

The Algerian legislative position on expropriation of investments: General rule and exceptions

الموقف التشريعي الجزائري من تسخير الاستثمارات: القاعدة العامة والاستثناءات

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الملخص:

سعى المشرع الجزائري لتحقيق إطار تشريعي ملائم يدعم الثقة في القانون الجزائري، ويضمن جذب المستثمرين خاصة الأجانب؛ وفي هذا الإطار منح لهم مجموعة من الضمانات، من بينها "ضمان عدم تسخير مشروعاتهم الاستثمارية"، الذي يعتبر تطبيقاً للحق في الملكية الفردية، المضمون دستورياً، والمعترف به في الأعراف والاتفاقيات الدولية.

غير أن التكريس الدستوري والاعتراف الدولي بالحق في الملكية الفردية؛ لا يتعارض مع حق الدولة في استرجاع الممتلكات لدواعي المصلحة العامة، وحققها في نزع الملكية للمنفعة العامة مادامت تتم وفق الأطر القانونية المنصوص عليها، وتتم مقابل تعويض عادل يضمن جبر الضرر الذي قد يلحق بالمستثمر بسبب تسخير مشروعه الاستثماري.

الكلمات المفتاحية: الضمانات القانونية، عدم التسخير، الاستثمار.

Abstract:

The Algerian lawmaker aimed to create an appropriate legal framework that would increase trust in Algerian law and attract investors, especially foreigners. Within this framework, a number of guarantees were granted, including the guarantee against the expropriation of foreign investment projects, which is considered an application of the constitutionally guaranteed right to private property, recognized in international conventions and agreements.

Nonetheless, the state's right to reclaim property for reasons of public interest is unaffected by the constitutional and international acknowledgment of the right to private property as long as it is exercised within the legal conventions. Property is recovered in return for fair compensation that guarantees a proper reimbursement for any damages the investor may have suffered as a result of their investment project being expropriated.

Key words: Legal Guarantees; Non-Expropriation; Investment.

Introduction:

Under Article 10 of Law 22-18 concerning Investment ¹, the Algerian legislator assures investors that their investment projects will not be subject to exploitation by the administration. This provision is consistent with protections outlined in prior investment laws, reinforcing the commitment to safeguard investors' rights and interests within the legal framework of Algeria. Such assurances serve to enhance the overall investment climate, promoting confidence among both domestic and foreign investors. Furthermore, it is a natural application of the guarantee of the right to private property enshrined in the Constitution ², in addition to other applications provided by the legislator in specific legal texts, such as Articles 677, 678, and 679 of the Civil Code ³, and Article 1 of Law 91-11 on Expropriation ⁴.

By enjoying ownership rights over the investment project, the investor is entitled to the exclusive rights that are typically associated with property ownership. These rights are, to name a few, the freedom to use and enjoy the investment or sell it freely. The investor may choose to exercise these rights, provided that doing so complies with all relevant laws and regulations. In this respect, the investor enjoys full legal authority over the investment project. Such prerogatives are not specific to investors, but constitute fundamental rights conferred upon any owner under the law, irrespective of the legal nature of the property.

The aforementioned guarantee is one of the agreed-upon guarantees included in bilateral agreements related to the encouragement and mutual protection of investments concluded by Algeria with Arab or foreign countries, even if their content is not included under the term "Expropriation." Rather, they are included under different names that carry the same meaning and lead to the same legal effect, such as "recovery," "restitution," "nationalization," "confiscation," and others.

However, the legislator has subjected the guarantee of non-expropriation to what is stipulated in the law. In certain cases and circumstances, this exceptional treatment of private property is also stipulated before, whether in the Constitution and in bilateral agreements related to the encouragement and mutual protection of investments, or in the legal texts mentioned above, and it is an acceptable practice by countries for their sovereign right agreed upon internationally. The practical consequence of the aforementioned exceptions is that the state can expropriate investments for reasons of necessity, according to the legally available formulas, which is the necessity that the laws often link to the "public benefit" and the "public interest."

When an exception takes away an investor's rights, it affects their ability to control their investment. This situation is particularly concerning for foreign investors who may not have a strong connection to the host country. They may not understand why their project could be taken for "public benefit." To address this, laws, including those in Algeria, require that investors receive "fair and equitable compensation" when their investments are affected. This compensation is based on certain criteria to ensure fairness.

However, there is a significant problem that concerns us, based on the above-mentioned argument: "Can the ensuring of non-expropriation investment project be considered a real

guarantee for investors, despite the state's ability to utilize it for reasons of public interest?" The problem raised gives rise to several sub-questions, the most prominent of which are:

1. What did the Algerian legislator mean by Non-Expropriation Investment Law?
2. Is the possibility of utilizing an investment project not considered an obstacle to investment in Algeria?
3. Is the fair and equitable compensation offered to an investor in the event of their investment project being utilized a guarantee that replaces, in terms of value, the Non-Expropriation Investment Law?

To answer the problem posed, we relied primarily on analytical method tools, as they are compatible with the nature of the subject, which requires research and analysis within various legal texts, and numerous articles and clauses of bilateral agreements concluded by Algeria in the field of mutual encouragement and protection of investments. This research paper is divided into two parts as follows:

- 1 - The concept of guaranteeing the Non-Expropriation of the investment project.
- 2 - The investment project between guaranteeing the Non-Expropriation and the necessity of Expropriation.

1- The concept of Guarantee Against Expropriation of Investment Projects:

The expropriation of investment projects, in any form, is one of the greatest concerns of investors; it is a valid reason for them to choose not to invest in a given country. Therefore, we find that the commitment to non-expropriation is one of the guarantees provided by countries in their domestic legislation to attract investors to their territories, and one of the issues included in the provisions of various bilateral and international agreements related to the encouragement and mutual protection of investment ⁵. It is one of the guarantees granted by the Algerian legislator to investors through Law 22-18 on Investment. However, it is not a new guarantee; it was previously presented in the texts of previous investment laws under different names. This paper will focus on:

- We will trace the terminology used by the Algerian legislator to indicate the impermissibility of exploiting an investment project (1.1).
- We will then address the most important forms of exploiting an investment project in Algeria (2.1).

Finally, we will define the Guarantee Against Expropriation of Investment Projects (1.3).

1.1- Terms indicating the impermissibility of exploiting investment projects in Algerian legislation:

The Algerian legislator has used various terms to express the prohibition of expropriating investment projects. This is clearly reflected in the investment laws. Algerian legislation also used several terms to indicate this in the bilateral agreements between Algeria and other countries within the framework of encouraging and protecting investment:

1.1.1 - The Implication of the Impossibility of Investment Expropriation in Algerian Investment Laws:

Investment laws in Algeria can be divided into those issued after Legislative Decree 93-12, through which the legislator opened the door to the private sector and established important rules that reflect its economic openness, in keeping with the economic reforms initiated in 1988, and into those issued before the issuance of the aforementioned decree, when Algeria was following a socialist system. We will examine the significance of investment expropriation in both time periods:

First: The significance of expropriation in investment laws in the period before the issuance of Legislative Decree 93-12:

During the period prior to the economic openness, Algeria witnessed the issuance of the following laws:

A - Law 63-277 on Investment: This law was issued in French, and the term "expropriation" was used in it, as the text was written in French. Article 6 stipulated that no expropriation of investors' property may be carried out except within the framework of the law, and after the cumulative amount of net profits reaches the value of the imported capital invested. This means that the relevant authorities must reach a certain amount of profits before the expropriation of the investment can take place, in addition to requiring fair compensation to be paid to the investor ⁶.

B - Order 66-284 containing the Investment Law: By virtue of this order, the Algerian legislator used the term "recovery" of the institutions that benefit from the provisions of the aforementioned law, and linked it to reasons of public interest, stressing that the recovery procedure can only be carried out pursuant to a legislative text, and that the compensation paid to the investor whose project was taken away from him must be completed within a maximum period of nine months, and must be equal to the net value determined by experts, and the national elements that were recovered from the state, to which is added the amount that was not consumed from "foundation expenses or intangible values corresponding to the actual expenses that were not taken into account in calculating the aforementioned compensation, in addition to the interest calculated according to the legal percentage for a period of two years" on the amount of the aforementioned compensation. The legislator indicated in this law the possibility of transferring compensation abroad in the case where the foreign investor, or if the investment was made in Algeria through funds imported into Algeria ⁷.

C - Law 82-11 on National Private Economic Investment: Pursuant to Article 41 of this law, the Algerian legislator repealed Order 66-284, which defined the objectives that national private economic investments should seek to achieve, as well as their conditions and the framework for their implementation. However, none of its articles referred to the idea of harnessing investments in any way. Article 20 of the law—the only article under the heading "Guarantees"—was formulated in a general manner, lacking details on the guarantees. The legislator merely indicated that investments to which Law 82-11 applies enjoy guarantees in

accordance with the Constitution and applicable laws ⁸.

D - Law 82-13 on the Establishment and Operation of Mixed Economic Companies: This law defined the legal framework and procedures for establishing mixed economic companies between an institution or Several socialist institutions and one or more foreign institutions. The foreigner is granted the right to re-export the proceeds of the transaction and, where appropriate, a share of the profits not reinvested. This is the case in several cases, including the nationalization of a mixed-income company ⁹.

The legislator stipulated in Article 48 of Law 82-13 the possibility of the state reclaiming a foreigner's shares for reasons of public interest, in exchange for compensation equal to the accounting value of the reclaimed shares, within a period not exceeding one year. In this case, the foreigner is authorized to transfer the sale of his shares ¹⁰.

E - Law 88-25 on the Guidance of National Private Economic Investments: According to Article 14 of this law, the Algerian legislator has repealed Law 82-11 concerning National Private Economic Investments. This new legislation outlines that directing national private economic investments should be prioritized in planning laws. However, it does not address the issue of how to effectively harness investment projects in any way ¹¹.

Second: The significance of "expropriation" in investment laws after the issuance of Legislative Decree 93-12:

From 1993 to the present day, the Algerian legislator has used various terms to denote investment expropriation, namely: "exploitation," "expropriation," "nationalization," "administrative confiscation," and "seizure." These terms are explained below, as they appear in the texts of investment laws:

1 - Legislative Decree 93-12 on Investment: The Algerian legislator used the term "expropriation" for the first time in Legislative Decree 93-12, where Article 40 stipulates that the administration is not permitted to exploit investments made within the framework of its legal provisions, except within the limits permitted by law and in exchange for fair and equitable compensation ¹².

2 - Decree 01-03 on Investment Development: Pursuant to Article 16 of Decree 01-03, the legislator replaced the term "expropriation" used in Legislative Decree 93-12 with the term "administrative confiscation," indicating that administrative expropriation may be carried out in the cases stipulated in the legislation and in exchange for fair and equitable compensation ¹³.

3 - Law 16-09 on Investment Promotion: Pursuant to Article 23 of Law 16-09, the legislator used two other terms: "expropriation" and "seizure," to describe the exploitation of investment. It prohibited the implementation of both of these operations except when carried out within the framework of the law and in exchange for fair and equitable compensation ¹⁴.

4 - Law 22-18 on Investment: Pursuant to Article 10 of Law 22-18, the Algerian legislator has once again used the term "expropriation", which it had previously used under Legislative Decree 93-12. It appears to be the most appropriate term to express the state's recovery of

ownership of the investment project, or its expropriation of investments, because it includes the various forms through which the state intervenes in the ownership of the investor. It has also permitted this to be done when it comes to the cases stipulated by law, and in return for fair and equitable compensation ¹⁵.

1.1. 2 - The significance of exploitation according to the bilateral agreements signed by Algeria regarding investment:

First - Bilateral agreements concluded between Algeria and Arab countries:

Under the heading "Legal Guarantees," Article 15 of the Agreement for the Promotion and Guarantee of Investment between the Arab Maghreb Union stipulates that it is not permissible to nationalize or expropriate investments owned by nationals of the contracting states, nor to subject them to any measure that would have a similar result to the two aforementioned measures ¹⁶. Under the title "Protection of Investments," Article 4/1 of the agreement concluded between Algeria and Syria for the same purpose stipulates the prohibition of taking measures to expropriate, nationalize, or freeze investments of nationals of each contracting state in the territory of the other state, directly or indirectly, or taking any measure that would have the same legal effect, or that would limit the investor from disposing of the ownership of his project ¹⁷. These are almost the same provisions referred to in the two agreements concluded in the same context between Algeria and Egypt ¹⁸, and Algeria and Oman ¹⁹.

Second - Bilateral agreements concluded between Algeria and foreign countries:

Under the heading "Prohibitive or Restrictive Measures," Article 4 of the Agreement on the Promotion and Reciprocal Protection of Investments concluded between Algeria and the Belgian-Luxembourg Economic Union ²⁰ stipulates that the contracting parties are obligated not to expropriate or nationalize the investments of nationals of the other country, or to take any direct or indirect measure that would do so. Article 5 of the Agreement on the Promotion and Reciprocal Protection of Investments concluded between Algeria and France has the same content, obligating each contracting party not to take any measures related to expropriation, nationalization, or other direct or indirect measures that would do so ²¹. These are almost the same provisions contained in the agreement concluded between Algeria and Germany for the same purpose ²², and in the agreement concluded between Algeria and Switzerland on promotion and mutual protection of investments ²³.

Finally, it was noted that all agreements concluded by Algeria regarding the the encouragement and mutual protection of investments, whether with Arab or foreign countries, have indicated the permissibility of taking expropriation, nationalization, or similar measures that would produce the same legal effect when the public interest is involved, with the necessity of providing fair and appropriate compensation to the citizen whose project ownership has been affected, without discriminatory treatment between investors.

2.1- Forms of Investment Project Expropriation:

The term "expropriation," which the Algerian legislator has reused in Investment Law

22-18, encompasses many forms, all of which indicate state intervention in the ownership, management, and direction of the investment project. However, within this title, we will address only two forms: the "nationalization" and "expropriation" procedures, given that they are the two most commonly used terms in the bilateral agreements concluded by Algeria regarding the encouragement and mutual protection of investment:

1. 2. 1. Expropriation of the investment project for the public benefit:

Private property is a fundamental right guaranteed by the constitution; However, the Constitution itself stipulates the possibility of expropriation within the limits of the law, as indicated in Article 60 of the 2020 constitutional amendment: "Property may only be expropriated within the framework of the law, and with fair and equitable compensation ²⁴." Article 677 of the Civil Code stipulates that individuals may not be deprived of their property except in cases specified by law and in accordance with the specific conditions for that purpose. Expropriation of all or part of it becomes acceptable if it is for the public benefit and is carried out with fair and equitable compensation ²⁵. In the same context, Article 2 of Law 91-11 indicates that expropriation for public benefit is only an exceptional method adopted by the state to acquire property and real estate rights in exchange for fair and equitable prior compensation. It is only used if all other possible methods have failed, and it is only adopted in the context of implementing operations resulting from the application of regulatory procedures, such as "construction and urban planning projects" or "works and facilities characterized by public benefit ²⁶."

Expropriation is an exceptional procedure that forcibly deprives an investor of part or all of their real estate ownership for reasons related to public benefit. According to Law 91-11, the assessment of public benefit hinges on the presence of one of two factors: the necessity to establish projects related to construction and urban planning, or the need to create businesses or facilities that serve the public good.

1. 2. 2. Nationalization of an Investment Project:

Nationalization generally refers to the transfer or repossession of ownership of a project or several projects from the private individual or group of individuals who own them to state ownership, i.e., transferring them from private ownership to public ownership. Nationalization can only be carried out pursuant to a legislative text ²⁷. Article 678 of the Civil Code states that a nationalization ruling may not be issued unless there is a legal text authorizing it, leaving room for the law to determine the conditions and procedures for transferring ownership, as well as the methods of compensation ²⁸.

Nationalization is a significant action that countries can take concerning investment projects²⁹. It holds considerable importance for the state that implements it. Economically, it allows for the recovery of property, the removal of economic restrictions, the restoration of the state's economic strength, and the maintenance of internal balances. Politically, nationalization reflects a state's effort to assert full sovereignty over its territory and achieve complete independence, particularly in the period following conflict and during the process of gaining independence. In this context, we note that Algeria has had a significant experience in

the field of nationalization, which can be described as exceptional. Due to the important decisions it made at the time, it was able to nationalize important strategic sectors, allowing it to lift restrictions imposed before independence and liberalize the hydrocarbon sector ³⁰.

3.1 – Definition of the Investment Project Non-Expropriation Guarantee:

"It is a guarantee provided by the state to investors on its territory, whether national or foreign, ensuring that their ownership will not be affected in any way, whether directly, such as through nationalization, confiscation, expropriation, or other measures, or indirectly, such as through measures that would obstruct the investor from managing his project as he desires, or deprive him of the necessary control over his decisions and impacts."

2 – The Investment Project: Between the Requirements of Non-Expropriation and the Necessity of Exploitation

Recognizing states' right to exercise full sovereignty over their territories, Domestic legislation and international agreements grant it the right to utilize investment projects within specific legal frameworks and under certain conditions, the most important of which are:

- The utilization of the investment project is an exceptional measure taken for the public interest (1.2).
- Investors in Algeria are equal before the utilization procedure (2.2).
- The investment project will be expropriated in exchange for fair and equitable compensation (3.2).

2.1 - Expropriating an investment project is an exceptional measure that serves only the public interest:

The authority of states to expropriate investment projects situated within their borders is enshrined in an array of domestic statutes and international or bilateral treaties aimed at the mutual promotion and safeguarding of investments. This prerogative is often articulated as a mechanism for asserting "economic sovereignty" and for channeling investments in alignment with national objectives and interests ³¹. It is imperative to underscore, however, that such expropriation should be regarded as a rare and exceptional recourse; states ought to eschew the normalization of this practice as a standard procedure for the acquisition of property and economic ventures. The basic principle is that investors should be secure and not threatened with their property being violated. In the absence of adherence to established legal principles, an arbitrary practice is confronted, resulting in a violation of rights. It is fundamentally unreasonable for investments to be expropriated unlawfully, irrespective of any subsequent compensation provided to the investor. The legitimacy of any investment project necessitates compliance with the criterion of serving the public interest; thus, the public interest constitutes a precondition for the implementation of such exceptional measures. Failing to satisfy this condition renders the decision to expropriate invalid ³². The concept of public interest or public benefit is consistently enshrined as a prerequisite for the execution of

investment projects in all bilateral agreements procured by Algeria concerning the mutual encouragement and protection of investments³³.

2.2 - Equality among investors in the expropriation of investment projects:

Equality among investors requires that they be treated fairly and equitably, no less favorable than the treatment provided to other investors in the same country. They are equal before the legal framework to which they are subject, and they have the same rights and bear the same obligations stipulated by the legislation of the host country. They are not unjustifiably or discriminatively obstructed³⁴. This means that they are treated the same when they are in similar situations, without discrimination. Non-discrimination is a fixed principle in international law that has been able to impose itself in various fields³⁵.

Equality is one of the established investment principles in Algerian legislation³⁶. One application of this principle is that investors are treated equally when it comes to decisions regarding the expropriation of investment projects, regardless of the method of expropriation. Below, we will address some of the implications of equality among investors in expropriating investment projects:

A - The criterion when making expropriating decisions is the importance of the project to be expropriated, not the nature of the person who is undertaking it: Equality among investors requires that there be no discriminatory treatment between national and foreign investors when issuing expropriation, nationalization, or similar measures that have the same legal effect. Therefore, the country in which the investment is located may not expropriate an investment project because its owner is a foreign investor, but leave another investment project alone because its owner is a national investor³⁷. The criterion that the country should consider when deciding to expropriate a particular investment project is the benefit that expropriating that investment achieves for the public interest, regardless of the nature of the person undertaking it. This is the same rule that foreign investors should be treated with among themselves in the country hosting the investment. It is impermissible for a state to allocate an investment project owned by a foreign investor from a particular country while neglecting an investment project owned by a foreign investor from another country, even though both projects have the same specifications and achieve the same benefit for the public interest³⁸. Therefore, priority when selecting an investment to expropriate must be given to investments that serve the public interest, not to favor a national investor over a foreign investor, or a foreign investor over a foreign investor from another country, regardless of the reasons or justifications.

B - Investors are equal in terms of the procedures and methods related to implementing the investment expropriation decision:

Non-discrimination between national and foreign investors requires that foreign investors be treated in accordance with the principle of national treatment. Their treatment should not be less than that provided to national investors³⁹. This is the guaranteed minimum that may not be exceeded in dealings with foreign investors⁴⁰. One of the consequences of non-discrimination between national and foreign investors is that there is no differentiation

between them in terms of the procedures and methods for implementing investment expropriation decisions, or in terms of compensation and its methods.

Prohibiting discrimination between investors is not intended to guarantee equal treatment between national and foreign investors only. It also includes ensuring equality among foreign investors, regardless of their nationalities, such that no foreign investor should be treated less favorably than the treatment provided to foreign investors from another country. Many bilateral agreements concluded by Algeria regarding the mutual encouragement and protection of investments have stipulated this matter ⁴¹.

In instances where the application of special agreements, most-favored-nation clauses ⁴², or the foreign investor's country joining economic blocs or unions—such as free trade areas, economic unions, or common markets ⁴³—leads to the provision of preferential treatment to specific investors, it is essential to clarify that such preferential treatment does not constitute discrimination between investors. Consequently, these factors should not be considered when evaluating the management of investments. The affiliation to particular blocs or the invocation of special agreements or most-favored-nation provisions does not justify differential treatment in decisions regarding expropriation, nationalization, or other comparable legal actions.

3.2 - Fair and Equitable Compensation for Foreign Investors' Investment Project:

To ensure that compensation for expropriation is fair and equitable, investors must receive restitution for the damages they have experienced ⁴⁴, as well as for any lost profits due to the deprivation of their property. This compensation should comprehensively address the damages arising from the expropriation process or other actions related to the investment project. Essentially, it includes the investor's right to utilize, manage, and benefit from their property as they see fit ⁴⁵.

The concept of fair and equitable compensation is enshrined in the Constitution. Historically, the Algerian legislature acknowledged the importance of prior compensation for individuals whose properties were affected, particularly in the constitutional amendments of 1989 and 1996. However, from the 2016 Constitution onward, and with subsequent amendments in 2020 ⁴⁶, this focus has shifted to merely describing compensation as just and equitable.

According to Article 21 of Law 91-11, in cases of expropriation, compensation is to be determined based on the actual value of the property. This valuation takes into account the nature of the property and its use by the current owner, as well as by any other rights holders. The actual value is assessed on the date that the evaluation is conducted ⁴⁷. Furthermore, Article 677/2 of the Civil Code states that if there is a disagreement over the compensation amount, the matter can be referred to the judiciary, which will make the final determination. Importantly, disputes regarding compensation should not impede the transfer of the expropriated property ⁴⁸.

In the context of Algeria's bilateral agreements aimed at promoting and Protecting in

vestments, the specifics of compensation can vary. Some agreements simply note the need for fair and equitable compensation, while others outline clear criteria for determining this compensation. For instance, the agreement between Algeria and Romania specifies that compensation should reflect the real value of the expropriated investment, taking into account the economic circumstances at the time of the expropriation decision or its announcement⁴⁹. Similarly, the agreement with Switzerland dictates that the compensation must equal the market value of the investment right before the decision is made or announced⁵⁰. Additionally, it stipulates that the payment should be made in the original currency of the investment or another currency acceptable to the investor. This payment should be prompt⁵¹, and if there is any delay, the investor is entitled to receive interest at a commercial rate, calculated from the date of expropriation until the payment is made—aligning with the stipulations in the agreement with Romania.

The agreement concluded between Algeria and France in this regard stipulates that compensation, from its approval until the date of payment, generates interest calculated at the official interest rate of the Special Drawing Right, as determined by the International Monetary Fund⁵². Meanwhile, the agreement concluded between Algeria and Bahrain indicates that compensation includes interest calculated at the normal commercial interest rate until the date of payment⁵³.

Finally, we note that the compensation granted to the investor for the expropriation of his investment project does not constitute part of the guarantee against exploitation; compensation is a civil penalty imposed on the state for its failure to fulfill its responsibility to ensure the non-exploitation of the investor's project. However, compensation can be conceptualized as a form of guarantee. In such a case; it serves as an assurance to the investor that they will be compensated for any harm incurred as a result of the state's failure to fulfill its obligations. This obligation, established at the outset, is a fundamental reason for the investor's decision to undertake the investment.

Conclusion:

The non-expropriation of an investment project is a legal guarantee granted by the Algerian legislator to investors, both nationals and foreigners, to encourage them to invest in Algeria. This guarantee is based on the legislator's awareness of the value of the legal protection provided by a particular country for its investment project. This protection has been emphasized in the bilateral agreements concluded by Algeria regarding the encouragement and mutual protection of investment. However, this guarantee is subject to the cases and conditions stipulated by law. Below, we present the most important findings and proposals related to this guarantee, which were reached in this research paper:

First: Results:

1 - Algerian legal texts do not explicitly outline the specific ways in which the state can interfere with ownership of investment projects or the rights to manage and dispose of them. However, an examination of the terminology used in investment laws and the bilateral agreements that Algeria has established for the mutual encouragement and protection of investment leads us to identify several potential forms of state intervention. These forms may

include nationalization, expropriation, seizure, administrative confiscation, restitution, or any other actions that could produce similar legal consequences to those listed.

2 – The guarantee against the expropriation of an investment project is a legal guarantee granted by the state to investors on its territory, regardless of their nationality or legal status. Its content is that investments may not be affected in any way, whether in relation to ownership of the investment or the ability to dispose of it and make decisions regarding it with complete freedom.

3 - The Algerian legislator has used many terms in the Investment Law to denote state intervention to exploit an investment project for the public interest, including: "administrative confiscation," "nationalization," "seizure," and "expropriation." However, the term "expropriation" is currently used in Law 22-18 on Investment, a term previously used under Legislative Decree 93-12 on Investment Promotion. The latter term appears to be the most appropriate because it encompasses all of the aforementioned terms and can include any other measure that would deprive an investor of his property or deprive him of his right to dispose of and control it.

4 - The two terms most commonly used in the bilateral agreements concluded by Algeria regarding the encouragement and mutual protection of investment are nationalization and expropriation. The reason for their frequent use is the profound legal implications they entail. Most of the aforementioned agreements also indicate that any measure that entails the same legal effects is subject to the same ruling.

5 - The state may exploit an investment project in one of the forms mentioned above, or in another form that entails the same legal effect. Because the state's expropriation of an investment necessarily infringes the investor's right to ownership of his project, or his right to dispose of and manage it with complete freedom, its intervention must be within the stipulated legal frameworks and in accordance with certain conditions such as:

A - The investment project may be affected only as an exception to achieve a public interest.

B - All investors must be treated equally, fairly, and non-discriminatory before the investment exploitation decision.

C - The investment project must be utilized in exchange for fair and equitable compensation.

6 - Investment expropriation decisions reflect the state's exercise of one of its sovereign rights. If this exercise conflicts with the investor's right to maintain ownership of their project, or their right to dispose of it freely, the state's right takes precedence over the investor's right, as it is exercising an internationally recognized sovereign right. From this standpoint, the expropriation of an investment project is not considered unfair or arbitrary treatment of investors if it is carried out in accordance with the conditions mentioned above. Nor is it considered an obstacle to investment in a particular country if it is treated as an exceptional measure taken to achieve public interest and public benefit, and is carried out within the limits set by law. It is also a natural application of the rule of prioritizing the public interest over private interest when there is a conflict between the two.

7 - The compensation given to an investor whose investment rights have been infringed is not intended as a continuation of the original investment guarantee. Instead, it serves as restitution for the violation of that guarantee. This compensation can be categorized

as a different form of guarantee, specifically aimed at reimbursing the investor for losses incurred and missed potential profits.

Second - Recommendations:

1 - The complexities of Algerian investment laws reveal that the legislator does not consistently use a single term to describe the state's role in managing investments. This inconsistency can lead to confusion among stakeholders. Therefore, it is essential to establish a unified term that captures the essence of investment exploitation. The ideal term should possess characteristics of precision, clarity, and comprehensiveness, allowing it to cover the various methods of exploitation. In this regard, it is suggested that the term "exploitation," as defined in Law 22-18, be retained. This term effectively meets the criteria of precision, clarity, and comprehensiveness, making it preferable for future legislative discussions and applications.

2 - The need to review Article 10 of Law 22-18 on investment in a manner that clarifies, without any room for doubt or interpretation, the following:

A - What is meant by investment expropriation.

B - The legal forms through which investments are expropriated, providing reliable benchmarks to differentiate between these various forms, and the cases in which each form is resorted to, including the case in which a specific investment is expropriated through the seizure or recovery of company shares, which is one of the forms overlooked in Algerian legislation.

C - Identifying the legal effects of expropriation decisions.

D - Cases in which an investment project may be expropriated for a limited period, and how investor rights are addressed in these cases.

3 - Enriching the legal provisions related to nationalization and expropriation found in the Civil Code. Despite the legal importance of these two procedures, the Algerian legislator has not encompassed them with sufficient legal provisions, whether in terms of concept, content, procedures, or other matters.

4 - Comparing the contents of Law 22-18 on expropriation with those contained in the bilateral agreements concluded by Algeria regarding the encouragement and mutual protection of investments. The Algerian legislator included only one article in Law 22-18, Article 10, which contained general provisions open to interpretation and cannot be relied upon to understand most issues related to expropriation.

5 - It is not sufficient to stipulate the necessity of providing fair and equitable compensation to the investor who has suffered harm due to the state's expropriation of his investment project. Rather, clear and precise criteria must be defined, without ambiguity, which can be clearly referred to in determining what is meant by the aforementioned issues of justice and fairness.

- This work was translated from Arabic to English with the help of a doctoral student: Abderrahmane Bentoumi, American literature, BouSaada Higher School.

Citations:

1 - Law No. 22-18 on Investment, July 24, 2022, Official Gazette, No. 50, dated July 28, 2022, p. 5.

2 - Article 60 of the 2020 Constitutional Amendment, Constitution of the People's Democratic Republic of Algeria, Official Gazette, No. 4, December 30, 2020, p. 4.

3 - Order No. 75-58, including the Civil Code, September 26, 1975, Official Gazette, No. 78, September 30, 1975, as amended and supplemented, p. 17.

4 - Law No. 91-11, defining the rules relating to expropriation for public benefit, April 27, 1991, Official Gazette, No. 21, May 8, 1991, p. 693.

5 - See previous Algerian investment laws, and also see some of the bilateral agreements concluded by Algeria:

*Presidential Decree No. 20-420, ratifying the Agreement for the Promotion and Guarantee of Investment between the States of the Arab Maghreb Union, signed in Algiers on July 23, 1990. December 22, 1990, Official Gazette, No. 06, February 6, 1991, p. 203.

*Presidential Decree No. 91-345 ratifying the agreement concluded between Algeria and the Belgian-Luxembourg Economic Union, relating to the encouragement and mutual protection of investments between Algeria, signed in Algiers on April 24, 1991, October 5, 1991, Official Gazette, No. 46, October 6, 1991, p. 1775.

*Presidential Decree No. 94-01 ratifying the agreement concluded between Algeria and France, relating to the encouragement and mutual protection of investments, and the exchange of letters related thereto, signed in Algiers on: February 13, 1991 1993, dated January 2, 1994, Official Gazette, No. 1, January 2, 1994, p. 4.

*Presidential Decree No. 02-223 ratifying the agreement concluded between Algeria and the Sultanate of Oman, relating to the encouragement and mutual protection of investments, signed in Algiers on April 9, 2000, dated June 22, 2002, Official Gazette, No. 44, June 26, 2002, p. 5.

*Presidential Decree No. 03-65 ratifying the agreement concluded between Algeria and Bahrain, relating to the encouragement and protection of investments, signed in Algiers on June 11, 2000, dated on February 8, 2003, Official Gazette, No. 10, February 16, 2003, p. 15.

6 - Article 6, Law No. 63-277, relating to the Investment Law, July 26, 1963, Official Gazette, No. 53, dated August 2, 1963, p. 774.

7 - Article 8, Order No. 66-284, including the Investment Law, September 15, 1966, Official Gazette, No. 80, dated September 17, 1963, p. 1202.

8 - Law No. 82-11, relating to national private economic investment, August 21, 1982, Official Gazette, No. 34, August 24, 1982, dated August 1982, p. 1692.

9 - Article 8, Law No. 82-13, relating to the establishment and operation of mixed-economic companies, August 28, 1982, Official Gazette, No. 35, dated August 31, 1982, p. 1724.

10 - Articles 48 and 49, same source.

11 - Law No. 88-25, guiding national private economic investments, July 12, 1988, Official Gazette, No. 28, July 20, 1988, p. 1031.

12 - Article 40, Legislative Decree No. 93-12, regulating investment promotion, October 5, 1993, Official Gazette, No. 64, dated October 10, 1993, p. 3.

13 - Order No. 01-03, regulating investment development, August 20, 2001, Official Gazette, No. 47, dated August 22, 2001, p. 4.

14 - Law No. 16-09, regulating investment promotion, August 3, 2001 2016, Issue 46, Official Gazette, Issue 46, dated August 3, 2016, p. 18.

15 - Law 22-18 on Investment, previous source.

16 - Presidential Decree No. 20-420, previous source.

17 - Presidential Decree No. 98-430 ratifying the agreement concluded between Algeria and Syria regarding the encouragement and mutual protection of investments, signed in Damascus on September 14, 1997, December 27, 1998, Official Gazette, No. 97, dated December 27, 1997, p. 4.

18 - Article 5/2, Presidential Decree No. 98-320 ratifying the agreement concluded between Algeria and Egypt regarding the encouragement and mutual protection of investments, signed in Cairo on March 29, 1997, October 11, 1998, Official Gazette, No. 76, dated October 11, 1998, p. 6.

19 - See also: Presidential Decree No. 02-223, op. cit., Presidential Decree No. 03-65, op. cit., and Presidential Decree No. 03-121 ratifying the agreement concluded between Algeria and Sudan regarding the encouragement and mutual protection of investments, signed in Algiers on October 24, 2001, and published on March 17, 2003, Official Gazette, No. 20, op. cit., March 23, 2003, p. 14.

20 - Presidential Decree No. 91-345, op. cit.

21 - Article 5/2, Presidential Decree No. 94-01, op. cit.

22 - Presidential Decree No. 2000-280 ratifying the Agreement and Additional Protocol concluded between Algeria and Germany concerning the Promotion and Reciprocal Protection of Investments, signed in Algiers on March 11, 1996, and October 7, 2000, Official Gazette, No. 58, October 8, 2000, p. 5.

23 - Article 6, Presidential Decree No. 05-235 ratifying the Agreement concluded between Algeria and Switzerland concerning the Promotion and Reciprocal Protection of Investments, signed in Bern on November 30, 2004, June 23, 2005, Official Gazette, No. 45, dated June 29, 2005, p. 15.

24 - Article 60, Amendment Constitutional Law of 2020, previous source.hg

25 - Article 677, Civil Code.

26 - Articles 1 and 2, Law No. 91-11. Law No. 91-11 defined the procedures to be followed in the process of expropriation for public benefit, and several regulatory texts were issued pursuant to it.

27- لتعريف التأميم أنظر: ناجي سليمان أحمد هزيم الفلاحي، فرحان نزال المساعيد، "النظام القانوني للتأميم دراسة مقارنة"، مجلة الاجتهاد القضائي للدراسات القانونية والاقتصادية، العدد 11، 2017، ص 173 و 174.

28 -Article 678, Civil Code.

29 - Cheikh lo fall, **La protection juridique des investissements directs étrangers dans les pays en développement** : l'exemple de l'afrique de l'ouest, these de doctorat, Université Bordeaux, 2018.

30- أنظر: عبد المومن بن صغير، "التجربة الجزائرية لتأميم النفط وتأثيرها على السيادة والتنمية الاقتصادية للدولة"، مجلة الدراسات القانونية، المجلد 6، العدد 2، 2020، ص ص 31 – 53، أنظر كذلك :

- Abderrahmane Benhama, **Le régime d'investissements étrangers en Algérie: aspects juridiques**, Thèse de doctorat, Département de droit privé, Université Paris I pantheon – Sorbonne, 2020, p 152 – 153.

31- نواره حسين، "الحماية القانونية لملكية المستثمر الأجنبي في الجزائر"، المجلة النقدية للقانون والعلوم السياسية، المجلد 4، العدد 1، 2009، ص 59. ص ص 55 – 105.

32 - نواره حسين، "المنفعة العمومية شرط لنزع ملكية المستثمر الأجنبي – دراسة مقارنة"، مجلة كلية القانون الكويتية العالمية السنة الثامنة، العدد 2، 2020، ص 243، ص ص 243-273.

33 - Article 4, Presidential Decree No. 94-328 ratifying the agreement concluded between Algeria and Romania, relating to the encouragement and mutual protection of investments, signed in Algiers on June 28, 1994, Official Gazette, No. 69, October 26, 1994, p. 5. See also: Article 5, Presidential Decree No. 94-01; previous source, and Article 4/3, Presidential Decree No. 03-223; previous source, and Presidential Decree No. 03-65; previous source, and Article 6, Presidential Decree No. 05-235; previous source.

34 - This concept can be deduced from the provisions of the agreements related to the encouragement and mutual protection of investments. See: Article 3/1, Presidential Decree No. 91-345; previous source, Article 3, Presidential Decree No. 94-01; previous source, Article 3/2, Presidential Decree No. 94-328; previous source, Article 4/1, Presidential Decree No. 95-88; previous source, Article 2, Presidential Decree No. 2000-280; previous source, Article 3/1, Presidential Decree No. 01-205; previous source, Article 2/2, Presidential Decree No. 03-65; previous source, and Article 2/3, Presidential Decree No. 03-121; Previous source, and Article 3, Presidential Decree No. 03-223; previous source, and Article 4, Presidential Decree No. 02-235; previous source. It should be noted that non-discrimination between investors is not an absolute principle, as the host country has the right to impose restrictions on some activities and grant investment privileges in certain sectors. See: Mohand and Ali Aybout, The Principle of Fair and Equitable Treatment of Foreign Investments, Critical Journal of Law and Political Science, Vol. 5, No. 1, pp. 100-128, 2010.

35 - Jean – pierre Laviec, **Protection et promotion des investissements ; étude de droit international des investissements économique** , presses universitaires , Paris ,1985, p 93-94

36 - Article 3, Law No. 22-18; op. cit.

37 - BONOMO Stéphane, **Les traités bilatéraux relatifs aux investissements entre protection des investissements étrangers et sauvegarde de la souveraineté des Etats**, presses universitaires d'AIX-Marseille , France , 2012, p 36.

38 - The bilateral agreements concluded by Algeria regarding the mutual encouragement and protection of investments stipulate the need for non-discrimination when making decisions to expropriate investment projects among foreign investors.

39 - Thierry Lauriol, **Le traitement national**, RGDI, Tome, vol.119, N°1/2015, p 52.

40- محند وعلي عيروط، "مبدأ المعاملة العادلة والمنصفة للاستثمارات الأجنبية"، مرجع سابق.

41 - Article 3/3, Presidential Decree No. 91-345; op. cit., Article 3/2, Presidential Decree No. 94-328; op. cit., Article 4/2, Presidential Decree No. 95-88; op. cit., Article 3/1, Presidential Decree No. 2000-280; Previous source, Article 3/4, Presidential Decree No. 01-201 ratifying the agreement concluded between Algeria and Mozambique, relating to the promotion and mutual protection of investments, signed in Algiers on December 12, 1998, Official Gazette, No. 40, dated July 25, 2001, p. 4, Article 3/2, Presidential Decree No. 01-205 ratifying the agreement concluded between Algeria and Greece, relating to the mutual promotion and protection of investments, signed in Algiers on February 20, 2000, dated July 23, 2001, Official Gazette, No. 41, July 29, 2001, p. 5, Article 4/1, Decree Presidential Decree No. 02-223; op. cit., Article 4/2, Presidential Decree No. 05-235; op. cit.

42 - المادة 4/4، مرسوم رئاسي رقم 94 - 328، مصدر سابق، لمعرفة المزيد حول شرط الدولة الأولى بالرعاية، أنظر: محند وعلي عيروط، "شرط الدولة الأولى بالرعاية في القانون الدولي للاستثمارات"، المجلة النقدية للقانون والعلوم السياسية، المجلد 5، العدد 2، 2010.

43 - As stipulated in Article 3/4, Presidential Decree No. 91-345; op. cit., and as stipulated in Article 4/2, Presidential Decree No. 94-01; op. cit., and Article 4/3, Presidential Decree No. 02-223; op. cit.

44 - In the implementation of this idea, Article 21 of Law No. 91-11 was issued.

45 - ياقوتة علويات، "نزع الملكية من أجل المنفعة العامة في التشريع الجزائري"، مجلة الشريعة والاقتصاد، المجلد 5، العدد 9، ص 123، ص ص 101-132.

46 - See: Article 20 of the 1989 Constitutional Amendment, Article 20 of the 1996 Constitutional Amendment, Article 22 of the 2016 Constitutional Amendment, Article 60 of the 2020 Constitutional Amendment.

47 - Article 21, Law No. 91-11, op. cit.

48 - Article 677/2, Civil Code.

49 - Article 4/2, Presidential Decree No. 94-328, op. cit., which is the same content as the agreement concluded between Algeria and France for the same purpose, Articles 5/3 and 4, Presidential Decree No. 94-328, op. cit.

50 - Also: Article 5/3, Presidential Decree 02-223; op. cit., and Article 4/1, Presidential Decree 03-65, op. cit.

51 - Article 6, Presidential Decree No. 05-235, op. cit.

52 - Article 5/2/d, Presidential Decree No. 94-01, op. cit.

53 - Article 4/1, Presidential Decree 03-65, op. cit.