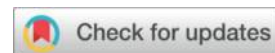




Disputes Regarding the Distribution of Electrical and Gas Energy, and Methods of Settlement in Algerian Legislation



BELFAR CHAOUKI, University of GUELMA(Algeria)

belfar.chaouki@gmail.com

<https://orcid.org/0009-0007-3953-9432>

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Abstract:

The electricity and gas distribution concession contract establishes relationships among multiple parties, including the Ministry responsible for energy, which grants the concession, the contractor holding the concession, and the customers of the service. These relationships may result in multiple disputes that must be resolved through administrative or judicial means.

Regarding administrative methods for settling electricity and gas distribution concession disputes, the law mandates that the concessionaire submit procedures for registering and handling utility user protests to the Electricity and Gas Control Committee for approval.

As for the judicial methods for settling disputes arising from the concession, every harmed utility can resort to the judiciary to claim his right. Here, a distinction can be made between disputes that are subject to the administrative judiciary's jurisdiction and those disputes that are subject to the ordinary judiciary's jurisdiction.

key words: Electricity and gas; Beneficiaries; Concession; Contract.

Introduction:

The implementation of an electricity and gas distribution concession contract gives rise to relationships between several parties, namely the energy regulatory authority, which acts as the grantor of the concession, selecting the concessionaire through an open tender process and awarding the contract to the bidder offering the best proposal⁽¹⁾. Other parties involved include the successful concessionaire, the service consumers, and the concessionaire's employees. These intricate relationships can lead to various disputes that must be resolved through administrative or judicial means.

Administrative courts have jurisdiction over disputes arising between the granting authority of electricity and gas distribution concessions and the concessionaire, as such disputes relate to administrative contracts. Similarly, disputes arising between individuals and the granting authority, concerning the enforcement of regulations governing the public utility, fall within the jurisdiction of administrative courts.

On the other hand, disputes arising between the concessionaire and its customers or third parties, such as contractors in the electricity and gas distribution sector or its employees, fall within the jurisdiction of ordinary courts, as these parties are private law entities .

The importance of having means and mechanisms to settle these disputes is highlighted, especially given the significance of the utility for citizens and economic entities. To protect the rights associated with the electricity and gas distribution concession contract, it is essential to establish administrative settlement procedures for resolving disputes that may arise during its implementation.

This research paper aims to examine the dispute resolution procedures arising from electricity and gas distribution concession contracts. In the first Topic, we will discuss the administrative procedures for resolving these disputes, and then in the second Topic, we will move on to studying the judicial procedures followed in this regard.

The first Topic

The administrative methods for resolving disputes regarding the concession of electricity and gas distribution

It can be said that Administrative dispute resolution is a non-judicial approach used by parties involved in electricity and gas distribution concessions to avoid resorting to the courts. Resorting to the judiciary imposes obligations on both parties, often requiring significant time and effort. Although beneficiaries of electricity and gas services are not direct parties to the concession contract, they have a vested interest in its performance, the law grants them a privileged status to protect their rights in improving the provision of electricity and gas services. Enjoying good service is considered a right for the users of this facility. Therefore, beneficiaries can demand good service in exchange for the fees imposed by the concessionaire⁽²⁾.

The Electricity and Gas Regulatory Commission has issued regulations governing the registration and handling of user complaints⁽³⁾, which are available on its official website. Additionally, affected parties can file online appeals against electricity and gas distribution concessionaires directly through the Commission's website, following the approved appeal procedures⁽⁴⁾.

This administrative appeal process involves several stages. In the first stage, a complaint is filed with the electricity and gas distribution concessionaire. If the user who filed the complaint is not satisfied with the concessionaire's response, they can then file an appeal with the Electricity and Gas Regulatory Commission.

The first requirement: Filing a complaint with the concessionaire

In the case of dissatisfaction among electricity and gas distribution concession beneficiaries, whether they are residential or industrial customers, they have the right to submit their objections to the Electricity and Gas Regulatory Commission. However, before approaching this commission, the beneficiary must file a complaint with the concessionaire. All complaints, regardless of their nature

(technical, commercial, administrative), must first be submitted to the electricity and gas distribution concessionaire. This is in accordance with the complaint handling procedures approved by the Electricity and Gas Regulatory Commission⁽⁵⁾.

The subscriber must first file a complaint, accompanied by all necessary documents, at the regional commercial agency of the concessionaire. If not satisfied with the outcome of the complaint, the subscriber may lodge an appeal with the relevant distribution directorate of the concessionaire. If the subscriber is still not satisfied with the outcome of the appeal, they may then lodge an appeal with the concessionaire, which is Sonelgaz-Distribution⁽⁶⁾.

In all cases, if the complainant does not receive a response from the electricity and gas distribution concessionaire within three months, or if the response received is unsatisfactory, the beneficiary can file a grievance with the Electricity and Gas Regulatory Commission. This grievance must be accompanied by the necessary supporting documents (copies of all correspondence sent to the concessionaire and any responses received, if applicable), in accordance with Article 4 of the regulations Decision CREG D/29-13/CD, 2013.

The second requirement: Filing an appeal with the Regulatory Commission

In certain circumstances, the Electricity and Gas Regulatory Commission may accept complaints and grievances from beneficiaries. If a dispute arises between a beneficiary and the concessionaire regarding specific issues, the beneficiary can turn to the Commission for assistance:

- Failure to ensure compliance with the distribution network or its modification or delay in achieving completion,
- Failure to address a request for relocation of installations or delays in execution.
- Problems related to outages, repairs, billing, or resupply after disconnection due to non-payment.

It is important to note that an appeal to the Electricity and Gas Regulatory Commission is subject to a prerequisite condition: a complaint must first be filed with the concessionaire.

If a beneficiary of electricity and gas distribution services remains dissatisfied after filing a complaint with the concessionaire, they may have additional recourse options, they can, within the regulatory oversight mission of this commission, file an online appeal by filling out the form available on the official website of the Electricity and Gas Regulatory Commission, or they can submit an appeal directly at the commission's headquarters ⁽⁷⁾.

Upon receiving the grievance file, the Electricity and Gas Regulatory Commission examines it to decide on its acceptance and jurisdiction to handle it, within a maximum of three days. Subsequently, the complainant is contacted to be informed of the measures taken regarding their grievance.

If the Regulatory Commission determines that a grievance falls outside its jurisdiction, it will inform the complainant. However, if the grievance is within the Commission's jurisdiction but is not accepted, the Commission will provide specific reasons for its rejection ⁽⁸⁾ .

If the Regulatory Commission accepts a grievance and determines that it falls within its jurisdiction, it will request the concessionaire to provide necessary clarifications. The concessionaire must respond to this request within 15 days.

Upon studying and analyzing the concessionaire's response, the Electricity and Gas Regulatory Commission takes the following actions based on the circumstances ⁽⁹⁾.

First section: If the concessionaire is found to have been at fault in its procedures

If the Electricity and Gas Regulatory Commission finds that the concessionaire has provided sufficient evidence and acted in accordance with the law, it will send an explanatory letter to the complainant containing all the information necessary to understand the issue and the reasons for closing the complaint file. If the concessionaire agrees to rectify the situation, the complainant will be notified by the Commission to close the complaint file. However, if the complainant is not satisfied with the Commission's decision, they have the right to appeal to the administrative court. ⁽¹⁰⁾

Second section: If the Regulatory Commission is not convinced by the arguments presented by the concessionaire

If the concessionaire persists in their unfounded position, the Electricity and Gas Regulatory Commission will issue a decision against them in favor of the complainant. Both parties will be notified of the decision. In all cases, the Commission may convene the parties involved to attempt a mutually agreeable solution if it deems it necessary ⁽¹¹⁾.

If either party is dissatisfied with the decision of the Electricity and Gas Regulatory Commission regarding a grievance, they may appeal the decision to the competent judicial authorities, as per Article 800 of (2008, 08-09 رقم القانون) .

- Establishment of the Detailed General Design to determine the final cost of the facility

The second Topic

Judicial Methods for Settling Disputes in Electricity and Gas Distribution Concessions

If administrative methods fail to resolve disputes arising from electricity and gas distribution concessions, the parties may pursue judicial remedies. In such cases, a distinction must be made between disputes that fall under the jurisdiction of ordinary courts and those related to the electricity and gas distribution service, which are the jurisdiction of administrative courts.

The first requirement: Disputes Subject to the Jurisdiction of Ordinary Courts

Ordinary courts have jurisdiction over disputes in the electricity and gas distribution service that arise between the concessionaire and third parties, including beneficiaries of this service or its employees.

First section: Disputes Arising Between the Concessionaire and Beneficiaries

Disputes between the concessionaire and the beneficiaries of electricity and gas distribution services typically fall under the jurisdiction of ordinary courts. These disputes are governed by private law, rather than public law, as the contracts involved do not involve a public legal entity as a party. Therefore, according to the organic criterion ⁽¹²⁾ Ordinary courts are competent to resolve disputes between the electricity and gas distribution concessionaire and the beneficiaries. Even though the relationship between these parties is directly based on the concession contract, disputes arising from this relationship fall under the jurisdiction of ordinary courts:

- Failure to address a request related to connecting to the distribution network or modifying it.
- Delays in execution.
- Failure to address a request related to relocating installations or delays in its execution.
- Issues related to outages and repairs.
- Issues related to billing.
- Issues related to resuming supply after disconnection due to non-payment.

Second section: Disputes Arising Between the Concessionaire and Third Parties.

Disputes arising between a concessionaire and third parties encompass both those between an electricity and gas distribution concessionaire and its employees, and those concerning claims for damages by third parties adversely affected by the facility's operations.

The relationship between the concessionaire and its employees is governed by private law, and disputes arising from this relationship fall under the jurisdiction of ordinary courts. The employees of the electricity and gas distribution service are considered private sector workers subject to labor law, rather than public employees governed by civil service rules.

Ordinary courts also have jurisdiction over claims seeking compensation for damages caused to third parties by the operation of an electricity and gas distribution facility. In the same context, the concessionaire is required to subscribe to all third-party liability insurance policies with Algerian insurance companies, covering risks related to total or partial loss of the electricity or gas network or damages caused to third parties. However, other risks remain the

responsibility of the concessionaire, and this insurance does not exempt them from liability. The concessionaire is obligated to maintain insurance coverage for all installations and structures of the electricity and gas distribution service. This insurance must cover civil liability for any damages caused to third parties as a result of the service's operations.

The second requirement: Disputes Subject to the Jurisdiction of Administrative Courts

In accordance with Article 800 of the Civil and Administrative Procedure Code, disputes in which the state, a WILAYA , a municipality, or public institutions of an administrative nature are parties fall under the jurisdiction of administrative courts.⁽¹³⁾

First section: Judicial oversight of the work of the Electricity and Gas Regulatory Authority

If the Electricity and Gas Regulatory Commission determines that the concessionaire's arguments are valid, well-founded, and lawful, it will issue an explanatory letter to the complainant. This letter will provide detailed information to help the complainant understand the issue and the reasons for closing the grievance file.

Should the concessionaire agree to rectify the situation, the Electricity and Gas Regulatory Commission will notify the complainant and close the grievance file. However, if the complainant remains dissatisfied with the Commission's decision, they may appeal to an administrative court .

Appealing a dispute to an administrative court depends on meeting certain conditions. If a complainant is dissatisfied with the Electricity and Gas Regulatory Commission's decision, they may file an appeal. Such disputes are generally considered administrative in nature and thus fall under the jurisdiction of administrative courts. The organic criterion and the substantive criterion are two key factors determining whether a dispute qualifies for administrative court jurisdiction.

The administrative judge's jurisdiction to consider disputes that may arise from the decisions issued by the Electricity and Gas Regulatory Commission is established under Article 139. It confirms that, like other independent regulatory bodies, it is an administrative authority ⁽¹⁴⁾, even though the laws establishing it do not explicitly state this.

Pursuant to Article 09 of Organic Law 98-01, the Council of State has exclusive jurisdiction to adjudicate annulment appeals against regulatory or individual decisions issued by central administrative authorities, national public bodies, and professional organizations.

It's important to note that the law exhaustively lists the entities whose decisions can be appealed to the Council of State. Consequently, the Electricity and Gas Regulatory Commission and other independent administrative authorities can be considered as falling within the category of national public bodies⁽¹⁵⁾ .

Additionally, Article 137 of Law 02-01 explicitly states that the decisions of the Arbitration Chamber formed within the Electricity and Gas Regulatory Commission are final and not subject to appeal, stating:

"Decisions of the Arbitration Chamber are not subject to appeal and, as such, are enforceable."

This leads to the conclusion that the Electricity and Gas Regulatory Commission, despite no explicit provision in the 2002 Electricity and Gas Law stating it as an administrative authority, can be considered one based on the tasks assigned to it, which generally fall under the executive authority, and the judicial authority competent to hear disputes arising from its decisions.

Second section: Disputes that arise between the granting authority of the concession and the concessionaire

It is acknowledged that disputes arising from the electricity and gas distribution franchise contract fundamentally belong to full jurisdiction, where administrative courts have the authority over lawsuits filed by one of the parties to the administrative contract, whenever the dispute is connected to the contract's execution. This includes claims for compensation or requests to halt certain actions that violate contractual obligations, as well as lawsuits aiming to terminate the electricity and gas distribution franchise contract.

1- Compensation Claim:

Such a claim can be filed by one of the parties to the electricity and gas distribution franchise contract to demand compensation for damages caused by the other contracting party. It can also be filed for any other reason that leads to a financial judgment.

2- Lawsuit to Annul Certain Actions of the Granting Authority

This type of lawsuit falls within the full jurisdiction of administrative courts, aiming to address a claim filed by the contractor with the administration, seeking the administrative court to annul the administrative action in which the administration violated its contractual obligations.

3- Lawsuit Related to the Termination of the Franchise Contract

A contractor party to a concession contract for the distribution of electricity and gas may, under certain circumstances, seek the termination of the contract. Such circumstances include force majeure events or a material breach by the granting authority. In these cases, the contractor's claim falls within the jurisdiction of ordinary courts. Similarly, disputes arising from the administrative termination of a concession contract are subject to the jurisdiction of ordinary courts.

The termination of a concession contract for the distribution of electricity and gas, given its public service nature, can occur in two ways:

First, the granting authority may unilaterally terminate the administrative contract based on the principle of adaptability, which governs public services, to end a contract it has entered into, even without any fault or negligence on the part of the contractor.

Second, termination may occur if the contractor breaches one of its contractual obligations after being notified to remedy it.

4- Interpretation Suit

The interpretation suit means that the franchisee submits a request to the judge in order to explain and interpret the hidden meanings of the regulatory conditions contained in the electricity and gas distribution concession contract that are challenged for ambiguity and vagueness⁽¹⁶⁾.

It can be concluded from reading the definition that the interpretation suit is characterized by a set of characteristics, which are:⁽¹⁷⁾

- The interpretation suit is considered a purely judicial suit, regardless of the party that initiated it.

- The interpretation suit is concerned with explaining and interpreting the regulatory conditions of the concession contract.

- Reducing the jurisdiction of the judge, as his work does not go beyond the scope of clarification and explanation requested by the plaintiff related to the ambiguous and vague meanings in the regulatory clauses and giving them the correct and true meaning.

Conclusion:

The implementation of the electricity and gas distribution franchise agreement creates a complex network of relationships and transactions involving multiple parties, including the granting authority, the franchisee, beneficiaries, and employees. These interactions can lead to various disputes that must be resolved through administrative or judicial processes.

To address disputes, the law requires the franchisee to establish procedures for registering and handling beneficiary grievances. These procedures must be approved by the Electricity and Gas Regulatory Commission. The Algerian Electricity and Gas Company - Distribution has submitted and obtained approval for such procedures, which are published on the Commission's website.

Affected parties have the right to lodge appeals directly with the Regulatory Commission through its website, following the approved procedures⁽¹⁸⁾.

There are judicial avenues for addressing electricity and gas concession disputes in Algeria. Any aggrieved party may file a lawsuit, either in administrative or judicial courts, depending on the specific nature of the dispute.

Disputes between subscribers and electricity and gas distribution concessionaires initially fall within the jurisdiction of ordinary courts. However, if a subscriber chooses to appeal a decision of the concessionaire to the Electricity and Gas Regulatory Commission, under specific conditions, and if a party aggrieved by an electricity or gas distribution service provider wishes to seek redress, they may approach this authority⁽¹⁹⁾. In adjudicating these complaints, the Electricity and Gas Regulatory Commission issues administrative decisions to settle the dispute, which are notified to both the concessionaire and the complainant.

In all cases, if either party, the concessionaire or the subscriber, is dissatisfied with the Commission's decision regarding a complaint filed with it, they may refer the dispute to the competent judicial authority, which in this case is the administrative court. This is because the appeal is against an administrative decision issued by the regulatory commission ⁽²⁰⁾. Such appeals are filed with the Algiers Administrative Court of Appeal, given that the Electricity and Gas Regulatory Commission is a central administrative authority.

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- (2) - Article 91 Décret exécutif n° 10-95 du 17 Mars 2010. Fixant les règles économiques pour les droits de raccordement aux réseaux et autres actions nécessaires pour satisfaire les demandes d'alimentation des clients en électricité et gaz.
- (3)- Décision CREG N° D/29-13/CD du 31 décembre 2013 fixant la procédure de traitement des recours des consommateurs auprès de la CREG.
- (4)- <https://creg.dz/consommateurs/faire-un-recours/> ,date de visite 24/11/2022.
- (5)- Article 4 Décision CREG N° D/29-13/CD,op cit.
- (6)- Belfar Chaouki, Fnides Ahmed " Guarantees For Beneficiaries Of The Electricity And Gas Distribution Facility Under The Concession Contract " Journal of Science and Knowledge Horizons, Issue 01, Part 13, Year 2022,P 275 .
- (7)- <https://creg.dz/consommateurs/formulaire-de-recours/> date de visite le 22/11/2022.
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- (11)- Article 7/3 Décision CREG N° D/29-13/CD ,op cit.
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- (19)- Article 2 Décision CREG N° D/29-13/CD ,op cit.
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