

Direct Payment in the Subcontracting Contract: A Guarantee of the Subcontractor's Rights and Protection from the Risks of Work Suspension

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ABSTRACT:

The contractual relationship is originally based on the principle of independence between contracts, including the subcontracting agreement between the contracting authority and the main contractor, who in turn contracts with the subcontractor to perform part of the work covered by the main contract. Based on this principle, the obligation to pay the subcontractor's dues lies with the main contractor, since they are the party directly bound by contract.

However, direct payment is a legal mechanism or guarantee that allows the contracting authority to pay the subcontractor directly, without passing through the main contractor. The main objective is to protect the subcontractor from the risks of non-payment by the main contractor, particularly in cases of bankruptcy or delay, and to ensure the continuous progress of the project without interruption.

Keywords: Direct payment; Subcontractor; Contracting authority; Subcontracting; Main contractor.

INTRODUCTION:

Subcontracting is a highly important legal and economic technique, as the main contractor resorts to it to assign part of the agreed works or services in a public contract to another specialized person called the subcontractor. The aim of this assignment is to benefit from the subcontractor's technical and specialized expertise, in order to ensure the rapid and efficient completion of the project particularly in large public contracts.

With the growing reliance on subcontracting, the need arose to provide legal and financial protection for the subcontractor, who often finds themselves in a vulnerable position and exposed to the risk of not receiving their financial dues from the main contractor, especially in the event of the latter's insolvency or bankruptcy.

This protection was recognized for the first time in Algeria with the issuance of Presidential Decree (02/250) on the regulation of public procurement, which established a direct link between

the contracting authority and the subcontractor by granting the latter the right to claim payment directly from the contracting authority for services performed under the subcontract, with the aim of protecting them from non-payment risks. However, this decree did not provide any definition of this right, nor specify the conditions or procedures required for its application.

In light of the shortcomings observed during the implementation of this decree, the subcontractor was exposed to economic risks and lengthy administrative procedures when seeking payment for the obligations performed, particularly in cases where the main contractor went bankrupt or ceased activity. The bankruptcy of the latter could negatively affect the subcontractor. To address these deficiencies, Decree No. (10/236) was issued, which granted the subcontractor the right to claim their dues directly from the contracting authority. This right is expressly stated in paragraph (3) of Article (109) of the same decree, which established the principle of direct payment ¹.

Furthermore, Presidential Decree No. (15/247) on the regulation of public procurement and public service delegations ², dated March 28, 2011, also relates to the modalities of direct payment to the secondary contractor ³.

Given the widespread use of subcontracting, the diversity of its forms, and the variety of works it covers alongside the specific risks faced by subcontractors in collecting their payments this protection has imposed itself as a necessary legal mechanism. It also justifies the selection of this topic for research, with the aim of identifying the legal framework governing this protection, addressing the legal issues it raises, and keeping pace with the rapid developments in the field of subcontracting activities.

Accordingly, the central research question posed is as follows:

What is the legal framework governing the mechanism of direct payment to the subcontractor, and what guarantees and procedures does it entail to protect their rights in relation to both the main contractor and the contracting authority?

To answer this main question, the research paper is divided into two main sections:

- **Section One:** The concept of direct payment to the subcontractor and its legal basis.
- **Section Two:** The legal effects arising from the implementation of the direct payment mechanism.

SECTION ONE: The Concept of Direct Payment to the Subcontractor and Its Legal Basis

In order to strengthen the legal protection of the subcontractor against the risks and difficulties he faces due to the non-payment of his financial dues, and with the aim of regulating subcontracting and maintaining its ability to perform the contracted works under the subcontracting agreement at the highest level, a special rule has emerged, adopted by most legislations including Algerian law and comparative legislations which is the recognition of direct payment as a mechanism to protect the subcontractor and help him overcome potential financial difficulties and bring them to an end.

The study of direct payment requires examining the mechanism of direct payment itself and clarifying the conditions for its validity.

First Requirement: Definition of Direct Payment

The mechanism of direct payment is based on the idea that the contracting authority bears the burden of paying the subcontractor directly. As its name suggests, it is a procedure established by a legislative provision, since it constitutes an exception to the principle of the relative effect of contracts. It allows the subcontractor to claim payment directly from the contracting authority for the financial dues owed to him by the main contractor, in return for the obligations he has fulfilled under the subcontracting agreement.

When examining the position of the Algerian legislator regarding direct payment in subcontracting contracts, it is observed that the legislator addressed this issue within the provisions related to public contracts. Paragraph 2 of Article 143 of the Presidential Decree regulating public contracts and public service delegations states that: “The approved subcontractor, under the aforementioned conditions, shall receive his dues directly from the contracting authority.”

In addition, reference to this direct payment mechanism is made in the Ministerial Order dated March 28, 2011, which concerns the modalities of direct payment to the secondary contractor. Article 02 of that order stipulates that: “When the services to be performed by the secondary contractor and their maximum amounts are specified in the contract, the latter may receive his dues directly from the contracting authority.”

Furthermore, the Algerian legislator defined payment to the subcontractor in general in Article 78 of the General Administrative Clauses Applicable to Public Works Contracts, which states: “The system of payment to the subcontractor refers to all the conditions and modalities that establish the subcontractor’s right to payment, whether from the contractor holding the public works contract or within the framework of the regulatory mechanisms for direct payment to the subcontractor, when such a mode of settlement is approved by the contracting authority.”⁴

As for the French legislator, he was the one who first introduced the system of direct payment and made it a means to protect the subcontractor, later developing it further. It was explicitly established by Decree No. 53/504 dated May 11, 1953, published in the Official Journal on May 12, 1953, under Article 14⁵.

The French legislator reaffirmed this right through Decree No. 37/329 dated March 14, 1973, published in the Official Journal on March 23, 1973⁶. These provisions were later incorporated into the Public Procurement Code before its amendment under Articles 167 and 344. However, direct payment remained an exception to the principle of personal performance of the contract by the main contractor and was subject to several strict conditions that limited its broad application. Consequently, subcontractors in dealings with public authorities continued to face considerable risks, having few means to secure their transactions. Moreover, since public administrations dealt only with the main contractors, subcontractors who were not paid directly could not commit to their share of the contract, depriving them of an effective source of financing. Finally, the subcontractor was deprived of guarantees in cases where the main contractor defaulted⁷, particularly in situations of bankruptcy or cessation of activity, which negatively affected the subcontractor and prevented him from obtaining his financial dues⁸.

In response to these risks, the French legislator intervened through Law No. 75/1334, amended and supplemented⁹, granting the mechanism of direct payment to the subcontractor. Article 6 of that law explicitly provides for it¹⁰. The same is reaffirmed by Article L2193-11 of Ordinance No. 2018/1074 dated November 26, 2018, concerning the French Public Procurement Code¹¹.

From the aforementioned provisions, it becomes evident that the Algerian legislator aligns with the French legislator in establishing a direct relationship between the contracting authority and the subcontractor despite the absence of a contract between them, by granting the subcontractor who contributed to the execution of part of the administrative contract the mechanism of direct payment.

It is also noteworthy that the French legislator did not merely provide for direct payment but elevated it to the level of mandatory provisions that cannot be derogated from or waived in advance in a subcontracting agreement. This highlights the French legislator's concern for the subcontractor whose acceptance and payment conditions were approved by the contracting authority.

Accordingly, Article L2193-12 of the same ordinance stipulates that: "Direct payment is mandatory even if the main contractor is under judicial liquidation, receivership, or preventive proceedings."¹²

Similarly, Article 7 of Law No. 75/1334 provides that: "Any waiver of direct payment shall be deemed null and void."¹³

Moreover, Article 15 of the same law¹⁴ nullifies all "clauses, conditions, or arrangements contrary to the provisions of this law."

The rationale behind these provisions is to prevent the parties to the main contract from excluding or limiting this right, even if the main contractor is under judicial receivership or liquidation. The legislator's intent was to encourage subcontractors to enter into subcontracting agreements by granting them sufficient and effective protection through the mechanism of direct payment, which cannot be excluded or limited. Any agreement to the contrary is considered absolutely null and void.

This principle has been confirmed by French jurisprudence, which held in a judgment dated April 19, 2017, that compliance with the direct payment procedure by the subcontractor is mandatory¹⁵. Similarly, the French Council of State concluded that if the terms of the subcontract regarding the scope or value of the subcontracted work are not modified, neither the contracting authority nor the main contractor may, by means of a special amending agreement, reduce the subcontractor's right to direct payment in consideration of the circumstances under which the subcontracted work was performed¹⁶.

In confirmation of this well-established trend, the Paris Administrative Court of Appeal, in a decision dated March 27, 2017, ruled in a dispute between Daufin Construction Métallique (an approved subcontractor entitled to direct payment) and the Mixed Economy Company for the Development of Eastern Paris (SEMAEST), which had reduced the amount of work subject to direct payment to Daufin Construction under a special agreement between SEMAEST and the main contractor Bacotra¹⁷.

Based on the above, the consistent criterion adopted by French administrative courts is founded on the mandatory nature of the subcontractor's right to direct payment. It is a public policy rule, and neither the main contractor nor the contracting authority may, through any agreement, alter or limit the subcontractor's right to direct payment under the pretext of adjusting to the circumstances under which the subcontracted services were performed.

Unlike the French legislator, the Algerian legislator did not explicitly address this issue despite its importance. However, it can be inferred from Article 3 of the Ministerial Order relating to the modalities of direct payment to the subcontractor that direct payment is a public policy rule. Thus, the parties may not agree to contravene it, whether by clause or agreement that limits, reduces, or exempts the contracting authority from it, since it is a guarantee granted by an exceptional legislative provision. Any such agreement is ineffective and does not affect the subcontractor's rights.

Accordingly, direct payment is a legal mechanism or a procedure established by law through which the subcontractor may claim his financial dues directly from the contracting authority for the works he has performed under the subcontracting agreement. It is of public order, meaning it cannot be waived or restricted, and any agreement to the contrary is absolutely null and void ¹⁸.

In other words, it is a legal mechanism intended to secure the subcontractor's financial dues by transferring him from a limited contractual relationship with the main contractor to a direct payment relationship with the contracting authority.

To ensure this mechanism provides effective protection to the subcontractor, the legislator did not make it absolute but instead subjected it to specific conditions and requirements that must be met; otherwise, it will not be accepted.

Second Requirement: Conditions Required for Direct Payment

For the subcontractor to benefit from the mechanism of direct payment, several conditions must be met; the absence of any of them prevents the subcontractor from benefiting from it. These include obtaining the contracting authority's approval of the subcontractor and the adoption of direct payment terms.

The Algerian legislator, similar to the French legislator ¹⁹, set out the conditions for direct payment in Article 143 of Presidential Decree No. 15/247 and in Article 78 of the General Administrative Clauses for Public Works Contracts. From these provisions, it is clear that the main contractor wishing to conclude a subcontract must obtain the contracting authority's prior written approval of the subcontractor and the acceptance of the subcontractor's direct payment conditions. Both requirements are fundamental for the subcontractor to receive his financial dues directly from the contracting authority.

First: Approval of the Subcontractor

The approval and acceptance of the subcontractor by the contracting authority constitute a fundamental condition for the main contractor to engage in subcontracting and for the subcontractor to benefit from the mechanism of direct payment. The subcontractor must obtain the mandatory and written approval of the contracting authority to be paid directly by it for the services rendered under the subcontract. This requirement is clear from the abovementioned legal provisions.

The French legislator, in Law No. 75-1334 of December 31, 1975, on subcontracting, affirmed the same principle. Under this law, a subcontractor who has been approved and whose payment terms have been accepted by the contracting authority is paid directly for the portion of the contract he has performed when the subcontract's value equals or exceeds €600 including tax ²⁰. The same principle was reaffirmed by the Public Procurement Code ²¹, which also added

that direct payment applies to public service contracts, public works contracts, and public supply contracts involving installation or service provision especially those awarded by the defense services, including prototype manufacturing, assembly, testing, repair, maintenance, and intellectual services.

However, direct payment to subcontractors applies only when the value of the subcontract is equal to or greater than 10% of the total value of the main contract.

Second: Declaration of the Subcontractor

The main contractor (the contracting party) must declare the existence of the subcontractor to the contracting authority either at the time of concluding the public contract or during its execution.

Third: Acceptance of Direct Payment

For the financial settlement of the subcontractor to occur enabling him to receive payment directly from the contracting authority the following conditions must be met:

- The approval of the subcontractor by the contracting authority.
- The declaration of the subcontractor.
- The adoption by the contracting authority of the payment terms applicable to the subcontractor.

The Algerian legislator stipulated this acceptance requirement in Article 143(2) of Presidential Decree No. 15/247, which provides: “The choice of the subcontractor and the payment conditions related thereto by the contracting party must be approved by the contracting authority in advance and in writing.”

The adoption of payment terms by the contracting authority is therefore no less important than the approval of the subcontractor itself.

This acceptance requirement enables the contracting authority to verify the extent to which the financial rights and obligations of the main contractor under the original contract are reflected in the subcontract, such as the right to price revision, loans, commissions, installments, and advance payments for work actually performed.

The purpose of the contracting authority’s acceptance of the direct payment conditions included in the subcontract is to ensure compatibility between the terms of the main contract and those of the subcontract. In other words, acceptance of the payment condition serves as a means of control for the contracting authority, allowing it to verify whether the relationship between the main contractor and the subcontractor is balanced ²². It thus guarantees fairness and equilibrium between both parties.

The right of the contracting authority to approve the direct payment terms is linked to its right to access the subcontract itself. This right is confirmed by Article 143(3) of Presidential Decree No. 15/247, which obliges the main contractor to provide the contracting authority with a copy of the subcontract for review ²³. This provision corresponds to Article 1.41(2) of the General Administrative Clauses for Public Works Contracts ²⁴.

In France, this right is explicitly enshrined in Article 3 of the Law on Subcontracting (December 31, 1975) and in Article 3.6.1.2 of the General Administrative Clauses for Public Works Contracts, which obliges the main contractor to comply with any request by the contracting authority to review the subcontract. Unlike Algerian law, however, the French legislator does not impose this obligation automatically it applies only upon the contracting authority's request ²⁵.

Furthermore, French law requires the main contractor to comply with such a request within fifteen (15) days from the date it is made; otherwise, he faces financial penalties in the form of a daily fine for delay, as stipulated in Article 3.6.3 of the Order of March 30, 2021, approving the General Administrative Clauses for Public ICT Contracts ²⁶.

The approval of the subcontractor and the acceptance of payment terms by the contracting authority are thus essential for the subcontractor's right to direct payment. Acceptance of direct payment serves as a protective mechanism for the subcontractor, guaranteeing his right to collect payment directly from the contracting authority for the work performed. This is explicitly stated in Article 1.78 of the General Administrative Clauses for Public Works Contracts: "The adoption of the subcontractor's payment terms, whether by the contractor holding the contract or within the framework of direct payment, constitutes a binding obligation on any contracting authority to ensure the effectiveness of public procurement and the protection of the subcontractor's right to payment."

Furthermore, approval of the subcontractor serves as a protective measure for the contracting authority, allowing it to ensure the quality of execution of the main contract by assessing the subcontractor's professional, technical, and financial capacities as demonstrated in the request for approval.

However, a question arises: must both approval of the subcontractor and acceptance of direct payment terms by the contracting authority be fulfilled simultaneously?

Upon reviewing the legal provisions, it is clear that only the subcontractor who has been both approved and whose payment terms have been accepted by the contracting authority may benefit from direct payment for the subcontracted works performed. Conversely, a subcontractor cannot claim direct payment for works executed before the contracting authority's approval and acceptance. This is stipulated in Article 143(2) of Presidential Decree No. 15/247, corresponding to Article L2193-11 of Decree No. 2018/1074 of November 26, 2018, on the French Public Procurement Code.

As a result, if either of these two conditions or both are not met (for instance, if approval is granted but acceptance is not), the subcontractor loses the right to direct payment for the works performed.

In line with this, French jurisprudence has consistently required the presence of both conditions (approval and acceptance). The French Council of State, in a decision dated May 6, 1988, ruled that a subcontractor who does not fulfill the direct payment condition cannot claim direct payment from the contracting authority. In that case, the request by the subcontractor company Vanesse for direct payment from the contracting authority (Municipality of Hérin) was rejected because Vanesse had not been submitted for approval by the main contractor (Société Nationale de Constructions Industrielles) which held the original contract for the construction of a kindergarten ²⁷.

In conclusion, both the approval and acceptance conditions must be met together, as they are interdependent ²⁸. Therefore, the subcontractor who has been approved and whose payment terms have been accepted is entitled to direct payment for the portion of the contract he has executed even in the event of the termination of the subcontract. This rule applies in favor of the subcontractor for all work performed prior to termination ²⁹.

Fourth: Limits of Subcontracting

The law generally sets a maximum percentage that the value of subcontracting may not exceed relative to the total amount of the main contract. The Algerian legislator, in the Public Procurement Law and the Ministerial Order on the modalities of direct payment to subcontractors ³⁰, explicitly established this limitation in Article 2, which sets out the following key conditions:

1. The subcontractor benefits from the financial protection of the direct payment system only if the subcontracted works and their maximum amounts are specified in the public contract.
2. The direct payment mechanism does not apply to all public contracts. It is limited to subcontracts whose value does not exceed 40% of the total contract value when the subcontractor is national, and 30% when the subcontractor is foreign. Therefore, if the value of the subcontract exceeds 40% (or 30%), the subcontractor loses the right to direct payment.
3. The direct payment terms must be included in the tender specifications, as confirmed by Article 95 of Decree No. 15/275, which stipulates that the conditions for subcontracting and its approval must be part of the mandatory data included in the request for tenders.

Third Requirement: Procedural Steps for Obtaining Direct Payment

We have previously concluded that the subcontractor benefits from the right to direct payment once the above-mentioned conditions are met. If we accept the necessity of these conditions, what procedures must be followed for the subcontractor to obtain acceptance of the direct payment clause? Who is responsible for submitting the request to accept direct payment? To whom is this request addressed? And when should the request be submitted?

To answer these questions, we will address the party that initiates the request for acceptance, the authority competent to grant acceptance, and the deadline for submitting the request.

First: The person responsible for submitting the direct payment request

The General Administrative Clauses applicable to Public Works Contracts regulates the procedures for submitting the request to accept the subcontractor's direct payment terms in Article 5.78, which states: "Within the framework of direct payment to the subcontractor by the contracting authority, the concerned subcontractor must submit: a request for approval of direct payment ..." ³¹. The Ministerial Order dated March 28, 2011 concerning the modalities of direct payment likewise provides in Article 3 that the obligation to initiate the request to accept the direct payment terms lies with the subcontractor, since he is contractually linked with the main contractor and is also responsible for performing the subcontract.

The Algerian legislator acted properly by allowing the subcontractor to submit the direct payment request, as the latter has a vested interest in concluding the subcontract. Moreover,

had the obligation to submit the acceptance been assigned to the main contractor, the latter might have acted abusively, for example by deliberately delaying the submission.

Second: The person competent to accept the direct payment terms

Article 5.78 of the General Administrative Clauses applicable to Public Works Contracts states: "... the concerned subcontractor must submit: a request for approval of direct payment to the contractor holding the contract, against acknowledgement of receipt...". Article 3 of the aforementioned Ministerial Order likewise provides: "The secondary contractor must submit to the holder of the contract a request for approval of direct payment against a receipt."

From these provisions, we observe that the Algerian legislator has identified the person competent and responsible for accepting the direct payment terms—namely, the main contractor, to whom the subcontractor must address the request for acceptance of direct payment.

Upon receiving the request, the main contractor examines and reviews it to verify its conformity with the works to be performed by the subcontractor, approves it, and prepares a statement of account which he forwards to the contracting authority. He must expressly state his position on this request full approval, partial approval, or reasoned refusal within 20 days from the date of receipt of the direct payment request ³².

If this period lapses without the main contractor expressly stating his position approval or reasoned refusal the Algerian legislator imposes a sanction on the main contractor: silence is deemed implicit approval. This is provided in Article 4 of the Ministerial Order: if the main contractor does not expressly respond by approval or reasoned refusal within the 20-day legal period from the date of receipt, this constitutes implicit approval of the request ³³. The same is confirmed by Article 6.78 of the General Administrative Clauses applicable to Public Works Contracts ³⁴.

This approach is also confirmed by legislation³⁵ and French jurisprudence, which consider that the main contractor's silence failing to approve or refuse the direct payment request within fifteen (15) days from the date of receipt constitutes implicit acceptance ³⁶. They further consider that a refusal expressed by the main contractor after the 15-day period cannot constitute a reasonable refusal, and the contracting authority cannot base its rejection of the amounts claimed by the subcontractor on the main contractor's objection formulated after the expiry of the aforementioned fifteen (15) days, since silence in this case amounts to implicit acceptance ³⁷.

Accordingly, the Algerian legislator similar to French legislation and jurisprudence considers that a main contractor who fails to express refusal or acceptance within the legally prescribed period has implicitly and definitively accepted the request, and the subcontractor then has the right to receive payment directly from the contracting authority for the works performed.

Note that the main contractor must justify any decision of refusal, objection, or reservations ³⁸, and the grounds must be technical (e.g., poor execution, substandard performance, or the subcontractor's inability to complete all assigned works) or financial (e.g., disagreement over the valuation of the work performed). When the subcontract price is determined on the basis of a schedule of rates and the contract value is thus not fixed, reference is made to the principles

established by the contracting authority for valuing works the value without which no contract can be concluded so the notional (work or obligation) value must be taken into account. In such cases, an expert may be engaged to estimate the value of the work ³⁹.

When the main contractor gives full or partial approval of the direct payment terms, he must notify the contracting authority thereof ⁴⁰, sending a copy of his approval together with the statement of account for the subcontractor indicating the value of the works performed under the subcontract and the invoices sent to him by the subcontractor. He keeps a copy in his records, then signs the original invoice and sends it to the contracting authority, confirming the works performed by the subcontractor ⁴¹, attaching the subcontractor's invoice evidencing the works performed by the main contractor himself ⁴², along with a payment order for the amount specified in these documents. The contracting authority then deducts this amount from the sums due to the main contractor ⁴³. The contracting authority has the right to verify the accuracy of the data contained in the subcontractor's invoice, and thus pays the dues of the approved subcontractor whose payment terms have been accepted.

Accordingly, the contracting authority must pay the amounts due directly to the approved subcontractor whose payment terms have been accepted once it is notified by the main contractor that he has lawfully received the direct payment request and approved it, expressly or implicitly, within the 30-day period set out in Article 122 of Presidential Decree No. 15-247. The contracting authority's obligation to disburse installments to the subcontractor runs from the date of receipt of the main contractor's acceptance or refusal of the direct payment request, or from the expiry of 20 days without any response from the main contractor ⁴⁴.

If the contracting authority fails to respect the legal time limit for paying the subcontractor directly 30 days from the main contractor's explicit or implicit approval the subcontractor is entitled to late-payment interest ⁴⁵, which mitigates and compensates for the damages caused by late payment by the contracting authority beyond the prescribed date ⁴⁶.

In addition to the above-mentioned obligation on the subcontractor to submit the direct payment request to the main contractor, the Algerian legislator also obliges the subcontractor to send to the contracting authority the same direct payment request submitted to the main contractor, accompanied by the interim payment or final account settlement, the supporting invoices and statements proving the value of the services performed by him, together with the acknowledgement of receipt or the postal notice showing that the envelope was refused or not claimed, proving that the main contractor actually received the request for approval of direct payment ⁴⁷.

For its part, upon receiving the direct payment request and the invoices/statements, the contracting authority must inform the main contractor without delay, by sending him copies of these invoices and statements ⁴⁸. Although the main contractor may already have been notified of the invoices, the purpose of re-sending them by the contracting authority may be confirmatory in nature ⁴⁹.

Therefore, a direct request addressed only to the contracting authority cannot be accepted without proof that the main contractor had been notified beforehand ⁵⁰. Likewise, any direct payment request not simultaneously addressed to the contracting authority, or without supporting documents, is inadmissible ⁵¹.

If the subcontractor fails to send a copy of the direct payment request to the contracting authority, accompanied by the supporting invoices and the acknowledgement of receipt proving submission to the main contractor within twenty (20) days, even though he did submit the request to the main contractor who then refrained from granting approval or giving a reasoned refusal the subcontractor forfeits his right to obtain payment directly from the contracting authority for the sums arising from performance of the subcontract, once the contracting authority has paid the full amount to the main contractor; in such a case, the contracting authority is not considered to have committed any fault.

Thus, the approved subcontractor whose payment terms have been accepted is deprived of the benefit of direct payment if the contracting authority is not informed in due time of the direct payment request. The subcontractor must therefore ensure compliance with the required procedures to be able to claim direct payment for his services.

It is worth noting that the Algerian legislator did not address the time limit for submitting the request to accept direct payment to the subcontractor; it addressed only the time limit for the request for approval. However, since acceptance of direct payment proceeds in parallel with approval of the subcontractor, the request to accept direct payment should likewise be submitted either at bid submission or during performance of the main contract.

Accordingly, if the request for acceptance is submitted at bid submission, it is presumed that the subcontract has not yet been signed by the two parties (the subcontractor and the main contractor). In this case, acceptance of direct payment is provided within the main contract itself, on condition that the subcontract subsequently includes the terms specified by law.

If, however, the request for acceptance is submitted during performance of the main contract, it follows the same procedures applicable to approval of the subcontractor, provided the request is issued by the main contractor himself.

Third: The authority competent to make the direct payment

From reading Presidential Decree 15/275 and the Ministerial Order on the modalities of direct payment to the subcontractor, it appears that the authority responsible for direct payment is the contracting authority, which pays directly the approved subcontractor whose payment terms have been accepted, for the works performed under the subcontract. The value paid directly by the contracting authority to the subcontractor is deducted from the sums due to the main contractor, and may not exceed those sums.

The French legislator⁵² agrees with the Algerian legislator in assigning responsibility for payment for the services performed by the approved subcontractor whose payment terms have been accepted to the contracting authority. This was affirmed by French jurisprudence in a Council of State decision dated September 18, 2019, which held: “The obligation to pay for the services performed by the approved subcontractor whose payment terms have been accepted lies with the contracting authority. In the event of a dispute over the amounts due, the subcontractor may bring before the administrative judge if the main contract is administrative an action for direct payment, the purpose of which is to obtain the sums he considers due to him”⁵³.

Section Two: The Legal Effects Resulting from Direct Payment

The mechanism of direct payment entails several legal consequences arising from the tripartite relationship between the subcontractor, the main contractor, and the contracting authority. These consequences are explained in detail as follows:

First Requirement: The Direct Relationship between the Subcontractor and the Contracting Authority

As a general rule in public works contracts, the subcontractor has no direct legal relationship with the contracting authority, since he is not bound by any contract with it. The relationship between the two is mediated by the main contractor.

According to this principle, the subcontractor was prohibited from receiving any financial payment directly from the contracting authority; instead, he had to turn to the main contractor to collect his dues for the work performed under the subcontract.

In reality, this general principle remained in effect until the year 2000, specifically before the issuance of Presidential Decree No. 02/252 regulating public procurement ⁵⁴. Upon the promulgation of this decree, a direct procedural channel was established between the contracting authority and the subcontractor for the purpose of financial payment. Since then, the approved subcontractor, whose payment terms have been accepted, has been granted the right to claim his financial dues directly from the contracting authority, after obtaining the approval of the main contractor.

Therefore, the aforementioned decree was the first Algerian regulation to establish a direct legal relationship between the subcontractor and the contracting authority.

This right was later confirmed by subsequent legal texts, most recently by Executive Decree No. 21/219, which approved the General Administrative Clauses Applicable to Public Works Contracts. Article 78 of that decree explicitly provides: “The system of payment to the subcontractor refers to all the conditions and procedures that establish the subcontractor’s right to payment, whether by the contractor holding the public works contract or within the framework of the regulatory mechanisms for direct payment to the subcontractor, when this type of settlement is approved by the contracting authority.”

Accordingly, by granting the subcontractor the right to direct payment, the law has created a direct legal relationship between the subcontractor and the contracting authority—a relationship based on legal provisions rather than contractual terms. It is, therefore, a legal relationship limited solely to the payment of financial dues, and it does not in any way constitute a contractual relationship.

Moreover, the main purpose of direct payment is to discharge the contracting authority’s obligation toward the main contractor by the amount paid to the subcontractor. When the contracting authority pays the subcontractor directly, that amount is considered as having been paid on behalf of the main contractor and deducted from the latter’s total dues.

Second Requirement: The Relationship between the Subcontractor and the Main Contractor

The direct payment mechanism leads to a modification in the financial liability of the main contractor (the contracting party) toward both the subcontractor and the contracting authority.

The main contractor's obligation to pay the subcontractor's remuneration is extinguished to the extent of the amount paid by the contracting authority directly to the subcontractor. The sum paid directly to the subcontractor is deducted from the total dues owed by the contracting authority to the main contractor.

However, despite the system of direct payment, the main contractor remains solely responsible before the contracting authority for the execution of the public contract and for all acts committed by the subcontractor. His liability and contractual obligations are not discharged by direct payment, particularly concerning warranty and liability for defects.

This principle was explicitly affirmed by the Algerian legislator in Article 141 of Presidential Decree No. 15/247, regulating public procurement and public service delegations, which states:

“The contracting party remains solely responsible before the contracting authority for the execution of the portion of the contract that has been subcontracted.”

In the same context, Article 41 of the General Administrative Clauses applicable to Public Works Contracts provides: “Subcontracting’ means the process through which the contractor either individually or within a temporary consortium of enterprises entrusts, under a subcontract and under his full responsibility, part of the performance of the contract...”

This liability results from the principle of personal performance of the contract, which continues to govern the relationship between the contracting authority and the main contractor. Authorized subcontracting does not substitute the subcontractor for the main contractor⁵⁵ and does not create any contractual relationship between the subcontractor and the contracting authority. The contractual relationship remains exclusively between the latter and the main contractor, derived from the public contract.⁵⁶

Consequently, the main contractor remains liable toward the contracting authority for any acts of omission or negligence committed by the subcontractor in the performance of the subcontract such as non-performance, delay, defective execution, financial insolvency, or technical failure given the absence of any contractual link between the subcontractor and the contracting authority on the one hand, and the fact that the main contract is executed under his supervision on the other⁵⁷.

Furthermore, the main contractor alone has the right to claim the entitlements arising from the main public works contract, even for the works executed by the subcontractor⁵⁸.

This principle has also been affirmed by both law and French jurisprudence, which confirmed the continuing personal liability of the main contractor toward the contracting authority in cases of authorized subcontracting even for the portion of the works carried out by the subcontractor⁵⁹.

As a result, neither the administration nor the main contractor may invoke the terms of the subcontract to evade their respective obligations. Authorized subcontracting produces no effect on their mutual relationship unless otherwise provided by law. The main contractor's liability toward the contracting authority remains, even if not expressly stated in the contract, unless there exists a specific contractual clause providing otherwise⁶⁰.

Third Requirement: Priority of the Subcontractor over the Main Contractor's Creditors

Under Algerian legislation, as previously explained, Presidential Decree No. 15/247 on public procurement grants the subcontractor the right to claim payment directly from the contracting authority for the work performed under the subcontract.

The Algerian legislator has limited the right of direct payment exclusively to the subcontractor, to the exclusion of all other creditors of the main contractor. This system effectively establishes a form of legal privilege in favor of the subcontractor, granting him priority in recovering his financial dues over all other creditors whether preferential or ordinary of the main contractor.

However, this privilege does not extend to the entire financial estate of the main contractor; it is limited to a specific debt, namely the amount corresponding to the value of the works performed by the approved subcontractor whose direct payment terms have been accepted under the subcontract agreement.

Furthermore, the privilege granted to the subcontractor arises only in respect of a non-transferable debt, meaning that the receivable in question has not been previously pledged or assigned to another party ⁶¹.

Since Law No. 15/247 requires the approval of the contracting authority and its acceptance of the direct payment terms as a prerequisite for the subcontractor to benefit from direct payment, the fulfillment of these conditions effectively results in the transfer of a portion of the main contractor's receivables to the subcontractor but only to the extent of the subcontracted portion.

Consequently, the receivables owed to the main contractor by the contracting authority become non-transferable up to the amount of the subcontractor's claim, which must not exceed 40% of the total contract value. This rule is confirmed by the Ministerial Order of March 28, 2011, in its Article 2 ⁶², which obliges the main contractor not to pledge or assign the portion of his receivables corresponding to the subcontracted works that do not exceed 40%.

Accordingly, the Algerian legislator provides protection to the approved subcontractor whose direct payment terms have been accepted, as provided in Article 145(11) of Presidential Decree No. 15/247, concerning payment for the works he has executed.

To reinforce this protection, Article 2.83 of Executive Decree No. 21/219, approving the General Administrative Clauses for Public Works Contracts, explicitly stipulates: "The contractor holding a public works contract may not pledge or assign receivables related to the portion of the contract subject to subcontracting for which the subcontractor benefits from the right of direct payment."

If the main contractor nevertheless pledges the receivables due to him from the contracting authority including the portion corresponding to the subcontracted works such a pledge, even if made before financial institutions or the Public Procurement Guarantee Fund for financing the main contract ⁶³, does not grant the pledgee priority over the subcontractor. This is because the Algerian legislator grants the subcontractor a privileged right over all the main contractor's creditors.

If the main contract is pledged in its entirety, including the subcontracted portion, the main contractor must reduce the scope of the pledge to cover only the part of the works he performs personally. The subcontracted works are excluded from the pledge whenever the approval and acceptance of direct payment precede the pledge of the main contract ⁶⁴.

Conversely, if the main contract has been wholly pledged before the contracting authority's acceptance of direct payment, the authority cannot authorize direct payment to the subcontractor or reduce the value of the pledged debt by the value of the subcontracted works. In this case, the subcontractor loses the right to benefit from the direct payment system ⁶⁵.

Similarly, if the main contractor pledges the entire main contract before entering into a subcontract, he cannot subsequently subcontract a portion of a pledged contract. This principle is expressly established in Article 2.83 of Executive Decree No. 21/219 approving the General Administrative Clauses for Public Works Contracts.

The stance adopted by the Algerian legislator has had a tangible effect, as it organizes the relationships among all parties involved in subcontracting, establishes essential procedural requirements such as approval and acceptance, prohibits the pledge or assignment of the main contract, and ensures that the subcontractor enjoys a preferential right over all the main contractor's creditors whether preferential or ordinary for the recovery of his dues.

When the main contractor engages several subcontractors to execute parts of the main contract, all such subcontractors enjoy a privilege over the main contractor's receivables, within the limits of the value of the works each has performed.

However, the question arises: how should disputes be resolved in cases of competition between multiple subcontractors holding preferential rights?

A segment of French doctrine considers that the claims of subcontractors are independent of one another and proposes priority based on the date of filing that is, the subcontractor who brings his claim first enjoys precedence over the others ⁶⁶.

In contrast, French jurisprudence has adopted a different approach, placing all subcontractors who have entered into agreements with the main contractor on equal footing and distributing the main contractor's receivable among them proportionally, according to the size of each claim. Thus, no subcontractor is granted priority over others, as there is no specific legal provision contrary to the general principles of civil law ⁶⁷.

From the foregoing, it is evident that the direct payment system grants the subcontractor a preferential right over the sums due to him for the works performed under the subcontract. All subcontractors who have been approved by the contracting authority and whose direct payment terms have been accepted share this privilege equally, and the main contractor's receivables are distributed among them pro rata, according to the value of their respective claims.

A specific question arises regarding the authority competent to resolve the dispute that may arise during the implementation of direct payment.

Judicial jurisdiction varies according to the judicial system in force. In Algeria, a dual judicial system is applied, where there is ordinary justice competent to hear disputes arising between individuals, and administrative justice competent to hear disputes in which the State, the wilaya, the municipality, or one of the public institutions of an administrative nature is a party.

In the case of a subcontract executed within a public works contract, three distinct relationships exist between the contracting authority, the main contractor, and the subcontractor. This structure makes it difficult to determine jurisdiction for disputes arising among these parties. The difficulty stems from the fact that the main contract between the contracting authority and the

main contractor is an administrative contract, whereas the subcontract between the main contractor and the subcontractor is a civil contract governed by private law.

Accordingly, disputes and claims arising between the subcontractor and the main contractor fall within the jurisdiction of the ordinary courts, as they pertain to the performance of the subcontract, which is governed by civil law. Whether the dispute involves the execution of the subcontract or liability claims initiated by third parties, the relationship between the main contractor and his subcontractors always falls within the competence of the ordinary judiciary⁶⁸.

Conversely, disputes concerning the main public works contract, where the contracting authority is a public legal entity or a publicly authorized body engaged in executing a project financed by public funds, fall under the competence of the administrative judiciary⁶⁹. Therefore, jurisdiction depends on the nature of the parties involved, an approach known as the organic criterion for determining judicial competence.

However, the issue that arises concerns disputes between the contracting authority and the approved subcontractor, whose payment terms have been accepted, resulting from the direct payment mechanism, which establishes a direct legal relationship between the two.

Referring to French jurisprudence, it appears that disputes arising from direct payment mechanisms granted to subcontractors when all legal conditions are met fall within the jurisdiction of the administrative courts, provided that the main contract between the contracting authority and the main contractor is an administrative contract.

The Administrative Court of France has ruled that it is competent to hear cases filed by subcontractors in public works contracts seeking direct payment from the contracting authority for the work they have performed⁷⁰. It also ruled that the obligation to pay for the services provided by an approved subcontractor whose payment terms have been accepted rests with the contracting authority. In case of dispute over the amount due, the subcontractor may file a direct payment claim before the administrative judge, not to pursue tort liability, but to obtain the amounts he deems owed to him⁷¹.

This position was also adopted by the French Court of Cassation in its judgment of May 14, 1984, which held that disputes involving the financial claims of subcontractors for work performed under public contracts, as well as for compensation for damages arising during the execution of their portion of the contract, fall within the jurisdiction of the administrative courts⁷².

The Administrative Court of Lyon reached the same conclusion, ruling that: "Disputes relating to direct payment to the subcontractor by the contracting authority for the price of works concern the execution of the public works contract and therefore fall within administrative jurisdiction."

⁷³

Based on these rulings, it is clear that disputes between subcontractors and contracting authorities arising from the direct payment mechanism fall exclusively under administrative jurisdiction. The administrative courts retain competence over all matters relating to financial claims of approved subcontractors whose payment terms have been accepted, concerning the execution of a portion of the main public contract. The determining factor for administrative jurisdiction, therefore, lies in the nature of the main contract, which must be administrative in character.

CONCLUSION:

Through our study of the topic Direct Payment in the Subcontracting Contract: A Guarantee for the Subcontractor's Rights and Protection from the Risks of Work Suspension, we reached a set of findings summarized as follows:

1. Direct payment is an exceptional procedure that allows the subcontractor to receive their financial dues directly from the contracting authority instead of being paid by the main contractor.
2. Direct payment is a mechanism that strengthens and reinforces the protection of the subcontractor against the risks of non-payment, by anticipating circumstances that may prevent the subcontractor from receiving their dues such as the bankruptcy or cessation of the main contractor's activity which may lead the subcontractor to suspend the execution of the assigned works, as they would be unable to pay their workers or suppliers. Accordingly, the legal framework of direct payment is built on incentive mechanisms designed to encourage subcontractors to conclude subcontracting agreements in accordance with the applicable rules and regulations.
3. Direct payment transfers the right of claim from the main contractor to the subcontractor, but only within the limits of the amount agreed upon between the subcontractor and the main contractor and within the limits of the main contractor's dues with the contracting authority.
4. The amount due to the subcontractor through the direct payment mechanism is deducted from the total amount owed to the main contractor.
5. The direct payment mechanism is a strong guarantee activated based on specific legal conditions and procedures set by public procurement laws. These include the contracting authority's approval of the subcontract and its payment terms, the stipulation that the amount to be paid by the contracting authority must be specified in the contract or its annexed documents, and the obligation of the subcontractor to submit a direct payment request accompanied by documents such as invoices, work statements, and receipts of delivery, among others.
6. The direct payment mechanism protects the subcontractor's rights and shields them from the risks of delay, abuse, or bankruptcy of the main contractor, thereby ensuring that they receive their payment.
7. The direct payment mechanism contributes to encouraging small and medium-sized enterprises, as subcontractors, to participate in executing large-scale projects, thereby supporting economic specialization and accelerating the completion of public contracts with high efficiency and quality.
8. The direct payment mechanism represents a balance point between the requirements of executing major projects and the need to secure the rights of all parties involved in the contractual process.

FOOTNOTES:

¹ Article 109/3 of Presidential Decree No. 10-236 dated October 7, 2010, regulating public procurement (Official Gazette No. 58, issued on October 7, 2010) stipulates that: "When the services to be performed by the subcontractor

are provided for in the contract, the latter may receive his payments directly from the contracting authority. The methods for implementing this paragraph shall be determined by an order of the Minister in charge of Finance.”

² See Article 143 of Presidential Decree No. 15/247 dated September 16, 2015, on the regulation of public procurement and public service concessions (Official Gazette No. 50, issued on September 20, 2015).

³ Ministerial Order dated March 28, 2011, concerning the procedures for direct payment to the subcontractor (Official Gazette No. 24, issued on April 20, 2011).

⁴ Executive Decree No. 21/219 dated May 20, 2021, approving the General Administrative Clauses applicable to public works contracts.

⁵ Jeqn-Pierre Bqbnndo, *La sous-traitance dans la construction, marchés publics, marchés privés*, 2005, p. 565.

⁶ Bertrand Sgblier, Joseph-Emmanuel Caro, and Séverin Abbattucci, *Subcontracting in Construction, Law of December 31, 1975: Analysis and Comments. Practice of Subcontracting Contracts. Sample Letters and Standard Forms*, Le Moniteur Éditions (7th edition), p. 98.

⁷ Jeqn-Pierre Bqbnndo, *op. cit.*, p. 565.

⁸ Walid Farouk Jumaa, *Protection of the Subcontractor within the Framework of Public Works Contracts*, PhD Thesis in Law, Faculty of Law, Ain Shams University, Egypt, 2000, p. 300.

⁹ Law No. 75-1334 of December 31, 1975 on Subcontracting.

¹⁰ 10. Article 6, Law No. 75-1334 of December 31, 1975 on Subcontracting, as amended by Ordinance No. 2018-1074 of November 26, 2018 – legislative part of the Public Procurement Code, JORF No. 0281 of December 5, 2018, Article 12: “The direct subcontractor of the market holder who has been accepted and whose payment conditions have been approved by the contracting authority shall be paid directly by it for the part of the contract for which he is responsible.

However, the provisions of the preceding paragraph shall not apply when the amount of the subcontract is less than a threshold set at 600 euros for all the contracts covered by this title; this threshold may be raised by decree of the Council of State depending on economic conditions. Below this threshold, the provisions of Title III of this law shall apply.

This payment is mandatory even if the main contractor is in liquidation, under judicial settlement, or under temporary suspension of proceedings.

A subcontractor who entrusts part of the contract to another subcontractor must provide him with a guarantee or payment delegation under the conditions defined in Article 14.”

¹¹ Article L2193-11, created by Ordinance No. 2018-1074 of November 26, 2018 – art.: “The direct subcontractor of the holder of the contract, who has been accepted and whose payment terms have been approved by the purchaser, shall be paid directly by the latter for the part of the contract he executes. Any waiver of direct payment shall be deemed null and void.”

¹² Article L2193-12, created by Ordinance No. 2018-1074 of November 26, 2018 – art.: “Direct payment is mandatory even if the holder of the contract is subject to judicial liquidation, judicial reorganization, or safeguard proceedings.”

¹³ Article 7, Law No. 75-1334 of December 31, 1975 on Subcontracting, consolidated version as of April 5, 2020: “Any waiver of direct payment shall be deemed null and void.”

¹⁴ Article 15, Law No. 75-1334 of December 31, 1975 on Subcontracting, consolidated version as of April 5, 2020: “Any clauses, stipulations, or arrangements that have the effect of circumventing the provisions of this law shall be null and void, whatever their form.”

¹⁵ Me Jean-Philippe Meschin, *Le sous-traitant et les sujétions imprévues*, [online] <http://www.dmt-avocats.fr/le-sous-traitant-les-sujetions-imprevues.html>, consulted at 19:45 on 01/02/2019.

¹⁶ Council of State, 7th – 2nd joined chambers, Friday, January 27, 2017, No. 397311. <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000033936366>

¹⁷ Council of State, 5th chamber, Monday, March 27, 2017, No. 394664, unpublished in the Lebon collection.

¹⁸ Bertqnd Sgblier, Joseph-Emmanuel Caro, and Séverin Abbattucci, *op. cit.*, p. 116.

¹⁹ Article 6, Law No. 75-1334 of December 31, 1975 on Subcontracting, as amended by Ordinance No. 2018-1074 of November 26, 2018 – art. 12; Article 3, Law No. 75-1334 of December 31, 1975 on Subcontracting; Article 5, amended by Law No. 2001-1168 of December 11, 2001 – art. 7, JORF December 12, 2001.

²⁰ Article 6, Law No. 75-1334 of December 31, 1975 on Subcontracting, as amended by Ordinance No. 2018-1074 of November 26, 2018 – art. 12, consolidated version as of April 5, 2020.

²¹ Article 115-1 and following of the French Public Procurement Code (repealed on April 1, 2016), amended by Decree No. 2011-1000 of August 25, 2011 – art. 29: repealed by Ordinance No. 2015-899 of July 23, 2015 relating to public procurement, JORF No. 0169 of July 24, 2015, p. 12602, art. 102.

Article 135 of Decree No. 2016-360 of March 25, 2016 on public procurement, JORF No. 0074 of March 27, 2016, text No. 28: “I. – When the amount of the subcontract is equal to or greater than 600 euros (including VAT), the subcontractor, who has been accepted and whose payment terms have been approved by the buyer, is paid directly for the part of the public contract that he performs.”

²² Nasser Sayed Ahmed Mohamed Hilal, *The Legal Nature of the Relationship Between the Administrative Authority and the Subcontractor in Administrative Contracts*, PhD Thesis in Law, Faculty of Law, Ain Shams University, Egypt, 2018, p. 326.

²³ See Article 143/3 of Presidential Decree No. 15/247 on the regulation of public procurement and public service concessions, mentioned above.

²⁴ See Article 1.41 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts, mentioned above.

²⁵ Article 3 of Law No. 75-1334 of December 31, 1975 on Subcontracting. Article 3.6.1.2 of the Order of March 30, 2021 approving the General Administrative Clauses for Public Works Contracts.

²⁶ Article 3.6.3 of the Order of March 30, 2021 approving the General Administrative Clauses for Public Procurement Contracts in Information and Communication Technologies, JORF No. 0078 of April 1, 2021.

²⁷ Council of State, 5th/3rd SSR Section, May 6, 1988, No. 51316, 68168.

²⁸ See Council of State Decision, 2nd/6th SSR Section, June 13, 1986, No. 56350, mentioned in the tables of the Lebon collection.

Instruction No. 10-027-M0 of November 2, 2010 on Subcontracting – NOR: BCR Z 10 00081 J: p.19, consulted at 18:45 on 19/06/2020.

<http://www.marche-public.fr/Marches-publics/Textes/Instructions/Instruction-10-027-M0-dgfp-sous-traitance.pdf>

²⁹ Council of State, 7th/10th SSR Section, Monday, October 11, 1999, No. 189580.

<https://beta.legifrance.gouv.fr/ceta/id/CETATEXT000037851697>

³⁰ See Article 2 of the Ministerial Order dated March 28, 2011, concerning the procedures for direct payment to the subcontractor, mentioned above.

³¹ Article 5.78 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts.

³² Article 3 of the Ministerial Order concerning the procedures for direct payment to the subcontractor, mentioned above, stipulates that: “The main contractor has twenty (20) days from the date of receipt acknowledgment to give full or partial approval, or to issue a reasoned refusal of direct payment to the subcontractor.”

Corresponding to:

Article 8, Law No. 75-1334 of December 31, 1975 on Subcontracting, consolidated version as of April 5, 2020: “The main contractor has a period of fifteen days, counted from the receipt of the supporting documents serving as the basis for direct payment, to endorse them with his acceptance or to notify the subcontractor of his reasoned refusal of acceptance...”

³³ See Article 4 of the Ministerial Order concerning the procedures for direct payment to the subcontractor, mentioned above.

³⁴ See Article 6.78 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts.

³⁵ Article 8, Law No. 75-1334 of December 31, 1975 on Subcontracting.

³⁶ Council of State, 7th – 2nd joined chambers, Wednesday, April 19, 2017, No. 396174.

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000034445499>

³⁷ Council of State, 7th and 2nd joined sub-sections, Monday, February 21, 2011, No. 318364.

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000023632350/>

³⁸ Article 4 of the Ministerial Order concerning the procedures for direct payment to the subcontractor, mentioned above, stipulates that: “If the main contractor refuses direct payment to the subcontractor, he must provide justification for such refusal...”

³⁹ Nasser Sayed Ahmed Mohamed Hilal, *op. cit.*, p. 361.

⁴⁰ Article 3 of the Ministerial Order concerning the procedures for direct payment to the subcontractor, mentioned above.

⁴¹ Nasser Sayed Ahmed Mohamed Hilal, *op. cit.*, p. 363.

⁴² Walid Farouk Jumaa, *op. cit.*, p. 347.

⁴³ Nasser Sayed Ahmed Mohamed Hilal, *op. cit.*, p. 358.

⁴⁴ Article 3/4 of the Ministerial Order concerning the procedures for direct payment to the subcontractor, mentioned above, and Articles 8.78 and 1.8.78 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts.

⁴⁵ *Bâtiment Actualité* No. 6, Dossier, March 21, 2006: “Subcontracting and Illegal Work in the Construction Industry — What Does the Law Say? The Construction Charter,” www.travail-solidarite.gouv.fr/IMG/pdf/, consulted at 14:30 on 07/06/2018, pp. 20–21.

⁴⁶ Elie Massoud Khattar, *Subcontracting in Administrative Disputes*, 1st edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2015, p. 275.

⁴⁷ Article 3 of the Ministerial Order concerning the procedures for direct payment to the subcontractor, mentioned above, and Article 5.78 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts.

⁴⁸ Article 3/3 of the Ministerial Order dated March 28, 2011, concerning the procedures for direct payment to the subcontractor, mentioned above, and Article 7.78 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts.

⁴⁹ Elie Massoud Khattar, *op. cit.*, p. 263.

⁵⁰ Council of State, 7th – 2nd joined chambers, Wednesday, April 19, 2017, No. 396174.

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000034445499>

⁵¹ CAA de Versailles, 5th Chamber, Judgment of Wednesday, June 1, 2011, No. 09VE01379, unpublished in the Lebon collection.

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000024225914/>

⁵² Article 6 of the Law amended by Ordinance No. 2018-1074 of November 26, 2018 – art. 12.

⁵³ Council of State, 7th – 2nd joined chambers, Wednesday, September 18, 2019, No. 425716.

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000039112469/>

⁵⁴ Presidential Decree No. 02/252 regulating public procurement, dated July 24, 2002, Official Gazette No. 52, issued on July 28, 2002.

⁵⁵ Kanaan Mohamed Mahmoud Al-Mufarriji, *Personal Consideration in the Administrative Contract: A Comparative Study*, 1st edition, University Thought House, Alexandria, Egypt, 2014, p. 132.

⁵⁶ Ahmed Mohamed Hazzah, *Subcontracting and the Rules Governing It*, Reading and Knowledge Journal, Issue No. 134, Ain Shams University, Faculty of Education, Egyptian Association for Reading and Knowledge, Egypt, December 2012, pp. 163–172, p. 164.

⁵⁷ Kanaan Mohamed Mahmoud Al-Mufarriji, *op. cit.*, p. 132.

⁵⁸ Article 1 of Law No. 75-1334 of December 31, 1975 on Subcontracting, amended by Ordinance No. 2010-1307 of October 28, 2010 – art. 7.

Article L2193-3 created by Ordinance No. 2018-1074 of November 26, 2018 – art.: “The holder of a contract may, under his own responsibility, subcontract part of the services of his contract under the conditions laid down in this chapter.”

⁵⁹ Ziad Al-Arsan and Ammar Al-Turkawi, *op. cit.*, p. 63.

⁶⁰ Abdel-Alim Moshref, *The Concept of Personal Consideration in Administrative Contracts (A Comparative Study)*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2003, p. 127.

⁶¹ Article 02 of the Ministerial Order dated March 28, 2011, concerning the procedures for direct payment to the subcontractor, mentioned above.

⁶² See Article 02 of the same Order.

⁶³ Article 145 of Presidential Decree No. 15/247 on public procurement and public service concessions, mentioned above, corresponds to Article 1.80 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts.

⁶⁴ Article 2 of the Ministerial Order concerning the procedures for payment to the subcontractor, mentioned above.

⁶⁵ Article 5.83 of Executive Decree No. 21/219 approving the General Administrative Clauses applicable to public works contracts.

⁶⁶ Walid Farouk Jumaa, *op. cit.*, p. 165.

⁶⁷ *Ibid.*, p. 165.

⁶⁸ See Fouzia Sakran, op. cit., p. 198; Abdelaziz Abdel Moneim Khalifa, *The General Principles of Administrative Contracts in Light of Tenders and Auctions and Their Implementing Regulation*, Dar Mahmoud, Cairo, Egypt, 2015, p. 140.

⁶⁹ See Article 800 of Law No. 22/13 dated July 12, 2022 (Official Gazette No. 48, issued on July 17, 2022), amending and supplementing Law No. 08/09 dated February 25, 2008, on the Code of Civil and Administrative Procedure.

⁷⁰ Council of State, 1st/4th SSR Section, Wednesday, March 17, 1982, No. 23440.

<https://www.legifrance.gouv.fr/ceta/id>

⁷¹ Council of State, 7th – 2nd joined chambers, Judgment of Wednesday, September 18, 2019, No. 4257, mentioned in the tables of the Lebon collection. <https://www.legifrance.gouv.fr/>

⁷² Tribunal of Conflicts, Judgment of Monday, May 14, 1984, No. 02313.

<https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007605250/>

⁷³ CAA de Lyon, 1st Chamber, Thursday, September 17, 1998, No. 96LY02545.

<https://www.legifrance.gouv.fr>