

Specificity of Vacant Properties Dispute in Algerian Law

خصوصية منازعة الأملاك الشاغرة في القانون الجزائري

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Received: 03/05 /2026

Accepted: 13/09 /2026

Published: September /2026

Abstract:

This research paper examines the distinctive nature of vacant property disputes in Algeria, as reflected in the legislative intent through the enactment of numerous legal provisions whose content varied between the pre-1975 and post-1975 periods. Taken together, these provisions illustrate the approach adopted by the legislator to regulate the settlement of disputes related to this category of property. The study focuses on two main aspects: first, analyzing the legislative framework and highlighting the ambiguity in its provisions, which has led to jurisdictional conflicts between ordinary and administrative courts; and second, reviewing judicial practice in such disputes, noting how rulings and decisions have established principles, reinforced protection, and limited administrative powers. The paper concludes by proposing a set of recommendations aimed at addressing the identified gaps.

Key words: Vacant properties; property disputes; property protection; judicial jurisdiction; Algerian law.

الملخص:

تعرضت هذه الورقة البحثية لموضوع خصوصية منازعة الأملاك الشاغرة في القانون الجزائري، وذلك من خلال إبراز الطابع الخاص لهذه المنازعة، المستشف من تعامل الإرادة التشريعية عبر سنّ نصوص قانونية وتنظيمية عديدة، تباين محتواها بين مرحلة ما قبل سنة 1975 ومرحلة ما بعدها، عكست في مجملها التوجه المعتمد من قبل المشرع الجزائري لتنظيم فض المنازعات المتصلة بهذا النوع من الأملاك، أين حاولت الدراسة تركيز معالجتها للموضوع من جانبين أساسيين، تمثل أولهما في تحليل الإطار التشريعي وبيان ما عرفته نصوصه من غموض وتعدّد في التعديلات، كانت سبباً في تسجيل تضارب في قواعد الاختصاص وتجزئة المسار القضائي بين الجهات القضائية العادية والإدارية، بينما تناول الجانب الثاني استعراض الممارسة القضائية النازرة في المنازعات المنصبة على الأملاك الشاغرة وما حملته أحكامها وقراراتها من ترسيخ للمبادئ وتكريس للحماية وتقيد للسلطات، لتنتهي الدراسة لإقتراح جملة من التوصيات الكفيلة بسد الثغرات والاختلالات المسجلة.

الكلمات المفتاحية: الأملاك الشاغرة؛ المنازعات العقارية؛ حماية الملكية؛ الاختصاص القضائي؛ القانون الجزائري؛

Introduction:

The subject of disputes over vacant properties in Algerian law holds particular significance, given the issues it raises concerning the essence of property rights, which are constitutionally enshrined as among the most important rights. Addressing these disputes involves a series of complexities arising from the multiplicity of legislations and their variation according to the period of their enforcement, in addition to the overlapping jurisdictions among different judicial authorities. This has produced a practical reality characterized by a variety of conflicting situations since the enactment of the initial regulations governing these properties up to the present day. Such diversity is evident both under the texts issued before 1975 and those issued afterward, resulting in conflicts over jurisdictional rules and/or fragmentation in the judicial procedures handling disputes related to these properties, which in turn has impacted the stability of transactions and the effectiveness of rights protection.

Accordingly, this research paper aims to examine the distinctive features of disputes concerning vacant properties in Algeria, from the perspective of legislative frameworks and judicial practice on one hand, and their impact on the guarantees established to protect property rights on the other. The core question it seeks to address is the effectiveness of the legislative and judicial framework regulating and adjudicating disputes over vacant properties in Algeria, and whether it has succeeded in achieving its primary objective: balancing the protection of private property with the State's rights over such properties?

To this end, the study relies on both analytical and descriptive methodologies, employing a descriptive-analytical reading that focuses on analyzing the relevant legislative and regulatory texts, tracing their historical evolution, and examining selected judicial decisions as practical applications from various judicial authorities. This approach allows the construction of a comprehensive and accurate understanding of the distinctive nature of these disputes within the Algerian legal system, revealing both their strengths and shortcomings.

In pursuit of the study's objectives and in accordance with the adopted methodology, a two-part plan has been established: **the first** part examines disputes arising from the registration process under texts issued before 1975, and **the second** part addresses disputes arising under texts issued after 1975

1-Disputes Arising from the Registration Process During the Period of Pre-1975 Legislation

In addressing this section, our analysis focuses on certain types of disputes that emerged from the practical implementation of the legislative and regulatory provisions enacted during this period (1.1), as well as their corresponding judicial applications (1.2).

1.1- Types of Disputes Arising During This Phase

Disputes relating to vacant properties were initially subject to special procedures defined by the following texts:

-**Decree No. 63-88 of 18 March 1963**, concerning the regulation of vacant properties,¹ whose Article 7 conferred exceptional jurisdiction on the *juge des référés* (judge for urgent matters) to adjudicate disputes arising from vacancy measures. However, this procedure was criticized for violating a fundamental rule of jurisdiction — namely, that the *juge des référés* is competent only to issue provisional measures and may not rule on the substance of the case, which falls within the jurisdiction of the trial judge.

-**Decree No. 63-168 of 9 May 1963**, relating to the placement of certain properties under state protection,² and **Decree No. 63-222 of 28 June 1963**, governing appeals against *wilaya* decisions concerning protection measures,³ before *review committees* which acted as quasi-judicial administrative bodies.

Following the establishment of the Supreme Court (*Conseil Supérieur*), all disputes concerning the legality of administrative acts came within its jurisdiction pursuant to the Law of 16 June 1963. Accordingly, all annulment claims against vacancy measures were to be brought directly before the Supreme Court (Administrative Chamber). The Court, in one instance, declared itself competent to rule on the legality of a decision determining the rent of a vacant property and annulled it for illegality.⁴

Other claims concerning trespass and compensation remained within the jurisdiction of ordinary courts, which ruled on them through summary proceedings, with the possibility of appeal before the Judicial Council and cassation before the Supreme Court. The Administrative Chamber of the Supreme Court rejected an appeal concerning trespass, holding that it fell under the jurisdiction of ordinary courts.

After the enactment of the **Ordinance of 8 June 1966**, establishing the Code of Civil Procedure,⁵ which complemented the statute governing the Supreme Court, a new phase began. Jurisdiction over disputes involving state property was henceforth vested in the administrative chambers of the judicial councils. This meant that disputes concerning the legality of measures related to such property were to be brought directly before these administrative chambers.

However, the **Ordinance of 18 September 1969**, amending Article 7 of the Code of Civil Procedure, reassigned jurisdiction to the ordinary courts for “disputes concerning properties whose ownership has been transferred to the State.” As the scope of this amendment was ambiguous and open to multiple interpretations, the legislator intervened once again through the **Ordinance of 25 December 1971**, which adopted the interpretation proposed by Bar President *Satour*, who maintained that the examination of the legality of vacancy decisions fell under the jurisdiction of the Administrative Chamber of the Supreme Court, whereas disputes concerning ownership of property deemed vacant fell within the jurisdiction of the administrative chambers of the judicial councils, while all other disputes remained within the competence of the court located at the seat of the judicial council.

This proposed solution was itself subject to criticism. Professor *Mahyou* argued that such an approach undermined the proper administration of justice by fragmenting disputes over state property among several judicial bodies, thereby creating difficulties for litigants in

identifying the competent court. He also noted the emergence of the issue of *prior adjudication*, which further complicated proceedings. In his view, the preferable solution would be to authorize the court located at the judicial seat to hear, at first instance, all disputes involving state property, including those concerning the legality of the *walis'* (governors') decisions. Such an approach would avoid judicial complexity and conflicts of jurisdiction, which judicial reform aims to eliminate.

Professor *Mahyou* illustrated his position with an example — the **decision of the Algiers Judicial Council dated 26 May 1971**, which dismissed a claimant's action on the grounds that it sought the annulment of a vacancy measure and referred the matter to the Supreme Court. However, the claimant had also requested confirmation of his ownership rights, a matter within the jurisdiction of the Algiers Judicial Council. Had the claimant limited his claim to this issue, the Council could have examined the dispute and ruled incidentally on the legality of the vacancy decision.⁶

Consequently, the content of the legal texts governing disputes related to vacant properties during this period contributed to a persistent state of instability and inconsistency in their application, leading to the following outcomes:

- Conflicts of jurisdiction between ordinary courts (first-instance courts at the judicial council seat), administrative chambers of the judicial councils, and the Supreme Court (Administrative Chamber).
- A proliferation of ambiguous legislative provisions, necessitating repeated legislative interventions,⁷ which resulted in conflicting jurisdictional rules concerning the settlement of disputes related to this category of properties.
- Fragmentation of disputes relating to vacant properties among multiple judicial bodies, causing confusion for litigants and compelling them to navigate complex and opaque procedural paths—often resulting in the loss or abandonment of claims due to procedural complications. Some of these outcomes will be illustrated in the judicial applications discussed below in Section (1.2).

1.2- Judicial Applications of Dispute Cases in This Phase

The judiciary has addressed, in a number of its rulings, several types of disputes related to vacant property matters during this phase. Some notable examples are presented below:

1.2.1- Supreme Court Decision No. 121879 of 21/03/1996, Judges' Bulletin 1997, No. 50, p. 149. The ruling stated: "...Whereas the State Property Administration considered that the notarized deed dated 13/12/1962, concluded between the late (T.M.) and the former settler — the previous owner of the disputed parcel — is null and void, as if it had never existed, pursuant to the provisions of Decree No. 62/03 of 23/10/1962, which prohibits the purchase of vacant properties,⁸ and consequently, the disputed parcel was lawfully incorporated into State property. Furthermore, Article 2 of this decree requires, under penalty of nullity, the declaration of any transaction relating to immovable or movable property formerly owned by settlers.

Whereas this legal text does not exempt the administration from issuing a decision confirming the nullity of the sale, which would establish that the sale contract is void and that the disputed parcel has become part of the national domain. In the present case, no such measure has been taken, and the disputed parcel remains registered in the name of the owner within the Property Administration; therefore, the contested decision must be upheld.”

It can be observed that the judicial orientation established by the above decision aims to:

- Even in the presence of a legislative provision prohibiting the transaction (Decree 62/03), a formal administrative act by the competent authority is still required for such prohibition to acquire legal effect.
- It reinforces the principle that an explicit administrative decision is necessary to produce a legal effect on real property rights.

1.2.2- State Council Decision No. 205492, Fourth Chamber, dated 24/04/2000⁹The ruling stated:“It follows from the case documents and the uncontested facts that the appellant was the tenant of the disputed villa, which had been granted to her husband by the Ministry of National Defence in 1966, and after the transfer by the State, the property was granted to the Municipality of Ain Taya, which allowed her to remain in occupation as a privileged holder.

However, the disputed villa was never formally declared by a decision of the wali as a vacant property of the State, as required by Ordinance No. 62/20 of 24/08/1962 and Decree No. 63/88 of 18/03/1963. The French owners had not left the national territory and thus continued to exercise their right of occupation, remaining lawful owners. Accordingly, in the present case, both the Ministry of National Defence and the municipality acted unlawfully in disposing of property belonging to others.”

From this State Council decision, it can be inferred that:

- Actual occupation or mere allegation of vacancy is insufficient; a formal ascertainment by the competent authority is required.
- Property rights are protected from any administrative or public action not legally founded.

As a result, the judicial treatment based on the legal texts applied during this period, regarding disputes related to vacant properties, allows us to conclude the following:

1. Reinforcement of the Principle of Legality:
Judicial decisions affirm that any infringement upon the right of ownership must rely on a valid legal and procedural basis, not on mere administrative discretion.
2. Necessity of Formality in Administrative Decisions:
Whether it concerns the annulment of a contract or a declaration of vacancy, an explicit written decision issued by the competent authority is required.
3. Protection of Private Ownership:
Even within the special legal framework for vacant properties, private ownership remains protected unless both the formal and material conditions for expropriation are fulfilled.
4. Limitation of Administrative Authority:

The administration cannot appropriate or dispose of real estate without completing the required legal procedures; otherwise, such action is null and void.

5. Clarification of the Burden of Proof:

In vacancy-related disputes, the administration bears the burden of proving the existence of a valid administrative decision declaring the vacancy; otherwise, ownership remains with its rightful holder.

2-Disputes Arising from the Process of Incorporation during the Post-1975 Legislative Phase

During this period, the Algerian legislator definitively resolved the issue by decreeing the incorporation of vacant properties (*biens vacants*) into the private domain of the State, as a result of highly complex administrative procedures. These procedures gave rise to numerous disputes, which we will address by discussing, first, the types of disputes triggered by the incorporation process under the legislative and regulatory texts enacted during this phase (2-1), and second, their judicial applications (2-2).

2.1- Types of Disputes Arising from the Incorporation Process during this Phase

Disputes arising during this period may generally be classified into two categories:

- Disputes initiated by the State Property Administration (*Administration des Domaines*) acting as the representative of the owner or potential heirs;
- Disputes in which the State Property Administration is held liable for management errors, brought against it by the owner or his heirs.

As previously mentioned, the incorporation process follows specific stages discussed in earlier sections, subject to certain conditions—the most important being the absence of an owner or heir of the vacant property. However, cases may arise in which an unknown owner or heir later appears, giving rise to multiple forms of disputes. In such instances, it becomes necessary to determine the competent judicial authority to adjudicate them.

2.1.1. The Appearance of an Heir

An estate is considered *vacant* (*succession vacante*) if the deceased leaves no relatives entitled to inherit—neither by *fard* (statutory shares), *‘asabah* (agnatic succession), nor kinship ties (*rahm*)¹⁰. However, the emergence of a potential heir remains legally possible. In such a case, the law grants the heir the right to recover his inheritance, which had been incorporated into the private domain of the State, as stipulated in the National Property Act ¹¹.

Accordingly, this heir may submit a petition to the competent judicial authorities within the statutory limitation period prescribed by Article 829 of the Civil Code, which sets the prescription period for inheritance rights at **33 years**, requesting the restitution of his hereditary rights and, consequently, the State’s relinquishment of the property¹². If his claim is well-founded and he successfully proves his status as heir and his entitlement to the inheritance, he may recover his rights to the estate. In cases where the property has been consumed or disposed of, he is entitled to adequate compensation¹³.

Thus, when a potential heir or legatee (*legatee under a will*) appears, the law allows for the restitution of the property that had been incorporated into the State's private domain—if restitution is still possible. Where restitution has become impossible due to the property's disposal, the heir or legatee is entitled to compensation equivalent to the property's value, calculated on the date of recognition of ownership.

However, it should be noted that a judgment rendered in favor of potential heirs, although it upholds the constitutionally guaranteed principle of private ownership, contradicts the doctrine of *res judicata*. Once the estate has been incorporated into the private domain of the State by virtue of a final *vacancy declaration judgment* (*jugement déclaratif de vacance*), the same case cannot be re-litigated before a competent court, since the matter has already been conclusively adjudicated. Furthermore, reopening such procedures would undermine the stability of legal transactions¹⁴.

2.1.2. The Competent Authority for Dispute Resolution

The action seeking a declaration of vacancy (*déclaration de vacance*) for the purpose of incorporating a specific property into the private domain of the State may give rise to disputes either before the initiation of proceedings, during the process, or even after a judgment declaring the property vacant has been rendered. These disputes are primarily related to determining the competent authority to adjudicate such matters—specifically, issues of *subject-matter jurisdiction*, *territorial jurisdiction*, and identifying the *legal representative of the State* in such proceedings.

2-1-2-1. Jurisdiction

A• Subject-Matter Jurisdiction

As far as subject-matter jurisdiction is concerned, there is a doctrinal divergence between those who argue for the competence of the ordinary courts and those who favor the administrative courts.

Professor **Hamdi Bacha Omar** maintains that disputes relating to the *private domain of the State* are expressly subject to the jurisdiction of *ordinary (civil/real estate) courts*, notwithstanding the fact that the State is a party to the dispute. This constitutes an exception to the *organic criterion* provided in Article 7 of the former *Code of Civil Procedure*.¹⁵ His position is based on Article 51 of *Law No. 90-30 of 1 December 1990* relating to the *National Property Code*.¹⁶

He further explains that assigning jurisdiction in such matters to the ordinary courts is justified by the principle that the *ordinary judge is the natural guardian of private property*.¹⁷

Conversely, **Professor Aomar Yahiaoui** argues that jurisdiction should rest with the *administrative courts*, given that the State is a party to the dispute, and he does not consider such cases to be among the exceptions contemplated by Article 7 of the (now repealed) *Code of Civil Procedure*.

It should be noted that, in these types of cases, the State often requests *judicial sequestration*. While sequestration proceedings generally fall within the jurisdiction of the *summary judge (juge des référés)*, in this context the request is considered an integral part of the *initiating claim* rather than an independent summary proceeding, since the State seeks to place the property under judicial control in anticipation of its incorporation into the State's private domain. However, *Executive Decree No. 12-427* partially redefined this issue: Article 181(1) provides that the *judicial sequestration regime*, when concerning property presumed vacant and lacking an owner or heir, is to be initiated *solely by way of an order upon petition* from the competent judicial authority.

B• Territorial Jurisdiction

Whether the case concerns an action to declare vacancy or a claim by a potential heir seeking recovery of rights in a vacant estate, the action must be filed before the *court having territorial jurisdiction* over the location of the property in question—exclusively. In such cases, territorial jurisdiction is considered *public order*, despite the general rule that jurisdiction lies with the defendant's domicile.

2-1-2-2. The Legal Representative of the State

Under the *National Property Code*, the State is represented by the **Minister of Finance**.¹⁸ This principle has been reaffirmed in the implementing texts: *Executive Decree No. 12-427* governing the management and administration of the State's public and private property explicitly designates the Minister of Finance as the general legal representative of the State in matters concerning national property.¹⁹

Simultaneously, this authority is delegated to the **Wāli** (Governor) when the property in question is located within his wilaya (province),²⁰ since the Wāli acts as a representative of the *State*, not of the *province* itself.²¹ The Minister may also delegate this representational power to officials of the *State Property Administration*.

As a result of this duality, the Wāli may sometimes represent the province and, at other times, the State—depending on the nature of the activity, whether local or national. While the general rule under Article 87 of the former *Law on the Wilaya* and Article 110 of the current version establishes that the Wāli represents the province, *representation of the State before the courts* is, in principle, the responsibility of the *Minister* and, exceptionally, of the *Wāli* when expressly provided by law. Generally, these provisions authorize the Wāli to represent the State in matters of national concern within his jurisdiction, whereas the Minister of Finance retains competence for issues of broader or central importance.²²

The Minister of Finance may, however, delegate the authority to litigate to officials of the *State Property Administration*. In this regard, the *Ministerial Order of 20 February 1999* specifies the scope of such delegation as follows:

- Before the *Supreme Court*, the *Council of State*, or the *Tribunal of Conflicts*, representation is entrusted to the *Director General of National Property*.

- Before *ordinary courts*, *appeal courts*, or *administrative courts*, representation is entrusted to the *Wilaya Director of State Property* or the *Wilaya Director of Land Registration*, as applicable.

This Order does not prevent the delegated authorities from further delegating litigation duties to subordinate officers under their supervision, provided that the *delegation order* is attached to each case file. For example, when a Wilaya Director delegates authority to one of his subordinates, the written delegation must be formally included in the court dossier.

However, Article 192(2) of *Executive Decree No. 12-427* states that: “The territorially competent Wāli shall exercise, with respect to national property located within his wilaya, actions asserting the State’s interests in the field of property, in accordance with the *Law on the Wilaya*, unless otherwise provided by law.”

It follows that:

This provision grants the Wāli *general jurisdiction* unless a specific text provides otherwise. Thus, the Wāli is empowered to initiate legal actions relating to State property within his wilaya as a general rule, unless another authority is explicitly designated. However, this appears inconsistent with Article 191 of the same Decree, which grants general competence to the *Minister of Finance*, pursuant to Articles 9, 10, 125, and 126 of the *National Property Code*. These provisions delegate litigation authority to the *Wilaya Director of State Property*, as previously indicated.

Professor **Aomar Yahiaoui** argues that *general competence* derives from the *National Property Code*, and therefore Article 192(2) of *Executive Decree No. 12-427*—which confers general competence on the Wāli—cannot override Article 191 of the same decree, as the latter is grounded in legislative authority. Consequently, under the *principle of legality*, Article 192(2) should be disregarded and abrogated in future amendments.²³

Although Article 110 of *Law No. 12-07 on the Wilaya* provides that the Wāli represents all ministers at the local level, Article 125 of the *National Property Code* delineates distinct competences, stipulating that:

“Pursuant to Article 10 of this Law, the Minister of Finance, the Wāli, and the President of the Municipal People’s Assembly shall each, within their respective jurisdictions and in accordance with applicable legislation, appear before the courts as plaintiff or defendant in matters concerning property belonging to the private domain of the State....”

Accordingly, litigation competence concerning national property is distributed as follows:

- The **Minister of Finance**, who delegates this authority to *State Property Administration* officers, for both public and private State property;
- The **Wāli**, for property belonging to the *Wilaya*; and
- The **President of the Municipal People’s Assembly**, for *municipal* property.

This general allocation may, however, be subject to exceptions established by special legislative provisions.²⁴

Finally, **Professor Hamdi Bacha Omar**, in his commentary on the *Council of State's Third Chamber Decision No. 167619 of 31 May 1999*, asserts that actions relating to *vacant property* should be brought *by the Wāli on behalf of the State*, and not by the *Director of State Property*, as had occurred in the aforementioned case, where the action was filed by the *Director of State Property of the Wilaya of Blida*.²⁵

2.2- Judicial Applications of Dispute Cases During This Period

Similar to the previous stage, the judiciary has dealt, through several rulings, with various disputes related to the issue of vacant property during this period. Some of these cases are presented below:

2-2-1 Decision of the Administrative Chamber of the Supreme Court, No. 38213, dated 20/10/1984²⁶

Concerning the case of (H.K., widow of B.Q.) v. (Wāli of Mascara Province and the Directorate of State Property), the Court established the following principle:

“It is established that the theory of vacancy (shoghour) is based on legally defined foundations such as ascertainment and declaration of vacancy. Therefore, any administrative decision involving the seizure of a property without fulfilling the legal procedures that establish the condition of vacancy is tainted by abuse of authority.

Since it was proven in the present case that the head of the district (Chef de Daïra) unilaterally decided to seize the premises for the benefit of a private person, believing that mere reference to the legislation governing vacant property—without any evidentiary proof of vacancy—was sufficient to justify his decision, such conduct renders the decision tainted with abuse of authority. Consequently, the order to seize the disputed premises must be annulled”²⁷

This decision is significant in that it reaffirms the principle that material and procedural proof are essential prerequisites, and that the administration does not have unlimited discretionary power to declare property vacant.

2-2-2 Decision of the Third Chamber of the Council of State, No. 167619, dated 31/05/1999,The Court ruled as follows: “Inheritance rights do not lapse except after thirty-three (33) years, in accordance with Article 829 of the Civil Code. Furthermore, according to Article 827 of the same Code, one of the conditions for acquiring property through adverse possession is the absence of an owner, which is not met in the present case, since the real estate in question—by the appellant’s own admission—belongs to ‘Bara Diboun Paul’. Hence, the appellant cannot validly claim ownership through prescription.

On 27/07/1995, the Directorate of State Property published in the daily newspaper *El Khabar* an announcement declaring the vacancy of the above-mentioned property. Following this announcement, and due to the silence of the heirs and their counsel, the Directorate of

State Property petitioned the Administrative Chamber to declare the property vacant, in accordance with the relevant legal texts.

The procedures followed by the Directorate of State Property were legal and in conformity with the applicable provisions.

Since the matter concerns a property forming part of an inheritance estate, the appellant's claims of acquisitive prescription are unfounded. Consequently, his claims must be rejected.”²⁸

The importance of this ruling lies in its reinforcement of the protection of private ownership, emphasizing that acquisitive prescription (usucapion) cannot be used to circumvent the inheritance rights of known owners, even when a declaration of vacancy exists.

2-2-3 Decision of the Council of State, No. 4396, dated 27/05/2002 In the case of (*Governor of Greater Algiers*) v. (*N.H.A.*), the Council of State held the following principle:

“The State must comply with the procedures provided for in Article 51 of Law No. 90/30 (Yes). Direct incorporation of the property into State assets pursuant to Ordinance No. 66/102 (No).”²⁹

The significance of this ruling lies in its clarification that subsequent specific legislation (Law 90/30 on National Property) limits the application of earlier provisions (Ordinance 66/102)³⁰, thereby confirming the priority of modern procedural frameworks.

2-2-4 The Case of the “Cinema El-Jamal” Hall (Adrar Province) Finally, it is worth mentioning one of the most complex and illustrative practical cases of disputes related to vacant property—one that remains unresolved to this day due to its procedural complications. We refer here to a case that the author himself had previously followed as legal representative for one of the parties, namely the Housing Promotion and Real Estate Management Office of Adrar Province (OPGI Adrar), with which there existed a professional affiliation at the time.

The importance of this case lies in the multiplicity of parties involved in the process of incorporating vacant property:

Case: Municipality of Adrar v.

- Directorate of State Property of Adrar Province, and later the General Directorate of State Property on behalf of the Minister of Finance.
- *Office de Promotion et de Gestion Immobilière (OPGI) of Tamanrasset Province – Adrar Unit*³¹
- Governor (*Wāli*) of Adrar Province.

Facts of the Case:

On 07/09/1996, pursuant to Article 4 of Executive Decree No. 93/290, a *joint ministerial decision*³² was issued, registered and recorded at the Adrar Real Estate Registry

on 16 February 2000, transferring ownership of the “Cinema El-Jamal Hall” to the OPGI of Adrar Province.

On 26/04/2000, the *Municipality of Adrar* appealed this decision before the Administrative Chamber of the Adrar Court of Justice.

On 11/02/2001, the Administrative Chamber ruled to *annul* the ministerial decision of 07/09/1996 transferring ownership of the cinema hall.³³

This judgment contradicted the provisions of Organic Law No. 98/01 of 30/05/1998 concerning the jurisdiction, organization, and functioning of the Council of State—particularly Article 9 thereof—as well as Article 274 of the former Code of Civil Procedure, since jurisdiction over appeals against central administrative decisions (such as a joint ministerial decree) lies exclusively with the Council of State. Accordingly, the Adrar Administrative Chamber should have declared itself incompetent to hear the case.

On 06/05/2001, the Director of OPGI Adrar appealed the decision before the Council of State under Case No. 8992. The Council issued a decision dated 15/04/2003, ordering, before ruling on the merits, the President of the Administrative Chamber of the Adrar Court to conduct an investigation to determine the construction date of the cinema, whether it was part of vacant property integrated under Ordinance No. 66/102 of 06/05/1966, and the circumstances under which it had been used by the municipality.

Subsequently, the General Directorate of State Property, on behalf of the Minister of Finance, filed another appeal under Case No. 9169.

On 16/09/2003, the Council of State, after consolidating cases 8992 and 9169 under Article 91 of the Code of Civil Procedure, decided to admit the appeal in form and to postpone the ruling on the merits until the results of the requested investigation were filed.³⁴

Despite more than two decades since that decision, the required investigation by the President of the Administrative Chamber of Adrar has never been carried out, leaving the case pending before the Council of State to this day. Upon inquiry with the Adrar Court of Justice, no official explanation was provided, although it is believed that the delay stems from a conflict of interest—the magistrate assigned to conduct the investigation had previously sat as a counselor in the same case when it was first brought before the Chamber. The same magistrate was later appointed as President of the Administrative Court of Adrar, thus perpetuating the procedural deadlock.

After a judicial reshuffle affecting administrative court presidents, a new president was appointed, who referred the parties to inquire directly with the Council of State—the body that had ordered the last procedural measure. However, despite assurances from the registry officials of the Council of State that the matter would be examined, no progress has been made as of the date of this writing.

Professor Abdelkader Mekidèche, a distinguished scholar of law at the University of Sidi Bel Abbès and lawyer at the Supreme Court, commented that the only way to revive this case lies in reintroducing it before the competent judicial authority, since procedural lapses have led to its forfeiture due to inactivity under the applicable Code of Civil and Administrative Procedure.

Beyond the fate of the case itself, the property in question—“Cinema El-Jamal”—has remained unused and continues to deteriorate, despite its strategic location in the heart of Adrar City.

From the judicial analysis based on the applicable legislation during this period concerning disputes over vacant property, the following conclusions can be drawn:

1. Vacancy is a legal condition, not a presumption: It must be proven through lawful means (inspection + declaration) prior to any administrative act.
2. Protection of private ownership and inheritance rights: Vacancy or acquisitive prescription cannot be invoked if the owner is known.
3. Priority of modern procedures: Newer legal provisions (e.g., Law No. 90/30) supersede older texts concerning vacant property.
4. Respect for judicial jurisdiction: Any procedural error in determining competence may lead to annulment or suspension of the proceedings.
5. Ambiguity in ownership transfer mechanisms: The unclear process of integrating vacant property has caused numerous disputes and incomplete administrative measures—often delaying final judgments, as illustrated by the *Cinema El-Jamal* case, which remains unresolved due to the failure to conduct a court-ordered investigation.

Conclusion:

At the conclusion of this research paper, it has been established that disputes relating to vacant properties in Algerian law are characterized by a distinct specificity stemming from both the evolving legislative framework that governs them and the multiplicity of judicial bodies involved in their resolution. The analysis of legal texts and judicial applications has revealed that this specificity is manifested in several key features, the most notable of which are as follows:

1. The absence of a consistent legislative approach, resulting from the multiplicity and frequent amendment of legal provisions, which has led to ambiguity in determining the applicable rules of jurisdiction.
2. The fragmentation of judicial procedures between the bodies of the ordinary judicial system (ordinary courts and the Supreme Court) and those of the administrative judicial system (administrative courts — formerly administrative chambers — and the Council of State), which has created confusion for litigants and affected the prompt resolution of disputes.

3. The requirement of procedural formalism and material proof prior to declaring vacancy or disposing of property, a principle reinforced by judicial precedents aimed at protecting the right to property.
4. The limitation of administrative authority through the subjection of its decisions to judicial oversight, and the invalidation of purely administrative measures that lack a legal basis.

In light of the above findings, the following recommendations may be proposed:

- To work toward **unifying the legislative framework** governing vacant properties, in order to ensure clarity of rules and avoid inconsistencies among legal texts.
- To **assign judicial competence to a single specialized authority**, thereby minimizing jurisdictional conflicts and expediting case resolution.
- To **organize specialized training sessions** on the topic of vacant properties for those responsible for their management, administration, and protection — including officials and judges — in order to clarify the relevant legal provisions and procedures. This would, in turn, enhance the effectiveness of their professional performance while ensuring a practical balance between the protection of private property rights and the safeguarding of the State's rights over such properties.
- To **promote the use of alternative dispute resolution methods** (conciliation, mediation, arbitration) as effective mechanisms suited to resolving disputes related to vacant properties.

Ultimately, implementing the aforementioned measures and steps requires the concerted efforts of legislative, judicial, and administrative authorities to address the numerous issues associated with vacant property disputes. Such coordination will undoubtedly contribute to the stability and proper functioning of this vital sector, ensure the necessary protection of the property system, uphold legal security, and strengthen litigants' confidence in the judicial system.

Citations:

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- 13- Article 54 of the National Property Law No. 90-30, op. cit.
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- 20- Article 192 of Executive Decree No. 12-427, op. cit. Corresponds to Article 184 of repealed Executive Decree No. 91-454.
- 21- This provision aligns with Article 110 of Law No. 12-07 on the Wilaya (Province), which grants the Wali (Governor) dual administrative and executive functions.
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- 34- Decision No. 720/2003 dated 16 September 2003 by the First Chamber of the Council of State (unpublished).