Procedures of the Cadastral Survey Process under Algerian Law

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Abstract:

The cadastral survey is a technical and legal process aimed at accurately determining the boundaries, location, and area of real property and officially documenting them. The process begins with preparatory procedures that include submitting the application, reviewing legal documents and previous plans, identifying the property's location on maps, coordinating with owners, and preparing the necessary technical and human resources. This is followed by field procedures, which involve moving to the property site, carrying out cadastral measurements using precise instruments, and determining and fixing boundaries on the ground in the presence of the concerned parties. The resulting data coordinates and areas are recorded, after which cadastral plans are prepared and subjected to technical and legal review. In the final stage, the survey is approved and registered in the land register, thereby contributing to the protection of real property ownership and the reduction of disputes.

Keywords: (Cadastral survey – property boundaries – cadastral measurement – cadastral plan – land register)

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INTRODUCTION

In light of the growing importance of real estate as one of the fundamental pillars of economic and social development, the need has emerged to regulate and secure real property ownership through precise legal and technical means. The cadastral survey is considered one of the most important mechanisms adopted to achieve this objective, as it contributes to clearly and reliably determining property boundaries, locations, and areas. It also helps to document real property rights and protect them from encroachment or loss. The importance of the cadastral survey further lies in its role in reducing disputes and conflicts between owners, which often arise due to unclear boundaries or insufficient documentation. In addition, it serves as a basis for preparing the land register, urban planning, and implementing development projects. However, the cadastral survey process goes through several stages and requires accurate preparatory and field procedures to ensure its validity and effectiveness. Hence, the following issue arises: To what extent do the preparatory and field procedures of the cadastral survey contribute to achieving legal and technical accuracy and ensuring the stability of real property ownership?

First Requirement: Preparatory Procedures for the Cadastral Survey Process

It is necessary to undertake preliminary procedures to create a suitable groundwork for initiating cadastral survey operations. These procedures mainly consist of collecting documents and conducting aerial

photography (first section), followed by the subdivision of the municipal territory and the announcement of the commencement of the cadastral survey process (second section).

First Section: Document Collection and Aerial Photography

Among the preparatory procedures for the cadastral survey is the collection of documents intended to be used during the survey process in order to identify public and endowment (waqf) properties. This is carried out through investigation and the preparation of a map of the concerned municipality produced by the National Institute of Cartography. Through this process, all efforts are coordinated to gather the necessary plans, documents, and designs. This step is undertaken by the head of the cadastral office at the provincial (wilaya) level[1], This concerns all documents related to the municipality in question, including old plans such as the plans delineating the boundaries of the municipality subject to the cadastral survey, prepared in application of Law No. 84-09 dated 04 December 1984 concerning the territorial organization of the country[2] as well as documents produced during works related to the Agrarian Revolution, according to a specific scale, in addition to documents relating to expropriation for public utility carried out within the territory of the municipality. This also includes specific plans relating to concession, allocation, and transfer. These documents concerning state- and municipality-owned properties are essential for public land survey operations. They can be found at the

level of the State Property Services and the regional cadastral survey agencies, as well as plans of partial or total investigations, whether approved or not, and plans relating to lands that were subject to the self-management system. The Land Registry Services must also provide a list of owners holding registered rights, as well as the tax register available at the tax services[3].

In addition to collecting the aforementioned documents, the aerial photography stage follows. Aerial photographs must be taken of the lands to be surveyed by the National Institute of Cartography. The aerial photograph is considered accurate when the land surface is free of elevations and is horizontal, and when the axis of image capture is vertical. Once the aerial photographs covering each municipal territory subject to the survey are completed, they are delivered to the National Agency for Land Survey in order to prepare two basic documents, which differ according to the geographical nature of the territory[4].

The first document concerns processed aerial photographs, which constitute a document prepared at a specific scale and having the metric characteristics of a plan, where the image appearance is adjusted in relation to the original aerial photograph according to specific techniques. For each processed aerial photograph, a copy is prepared for use in the survey process, while the original is retained.

The second document relates to the boundary diagram plan, which is a graphic and metric document characterized by clarity and accuracy, specific to the

topographic plan. It is produced through the exploitation of all details contained in the aerial photographs, and heliographic paper is obtained for aerial photographs and photographic restitutions[5].

Second Section: Subdivision of the Municipal Territory and the Announcement of the Commencement of the Cadastral Survey

After the preparation of these documents, they are sent to the Land Survey Administration in order to subdivide the municipal territory into cadastral sections. Each section consists of a grouping of ownership units, and each ownership unit consists of one or more land parcels. Since it is not possible to survey an entire municipality at once, a plan must be prepared to divide it after preparing the plans for the area designated for survey. The subdivision is carried out on the basis of the documents submitted and prepared by the topographic expert. When initiating the subdivision process, certain conditions must be taken into account, namely:

- The perimeter of the cadastral section must have boundaries that may be natural or artificial.
- Named localities must not be divided; the cadastral section must include the entire area of the locality.
- A homogeneous real estate unit should be divided.

After subdividing the municipal territory into cadastral sections, these sections must be numbered consecutively without interruption. The section located in the northwestern part is assigned number (01), and horizontal numbering continues eastward until the municipal boundary is reached, then proceeds westward in a zigzag

pattern in a regular back-and-forth manner, with two consecutive numbers assigned to two adjacent sections. Care must also be taken to avoid confusion between urban and rural sections during the numbering process[6].

Once the aforementioned works have been completed, the Director of Land Survey proposes to the Wali (Governor) the issuance of a decision announcing the launch of the general cadastral survey operations and the appointment of the cadastral survey committee. Article 02 of Executive Decree No. 76-62 relating to the preparation of the general cadastral survey, as amended and supplemented, provides that:"Cadastral survey operations in each municipality shall be the subject of a decision issued by the Wali, specifying in particular the date of commencement of the operations, which shall take place no later than one month from the date of publication of this decision.

The decision shall be published in the Official Gazette of the People's Democratic Republic, in the collection of administrative decisions of the concerned wilaya, as well as in national daily newspapers, and shall be notified to the President of the concerned People's Municipal Assembly."

From an examination of this article, it appears that cadastral survey operations begin one month after the publication of the Wali's decision in the Official Gazette and national daily newspapers, with the obligation to notify the President of the People's Municipal Assembly and to publish the decision in the collection of administrative decisions of the wilaya. As for informing

the public, this is carried out by posting notices on advertising boards at the headquarters of the daira (district) and the concerned municipality, as well as neighboring municipalities[7], This shall be done within a period of fifteen days prior to the commencement of these operations[8]. The decision issued by the territorially competent Wali is considered a legal authorization for the launch of the cadastral survey process in the concerned municipality. Accordingly, the wilaya-level land survey directors, under the supervision of the regional land survey directors, ensure the proper implementation of this decision by preparing a report addressed to the Directorate of the National Agency for Land Survey, containing the following information:

- Identification of the municipality in which the cadastral survey operations will commence.
- The date on which the President of the concerned People's Municipal Assembly was notified.
- References relating to the publication of the decision in the Official Gazette or in the wilaya administrative bulletins, as well as the dates of posting notices and public announcement.
- Difficulties encountered.
- The date of issuance of the decision by the Wali and the date scheduled for the commencement of the survey operations.

The rationale behind this notification lies in ensuring the presence of all parties concerned with the operation, particularly property owners, whose attendance is essential in order to avoid future disputes, as well as

representatives of State Property Services, with a view to protecting State-owned properties from encroachment[9].

Second Requirement: Field Procedures of the Cadastral Survey Process

This stage involves conducting an inventory and investigation of the real estate situation in its natural and legal aspects, with the aim of preparing the cadastral plan of property boundaries. Under this requirement, attention will be given to the boundary demarcation process (first section), followed by the process of conducting the cadastral investigation inspection (second section).

First Section: Boundary Demarcation Process

Article 05 of Decree No. 76-62 relating to the preparation of the general cadastral survey, as amended and supplemented, provides as follows: "Municipalities shall determine their territorial boundaries.

This determination shall be carried out by an official in charge of cadastral survey operations, in the presence of the President of the People's Municipal Assembly of the concerned municipality and the Presidents of the People's Municipal Assemblies of neighboring municipalities. Any difficulties affecting the determination of municipal boundaries shall ultimately be examined and resolved by the Minister of the Interior."

It is understood from the wording of this article that all municipalities concerned by the cadastral survey process are required to determine their territorial boundaries in order to facilitate and properly regulate the cadastral survey. The boundaries of each municipality

may only be established in accordance with the documents prepared pursuant to Law No. 84-09 concerning the territorial organization of the country. These boundaries are to be recorded in an official report known as the boundary demarcation report, drawn up in the presence of the President of the concerned People's Municipal Assembly and the Presidents of the People's Municipal Assemblies of neighboring municipalities. Where appropriate, the report shall mention any objections or proposals aiming at a minor modification of the boundaries so as to bring them into conformity with established boundaries.

Once signed by all authorized persons present during the boundary-setting operations, this document is submitted to the Wali for approval and ratification. It is also submitted to the Minister of the Interior for approval in cases where the boundaries are adjacent to those of another wilaya or to the borders of another State[10].

The boundary demarcation process requires identifying the properties on the basis of which the survey is carried out. Accordingly, real estate areas are divided into sections and parcels. Each parcel of land owned by one person or jointly by several persons, and subject to the same rights and encumbrances, constitutes a natural and legal unit[11].

After completing the municipal boundary demarcation process, the agents in charge of the cadastral survey proceed to identify and determine known localities for the purpose of documenting them. This can only be achieved with the assistance of residents who

possess good knowledge of the locations and their correspondence with property boundaries.

The practical procedures for setting the boundaries of the various properties may be summarized as follows:

First: Summoning the concerned persons

Accordingly, property owners and other holders of real rights must be present on site in order to provide their statements on the day their property boundaries are demarcated[12], In application of the provisions of Instruction No. 16 dated 24 May 1998, relating to the conduct of operations specific to the cadastral survey and provisional numbering[13]which provides that property owners holding rights must be summoned at the commencement of the operation, as well as through public announcements in markets and by posting notices, within a maximum period of 15 days prior to the start of operations, in the designated notice boards at the level of the concerned district and municipality and neighboring municipalities. The summons is carried out by means of notifications sent through a T3-type letter (see Appendix No. 01). Another letter must also be sent to the concerned public services to remind them of their obligation to determine the boundaries of their properties and to invite them to appoint a duly authorized representative for that purpose.

In the absence of neighboring owners, and after the exhaustion of three consecutive summonses sent over a period of 15 days, the demarcation is carried out unilaterally. In such a case, the technician in charge of preparing the cadastral survey must make weekly entries

on a compilation card posted at the municipality headquarters indicating the progress of the works, in order to inform the concerned services and owners of the progress of the field operations.

Second: Verification of the Identity of Owners or Their Agents

This is done by requesting any document proving their full identity, including first and last name, date and place of birth, and family status. If the person concerned is an agent, the power of attorney must be requested in order to verify its legal validity with regard to its reference, date, and parties.

Third: Inspection of the Property and Identification of Its Boundaries

This stage is considered difficult, especially when it concerns properties that do not have ownership titles or whose titles do not reflect the actual situation of the property on the ground. In such cases, the agents in charge of the cadastral survey must merely record the statements made by the owners in an objective and neutral manner. Any person wishing to object to the claims of another must record the objection in the special register of the concerned municipality, so that it may be decided upon by the municipal cadastral survey committee appointed by the territorially competent Wali. Finally, the agents in charge of the cadastral survey prepare a set of cadastral cards specific to the ownership units[14].

Second Section: On-Site Inspection of the Cadastral Investigation

The field investigation is considered one of the most important stages of the cadastral survey; therefore, it requires specific qualifications and extensive legal and technical knowledge on the part of the investigating agent or investigation teams. This process requires the investigating agent or the cadastral investigation team to travel to the site to inspect rights and examine the documents and titles presented by property owners. It is a difficult and sensitive task, carried out in accordance with administrative procedures and undertaken by different teams composed of agents belonging to the administrative services concerned with real estate management. The investigator performs his duties under the responsibility of the head of the survey team by determining the properties subject to investigation through verification of their actual area and comparison with the documents and titles received. He proceeds to the field to verify the legal possession of the applicant while taking into account the rights of neighboring owners and holders, including the protection of State property, local community property, and endowments (waqf)[15], The investigation carried out in rural areas results in a cadastral card, Form T7. In urban areas, it results in a set of cadastral cards, namely: Form T5 for owners subject to investigation, Form T4 for ownership groups whose boundaries have been established, and Form T8 for properties subject to the system of joint ownership, in addition to the joint ownership shares card,

Form T9. Reference is made to the attached appendices respectively (02, 03, 04, 05, 06).

It should also be noted that the cadastral investigation is related to another procedure governed by a different regulatory framework, which was introduced later by Law No. 07-02 dated 27 February 2007, relating to the establishment of a procedure for the ascertainment of real property ownership rights and the issuance of ownership deeds through a cadastral investigation[16], It is considered complementary to the cadastral survey. Within the framework of survey works, the cadastral investigation aims to obtain the information necessary for the general cadastral survey, particularly all elements essential to ownership rights and other real property rights, all legal information relating to ownership groups, information concerning the identity of rights holders, as well as the identification of any potential rights of the State over the properties subject to investigation.

The cadastral investigation process has been entrusted to agents of the local cadastral survey service, specifically to teams composed of at least five agents: two agents responsible for determining ownership, assisted by two investigating agents one from the Land Registry Directorate and the other from the State Property Directorate along with a municipal agent responsible for monitoring investigations related to municipal property[17], and the cadastral investigation is carried out in parallel with the boundary demarcation process. The importance of the role of investigators affiliated with the State Property Services lies in

representing the State during the demarcation of properties that constitute State-owned property. The agent affiliated with the Land Registry is appointed by the wilaya director of land registration, upon proposal of the land registrar. This agent must periodically inform the Directorate of the activities of land registry agents assigned to investigation duties, the problems raised, and the progress of the work, as far as possible.

The investigating agents are assigned the following tasks:

- Examining the titles and documents submitted to them;
- Collecting statements and declarations from the concerned persons;
- Raising all useful opinions and observations for the investigation;
- Assessing and evaluating acts of possession;
- Identifying potential rights belonging to the State over the surveyed properties;
- Comparing the information obtained in the field with that available at both the Land Registry and the State Property Directorate, as well as with other documents collected during the preparatory works of the cadastral service. These aspects will be addressed in the following elements:

First: Inspection of Rights Holders

The owner or presumed owner may be an individual or a group of natural persons in the case of joint ownership (co-ownership), owners under a joint ownership regime, or a legal person. The same applies to holders of other real rights. During the first investigation, the

concerned person is assigned a temporary municipal owner number, which is issued by the demarcation officer.

1. Identification of Natural Persons by Stating Their Status:

- First and last name, followed by the father's and grandfather's names, and the mother's first and last names;
- Date and place of birth and nationality;
- Family status.

When the property is jointly owned or has partners, identifying the identity of one of the co-owners is considered sufficient. In the absence of a formal division, the identity of the co-owner who ensures the management of the property is recorded, with the addition of the phrase "and partners."[18]

2. Identification of Legal Persons:

These include the State, local authorities, public institutions, companies, and others. The information related to their identification is recorded as follows:

- **Companies:** company name, legal form, registered office, and, if the company is commercial, its commercial register number[19].
- **Associations**: name, headquarters, date and place of registration, and articles of association.
- **Local authorities:** name of the municipality or the wilaya.
- **State property:** name of the State, the headquarters of the public services and bodies to which the property is allocated and which are responsible for its management.

It should be noted that it is necessary to verify the natural person representing the legal entity, who must present the official documents proving such representation, such as the appointment decision.

Second: Verification of Ownership Rights:

The determination of ownership rights is carried out either through ownership titles or, in the absence of such titles, through investigation and inquiry[20].

1.Verification by Title:

This examination is carried out through a precise review of the submitted document, which means, for the investigator, examining the legality of this document, which must display all the characteristics and required conditions in force to establish ownership rights, and verifying the nature of the information contained in this document.

The examination of these documents leads to situations, including that the submitted document bears all the characteristics of a valid legal contract, but nothing indicates that it relates to the property subject to investigation. In this case, there is a deficiency in the evidentiary value of the submitted document, and thus recourse is made to investigation and inquiry to complete this deficiency in proving ownership rights. This situation resembles ownership without title; therefore, investigators must examine the extent to which legal possession and its elements are available in order to rely on it and recognize the possessor's entitlement to ownership, provided that no objections are recorded by third parties. The submitted document may also be legal

and relate to the property concerned with clear evidence, but the area mentioned therein is less than the area determined on the ground[21], Here as well, the evidence is incomplete; therefore, it is necessary to identify the source of the excess area, as it may concern rights derived from neighboring owners, which must be proven by them, or encroachment and infringement upon the property of others. In this case, investigators must ensure that it does not belong to the State. The person whose ownership is under investigation may also rely on the area recorded in their title deed, which is larger than the area determined by the field survey. In such a case, investigators must resort to examining the deeds related to neighboring properties[22].

Accordingly, if this examination leads to a correspondence between the areas recorded in those deeds and the deeds resulting from the survey, then the person concerned cannot rely on the information contained in their deed due to the lack of material and field evidence supporting its validity. However, if such correspondence cannot be established, the situation constitutes a dispute, and the case is recorded as disputed and subsequently referred to the Land Survey Committee.

A- Officially recognized deeds: Among these deeds are ownership titles prepared by the State Property Administration under previous land legislations. These deeds provide sufficient details to identify the owner and the shares of co-owners in common ownership, but they often do not reflect the actual situation of the properties

due to the lack of precise identification. Therefore, the investigating officer must complete this deficiency through research and inquiry. This also includes administrative contracts establishing, transferring, declaring, or amending real property ownership or other real property rights, prepared by former governors and mayors, as well as contracts establishing, transferring, declaring, or amending real property ownership or other real property rights, prepared by former notaries and notarial clerks and duly published. These contracts prepared before the issuance of Order No. 70-91 dated 15 December 1970 concerning the organization of notarization are considered[23], amended and supplemented[24], They contain accurate information, whether regarding the identification of the parties or the identification of the properties, as well as contracts establishing, transferring, declaring, or amending real property ownership or other real property rights, prepared by former judges and notary judges. This type of contract is used for properties located in rural areas where ownership is still subject to the rules of Islamic Sharia. Although these contracts are official, they were not mandatorily subject to land registration procedures unless the parties so wished. This defect of insufficient publication does not in any way diminish the evidentiary force established under previous legal texts; thus, they bear all the characteristics of an official contract and remain applicable until proven otherwise, as do judicial decisions establishing, transferring, declaring, or amending real property ownership or other real rights

issued by the judiciary and having the authority of res judicata[25].

B- Recognized unofficial deeds:

This concerns all customary contracts with a fixed date prior to 01 January 1971. It should be noted, pursuant to Article 328 of the Algerian Civil Code, that the date of a contract is deemed fixed starting from:

- the day of its registration;
- the day its content is established in another contract drawn up by a public official;
- the day it is endorsed by a competent public officer;
- the day of the death of one of the persons whose handwriting or signature appears on the contract.

It should be noted that, with regard to the first three criteria, the investigator or the land registrar can verify the fixed date of the contract accordingly, whereas the fourth criterion can only be established through the judiciary. As for customary contracts that do not have a fixed date, their evidentiary value can only be established through the judiciary, and they cannot be relied upon in the verification of ownership rights[26].

2- Verification in the absence of a deed:

In this case, land surveying constitutes the basis for the creation of ownership rights starting from the proof of possession. In the absence of a deed, verification is carried out through inquiry and investigation, with the aim of collecting the largest possible amount of important information related to proving possession. The matter here concerns investigating the extent to which the person concerned has exercised possession over the

property, in accordance with the procedures of civil law. The law protects possession as it protects ownership, and it has established specific means for the protection of both possession and ownership; it protects possession in itself, even if the possessor is not the owner[27].

The claimant of possession is required to submit all forms of evidence, including witness testimony and statements from neighboring owners, and to hear any person whose testimony may be useful to the investigation regarding this fact[28].

Conclusion:

In conclusion, cadastral surveying constitutes one of the fundamental pillars for the organization of real property ownership and the protection of the legal rights of individuals and the State alike. It provides accurate data on the location, boundaries, and area of properties, thereby contributing to clarity and transparency in real estate transactions. Cadastral surveying also helps to reduce disputes and conflicts between owners and neighbors through the precise determination of boundaries. It is considered an important basis for the preparation and regular updating of the land register.

In addition, cadastral surveying plays a central role in urban planning and urban and rural development. It enables the competent authorities to make sound decisions related to land use and the implementation of development projects. It also contributes to supporting real estate investment by providing legal certainty and security. On the other hand, it helps improve land management and its proper utilization. Thus, cadastral

surveying constitutes a strategic tool for achieving property stability, sustainable development, and serving the public interest.

Footnotes:

[1] Noura Ourhamoun: Proof of Private Real Property Ownership in Algerian Legislation and Judiciary, Master's thesis, "unpublished," Branch of Professional Liability Law, Faculty of Law and Political Sciences, Mouloud Mammeri University – Tizi Ouzou, Algeria, 2012, p. 145.

[2] Official Gazette, Issue No. 06, published on 07 December 1984.

[3] Zahra Ben Ammar: The Role of the Land Registry in the Real Estate Registration System and Its Disputes before the Algerian Judiciary, Master's thesis, "unpublished," specialization in Administrative Law, Faculty of Law, Badji Mokhtar University, Annaba, Algeria, 2011, pp. 99–100.

[4] Imad Eddine Rahaimia: Legal Means of Proving Private Real Property Ownership in Algerian Legislation, Doctoral dissertation, unpublished, specialization in Law, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2014, pp. 227–228.

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[6] Imad Eddine Rahaimia: op. cit., p. 229.

[7] Rim Marahi: The Effects of Cadastral Documents on Regulating and Defining Real Property Ownership, the Fourth National Conference on Land Conservation and the Registration of Real Property Rights in Algeria, held on 27–28 April 2011, Faculty of Law, Dr. Yahia Fares University of Medea, Algeria, p. 06.

[8] Text of Article 03 of Decree No. 76-62 relating to the preparation of the general land survey, as amended and supplemented.

[9] Abdelghani Bouzaitoun: Cadastral Surveying in the consolidation of Real Property Ownership in Algerian Legislation, Master's thesis, "unpublished," Department of Private Law, Real Estate Law Branch, Faculty of Law, Mentouri Brothers University, Constantine, Algeria, 2010, p. 93.

[10] Imad Eddine Rahaimia: op. cit., p. 230.

[11] Text of Article 23 of Executive Decree No. 76-63 relating to the establishment of the land register, as amended and supplemented.

[12] Article 10 of Executive Decree No. 76-16 relating to the preparation of the general land survey, as amended and supplemented, op. cit., p. 49.

[13] Issued by the General Directorate of National Properties, Ministry of Finance.

[14] Imad Eddine Rahaimia: op. cit., pp. 233–235.

[15] Zadi Sid Ali: Jurisdiction of the Administrative Judge in Real Property Ownership Disputes, Master's thesis, "unpublished," Branch of Administrative Disputes Law, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2014, p. 88.

[16] Official Gazette, Issue No. 15, dated 28 February 2007.

[17] Mouaz Cherbali: Mechanisms for the Purification of Private Real Property Ownership, Master's thesis, "unpublished," specialization in Advanced Private Law, Faculty of Law and Political Sciences, Abou Bekr Belkaid University, Tlemcen, Algeria, p. 93.

[18] Rim Marahi: op. cit., p. 43.

[19] Mouaz Cherbali: op. cit., p. 94.

[20] Rim Marahi: op. cit., p. 44.

[21] Noura Ourhamoun: op. cit., p. 155.

[22] Rim Marahi: op. cit., pp. 44–45.
[23] Official Gazette, Issue No. 107, dated 25 December 1970.
[24] Amended and supplemented by Law No. 06-02 dated 20 February 2006 concerning the organization of the notarial profession (Official Gazette, Issue No. 14, dated 08 March 2006).
[25] Rim Marahi: op. cit., p. 45.
[26] Imad Eddine Rahaimia: op. cit., p. 240.
[27] Mouaz Cherbali: op. cit., p. 97.
[28] Noura Ourhamoun: op. cit., p. 156.

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