

The Penal Protection of State-Owned Lands in Algeria as Stipulated in Law No. 23-18

الحماية الجزائية لأراضي الدولة بالجزائر في ظل القانون رقم 23-18

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Abstract:

Algeria's territory is vital, given its vast size and as an essential source of national wealth. The Algerian legislature has, therefore, sought to protect it through various legal texts, particularly Act No. 23-18 of November 20, 2023, on protecting the State's territory.

This study dealt with the subject by indicating who are qualified agents to examine offenses on the State's territory, what powers are legally conferred on them in the context of their supervisory functions, and the criminal monitoring of perpetrators of offenses against the State's various territories.

Keywords: State property, penal protection, offenses committed on property, State territory, control.

ملخص:

تكتسي أراضي الدولة أهمية بالغة في الجزائر، نظراً لمساحتها الشاسعة وكونها مصدراً أساسياً للثروة الوطنية. ولذلك، سعى المشرع الجزائري إلى حمايتها من خلال مختلف النصوص القانونية، خاصة القانون رقم 23-18 المؤرخ في 20 نوفمبر 2023 المتعلق بحماية أراضي الدولة.

وقد عالج هذا البحث الموضوع من خلال تبين من هم الأعوان المؤهلين بمعاينة الجرائم الواقعة على أراضي الدولة، والصلاحيات المخولة لهم قانوناً في إطار مهامهم الرقابية، كما بينا المتابعة الجزائية لمرتكبي الجرائم التي تستهدف مختلف أراضي الدولة.

الكلمات المفتاحية: أملاك الدولة، الحماية الجزائية، الجرائم المرتكبة على العقار، أراضي الدولة، الرقابة.

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INTRODUCTION

In Since ancient times, humans have strived to acquire and possess land by any means possible, recognizing its vital role in their lives and continuity. This pursuit intensified after humans learned agriculture, how to obtain food from it, and when they began constructing dwellings.

Unlike other assets, land is not susceptible to deterioration or destruction except in rare cases involving natural phenomena such as volcanoes, earthquakes, or floods. These events can alter the nature of the land and may even cause it to disappear entirely by changing its features.

With human civilization's advancement and nations' emergence, land ownership has expanded beyond individuals. States now hold vast tracts of land, considering them strategic national resources and a fundamental basis for economic and social development. Moreover, land ownership signifies a nation's sovereignty.

Given the immense significance of land in human life, its protection and utilization have become paramount issues that require regulation. Consequently, nations have enacted laws and regulations governing land, ownership, and use. State intervention is necessary to frame and safeguard land ownership from encroachments and threats. State lands face numerous threats, most notably encroachment by individuals and groups, which negatively impact a nation's economy and social security.

In response to this challenge, Algeria, like other countries, has taken steps to protect its land by enacting various laws, the most recent of which is Law No. 23-18 of November 28, 2023, aimed at safeguarding and preserving state lands.

"How did the Algerian legislator address criminal protection through the provisions of this Law?

To answer this question, we have chosen to divide the research topic as follows:

First: The scope of application of Law 23-18 provisions.

Second, The officers are qualified to examine crimes committed against state lands.

Third: The powers legally granted to supervisory officers.

Fourth: The criminal prosecution of perpetrators of crimes targeting state lands."

Section One: Scope of Application of Law 23-18

The Algerian legislator has defined the scope of application of Law 23-18 under Article 2 as follows:

1Lands belonging to the national patrimony: According to Article 22 of the 2020 Constitution, the national patrimony consists of public and private property owned by the state and regional communities. Notably, the legislator has granted the three regional entities (state, wilaya, and municipality) the authority to own and manage the national property located within their respective territories, reflecting the principle of regionalization. The legislator considers public national property to be a set of movable and immovable rights and properties used by everyone, either directly or through public service, provided that they are classified by nature or by their specific adaptation in an absolute manner consistent with the purpose of the service, by the amended and supplemented Law on National Property. Public national property, within the meaning of this Law, consists of natural public property and artificial national property. As for private, national property refers to other property not classified as public, which serves a financial ownership function, whether it belongs to the State, wilaya, or municipality.

2Lands recovered under Law 23-18 provisions from various resettlement operations: This refers to state lands seized, encroached upon, and illegally built upon. By examining the provisions of Law 23-18, it can be inferred that the cases of encroachment on state lands mentioned in this Law include:

- Seizing and exploiting state lands for personal interests.
- Constructing buildings on state lands without a permit.
- Disposing of state property and connecting buildings or facilities illegally constructed to road networks and utilities.
- Altering the nature of state lands and regularizing the status of illegal buildings erected on state lands.

Secondly, Officers Qualified to Investigate Crimes Committed Against State Lands

To combat violations and encroachments on state lands, the Algerian legislature has expanded the circle of officers legally authorized to investigate and examine such violations. In addition to judicial police officers, supervisory officers affiliated with relevant public administrations are now empowered to carry out

these tasks within the framework of the powers the Law grants them under the amended and supplemented Code of Criminal Procedure.

Article 11 of Law 23-18 concerning protecting and preserving state lands specifically identifies these qualified officers.⁽¹⁾ Authorized officials will investigate and examine various offenses against state lands, as will be enumerated.

1. Urban Planning Police:

The Urban Planning and Environmental Protection Police was established in 1984 across central provinces. In 1987, urban planning and environmental protection units were created at the Algiers level and several other provinces (Setif et al.). However, their activities were suspended starting from July 1991, based on a decree dated 21/07/1991 (number 4135), due to the prevailing security situation (the black decade). This led to the proliferation of unauthorized constructions and shantytowns due to the absence of monitoring and oversight and the disregard for building and construction regulations. In response to the Interior Minister's recommendations, the force was reactivated by creating the first unit in 1997 and expanded in 1999 to cover all provinces.

In 2000, the legislature sought to revitalize the role of the Urban Planning and Environmental Protection Police, considering it a body responsible for field monitoring urban planning and construction works, investigating related violations, and drawing up reports to initiate judicial and administrative proceedings against offenders. This aim was to prevent any risks that may arise.

During a Council of Ministers meeting on December 11, 2022, the President of the Republic instructed that the Urban Planning Police be established as part of the draft revision of the Urban Planning Law to strengthen the protection of state lands and to have a presence in all neighborhoods of the country's municipalities. He also stressed the need to expedite the establishment of a joint committee between the Interior, Housing, and Urban Planning sectors to develop a final draft of a law governing the work and duties of the Urban Planning Police.

2. Judicial police officers attached to the Forestry Administration.

¹Law No. 23-18 dated November 28, 2023, concerning the protection and preservation of state lands, o.j No. 76, 2023.

The legislator has emphasized the protection of forest resources by issuing Law No. 84-12, as amended and supplemented by Law No. 91-20, which outlines the general forest regime. Forests are considered public property with an economic function, and the State owns this resource. In this capacity, the State enjoys broad powers to regulate, determine management conditions, and monitor forest exploitation. Consequently, forests have a regime the legislator believes is optimal for their protection..⁽¹⁾

Notably, under Law No. 23-18, the legislator has enacted stricter and more deterrent penalties for any encroachment on forest lands than those previously stipulated in the Forestry Law.

Given the utmost importance the legislator attached to forest resources, Law No. 23-21 concerning forests and forest resources was enacted. This Law repealed the Law above 84-12 and aims to define and regulate the rules for managing and protecting national forest resources within the sustainable development framework.

The new Law stipulates prison sentences and financial penalties for those committing crimes related to forest fires and destruction, crimes related to erosion, grazing, and plowing, crimes related to unauthorized construction and occupation of public forest lands, crimes related to harming fauna and flora, and those related to the illegal exploitation or use of woody and non-woody forest products. It also defines the duties of forest police and the procedures for investigating crimes.

3. State Property Inspectors

The term 'State Property Inspectors' here refers to inspectors affiliated with State Property Inspectorates at the municipal level, distributed across the national territory. The State Property Inspectorate at the municipal or joint municipal level manages state-owned properties within its regional jurisdiction. Oversight, inspection, and investigation are among the primary tasks authorized by Law for these inspectorates..⁽²⁾

¹–Hakima Harirsh, "Forest Administrative Regulation in Algerian Legislation," *Al-Mufakkir Journal*, Issue No. 16, Mohamed Khider University, Biskra, December 2017, p. 521.

²–Executive Decree No. 21-394 dated October 18, 2021, defining the tasks, organization, and operation of the State Property, Land Survey, and Land Registration Inspectorate, *Official Gazette* No. 80, 2021.

4. Agricultural Administration Officers

The legislator has accorded special attention to agricultural lands through the issuance of Law No. 08-16 concerning agricultural guidance ⁽¹⁾Where any non-agricultural use of lands classified as agricultural or having an agricultural purpose is prohibited by the provisions of Article 14 of this Law.

This Law aimed to provide exceptional protection for agricultural land, primarily through:

- Establishing agricultural guidance plans serves as a reference framework for preserving, conserving, and rationally exploiting agricultural spaces and using them within natural capacities.
- Requiring agricultural investors, whether natural or legal, to exploit agricultural lands to ensure integrated, harmonious, and sustainable agricultural development at the local and national levels.
- Prohibiting the disposal of agricultural land and land intended for agricultural purposes in a manner that would change its agricultural purpose.

5. Environmental Inspectors and Tourism Inspectors

In accordance with environmental laws and regulations ⁽²⁾As well as the tourism organization ⁽³⁾"We find that environmental inspectors, technical staff of the department in charge of the environment, and tourism inspectors have the authority to investigate and examine crimes that affect the tourist environment, regardless of its type, whether it be natural reserves, deserts, mountains, seas, or water bodies. Environmental inspectors are tasked with proving violations and crimes related to tourist environmental resources, regardless of the environment in which they were committed."

¹–Law No. 08-16 dated August 10, 2008, related to agricultural orientation, Official Gazette No. 46, 2008.

² – Law No. 03-10 dated July 19, 2003, concerning environmental protection within the framework of sustainable development, Official Gazette No. 43, 2003, amended and supplemented.

³– Law No. 02-02 dated February 5, 2002, concerning the protection and enhancement of the coast, Gazette No. 46, 2008.

³ – Law No. 03-10 dated July 19, 2003, concerning environmental protection within the framework of sustainable development, Official Gazette No. 43, 2003, amended and supplemented Official Gazette No. 10, 2002.

6-Inspectors and cultural heritage protection agents

The Algerian legislator was keen to protect cultural heritage by issuing the Law of Protecting Cultural Heritage 98-04⁽¹⁾. And it is considered a cultural heritage: all cultural property, real estate, specifically real estate and movable property located on the lands of national properties, and within them owned by natural or legal persons governed by private Law, and also found in the groundwater of internal, regional and national waters inherited from various successive civilizations since the prehistoric era to the present day, by the provisions of Article 1 of this Law. The legislator considered inspectors and agents of cultural heritage protection as qualified agents to search for violations of the provisions of this Law and examine them by the provisions of Article 91 of the same Law.

7- Water Police Officers

The Algerian legislator has given great attention to the protection of water resources, as evidenced by the issuance of a significant and diverse set of legislative and regulatory texts, starting with the Water Law of 2005, which represents a decisive step by the legislator in controlling the use, management, and sustainable development of water resources, considering them as state property. Article 159 of the Water Law stipulates...⁽²⁾ Establish a water police composed of agents affiliated with the department in charge of water resources. The police are qualified to search, investigate, and inspect misdemeanors and violations of the water law.

¹ –Law No. 98-04 dated June 15, 1998, concerning cultural heritage, Official Gazette No. 44, 1998.

²–Law No. 05-12 dated August 4, 2005, concerning water, Official Gazette No. 60, 2005, amended and supplemented.

Second: The powers legally granted to oversight agents

"By the provisions of Article 11 of Law No. 23-18, supervisory officers are authorized to visit state lands, request all related documents, and conduct any necessary investigations. They may conduct field inspections of state lands, day or night, including weekends and holidays. The legislator wisely did not limit the time for field visits, allowing them to carry out their duties at any time they deem appropriate, especially during nighttime, weekends, and holidays, when violators may exploit the opportunity to commit various acts of encroachment on state lands. Furthermore, the legislator has authorized qualified officers to request the mobilization of public force while carrying out their duties under this Law. Under the provisions of Article 12 of the same Law, during the field inspection and detection of violations by legally qualified officers, they must document this by preparing a report that clearly states the name(s) and qualifications of the qualified officer(s), the date, time, and place of the inspection, the facts observed, the nature of the offense, and the identity and statements of the offender. The qualified officer(s) and the offender must sign the inspection report. If the latter refuses to sign or their identity cannot be ascertained, this shall be recorded in the report, and the report shall remain valid until proven otherwise. The report shall be sent to the competent public prosecutor within seventy-two (72) hours of the inspection, and a copy shall be sent within the same timeframe to the President of the municipal people's assembly and the wali. In this regard, supervisory officers must immediately halt any encroachment on state property, seize the materials, tools, and equipment used in committing the offense, and seal off the areas if necessary. It is worth noting that Article 4 of Law No. 23-18 empowers both the wali and the President of the municipal people's assembly to conduct field inspections of state lands, request the necessary investigations they deem

appropriate, and request that they be provided with the administrative and technical documents related to state lands. These visits to state lands may be conducted individually or collectively. In the same context, Law No. 23-18, under Article 8, stipulates the establishment of local cells to monitor cases of encroachment and illegal construction on state lands and to inform the competent authorities thereof while taking the initiative to propose any measures to protect and preserve state lands. Their composition, location, and operating procedures shall be determined by regulation."

The legislator also approved that the State, through its various institutions, encourages the participation of civil society and the media at the national and local levels in promoting the culture of citizenship, protecting and preserving the State's lands, and notifying the competent authorities of facts that may constitute an infringement on them⁽⁹⁾ .

Third: Criminal prosecution of perpetrators of offenses targeting state lands

Article 14 of Law 23-18 stipulates that the Public Prosecution automatically initiates public prosecution about the offenses stipulated in this Law, and Article 15 of the same Law defines the parties that can be established as civil parties as follows:

- The judicial agent of the Treasury as a representative of the State.
- The governor is in his capacity as a representative of the State.

⁹–Article 7 of Law No. 23-18, previously cited source

- The President of the People's Assembly as a municipality representative.

In this regard, the legislator devoted Chapter 5 of Law No. 23-18 to the penal provisions prescribed for the perpetrators of the offenses specified in this Law. The applicable penalties vary according to the State of encroachment on state land, which in turn is categorized according to the status of the perpetrator, and we can explain this as follows:

-1Penalties prescribed according to the case of encroachment on state lands by a state land marshal or a public official:

Prescribed penalty	Case of encroachment on state land
Imprisonment from three (3) years to five (05) years and a fine from 300.000 DZD to 500.000 DZD.	Third parties may infringe due to the administrator of state lands or a public official's inaction or leniency.
Temporary imprisonment from seven (07) years to twelve (12) years and a fine of 700.000 DZD to 1.200.000 DZD.	The failure of the state land manager or public official to perform the obligations imposed on him in the legislation and regulations in force to protect the State's lands damages them. Or infringement by third parties.
Temporary	The collusion of a state

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imprisonment from ten (10) years to fifteen (15) years and a fine from 1,000,000 DZD to 1,500,000 DZD	administrator or public official with third parties can lead to encroachment and damage to state lands.
The punishment is imprisonment for two (02) to five (05) years and a fine of 200.000 DZD to 500.000 DZD.	Knowingly granting a license to connect buildings or installations on the territory of the acquired State to public roads and utility networks.

"The legislator has acted wisely by imposing strict penalties on land managers, holding them personally responsible for any damages resulting from encroachments on the State lands under their management due to their failure or refusal to fulfill their obligations under the applicable legislation and regulations. They may resort to the competent judge to take the necessary measures and steps to protect state lands by the provisions of Article 5 of Law No. 23-18.

1- Penalties prescribed according to the case of encroachment on state lands by third parties:

Prescribed penalty	Case of encroachment on state land
Imprisonment from five (05) years to ten (10) years and a fine from 500.000 DZD to	Unlawful acquisition of state land and exploitation of it for personal purposes or the

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1.000.000 DZD.	benefit of others.
Imprisonment from seven (07) years to twelve (12) years and a fine from 700.000 DZD to 1.200.000 DZD.	Construction of buildings or installations on the land of the acquired State.
Imprisonment from five (05) years to ten (10) years and a fine from 500.000 DZD to 1.000.000 DZD	Regularization of the status of buildings or installations on the territory of the acquired State.
The punishment is imprisonment for two (02) to five (05) years and a fine of 200.000 DZD to 500.000 DZD.	Connecting buildings or installations on the lands of the acquired State to public roads and utility networks.
Temporary imprisonment from ten (10) years to fifteen (15) years and a fine from 1,000,000 DZD to 1,500,000 DZD	Disposition of state lands after their acquisition.
Imprisonment from three (3) years to seven (07) years and a fine from 300.000 DZD to 700.000 DZD.	Intentional change of the nature or destination of the State's lands.

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In all cases, the competent judicial authority must order the offender to restore the encroached state lands to their original condition at their own expense. The competent judicial authority may also issue a ruling ordering the confiscation of structures and buildings if they comply with the required standards according to the applicable laws and regulations. In order to protect supervisory officers, members of the monitoring cell, or public authorities from various harassments that they may face while performing their duties, the legislator has enacted strict penalties against anyone who prevents or hinders the supervisory work carried out by the officers within the framework of the provisions of Law No. 23-18, as well as against any offender who provides false, misleading, or inaccurate information. The legislator has also provided legal protection for the person in good faith who reports acts of encroachment on state lands to the competent authorities, or their family members and all closely related persons by imposing strict penalties on anyone who resorts to retaliation, intimidation, or threats in any way or form against them. In the same context, the person in good faith shall not bear any administrative, civil, or criminal liability,⁶⁵⁷ even if the investigations do not yield any results.

Conclusion

Despite the numerous and varied legal texts issued by the legislator to regulate the urban sector and combat the phenomenon and spread of encroachments, seizures, and random and chaotic construction on state lands throughout the country, which has negatively impacted the aesthetic appearance of cities, state lands continue to be subject to looting, damage, and appropriation. This has led the Algerian legislator to intervene by issuing Law No. 23-18 to provide legal protection by introducing a set of precautionary measures and imposing personal responsibility on public officials and land managers in the event of their proven failure to fulfill the obligations imposed on them under the applicable legislation and regulations. Our study has led to several findings and recommendations as follows:

- The legislator has acted wisely by issuing the Law on Protecting and Preserving State Lands to curb the phenomenon of illegal seizure and encroachment on state lands, whether by constructing buildings or structures on them or changing their nature or purpose and exploiting them for personal or third-party interests.
- The legislator has enacted strict penalties in this Law, with the penalty for some crimes reaching up to 15 years imprisonment and a fine of up to 1,500,000 dinars, depending on the seriousness of the act and the perpetrator's status.
- Law No. 23-18 has expanded the authorities authorized to conduct violations inspections, such as tourism inspectors, urban planning inspectors, and the Directorate of Culture.
- Law No. 23-18 holds all parties accountable (ministers, governors, presidents of municipal people's assemblies, and managers of public institutions and bodies, each according to the powers granted to them by Law).
- The possibility of resorting to the judiciary to protect State lands through filing lawsuits by the Minister of Finance, public prosecutors, and mayors as representatives of the state and local communities.
- The legislators' involvement in civil society and the media promotes a citizenship culture and protects and preserves state lands.
- The legislator has provided legal protection for supervisory officers, members of the monitoring cell, and public authorities from various harassment that they may face while performing their duties, as well as for individuals in good faith who report acts of encroachment on state lands to the competent authorities, or their family members and all closely related persons. Based on our findings, we propose the following:
- The legislator needs to issue the regulatory text that determines the composition of local cells to monitor cases of encroachment

and illegal construction on state lands, their location, and their operating procedures.

- It would be desirable for the legislator to expedite the issuance of the regulatory text related to urban police to reactivate it as an effective partner in coordinating with various stakeholders to protect and preserve state lands.
- The competent authorities must strictly adhere to the Law according to their jurisdiction to combat various forms of encroachment on state property."

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