Limitations on Private Real Estate Ownership Rights in Algerian Law: The Model of Exploitation Authority



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Abstract:

The protection mechanisms established by the Algerian legislator to protect private real estate ownership, despite their diversity, have been regulated by various restrictions governing them, so that the owner of the property does not exceed the legally prescribed limits. Accordingly, these restrictions have multiplied to meet the requirements of the social trend and have been found for the purpose of organizing the rights of owners. It becomes clear from this that the rights of society and the rights of owners are complementary rights that support each other; without the contribution of society, the necessary protection to preserve private ownership is not available.

Therefore, without private ownership, the developmental goals of society cannot be achieved except through its preservation, and the establishment of the right of society is by imposing legal restrictions on private ownership. Each restriction has objectives and types that achieve the social function, which is what the Algerian legislator sought through the arsenal of legislative and regulatory laws existing in the Algerian legal structure.

Key words: Real estate; real estate ownership; private real estate ownership; public utility.

Introduction:

Possessing real estate is a significant source of prosperity on both a national and international scale. It serves as a valuable element for investments as well as the financial, societal advancement of nations. Because of this, a majority of the comparative laws across different time periods have been determined to put in place complete real estate frameworks. These are consistently updated and improved to ensure the actual entitlements of both individuals and the government.

Due to Algeria's economic transition away from a centrally controlled, monopolistic system and toward a free-market system, the demands of the economy have enabled private sector involvement in the growth process with the government. This involvement has broadened the scope of real estate ownership, given its role as a vital base for private investment and established a form of legal and judicial safeguards for this actual entitlement, which is acknowledged both constitutionally and internationally. Thus, looking into how much the government ensures private real estate ownership and whether the protection methods used to stop violations are effective is required, pertinent, and lawful.

Considering the large volume of legislation created by lawmakers to protect both public and private ownership, one may consider the degree to which even a modest portion of this protection is being effectively delivered, and represents a separate legal framework that the legislator has theoretically and scientifically guaranteed its use.

The significance of this research document resides in its analysis of the scope of private ownership safeguards, recognizing that such ownership constitutes a genuine entitlement that concerns individuals and the government equally. Furthermore, it is a relevant subject because of its persistent association with market economics and real estate lending, which depends significantly on real estate in its dealings, emphasizing the necessity of protecting it and ensuring the stability of related transactions.

Additionally, it is essential because it gives an overview of real estate policy within Algeria through examining real estate political orientations in our country. This objective can only be accomplished through providing a conceptual understanding of real estate ownership, which encompasses defining it, delineating real estate, identifying its attributes, categories, authorities, and its diverse and varied safeguarding mechanisms.

The problem of this research paper can be summarized in that the Algerian legislator, through the arsenal of laws it has established to protect real estate ownership and through enshrining it as a constitutional right, remains deficient in this regard unless supported by effective legal mechanisms, especially on the practical level, in a way that ensures comprehensive protection of real estate ownership from various infringements. This leads us to pose the following issue:

To what extent has the legislator succeeded in enshrining protection mechanisms for private real estate ownership?

Which we will attempt to answer through our study of this subject.

As for the study objectives: they aim at a set of goals, which are:

-Clarifying the general mechanisms of real estate protection and their types, and the differences existing between them.

-Explaining the scope of this protection specifically for private real estate ownership.

As for the methodology followed: in order to answer the various research problems, we relied on the analytical method through which we implicitly and explicitly analyzed some legal texts.

As for the study plan: it addressed the restrictions imposed on the powers of use and exploitation, then the restrictions imposed on the authority to exploit the right of private real estate ownership, and finally the restrictions related to the authority to dispose of the ownership right.

1- Restrictions Arising from Adjacency in Neighborhood:

These restrictions have appeared since ancient times due to social conditions and individual life circumstances, and modern legislations have taken interest in them, enacting laws to regulate them in service of the private interest of neighbors. These restrictions are represented in:

1-1- The Common Wall:

If both neighbors jointly own the wall, this scenario is accomplished. Since legislation views it as a type of shared ownership, neither partner in a common wall may ask for the wall to be separated or sell their undivided portion, nor may their creditors take possession of this undivided portion. Co-ownership is a legal requirement that cannot coexist with illegal exploitation (Omar, 2000, p. 127).

The following scenarios are connected to the shared wall restriction:

1-1-1- Proof of Participation in the Wall:

Article 707 of the Algerian Civil Code (Order No. 75-58, 1975, art. 703) stipulates this case by stating: "The wall that, at the time of its construction, separates two buildings is considered common until proven otherwise."

By examining the text of the article, it becomes clear that the legislator set two conditions to consider the wall common, which are:

a- The wall must separate two buildings; if there is a building adjacent to a vacant land, the separating wall between them is not considered a common wall but is owned by the owner of the building. Thus, it becomes clear that joint ownership does not apply to the land (Omar, 2000, p. 128).

b- The wall must have separated the two buildings since its construction; if the wall was initially constructed for one building and then another building was erected adjacent to the first, it is considered privately owned by the owner of the first building.

1-1-2- Use of the Common Wall:

Article 704 of the Civil Code stipulates in its first paragraph: "The owner of the common wall may use it according to the purpose for which it was prepared and may place beams on it to support the roof without overburdening the wall beyond its capacity".

By analyzing this legal text, it becomes clear that the partner's use of the wall is subject to conditions represented in:

It must be used according to the purpose for which it was prepared, for example, placing beams to support the roof or making an excavation in the wall to prepare the place for heating or water ducts or for a useful and important purpose intended by the property owner (Sawar, 2000, p. 80) without causing harm to the neighbor.

The wall must not bear more than its capacity, nor cause damage to others or to the wall itself.

1-1-3- Repair of the Common Wall:

Article 704, second paragraph, of the Algerian Civil Code states: "If the common wall is no longer suitable for the purpose for which it was designated, the cost of its repair and reconstruction shall be borne by the partners, each according to his share in it."

By analyzing this text, it is clear that the legislator clarified the case of the common wall that is no longer suitable for its designated purpose, making the cost of its repair or reconstruction the responsibility of the partners, each according to his share.

1-1-4- Raising the Wall:

Article 705 of the Algerian law provides: "The owner, if he has a bona fide interest in raising the common wall, may raise it on the condition that no serious harm is caused to his partner, and he must bear alone the cost of raising and maintaining the raised part and perform the necessary works to make the wall capable of bearing the additional load resulting from the raising without losing any of its solidity."

By reviewing the text of this article, it is clear that if the owner has an interest in raising the wall, the law permits him to do so, provided that no serious harm is caused to his neighbor, and he must bear the expenses of raising and maintaining the raised part, as well as perform all necessary works to make the wall bear the increase.

Accordingly, in addition to the above, if there are multiple partners in the common wall and they want to raise it by agreement among themselves, as required by the interest, they bear the expenses of the raising, Each in proportion to his share, and the wall remains shared between them.

1-2- The wall owned in full ownership by one of the neighbors:

Article 708 of the Civil Code: "A neighbor may not compel his neighbor to fence his property nor to relinquish part of a wall or the land on which the wall stands except in the cases mentioned in Article 697; however, the owner of the wall may not demolish it voluntarily without a legal excuse if this harms the neighbor whose property is sheltered by the wall."

Analyzing this text reveals several cases:

1-2-1- Fencing the property and joint ownership of the dividing wall:

This case means that the owner has absolute freedom to fence his property or refrain from doing so, and the expense is at his own cost, and he may not compel his neighbor to do so. The meaning of fencing: is placing a separating fence between the properties of the two neighbors.

1-2-2- Demolition of the wall without legitimate excuse:

This means that the owner may not demolish the dividing wall owned in full ownership by him if certain conditions are met:

*The neighbor's property must be stable on the wall from three sides, and the wall forms the fourth boundary.

*Demolishing the wall must cause harm to the neighbor, unless the neighbor's property is vacant land unaffected by the demolition, because joint ownership does not exist in vacant land, but there must be a building. (Omar, 2000, p. 128).

*The owner's need for demolition must not be urgent; he must have a strong excuse for demolition so as not to harm his neighbor due to the demolition process.

2-Restriction on setting boundaries between adjoining properties:

The Algerian legislator regulated the process of setting boundaries pursuant to Article 703 of the Civil Code as follows: "Each owner may compel his neighbor to set boundaries for their adjoining properties, and the expenses of delimitation shall be shared between them."

We conclude from the content of this article that the process of boundary setting consists of:

Setting the boundaries for the properties separating them, like any demarcation line between two lands. Marking them with a physical sign such as large stones, bricks, or iron, then drawing straight lines between these markers to precisely define ownership, provided that the expenses of this demarcation are shared between the two parties.

The boundary determination process goes through several stages:

2-1- Boundary Determination Stages: There are three stages:

2-1-1- Preliminary Stage:

It is carried out according to the following steps:

a- Examining ownership documents to determine the total area of ownership of the parties to the lawsuit, then comparing it with the request submitted regarding boundary designation, then applying it on the ground to identify fixed landmarks, which are considered the starting point for establishing ownership deeds.

b- Conducting a survey of the adjacent lands between which the boundary is to be set to verify the conformity of the actual area with the physical reality; this does not

mean that lands that have not undergone cadastral surveying are not subject to any regulation. (Omar, 2000, p. 121).

2-1-2- Final Stage of Boundary Setting:

* Drawing the separating boundaries between the adjacent lands by placing visible physical markers at the beginning and end of the boundary, which are often at the four corners of the land. (Sawar, 2000, p. 85)

* Preparing a report documenting all the steps of the determination, the separating boundary, and the fixed landmarks.

2-1-3- Boundary Expenses: There are three types of expenses:

* Expenses of the boundary setting itself, from examining ownership deeds and applying them on the ground, divided equally between the adjoining owners.

* Surveying expenses, divided between the adjoining owners according to the area of land each owns.

* Litigation expenses in case of a dispute over ownership, borne by the party who loses the lawsuit, according to general rules (Yakan, 1974, p. 111).

2-2- Methods of Boundary Demarcation:

This process is carried out in two ways: either through the judiciary or by agreement:

2-2-1- Boundary Demarcation by Agreement:

This occurs if both parties agree to set boundaries for the property and in case of certainty about the dividing boundaries between their lands. If there is uncertainty, it is preferable to appoint an expert to survey each land, then determine the dividing boundaries by placing clear and visible boundary markers.

2-2-2- Boundary Demarcation by Judiciary:

This is confirmed by the legislator in Article 703 of the Civil Code, which states: "Each owner may compel his neighbor to set boundaries for their adjoining properties, and the expenses of demarcation shall be shared between them."

It is understood from the text of the article that if the two parties do not agree on setting boundaries for the adjoining properties between them, one of the neighbors may resort to the judiciary to compel his neighbor to set the boundaries of his property.

However, if the land adjoins state property or public domain, the administrative authority is responsible for appointing the boundaries by a decision issued by it, and the owner of the adjoining land may file a lawsuit challenging the administrative decision before the administrative judiciary.

3- Legal Distance Restrictions:

Article 709 civil code has specified the method of calculating the distance related to overlooks, balconies, and terraces, stating: "A neighbor shall not have an

overlooking window facing his neighbor at a distance less than two meters, and the distance is measured from the back of the wall that has the overlook or from the outer edge of the balcony or from the projection."

From this article, we deduce that distance restrictions concern:

3-1- Overlooks:

This refers to openings created by the owner to allow ventilation, viewing outside, lighting, or aeration provided that it does not harm the neighbor. These include types such as balconies, windows, and doors (Mansour, 2009, p. 220), and their legal basis is derived from the principle of a person's freedom to enjoy his property, There are two types of openings: facing and oblique.

Article 709, paragraph 1 of the Civil Code provides that: "A neighbor shall not have a facing opening on his neighbor at a distance less than two meters, and the distance is measured from the back of the wall that has the opening or from the outer edge of the balcony or projection."

By interpreting the text of the article, it is deduced that every person has the right to acquire a facing opening by virtue of prescription without regard to the distance specified in this article, as the opposite neighbor cannot establish a facing opening less than two meters measured in the manner mentioned in the article, and this type of opening is called a facing opening.

In Article 710 of the Civil Code, which provides that: "A neighbor shall not have an oblique opening (which is the second type of openings) on his neighbor at a distance less than sixty centimeters from the edge of the opening, provided that this prohibition is nullified if this oblique opening on the adjacent property simultaneously faces the public road."

By analyzing the text of the article, it becomes clear that the owner who wishes to open an oblique opening on his neighbor's property must respect the distance specified by the legislator, which is estimated at sixty centimeters from the edge of the opening, but if this opening faces the public road, he has the freedom to leave the distance he wants.

3-2-Light wells:

The legislator paid attention to them and set special provisions in his civil law; these are openings intended only for the passage and flow of air, without overlooking the neighbor's property, due to their height above the usual human stature (Mansour, 2009, p. 22).

The purpose of their existence is the passage of light and air, and the legislator did not require any distance for their placement according to Article 711, which provides that: "No distance is required for opening light wells, which are established at a height of two meters from the floor of the room to be illuminated, and they are

intended only for the passage of air and the penetration of light without allowing overlooking from them onto the adjacent property.» (Yakan, 1974, p. 118).

By examining the text of the article, we deduce the following:

- That the openings of the light wells are established at a height of two meters from the height of the room; no distance is required for placing the light wells regardless of how wide or narrow the buildings are.

3-3- Restriction of Servitude:

It is considered one of the most important restrictions imposed on the right of private real property ownership, and it is a perpetual right established on a property, meaning that it is fixed for the benefit or advantage of a property called (the dominant or served property) (Al-Attar, 1999, p. 122). For example, the right of passage from one land to another is the right of the served land, and therefore it is enjoyed by anyone who wants to reach it, as it is a right attached to this land and the benefit is not limited to a specific person (Al-Bashir & Taha, n.d., pp. 321–324).

The right of servitude is a permanent, not temporary, right that only ceases with the disappearance of the property itself. This is the view of the Hanafi school, and those who held that servitude rights are limited to four rights found among the ten rights previously mentioned, which are: the right of drinking water, the watercourse, the drainage, and passage, and that it is not permissible to create other rights.

While the Maliki school said: "that the owner is free in what he creates on his property of real rights and others."

The right of servitude from the owner's perspective is an original real right derived from the right of ownership, and according to Islamic jurisprudence, it is a type of diminished ownership that applies only to the benefit and is accompanied by the right of usufruct in rem, which is why Sharia jurists call it the right of usufruct in rem because it relates to things (real property) and not to persons.

Article (1271) of the Iraqi Civil Code defined the right of servitude by stating: "Servitude is a right that limits the benefit of a property for the benefit of another property owned by another owner."

It is clear from this definition that an easement is an obligation or restriction imposed on a property called the (servient property) or the servient estate for the benefit of another property called the (dominant property) or the dominant estate. It is an easement that can only be established on a property, and the property must be by its nature; a property by specification is not suitable to be the subject of an easement right independent of the property by its nature. Likewise, trees, which are considered property, are not suitable to be the subject of an easement right (Al-Sanhouri, 1967, p. 552), and it must be something that can be dealt with, i.e., something suitable to be the subject of private ownership.

Some jurists, as well as some legislations, have held that public properties can be the subject of an easement right provided that this does not conflict with the purpose for which these properties were designated (Al-Sanhouri, 1967, p. 553)

Article 867 of the Civil Code states: "A right that sets a limit for the benefit of one property for the advantage of another property belonging to another person. An easement may be established on public property if it does not conflict with the use for which this property was designated."

The easement right has characteristics that distinguish it from other rights:

3-3-1- Binding on all:

The easement right is a real right, and it is not only enforceable against the owner of the servient property but is enforceable against all. (Al-Bashir & Taha, n.d., pp. 321–324)

3-3-2- Accessory right:

The easement right is an accessory right that cannot be separated from the property; it follows the dominant or servient property and transfers with it. It is subject to the same dispositions as the property, so it is not permissible to dispose of it independently of the property by sale, mortgage, or otherwise. Consequently, if the property is sold or mortgaged, this sale, gift, or mortgage includes the easement right as well, considering it part of the appurtenances of the property subject to the transaction (Al-Bashir & Taha, n.d., pp. 322).

Accordingly, the right of servitude is a perpetual right, and this attribute of perpetuity comes from it being an accessory right; as long as it is necessary for the enjoyment of a property, it is likewise a perpetual right. However, it should be noted that although perpetuity is inherent in the nature of the right of servitude, it is nonetheless not one of its essential requirements, and therefore it may be specifically limited to a certain period by special agreement (Al-Sanhouri, 1967, p. 553)

3-3-3- Indivisible Right:

The right of servitude is an indivisible right both in terms of its establishment and its extinction. Accordingly, it is not valid to establish a servitude right on a property owned in common by more than one owner, nor for the benefit of a shared interest in a common property. It also follows that if one of the partners in the common ownership waives his right to the servitude, the servitude does not terminate but rather the remaining partners continue to use it (Sawar, 2000, p. 110).

The right of servitude varies; we find: servitude of right of passage—servitude of water resources (which themselves vary)—and we will study them successively.

A- Servitude of Right of Passage:

The Algerian legislator stipulated it in Article 693 of the Civil Code stating: "The owner of an enclosed land that has no access path to the public road or had a path but

it is insufficient for passage may request a right of passage over neighboring properties in exchange for compensation proportionate to the damages that may result therefrom."

By analyzing the article, we can define the right of passage as: "A right granted to the owner of enclosed land to authorize him to obtain a passage or road on adjacent lands to reach the public road, if there is no path connecting it thereto or if that passage is insufficient for its exploitation according to the purpose for which it was prepared."

A-1- Conditions of the Right of Servitude of Passage:

The law has set conditions for the right of passage which consist of:

A-1-1- Land Enclosure from the Public Road:

This includes land enclosed from the public road whether it is agricultural land, land for construction, or prepared for industrial exploitation. This enclosure or confinement may be total or absolute, or it may be partial. If the passage is sufficient for passage but not comfortable, the owner does not have the right to another path because the legal path is the one that is necessary, not the useful or easy one, or that imposes some expenses on the owner.

A-1-2- Necessity of the Passage for the Use and Exploitation of the Property:

The law requires that the passage for the enclosed property be necessary for the use and exploitation of the property, to the extent necessary in the usual manner and for the purpose designated for the property.

A-1-3- The Enclosure Must Be Due to the Owner's Act:

This is what is stipulated in the first paragraph of Article 695 of the Civil Code, which states: "The owner of the enclosed land, which has a sufficient passage to the public road, may not request the right of passage on another's land if the enclosure is the result of his own will."

If the enclosure results from the owner's will, he may not request the right of passage on another's land, and likewise if he enjoys the right of passage by agreement, as long as the consensual passage has not yet been terminated (Hussein, 1985, p. 49).

If he enjoys the right of passage by way of permission, as long as the permission right has not been removed (Abu Al-Saud, 2004, p. 49).

A-2- Provisions of the Easement of Passage:

If all the previous conditions are met, the right of passage is established by force of law except in the case of disagreement between the two parties, in which case the court undertakes to designate the passage and the manner of passage on the land in exchange for compensating the neighbor for the damages incurred.

A-2-1- Judicial Claims Related to the Easement of the Right of Passage:

For the owner of the enclosed land, he may file a claim for the right of passage, and in return, the owner of the adjacent land may file a claim for the compensation due for the damages he suffers. The former files the claim before the court having

jurisdiction over the property, and if the judge finds the claim valid, he may determine the right and the manner in which the passage is to be made, taking into account the sufficient extent for the use and exploitation of the property in the usual manner. He may also determine the amount of compensation that must be paid. (Yakan, 1974, p. 129).

The legislator also stipulated in Article 700 of the Civil Code that: "The owner of the servient property may not request compensation if he remains silent until the owner of the enclosed land obtains the right of passage by prescription for a period of 15 years."

By examining the text of the article, the case of the impossibility of agreeing on the amount of compensation between the owner of the enclosed land and the neighbor becomes clear, where the owner of the adjacent land may resort to the judiciary demanding compensation proportional to the subsequent individuals, and this right lapses after 15 years by the statute of limitations.

A-2-2- The judge's scope in determining the servitude of the right of passage:

According to the text of Article 696 of the Civil Code, which states: "The right of passage must be taken from the side where the distance between the property and the public road is suitable and causes the least harm to the neighboring owners."

The judge chooses the property where the passage causes the least harm, and he may determine a location other than the passage where the passage is shorter than others if it appears to him that the costs of passage are less and the damages resulting from opening the passage are lighter for the owner of the adjacent property.

He may determine the amount of compensation for the owner of the adjacent land provided that it is fair and corresponds to the extent of the damage caused to the property**.**

A-2-3- Effect of Prescription on the Easement of Right of Way:

The right of way for the enclosed land remains valid as long as the state of enclosure exists; it does not lapse regardless of the length of time of non-use.

A-3- Termination of the Easement of Right of Way:

Article 878 of the Algerian Civil Code states: "Easement rights shall terminate upon the expiration of the specified term, the total destruction of the servient property, or the unification of the servient and dominant properties in the hands of one owner, and the easement right shall revive if the unification of the two properties ceases."

This clarifies that the right of way, like other easement rights, is subject to the rules of easements from their creation to their termination, which are represented by:

A-3-1-Destruction of One of the Properties: This occurs by the total destruction of either the servient property or the dominant property, whether materially

or legally, for example: expropriation for public benefit leading to the removal of enclosure.

A-3-2-Termination Linked to a Term: This is by the expiration of the specified terms, for example, an agreement for a certain period for the passage of maintenance materials, whereby the right ends upon the expiration of this period and the exhaustion of the care for which the right was created.

A-3-3- Unification of Ownership: This means the unification of the enclosed property and the property over which the right of way is exercised in the hands of one owner for reasons of acquisition of ownership such as contract, preemption, prescription, or inheritance.

A-3-4-Extinctive Prescription: Article 879 of the Algerian Civil Code provides: "The easement right terminates after non-use for ten years and also terminates after non-use for thirty-three years if the easement was established for the benefit of an inherited estate belonging to the family...".

A-3-5- The Removal of Enclosure: This occurs when the property is connected to the public road, such as when the owner of the enclosed property purchases the adjacent property to the public road or if a road is cut through and the enclosed property becomes connected to the public road.

3-4- Restrictions on the Use of Water Resources:

Many provisions have addressed water resources, for example, the constitution states that public ownership belongs to the national community and includes ... water.

Also, Article 692 of the Civil Code states: "All water resources are considered property of the national community...".

3-4-1- Right of Way:

It is provided for in Article 4 of Law 05-12 concerning the Water Law, which states: "Every natural person subject to public or private law who holds a privilege benefits from the right of passage of water, whatever its nature, through a subterranean channel in the intermediate properties."

The right of way means that the owner of land that lacks sufficient water cuts a channel in his neighbor’s land to connect to the water resource that is far from his land, whether the resource is public or owned by others.

The right of way has conditions represented by:

* Proximity.

* That the land is far from the water resource.

* Urgent need for the channel.

* Not clearly infringing on the owner’s use.

Its provisions are represented in that:

* It is used in a manner that causes the least damage.

* Fair compensation is paid by the person who creates the channel to the neighbor whose land the channel passes through.

* The owner of the servient property is obligated to perform necessary repairs, otherwise he is liable for damages arising according to the provisions of tort liability.

* If the owner of the land or servient property wishes to irrigate his land from the channel, he may do so within the limits of drinking water, taking what is sufficient to irrigate his land.

3-4-2- Right of Irrigation:

The Egyptian law defined it as: "It is the right of a person to irrigate his land from a private irrigation canal owned by another person." This right is governed by the provisions of the Civil Law and the Irrigation and Drainage Law No. 12 of 1984. Article 808 of the Civil Code provides that: "Whoever establishes a private irrigation canal or drainage according to the special regulations thereof has the sole right to use it; nevertheless, neighboring owners may use the canal or drainage as needed for irrigating or draining their lands...". (Al-Sanhouri, 1967, p. 726)

From this article, it can be said that the irrigation restriction applies to the owner of an irrigation canal who has fulfilled his land's need and has surplus water remaining, subject to the following conditions:

* The condition of adjacency.

* The owner of the irrigation canal has fulfilled the need of his land from it.

* The neighbor's need for the water of the irrigation canal.

Also, this right has rulings which we mention successively:

* If an agreement cannot be reached between the claimant of the drinking right and the owner of the irrigation canal, he may resort to the judicial authority to claim the easement of the irrigation right.

* The expenses of maintenance and necessary repairs are divided among all beneficiaries including the owner, and the proportion is according to the area of the land benefited (Al-Sanhouri, 1967, p. 726)

3-4-3- Right of Drainage or Disposal:

It was stipulated by the Algerian legislator in Law 05-12 under its Article 40 stating: "Every natural or legal person benefits from the right of water passage regardless of its nature, through a natural channel in the intermediate properties."

By interpreting the article and explaining the meaning of the phrase (regardless of its nature), i.e., whether the water is potable or excess water, we are thus before: the right of drainage which has several forms:

3-4-3-1-Direct Drainage**:** meaning the disposal of excess water regardless of its type into the neighbor's drainage, which means using the neighbor's drainage to dispose of water into a public outlet.

3-4-3-2-Indirect Drainage**:** meaning the use of drainage channels on the neighbor's land to discharge water into a public outlet.

The right of the watercourse or drainage has conditions which are:

A- Proximity**:** meaning that the claimant of the drainage right must be the owner of the land adjacent to the land requiring the establishment of the drainage at his expense up to the nearest public drain, and proximity does not require being contiguous to the drain itself. (Al-Sanhouri, 1967, p. 132)

B- The neighbor's need for the owner's drain: that the neighbor's land is the only means for draining the neighbor's water.

Also, the right of drainage or watercourse has rules represented in:

C- The holder of the drainage right must undertake the cleaning, maintenance, and preservation of the land through which the drain passes, and if there is negligence in this regard, the landowner may claim compensation to repair the damage suffered based on tort liability.

D- The neighbor may resort to the judicial authority to obtain the drainage right if no agreement is reached with the owner, in exchange for compensation covering all construction drains and damages resulting therefrom.

E- Regarding necessary repairs, if the beneficiaries do not agree to share the expenses, they may be compelled, upon the request of any of them, to share according to the proportion of the area of their lands benefiting from the drain. (Al-Sanhouri, 1967, p. 740)

Conclusion:

Since ownership in its various forms constitutes an effective element and a main driver of the development wheel, the Algerian legislator, like other Western and Arab legislators, has sought to protect the right of ownership by enshrining a set of positive laws. The subject of private real estate ownership is thought to be one of the thorny and unstable issues, especially influenced by various political and economic trends. In addition, it has aimed to expand its scope to keep pace with free economic openness and has reduced the restrictions imposed on it by setting legal conditions and tools governing it. By reaching a set of conclusions as follows, we can answer the problematic issue raised in our research topic, which revolves around the extent of the legislator's success in protecting private real estate ownership:

1. The legislator has not been very successful in this area, despite the abundance of laws and the severe instructions he has given regarding the protection of real estate ownership in general and private ownership in particular. The inadequacy is still related to the limitations he has imposed in order to safeguard this ownership.

2. By citing some laws, we discover that they are not used in practice and that they do not address certain circumstances, which makes them more complicated and worse and leads to a number of significant disagreements.

3. The Algerian legislature's overall limitations are not in line with the changes brought about by the global economy, which results in developmental challenges.

4. Because private real estate ownership includes all types of real estate, including agricultural lands, the legislator has established conditions and regulations for their use. However, in our opinion, this use is still detrimental and does not benefit the national investment, which has a negative impact on the national economy.

5. Because ownership of real estate entails the urban layout, we observe inadequate administration and exploitation of this asset by the government and private entities, which has had a detrimental impact on the nation's investment sector.

6. Due to its uniqueness, the safeguards put in place by the legislator in its many forms only apply to it in itself and not to other types of ownership.

7. Because it is the only mechanism capable of safeguarding people's rights and their property, the judiciary's mechanisms in its various forms (civil, criminal, and administrative) are the most efficient.

8. The legislator has not been able to put in place mechanisms to prevent restrictions that violate the right to property ownership, and he is still powerless in the face of them.

9. The legislator's complete autonomy in passing laws has led him to disregard the social role, which has resulted in the invasion and endangerment of the owner's rights in certain situations.

10. As evidenced by the right of preemption for owners next to agricultural land, as embodied in the extension of one real estate property over another, the legislator did not balance the public interest with the private interest and the interest of the owner, but rather favored the former and second over the owner's interest.

Based on the aforementioned, we can ultimately provide some broad ideas and guidelines for helping, even in a minor way, to fulfill the owner's needs and the social role that real estate ownership is intended to serve. Accordingly, it is possible to insist:

1. When applying the urban fabric, put in place preventive legal laws pertaining to both agricultural and urban lands to prevent the misuse of the former and urban congestion of the latter, and to protect green areas.

2. Creating urban restrictions that govern every aspect of the urban landscape.

3. Implementing stringent and deterrent legislation that controls urban growth and limits property owners.

4. Giving owners constitutional rights and empowering them to defend those rights.

5. Reconsidering the civil and administrative right of preemption and enacting laws that govern and direct it, in order to protect agricultural land from all kinds of speculation and violations. The following are some of the proposals we see as necessary and beneficial to both the owner and society:

✓ By exploiting all of its treasures and mineral and natural resources, contrary to what the law specifies, which treats them as state property, therefore denying the owner the ability to profit from them and, as a result, failing to enforce his three rights of ownership—the right to use, exploit, and dispose—the land benefits greatly from having depth.

✓ To take advantage of the commercial register of ownership agreements and apply them legally, the procedure of land surveying should be generalized across all the nation's municipalities.

Demanding the stability of real estate rights, which results in the stability of the real estate system and the establishment of stringent standards and strict controls in the process of expropriation of real estate for public benefit, so that the government does not enforce regulations that are outside the bounds of the law.

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