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The Public Water Services in France: Between Public and Private Management[2]

Abstract

Since the early 2000s, France has witnessed a marked shift towards the remunicipalisation of public water services. The model of private management is currently undergoing a period of crisis, as public sentiment strongly favours the reappropriation of these essential services by local authorities. This study sets out to identify the historical context of public water services management in France. It offers a number of explanations for the observed reversion to public management, chief among them being the growing demand for transparency within public services and the desire to take account a social dimension in the management of public services, particularly in light of the formal acknowledgement of access to water as a fundamental human right. The movement towards the remunicipalisation of public water services is propelled by a vigorous social demand, reflecting the citizenry's aspiration to participate more effectively in the governance of water. It signals, moreover, the emergence of a civic counterbalance to both State authority and private sector interests.

Keywords: local authorities, management, public participation, remunicipalisation, right to water, public water service, water price

As water constitutes a vital resource, it ought not to be subordinated to the imperatives of the market. In France, this principle was given renewed prominence in the findings of a parliamentary committee of enquiry, which, on 15 July 2021, issued its report on the private control of water resources and the attendant consequences[3]. Set against the backdrop of climate change and increasing water scarcity, the report examines the predominant role of private operators in the management

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of water supply and sewerage services. It records that 61% of the population is presently served by private operators. Of the 12,096 public water supply services existing in France, 30.6% are managed by a private operator, accounting for the provision of water to approximately 57.3% of the French population[4].

In addition, of the 14,355 collective wastewater services, 22.9% are under private management, serving an estimated 61.4% of the population[5]. The report underscores that water services administered by local authorities—who bear statutory responsibility for such services—are generally more effective, both in terms of quality and cost. Nevertheless, private management remains predominant[6]. The report further warns that some companies could "abuse their dominant position to favour companies in their group"[7]. Furthermore, according to the report, "private interests may clash with the objectives of collective management of water resources and distribution if the State does not guarantee clear, transparent and fair rules of the game"[8]. In a broader reflection, the parliamentary committee of enquiry advocates a re-examination of the role of the public authorities in the regulation of private activities, , urging the redefinition of water as a common good[9], thereby positing a conceptual alternative to the traditional dichotomy of public and private ownership.

The governance of public water supply and sewerage services are managed now lies at the nexus of a multitude of political, financial, environmental and legal concerns. In an era marked by increasing decentralisation and successive environmental and financial crises, locally elected representatives are impelled to determine a mode of management that ensures an efficient and high-quality service, for which they bear both oversight and accountability.

The management of water services sits at the confluence of a number of fundamental issues concerning the pricing of services, access thereto, the quality of provision, and the transparency of water management. The European Union has, over time, developed an extensive body of rules on water supply and sewerage management. In particular, it has recognised that water supply constitutes a service of general economic interest within the meaning of Articles 14 and 106(2) of the Treaty on the Functioning of the European Union (TFEU), thereby acknowledging that, at the discretion of the Member States, such activity may be subject, in

4 | Ibid. 22.
5 | Ibid.
6 | Regarding the overseas territories, in 2023, in terms of drinking water, more than 70% of the population was supplied by a service managed by a private operator. See Cour des comptes 2025, 55.
7 | Assemblée Nationale 2021, 222.
8 | Ibid. 25.
9 | In order to take into account the results of the parliamentary investigation, two legislative proposals were registered in the National Assembly on October 19, 2021: one creating a legal status for common goods (n° 4590) and the other relating to the protection of common goods (n° 4576), both having nevertheless been rejected by the Committee on Constitutional Laws, Legislation and General Administration of the Republic. More broadly see, for example, Bories & Boussard (eds.) 2023, 353., See also Perroud (ed.) 2023, 220.

whole or in part, to market forces, or alternatively, may be classified as a matter of general interest and subject to public service obligations. Protocol No. 26 annexed to the TFEU by the Treaty of Lisbon in 2007 underlines the broad discretionary powers vested in national, regional and local authorities to provide, commission and organise these services[10].

In France, water is deemed a local public service insofar as it constitutes an activity either undertaken or assumed by a public entity with a view to satisfying the general interest[11]. The public service is managed either directly by the public authority or by a private party. However, water is "a resource that should not be managed solely according to the imperatives of profitability, because it is in the general interest that this should be the case"[12].

The identification of the contours of the public water service[13] is, in legal terms, relatively intricate. While the public water supply service[14] and the public wastewater treatment service[15] are clearly established, there also exists a public service dedicated to the management of urban rainwater, specifically addressing the handling of rainwater in urbanised zones or planned development areas[16]. Lastly, competence in relation to runoff water represents yet another aspect of this diversified regime[17]. The diversification and fragmentation of water services can sometimes engender challenges of internal coordination, which in turn may give rise to asymmetries of information within the public authority charged with their organisation.

This study is principally concerned with the public water supply service, which gives practical expression to the right of access to clean water intended for human consumption.

Under French law, the public service of water supply[18] is recognised as a local public service and includes "any service providing all or part of the production, transport, storage and distribution of water intended for human consumption is a drinking water service. The production of water intended for human

10 | Art. 1, Protocol n°26 on services of general interest, C 326/1, Official Journal of European Union, 26/10/2012, "the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users (...)".
11 | Chapus (ed.) 2001, 579.
12 | Romi (ed.) 2004, 470.
13 | In English and in the British context, these services are usually referred to as Public Utilities; in France, they are *services publics industriels et commerciaux*.
14 | Art. L. 2224-7 and Art. L. 2224-7-1 the General Code on Local Authorities (in French : Code général des collectivités territoriales).
15 | Art. L. 2224-8, the General Code on Local Authorities.
16 | Art. L. 2226-1, the General Code on Local Authorities.
17 | Art. L. 211-7, the Environmental Code.
18 | The public nature of the drinking water service was enshrined in French domestic law by administrative jurisprudence from the end of the 19th century, Conseil d'État, 27/04/1877, Ville de Poitiers, Rec. p. 385.

consumption includes all or part of the abstraction, protection of the point of abstraction as well as the treatment of the raw water"[19]. This entire chain of activity is presently subject to a series of technical and legal constraints imposed under European Union law, wherein the European legislator has enacted robust standards in terms of water quality protection. The obligation to supply drinking water as set out in Article L. 1321-1 of the French Public Health Code[20] is to be interpreted as a strict obligation of result. This is the interpretation given by the Court of Cassation in its decision of 28 November 2012,[21] which aligns with the jurisprudence of the Court of Justice of the European Union, likewise construing the duty to supply quality drinking water as one requiring the attainment of a defined result[22].

While compliance with European water quality requirements is mandatory, European Union law affords Member States the discretion to determine whether the provision of water services should be effected through public or private means. In France, the public water supply and sewerage services are the responsibility of the local authority, in accordance with the constitutional right to self-government administration of territorial communitie[23]. In accordance with this principle, municipalities[24] and inter-municipal grouping[25] are empowered to select the mode of management they consider most appropriate for the operation of the public water service.[26] They may either assume direct responsibility for the service or delegate its management to a publicly owned local company or a private enterprise[27]. French law allows for the functional separation and differ-

19 | Art. L. 2224-7, the General Code on Local Authorities.

20 | According to this Article, "any person who makes water intended for human consumption available to the public, whether in return for payment or free of charge and in any form whatsoever, including in the form of ice cream, is required to ensure that this water is clean and wholesome".

21 | Cour de cassation, chambre civile, 28/11/2012, Mme Mataillet c/Commune de Saint-Hilaire-de-Lavit, n°11-26.814.

22 | CJEC, 8/03/2001, Commission c/France, aff. C-266/99 ; CJEC, 14/11/2002, Commission c/Irlande, aff. C-316/00 ; CJEC, 31/01/2008, Commission c/France, aff. C-147/07.

23 | Art. 72 of French Constitution.

24 | In the context of our study, the terms "communes" and "municipalities" are used as synonyms. In France, there are now 34955 communes. Many are very small and there have been attempts to encourage mergers in recent years.

25 | Many services are provided by joint organisations between communes (*établissements publics de coopération intercommunale)* which have legal personality.

26 | Since the adoption of the 2014 law, municipal competence for water supply and sewerage has been transferred to the organization between communes called *établissement publics de cooperation intercommunale*, including the metropolitan areas; loi n° n° 2015-991 du 7 août 2015 portant nouvelle organisation territoriale de la République.

27 | The delegating authority concludes a contract with a delegate, which may take the form of a franchise (*affermage)* contract, a concession contract or a *régie.* Under a franchise contract, the contractor has to operate the service with means put at its disposal by the public authority. Under a concession, the contractor has to finance and provide the infrastructure and other equipment. In both cases the contractor is paid out of operational revenue. The *régie* is a contract of transfer of operational management of public service, in which a public person responsible for the service entrusts the management of the service to a third party (public establishment), called a manager,

ential management of the constituent activities of drinking water supply. Thus, it is entirely lawful, for instance, for a municipality to delegate the production of drinking water to a private operator, whilst retaining distribution under public control—typically in the form of a *régie,* a publicly operated entity affiliated with the local public authority[28].

In principle, the French model has historically favoured the delegation[29] of public water services to private operators. The development of private management of water services is mainly driven by economic and technical considerations, particularly the need to mobilise private investment to build water supply networks and to produce and distribute drinking water.

Delegating public water services to a private company also reflected a policy choice to outsource complex technical management, investment financing and operational risk.

However, this model has come under increasing scrutiny in France, with a growing trend to "remunicipalise"[30] the public service. "Remunicipalisation" refers to the reversion to public management of water services previously delegated to a private company. This process entails the re-internalisation of activities once outsourced and has served both to expose the limitations of private water management and to rekindle broader debate concerning the optimal form of governance for public services.

It must be noted that the recent rise of remunicipalisation stands in contrast to a longstanding tradition in France, wherein local authorities consistently preferred private management for water services.

who acts on behalf of the public entity and receives from it a remuneration indexed to the financial results of the service. These public services are managed by local authorities. In this case, the management of the service is fully under the control of the organizing authority, including cases where the authority decides to set up a company with legal personality. The local authority manages the service with its own human, material, and financial resources. The *régies* having the status of a public law corporation under local government control have their own balance sheet, board and executive manager. There are several types of *régie* : simple, financially autonomous, and financially autonomous with legal personality. See more Guglielmi, Koubi & Long (eds.), 2016, 896.

28 | Conseil d'État, 28/06/2006, Syndicat intercommunal alimentation en eau vallée du Gier, n° 288459 ; Cour administrative d'appel de Marseille, 4/06/2018, Association syndicale Libre des propriétaires de la baie du Gaout Benat, n° 17MA00709.

29 | The term "public service delegation" in the general code of local authorities (Art. L.1411-1) has the same meaning and legal scope as that of "concession in the form of a public service delegation", retained by the public procurement code (Art. L. 1121-3) following the transposition of the 2014 European directives. In the context of our study, we will use the term "*public service delegation*", which is still in use in the water sector. A public service delegation is a contract by which a legal entity under public law entrusts the management of a public service for which it is responsible to a public or private delegatee, whose compensation is substantially linked to the results of the operation of the service. The delegatee may be responsible for constructing works or acquiring assets necessary for the service.

30 | Hall, Lobina & Terhorst 2013, 193–214 ; Chiu 2014, 247–262.

1. Private management of public water services, historically favoured by local authorities

France has a long history of devolving public water services to the private sector. From the 19th century onwards, private management of water distribution was favoured and was entrusted to two large private companies, the *Compagnie Générale des Eaux* (founded in 1853) and the *Société Lyonnaise des Eaux et de l'Eclairage* (founded in 1880).

The *Compagnie Générale des Eaux* was formally authorised by imperial decree on 14 December 1853 to manage the public service of drinking water. The company's objectives were as follows: "considering the important services that could be rendered to the embellishment and healthiness of towns, as well as to agriculture and the sanitation of the countryside, by the establishment of a company whose purpose would be to provide for the distribution of water in towns and the irrigation of land, they [the respondents] resolved to carry out this work of public utility"[31]. As Stéphane Duroy aptly observes, "the use of private companies was essential at the time because the immensity of the task required private capital"[32]. In the inter-war period, a notable resurgence of public management took place. This was largely attributable to the financial difficulties encountered by concessionaires and, more fundamentally, to the political and ideological movement known as "municipal socialism"[33]. However, by the end of the 20th century, the majority of French towns had opted for private management[34]. The principal rationale invoked in support of private management lay in the perceived expertise of private undertakings, in particular, their superior technical, technological and financial resources available to them. Private operators, unlike their public counterparts, were credited with greater operational agility and a heightened capacity to respond to unforeseen contingencies.

Whilst improved water governance may be among the stated aims of private operators, their principal motive remains the pursuit of profit. Among the leading multinationals specialising in the water sector are Veolia (formerly *Compagnie Générale des Eaux* and Vivendi) and Suez (formerly GDF-Suez and *Lyonnaise des Eaux*). These French conglomerates, heirs to a legacy of technical expertise

31 | Goubert (ed.) 1986, 117.
32 | Duroy (ed.) 1996, 213.
33 | This was a movement towards the creation of public services by local public bodies, made possible in particular by the adoption of the law of 10 August 1871 on the organisation of the *département* and the municipal law of 5 April 1884. As Professor Jacques Chevallier points out, "the development of municipal socialism led to local authorities taking over the management of a series of local services, as well as more directly economic activities", Chevallier 1997, 9.
34 | Fraysse 2011, 32.

spanning over a century, are responsible for water distribution in a number of cities worldwide, including Shanghai, Hong Kong, Budapest and Dubai[35].

However, the model of private water management in France has come under increasing scrutiny, particularly in the wake of a highly publicised corruption scandal involving the award of a contract to Suez to manage the service in the city of Grenoble.[36] The affair culminated in the criminal liability of the mayor[37], and the contract between Suez and the city of Grenoble was cancelled in 1998[38]. The water service was taken over by the municipality *régie* in a resolution passed on 20 March 2000.

For a long time, the private management of public services represented a fertile ground for corruption. This was due, in part, to the liberal nature of the legal regime then governing such delegations, which, prior to the enactment of legislation in 1993,[39] imposed no formal requirement for competitive tendering. Although the 1993 law introduced mandatory public notice, competitive bidding procedures, and evaluation of tenders for public service delegations. Yet in practice, contracts for the delegation of public water services are awarded to three major private sector companies, Veolia, Suez and SAUR (*Société d'aménagement urbain et rural*), with the former two controlling approximately three-quarters of the sector[40].

The model of private management, long emblematic of the French approach to public water services, is currently in crisis, with a 20% drop in market share in the space of 20 years[41].

The reversion to public management in the water sector began in the 2000s and gathered notable momentum from 2010 onwards, coinciding with the expiry of numerous delegation contracts and triggering a widespread phase of renegotiation. This return to public management has taken place in both small

35 | The professor Nicolas Haupais refers to the turnover of the Suez company for 2008, which is approximately 12,000 million euros, half of which is linked to the water sector, Haupais 2011, 61.

36 | In this case, the mayor of Grenoble, Alain Carignon received 21 million francs for awarding the contract to Suez.

37 | Cour de cassation, chambre criminelle, 27/10/1997, pourvoi n° 96–83.698, Alain Carignon et autres : the mayor of Grenoble was sentenced for complicity in the misuse of corporate assets, concealment of misuse of corporate assets, passive corruption and witness tampering, to 5 years' imprisonment (1 year suspended), with a warrant for his arrest, a fine of 400,000 francs and a 5-year ban on the right to vote and ineligibility.

38 | Tribunal administratif de Grenoble, 7/08/1998, req. n° 962133, 964778, 964779, 964780, 98481, 98482.

39 | Law n° 93-122 of 29 January 1993 on the prevention of corruption and the transparency of economic life and public procedures (known as the Sapin I Act) (Loi n° 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques, dite loi Sapin I). Since this Act, the granting of an unjustified advantage in public contracts and delegations of public services has been punishable by the offence of favouritism. This offence is now set out in Article 432-14 of the Criminal Code.

40 | Cour des comptes 2024, 133.

41 | Assemblée nationale 2021, 169.

towns and large cities such as Amiens, Bordeaux, Strasbourg, Nancy, Nantes, Paris, Grenoble, Tours, Reims, Rennes, and Lyon. This trend is not confined to France, but has likewise manifested in other countries, such as Italy[42], Spain and Germany[43].

The example of the city of Paris remains emblematic of the broader movement from private to public control of water services. During the 2008 municipal elections, the incumbent Socialist mayor, Bertrand Delanoë, pledged to restore public management of the city's water service in the event of his re-election[44]. This electoral promise was duly honoured: with effect from 1 January 2010, the water supply service was placed under public management. It is now managed by the public *régie Eau de Paris* ("Water of Paris"), thereby establishing the first local public water company in France. Water management in Paris was thus remunicipalised after twenty-five years of private management by Suez and Veolia. This transition lends weight to the growing perception that the model of private management is in a state of decline or dysfunction[45].

To comprehend more fully the dynamics underpinning the remunicipalisation movement, one must consider the autonomous discretion exercised by local authorities in selecting among the various available modes of water service management. In this context, the relationship between the right to water and the reassertion of public control becomes a critical axis of analysis.

2. Freedom of choice in the management of public water services

The reversion to public management of water services is facilitated by the principle of freedom of choice accorded to local authorities, which serve as the organising authorities for these services.

Under French law, local authorities and their groupings are not obliged to carry out an in-depth analysis of the advantages and disadvantages of the various methods of managing public services when they create a new service, extend an existing service or contemplate a change in its method of management.

42 | Lucarelli 2015, 198.
43 | Bauer 2015, 723–746; Bauer & Markmann 2016, 281–296.
44 | Le Strat 2011, 119.
45 | Law n° 2010-559 of 28 May 2010 on the development of local public companies, particularly in the field of environmental public services, reinforces this trend (La loi n° 2010-559 du 28 mai 2010 pour le développement des sociétés publiques locales, en particulier dans le domaine des services publics environnementaux, renforce cette tendance, JORF du 29/05/2010).

The scope of the principle of freedom of choice

Administrative jurisprudence has clarified the scope of this principle for local authorities when choosing the method of managing public services, affirming that the discretionary powers conferred upon local authorities preclude the administrative judge from reviewing the expediency of the management option selected by the public authority[46].

Furthermore, the question of whether a public authority may vary the amount of its financial aid it provides based on the management model employed has long been a matter of contention in domestic law. Initially endorsed by the *Conseil d'État*[47] (the Council of State), the highest administrative court in France, such a practice was later explicitly prohibited by legislative intervention. The Law of 30 December 2006[48], introduced a statutory bar—enshrined in Article L. 2224-11-5 of the General Code of Local Authorities—stating that "public aid to municipalities and groups of local authorities responsible for water supply or sewerage cannot be modulated according to the method of management of the service".

This legislative provision was subsequently subjected to a *question prioritaire de constitutionnalité* (priority question of constitutionality)[49], leading the *Conseil constitutionnel* (the Constitutional Council) to declare it unconstitutional. The Court held that "that this prohibition on modulating subsidies according to the method of management of water supply and sewerage services restricts the constitutional right to self-government of the *départements* to such an extent as to infringe Articles 72 and 72-2 of the Constitution"[50]. The principle thus established recognises that adjusting subsidy levels in favour of public *régies* does not prohibit the choice of delegated management, nor does it unduly restrict the freedom of local authorities to determine the governance model for public services. This doctrinal position has since been reaffirmed in consistent case law[51].

The choice of private management governed by law

Under Article L. 1411-1 of the French General Code for Local Authorities, "local authorities, their groupings or their public establishments may entrust the

46 | Conseil d'État, 4/05/1906, Babin : Rec. CE, p. 363 ; Conseil d'État, 28/06/1989, Syndicat du personnel des industries électriques et gazières du centre de Grenoble ; Conseil d'État, 10/01/1992, Association des usagers de l'eau de Peyreleau ; Conseil d'État, 24/11/2010, n° 318342, Association fédérale d'action régionale pour l'environnement.

47 | Conseil d'État, arrêt d'assemblée, 12/12/2003, département des Landes, n° 236442.

48 | Law on water and aquatic environments (Loi n° 2006-1772 du 30 décembre 2006 sur l'eau et les milieux aquatiques, JORF du 31/12/2006).

49 | Conseil d'État, 29/04/2011, département des Landes, n° 347071 (decision to refer the priority constitutionality question to the Constitutional Council).

50 | Conseil constitutionnel, 8/07/2011, n° 2011-146 QPC, département des Landes.

51 | Cour administrative d'appel de Bordeaux (Administrative Court of Appeal of Bordeaux), 3/03/2014, Fédération professionnelle des entreprises de l'eau, n° 12BX02263.

management of a public service for which they are responsible to one or more economic operators under a public service delegation agreement", such agreements being governed by the provisions of the French Public Procurement Code.

As a general principle, the duration of contracts for the delegation of public water services is limited.

Article L. 3114-8 of the French Public Procurement Code specifies that these contracts may not exceed a term of 20 years[52], with the prevailing practice being to conclude them for an average duration of 12 years[53].

The Public Procurement Code[54] and the General Local Authorities Code[55] jointly regulate both the award procedures applicable to public service delegations and, to a lesser degree, the oversight exercised by local authorities in monitoring contractual performance.

The legislative milestone of 1993[56] introduced, for the first time, mandatory requirements for public service delegations to be publicly advertised and subject to competitive tendering. However, the oligopolistic position held by Veolia, particularly since the takeover of Suez in 2021, continues to impede effective competition from new entrants within the French water market.

Private management is frequently driven by the objective of optimising or streamlining management. With the involvement of a private operator, local authorities are relieved of the operational burdens and complexities inherent in managing public sector personnel, including recruitment, replacement of retiring staff, absenteeism. Furthermore, they are exempted from the stringent public procurement rules that govern the acquisition of goods and services. Larger private companies benefit from economies of scale in procurement, enabling them to secure lower prices than might be achieved by a solitary public

52 | Unless the departmental director of public finance, at the initiative of the granting authority, examines the justification for exceeding this period.

53 | Cour des comptes 2024, 60.

54 | Since Order n° 2016-65 of 29 January 2016 and its implementing decree no. 2016-86 of 1 February 2016 transposing Directive 2014/23/EU of 26 February 2014, the rules relating to concession contracts within the meaning of European Union law have been brought together in Part III of the Public Procurement Code. Following the example of European Union law, the latter distinguishes between two main categories of concessions: works concessions and service concessions. Without this difference having any legal impact, the General Code of Local Authorities has retained the term "public service delegation".

55 | Article R. 1411-1 of the of the French General Code for Local Authorities: "the public service delegations of local authorities, their groupings and their public establishments are awarded and executed in accordance with the provisions of the Public Procurement Code". The French General Code for Local Authorities lays down procedural rules for the adoption of public service delegation agreements: opinion of the local public services consultative commission and the public service delegation commission, deliberation by the decision-making body before the contract is signed. In accordance with Article L. 1411-5 of the French General Code for Local Authorities, the public service delegation committee analyses the applications and draws up a list of candidates admitted to submit a bid.

56 | Loi n° 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques, dite loi Sapin 1.

purchaser. The scale of the network to be operated may explain the use of a private management.

In the field of drinking water distribution, for example, "the size of the service and its management method are highly correlated: the larger the size of the service (in terms of number of inhabitants), the higher the proportion of delegated services. The proportion of delegated services is seven times lower than that of public *régies* in the category of services with fewer than 1,000 inhabitants, while it is 1.5 times higher on average in the categories with more than 3,500 inhabitants"[57]. Smaller municipalities often use public contracts to manage their services themselves. What is more, upon the imminent expiration of a public service delegation contract, the elected representatives of a local authority may opt to renew the delegation with a company that has the technical expertise and knowledge of the service to safeguard its uninterrupted operation. This This choice is often driven by considerations of continuity, security, and administrative simplicity. Particularly where a service has long been delegated, internal operational within the local authority tends to be limited, and a pronounced information asymmetry exists between the contracting private entity and the public authority.

For local authorities, exercising full control over the management of their public services entails the ability to alter the contracted operator or delegatee or, indeed, to modify the management method itself. This This requires anticipation and foresight, particularly through contractual provisions incorporated at the outset of the delegation agreement —at which point the local authority typically enjoys a more favourable balance of power in negotiations with the delegatee undertaking. In this respect, it is prudent to provide explicitly for the financial and material consequences of early termination on grounds of public interest within the initial contract.

The delegating authority is vested with the power to unilaterally terminate a delegation agreement in the event of sufficiently serious misconduct on the part of the delegatee or on grounds of public interest[58]. Should the public authority decide to bring the contract to an end prior to its scheduled expiry, the delegatee is entitled to compensation for losses incurred as a result of the premature, cost-free reversion of assets to the public authority, where such assets have not been fully depreciated[59]. In the event of termination on grounds of public interest, the delegatee company is entitled to full compensation for the loss it suffers as a result of the early termination of the contract[60]. This compensation takes into account the

57 | Observatoire des services publics d'eau et d'assainissement (*Observatory of public water and sanitation services*), Panorama des services et de leur performance en 2021, rapport national, publié en 2023, 29.
58 | Art. L. 3136-3 of Public Procurement Code.
59 | Art. L. 3136-10 of Public Procurement Code.
60 | Conseil d'État, 23 mai 1962, Société financière d'exploitation industrielle, n° 41178.

expenses incurred, as well as the loss of earnings for the contractor[61]. Nonetheless, it is open to local authorities to include provisions within the delegation contract that limit liability, for instance, by stipulating partial rather than full compensation for loss of earnings in the event of early termination.

In the water and sanitation sector, Article L. 2224-11-4 of the General Code of Local Authorities,[62] introduced in 2007, requires the delegatee company to transmit to the delegating authority—no later than six months prior to the expiry of the contract—a file comprising subscriber data, meter specifications, and plans of the water supply and wastewater networks. In principle, while the aim of this provision is to facilitate either competitive re-tendering or the assumption of the service by a new operator, the prescribed six-month notice period is widely considered insufficient. With the exception of small local authorities, the choice of new operator must be made at least six months before the expiry of the delegation contract, so that operations and staff can be taken over, necessitating the commencement of competitive procedures no less than a full year in advance. Potential bidders must be granted access to anonymised user data, as well as information on the characteristics of the meters and updated network plans, as soon as the call for tenders is issued. Where a public operator (in régie) is to take over the service, preparatory work may span as long as three years.

For example, the Métropole de Lyon required a full two-year period to prepare for the municipalisation of the water production and distribution service, which came into effect on 1 January 2023.[63] This transition was governed by a detailed contract with Veolia regarding the transmission of data. Although the precision of the contract facilitated the transfer to public ownership, it had to be supplemented by an end-of-contract protocol specifying, in particular, the obligations of the parties with regard to the General Data Protection Regulation (GDPR), Regulation (EU) 2016/679 of 24 May 2016, which came into force during the lifetime of the delegation, along with provisions concerning human resources and user relations[64]. More generally, the French Court of Auditors (*Cour des comptes*) considers that "in order to protect their interests, it is in the interest of local authorities to conclude with the delegatee company, one or two years in advance, a memorandum of understanding aimed at securing the proper operation of the public service until the end of the delegation and the transmission of the information necessary

61 | Conseil d'État, 18/11/1988, Ville d'Amiens et Société d'exploitation du parc de stationnement de la gare routière d'Amiens, n° 61871.

62 | Art. L. 2224-11-4 of the General Code of Local Authorities states that "the subscriber file, comprising personal data for billing water and wastewater services, together with the characteristics of the meters and updated network plans, shall be submitted by the operator to the delegating authority at least six months before the end of the contract".

63 | After almost 40 years of delegated private management, the Lyon Metropolitan Area has opted for public management of its water supply service from 1 January 2023. See more on the following website https://www.eaudugrandlyon.com/.

64 | Cour des comptes 2024, 123.

for the continuity of the service"[65]. In addition, to incentivise proper contractual performance throughout the term of the agreement, delegation contracts ought to incorporate penalty clauses and provisions for formal notice, thereby reinforcing the legal position of both the authority and the users of the public service.

3. The links between the human right to water and the return to public management of water services.

It is in response to the increasing scarcity and progressive privatisation of water resources that the law has, at times, acknowledged the status of water as a *res communis,* a common good[66], and at others, enshrined a fundamental right of access thereto. The resurgence of public management of water services thus contributes to the realisation of this paradigmatic shift.

Since 1992, the French legislator has formally recognised that "water is part of the nation's common heritage". At the European Union level, the Water Framework Directive of 23 October 2000[67] specifies in its opening recital that "water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such".

The European Parliament, in its resolution of 15 March 2012, advances this position further by stating that "water is a shared resource of humankind and, therefore, should not be a source of illegitimate profit and that access to water should constitute a fundamental and universal right"[68]. This resolution takes note in particular of the resolution of the United Nations General Assembly of 28 July 2010 which recognises the fundamental right to safe and clean drinking water[69].

Domestically, since 2006, the French legislature has recognised that "the use of water belongs to all and every natural person, for their food and hygiene, has the right to access drinking water under conditions economically acceptable to all".

65 | Ibid.

66 | Mention can be made of the publication on 29 May 2018 of an opinion piece in the newspaper *Le Monde* by fifty lawyers, economists and researchers calling for a constitutional revision aimed at introducing "the common good" as a limit on the right to property and entrepreneurial freedom. The Article, entitled in French "Bien commun : Une réforme sage et mesurée de notre Constitution est devenue une urgence" (and English : Common good: A wise and measured reform of our Constitution has become a matter of urgency), was signed by Mireille Delmas-Marty and Thomas Piketty, among others.

67 | Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Official Journal L 327, 22/12/2000, 1–73.

68 | European Parliament resolution of 15 March 2012 on the 6th World Water Forum taking place in Marseille on 12–17 March 2012 (2012/2552(RSP)), P7_TA(2012)0091, Official Journal of the European Union, CE 251/102, 31/08/2013.

69 | UN General Assembly resolution 64/292 of 28 July 2010 on the human right to water and sanitation.

The legal scope of the right to water as affirmed by this provision has been criticised by legal doctrine. In this respect, Professor Bernard Drobenko specifies that "the recurrent assertion of access to drinking water and sanitation services reinforces an approach that is essentially economic and consumerist. This is the path chosen by the legislature with the law on water and aquatic environments... At no point are the conditions of this right of access specified, which, in substance, responds to the technical modality of need, but not to the fundamental right"[70]. Indeed, the recognition of the right to water remains constrained by financial considerations and suffers from the absence of enforceability[71]. As Professor Laurent Richer points out, the economic limits placed on this right "include the cost to the municipality"[72].

It is, moreover, necessary to distinguish the right *to* water from the right *of access* to water. While the former is part of the category of fundamental human rights, the latter is a matter of water law—that is, to the concrete modalities by which water resources are administered and distributed. Under positive law, it is not a right to water itself which is formally recognised, but rather a right of access to water[73], coupled with the competence of municipalities to guarantee such access. The Conseil d'État, in its decision of 26 January 2021, held that this right of access is not equivalent to a right to connection to the public drinking water network[74].

Guaranteeing everyone a minimum level of access to safe drinking water is an essential part of realising the right to water. In pursuit of this objective, some municipalities have enacted *arrêtés anti-coupures* (anti-disconnection orders) aimed at safeguarding the minimum level of service for persons in conditions of poverty. These municipal measures, however, have encountered a number of legal difficulties. While some administrative judges have validated these orders[75], others have refused to adopt a position in favour of a minimum right of access to water[76]. This divergence in administrative jurisprudence has catalysed a robust doctrinal debate[77]. As Professor Virginie Donier highlights, "in the case of public water or

70 | Drobenko 2007, 202.
71 | Ahoulouma 2011, 1887.
72 | Richer 2007, 1170.
73 | Drobenko 2012, 491.
74 | Conseil d'État, 26/01/2021, commune de Portes-en-Valdaine, n° 431494. More specifically, outside the service areas defined by the municipal or inter-municipal drinking water distribution scheme, or in the absence of such areas being defined by the scheme, the Council of State allows the competent authority more leeway in deciding what action to take on requests to carry out work to connect to the public drinking water distribution network, in accordance with the principle of equality before the public service, in particular on the basis of their cost, the public interest and the conditions of access to other sources of drinking water supply.
75 | Conseil d'État, 2010, footnote 287.
76 | Cour administrative d'appel de Paris 11/07/2007, Commune de Mitry Mory, n° 05PA01942 ; Cour administrative d'appel de Versailles 25/10/2007, Commune de Bobigny, n° 06VE00008 ; Cour administrative d'appel de Paris 12/02/2008, Société EDF, n° 07PA02710 ; Cour administrative d'appel de Nancy 11/06/2009, Préfet du Doubs, n° 08NC00599.
77 | Braconnier 2005, 644.

energy distribution services, the courts have consistently refused to recognise a right to continuity that could provide a legal basis for municipal anti-cuts orders. Once again, these solutions tend to restrict the scope of the right of access by jeopardising its effectiveness"[78]. The administrative judiciary has declined to recognise a right to water on the basis of human dignity, reasoning that "the infringement that this right would cause to the freedom of trade and industry seems excessive, even if most of the municipal orders limited their scope of application to only 'people in social difficulty in good faith'"[79]. This judicial stance is regrettable when viewed from the perspective of protecting the inviolable core of the right to human dignity.

It was not until the legislature intervened in 2013[80], and in particular the amendment of Article L. 115-3 of the Social Action and Families Code, that a degree of progress was made towards the effective implementation of the right to drinking water. Thus, paragraph 3 of this Article now states that "from 1 November of each year to 31 March of the following year, electricity, heat and gas suppliers may not interrupt the supply of electricity, heat or gas to individuals or families in their primary residence, including by terminating contracts for non-payment of bills". The last sentence of this paragraph specifies that this prohibition applies "to the distribution of water throughout the year", thereby establishing a general prohibition against water shut-offs due to non-payment. Furthermore, the Constitutional Council declared the constitutionality of this paragraph in a decision of 29 May 2015[81] by validating the ban on interrupting the distribution of drinking water in primary residences. The Constitutional Council affirmed that access to water "meets an essential need of the person", and it is intrinsically linked to "the objective of constitutional value that constitutes the possibility for any person to have decent housing". This decision validated the intention of the legislator, whose primary aim was to provide a secure legal basis for the mechanisms allowing households in a difficult economic situation to have access to the water.

Notwithstanding these developments, the scope of the right to drinking water remains circumscribed by the political will of the municipalities "competent in

78 | Donier 2010, 800.

79 | Ibid.

80 | Law n° 2013-312 of 15 April 2013 aimed at preparing the transition to a low-carbon energy system and containing various provisions on water pricing and wind turbines (Loi n° 2013-312 du 15 avril 2013 visant à préparer la transition vers un système énergétique sobre et portant diverses dispositions sur la tarification de l'eau et sur les éoliennes, JORF du 16 avril 2013, loi dite Brottes). This law authorised, for a period of 5 years in the form of an experiment, local authorities to implement social pricing as part of the public water service. This possibility was then perpetuated by the law of 27 December 2019 known as "Engagement and proximity", law no. 2019-1461 of 27 December 2019 relating to engagement in local life and the proximitý of public action (loi dite « Engagement et proximité », n° 2019-1461 du 27 décembre 2019 relative à l'engagement dans la vie locale et à la proximité de l'action publique, JORF, 28/12/2019).

81 | Conseil Constitutionnel, 29/05/2015, n° 2015-470 QPC, Société SAUR SAS. See for a commentary on this decision Nivard 2015, 1704.

matters of drinking water distribution", as well as that of their intercommunal groupings. Article L. 2224-7-1 of the General Code of Local Authorities specifies that "in this context, they establish a water supply network scheme determining the areas served by the distribution network". When interpreted in the light of the right of access to drinking water, this provision implies that, within designated service areas, there exists an obligation to accede to requests for connection works. Outside such areas, however, no such obligation arises.[82] In the latter case, local authorities decide what action to take in response to requests for connection to the public service, taking into account the cost of the work, the public interest and the conditions of access to other sources of drinking water supply, such as the existence of private wells. The administrative courts exercise only limited control over refusal decisions by local authorities[83].

Nonetheless, the scope for discretion afforded to local authorities was curtailed by the Order of 22 December 2022[84], which transposed into French law the provisions of European Directive 2020/2184 of 16 December 2020 on the quality of water intended for human consumption.[85] Article L. 1321-1 B of the Public Health Code now provides that "municipalities or their public cooperation establishments, taking into account the particularities of the local situation, take the necessary measures to improve or preserve access for all persons to water intended for human consumption". To this end, they drew up a "territorial diagnosis" in which they "identify the persons in their territory who have no access, or insufficient access, to drinking water and the reasons explaining this situation"[86]. In the light of this diagnosis, they "proceed to [...] the installation and maintenance of drinking water fountains and other equipment [...] allowing access in public places to water intended for human consumption"[87]. A further limitation on the right of access to drinking water is its justiciability. Indeed, the Council of State declined to recognise any enforceability of this right, in a case involving a challenge to the legality of a deliberation setting the price of water and the amount of sanitation charges levied as part of the public water service[88].

Despite recognition of the human right of water and the right of access to safe drinking water, it remains the case that public water services in France are not provided free of charge.

82 | Peyen 2021, 981.
83 | Conseil d'État, 26/01/2021, n° 431494. The administrative judge's review is limited to manifest errors of assessment (erreur manifeste d'appréciation); this is the weakest form of review.
84 | Ordonnance n° 2022-1611 du 22 décembre 2022 relative à l'accès et à la qualité des eaux destinées à la consommation humaine, JORF, n° 297, 23/12/2022.
85 | Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption, Official Journal L 435, 23/12/2020, 1–62.
86 | Art. L. 2224-7-2 of the General Code of Local Authorities.
87 | Art. L. 2224-7-3 of the General Code of Local Authorities.
88 | Conseil d'État, 22/10/2021, Comité syndical du syndicat mixte des eaux de la région de Buthiers, n° 436256.

The price of public water services and the right of access to drinking water

The issue of pricing in the provision of public water services largely determines users' access to drinking water. In the words of Professor Laurent Richer, "water supply and sewerage services occupy a special place in the debates on public services, which in France never cease. The "water bill" is the cause"[89]. These words capture with precision the enduringly contentious nature of the debate—one that extends well beyond the confines of the French Republic.

The Law on Water and Aquatic Environments of 30 December 2006 established the principle of compulsory pricing for the supply of drinking water, mandating that such pricing must be set "at the rate applicable to the corresponding category of user." This legislative provision laid the foundations for an obligation on the part of the authority managing this public service to treat water users in different situations differently.

A central argument advanced in favour of a return to public management is the price of water paid by users, which is much higher when the public service is managed is a private company[90]. In its 2010 *Rapport public*, the Council of State underscored this disparity, noting that the price of water was between 5.5% to 9.5% higher when the service was managed by a private company[91]. In this context, economic considerations loom large: local authorities seek to maintain control over the price of water whilst simultaneously respecting transparency in the breakdown of service-related costs and expenditures. However, beginning in the 2010s, an upward trend in water pricing has been observed, regardless of the management method chosen. This phenomenon may be attributed, inter alia, to the marked increase in the cost of wastewater treatment (including the modernisation of treatment plants), as well as the rise in value-added tax to 10% in 2014. In addition, the price of water provision is not uniform across the territory; it varies in accordance with local specificities, including the scale of the service, geographic distance, quality and availability of water resources, topographical conditions, the configuration and density of the network, customer base, the level of treatment required, and the extent of capital investment.

The principle of dual billing for public water service

Article 9, paragraph 1 of Directive 2000/60/EC, known as the Water Framework Directive, sets out the principle of recovery of the costs of water services. It provides that "water-pricing policies (of the Member States) provide adequate

89 | Richer 2007, 1168–1169.
90 | It is interesting to note that contracts have been renegotiated by local authorities with private companies, leading to a reduction in water bills of up to 25%. Fraysse 2011, 33.
91 | Conseil d'État, 2010, 407, footnote 250.

incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive".

The methodology for calculating the price of water[92] is based on two pillars that contribute to represent the public service as a "productive function": namely, the principle of remuneration—corresponding to cost recovery—and the requirement of budgetary equilibrium [93]. In other words, whether the service is publicly or privately administered, the public drinking water service is bound by the obligation to maintain a balanced budget, ensuring parity between income and expenditure.

The general principle is that "water pays for water", denoting that the full operational, capital investment, and environmental preservation costs associated with both water supply and sanitation services must ultimately be borne by the users. In France, as in other European countries, the pricing system for public water services is based on the principle of *dual billing*. This entails that the price of water includes both an amount proportional to the volume of water actually consumed by the customer (variable part) and an amount independent of this volume, which generally corresponds to the costs of water distribution services (fixed part)[94].

The principle of dual billing was held by the Court of Justice of the European Union to comply with the Water Framework Directive in a judgment of 7 December 2016[95]. The matter arose from a request for a preliminary ruling by the Croatian court in the context of a dispute brought by a subscriber who contested that portion of his bill corresponding to the fixed charge element. Following a didactic recapitulation of the key tenets of the 2000 Water Framework Directive, and particularly with regard to the economic dimension of water protection, the Court affirmed, without notable departure from expectation, that in order to comply with the obligation to recover the costs of the services connected with water use, laid down in EU law, the Member States may lawfully implement other water-pricing methods which enable recovery of, inter alia, the costs borne by water distribution services in making it available to users in sufficient quantity and of sufficient quality, irrespective of their actual consumption of that water. Although this billing principle—prevalent across many Member States—may lead to substantial

92 | According to data from the National Observatory of Watersupply and sewerage Services (Observatoire national des services d'eau et assainissement), in 2023, the average price of drinking water services was €2.31 (including tax) per m3 and the average price of wastewater services was €2.37 (including tax) per m3, see the data online at https://www.services.eaufrance.fr/. However, the price of water services (distribution and sanitation) is on average 5.4% more expensive under private management than under public *régies*. The lowest price is particularly prevalent in local authorities with fewer than 10,000 inhabitants, see the National Assembly report, prec., 226.

93 | Camus 2023, 143–156.

94 | The constraints inherent in balancing the budget of public water services tend to encourage local authorities to introduce relatively high fixed charges. See Causse & Wulfranc 2022, 15.

95 | CJEU, 7/12/2016, Vodoopskrba i odvodnja, aff. C-686/15.

differences in taxation from one State to another, the Court nonetheless regarded it as a legitimate instrument for incentivising efficient use of water resources. As such, it contributes to the realisation of the environmental objectives set out in the 2000 Water Framework Directive.

Social pricing for public water services

Article 16 of the European Directive of 16 December 2020 on the quality of water intended for human consumption makes only cursory reference to social pricing. It obliges Member States merely to adopt the necessary measures to enhance or preserve universal access for all to water intended for human consumption. However, Recital 33 of the directive states that the Commission has invited Member States to guarantee access to a minimum water supply for all citizens, in accordance with the WHO recommendations, an approach deemed to be in line with Sustainable Development Goal No. 6 and its associated target of "ensuring universal and equitable access to safe drinking water at an affordable cost".

In this domain, "France is more committed than the Commission is inviting it to be"[96]. The social pricing of water[97], authorised in France by the legislator since 2013[98], aims to make effective the right of access to drinking water under economically acceptable conditions for all, as set out in Art. L. 210-1 of the French Environmental Code. Social pricing in this context refers to a spectrum of pricing policy measures applicable to public water supply and sewerage services. In a strict sense, it can consist of a modulation of the price of the public water services, based on the composition or income of the household, but it can also more broadly take the form of "assistance with the payment of water bills, assistance with access to water or support and measures to encourage water saving"[99]. The General Code of Local Authorities also provides that the price of the service may be modulated on the basis of incentive criteria "defined according to the quantity of water consumed"[100]. At the same time, it should be remembered that Article L.115-3 of the French Social Action and Families Code guarantees year-round access to water for individuals or families experiencing particular hardship, by expressly prohibiting water distributors from interrupting the service or reducing the flow rate in the event of non-payment of bills.

96 | Rabiller & Zavoli 2021, 537.
97 | Moysan 2024, 100–110.
98 | Article 28 of the aforementioned Act of 15 April 2013 (loi Brottes). Since the aforementioned law of 27 December 2019, Article L. 2224-12-1-1 of the General Code of Local Authorities authorises public water (and sanitation) services to implement social measures aimed at making the right of access to drinking water effective by taking into account, in particular, the composition or income of the household.
99 | Art. L. 2224-12-1-1 of the General Code of Local Authorities.
100 | Ibid.

4. Public participation in the governance of public water service

Beyond the traditional satisfaction surveys annually conducted by service providers, French law provides legal mechanisms and procedures to facilitate civic engagement in the operation of these services, thereby enhancing transparency in their management.

One such mechanism is the consultative commission for local public services[101], which enables users to be represented through local delegates appointed by the deliberative authority[102]. User representation means that representatives of local associations can be appointed to these commissions and, since 2022[103], representatives of users and residents with an interest in local public services. These representatives continue to be appointed by the deliberative body[104], although the composition of the commission is fairly free and the term of office of the user representatives coincides with that of the local elected representatives. For example, the Grenoble Alpes Métropole has set up a consultative commission for local public services with 40 members, including 10 elected officials, 10 representatives of associations and 20 residents from the 49 constituent municipalities in the metropolitan area[105].

While these commissions are compulsory in all municipalities exceeding 10,000 inhabitants, or public establishments for inter-communal cooperation serving over 50,000 residents.[106] Nevertheless, their remit remains purely consultative. By setting up such a commission, citizens are indirectly involved in the operation of local public services, whether these are operated *en régie* with a financial autonomy or delegated to private entities.

The law of 27 February 2002 on Local Democracy requires that various documents relating to the development of services be transmitted to the consultative commission for local public services or submitted to them for their opinion: the delegation project, the annual report on the quality and price of the service, the delegate's annual report, the activity report for the services operated in *régie*[107].

101 | For example, the Consultative Commission for Local Public Services of Lyon Métropole is consulted in the following areas: water and wastewater treatment; prevention and disposal of household and similar waste; district heating and cooling; gas and electricity; car parks; very high speed broadband, etc.
102 | Art. L. 1413-1 of the General Code of Local Authorities.
103 | Loi n° 2022-217 du 21 février 2022 relative à la différenciation, la décentralisation, la déconcentration et portant diverses mesures de simplification de l'action publique locale, dite « 3DS », JORF n° 44, 22/02/2022.
104 | Either the municipal assembly or the deliberative assembly of the public establishments for inter-communal cooperation.
105 | Cour des comptes 2024, 116.
106 | Art. L. 1413-1 of the General Code of Local Authorities.
107 | Ibid.

However, the advisory opinion rendered by the commission is issued only at the final stage of the decision-making process—immediately preceding the deliberative assembly's vote. What is more, as the report of the 2021 parliamentary commission of enquiry points out, in the absence of any regulatory provision setting out the composition or operation of local public service advisory committees, the latter are perceived more as chambers for recording the decisions of local authorities[108]. In order to strengthen citizen control over public water services, whatever the management method chosen, the composition of local commissions should be broadened and at least half of their members should be user representatives[109]. Such a change in positive law would constitute a significant step towards the consolidation of citizen oversight over local public services, including those concerned with water.

In certain instances, users may be granted even closer involvement in the governance structures of the entities—public or private—tasked with managing the public water service. This participatory approach is more feasible under *régie* arrangements. This is the case, for example, for the *Métropole de Lyon*, which, as of 1 January 2023, entrusted its drinking water service to the public *régie* known as *Eau du Grand Lyon* (Water of Greater Lyon). Of the 20 seats on the board of directors, four are reserved for user representatives, appointed by the Water Users' Assembly, a participatory forum inaugurated on 18 January 2023. The Water Users' Assembly is a forum for dialogue between users, the metropolitan authority and the public *régie*. It comprises 120 members, including 101 citizens and 19 representatives from various organisations. Any resident of the Lyon metropolitan area may join, provided they undertake to participate actively. Associative actors, collective interest groups, and non-domestic users are also eligible for representation.

This Assembly serves as a space for public deliberation and debate concerning strategic issues related to water within the local territory, including metropolitan public policies relating to access to water and the preservation of water resources. The Lyon Metropolitan Authority and the public *régie* may call on this assembly to consult or co-construct decisions[110].

108 | National Assembly 2021, 181.

109 | This proposal was included in the report of the parliamentary committee of enquiry in 2021, p. 181. It is inspired by the solution adopted by the French legislator for public water supply and sewerage services in Guadeloupe, see Law n° 2021-513 of 29 April 2021 renewing the governance of public water supply and sewerage services in Guadeloupe, (loi n° 2021-513 du 29 avril 2021 rénovant la gouvernance des services publics d'eau potable et d'assainissement en Guadeloupe, JORF, n°102, 30/04/2021).

110 | In 2023, the meeting's annual work topic was the solidarity-based and environmental water pricing system adopted by the metropolitan authority, which comes into force on 1 January 2025. This new pricing system applies only to the variable portion of drinking water. For private customers, three bands have been introduced: band 1, "vital water", which is free for the first 12 cubic metres of drinking water for each household and corresponds to 30 litres of water per day; band 2, "domestic water", for up to 180 cubic metres of water, which corresponds to the standard rate; and band 3, "recreational water", for more than 180 cubic metres, for which the rate is doubled.

The decision to remunicipalise the public water service in Lyon through a *régie* structure is the result of a conscious political choice. This course of action was motivated, first, by the desire, to retain control over an essential and crucial public service for the years to come, without depending on the private sector and second, by the objective of consolidating all public policies relating to drinking water under public management, so as to ensure greater coherence and to secure the participation of users in the decision-making processes of the public *régie*.

In conclusion

When faced with the choice between public and private management of the public water services, "the local authority must pay attention to a number of factors : the need to make investments that are more or less costly, the distribution of the risks inherent in managing the service, the degree of involvement that the local authority wishes to have in managing the service, the control of know-how, the control of service costs and the tariffs'"[111]. More generally, the rationale for remunicipalisation rests upon two principal foundations: the demand for transparency and the desire to take account of a social dimension in the management of the public service.[112]

On two notable occasions, in 1997[113] and again in 2003[114], the Court of Auditors drew attention to deficiencies in the transparency of water service management under private operators. This jurisdiction lamented the opacity surrounding the pricing structure of water and underscored the pressing need for clarity in how such charges are determined. That said, the return to direct public management is not without its challenges. Local authorities may confront significant difficulties, including the lack of technical skills, the problem of the fate of staff as well as financial, tax and accounting difficulties can all be obstacles in the reappropriation of water services[115].

While the public management system has many advantages—particularly in terms of democratic oversight by elected officials and citizens, as well as institutional knowledge of the water network—the influence of the management method on the price of the public service remains ambiguous, albeit with public management in the form of a *régie* appearing to confer a modest comparative advantage[116].

111 | Lachaume, et al. 2012, 231.
112 | On the social dimension of water law and its literature in Central Europe, see Jakab & Mélypataki 2019, 7–63 Szilágyi 2019, 255–298.
113 | Cour des comptes, 1997.
114 | Cour des comptes, 2003.
115 | Bordonneau et al. 2010, 137.
116 | Cour des comptes 2024, 156.

The movement towards the remunicipalisation of the public water service is propelled less by purely institutional considerations than by a robust social demand, reflecting a growing aspiration among citizens to participate more effectively in the governance of water—thereby constituting a counterbalance to both the State and the private sector.

The participation of water users, especially domestic users, is increasingly recognised as an essential element of good water governance. Such engagement not only contributes to improved decision-making, but also strengthens trust and legitimacy, while promoting more sustainable and equitable water management.

Regardless of the method of management adopted for the public service, it falls to the operator to ensure compliance with the constitutional principle of continuity of service. In other words, any interruption of the public drinking water distribution service violates this constitutional principle and, consequently, the right of access to drinking water cannot be fulfilled. Within the broader context of climate change, the obligation to maintain continuity in the public water supply service necessitates a long-term, sustainable, and ecologically responsible stewardship of water resources. The promotion of environmentally conscious behaviour—particularly through pricing mechanisms aimed at reducing consumption—stands in direct alignment with the overarching objective of preserving the sustainability of the public drinking water distribution service.

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