

The Legal Regime of Thermal Investment in Algerian Legislation

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Abstract:

This study examines the legal regime governing thermal investment in Algeria and its oscillation between the protection of groundwater resources as a sovereign public property and the promotion of private investment through administrative concession contracts. The significance of this study lies in highlighting the thermal tourism sector in Algeria as a promising strategic pillar for economic diversification and the achievement of local development beyond the hydrocarbons sector.

The study primarily aims to identify and examine the regulatory frameworks and legal mechanisms governing this activity, while assessing the adequacy and effectiveness of the legislative system in reconciling the protection of groundwater resources as a sovereign public property of the State with the encouragement of private investment capital through the regulation of the administrative concession contract and the conditions governing its granting and termination.

Keywords: Thermal investment; concession contract; Algerian legislation; thermal waters; health tourism.

Introduction

Thermal investment is no longer merely a traditional tourism activity known in the various regions of Algeria; rather, it has become a strategic pillar dictated by the imperative of economic diversification and sustainable local development. The State's developmental approach has shifted from absolute reliance on the hydrocarbons sector toward the valorization of underground natural resources and their transformation into promising therapeutic and health-tourism destinations. Although this orientation seeks to create an alternative source of wealth, it has given rise to a complex legal regime characterized by specificity and duality, as it lies at the intersection between the protection of national water resources as a sovereign, inalienable component of the public domain and the encouragement of private investment capital through administrative concession mechanisms. This valuable natural resource carries intertwined environmental and economic dimensions, requiring the legislator to establish strict rules that ensure its sustainability and protection from depletion or pollution without hindering the pace of investment-driven growth.

Hence, the considerable importance of subjecting thermal tourism activities to rigorous legal and regulatory oversight becomes apparent, particularly since the transition of mineral springs from the stage of "raw existence" to that of "economic productivity" requires a complex

infrastructural and institutional framework, imposing reciprocal and stringent obligations upon both the granting administration and the investor. The significance of this issue also lies in the need to reconcile the removal of bureaucratic obstacles and the attraction of national and foreign investments with the imposition of administrative and criminal sanctions for any breach of the specifications that may affect the State's groundwater resources or the health and safety of users.

Accordingly, this study revolves around a fundamental issue: "to what extent is the legal regime in Algerian legislation adequate and effective in regulating the mechanisms of thermal investment and balancing the protection of water resources with the development of the health-tourism sector?"

To address the various aspects of this issue, this article seeks to analyze the governing elements of the subject through two main sections. The "first section" is devoted to defining the conceptual framework of thermal investment and the legal nature of thermal waters, while examining the practical forms and field challenges of this activity in Algeria. The "second section" is dedicated to examining the legal regime governing the concession contract for the exploitation of thermal waters, highlighting the mechanisms for its granting, the obligations arising therefrom, and the methods of termination of this contractual relationship and their temporal effects.

Section One: The Concept of Thermal Investment in Algerian Legislation

Understanding the concept of thermal investment constitutes the cornerstone for defining the legal mechanisms governing therapeutic tourism activities, as the effectiveness of the thermal regime cannot be conceived without a precise determination of the legal nature of thermal waters as a component of national property and the identification of the investment patterns directed toward their exploitation.

The Algerian legislator has sought to establish a legal approach that balances the protection of the State's natural water resources with the promotion of investment capital. This necessitates the adaptation of legislative and regulatory texts to accommodate the modern economic and technical developments affecting this activity, which is characterized by its dual nature (environmental and economic). Accordingly, and in order to address all aspects of this concept, this section will be divided into two main parts. The "first part" examines the definition of thermal investment and the legal nature of thermal waters, while the "second part" focuses on the various forms of thermal investment and its requirements.

First Requirement: Definition of Thermal Investment and the Legal Nature of Thermal Waters

A methodological study of the legal regime governing thermal investment requires, as a starting point, the determination of the conceptual framework of the activity and the conditions for acquiring its legal legitimacy. It is impossible to conceive of thermal investment in its regulated form unless the activity possesses the specific characteristics required by law. Since this sector is fundamentally based on a natural resource, this conceptual determination can only be completed by clarifying the legal status of the thermal waters available for exploitation and the

manner in which they are transformed from a public natural resource into the subject of a “concession right” granted by the State to economic operators.

Accordingly, and in order to cover the various aspects of this subject, this requirement will be divided into two branches. The “first branch” is devoted to defining thermal investment and thermal tourism through an examination of the criteria governing them, while the “second branch” addresses the legal nature of thermal waters and the manifestations of their inclusion within the State’s public domain.

First Branch: Definition of Thermal Investment

Determining the frameworks of protection and administrative control imposed on natural resources necessarily begins with defining the legal concept of investment directed toward their exploitation. In Algerian legislation, the concept of “thermal investment” refers to investment in the field of thermal tourism, which constitutes the fundamental basis upon which this economic activity, distinguished by its therapeutic and preventive characteristics, is legally characterized. Given that such investment requires the exploitation of water resources belonging to the national domain, alongside the development of supporting tourism facilities, it is necessary to examine the legal and regulatory concepts governing the components of this activity and the approaches that have sought to define its therapeutic dimensions.

Accordingly, this branch will be examined through two main points: the definition of “thermal waters” (First), and the definition of “thermal tourism (Second).

First: Definition of Thermal Waters

An objective understanding of thermal investment requires a precise determination of the essence of the material resource being exploited. Thermal waters constitute the fundamental basis and investment medium upon which this tourism activity of a therapeutic nature is built. In view of the scientific and environmental dimensions surrounding the characteristics of these waters and their emergence from underground sources, it is necessary to examine the doctrinal approaches that have sought to define their theoretical dimensions before proceeding to analyze the legislative approaches that have conferred upon them a binding legal status within the legal system.

Accordingly, this definition will be presented through two complementary aspects: the “doctrinal definition of thermal waters” (1) and the “legislative definition of thermal waters” (2).

1. The Doctrinal Definition of Thermal Waters

Legal and administrative scholarship has consistently defined thermal waters on the basis of their unique physical and chemical characteristics and their therapeutic purposes. One line of scholarship defines them as:

“Natural groundwater emerging from the depths of the earth at relatively high temperatures and containing rare mineral and gaseous elements that confer upon it distinctive therapeutic and healing properties, distinguishing it from ordinary potable water.”¹

Another view, within the context of public health and environmental legislation, defines them as:

“Water originating from deep underground sources, naturally flowing from springs or through artificial wells, characterized by the stability of its chemical composition and temperature at the source, and possessing health-beneficial therapeutic properties recognized by the competent medical authorities.”²

Thus, the doctrinal concept is based on the principle that such waters cannot be artificially produced; rather, they must emerge from a natural geological environment that protects them from pollution. This characteristic makes them a real estate-based investment resource of a service-oriented and therapeutic nature that contributes to promoting and stimulating tourism investment activities.³

2. Legislative Definition of Thermal Waters

At the legislative level, the Algerian legislator provided a precise definition of thermal waters under Article 02 of Executive Decree No. 07-69, defining them as: “waters extracted from a natural spring or a drilled well and characterized by therapeutic properties due to the particular nature of their sources.”⁴This definition was subsequently reinforced through the amendment introduced by Executive Decree No. 19-150, which added Article 02 bis defining a thermal spring as: “any natural spring, group of springs, or drilled borehole from which thermal waters emerge and which are used for therapeutic and physical well-being purposes.”⁵This explicitly confirms the therapeutic and investment-oriented purpose of such waters.

Reference to Water Law No. 05-12 reveals that the legislator did not provide a direct technical definition of thermal waters within the chapter on general provisions. However, it referred to them among groundwater resources in Article 04, describing them as mineral waters, spring waters, and thermal waters once their existence has been confirmed or discovered through exploratory drilling and prospecting works carried out by any natural or legal person subject to either public or private law.⁶

Taken together, these provisions demonstrate that the legislative concept of thermal waters in Algeria is essentially based on two interrelated criteria: the “source criterion” (an underground spring or drilled well) and the “functional criterion” (therapeutic and healing properties). Consequently, transforming such waters into an exploitable investment resource suitable for tourism development requires reliance on comprehensive technical and planning studies of the designated sites in order to ensure their sustainability and protection.⁷

Secondly: Definition of Thermal Tourism

Thermal tourism represents the practical manifestation and economic objective intended to be regulated through thermal investment. Given its service-oriented and therapeutic dimensions, it has been subject to a precise conceptual framework formulated through two aspects: the “international institutional definition” (1) and the “doctrinal and academic definition” (2).

1. The International Institutional Definition of Thermal Tourism

International organizations have established normative frameworks to regulate this activity on the basis of the exploitation of natural resources and health supervision. In its official technical

guidelines on health tourism, the “World Tourism Organization (UN Tourism)” defines thermal tourism as: “the provision of health facilities through the use of a country's natural resources, particularly mineral waters and climate.”⁸

Within the same regional regulatory context, the “European Parliament” and the “Council of the European Union”, in their guiding documents governing cross-border healthcare, emphasized the element of medical and institutional supervision by defining it as: “tourism whose purpose is treatment through the use of natural resources during a period of recuperation under regular medical supervision, with tourists staying in sanatoria or health resorts possessing recognized therapeutic characteristics for the promotion of public health.”⁹

2. The Doctrinal Definition of Thermal Tourism

Legal scholarship has offered various interpretations of the therapeutic and economic specificities of this form of tourism. Academically, it is defined as the movement of an individual from his or her place of residence to regions and health resorts renowned for natural therapies and mineral springs that are unavailable in the person's local environment, for the purposes of treatment and the attainment of psychological and physical well-being. This form of tourism is characterized by high investment returns due to the extended duration of stay associated with medical protocols and the multiple categories of expenditure incurred by users.¹⁰

From the perspective of the host country, thermal tourism consists of the optimal economic exploitation of available underground resources and natural wealth within national territories and directing them toward meeting the needs of domestic and foreign therapeutic visitors seeking health alternatives to combat modern ailments resulting from daily and professional pressures.¹¹

Based on the foregoing, a comprehensive legal definition of thermal tourism may be formulated as follows:

“Thermal tourism is a regulated investment-based tourism activity founded upon the authorized economic exploitation of mineral springs and natural thermal baths through bathing or drinking mechanisms, with the objective of providing health, therapeutic, and psychological care to users under strict administrative and medical supervision and regulations.”¹²

Second Branch: The Legal Nature of Thermal Waters

Defining the conceptual and institutional framework of investment in the field of thermal tourism cannot be legally achieved without determining the legal status of the water resource being exploited and identifying the protective regime governing it. The designation of a resource as “thermal waters” confers upon it exceptional legal protection upon which the mechanisms for granting licenses and rights of economic exploitation in Algerian legislation are based. Given that these underground therapeutic resources are linked to the State's economic sovereignty and require a balance between encouraging private investment and preserving environmental sustainability, it is necessary to examine the constitutional and legislative rules governing these resources and defining the scope of their protection from private ownership or administrative seizure.

Accordingly, this branch will be examined through two main points: the inclusion of thermal waters within the national public domain (First), and the principle of the inalienability, imprescriptibility, and immunity from seizure of thermal waters (Second).

First: Inclusion of Thermal Waters within the National Public Domain

A thorough study of thermal waters requires identifying the legal regime of ownership to which they are subject. The Algerian legislator seeks to confer a sovereign public character upon all groundwater resources in order to protect them from monopolization and unregulated investment-related depletion. In view of the strategic medical and economic importance of thermal springs, it is necessary to examine the legal basis for their incorporation into the State's public property regime.

Accordingly, this issue will be addressed through two interrelated aspects: the "constitutional and legislative foundations of the public character of thermal waters" (1), and the "distinctive nature of thermal waters as public tourism property" (2).

1. Constitutional and Legislative Foundations of the Public Character of Thermal Waters

The public nature of thermal waters derives its direct basis from the Constitution, which considers natural resources and surface and groundwater sources to be assets belonging to the national community, the preservation and exploitation of which are entrusted to the State.¹³ In implementation of this constitutional principle, Article 02 of Law No. 05-12 relating to water provides that water resources constitute an integral part of the State's public domain. Furthermore, Article 04 expressly incorporates "mineral waters and thermal baths, once their existence has been confirmed or discovered," within the components of the natural public water domain.¹⁴

Accordingly, any natural thermal spring or drilled well from which therapeutic waters emerge is incorporated, by operation of law and immediately, into the national public domain without the need for any prior administrative procedure to establish such status. Consequently, the State becomes the sole legal owner of these resources.¹⁵

2. The Distinctive Nature of Thermal Waters as Public Tourism Property

The legal characterization of thermal waters extends beyond their status as mere groundwater resources. From both doctrinal and legislative perspectives, they acquire the status of "thermal tourism property." Executive Decree No. 07-69 establishes a connection between the exploitation of a thermal spring and the associated thermal perimeter, as well as the technical and environmental protection zone surrounding it.¹⁶

This material relationship between the underground water source and the land on which the public facility is established grants the resource the nature of public immovable property, often located within tourism development areas. Consequently, such resources are subject simultaneously to the provisions of water law and tourism framework legislation, thereby becoming an integrated property base granted to investors through long-term concession arrangements, the conditions and accompanying facilities of which are regulated by the State in order to promote domestic tourism.¹⁷

Secondly: The Principle of the Inalienability, Imprescriptibility, and Immunity from Seizure of Thermal Waters

As a consequence of their inclusion within the national public domain, thermal waters are subject to a strict protective legal regime that restricts the powers of the administration and prohibits any transactions transferring ownership thereof. Since these rules constitute the fundamental limitations preventing investors from acquiring ownership of the spring itself and requiring them to operate through administrative concession mechanisms, these protective principles may be divided into two aspects: the “prohibition of disposal and acquisition by prescription of thermal resources” (1), and the “immunity of thermal waters from seizure”(2).

1. Prohibition of Disposal and Acquisition by Prescription of Thermal Resources

The principle of the inalienability of thermal waters means that neither the State nor its local authorities may sell a thermal spring or transfer its ownership to private individuals or investment companies, under penalty of absolute nullity and criminal prosecution. This principle is affirmed by the provisions of Law No. 90-30 relating to National Property.¹⁸ Closely associated with this prohibition is the rule that such waters cannot be acquired through acquisitive prescription, regardless of the duration of possession of the site by a private investor or the length of operation of the thermal establishment. The relationship between the economic operator and the spring remains one of temporary use and exploitation, limited by the duration of the concession contract, and can never evolve into private ownership, irrespective of how long the activity continues.¹⁹

2. Immunity of Thermal Waters from Seizure

This principle aims to safeguard the continuity of the therapeutic tourism public service. Accordingly, the law prohibits any judicial, real estate, or enforcement seizure of thermal springs or their essential facilities that form part of the public domain, even in connection with debts or financial obligations incurred by the investor operating the facility.²⁰

The rationale behind this immunity lies in the fact that thermal waters are dedicated to therapeutic public benefit and to promoting the physical well-being of citizens. Consequently, neither the waters themselves nor the public property hosting them may be pledged as collateral for private bank loans obtained by the investor. This requires financial and credit institutions to limit their guarantees to the real rights arising from the concession contract, without affecting the natural resource itself or the source of its flow.²¹

Section Two: Forms, Requirements, and Challenges of Thermal Investment in Algeria

Algeria’s underground thermal water resources constitute one of the most promising strategic assets upon which modern economic approaches rely to promote sustainable local development and create alternative tourism hubs beyond the hydrocarbon sector. However, transforming this abundant natural resource from a stage of “raw existence” to one of “efficient investment productivity” depends not only on the volume of spring flows, but also on the availability of an integrated framework of structural, regulatory, and service-related requirements,

accompanied by a serious assessment of the field and administrative obstacles that hinder its growth.

Accordingly, the dimensions of this section will be examined through two interrelated branches: the practical forms of thermal tourism in Algeria (First Branch) and the requirements of thermal activity together with its administrative and service-related constraints (Second Branch).

First Branch: Practical Forms of Thermal Tourism in Algeria

Algeria's geological environment is characterized by a rare diversity in the physical and chemical properties of its underground water springs. This diversity grants thermal investment considerable flexibility, allowing it to take various practical forms and functional classifications capable of meeting the expectations of users. Thermal tourism exploitation ranges from purely therapeutic and curative objectives based on the use of natural elements to complementary purposes combining cultural, historical, and recreational dimensions.

Accordingly, these investment forms will be examined through two main points: the "therapeutic forms of thermal investment" (First) and the "complementary forms of thermal investment" (Second).

First: Therapeutic Forms of Thermal Investment

Therapeutic forms constitute the cornerstone and primary investment framework of thermal tourism, as their fundamental objective is to provide curative and rehabilitative protocols that serve as alternatives or complements to modern medical sciences. Depending on their methods of establishment and the nature of human intervention involved, these forms are divided into two categories: "natural therapeutic tourism and its curative components" (1), and "artificial therapeutic tourism"(2).

1. Natural Therapeutic Tourism and Its Curative Components

This form of tourism is based on travelling to regions and resorts endowed with natural therapeutic resources that possess proven benefits in alleviating physical and psychological illnesses and facilitating recovery periods.²² The foundation of this type of tourism lies in the integration of climatic characteristics and natural resources, which give rise to several important investment activities:

Sulphurous Mineral Baths: These represent the most traditional and widespread form of thermal tourism. The waters emerge from underground springs rich in minerals and characterized by high temperatures that may reach 72°C at the source.²³ From a therapeutic and physical perspective, they are divided into:

Cold-water baths, intended to induce rapid vasoconstriction, stimulate the nervous system, revitalize the body, strengthen immunity, and alleviate rheumatic pain.

Warm-water baths, which help calm the nervous system, relax muscles, and combat joint inflammations and disc disorders.²⁴

Alternating Baths: These operate through a dynamic alternation between warm water flows (which dilate blood vessels) and cold water flows (which constrict them), thereby stimulating blood circulation and promoting detoxification.²⁵

Sand Baths: This investment model is widespread in Algeria's Saharan regions, particularly in Biskra and El Oued. It relies on the technique of "burial in naturally heated sand" as a traditional remedy for joint disorders and rheumatic diseases.²⁶

Mud Baths (Therapeutic Clay Treatments): These involve immersing affected body parts in therapeutic mud possessing a unique organic and mineral composition rich in calcium carbonate, aluminium oxide, iron, and sulphurous waters.²⁷

2. Artificial Therapeutic Tourism

Artificial therapeutic tourism represents a modern investment model based on the integration of human engineering and advanced technological innovations to redesign and utilize water resources within urban wellness centres. These facilities are specifically developed to serve individuals seeking fitness, physical well-being, weight management, and relief from work-related stress.

Inspired by leading international examples such as the spa cities of Bath in the United Kingdom and Montecatini in Italy, this model combines hydrotherapy with recreational activities and artificially landscaped green spaces.²⁸

Second: Complementary Forms of Thermal Investment (Cultural and Recreational)

Contemporary thermal investment extends beyond the mere provision of healthcare services. It increasingly integrates with other tourism forms that enhance the economic attractiveness of thermal resorts and encourage visitors to extend their stays. These complementary forms are generally classified into "cultural thermal tourism" and "recreational thermal tourism".

1. Cultural Thermal Tourism

This form seeks to satisfy tourists' cultural and historical interests by linking therapeutic visits with the exploration of the historical and archaeological heritage surrounding thermal springs. Algeria possesses significant potential in this regard, as many of its thermal stations such as Hammam Debagh in Guelma and Hammam Essalhine in Khenchela are historical landmarks whose original structures date back to ancient civilizations, particularly the Roman era.²⁹

2. Recreational Thermal Tourism

Recreational thermal tourism aims to meet visitors' needs for relaxation, leisure, and entertainment during holidays by providing supplementary facilities around thermal resorts, including green spaces, parks, and the exploitation of unique geological formations such as caves, stalactites, and stalagmites. These attractions constitute a powerful incentive for families and leisure tourists seeking recreation and relaxation.³⁰

Second Branch: Requirements for Thermal Activity and Its Administrative and Service-Related Constraints in Algeria

Transforming the various forms of thermal tourism into a tangible economic reality requires a decisive response to a range of structural and regulatory prerequisites, alongside a careful assessment of the obstacles that hinder the achievement of the desired investment efficiency in Algeria.

Accordingly, this branch will address two interrelated aspects: “the structural and institutional requirements for the establishment of thermal activity” (First), and “the administrative and service-related constraints affecting the thermal investment environment” (Second).

First: Structural and Institutional Requirements for Thermal Activity

The establishment of an efficient thermal investment sector that meets international quality standards requires the availability of an integrated set of structural and service-related foundations, supported by a proactive role on the part of the State. These requirements include: “basic infrastructure and service facilities” (1), and “the strategic role of government in supporting thermal investment”(2).

1. Basic Infrastructural and Service Requirements

These requirements constitute the hard and soft infrastructure of thermal tourism activity and may be classified as follows:

Specialized Therapeutic Facilities: These include mineral baths and health resorts equipped to provide physical and psychological healthcare services, as well as massage therapies using both modern and traditional techniques.³¹

Tourist Accommodation Facilities: This refers to the availability and diversity of lodging infrastructure, including hotels, tourist villages, and resorts located in proximity to thermal sites, ensuring sufficient capacity to accommodate visitors and patients.³²

Tourism Intermediation and Marketing: This involves strengthening the role of travel and tourism agencies as commercial actors responsible for organizing trips, arranging hotel reservations, and promoting thermal tourism products both domestically and internationally.³³

Visitor Assistance and Security System: This requires the provision of stringent guarantees to ensure the safety and security of tourists and their property both inside and outside thermal resorts. It also includes specialized tourist guidance services through the training of professional tour guides possessing advanced linguistic and cultural skills capable of directing visitors and enhancing their overall experience.³⁴

2. The Strategic Role of Government in Supporting Thermal Investment

Experts emphasize that the revitalization of the thermal tourism sector in Algeria largely depends on improving service quality and establishing specialized financing mechanisms, such as the creation of a tourism investment bank.

This governmental role is further strengthened through:

- Developing coherent national strategies and action plans based on policies that encourage and attract private investment;

- Concluding bilateral international agreements to facilitate the movement of health-seeking tourists at lower costs;
- Establishing continuous and professional coordination mechanisms among all stakeholders within the sector, including thermal treatment centres, medical clinics, airlines, hotels, and tourism operators, in order to provide integrated service packages.³⁵

Second: Administrative and Service-Related Obstacles Affecting the Thermal Investment Environment

Despite its considerable potential, thermal tourism in Algeria faces numerous structural and regulatory challenges that undermine its competitiveness. The most significant obstacles may be summarized as follows:

1. Infrastructure Deficiencies and Limited Development Planning

There is a notable shortage of major investment projects and modernized facilities within the sector, resulting in thermal tourism occupying a secondary and relatively weak position in local development plans.³⁶

2. Weak Awareness and Promotional Efforts

The lack of organized awareness campaigns and promotional strategies has contributed to insufficient public and institutional interest in the valorization, protection, and development of thermal water regions and resources.³⁷

3. Insufficient Professional Training and Qualification

The limited number of educational institutions and specialized training centres dedicated to thermal tourism and hospitality has negatively affected service quality, visitor reception, and guidance due to the shortage of qualified professional personnel.³⁸

4. Deterioration of Transport Networks and Sanitation Services

The low standards of public cleanliness in certain cities and thermal resort areas, coupled with the deterioration of transportation services and infrastructure connectivity, constitute significant obstacles to tourism attractiveness.

5. Bureaucratic and Administrative Obstacles

The complexity of administrative procedures and the overlap of competencies among various public authorities hinder the implementation of flexible thermal tourism programs and consequently prevent the extension of tourists' stays within thermal establishments.

6. Imbalance between Price and Quality

The limited accommodation capacities and lodging facilities available at thermal resorts are accompanied by a noticeable increase in the cost of services offered, which often fail to meet international standards and quality requirements.³⁹

Section Two: The Legal Framework Governing the Concession Contract for the Exploitation of Thermal Waters in Algeria

The concession contract constitutes the principal legal framework and regulatory mechanism established by the Algerian legislator for the management and exploitation of the national

thermal water resources. Through this mechanism, a balance is sought between encouraging private investment and preserving public ownership of water resources.

The importance of this section lies in examining the procedural and substantive legal regime governing this contractual relationship of a special administrative nature. Indeed, the dynamics of thermal investment cannot be fully understood without defining the legal identity of this contract, clarifying the stringent conditions and granting procedures imposed by the administration in its capacity as guardian of the public service, and analysing the procedural framework governing the termination of the contractual relationship and its temporal effects. Accordingly, in order to provide a comprehensive understanding of the pillars of this legal regime and its legislative applications in Algeria, this section is divided into two main requirements. The “first requirement” examines the concept of the thermal concession contract and its legal characteristics, while the “second requirement” addresses the mechanisms for granting thermal concession contracts and the methods of their termination.

First Requirement: The Concept of the Thermal Concession Contract and Its Legal Characteristics

A systematic study of the legal framework governing contracts for the exploitation of thermal waters in Algeria requires an examination of the conceptual foundations of this administrative legal act and an analysis of its legislative nature, which distinguishes it from other administrative and civil contracts.

To establish a solid theoretical basis, this requirement is divided into two complementary branches. The “first branch” is devoted to defining the concession contract for the tourism-related exploitation of thermal waters and determining its legal nature, while the “second branch” examines the distinctive characteristics that define it within the Algerian legislative system.

First Branch: Definition and Legal Nature of the Concession Contract for the Tourism Exploitation of Thermal Waters

Before examining the legal framework governing thermal investment, it is necessary to explore the doctrinal meanings and legislative texts that regulate this contract. Its concept lies at the intersection of the general principles governing administrative contracts and the technical and environmental specificities of thermal water resources.

Accordingly, this branch is divided into two points: “the definition of the concession contract for the exploitation of thermal waters” (First), and “its governing legal nature” (Second).

First: Definition of the Concession Contract for the Exploitation of Thermal Waters

Before addressing the specific definition of thermal exploitation, it should be noted that administrative legal doctrine generally defines a concession contract as:

“A method of managing public services whereby the concessionaire whether a natural person or a legal entity is entrusted, under an administrative contract, with the management and operation of a public service for a specified period of time, in return for financial fees collected from users of the service. The concessionaire assumes all risks associated with the operation,

including profits and losses, and remains bound by the legal rules governing the functioning of the public service.”⁴⁰

As for the specific thermal water legislation, the definition of this contract has undergone several legislative stages and significant amendments.

1. According to Executive Decree No. 94-41

Article 23 thereof provides that:

“The concession of mineral spring waters shall be considered an administrative contract granted by the minister responsible for mineral baths, acting as the concession-granting authority, to a legal or natural person, whether public or private, conferring upon them the right to exploit such mineral waters for a specified period and for consideration.”

Article 24 of the same decree further highlights the intersectoral nature of this administrative contract by making the concession procedure subject to the joint involvement of the minister responsible for mineral baths, the minister responsible for irrigation, and the minister of public health.⁴¹

2. According to Water Law No. 83-17 (Repealed)

This law exhibited a clear legislative deficiency in establishing an attractive framework for private investment. Under its general provisions, it defined a water concession as:

“A public law contract through which a natural or legal person is entrusted with carrying out a service in the public interest.”

However, it restricted the category of potential investors by stipulating that:

>“This concession may only be granted to a public body or a local authority.”⁴²

Based on a comprehensive examination of the common provisions and amended texts of Algerian legislation particularly Articles 22, 23, 37, and 38 of Executive Decree No. 94-41 a comprehensive definition of the concession contract for the exploitation of thermal waters may be formulated as follows:

> “A formal administrative contract granted by the minister responsible for thermal waters, in his capacity as the concession-granting authority, to a natural or legal person (whether public or private) upon request, conferring upon the beneficiary the right to use and exploit this natural resource in return for financial consideration and for a legally prescribed period of twenty years, renewable. The concession is granted by ministerial decision following the opinion and approval of the Technical Committee for Thermal Waters and is mandatorily accompanied by a specifications booklet setting out the investor’s obligations.”

Second: The Legal Nature of the Concession Contract for the Exploitation of Thermal Waters

The determination of the legal nature of the concession contract has generated extensive doctrinal and judicial debate in administrative law, particularly within French and Algerian legal scholarship, due to the interplay between the will of the contracting parties and the sovereign authority of the State. Opinions on this matter have been divided into three principal theories:

1. The Contractual Nature Theory

Proponents of this theory, which prevailed in France during the nineteenth century, consider the concession to be a civil or consensual contract in the fullest sense of the term, since it requires the meeting and agreement of two wills that of the administration and that of the investor. It is therefore binding upon both parties and gives rise to reciprocal rights and obligations based on the principle that “the contract is the law of the parties”. Consequently, the administration has no right to amend its terms unilaterally except with the consent of both parties.⁴³

2. The Dual Nature Theory

This theory recognizes that the concession possesses a dual character that cannot be denied. It assumes a regulatory nature in the relationship between the undertaking and the users and beneficiaries of the public service, while retaining its contractual character in the financial relationship and the reciprocal obligations existing between the concessionaire and the granting administrative authority.⁴⁴

3. The Mixed Legal Act Theory (The Most Convincing Approach)

This inductive theory, currently adopted in modern administrative law, considers the concession contract to be a mixed legal act comprising two categories of provisions:

Regulatory provisions, established in advance by the administration and subject to unilateral modification whenever required by the public interest, such as operating hours, health measures, and the nature of therapeutic treatments;

Contractual provisions, which are based on mutual agreement and may not be altered without the consent of both parties, such as the financial equilibrium of the contract, the financial consideration, and the financial advantages granted to the investor.⁴⁵

Second Branch: Distinctive Characteristics of the Thermal Concession Contract

Within the Algerian legislative framework, the concession contract for the exploitation of thermal waters possesses a number of structural legal characteristics that distinguish it from ordinary civil and commercial contracts and render it a development instrument governed by the rules of public law. The most significant of these characteristics are as follows:

First: A Time-Limited Grant by Its Nature

The Algerian legislator does not permit the perpetual exploitation of natural resources. Accordingly, Article 37 of Executive Decree No. 07-69 sets the duration of the concession at twenty (20) years.

This period is renewable upon the investor’s request unless one of the parties formally declares in writing its intention to terminate the concession before the expiry of its legally prescribed term. Legal scholars have criticized the Algerian approach for the length of this period (20 years), particularly in light of the decline in effective field supervision by administrative authorities, which may sometimes lead investors to neglect the modernization of facilities and infrastructure.⁴⁶

Second: A Formal Contract Subject to a Specifications Booklet

Formal requirements constitute an essential element for the formation of this contract. The concession procedure involves a series of formal steps beginning with the submission of the application file and the opinion of the Technical Committee, and culminating in the issuance of the ministerial decision. This process is necessarily completed by the signing of a specifications booklet.

Article 79 of Water Law No. 05-12 expressly confirms this formality by providing that:

“The granting of a concession for the use of water resources shall be subject to the signature of both the concession-granting authority and the concessionaire on a special specifications booklet.”⁴⁷

Accordingly, the absence of a signed specifications booklet renders the concession entirely void.

Third: A Contract Aimed at Promoting Tourism Investment and Local Development

The right derived from this contract is not merely an ordinary authorization for water use; rather, it is a functional right that enables its holder to exploit thermal waters as a fundamental basis for the establishment of thermal resorts, thermal hotels, and therapeutic spa complexes that contribute to tourism development.⁴⁸

The concession-granting decision constitutes the cornerstone of the investment relationship between the State and the investor whether a natural or legal person, public or private once the latter submits an application and demonstrates both the intention and the financial and technical capacity necessary to implement the project.⁴⁹

Fourth: A Contract Characterized by Continuity and Resistant to the Effects of Death (Inheritance Right)

Despite the personal considerations involved in selecting the investor, the contract is distinguished by a mechanism of continuous operation throughout its legal duration. Accordingly, it is not terminated by the death of the investor where the concessionaire is a natural person; rather, it passes as a patrimonial right to the heirs (rightful beneficiaries) in order to ensure the stability of the investment.

However, the legislator has subjected such transfer to strict deadlines and procedures established under Article 40 of Executive Decree No. 07-69, namely:⁵⁰

1. The minister responsible for thermal waters must be informed of the death of the deceased concessionaire and of the heirs' intention to continue the concession through the territorially competent governor within a period not exceeding two (02) months from the date of death.
2. The heirs must fully comply with all provisions and requirements of the Executive Decree and the specifications booklet within a maximum period of six (06) months from the date of death.

Fifth: A Personal Right That Is Neither Assignable nor Voluntarily Transferable

Since the concession is granted on the basis of the investor's qualifications and technical and financial dossier, the legislator has imposed an absolute prohibition on assigning the contract to a third party or voluntarily transferring its ownership without the approval of the State.

Article 24 of Executive Decree No. 07-69 provides that the concession constitutes a personal right that is not assignable. This principle was reaffirmed and further strengthened by Article 55 bis 03 of the subsequent Executive Decree No. 19-150, which expressly states that the granting of a licence for the exploitation of thermal waters constitutes a purely personal right that may neither be assigned nor transferred to a third party.⁵¹

Section Two: Mechanisms for Granting the Thermal Concession Contract and Methods of Its Termination

The investment concession contract for thermal waters is founded upon a delicate balance: the administration seeks to protect national resources, while the investor seeks a stable legal environment that guarantees the viability of investment projects. Accordingly, the Algerian legislator has surrounded this contract with strict procedural safeguards governing its formation and administration, as well as the legal mechanisms leading to the termination of its contractual effects. Therefore, this section will be examined through two successive branches: the ****first branch**** addresses the conditions and procedures for granting a concession for the exploitation of thermal waters, while the "second branch" examines the methods by which the effects of the concession contract for the tourism exploitation of thermal waters come to an end.

First Branch: Conditions and Procedures for Granting a Concession for the Exploitation of Thermal Waters

The Algerian legislator recognized that integrating thermal waters into the framework of local development requires the establishment of objective selection criteria capable of ensuring the seriousness of investors. Accordingly, a set of restrictions and procedures was established, divided into two aspects: the "conditions for granting a concession for the exploitation of thermal waters" (First), and the "procedures and nature of the application process for obtaining the concession contract" (Second).

First: Conditions for Granting a Concession for the Exploitation of Thermal Waters

Article 25 of Executive Decree No. 07-69, which determines the conditions and procedures for obtaining a concession and exploiting thermal waters, refers to a number of mandatory substantive conditions that must be fulfilled by the concession applicant. These are essentially the following:

1. The Property and Financial Requirement

The applicant must prove ownership of the land within which the thermal spring is located, or possess a right of usufruct or a lease agreement established by an official notarized instrument. Such an instrument must expressly state that the purpose of the property is the exploitation of

thermal waters, and its duration may under no circumstances be less than the legal duration of the concession contract (i.e., not less than twenty years).⁵²

2. The Professional and Technical Competence Requirement

The concession applicant must demonstrate professional competence related to thermal activities or establish that he or she maintains continuous and effective cooperation with qualified specialists responsible for the supervision and direct management of therapeutic and fitness rehabilitation facilities.

The technical manager must be:

- Either the holder of a degree in general medicine or a medical specialty;
- Or the holder of a higher technician diploma in public health working under the supervision of a contracted and responsible physician.⁵³

Second: Procedure for Applying for a Concession Contract for the Tourism Exploitation of Thermal Waters

Within the framework of legislative policies aimed at simplifying investment procedures in accordance with the provisions of Investment Law No. 22-18, Executive Decree No. 19-150, as amended and supplemented, established a clear administrative process for the submission and examination of applications as follows:

1. Submission of the Application File and Its Components

The concession applicant, whether a natural or legal person, must submit an application file in three (03) copies to the Directorate of Tourism and Handicrafts of the territorially competent wilaya. The file must obligatorily contain the following documents:⁵⁴

- Personal details and domicile of the applicant, or the company name, registered office, and articles of association if the applicant is a legal person;
- The name of the thermal spring intended for exploitation and its precise geographical coordinates;
- A copy of the title deed, lease agreement, or land concession document relating to the land designated for the construction of the thermal establishment, accompanied by the approval of the territorially competent governor;
- A comprehensive technical and economic feasibility study of the thermal project, including a descriptive report and an engineering plan drawn to an appropriate scale showing the water collection and conveyance installations;
- Accurate information concerning the expected daily volume of water consumption, accompanied by physicochemical and bacteriological analyses and details regarding the therapeutic properties of the water, where the spring has not previously been inventoried within the national thermal water register.

2. Administrative Examination and Referral Stage

The territorially competent Wali is responsible for forwarding the application file to the minister responsible for thermal waters within a period not exceeding two (02) months from the date of submission.⁵⁵

3. Technical Committee Opinion and Decision of the governor

The file is referred to the “Technical Committee for Thermal Waters” for examination and for the issuance of its technical opinion within a maximum period of one (01) month from the date on which it is notified by the minister. Following the committee’s opinion, the territorially competent governor must issue a final decision on the application within one (01) month from the date of receipt of that opinion.⁵⁶

4. Signature and Commencement of Works

If approval is granted, the investor receives the concession decision together with the specifications booklet setting out all rights and obligations.⁵⁷ The concessionaire is legally required to commence construction and development works at the thermal spring within a maximum period of three (03) months from the date on which the concession decision is granted.⁵⁸

Second Branch: Termination of the Effects of the Concession Contract for the Tourism Exploitation of Thermal Waters

The granting of a concession for the exploitation of thermal waters and the signing of the accompanying specifications booklet establish a new legal status comprising a set of reciprocal rights and obligations between the granting authority and the investor. These effects constitute the operational framework of thermal investment throughout its legal duration.

Such effects inevitably come to an end either upon the expiry of the contractual term or upon the occurrence of legal circumstances that terminate the contract before the expiration of its prescribed duration. Accordingly, the study of this branch will be divided into two aspects: “first”, the effects and reciprocal obligations arising from the thermal concession contract; and “second”, the methods by which the effects of this contract are terminated and the contract itself extinguished.

First: Effects Arising from the Thermal Concession Contract

Once the concession-granting decision enters into force and the specifications booklet is signed, reciprocal obligations and legal positions arise for both parties to the contractual relationship: the investor (1) and the granting administration (2). These obligations are intended to ensure the regular and continuous operation of the thermal facility in accordance with the principles of public law.

1. Rights and Obligations of the Thermal Investor (Concessionaire)

The investor is bound by the technical and financial requirements imposed by the legislator, foremost among which is the obligation to pay periodic concession fees on a regular basis. The

financial proceeds derived therefrom are allocated to support the local authorities and municipalities within whose territorial jurisdiction the thermal spring is located.⁵⁹

The investor also bears full responsibility for the management and exploitation of the spring, the preservation of its natural condition, and strict compliance with environmental protection requirements relating to the ecosystem and geographical surroundings of the spring. This includes the establishment of wastewater treatment units and safe facilities for the collection of medical waste.⁶⁰

Furthermore, the investor must refrain from making any alterations to the natural characteristics of the spring or constructing permanent concrete structures outside the approved development plan without authorization. The concessionaire is likewise required to employ qualified medical personnel and provide services at fair and non-exploitative rates.⁶¹

In return, the investor enjoys the right to receive financial returns and investment revenues from users of the facility in accordance with the tariffs predetermined in the specifications booklet. The investor also benefits from the exclusive right to exploit the granted spring, thereby ensuring protection against overlapping and unregulated competition, notwithstanding the criticism directed at legislation for occasionally failing to define thermal protection zones with sufficient precision.⁶²

2. Rights and Obligations of the Concession-Granting Administration

The administration is required to place the concession asset at the investor's disposal free from obstacles and to guarantee the investor's possession and effective occupation of the spring without any material or legal interference originating either from the administration itself or from third parties that might impede its exploitation.⁶³

It is also responsible for conducting periodic analyses of water quality and informing users of the results in order to ensure therapeutic safety. In addition, it must define and enforce the boundaries of the spring's "protection perimeter" to prevent contamination of groundwater resources.⁶⁴ The administration is likewise required to facilitate the investor's access to complementary sector-specific administrative authorizations.

In return, the administration retains powers of supervision and direction to ensure compliance with the specifications booklet, safety standards, and public health requirements. It may issue binding directives, the violation of which may result in administrative sanctions imposed directly through the prerogatives of public authority without prior recourse to judicial proceedings.⁶⁵

Such sanctions may extend to the suspension or withdrawal of the concession decision at the expense of the defaulting investor, or even the revocation of the concession without compensation where the investor fails to exercise the granted rights or is proven to have polluted the spring and endangered public health.⁶⁶

Second: Methods of Termination and Extinction of the Thermal Concession Contract

The termination of the effects of a concession contract is defined, from both an administrative and legal perspective, as:

“The extinguishment of all legal effects and reciprocal obligations incumbent upon the parties to the contract, and the cessation of its operation and enforceability with regard to the future.”⁶⁷ The contractual relationship established by the concession comes to an end, and all its future legal effects cease, either through an ordinary and natural mode of termination (1) or through an extraordinary termination resulting from objective circumstances or sanctioning measures (2), as detailed below.

1. Ordinary Methods of Contract Termination (Natural Expiry)

The ordinary and natural means of terminating a concession contract is the expiration of the contractual period specified in both the concession agreement and the specifications booklet, namely twenty (20) years.

Since the concession contract is, by its nature, a time-bound administrative contract and not a perpetual one, the arrival of the agreed term results in its automatic termination by operation of law, thereby extinguishing all obligations of both parties.⁶⁸

Upon expiry, the parties may not automatically extend the contract. Instead, the possibility of “renewing the concession” arises through the submission of a new application and an updated file subject to the same legal requirements and conditions previously applicable.

2. Extraordinary Methods of Contract Termination

A concession contract may terminate before the expiry of its legal duration of twenty (20) years as a result of unforeseen circumstances or administrative and judicial decisions. Such methods are limited to four principal situations:

• Termination by Operation of Law (Force Majeure)

This occurs where an external force majeure event beyond the control of either party renders the performance of the contractual obligations absolutely and permanently impossible, such as the complete drying up of the thermal spring as a result of an earthquake or the depletion of groundwater resources. In such circumstances, the contract is terminated without any compensation being due to either party.⁶⁹

• Voluntary Termination (Mutual Rescission)

Pursuant to the general rules governing contracts, the parties to the concession the granting administration and the investor may mutually agree to terminate the contractual relationship and end the investment project before the expiry of the contractual term whenever their common interest so requires.⁷⁰

• Administrative Termination by Unilateral Decision

By virtue of its prerogatives as a public authority, the concession-granting administration possesses the power to terminate or revoke the contract unilaterally. This power may be exercised in two situations:⁷¹

Punitive revocation (forfeiture of rights): where the investor breaches one of the essential obligations stipulated in the concession agreement or the specifications booklet, such as failing to commence the works or unlawfully transferring the concession to a third party.

Termination in the public interest: where the requirements of the public service, changes in tourism policy, or broader public-interest considerations necessitate a change in the method of

management of the facility. In this case, the investor must be granted fair compensation for the losses suffered

• **Judicial Termination**

Judicial termination occurs through a final judgment issued by the administrative courts upon the request of one of the contracting parties.

It may take one of two forms:

- The investor may seek rescission of the contract where the granting administration has failed to fulfil its contractual obligations, such as refusing to provide the agreed water allocations, in accordance with the general principles governing contracts.⁷²
- The investor may also petition the courts for termination of the contractual relationship and compensation where substantial and unforeseen losses have rendered continuation of the project financially impossible. Such losses may arise from the administration's exercise of its regulatory power to modify contractual conditions, pursuant to the provisions of Ministerial Instruction No. 842/3-94 concerning concessions of public services.⁷³

Conclusion

Thermal investment in Algeria represents one of the most promising strategic opportunities for diversifying the national economy and generating alternative sources of wealth beyond the hydrocarbons sector, given the richness of the country's geological structure and its reserves of water resources possessing unique therapeutic properties. Through the legal and analytical examination of the various dimensions of this activity undertaken in this study, a number of findings and recommendations emerge as the principal conclusions of this research.

First: Findings of the Study

Dual Legal Nature of the Activity

The study has shown that thermal investment is governed by a dual legal framework in which the provisions of water law aimed at protecting the resource and prohibiting its private ownership or seizure intersect with the provisions of tourism orientation legislation. Consequently, thermal waters may be regarded as a form of public tourism property subject to State sovereignty and the regime of public national assets.

The Specific Nature of the Thermal Concession Contract

The concession contract for the exploitation of thermal waters assumes the character of a "mixed legal act". It is not merely a licence for water use; rather, it is a time-bound administrative contract (limited to twenty years) and a strictly formal agreement subject to a rigorous specifications booklet. It seeks to balance the investor's financial rights with the sovereign prerogatives of the administration.

Continuity of the Contract despite Death and the Prohibition of Assignment

The Algerian legislator has sought to ensure investment stability by allowing concession rights to pass to heirs under specific procedural and temporal conditions. At the same time, it has imposed an absolute prohibition on the voluntary assignment or transfer of the contract to third parties in order to preserve the criterion of personal and technical competence upon which the concession was originally granted.

The Gap between Legal Texts and Practical Implementation

Despite the simplification of administrative procedures for submitting applications under Executive Decree No. 19-150, practical realities continue to be hindered by structural obstacles, including bureaucratic complexity, weakened effective supervision, and an imbalance between price and quality within accommodation facilities.

Second: Proposals and Recommendations

1. Updating and Revising the Duration of Concessions

It is recommended that the twenty-year concession period established under Executive Decree No. 07-69 be reconsidered and linked to periodic evaluation phases (for example, every five years) in order to assess the investor's commitment to maintaining and modernizing infrastructure and to prevent managerial stagnation.

2. Strengthening Field Supervision and Protecting Thermal Protection Zones

Technical and environmental monitoring should be reinforced by both the Technical Committee for Thermal Waters and the granting administration to ensure that no alterations are made to the chemical and physical characteristics of thermal springs. Efforts should also be accelerated to establish precise maps and plans defining protection perimeters in order to prevent groundwater contamination.

3. Establishing a Tourism Investment Bank

The implementation of experts' proposals advocating the creation of specialized financing mechanisms such as a tourism investment bank should be expedited. Such an institution would support major thermal projects and enable investors to meet international standards while overcoming the limitations of conventional financing methods.

4. Investing in Human Resources and Professional Training

Specialized institutes and university faculties dedicated to tourism, hospitality, and medical thermal training should be established in order to develop a qualified workforce capable of addressing the pressing shortage of skilled personnel in reception services, visitor guidance, technical supervision, and sports and wellness activities within thermal resorts.

5. Integrating the Thermal Sector into Local Development Plans

Local authorities, including municipalities and wilayas, should incorporate thermal resorts as central components of their development strategies through the improvement of transportation networks, public utility connections, and general sanitation standards surrounding thermal facilities, thereby enhancing their tourism attractiveness.

6. Developing Digital Marketing and Promotion Channels

The role of tourism and travel agencies should be strengthened through unified digital platforms dedicated to promoting Algerian thermal tourism products both domestically and internationally. Historic thermal resorts, such as Hammam Debagh and Hammam Essalihine, should be integrated into cultural and archaeological tourism circuits in order to extend visitors' length of stay.

In conclusion, the advancement of thermal tourism in Algeria depends primarily on moving beyond the mere existence of legal texts toward effective and flexible implementation in practice. This requires the establishment of a secure and attractive investment environment in which the sovereign role of the administration is harmonized with the efficiency and dynamism of private capital.

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