defining the reciprocal rights and obligations of the contracting authority and the contracting economic operator. The Decree was adopted in response to the growing need to modernize the legal framework governing public works and to unify the applicable rules, particularly after decades of reliance



on outdated legal instruments that no longer reflected the economic and administrative transformations experienced by the Algerian State.

Nevertheless, the importance of this Decree does not preclude its critical examination and legal analysis. A careful reading of its provisions reveals several shortcomings relating both to its legal nature and to the substance of its provisions. Some articles are drafted in a manner that allows for multiple interpretations, while certain obligations are not supported by adequate legal guarantees to ensure their effective implementation. Moreover, some provisions continue to raise questions regarding their binding force and the limits of their application. This is particularly evident in the debate surrounding the mandatory nature of the General Administrative Specifications and in the limited enforceability of the provisions relating to environmental protection during the execution of public works.

Article 60 of Executive Decree No. 21-219 approving the General Administrative Specifications Applicable to Public Works Contracts provides that:

"Reference to the provisions of these General Administrative Specifications shall be mandatory in the conclusion of public works contracts."

This provision means that contracting authorities are legally required, when concluding a public works contract, to adopt the General Administrative Specifications as the applicable reference framework. They must expressly refer to these specifications in the contractual provisions so that they also become binding upon the contracting parties.¹

1.1 The Issue of the Non-Mandatory Nature of the General Administrative Clauses and the Weak Binding Force of the Environmental Dimension

Executive Decree No. 21-219 allows the contracting authority to exercise a level of supervision that goes beyond merely ensuring the proper execution of the public contract in accordance with environmental requirements. This is achieved by monitoring the contractor's compliance with the legislative and regulatory provisions in force regarding environmental protection within the framework of sustainable development, as stipulated in Article 47 of the Decree. Furthermore, this supervision extends to examining the quality of the services and materials used during the execution process, ensuring their quality and assessing their environmental impact. Article 47² of Executive Decree No. 21-219 provides:

"At the express request of the contracting authority, the contractor, whether acting individually or as part of a consortium, must, during the execution of the works, be able to provide evidence that the services delivered under the public works contract, as well as those provided by its subcontractors, where applicable, comply with the environmental requirements and the sustainable development standards specified in the Special Instructions Book."

By adopting this approach, the Algerian legislator has effectively incorporated the precautionary principle as a preventive mechanism for protecting the environment against

¹ Boualssaibine, Mounira & Nekache, Hamza, Specifications in the Field of Public Procurement, Algerian Journal of Law and Political Science, Vol. 9, No. 1, 2024, p. 434.

² Melal, Abdelhamid, The Institutionalization of the Environmental Dimension in Public Works Contracts in Light of Executive Decree No. 21-219, Journal of Law and Political Science, Vol. 10, No. 2, June 7, 2023, p. 150.



potential and uncertain risks and threats that may harm the environment and hinder the proper execution of public works contracts. This reflects the understanding that environmental damage is often potential rather than certain. Indeed, environmental protection has now become one of the fundamental principles that the State seeks to promote when awarding public procurement contracts. Moreover, environmental protection has evolved into a development objective in its own right, which must be taken into account and cannot be overlooked in development projects proposed by the administration within the framework of sustainable development.³

Despite these provisions and the content of Article 47 of Executive Decree No. 21-219, they remain insufficient, particularly in light of the growing importance of environmental protection in recent years. These provisions do not ensure the proper and rigorous implementation of international environmental protection standards in the field of public procurement. The mandatory nature of the General Administrative Clauses (GAC) has therefore become one of the most debated issues in legal scholarship and judicial practice relating to public procurement, due to its direct connection with the legal nature of these clauses and the extent of their binding effect. The General Administrative Clauses were not designed merely as technical documents or optional reference models to be consulted when necessary; rather, they were established to unify the legal rules governing contractual relationships within a specific area of public procurement, thereby ensuring consistency in administrative transactions and promoting uniform contractual practices.

Through Executive Decree No. 21-219, the Algerian legislator sought to confer a clear regulatory character upon the General Administrative Clauses applicable to public works contracts. This is evident from their adoption in the form of an executive decree possessing binding legal force for contracting authorities subject to the public procurement regulations. However, the problem arises when moving from the theoretical framework to practical application, particularly regarding whether these clauses apply in cases where they are not expressly incorporated into the tender specifications or the contractual documents governing the public contract.

The origin of this issue lies in the wording adopted by the legislator in certain provisions of the Decree. On the one hand, the General Administrative Clauses appear to possess a mandatory character by virtue of forming part of the regulatory framework governing public procurement. On the other hand, certain provisions suggest that their applicability depends upon their explicit incorporation into the contractual documents. This situation raises fundamental questions concerning the legal basis of their binding force: Does this force derive from their regulatory nature, or from their incorporation into the contract itself?

The significance of this issue is further reinforced by its practical consequences. If the General Administrative Clauses are considered binding by virtue of their regulatory status alone, their provisions automatically apply to every public works contract falling within the scope of Executive Decree No. 21-219, regardless of whether the contract expressly refers to them.

³ El Arabi Meddah, The Institutionalization of the Environmental Dimension in Public Works Contracts, *Journal of Research in Law and Political Science*, Vol. 10, No. 1, June 30, 2024, p. 114.



Conversely, if their binding force depends upon the parties' intention and their express incorporation into the contract, the absence of such a reference may result in their exclusion or in limiting the scope of their application.

From a practical perspective, leaving this issue unresolved undermines legal certainty, as it leads to differing interpretations among contracting authorities and economic operators, while also creating disputes concerning the determination of the applicable legal rules whenever contractual conflicts arise. Consequently, the administrative judge may be required to strike a balance between the requirements of administrative legality on the one hand and the principle of contractual autonomy on the other.

The issue relating to the environmental dimension is no less significant than the foregoing, particularly in light of the developments witnessed in modern administrative law and its increasing orientation toward the promotion of sustainable development and environmental governance. Across contemporary legal systems, public procurement has evolved into an instrument serving objectives that extend beyond merely satisfying the needs of public authorities. It now encompasses environmental protection, the rational use of natural resources, and the reduction of the adverse environmental impacts resulting from public projects.

Within this framework, Executive Decree No. 21-219 incorporates a number of provisions emphasizing the need to comply with environmental requirements during the execution of public works. It also grants the contracting authority the right to verify the extent to which the contractor or contracting party complies with the applicable environmental regulations. However, despite their significance, these provisions do not appear sufficient to establish a comprehensive environmental protection framework within the field of public works.

The Decree is largely confined to setting out general principles without clearly specifying the practical procedures required to ensure their effective implementation. Moreover, it does not establish a clear environmental monitoring system during project execution, nor does it precisely define the nature of the documents or reports that the contractor must submit to demonstrate compliance with the environmental obligations imposed upon it.

It is also noteworthy that the Decree does not provide for independent environmental sanctions applicable in cases of non-compliance with environmental obligations. Instead, it leaves such violations subject to the general penalties governing contractual obligations. This situation weakens the effectiveness of environmental protection and often reduces it to a moral or advisory commitment rather than a binding legal obligation.

Accordingly, it is evident that Executive Decree No. 21-219 has not fully succeeded in transforming environmental protection from a general principle into an integrated legal framework based on precise rules, effective monitoring mechanisms, and enforceable sanctions. This calls for future regulatory intervention to strengthen the role of the environmental dimension within public works contracts and to make it an essential component of their implementation framework.



1-2 The Issue of Financial Advances and the Limited Mechanisms for Control and Accountability During Contract Execution

Financial advances relating to the execution of a public works contract (or a public procurement contract for works) take two principal forms: lump-sum advances and procurement advances. These are the same two categories provided for in Article 111 of Algerian Presidential Decree No. 15-247, which states: "Advances shall, as the case may be, be classified as lump-sum advances or procurement advances."

1-2-1 Lump-Sum Advance in the Execution of Public Works Contracts under Algerian Executive Decree No. 21-219

Pursuant to Article 67.1.2.1 of Algerian Executive Decree No. 21-219, which provides that: "Advances shall, as the case may be, be classified as lump-sum advances or procurement advances..."

The first type of financial advance relating to the execution of a public works contract, as provided for in both Algerian Presidential Decree No. 15-247 and Executive Decree No. 21-219, is referred to as a lump-sum advance because its amount is not determined according to specific criteria or based on quantifiable data. Rather, it is fixed as a percentage of the contract value. It refers to the amount paid by the Algerian contracting authority, acting as the project owner, to the national or foreign contractor before the commencement of the execution of the public works contract. Consequently, it is not determined on the basis of predefined considerations but instead constitutes a sum of money made available to the national or foreign contracting party prior to the commencement of the execution of the public works contract, provided that its maximum value does not exceed 15% of the initial contract price.

1.2.2. Supply Advance Related to the Performance of Public Works Contracts under Algerian Executive Decree No. 21-219

The second type of financial advance related to the execution of public works contracts—referred to in both Algerian Presidential Decree No. 15-247 and Algerian Executive Decree No. 21-219—is known as the supply advance. It is so named because it is granted to contractors to enable them to procure the supplies necessary for the project (goods and equipment). It is a sum paid by the contracting authority to the contractor upon submission of evidence confirming purchase orders for the materials and products required to execute the contract, such as the purchase of construction materials in the case of a public works contract. This is expressly provided for in Article 1.3.67 of Algerian Executive Decree No. 21-219.

The system of financial advances is one of the mechanisms introduced by the legislator to enable contractors to secure the financial resources necessary to commence the execution of public works projects, particularly where the nature of the project requires substantial initial expenditures or equipment and materials that cannot easily be acquired without prior financial support. From this perspective, the advance payment system constitutes a practical means of facilitating project implementation and ensuring that projects commence within the prescribed timeframes.

However, this system also raises several legal and financial issues relating to the protection of public funds and the proper use of the financial resources granted to contractors. A financial



advance constitutes an exception to the traditional rule that payment should only be made in exchange for services rendered or works actually completed. Consequently, it must be surrounded by adequate safeguards to prevent it from becoming a source of financial risk or a means of depleting public funds without a corresponding benefit.

One of the primary risks lies in the possibility that advance payments may be used for purposes unrelated to the public contract under execution, particularly where monitoring and control mechanisms are inadequate. Moreover, a contractor may encounter financial difficulties that prevent the commencement of the works despite having received the advance payment, thereby placing the contracting authority in the difficult position of recovering the funds already disbursed while ensuring the continuity of the project.

These risks become even more significant when coupled with weak control and accountability mechanisms during the implementation stage. Contract execution represents the phase during which the contract moves from the theoretical framework to practical application, and it is at this stage that contractual obligations are fulfilled and various technical, financial, and administrative challenges emerge.

Although Executive Decree No. 21-219 contains certain provisions concerning the supervision and monitoring of public works, these provisions do not establish a comprehensive oversight system capable of ensuring accurate monitoring throughout all stages of contract implementation. In many instances, the Decree merely refers generally to the role of the contracting authority without clearly specifying the methods and procedures to be followed in the day-to-day supervision of the works.

Furthermore, the Decree does not adequately address the documentation of technical inspection procedures or the methods for assessing whether the completed works comply with the agreed technical specifications. This leaves considerable room for discretionary interpretation and results in significant differences in practice among various public administrations.

Deficiencies are also evident in the area of financial control. The Decree does not establish a detailed framework for monitoring financial statements or verifying that the quantities of work completed correspond to the amounts claimed for payment. Nor does it provide a precise mechanism for coordination among the various internal and external oversight bodies.

Accordingly, the effectiveness of public procurement contracts depends not only on the quality of the legal rules governing their award but also on the effectiveness of the oversight system applied during their execution. Strengthening monitoring, control, and accountability mechanisms is therefore an essential requirement for safeguarding public funds and ensuring that public projects achieve their intended objectives.⁴

⁴ Kourdas, Hussein, & Moussa, Noura. Financial Advances Related to the Execution of Public Works Contracts under Algerian Executive Decree No. 21-219 Approving the General Administrative Clauses Applicable to Public Works Contracts. *Journal of Social and Human Sciences*, Vol. 14, No. 2, 31 December 2021, pp. 39–40.



2. Gaps Related to the Limited Adaptation of Executive Decree No. 21-219 to Recent Legislative and Administrative Developments

The current state of the Algerian public administration is characterized by numerous structural, functional, and legal shortcomings, which constitute both psychological and material obstacles to meeting citizens' expectations. This situation calls for a reconsideration of administrative management methods and the adoption of a clear strategy to move away from the traditional "counter service" approach and conventional management practices that have generated various negative phenomena, such as bureaucracy, bribery, and other forms of administrative corruption. This need has become even more pressing in light of the expansion of democratic governance, the increasing educational level of citizens, their growing awareness of their social, health, administrative, cultural, and economic needs, and the proliferation of organizations and associations advocating for their rights and interests while demanding quality, transparency, and prompt service delivery as fundamental principles of good governance.⁵

Today, public procurement is no longer merely a legal instrument through which the administration fulfills its needs for public works, supplies, and services. Rather, it has become a strategic tool for achieving economic, social, and environmental development objectives, as well as an effective mechanism for promoting the principles of good governance, transparency, and the rationalization of public expenditure. These developments have compelled comparative legal systems to periodically revise their regulatory frameworks in order to ensure consistency with the economic, technological, and organizational changes characterizing modern public administration.

To ensure procedural transparency and freedom of access to public procurement opportunities, Article 158 of Algerian Presidential Decree No. 15-247 requires contracting authorities to publish, at the beginning of each fiscal year, a list of all contracts awarded, together with the estimated program of projects scheduled to commence during the relevant fiscal year. This information must be published in the Official Bulletin of Public Procurement Operators (BOMOP) or on the contracting authority's official website. However, it is noteworthy that the legislator did not designate the electronic public procurement portal as a means for publishing this information, thereby reducing the significance of conducting public procurement procedures through this platform. Furthermore, several technical obstacles continue to hinder the effective implementation of electronic procurement, including weak internet connectivity and frequent system failures.⁶

In Algeria, the public procurement system has undergone significant legislative developments in recent years, most notably through the enactment of Law No. 23-12 on Public Procurement and Public Service Delegations. This law introduced a set of new principles and mechanisms

⁵ Ismail Sayhi, The Strategy for Transition toward Electronic Public Service in Algeria: A Study of the Causes and Mechanisms, *Marafi Journal of Political and Legal Studies*, Vol. 1, No. 2, January 16, 2022, p. 66.

⁶ Charnane Fatima Zahra and Berkouk Abdelaziz, The Constitutionalization of the Specific Framework for Public Procurement under Presidential Decree No. 15-247, *Journal of Legal and Political Thought*, Vol. 7, No. 2, November 30, 2023, p. 633.



aimed at enhancing the efficiency of public procurement while reinforcing the principles of transparency, competition, digitalization, and sustainable development. However, Executive Decree No. 21-219, which predates this law, has not yet undergone a comprehensive revision to align its provisions with the innovations introduced by the new legislation. Consequently, a number of legal and regulatory gaps have emerged, directly affecting the practical implementation of the General Administrative Clauses for Public Works Contracts.

These shortcomings become more evident when examining, on the one hand, the degree of consistency between Executive Decree No. 21-219 and Law No. 23-12 and, on the other hand, the extent to which the Decree responds to the requirements of digital transformation in the field of public procurement.

2.1 Gaps in the Linkage Between Executive Decree No. 21-219 and Law No. 23-12

Law No. 23-12 on Public Procurement and Public Service Delegations represents a new stage in the development of the legal framework governing public procurement in Algeria. Its role extends beyond merely reorganizing certain procedures or updating traditional concepts; rather, it seeks to reshape the philosophy of public contracting in a manner that is more consistent with the requirements of modern public administration and the objectives of sustainable economic development. Accordingly, the enactment of this law should have been followed by a comprehensive revision of the implementing regulations associated with it, foremost among them Executive Decree No. 21-219, which serves as the principal regulatory framework governing the execution phase of public works contracts.⁷

However, the legislative reality reveals that such an update has not been carried out in the required manner. Executive Decree No. 21-219 has largely retained its original structure and many of its provisions, which were drafted under the previous legal framework. This has created a degree of inconsistency between the new legislative text and the existing regulatory framework. This gap is particularly evident in matters relating to the organization of oversight, the allocation of responsibilities, mechanisms for ensuring transparency, and the role of digitalization within the public procurement system.

This situation has resulted in a lack of legislative coherence within the legal framework governing public procurement. Those responsible for implementing the legal provisions are confronted with new rules introduced by Law No. 23-12 without a corresponding revision of the implementing provisions contained in the General Administrative Clauses. Consequently, practical implementation often depends on administrative discretion or subjective interpretation of the legal texts, which runs counter to the principle of legal certainty, requiring legal rules to be clear, stable, and predictable.

Moreover, the continued application of regulatory provisions that have not been revised in light of recent legislative developments may lead to conflicting interpretations of certain rules, particularly with regard to determining the applicable procedures, identifying the competent

⁷ Barakat Riyad & M'sika Mohamed El-Saghir, "The Reality of Electronic Contracting through the Electronic Public Procurement Portal in Algeria," *Algerian and Comparative Journal of Public Law*, Vol. 8, No. 2, 2022, p. 688.



authority responsible for making specific decisions, or defining the liabilities arising from breaches of contractual obligations. In such circumstances, public administrations may differ in their understanding and application of the legal provisions, as may oversight and judicial authorities, thereby disrupting practical implementation and undermining the effectiveness of the legal framework governing public procurement.

This issue becomes even more significant considering that the General Administrative Clauses are not merely a technical document but rather constitute the principal reference framework governing the execution phase of public works contracts. Consequently, any inconsistency between these clauses and higher-ranking legislative provisions has a direct impact on all contractual relationships arising during the implementation of public projects.

Another manifestation of this shortcoming is that Executive Decree No. 21-219 has not adequately kept pace with the new orientation toward strengthening the principles of transparency, accountability, and good governance established by Law No. 23-12. While the legislature, through the new law, sought to reinforce mechanisms for preventing irregularities and enhancing oversight of public expenditure, the General Administrative Clauses have retained many traditional mechanisms that no longer fully meet the requirements of modern public administration.

It is also noteworthy that certain concepts which have assumed a central position within the new legislative framework have not been sufficiently addressed in Executive Decree No. 21-219. As a result, the Decree appears to belong to an earlier legislative phase whose philosophy and objectives differ from those introduced by Law No. 23-12. This situation weakens the coherence of the legal system and creates a disconnect between the legislative and regulatory levels.

Accordingly, achieving legislative consistency requires a comprehensive revision of Executive Decree No. 21-219, in order to align its provisions with the new principles and mechanisms introduced by Law No. 23-12. Such a revision would ensure the unity of the legal framework governing public procurement and reduce instances of conflict and divergent interpretation that may arise from the continued application of provisions that no longer fully reflect the current legislative orientation.

2-2. The Inadequacy of Executive Decree No. 21-219 in Keeping Pace with the Digital Transformation of Public Procurement

Digital transformation is one of the most prominent features of modern public administration. Digitalization has become an essential tool for improving the quality of public services, enhancing transparency, rationalizing public expenditure, and reducing administrative processing times. This trend has been clearly reflected in the field of public procurement, where many modern legal systems have adopted electronic platforms as the primary means of managing all stages of the public procurement process, from the publication of procurement notices and the submission of bids to contract execution and monitoring.

In Algeria, the move toward the digitalization of public procurement has become a strategic choice driven by the need to modernize public administration, improve the business environment, and strengthen transparency in the management of public funds. This orientation



has materialized through the establishment of the Electronic Public Procurement Portal, which has been legally incorporated into the modern legislative framework as a tool designed to simplify procedures, ensure equal treatment among economic operators, and broaden the scope of competition.⁸

However, Executive Decree No. 21-219 has failed to keep pace with these developments. An examination of its provisions reveals the absence of any substantive regulation concerning digitalization or the integration of electronic means into the execution of public works contracts. The Decree continues to rely almost entirely on the traditional approach based on paper documentation and physical administrative procedures, without establishing a legal framework governing the use of electronic means or defining the legal effects arising from their use.

This omission has resulted in a clear regulatory gap, particularly in light of the growing use of digital technologies within public administration. The absence of precise rules governing the exchange of electronic documents, determining the evidentiary value of digital records, or specifying the methods for authenticating electronically executed operations may give rise to numerous practical challenges during the execution of public procurement contracts.

Furthermore, the failure to incorporate provisions relating to the Electronic Public Procurement Portal into the General Administrative Clauses reduces the effectiveness of the portal and leaves it relatively disconnected from the regulatory framework governing the execution of public contracts. The integration of digitalization with the legal framework is an essential prerequisite for the success of digital transformation, a goal that cannot be achieved while the applicable regulatory texts continue to rely entirely on the traditional paper-based administrative model.

This situation consequently perpetuates numerous practical difficulties associated with the exchange of information and documents between contracting parties. It also prolongs administrative processing times and increases bureaucratic burdens, thereby undermining the objectives pursued by Algeria's digital transformation strategy.

Moreover, the absence of explicit references to digital technologies within Executive Decree No. 21-219 deprives both public authorities and economic operators of fully benefiting from the advantages offered by modern technology, particularly the rapid exchange of information, real-time monitoring of project implementation stages, enhanced transparency, and the reduction of opportunities for manipulation or concealment of information.

Accordingly, the revision of Executive Decree No. 21-219 has become an imperative in light of the ongoing transformation of Algerian public administration. This revision should introduce clear provisions regulating the use of electronic means, digital documents, and electronic procurement platforms in the execution of public procurement contracts, thereby ensuring consistency between the legal framework and the new administrative reality founded upon digitalization and the electronic exchange of information.

It is ultimately evident that the shortcomings of Executive Decree No. 21-219 in keeping pace with digital transformation do not merely constitute a minor technical deficiency; rather, they

⁸ Amrani Mourad & Qarana Adel, "The Legal Framework of the Electronic Public Procurement Portal," Professor-Researcher Journal of Legal and Political Studies, Vol. 6, No. 1, 2021, pp. 663–684.



reflect a genuine need to reconsider and reconstruct certain of its provisions in a manner consistent with the requirements of modern e-government. The success of the digitalization policy in the field of public procurement depends not only on the availability of technical infrastructure, but also on the existence of a comprehensive legal and regulatory framework that clearly defines the rights, obligations, and legal consequences associated with the use of modern technologies throughout the various stages of the public procurement process.

It should also be emphasized that the absence of the generalization of General Administrative Specifications (General Administrative Clauses) to all categories of public procurement contracts is not merely a limited technical or regulatory issue. Rather, it represents a structural problem that affects the coherence of the legal framework governing public procurement in Algeria. Although the legislator adopted the General Administrative Specifications for Public Works through Executive Decree No. 21-219, this approach was not extended to establish similar specifications for other categories of public contracts, such as service, supply, and consultancy (study) contracts. Consequently, a significant disparity has emerged in the level of legal regulation governing public contractual relationships.

As a result, the general administrative rules that are intended to govern all public procurement contracts uniformly have become confined to a single category, while the remaining categories are largely governed by Special Specifications. Although these documents play an important regulatory role, they remain limited in scope and application and often vary from one contracting authority to another. This situation has led to a lack of consistency in the applicable legal rules and to the proliferation of contractual reference frameworks within the same legal system.

From a practical perspective, this regulatory gap undermines the stability of administrative transactions, as the conditions of performance, contractual obligations, and liabilities differ from one contract to another according to the content of the Special Specifications, without the existence of a unified general framework capable of ensuring a minimum level of consistency. Furthermore, the absence of General Administrative Specifications for the remaining categories of public contracts restricts the administration's ability to establish standardized models for implementation and supervision and makes it difficult to develop precise criteria for assessing compliance with contractual obligations.

Accordingly, extending the application of General Administrative Specifications to all categories of public procurement contracts should be regarded as a legal necessity rather than a mere regulatory option. Such an approach would contribute to the unification of the fundamental rules governing administrative contracts, strengthen the principle of legal certainty, and enhance transparency and equal treatment among economic operators. Moreover, it would reduce disparities in administrative practices and limit the broad discretionary powers that may result from excessive reliance on Special Specifications, thereby reinforcing the overall effectiveness and coherence of the legal framework governing public procurement.



3. The Failure of Executive Decree No. 21-219 to Address the Digitalization of Public Procurement Procedures

Despite the importance of Executive Decree No. 21-219 in reorganizing and updating the legal framework governing public procurement, it failed to adequately keep pace with the profound transformations taking place in public administration under the growing trend toward the digitalization of all administrative activities. The Decree contains neither explicit nor implicit provisions addressing the digitalization of public procurement procedures.

This shortcoming is particularly evident in its failure to address the electronic public procurement portal, whether by establishing its legal foundations or regulating the procedures governing its use, despite the fact that the platform had already been officially launched and had entered into practical operation. The portal was initially established under the provisions of Presidential Decree No. 10-236, while its role was strengthened and the scope of its application expanded through Presidential Decree No. 15-247. Subsequently, it was expressly recognized by Law No. 23-12 on Public Procurement.

This omission creates a paradox between the practical implementation of digital procurement on the one hand and the governing legal framework on the other. Such inconsistency may lead to a legislative gap that could negatively affect the harmonization of procurement practices and undermine legal certainty for both contracting authorities and bidders alike.

In this regard, the legislator should have adopted a realistic and gradual approach by providing, even if only by way of guidance rather than mandatory obligation, for the possibility or necessity of accompanying paper-based procurement files with electronic copies during a transitional phase. Such a measure would facilitate the future full implementation of the electronic public procurement portal. Incorporating this approach into the provisions of the Decree would have contributed to promoting a culture of electronic transactions, reducing administrative burdens, strengthening the principles of transparency and equal treatment, and enabling both public administrations and economic operators to adapt progressively to the requirements of digital transformation without imposing immediate obligations that might conflict with the existing technical and institutional realities.⁹

Conclusion:

The discussion presented in this section demonstrates that Executive Decree No. 21-219, approving the General Administrative Specifications applicable to Public Works Contracts, despite its significance as a fundamental regulatory framework governing the implementation phase of public procurement contracts, reveals, in practice, a number of legal and regulatory shortcomings that limit its effectiveness in keeping pace with the modern developments occurring in the field of public procurement.

Firstly, the Decree raises an issue regarding the binding nature of the provisions of the General Administrative Specifications, namely whether such binding force derives from their regulatory character or from the necessity of expressly incorporating them by reference into the contractual

⁹ Faiza Moumeni, *The Electronic Portal and the Digitalization of Public Procurement in Light of Law No. 23-12*, Vol. 13, No. 1, 2026, p. 320.



documents. This ambiguity affects the stability of administrative transactions and the level of legal certainty that should be guaranteed to economic operators. Secondly, the analysis of the Decree highlights deficiencies in effectively and mandatorily integrating environmental considerations into the mechanisms governing the execution of public procurement contracts, despite the growing legislative trend toward promoting sustainable development and environmental protection.

The analysis also reveals that the financial advance payment system, although intended to facilitate the commencement of public projects, gives rise to concerns related to inadequate control and accountability mechanisms during the execution phase. Such shortcomings may undermine the effectiveness of financial oversight and the protection of public funds. Furthermore, the Decree's inability to keep pace with digital transformation is reflected in its continued reliance on the traditional paper-based approach, without establishing a clear legal framework governing the use of electronic means or effectively integrating the electronic public procurement portal into contract implementation.

Accordingly, these shortcomings collectively confirm that Executive Decree No. 21-219, in its current form, no longer fully reflects recent legislative and administrative developments, particularly those introduced by Law No. 23-12. This situation calls for a comprehensive revision and updating of its provisions to ensure consistency between legislative and regulatory texts, enhance the effectiveness of the legal framework governing public procurement, and strike an appropriate balance between the requirements of economic efficiency, the protection of public funds, and the principles of good governance.

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