

## *The problem of scarcity of medicines in the Algerian market: Its causes and treatment mechanisms*

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### ***Abstract:***

*Medicines are an essential part of every health system, and their availability is imperative to ensure the health and safety of individuals and communities, but this goal challenges the scarcity of medicines and prevents them from being achieved. Where this problem has known its zenith in recent years coinciding with the emergence of regional, health and even economic crises, and its causes are due to global external factors, including a shortage of raw materials, which are the basis of the pharmaceutical industry, and the withdrawal of medicine from the market permanently, and other internal factors related to illegal practices of pharmaceutical monopoly. Illegal speculation and parallel sale have exacerbated the problem of scarcity, which put the state in a great challenge facing it, and to overcome it, it prompted it to develop effective national strategies and mechanisms to ensure that the problem of scarcity is addressed, on the one hand, and to achieve pharmaceutical and health security for citizens.*

*This study aims to shed light on the internal and external causes and factors that cause scarcity, how the Algerian legislator addressed them and what mechanisms and mechanisms he adopted in eliminating the problem of scarcity of medicines and achieving abundance and stability of the drug market.*

**Keywords:** *Medicines; Scarcity; Monopoly; Distribution; Observatory; Market.*

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**Introduction:**

Medicines are at the forefront of pharmaceuticals and thus occupy a prominent place in any health system, and this is reflected in the important role they play in achieving health care, whether used in prevention, treatment or diagnosis. It is characterized by the specificity of being related to human health and safety.

At the legislative level, we find that the provision of medicine is a legislative right stipulated in Article 205 of Law 18-11<sup>1</sup> where the state ensures the provision of pharmaceutical materials, including medicines, and ensures easy access to them, especially basic ones. The provision of medicines is one of the priorities of the health policy that the state seeks to achieve, but medicines can know scarcity or shortage in the market so that the quantity of a particular drug is insufficient compared to the required needs and along the supply chain from production and manufacturing until the market is put on the market, the shortage of medicines, whether at manufacturers or distributors, is a serious matter that greatly affects human health and safety for not receiving treatment, especially essential medicines related to chronic diseases<sup>2</sup> and the problem of scarcity is due to various reasons and factors that prevent the achievement of the goal of providing medicines, which requires the intervention of the state and its agencies in controlling the market and working to search for gaps to provide this necessary consumer substance, which is characterized by its specificity in being a substance whose acquisition is not known to be the choice, so the patient is forced to acquire it in order to preserve his health.

From this standpoint, the provision of medicines is an integral part of the State's responsibility to protect and preserve the health of citizens, as the lack or absence of some of them will disrupt universal health care.

Hence, what are the underlying factors causing medicine shortages in the market, and how effective are the legislative and institutional

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<sup>1</sup>Law No. 18-11 of, 02/07/2018 Law of Health, no. 46, Official Journal of the Republic of Algeria, amended and supplemented by Ordinance No. 20-02 of 30/08/ 2020. Official Journal of the Republic of Algeria, no 50.

<sup>2</sup>First paragraph of Article 205 of Law of Health, defined by the World Health Organization at the Sixty-seventh World Health Assembly, Access to Essential Medicines, May 2014, as "essential medicines as medicines that meet the priority needs of the population in the field of health care".

frameworks implemented by the state as solutions to ensure drug availability and achieve the desired health security?

To answer this problem, the analytical approach that suits the nature of the subject has been relied upon, and this study will be divided into two axes, the first axis deals with the causes and factors that cause the scarcity of medicines in the market, and the second axis is devoted to the mechanisms and strategies developed by the state to address the problem of drug scarcity.

## **1. The general causes of drug scarcity**

The provision of medicines is one of the important strategies that the state seeks to achieve, since medicine is an indispensable consumer material, due to its vital role in maintaining human health, its shortage or scarcity in the market is a problem that most countries of the world, including Algeria, suffer from, where the scarcity affects all stages that the drug goes through from its production until it is dispensed to the patient, and each stage has its causes and factors that cause scarcity.

Accordingly, the reasons leading to the scarcity of medicines in the market will be identified, which can be divided into external causes and into internal causes and factors that permeate the pharmaceutical market.

### **1.1. External causes**

There are many external reasons that lead to the scarcity of medicines in the market, including those related to a shortage of raw material, and some related to the withdrawal of medicines from the market.

#### **1.1.1. Shortage of Raw Material**

The pharmaceutical industry is one of the important and accurate industries as it contains complex chemical compositions in all aspects of manufacturing, starting with raw materials or raw materials, which are basic and important materials that are reliable in the pharmaceutical industry, so manufacturing cannot be done without them. Raw materials are defined as chemicals that are used in the composition of medicines

and pharmaceutical industries for mass production to meet market demands.

The shortage or absence of raw materials will greatly affect the availability of the type of medicines that enter into their composition, this is confirmed by the World Health Organization.

This was confirmed by the World Health Organization (WHO), which identified the difficulty in obtaining raw materials as one of the primary potential causes of drug shortages. This is particularly critical when these medications are classified as essential medicines used to treat chronic, urgent, and rare diseases.<sup>1</sup>

Therefore, the lack or absence of raw materials will greatly affect the availability of the type of drugs that enter into their composition, especially if these medicines are classified as essential medicines that treat chronic, urgent and rare diseases.

Thus, it will negatively affect the health and treatment of patients, which will require changing the drug and replacing it with another type, which is financed in small quantities in the market due to the pressure on it. This will inevitably lead to a scarcity of the market.

### **1.1.2. Drug Withdrawal from the Market**

The withdrawal of the drug from the market is a procedure carried out by the regulatory authorities and manufacturing institutions if it is confirmed that the drug does not conform to the legal specifications in force and proves its lack of safety and quality, in the sense that it stops circulating, using and prescribing it by doctors, and this is done after conducting laboratory analyzes to confirm the non-conformity. It is withdrawn from manufacturing establishments, distribution stores and pharmacies.

The withdrawal of the drug is one of the reasons for its scarcity in the market, as stopping its manufacture will constitute a scarcity that affects the health of patients for not receiving treatment, especially if the withdrawn drug belongs to the basic list of drugs.

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<sup>1</sup> Report from the WHO Secretariat, Addressing Global Drug Shortages and the Safety and Accessibility of Medicines for Children, 138th Session, December 2015.

Here we refer to an important matter related to informing doctors and pharmacists of the withdrawal of the drug, as it is prescribed to patients without their knowledge of the withdrawal, and it is not obtained in pharmacies, and in this case it is acknowledged that the drug is scarce in the market, but it has been withdrawn.

## **1.2. Internal causes**

There are many internal reasons that would cause a scarcity of medicines in the market, including the illegal practices carried out by pharmaceutical institutions of monopoly and illegal speculation, and related to the weakness of import and distribution.

### **1.2.1. Pharmaceutical Monopoly**

The principle of pharmaceutical monopoly mandates that the pharmacist alone is authorized to handle medications. No other person may engage in the pharmaceutical trade, as the pharmacist holds the exclusive right to sell and distribute drugs by virtue of their professional designation and competence.<sup>1</sup>

The pharmaceutical industry is a sector monopolized by legally approved pharmaceutical institutions, in which a company or group of companies controls the production, distribution and sale of medicines, and is in various forms, including a monopoly on patents, a monopoly on distribution, and a monopoly on trademarks.

Pharmaceutical monopoly leads to a reduction in patients' access to monopolized drugs in any of the mentioned forms, and thus a monopolized drug becomes in demand in the market and is scarce. In other words, the scarcity of medicines is directly affected by the pharmaceutical monopoly, for example the Corona pandemic drug crisis, where the world has witnessed a shortage and scarcity of medicines that treat the virus. One of the reasons is due to the monopoly of some companies to produce and distribute these drugs, the most important of which are antibiotics, paracetamol and blood clotting drugs. Rare disease drugs are also scarce and are not readily available due to the monopoly of

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<sup>1</sup>Siham MURR, Civil Responsibility of Pharmaceutical Producers and Sellers – A Comparative Study -, PhD Thesis in Law, University of Tlemcen, Algeria, 2016-2017, p.101.

the companies that produce them and therefore patients cannot obtain them.

### **1.2.2. Illegal Drug Speculation**

We find the definition of illegal speculation in the text of Article 2 of Law No. 21-15<sup>1</sup> as "any storage or concealment of goods or goods with the aim of causing scarcity in the market and disruption in supply, and any artificial increase or reduction in the prices of commodities, goods or securities directly or indirectly or through an intermediary or the use of electronic means or any other fraudulent methods or means."

Illegal speculation in medicines is considered an economic crime that affects money and negatively affects the stability and regularity of the market, the confidence of dealers, extends to the state economy, and affects the interest of the consumer<sup>2</sup>The Corona pandemic is the best evidence of this practice, as it has spread widely in the national and even global markets, which led to a scarcity of its vaccines and treatment protocols.

Illegal speculation in medicines can take many forms, including storing medicines and putting them on the market afterwards, offering offers in the market for the purpose of causing price turmoil, as these illegal forms are what cause the scarcity of medicines in the market and generate a crisis in the pharmaceutical field, making the drug market volatile and does not achieve security, sufficiency and stability of medicine and health in general.

The causes and factors mentioned require the state to intervene to avoid and treat them, and this will be addressed in the next section.

## **2. The mechanisms of the state in curbing the phenomenon of scarcity of medicines**

The scarcity of medicines constitutes a global challenge that affects the health system in various countries, because of the impediment it causes in the provision of health care to patients, especially those with

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<sup>1</sup> Law N° 21-15 of 28/12/2021, On combating illegal speculation, no. 99, Official Journal of the Republic of Algeria.

<sup>2</sup>Khadidja MUSALLAM, "Illegal Speculation in Pharmaceuticals". *Journal of politic and law*, vol. 15, no. 2, (Joan 2023), p. 43.

chronic diseases, and in the face of this problem, and with reference to the Health Law No. 18-11 in Article 205 thereof, which stipulates that the State ensures the provision of pharmaceutical materials, including medicines, and ensures easy access to materials, especially basic ones, at all times and everywhere in the national territory. The state had to search for mechanisms and mechanisms that work to avoid scarcity and achieve drug security for patients.

Therefore, local production will be addressed as a mechanism to avoid scarcity and other legal mechanisms.

### **2.1. Encouraging the local production of medicines**

Local production of medicines is a prominent mechanism that Algeria has relied on to overcome the scarcity of medicines, especially if the drug that knows scarcity is imported from other countries, as local production reduces dependence on imported medicines, which may be affected by fluctuations in global markets, and also contributes significantly to achieving a rapid response to local needs, which reduces the occurrence of scarcity, especially medicines that are in high demand. Local production also ensures increased competition between pharmaceutical institutions, as the presence of a local pharmaceutical industry leads to strong competition in the market, which contributes to increasing the percentage of production and reducing prices, all of which are in the fight against the scarcity of medicines.

The pharmaceutical policy in Algeria depends mainly on the production of generic medicines by 75%, and this important percentage came after structural and structural transformations highlighted by Algeria's adoption of a number of decisions and measures aimed at encouraging a local industry capable of ensuring the health security of individuals, developing local alternatives and encouraging national production<sup>1</sup> In this context, Algeria has adopted a series of measures to protect the local pharmaceutical industry, the most prominent of which is

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<sup>1</sup>Nour Al-Din AYACHI, "Transformations in the Global Drug Market and the Opportunities of Emerging Countries - The Case of Algeria –", *Journal of Human & Social Sciences*. Vol. 04, no 01, (July 2018), p. 114.

the decision to ban the import of locally produced [medicines](#)<sup>1</sup>. This allows the elimination of global dependency in this area, so that the pharmaceutical market in Algeria does not become variable and turbulent with the turmoil of the global market.

Encouraging and developing production reduces the problem of drug scarcity, and we note that the Algerian pharmaceutical industry – in recent years – has been witnessing a booming progress, as it has developed the production of cancer drugs and insulin and its vaccine production during the Corona crisis. In addition to the facilities granted to pharmaceutical institutions to invest in this field and the facilities set by the State to speed up the registration of the pharmaceutical product, all of these mechanisms work to promote and develop the pharmaceutical industry.

In addition to encouraging production to achieve local coverage, the state has sought to establish bodies and laws that track the drug market and deter illegal practices.

The Algerian state also works to support national production by stimulating scientific research and innovation and protecting it with patent laws, whether for generic or branded medicines.<sup>2</sup>

## **2.2. Legal mechanisms to eliminate the phenomenon of drug scarcity**

Encouraging local production alone is not enough to achieve the availability of medicines and eliminate scarcity, given that the pharmaceutical market is a wide market whose commercial practices are interspersed with illegal practices such as monopoly and illegal speculation, which cause scarcity, so the President of the Republic intervened by drafting a special law No. 21-15 criminalizing those practices.

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<sup>1</sup>Order of 09 July 2015, on the prohibition of the import of pharmaceuticals and medical supplies destined for human medicine manufactured in Algeria Official Journal of the Republic of Algeria, no. 62.

<sup>2</sup>Walid BEN LAAMER, The Legal System of Pharmaceutical Industries in Algerian Law and the TRIPS Agreement, PhD Thesis in Law, University of Batna 1, Algeria, 2019-2020, p. 101.

The decision of the Ministry of Pharmaceutical Industry to create an administrative body whose role is to track the pharmaceutical market and its supply will be discussed, and then the criminalization of scarcity practices will be discussed.

### **2.2.1. The Administrative Body in charge of tracking scarcity**

The Ministry of Pharmaceutical Industry has established a body in charge of monitoring the availability of pharmaceuticals called the "National Observatory for Vigilance for the Provision of Pharmaceuticals", created by the Minister of Pharmaceutical Industry by virtue of Decree No. 38 of April 26, 2022 amending and supplementing Decision No. 13 of January 28, 2021 on the establishment of the National Observatory for the Provision of Pharmaceuticals<sup>1</sup>, its main tasks are to draw up a basic list of medicines that are out of stock or are experiencing supply difficulties, to propose measures to exclude any supply pressure difficulties that affect medicines, to propose measures and procedures that will enrich the information platform dedicated to monitoring disruptions or tensions in the supply of pharmaceuticals, to inform doctors about medicines available on the market.

The National Observatory defined the term "provision of pharmaceuticals, including medicines" as "the assessment of the availability of each pharmaceutical product, in terms of meeting the need of one or more of the existing and/or imported and/or locally manufactured specialties, general or bio-substitutes."<sup>2</sup>

What distinguishes this body is its joint work with many sectors of doctors, pharmacists, distributors, producers and importers, as the observatory includes different ministries (defense, interior, health, labor and social security), as well as all organizations and unions of pharmacists, doctors, producers, distributors and consumer [associations](#)<sup>3</sup>, hence tracking and monitoring scarcity in the market is more effective by joint work between sectors.

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<sup>1</sup>The decision is included in the compilation of legal texts on the official website of the Ministry of Pharmaceutical Industry.

<sup>2</sup>This definition has been endorsed by members of the National Observatory for the Provision of Pharmaceuticals.

<sup>3</sup>Article 3 of Decision No. 38 of 26 April 2022. Ibid.

Especially its joint work with the corps of doctors, so that the observatory is a link between the doctor and the patient, it is its tasks to inform doctors who prescribe medicines of the list of available medicines, including essential medicines, and therefore medicines that know a scarcity are not prescribed by doctors, and here patients have the comfort in obtaining medicines from pharmacies. Here, the importance of the observatory's work in providing solutions to confront the scarcity of medicines and the resulting difficulties that destroy the patient.

Accordingly, the Ministry of Pharmaceutical Industry is keen to ensure the availability of medicines in the market, especially in the period of crises, at a time when the market is experiencing fluctuation and instability in supply, especially basic medicines, for example, its issuance of a memorandum on August 18, 2022 that includes the commitment of pharmaceutical institutions for manufacturing, import and wholesale distribution to direct all quantities of medicines that are witnessing pressure and scarcity and available in stock to pharmacies within a period not exceeding 5 days. In this context, the inspection teams of the General Inspectorate of the Ministry of Pharmaceutical Industry and the mixed teams of the Ministry of Commerce - Ministry of Pharmaceutical Industry are working to inspect the institutions of production and distribution of medicines, in order to ensure the continuous supply of medicines in pharmacies. It also inspects wholesale distribution institutions in particular, and revokes accreditation from them if it is proven that they have seized medicines or committed illegal practices related to monopoly, conditional sale and speculation.

As part of the special measures to address the phenomenon of scarcity, a digital platform and a national system for vigilance and warning for the supply of pharmaceutical materials have been established, which allows this platform to track the reality of the market and monitor the imbalance of medicines in order to avoid scarcity, and to ensure their availability in the market. In addition to the digital platform, an online portal<sup>1</sup> has been set up, the purpose of which will be to enable all stakeholders in the drug chain and civil society to report any form of illegal commercial practices on medicines and to report the recorded shortage of medicines.

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<sup>1</sup> For example website: [Requetemedic@miph.gov.dz](mailto:Requetemedic@miph.gov.dz) is on the official website of the Ministry of Industry and Local Production.

In addition to these mechanisms, the Algerian legislature has ensured the avoidance of scarcity by criminalizing the illegal practices that cause their occurrence.

### **2.2.2. Criminalization of scarcity creation practices**

Illegal speculation is one of the methods resorted to by economic dealers to create tension and turmoil in the pharmaceutical market and create scarcity to achieve their own endeavors, and due to the specificity of this crime and its eloquent impact on the market, the Algerian legislator intervened and by a decision of the President of the Republic to cancel the crime of illegal speculation from the Penal Code stipulated in only three articles 172, 173, 174, and a special law No. 21-15 - mentioned above - included forms of criminalization other than those stipulated in the Penal Code, where there are many. The spread of these practices in exceptional circumstances where the country is going through health crises<sup>1</sup> and this law coincided with the spread of the Corona pandemic crisis, where the phenomenon of illegal speculation in pharmaceuticals and medicines, especially in that period, worsened, and created turmoil and scarcity in the market. Law No. 15-21 addressed and criminalized illegal speculation in the pharmaceutical market and thus eradicated scarcity.

With reference to the legal adaptation of illegal speculation, we find that the Algerian legislator, through Law 21-15, has qualified acts practiced on pharmaceutical substances as a misdemeanor, and this is confirmed by article 13 thereof: "If the acts mentioned in article 12 of the law are committed on cereals and their derivatives, dry pulses, milk, vegetables, fruits, oil, sugar, coffee, fuels or pharmaceuticals, the penalty shall be imprisonment from ten (10) years to twenty (20) years and a fine. From 2,000,000 DZD to 10,000,000 DZD.

Acts against pharmaceutical substances are also classified as a felony according to Article 14 of Law 21-15, if committed in exceptional cases, the emergence of an emergency health crisis, the outbreak of an epidemic or the occurrence of a disaster, the penalty shall be temporary

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<sup>1</sup>Hasen TEHRAOUI, Lakhder REFAF, "The Specificity of Criminalization in the Crime of Illegal Speculation According to Law", *The Journal of Legal and Political*, vol.6, no. 2, (November 2022), p. 523.

imprisonment from twenty (20) years, to thirty (30) years, and a fine from 10,000,000 DZD to 20,000,000 DZD.

Therefore, crimes related to medicines are intentional crimes, where the moral element of them is the availability of criminal intent with the elements of knowledge and will, where knowledge is represented in the realization of the offender that the act he performs is a criminal act legally and punishable, whether it comes to refusing to sell without legitimate justification or illegal speculation, with the tendency of his will to commit the crime without being forced to do so. As for the material element of the crime, which is represented in the place of the crime, which is "medicines", and the criminal conduct in the crime<sup>1</sup> represented in the illegal practices mentioned above.

This indicates the State's keenness to confront any imbalance that leads to disruption of the pharmaceutical market, and to criminalize any illegal act or practice that prevents the achievement of pharmaceutical security and the national need to achieve the safety of people's health, and the integrity of its economy in the pharmaceutical field.

Since speculation results in a pharmaceutical monopoly on the part of prices, the Algerian legislator has worked since ancient times to combat monopoly, controlling the pharmaceutical market through pricing through Law 95-06 of 25 January 1995 on competition, which established the principle of price liberalization and became the prevailing basis in the market for various goods.

In this context, a committee has been established at the level of the National Agency for Pharmaceuticals, called the Intersectoral Economic Committee for Medicines, whose main task is to fix the prices of medicines upon registration.<sup>2</sup>

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<sup>1</sup> Nabila SAID RAZZAQI, *Pharmaceutical Crime - A Comparative Study* -, (Amman: Dar Al-Alamia International for Publishing and Distribution, 2018), pp. 357-363.

<sup>2</sup>Article 2 of Executive Decree no. 20-326 of 22/11/2020, containing the functions, composition, organization and functioning of the Intersectoral Economic Committee for Pharmaceuticals, Official Journal of the Republic of Algeria, no. 69.

## Conclusion:

The problem of the scarcity of medicines in the market suffers from various countries in the world, where it has known sharpness in recent years coinciding with the emergence of regional, health and even economic crises, due to many factors, including a shortage of raw materials, and also due to the withdrawal of major pharmaceutical companies for some medicines, especially basic ones, which makes the pharmaceutical market locally damaged, in addition to external factors, there are internal factors that lead to disruption of the

pharmaceutical market and create scarcity in it, including pharmaceutical monopoly and illegal speculation. Parallel selling are all illegal practices in the pharmaceutical market and directly affect their consumers. This prompted the state to take measures and measures to curb this phenomenon, as it restructured the sector by establishing the Ministry of Pharmaceutical Industry, which committed to providing medicines through its organization of import programs, and encouraging local production as a goal to raise local coverage, with the development of mechanisms charged with tracking and eliminating obstacles to supply and the provision of medicines by establishing the National Observatory for the Provision of Pharmaceuticals and its effective importance in studying the availability of medicines and providing solutions that eliminate the problem of scarcity, in addition to the effectiveness of the law. Criminal for illegal speculation.

In light of the above, this study reached a set of results, most notably:

- The problem of the scarcity of medicines in Algeria stems from illegal practices resorted to by economic operators for purposes that serve their profit interests.
- Supporting local production and supporting investment in it, which is an important mechanism to avoid the scarcity of medicines, especially imported ones, which are affected by the fluctuations of global markets.
- The problem of the scarcity of medicines pushes the consumer to rely on electronic pharmacies and resort to illegal ways to obtain

medicines, as this poses a threat to his safety and health, especially since most electronic pharmacies practice their work illegally.

Recommendations:

- Local production needs to depend mainly on scientific research, so laboratories must be developed, competencies must be attracted and international cooperation must be strengthened through the exchange of experiences in the pharmaceutical industry.

- The need to work on investing in the production of raw materials in quantity and quality, which will reduce the cost of industrial production of medicines and reduce the import bill on the one hand, and eliminate global dependence on the other.

- Promote joint work between the health sector and other sectors to identify the causes of scarcity and develop solutions for this.

- Continuous monitoring of monopolized distribution networks for medicines.

- Suppress violators of the legal provisions of illegal practices such as monopoly, parallel sale and illegal speculation, and impose the penalties stipulated by law.