

Legal security of water resources in Algerian legislation

الأمن القانوني للموارد المائية في التشريع الجزائري

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Abstract:

In Algerian legislation, the protection of water resources is a vital issue, given its importance to economic, social, and environmental development, particularly in light of the challenges related to its scarcity and increasing demand. Algerian legislators have paid special attention to this issue through a set of laws and regulations aimed at regulating water use, conserving it, and ensuring its sustainability.

Algerian legislation demonstrates a growing awareness of the importance of protecting water resources by adopting an integrated legal system aimed at the rational and sustainable management of this vital resource. However, the effectiveness of these laws remains dependent on their strict implementation, increased public awareness, and improved coordination among the various stakeholders.

Keywords: Legal protection of water – Water property – Water security – Sustainable water development – Water resources.

Introduction:

Water resources have been a preoccupation of many researchers in various fields, including the legal field, since ancient times, water represents a national asset and an environmental area that requires legal protection.

Most countries, including Algeria, have sought to ensure that their people's water needs are met to achieve water security. They have recognized the importance of preserving water resources and managing them rationally, considering them a fundamental resource for economic development and a fundamental component of their national assets.

The right to water encompasses both freedoms and rights. Freedoms include the right to continue to benefit from existing water supplies necessary to realize the right to water, and the right to be free from interference, such as the right to be free from arbitrary interruption or pollution of water supplies.

Conversely, rights include the right to a water supply and management system that provides equal opportunities for all people to enjoy the right to water. In order for states to demonstrate their compliance with their general and specific obligations, they must demonstrate that they have taken the necessary and feasible steps to realize the right to water in accordance with international law. Failure to act in good faith to take such steps constitutes a violation of this right.

It should be emphasized that a state party cannot justify its failure to comply with the basic obligations stipulated.

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As a result, Algerian legislators have attempted to establish a national policy aimed at protecting and providing this vital resource while ensuring its sustainability for future generations.

The concept of national water property in Algerian law has passed through various historical stages, influenced by general political and economic trends and taking on specific and local concepts. During the socialist era, it was characterized by the expansion of public property, the introduction of innovative divisions within the framework of national property, and strict oversight. With the issuance of the 1989 Constitution and the emergence of capitalism, and the subsequent implementation of Law No. 30-90 on national property, it was decided to return to the conventional binary division of national property based on the difference in legal systems and the nature of disputes.

The criteria for differentiating between what is considered public, which includes directly by everyone or through allocation to public utilities, and what is considered private national property on the basis that its exploitation generates financial returns, or that it performs a property function and is subject in many of its provisions to private law became clear.

The Algerian legislator stipulated in Article 80 of the 2016 constitutional amendment: "Every citizen must protect public property and the interests of the national community and respect the property of others."¹ and the constitutional revision in article 63 : The State ensures that citizens have: « access to drinking water and its preservation for future generations »³.

Article 1 of Law No. 05-12 on Water² emphasized that this law aims to define the principles and rules applicable to the use, management, and sustainable development of water resources, as they are the property of the national community. The necessities of economic and social development require the provision of water to meet the ever-increasing needs of the population . These needs are often competitive and even contradictory, making water management extremely complex and difficult to implement. To address this situation, it was necessary to have effective legal tools to regulate the distribution of water resources, monitor their use, and ensure their protection and preservation. Accordingly, this intervention aims to highlight the legal protection of water in light of Law No. 90-30 on national property, including the legislation on water, by addressing the concept and components of public water property, and the benefits granted to it under the Water Law and the National Property Law.

Hence, our question was as follows:

- How did the Algerian legislature protect water property?
- What protection did it provide in the National Property Law?

Researching this topic required an analytical approach, through which we proposed the following research plan:

1- Section One : The Concept and Components of Public Water Property:

The origin of all real estate is the land, which includes everything above and below it, including the waters beneath it.

The Algerian legislator stated its classification of real estate in Article 23 of Law No 90-25, which includes the Real Estate Ordinance, as amended and supplemented by Order No 95-26 stating : " Real estate of various types is classified within the following legal categories:

- National property.
- Private or private property.
- Waqf property.

This law was followed by the issuance of Law No. 90-30, which includes the National Property Law, in which the Algerian legislator adopted the theory of the duality of national property. Article 1 of the law states: " This law defines the components of national property as well as the rules governing its formation, management, and monitoring of its use ".

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The management, exploitation, and development of this national property are carried out either directly by state bodies and other public ownership groups, or by license or contract, by legal persons under public or private law, or by individuals. Natural.

Accordingly, the legislator stipulated in the second paragraph of Article 5 of Law 90-30⁴ :

"...to this end, it must ensure the protection and preservation of national property and its dependencies."

Beneficiaries, users, and holders of national property must adhere to the applicable laws and regulations and the stated objective of this facility.

All water, regardless of its form, is incorporated into public water property. Therefore, water resources cannot be subject to private ownership, with the exception of water over which legal rights have been acquired. Other texts were subsequently issued to address emerging needs.

Indeed, the current conditions for water use are no longer those that prevailed in the past, as water resources were not in demand with the same urgency as they are today due to the increasing demand for water.

1.1- First subsection : Definition of Water Resources :

Water is a fundamental natural resource for life and an essential substance upon which the majority of human economic activities are based.

It is also a rare resource whose availability is irregular in time and space, and it is highly susceptible to the negative repercussions of human activities.

Water is one of the planet's renewable natural resources and one of the essential elements on Earth. One of the most important things that distinguishes it from other chemical compounds is its stability. The amount of water present on Earth is the same as it has been since God created the Earth. It exists on land, in the seas and oceans, and in its solid state as ice at the poles.

A water molecule consists of a bond between one oxygen atom and two hydrogen atoms.

Water is the foundation of life on Earth and the basis of its existence and continuity, it is one of the most important necessities of life, as no life can function without water⁵.

1.1.1- First Branch : Through National Laws :

Land, as real estate, includes everything above and below it. Therefore, underground water and surface water are considered real estate by their very nature, as long as human intervention has not reached into it and isolated it from its natural source, consequently, they become movable property by their very nature.

Ownership of real estate grants ownership rights to everything it produces, including what is attached to it and what is incorporated into it by adhesion, whether natural or artificial.

Public ownership of water was established by Law 90-30, which includes the National Property Code.

All water constitutes part of public property, with the exception of the recognized acquired rights to this water.

The Algerian legislator, in Law No. 12-05 on Water, has consistently defined the components of natural and artificial public property, including water and related easements, but has not defined water.

1.1.2- Second Branch : Through Legal Jurisprudence:

Legal commentators have usually applied the term "internal waters" to any water that penetrates into the territory of a state, including ports, bays, straits, archipelagos, lakes, enclosed seas, sea canals, and rivers.

The dictionary defines water as a liquid upon which life on Earth depends. In its purity, it is transparent, colorless, odorless, and tasteless. It boils at 100 degrees Celsius and freezes at zero degrees.

It consists of the union of two hydrogen atoms with one oxygen atom. The views of states and legal scholars have varied regarding the legal status of water, particularly marine waters, and the extent to which sovereignty can be imposed over them. Therefore, there has been an urgent need to codify rules regulating the use and exploitation of water⁶.

Most legal scholars have not defined water, but have instead provided definitions through international agreements and treaties for similar terms such as internal waters, territorial waters, archipelagos, valleys, and rivers, such as the 1997 United Nations Convention on International Rivers, all of which focus on agreements to support efforts to conserve water.

1.2- Second subsection : Components of the Public Water Domain :

Public national property consists of rights and movable and immovable property used by all and placed at the disposal of the user public, either directly or through a public facility, provided that, in this case, by virtue of its nature or special arrangement, it is adapted absolutely or essentially to the specific purpose of that facility. This is in accordance with the text of Article 12, paragraph 1, of the National Property Law.

As for the composition of public water property, it consists of two basic categories: natural public property and artificial public property.

1.2.1- First Branch : Natural Public Water Domain :

Natural public property, as stipulated in paragraphs 5 and 7 of Article 15 of Law 90-30, includes:

- Seashores
- The territorial seabed and its subsoil
- Inland sea waters
- Seabed and its basins
- Watercourses and dry stream beds, as well as islands formed within stream beds, lakes, and other water bodies or areas within their boundaries, as defined by the law containing the Water Code.

The last paragraph of the same article states: "...surface and underground natural wealth and resources represented by water resources of various types..."

Referring to Article 4 of Law 05-12, we find that it details the components of natural public water property, stating that it consists of:

- Groundwater, including water recognized as spring water, natural mineral water, and bath water, once their existence is confirmed or discovered, particularly after the completion of exploratory drilling or prospecting work, regardless of its nature, carried out by any natural or legal person subject to public or private law.
- Surface water formed by valleys, lakes, ponds, salt marshes, and shores, as well as the lands and vegetation within their boundaries.
- Silt and sediments that form naturally in watercourses.
- Non-renewable water resources, which consist of the following:
 - Fresh seawater and demineralized saline water for public use.
 - Wastewater treated and reused for public use.
 - All types of water incorporated into water systems using artificial replenishment technology.

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Referring to the text of Article 15 of Law No. 84-16 on National Property (repealed)⁷, we find that it previously confirmed that the following are considered national property:

- Sea coasts.
- The territorial seabed and subsoil.
- Inland marine waters.
- Seabed and its basins.
- Watercourses and dry stream beds, as defined by the law containing the Water Code (i.e., Law No. 83-17 containing the Water Code, repealed).
- Lakes
- Islands formed within stream beds.
- Territorial airspace.
- The continental shelf and the exclusive economic zone.

Therefore, natural public water property is defined by demarcating the boundaries of valleys, lakes, ponds, salt marshes, and shorelines at the highest level reached by the water. This is particularly true for valleys, which is at the level of unimpeded floods until they flow.

However, given the current scarcity of water, the legislator has attempted to devise methods and techniques for extracting water and protecting exposure to it. He therefore provided for another type of water property, classifying it in a different classification.

1.2.2- Second Branch : Artificial Public Water Domain :

When the Algerian legislator discussed artificial national public property in Article 16, he did so in the context of discussing what are called major technical installations and other facilities and their appurtenances constructed for the public benefit.

These installations and structures are constructed and fall within the artificial public water property, as detailed in the Water Law, particularly the following:

- Such as installations and structures constructed for the purpose of exploring, examining, and evaluating water resources quantitatively and qualitatively. - Groundwater and surface water resource mobilization and transfer facilities, treatment plants, reservoirs, water transport and distribution facilities via canal and pipeline networks, as well as their facilities, intended for public use to supply urban and rural areas with water or irrigate and drain irrigated areas.
- Wastewater and rainwater collection and treatment plants, as well as their facilities, intended for public use to purify urban and rural areas.
- Hill leveling facilities for flooding and retention, and the development of drainage and valley edges, constructed to ensure protection from flooding in urban areas or areas prone to flooding.

The Algerian legislator also established a national public institution of an industrial and commercial nature, named "Algerian Waters" by Executive Decree No. 01-101.⁸

As part of the national development policy, the institution is tasked with ensuring the implementation of the national drinking water policy throughout the country by managing the production, transport, treatment, storage, conveyance, distribution, and supply of drinking and industrial water, as well as the renovation and development of its infrastructure. This institution was established pursuant to Law No. 83-17 on water. Its relations with the state are subject to administrative rules and it is considered a trader in its relations with third parties.

There are also easements related to public artificial water properties. For example, individuals adjacent to water diversion and water conveyance channels, as well as those adjacent to agricultural wastewater collection points, must allow free passage on their private property to administration employees, their equipment, or contractors responsible for their maintenance. They

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must also allow the unloading of purification materials within a five (05) meter width on either side of the public artificial water properties.

Any new construction, the erection of a fixed fence, or the planting of trees within areas subject to a passage or unloading easement is also prohibited.

Any owner of a property subject to a passage or unloading easement may require the beneficiary of this easement to acquire this land at any time.

The state, regional authorities, public institutions, concessionaires, and public service commissioners who carry out development projects of public interest may also benefit from easements for the installation of underground or open channels on undeveloped private land.

2- Second Section : Supervision of Public Water Domain :

As for supervision of public water property, the Algerian legislator has established methods for this purpose. Article 59, Paragraph 1 of Law 90-30 states: "The administrative authorities responsible for managing public national property, pursuant to legislation or regulations, each within the limits of its jurisdiction, have the authority to take measures related to the management of public national property to ensure its protection and preservation."

Also, anyone who has not been granted permission by the competent authority in accordance with the forms stipulated in the regulations may not occupy a plot of public national property or use it beyond the limits permitted to all. Paragraph 1 of Article 61 of the same law also states: "The public may use public national property directly or through a public interest in the form of management by proxy or exploitation by concession, provided that this public interest has been assigned to that property."

It is noteworthy that the legislator has granted the possibility of acquiring, on the other hand, the use of public national property. A normal or unusual character.

To this end, natural or legal persons subject to public or private law must obtain a license to use natural public water property.

They may also use it based on a concession contract and are called exploitation concession holders.

2.1- First subsection : Benefits Granted Under the Water Law and the National Property Law :

The Algerian legislator has established, within the framework of the National Property Law, rules for their formation, management, and oversight. In this context, it has worked to protect water resources from various types of pollution and set the necessary conditions for this.

Through the Water Law, it has also established sound environmental foundations and standards for the establishment of wastewater treatment plants, defined the conditions and requirements for the establishment of waste dumps, identified waste disposal sites, defined the health requirements for water treatment, purification, transport, or storage, and established the principles, guidelines, and requirements for rationalizing water consumption.

2.1.1- First Branch : The Right to Use and Exploitation :

The exploitation of subterranean water may require instructions specifying the maximum amount of water to be exploited for wells or excavations, whether this involves the use of a number of wells or excavations, or any other measure capable of avoiding harmful interactions and achieving the conservation of existing water resources. The right to use water remains attached to a specific piece of land within a specific scope of use. Moreover, in the event of land fragmentation, the distribution of water to the resulting parcels becomes the subject of new water usufruct rights, replacing the original usufruct right.⁹

Some comparative legislation also stipulates that if spring water, upon its release from the property from which it originates, forms a watercourse characterized by running water, the landowner may not divert the water from its natural course to the detriment of the beneficiaries located downstream. Every owner has the right to use and dispose of rainwater falling on his land.

Used water from water-supplied dwellings may be directed via an underground canal toward collection or purification facilities, in accordance with the relevant texts and instructions for water collection.

The right to water encompasses both freedoms and rights. Freedoms include the right to continue to benefit from existing water supplies necessary to realize the right to water, and the right to be free from arbitrary interruption or pollution of water supplies.

Conversely, rights include the right to a water supply and management system that provides equal opportunities for people to enjoy the right to water.

2.1.2- Second Branch : Duties of Users of Public Water Domain :

Encroachment in any form, especially by means of buildings, on the free banks of temporary or permanent waterways, irrigation canals, lakes, water pipes, navigation, irrigation, or purification canals that fall within public water property is prohibited.

It is also prohibited to construct or remove deposits, plantings, or crops within public water property without a license.

2.2- Second Subsection : Effects of Protecting Public Water Domain :

The right to water has been and continues to be one of the primary causes of many disputes and conflicts between individuals, groups, and even countries.

In some cases, disputes over water between landowners have negatively impacted water resources and their exploitation, resulting in a decline in development and progress. This has occurred in many parts of the world. Given the importance of water as a natural resource and the need for its sound management, which requires international efforts to regulate its exploitation, management, and conservation, and given the increasing demand for water due to the population explosion, which now requires serious application of scientific studies and findings on water and its sound management to ensure the preservation of the quality and quantity of water resources, this must be achieved through strengthening domestic regulatory laws and activating international treaties.

2.2.1- First Branch : Through International Treaties :

Article 11, paragraph 1, of the International Covenant on Human Rights identifies a number of rights arising from the realization of the right to an adequate standard of living, which are indispensable for the realization of that right, including "...adequate food, clothing and housing." The use of the phrase "including" indicates that this list of rights is not intended to be exhaustive. Rather, the right to water falls within the category of basic guarantees for ensuring an adequate standard of living, as it is one of the most important conditions for survival. Furthermore, the Committee has previously recognized access to water as a human right, as set forth in Article 11, paragraph 1, of the International Covenant. The right to water is also inseparable from the right to the highest attainable standard of physical health and the right to adequate shelter and food.

This right should also be viewed in conjunction with other rights enshrined in international human rights law, most importantly the right to life and human dignity.

A wide range of international documents, including treaties, declarations, and other international standards, have recognized the right to water. For example, Article 14, paragraph 2,

of the Convention on the Elimination of All Forms of Discrimination against Women stipulates that States parties to the Convention shall ensure to women the right to "enjoy adequate living conditions, particularly with regard to [...] water supply."

Article 24, paragraph 2, of the Convention on the Rights of the Child also requires States parties to combat disease and malnutrition "through the provision of adequate nutritious foods and clean drinking water."

The Committee has consistently addressed the issue of the right to water through States parties' reports, in accordance with its revised general guidelines on the form and content of reports to be submitted by States parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights and its general comments. The United Nations General Assembly also declared an International Decade of Action for the years 2005 to 2015 under the slogan "Water for Life." The primary goal is to work toward achieving international commitments on water-related issues and the Millennium Development Goals by 2015. Countries agreed, under the development goals and commitments they made at the World Summit on Sustainable Development in 2002, to address the problem of reducing the number of people without access to safe water and sanitation.

The European Commission also set a set of objectives within its water policy, including providing safe sources of drinking water in sufficient quantities and of acceptable quality to meet economic, industrial, and agricultural needs, and maintaining the quality and quantity of water resources to protect and support the functioning of the aquatic environment and ensure its continued natural state.

It also worked to manage water resources to prevent or mitigate the negative effects of floods and reduce the severity of drought. The First Protocol to the Geneva Convention relating to the Protection of Victims of International Armed Conflicts, issued in 1977, was more explicit than the Convention in its report on the protection of civilian objects, as it addressed all different objects, including natural resources, installations and public property. It also included all acts of attacking, destroying or removing objects and resources indispensable to the survival of the civilian population, including water facilities, their networks and irrigation facilities. This is what Article 48 addressed, which stipulated the necessity that: "The parties to the conflict must strive to distinguish between the civilian population and combatants and civilian objects." Article Five (05) addressed the general protection of civilian objects, and Article 55 addressed the issue of protecting the natural environment.

2.2.2- Second Branch : Through National Laws :

Water protection is clearly demonstrated by Law No. 05-12 on Water and Law No. 90-30 on National Property, which regulates public water resources. For this purpose, the Algerian legislature has established protection for these waters.

Article 692 of the Civil Code states: "Land belongs to whoever cultivates it, and all water resources are considered the property of the national community.

The procedures for implementing this article are determined by the texts pertaining to agricultural resources and the texts pertaining to water research, distribution, use, and exploitation."

Article 123 of Law 90-30 on National Property stipulates that: "Legal agents shall inspect all forms of infringement on public national property..." Article 131 of the same law states: "National institutions, administrative liquidation bodies, civil servants, and oversight institutions, each within its jurisdiction, shall exercise oversight over the use of property belonging to national property in accordance with the laws and regulations that define their jurisdiction." Therefore, it is not possible to use water resources in this manner, whether for natural or legal persons, except

by virtue of a license or concession, and only by virtue of this license, which constitutes a public law contract through which this water may be exploited, and this upon the request of the person concerned. Accordingly, violations recorded regarding water encroachment are entrusted to the Water Police, as defined in Article 159 of Law 12-05 relating to water. These officers are composed of agents affiliated with the administration in charge of water resources. Violations detected by them are subject to investigation, inspection, and review by judicial police officers and agents, as well as water police officers.

Article 138 of Law No. 90-30 relating to national property stipulates that violations stipulated in Article 136 and its annexes shall be investigated in accordance with the rules and procedures established in the Code of Criminal Procedure.

The legally established oversight bodies and qualified individuals shall prosecute and punish violations in accordance with the terms and procedures specified by law. Conversely, if these agents charged with monitoring this public water resource neglect this responsibility, they will also be punished for it. Article 119 bis of the Penal Code states: "Any public official, within the meaning of Article 2 of Law No. 06-01 on the prevention and fight against corruption, who, through their clear negligence, causes the theft, embezzlement, damage, or loss of public or private funds, or items in their place, documents, bonds, contracts, or movable property placed under their control, whether by virtue of or because of their position, shall be punished by imprisonment from six (6) months to three (3) years and a fine of 50,000 DZD to 200,000 DZD if, through their clear negligence, they cause the theft, embezzlement, damage, or loss of public or private funds, or items in their place, or documents, bonds, contracts, or movable property placed under their control, whether by virtue of or because of their position." The legislator also considered the crime of encroachment on water a violation through Law No. 05-12 on water, punishing it with varying fines, or in some cases, imprisonment of up to five years.

Conclusion:

Water is a fundamental natural resource for life and an essential substance for it. It is on this basis that most human economic activities are based. Therefore, it was necessary to provide special water resources and enact appropriate legislation that makes its management and protection a priority for Algerian law makers.^b

Water represents one of the environmental areas requiring protection. Through the National Property Law and the Water Law, the legislator sought to ensure that citizens' water needs are met to achieve water security. This stems from his awareness of the importance of preserving water resources and managing them rationally, as they are a fundamental resource for economic development.

Among the primary objectives of protecting this vital resource is to provide for the requirements of social and economic life while ensuring its sustainability for future generations.

Accordingly, we can draw the following conclusions:

- There is quantitative and qualitative protection for real estate properties as a whole, and they must be preserved.
- The Water Law and the National Property Law will contribute to improving the water environmental status of public resources.
- The National Property Law and the Water Law are effective tools for combating any infringement on public water property.
- The legislature considers water to be public property, and therefore cannot be subject to private ownership.
- The right to use water is only granted under legally defined conditions and regulations, and a person is punished if he violates the legal rules set forth for this purpose.

Citations:

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