

Withdrawal of Authorization as a Mechanism for Protecting Groundwater in Light of Climate Change, in Accordance with Water Law No. 12/05

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Abstract:

Water resources are among the most important issues at the forefront of the challenges and problems facing the world. Therefore, despite the adoption of strategies, the conclusion of agreements and treaties, and the enactment of numerous laws, the protection of groundwater resources continues to deteriorate as a result of their irrational use.

Accordingly, it has become imperative for Algerian legislation to intervene and provide for preventive methods to address and confront water resource problems. On this basis, the legislator has granted the administration the authority to monitor the use of groundwater, equipping it with preventive legal tools that fall within the framework of subsequent control exercised over individuals and institutions in order to verify compliance with the prescribed procedures.

These measures are known as administrative sanctions, which vary in form and scope depending on the degree of violation of mandatory legal rules, such as the withdrawal of authorization in cases of non-compliance with the rules and conditions governing the exploitation of groundwater.

Keywords: groundwater, authorization, sanctions, exploitation, withdrawal.

Introduction:

The issue of water resources has received significant attention from specialists and global public opinion alike, as it has become a priority in local, regional, and international agendas and debates, particularly following the severe disasters resulting from the irrational exploitation of various water resources by humans. This has led and continues to lead to their degradation, a reduction in their capacity and effectiveness, and the emergence of acute crises due to increasing pressure on water resources, whether through misuse or through negative impacts that generate water pollution.

Thus, the problems affecting water resources, especially groundwater, have become an increasingly pressing issue in the present time, particularly in light of growing climate change and declining rainfall. This situation necessitates the intervention of the state and its institutions, through the instruments of public authority at their disposal, to avert the risks threatening groundwater and to reduce its depletion. This is achieved by enacting laws that regulate individual activities and organize the use of groundwater resources.

On this basis, Algerian legislation for the protection of groundwater has relied on a deterrent approach through the imposition of administrative sanctions aimed at compelling violators of

groundwater use regulations to comply with the will of the legislator and with the provisions of laws protecting groundwater resources.

From here arises a fundamental question regarding the extent to which the deterrent approach is effective in protecting groundwater in light of climate change.

In order to address this issue and cover its various aspects, this research paper is divided into two sections: the first addresses the authorization for the use of groundwater, while the second examines the sanctions resulting from violations of groundwater use authorizations.

First Section: Authorization for the Use of Groundwater

In order to protect groundwater and preserve it from any threat that may affect it, it was necessary for the legislator to intervene and adopt all measures that limit harm to it. Accordingly, the competent administration was granted a set of legal instruments in order to achieve its objectives of protecting and conserving water resources.

These instruments may take the form of authorization issued in the form of individual decisions and orders, as it is considered one of the most common means, since it represents a direct link between administrative authorities and an individual or a group of individually designated persons¹, through these decisions, the administration aims to regulate the exercise of individuals' rights and activities and to restrict some of them in a manner that ensures the protection of public order. In doing so, it regulates the conduct of individual activities and determines sanctions for their violation.

Within this framework, the administration exercises broad powers in implementing preventive policy in the field of groundwater protection, which at the same time constitutes one of the most important supervisory tools that Algerian legislation has placed in the hands of the administrative authority to prevent any infringement on groundwater resources².

First Requirement: Definition of the Authorization to Use Groundwater

Within the framework of ensuring the protection of water resources and their sustainable development, Law No. 12/05 provides for³ a prohibition on any use of these resources by any person, whether natural or legal, except upon obtaining an authorization issued by the administration responsible for water resources.

Thus, authorization constitutes one of the preventive measures used by the administration in order to preserve groundwater. It is considered one of the most important administrative means relied upon by the administration to exercise prior control over individual activity. Accordingly, it plays a preventive role by enabling the administration to prevent the occurrence of disturbance or harm to society, including harm to neighbors, the environment, and water resources, through identifying the source of harm⁴.

Linguistically, authorization (tarkhis derives from the verb rakhkhasa, meaning to permit or allow something after it had been prohibited. It is said "rakhkhasahu fi al-amr," meaning he permitted him to do something after having forbidden it, and "rakhkhashtu fulanan fi kadhā," meaning I allowed him to do so after having prohibited him from it⁵.

Terminologically, definitions of authorization have varied. One definition considers authorization as the procedure by which permission is sought from the administration in order to practice a specific activity⁶.

Authorization has also been defined as a preventive police measure exercised by the regulatory authority, established to protect the state and individuals from the harms that may arise from the exercise of individual activity⁷.

It has further been defined as permission or the obtaining of approval from the administrative authority prior to engaging in a specific activity or profession, in order for the administration to ensure that the exercise of such activity or profession does not involve a violation of the law and does not lead to harm to public order in its various elements (public security, public health, public tranquility, and public morals). Moreover, requiring prior authorization or licensing enables the administration to intervene and take the necessary precautions whenever the public interest so requires⁸.

Authorization has also been defined as prior permission granted by the administrative authority before engaging in an activity within the limits permitted by law⁹.

Authorization is also understood as the permission issued by the competent administration to carry out a specific activity that may not be exercised without such permission, and the administration grants this authorization once the legal conditions prescribed by law for its issuance are fulfilled¹⁰, Authorization also consists in the obligation to obtain prior permission from the administration to carry out a specific activity, in accordance with regulatory rules that define the objective and personal conditions for allowing the exercise of such activity¹¹.

Laws often grant the administration broad powers, such as restricting certain acts and behaviors that may cause harm to water resources, by requiring the prior acquisition of an administrative authorization granted by the administration on the basis of the discretionary power it enjoys in assessing potential harm and the precautionary and preventive measures taken by the concerned parties¹².

As a general rule, authorization is permanent unless it is expressly limited in time. Temporary authorization may be renewed after fulfilling the required conditions, and authorization is usually granted in return for fees paid by the applicant as part of the conditions necessary for its issuance¹³.

Accordingly, authorization may either relate to the exercise of an activity that is not originally prohibited but is required by considerations of public order, such as a building permit, or it may concern an activity that is originally prohibited, such as authorization to carry firearms¹⁴.

Based on the foregoing, the rationale behind imposing authorization is to enable the administrative authority to intervene and take all necessary precautions to prevent risks arising from the exercise of individual activities.

In general, and in light of the above, the imposition of authorization aims primarily to:

- protect public security, as in the case of authorizations related to dangerous activities, activities disturbing public comfort, or those harmful to health;
- protect public health, as in the case of authorizations related to the establishment of food-related projects;
- protect public tranquility, as in the case of authorization to use loudspeakers in public places or facilities that may cause noise disturbing neighborhood comfort;
- protect any element of the environment, such as in the case of hunting licenses, building permits on agricultural land, authorizations for projects generating harmful waste, and authorizations for the transport of waste and hazardous materials.

With reference to Algerian legislation, and in line with comparative legislations, it is found that it includes numerous applications in the field of administrative authorization for the protection of water resources, including authorization related to the use of groundwater. This was provided for by the legislator under Article 74 of the Water Law, which defines it as: “a contract under public law granted to any natural or legal person subject to public or private law, who submits an application in accordance with the conditions stipulated by law and under the modalities determined by regulation.”

Through an examination of the above-mentioned article, it appears that the Algerian legislator has considered the authorization to use groundwater as a contract, whereas in reality the authorization is a unilateral act issued by the administration; consequently, it is an administrative decision and not an administrative contract.

This is because the administration is the source of the obligation in a contract, unlike the formal and substantive conditions of authorization, which constitute legal and administrative constraints regulating the legal activity subject to authorization, and in which the will of the individual has no role whatsoever when the administration approves the authorization request¹⁵.

However, with reference to Executive Decree¹⁶ No. 08/149, the Algerian legislator defined the authorization under Article 04 as an administrative decision issued by the competent wali in favor of the applicant on the basis of the results of the technical instruction.

This is the same definition reaffirmed by Algerian legislation in Executive Decree No. 21/260, Article 04, which states that the authorization is an administrative decision issued by the competent wali in favor of the applicant on the basis of the results of the technical instruction.

Second Requirement: Procedures for Granting Authorization to Use Groundwater

Pursuant to Article 02 of Executive Decree¹⁷ No. 21/260, the application for authorization to use groundwater resources shall be submitted to the wilaya administration responsible for water resources, for the purpose of drilling and excavating wells to extract groundwater, and it must be accompanied by the following explanations and documents:

- The application must include the applicant’s first and last name and address, or, where applicable, the registered office of the applicant;
- Justification by an official contract for the occupation of the land or lands designated as the site for the establishment of the projected water extraction facilities or structures by the applicant;
- Applicants for authorization to use groundwater resources may be located on municipal land or land belonging to state property;
- Justification for the occupation of the land or lands designated as the site for the establishment of the projected water extraction facilities or structures, by means of any document proving occupation and exploitation issued by the competent municipal or agricultural services; in this case, the authorization to use water resources does not confer any right of ownership over the land or lands, nor does it affect the rights of others in any way;
- The nature, geographical location, and site plan of the water extraction facility or structure within the meaning of Article 75 of Law No. 05/12;
- The scheduled period for the works;

- The level or volume of water to be extracted;
- The duration of use of the water resource;
- The use or uses of the water to be extracted.

In addition, the technical documents required for the construction of each type of facility or structure for the use of water resources are determined by a decision of the minister responsible for water resources.

Furthermore, pursuant to Article 03 of Executive Decree No. 21/260, the application for authorization to use water resources is subject to a technical instruction prepared by the services of the wilaya administration responsible for water resources, which consists of the following:

- Verifying the availability of the water resource, taking into account previously granted usage rights, as well as existing and future public development works¹⁸;
- Conducting site visits to examine the conditions for the installation of the proposed facility or structure and those related to the use of the water resource¹⁹;
- Seeking the opinion of the bodies responsible for the assessment and integrated management of water resources, namely the National Agency for Water Resources, the National Agency for Integrated Water Resources Management, and the services responsible for fisheries, agriculture, and the environment.

The application for authorization to use water resources is processed within a period not exceeding one month, starting from the date of submission of the file²⁰.

Subsequently, the authorization to use water resources is granted by decision of the competent wali, based on the results of the technical instruction²¹.

In the event of refusal, the applicant is notified of the reasons, and the latter may submit an appeal within ten (10) days from the date of notification of the refusal to the territorially competent Directorate of Water Resources, which has a period of fifteen (15) days to rule on the appeal²².

As for the content of the decision granting authorization to use groundwater, Article 05 of Executive Decree No. 21/260 provides for the main information that the authorization decision must include, namely:

- The surnames, first names, and addresses, and where applicable, the company address of the applicant;
- The maximum level or volume of water that may be extracted;
- The use or uses of the water to be extracted;
- The period of validity of the authorization to use water resources;
- The duration and technical conditions for carrying out the works;
- The conditions for operating and maintaining the facilities and structures;
- The obligation to install methods for measuring or metering the extracted water;
- The obligation to pay fees.

Thus, on the basis of the above-mentioned article, it may be noted that the Algerian legislator has set deadlines for the works not exceeding eighteen (18) months, starting from the date of notification of the authorization to use groundwater. This period may be extended once for a period of six (6) months for legally justified reasons²³, and this is for the purpose of protecting water wealth from irrational exploitation.

As for the validity period of the authorization to use groundwater resources, the Algerian legislator has set it, pursuant to Article 06 of Executive Decree No. 21/260, at a maximum of ten (10) years, renewable upon request accompanied by the initial authorization and submitted six (6) months before the expiry of its validity period.

Third Requirement: Effects Resulting from the Granting of Authorization to Use Groundwater

The granting of authorization to use groundwater entails several legal effects, affecting both the administration responsible for granting the authorization on the one hand, and the holder of the authorization on the other.

1 – The Administration Responsible for Granting the Authorization:

The authorization to use water resources is granted by the territorially competent wali, who is the issuer of the administrative decision. He has the authority to grant or refuse authorization to use groundwater resources in cases where the needs to be met are unjustified or where such use would affect the quantitative and qualitative protection of water resources.

In general, the main effects resulting from the granting of authorization to use groundwater in favor of the granting administration include:

- Amending, reducing, or revoking the authorization at any time for reasons of public interest;
- Granting compensation to the authorization holder for any direct damage suffered in the event of revocation of the authorization to use groundwater resources for reasons of public interest²⁴;
- The administration may revoke the authorization to use groundwater without compensation, after a formal notice addressed to the authorization holder, in the event of failure to comply with the conditions and obligations arising from the provisions of Law No. 05/12 and the regulatory texts adopted for its implementation, as well as the authorization or the specifications²⁵.

In addition, Article 88 of the Water Law provides for a set of powers exercised by the administration responsible for granting the authorization, including:

- Modifying equipment works that do not comply with the conditions of the authorization;
- Demolition of structures built without obtaining authorization, or restoration of the premises to their original state upon loss of the right to authorization;
- The administration may also temporarily suspend the authorization to use water resources in the event that water wastage is proven, regardless of the reason. The reinstatement of the authorization is subject to verification by the administration responsible for water resources of the measures taken by the concerned users to prevent the observed wastage;
- In addition, in the event of natural disasters, particularly drought, the administration may adopt measures to limit water use, temporarily suspend it, or carry out seizure operations, for the purpose of mobilizing the water necessary to confront disasters and ensuring priority in supplying the population with water and irrigating livestock.

2 – Holder of the Authorization to Use Groundwater Resources:

The main effects incumbent upon the authorization holder include:

- Payment of fees;
- Water must be used rationally and economically;

- Installation of devices for measuring or metering water consumption;
- Compliance with provisions relating to the conditions for operating and exploiting irrigation facilities;
- Compliance with inspection interventions carried out by water police officers;
- Entitlement to compensation for damage suffered as a result of the revocation of the authorization for reasons of public interest.

The authorization to use water resources also enables its holder, pursuant to Article 75 of Law No. 12/05, to carry out the following:

- Drilling wells or excavations to extract groundwater;
- Constructing source exploration facilities not intended for commercial exploitation;
- Building transfer, pumping, or drilling facilities and structures;
- Establishing all other facilities or structures for the extraction of groundwater or surface water.

Second Section: Sanctions Resulting from the Violation of the Authorization to Use Groundwater

Given that the authorization system constitutes one of the most important tools placed by Algerian legislation in the hands of the competent administrative authorities to exercise prior control over activities likely to affect groundwater resources and their availability, or activities for which legislation requires prior authorization before they may be carried out, its withdrawal or revocation represents one of the most severe administrative sanctions available to the competent administration for the protection of water resources. Such sanctions may be imposed on projects causing pollution or harm where it is established that the authorization holder has violated the provisions and conditions governing the authorized activity.

First Requirement: Definition of Withdrawal

The withdrawal of authorization is considered one of the most serious sanctions falling within the powers of the competent administrative authorities, as these authorities are the ones that grant authorizations for the initiation of certain activities or works under specific controls and conditions, and they enjoy these powers pursuant to the laws regulating such activities or works²⁶.

Accordingly, in administrative law, withdrawal is defined as the termination and annulment of the legal effects of administrative decisions retroactively, as if they had never existed, meaning the elimination of the effects arising from the authorization, considered as an administrative decision, for both the past and the future²⁷, it is an inherent right of the competent administrative authorities²⁸ Granted to it by the legislator, whereby it proceeds to strip the operator who has not aligned its activity with legal standards of the license²⁹.

Section Two: Conditions for Withdrawal of the License

Despite the serious infringement that the withdrawal of a license constitutes on individuals' acquired rights, the legislator has nevertheless taken into account certain considerations, pursuant to which the administration although it is the authority competent to issue the licensing decision and through which the individual acquires rights may withdraw this license in the following cases:

- The commission of violations by the holders of these rights;

- Where the continued operation of the project poses an imminent danger to public security or public health;
- If the project no longer fulfills the essential conditions that must be met, which relate primarily to the protection of groundwater resources;
- If work on the project is suspended for more than a specific period determined by law, since there is no justification for maintaining the license when operations have ceased; moreover, this encourages project owners to continue operating their projects and not suspend them.

Accordingly, we find that the right of withdrawal is affirmed by law in every case where it stipulates the conditions for granting the license.

When the administration intervenes in the field of licensing, it relies on logical foundations, embodied in the freedom that must be granted to industrial establishments under the license, which determines the conditions for their investment. If it is self-evident that every person should be left free to choose the activities and work they prefer, it is even more necessary to curb any abuse in the exercise of this right. Thus, a balance must be established between the limits of individual freedom within the framework of investment and exploitation institutions, and respect for the rights of others against the damages that may result from such activities³⁰. Accordingly, the administration's right to withdraw the license does not conflict with acquired individual rights, because if a person has acquired a right by virtue of a groundwater use license, there exists a right that is more deserving of protection than this right, namely the right to preserve and rationally exploit groundwater resources.

Thus, when Algerian legislation grants the administration the power to withdraw the license, this power is not discretionary, as discretion has a limited scope in matters of annulment and withdrawal³¹.

On this basis, before resorting to the withdrawal of the license, Algerian legislation obliges the administration to issue a warning and notify the license violator, alerting them to take the necessary measures to bring their activity into conformity and compliance with the conditions and obligations agreed upon under the specifications and stipulated in the license, in accordance with Article 86 of the Water Law No. 05/12.

Section Three: Cases of Withdrawal of the Groundwater Use License

The withdrawal of the license is considered one of the most important measures relied upon by the administrative authorities granting the license to protect groundwater and to monitor projects of special importance that consistently cause serious harm to water resources.

Accordingly, among the most significant applications of license withdrawal is what the Algerian legislator stipulated in Article 87 of the Water Law No. 05/12, which provides that if the holder of the license or concession fails to comply with the legally prescribed conditions and privileges for the use of water resources, the license or concession shall be revoked.

Accordingly, through an examination of the provisions of the Water³² Law as well as the relevant regulations³³ Related to determining the modalities for granting a license to use water resources, it is possible to identify the main cases that authorize the licensing administration to withdraw the license without compensating the license holder, after issuing a warning requiring the immediate adoption of the necessary measures to rectify the situation or the violation. These cases are as follows:

- Irrational use of groundwater;
- Waste of water for reasons not specified in the specifications;
- Failure to comply with monitoring interventions carried out by qualified agents;
- Failure to respect the rights of water users;
- Failure to comply with the provisions relating to conditions of use;
- Failure to renew the application for a groundwater use license;
- Failure to commence works within a period of two (02) years from the date of notification of the licensing decision;
- Non-conformity of the execution of facilities and structures with the technical documents;
- Use of water for an unauthorized purpose.

In addition, the licensing administration may temporarily withdraw the license or carry out an expropriation, in the event of natural disasters, particularly drought, in order to enable the administration to take the necessary measures to confront drought, protect groundwater, and ensure its availability³⁴.

Conclusion:

The deterrent legal instruments granted to the administrative authority in the field of groundwater resource protection are of great importance in achieving effectiveness in this area, especially the withdrawal of the license, which constitutes the most serious administrative measure taken by the administration to confront violations committed by individuals through their engagement in activities that pose significant risks to groundwater.

Therefore, it is necessary to operate within a coherent and coordinated approach and to mobilize all available means in order to achieve effective protection of groundwater, with compliance with the law as its cornerstone and the protection of the aquatic environment as its foundation.

Accordingly, based on the foregoing, and through the study of the withdrawal of licenses as a mechanism for protecting groundwater in light of climate change in accordance with Water Law No. 12/05, several results have been reached, namely:

- Licensing is considered one of the most important means stipulated by Algerian legislation for the exploitation and rationalization of groundwater;
- The granting of a license goes through several procedures, the most important of which is the submission of an application for the exploitation of water resources to the administration in charge of water resources;
- The license to exploit groundwater is granted by virtue of a decision issued by the territorially competent wali, based on the results of the technical committee;
- Licensing is considered one of the most important tools of environmental administrative regulation for rationalizing the exploitation of groundwater;
- Licensing is among the most important means relied upon by the State to exercise prior control over the exploitation of water resources;
- The license enables its holder to exploit groundwater for a specific period of ten (10) years, renewable once for a period of six (06) months;

- Algerian legislation authorizes the licensing administration to withdraw the license if its holder fails to comply with the legal conditions and those agreed upon in the specifications, after prior notice.

In light of the previously presented results reached through this study, it is possible to put forward some recommendations to contribute to enriching the subject, namely:

- Given that Algeria has become a country that relies on digital services, Algerian legislation should establish a unified electronic platform for submitting license applications, which would enhance transparency in procedures;

- In addition to withdrawing the license, it is necessary to strengthen the deterrent supervisory dimension by imposing financial penalties on persons who violate the legally stipulated conditions for granting the license;

- Activating on-site and periodic monitoring while relying on modern technical means by the licensing administration, in order to ensure the rational and efficient exploitation of water resources;

- The necessity of amending the law relating to water in a manner consistent with economic development.

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