

Protection of private real estate property Under the Expropriation Law 91/11



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Abstract

Despite the sanctity of the right to property and the protection established by various legislations, this protection is no longer absolute, but rather restricted to achieving the public benefit. The true meaning of expropriating private property is the need of the entire society for a real estate balance whose purpose is to achieve the public interest. Therefore, the damage that affects private property will be limited compared to what society gains from this process. Despite this, the Algerian legislator has granted an important set of guarantees to the injured party in order to facilitate the task of expropriation on the one hand and to guarantee the rights of the private property whose property is to be expropriated on the other hand.

Keywords

Legal protection;
Expropriation;
Private property;
Public benefit.

الكلمات المفتاحية

الحماية القانونية؛
نزع الملكية؛
الملكية الخاصة؛
المنفعة العامة.

حماية الملكية الخاصة في ظل قانون نزع الملكية 11/91

ملخص

بالرغم من قدسية حق الملكية والحماية التي أقرتها مختلف التشريعات غير أن هذه الحماية لم تعد مطلقة وإنما مقيدة بتحقيق المنفعة العمومية، فالمغزى الحقيقي من نزع ملكية الخواص هو احتياج المجتمع بأكمله إلى رصيد عقاري الغاية منه تحقيق المصلحة العامة، وبالتالي فإن الضرر الذي يمس الخواص سيكون محدود مقارنة بما يجنيه المجتمع من جراء هذه العملية، وعلى الرغم من ذلك فإن المشرع الجزائري منح مجموعة هامة من الضمانات للطرف المتضرر وذلك من أجل تسهيل مهمة نزع الملكية من جهة و ضمان حقوق الخواص المراد نزع ملكيتهم من جهة أخرى.

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Introduction:

The right to real estate ownership is one of the most prominent rights stipulated by the Constitution and the law. Whereas the right of ownership gives its owner the right to enjoy and dispose of things, as Article 677 of the Civil Code stipulates that no one may be deprived of his property, as the right of ownership is a permanent right. However, the right of ownership is no longer absolute, but is subject to many legal and administrative restrictions to achieve the public interest, as the administration resorts to expropriating real estate and real property rights owned by private individuals for the public interest, in order for real estate ownership to perform its natural function, both from the social and economic perspective, to ensure the advancement of the individual and the group alike.

Therefore, expropriation procedures for public benefit are among the most dangerous procedures that the administration resorts to in order to achieve and meet its needs, considering that this method is an exception to the general rule through the privilege that makes the administration take the decision to expropriate from private individuals without waiting for a judicial decision to do so. Therefore, expropriation of private property for the public good is considered an exceptional method through which the administration takes possession of property and real estate rights. Unless all friendly and conciliatory attempts lead to negative results.

The subject of this study is of great importance, given that expropriation procedures may be accompanied by cases in which the administration is arbitrary, exceeds the limits of its authority, goes beyond the limits set for it by the legislator, and misuses this privilege.

This modest study aims to highlight Protection of private real estate property Which the Algerian legislator has approved through substantive and procedural guarantees and provisions to protect the rights of individuals, in addition to clarifying the procedures and provisions of expropriation for the public good and judicial oversight of the legitimacy of the decisions issued by it within the framework of expropriation and enabling the party harmed by expropriation to resort to the judiciary to demand compensation for the harm that has befallen him.

From the above, and in order to achieve the objectives of this study, we are prompted to pose the following main problem:

Did the legislator succeed in establishing sufficient legal guarantees to protect private real estate ownership in light of the exceptional privilege granted to the administration upon expropriation? And how did the judiciary contribute to resolving the related problems? Expropriation for public benefit?

In this study, we have relied on the analytical approach, as we are in the process of analyzing the legal provisions related to protection. Private real estate ownership under the Expropriation Law 91/11 and related laws. We also used the descriptive approach in the theoretical aspects of some concepts.

Based on the main problem and its branches, we divided this research paper into two parts. We address the concept of expropriation for the public benefit in (the first section), while we study the procedures for expropriation for the public benefit through (the second section).

First requirement: The concept of expropriation for public benefit

The consecration of the new role of property as a right with a social function, which is embodied particularly in the field of construction and development, requires giving priority to the public interest over the private interest of individuals, which appears clearly in the field of expropriation for the public benefit, although it remains an exceptional method for acquiring private real estate property for the state. This is what is included in Article 26 of State Property 90/30.¹It was later confirmed by the Expropriation for Public Benefit Law.²This procedure is only resorted to by the relevant administrative authorities if all amicable and conciliatory attempts have led to negative results.

In order to study the concept of expropriation for the public benefit and to understand the objective guarantees established for the benefit of the expropriated person and their limits under the expropriation law, we will address in (the first section) the definition of expropriation for the public benefit and touch upon the concept of public benefit, while in (the second section) we will address Compensation in the field of expropriation for public benefit.

Section One: Definition of expropriation for public benefit

Before addressing the definition of expropriation for public benefit, it is necessary to address the concept of public benefit so that the concept of expropriation for public benefit becomes clear to us.

The Algerian legislator did not define public benefit in the field of expropriation, but rather left that to jurisprudence and the judiciary, as it is difficult to define public benefit. Instead, he tried to identify some examples that could be considered to have the character of public benefit.

The reason is primarily due to the impossibility of limiting public benefit to specific works, and just as public benefit cannot be limited to a specific field, public benefit develops with the development of society, and is linked to state intervention in establishing projects that will achieve public benefit, whether in the social or economic field.

Article 13 of the same law stipulates the right of any interested party to appeal the administrative decision related to the declaration of public benefit before the competent judicial authorities.

Accordingly, the Algerian legislator did not give a clear formulation to Article 2 of the Expropriation Law, especially since it addressed the operations resulting from the application of regulatory procedures, for example, but not limited to that. The legislator was satisfied with setting conditions that force the administration to resort to this operation, but he did not restrict the administration to a specific definition of that public benefit. Accordingly, he left the administration with discretionary power in choosing the type or form of the public benefit for which the property is expropriated. Thus, the public benefit takes on a broad concept according to the discretion of the administration, which retains broad authority under the supervision of the judiciary.

This article is somewhat ambiguous and imprecise, as the legislator did not specify the activities that fall within the framework of the public interest, but rather mentioned them as examples, thus opening the door wide open for the administration to intervene and include whatever activities it wishes within the framework of the public interest, thus limiting the freedom of individuals to own property.

Accordingly, can the decision to authorize the public benefit of a park project be invalidated, especially if the park project is unjustified as there are several parks adjacent to it? And is the public benefit condition justified in this case?

This is the opposite of what the order stated.^{48/76}, which gave a broader definition of public benefit.

The idea of public benefit is synonymous with the idea of public interest, which is considered the purpose of the existence of administration and public utility. Accordingly, public benefit can be defined as the sum of works that aim to serve society to the extent that its interest justifies sacrificing the interest of the individual, which contradicts the good that the group reaps. As for the authority of the administration to estimate the public benefit, the powers of the administration to estimate the public benefit are derived from its enjoyment of the authority of suitability. However, the broad concept of the expression public benefit is not used absolutely in some cases, but rather is accompanied by some restrictions, the most prominent of which is not allowing the administration to expropriate private property for purposes that are not within its jurisdiction, such as the Ministry of Health's expropriation of private property to build a school on it or to pave a road.³

The concept of public benefit develops with the development of the state and the needs of society. Therefore, the judiciary has tried on many occasions to establish standards for public benefit, through the principle of balance, especially in the field of construction, by giving priority to those who achieve the greatest amount of public benefit, even if they are private, at the expense of state programs. Judicial jurisprudence has established that public benefit can be achieved by private individuals, as stated in a decision of the French State Council, in which it was considered that private interest does not conflict with public benefit with regard to the completion of an important real estate complex designated for residential and commercial projects, administrative shops, parking lots, and other facilities.⁴

Public benefit is synonymous with what is known in the science of Islamic objectives as "interest." In Islamic law, it is the reason that leads to the purpose of the Lawgiver in worship and custom. It is divided into what the Lawgiver intends for his own sake, such as acts of worship, and what he intends for the benefit of creation and the regularity of their affairs, such as customs. Public benefit in Islamic jurisprudence refers to every matter upon which the regularity of people's affairs depends.⁵

As for the definition of expropriation for public benefit, the Algerian legislator stipulated in Article 26 of the National Property Law 90/30, as amended and supplemented, that expropriation for public benefit is one

of the exceptional ways by which the state acquires its real estate ownership, which was embodied by Law 91/11, where the method of expropriation was considered an exceptional way for public persons to acquire real estate properties and rights, and this does not happen unless it leads to the adoption of All other means lead to a negative result.

Accordingly, the law on expropriation for public benefit attempts to create a balance between private interests and the public interest in order to implement state programmers, particularly in the field of development and construction.

Some researchers have defined expropriation as a legal procedure that the state resorts to in order to compel private individuals to give up their real estate properties and other real estate rights for the public benefit in exchange for fair compensation, as it was defined by j.M. Auby defines it as: "The state's authority that allows the initiative of a public or private person aimed at achieving a public benefit, to compel a public or private person to relinquish ownership of a property or a real estate right in favor of another public or private person in exchange for respecting a number of procedural and substantive guarantees."⁶

Professor Suleiman Muhammad Al-Tamawi defined it as follows: "Expropriation for the public benefit means depriving the owner of the property of his property for the public benefit in exchange for compensation for the harm he suffers."⁷

Professor Muhammad Anas Qasim defined it as a procedure that would deprive the owner of a certain property of his property in order to allocate it for the public benefit in exchange for fair compensation.⁸

Section Two: Compensation in the field of expropriation for the public benefit:

The Algerian legislator gave priority to the public interest over the private interest, but he tried to create a kind of balance between the two interests when he stipulated the necessity of compensating the owner whose property was expropriated.

Expropriation for the public benefit is not in itself considered a purchase of the land to be expropriated, so the rights holders demand compensation based on the contractual principle, but it is a process that emerges in the need of the entire society for the property to achieve the public interest, without this being dependent on taking into account the opinion of the rights holders whose ownership is to be expropriated. Accordingly, the source of the administration's obligation to compensate for expropriation is not the unlawful act, but rather the law. This is what Article 20 of the 1989 Constitution stipulates.⁹This is what was confirmed by the first paragraph of Article 21 of Law 91-11.

Accordingly, compensation is based on administrative liability without fault, based on equality before public burdens. In general, the general rules must be applied in assessing compensation, which should cover all damages incurred and lost profits due to expropriation. It must include current and actual damages arising directly from expropriation.

The value of compensation is determined according to the real value of the property, without taking into account improvements of any kind, or any commercial transaction concluded with the intention of obtaining a higher priced compensation. This value is estimated on the day of its evaluation by the State Property Service, where Decision No. 034671 was issued on 2009, which stated:¹⁰The amount of compensation due for expropriation for public benefit is determined according to the real value given to the property on the day it is appraised by the National Property Service.

Article 21 of the 1991 Law, which includes the rules for expropriation, explicitly states that the valuation shall be determined at the time the State Property Authority evaluates the properties, which necessitates amending the decision in this regard.

The owner may also request the complete expropriation of his property. The choice may be made to expropriate only a part of the property to meet the needs of the project to be completed, and thus the other part of the property remains in the possession of the real owner, but without any benefit expected from it, such as if the location is not strategic or unsuitable for exploitation or requires large sums of money, making it impossible to take any action or benefit from it. In all these cases, the real owner can request the administration to completely expropriate the property or completely relinquish the property. In the event of refusal, the real owner can sue the administration to fulfill his request and compensate him for the damages he suffered as a result of the partial expropriation. In all cases, the compensation must cover the loss in value of the property and rights resulting from the expropriation, as Article 22 of Law 91/11 stipulates that: "If the expropriation only concerns a part of the property, the owner may request the seizure of the remaining unused part."

In all cases, compensation must cover the loss in value of the property and rights not expropriated as a result of the expropriation.”

The basic principle is that compensation should be in cash, with the exception of compensation in kind, as stipulated in Paragraph 2 of Article 25 of Law 91/11, which states: “Whenever possible, a proposal for compensation in kind should be attached to replace the cash compensation stipulated above.”

The person harmed by expropriation must also prove his ownership of the property or the real estate rights to be expropriated. At the time of issuing the expropriation decision, Decision No. 12419, Case (N.M.B.M.), was issued against the Governor of Batna and those with him on 12/16/2003, which stated:¹¹...and whereas it is evident from the file, and particularly from the administrative decisions issued by the expropriating authority, that the appellant was in possession of the expropriated plot of land for the benefit of the transportation company.

However, the notoriety contract submitted by him to prove his ownership of the expropriated plot of land and his right to compensation was drawn up on 07/08/1998, and therefore his status as owner was not established at the time of expropriation, on the one hand, and this possession relied upon to recognize the appellant’s right to ownership of the plot of land by way of acquisitive prescription does not correspond to reality, as the appellant lost possession since 1984, the date of transfer of ownership of the plot of land, in accordance with the provisions of Article 9 of Order 76/48, which stipulates that the expropriation decision, from the date of its publication, forfeits all real rights existing in the property subject to expropriation.

Whereas the appealed decision was correct in its ruling to dismiss the lawsuit for lack of foundation, it must therefore be said that the current appeal is unjustified and, as a result, the appealed decision must be upheld.

Although the decision was issued under the old law, it was correct in what it concluded, especially since it does not conflict with the text of Article 3 of the Expropriation Law 91/11, paragraph three, which explicitly stipulated the necessity of a complete identification of the properties and real estate rights required to be expropriated, and the identification of the owners and rights holders from whom this property is to be expropriated, since the appellant did not prove his ownership or even his possession at the time of expropriation.

One of the most important and fundamental guarantees for expropriation for the public good is the legislator’s recognition of the necessity of paying compensation to the owner whose property has been expropriated. This is what Article 20 of the 1989 Constitution stipulates, stating: “Expropriation shall only take place within the framework of the law and shall entail fair and equitable prior compensation.” However, by referring to the text of Article 21 of Law 91-11 mentioned above, which states the following: “The amount of compensation for expropriation must be fair and equitable, covering all damages and lost profits due to the expropriation.” Also, by referring to Article 677 of the Civil Code, which originally embodies what the Constitution includes, we find that it is satisfied with only stipulating the necessity of paying fair compensation to the person whose property has been expropriated without specifying the time in which this compensation will be paid, which causes the relevant authorities to delay paying it for many years after the transfer of ownership.¹²

The strange thing is that the constitutional legislator retreated from prior compensation through the constitutional amendment of 2016 when it stipulated in Article 22 that:¹³“Property shall not be expropriated except within the framework of the law and shall result in fair and just compensation.” What we note is that the new constitutional amendment did not address tribal compensation, which raises questions about compensation that is delayed after expropriation, and this constitutes an infringement on the rights of the persons whose property is to be expropriated.

The majority of comparative legislation has stipulated that expropriation for public benefit is not legitimate unless it is carried out for public benefit and in return for prior and fair compensation, unlike the Algerian legislator, who stipulated that compensation should be fair and equitable and did not address the priority of compensation in either civil law or expropriation law, and his retreat from prior compensation in the Algerian Constitution, which negatively affects rights and freedoms in the event that the administration delays paying compensation for one reason or another. Therefore, prior payment of compensation must be established by providing financial appropriations before commencing expropriation, similar to other legislation.

According to Articles 20 and 36 of Law 91/11, the State Property Administration is responsible for determining the value of compensation for property owners and real estate rights, after identifying the owners entitled to compensation, as well as the evaluation process of property and real estate rights. Accordingly, the Administration is both the opponent and the judge. Therefore, the State Property Administration’s evaluation often does not satisfy the party harmed by the process, which forces recourse to

the judiciary to demand fair compensation, in accordance with Articles 24 and 26 of the Expropriation Law 91/11.

Therefore, the properties and rights to be expropriated must be evaluated in an objective manner, as is the case in some legislation, through an evaluation committee consisting of a group of members who have a direct relationship with real estate transactions.¹⁴ Provided that the expropriation judge remains the final authority in deciding on this compensation in the event of a dispute or through estimating the compensation for expropriation by a competent judicial authority.¹⁵

Although most constitutions and national laws stipulate that compensation for expropriation for the public good must be fair, they all lack any explanation of what is meant by fair compensation. This is in contrast to international conventions, some of which have explained its meaning, while others have merely referred to it. The Food and Agriculture Organization of the United Nations defined FAO defined fair compensation in the study it published in 2008 on land acquisition as “compensation that is neither more nor less than the loss incurred as a result of the compulsory acquisition of individuals’ land.”¹⁶

At the level of jurisprudence, many definitions have been put forward, the most important of which is “the price that is determined on the basis of what any stranger would pay if he wanted to obtain a similar property in an open market.” It has also been defined as “an amount of money that is equal to or equivalent to the value of the property expropriated from individuals.”¹⁷

At the judicial level, the Supreme Court of the United States of America has explained what is meant by just compensation stipulated in the Fifth Amendment to the American Constitution as: “the market value of the property sought to be expropriated.” In turn, it defined “market value” as “the price at which the owner would be willing to sell if he wished to sell, and the price at which the buyer would be willing to buy if he wished to buy.”

The second requirement: expropriation procedures for public benefit

In expropriating property for the public benefit, the administration is subject to precise and specific procedures in accordance with the expropriation law. That is, its authority is restricted in this area by law in order to protect the private interest of individuals as well as the public interest. In view of the provisions of the expropriation law, the administration must follow the steps previously specified by law for this purpose, under penalty of being invalidated, with the possibility of claiming compensation for damages.

In order to achieve effective guarantees for those whose property has been expropriated, the aforementioned Law 91/11 requires the administration to take a series of precise and specific measures in order to achieve a balance between the interests of private individuals and the public interest.¹⁸

Accordingly, in order to study the procedures for expropriation for the public benefit and to understand the procedural guarantees provided for the expropriated person to protect the public and private interest, we will address in (the first section) Public utility declaration decision While we discuss in (the second section) the decision to expropriate for the public benefit.

Section One: Public Benefit Declaration Decision

Article 4 of Law 91/11 states the following: “The procedure for declaring a public benefit shall be preceded by an investigation aimed at establishing the existence of this benefit.”

An investigation will only be opened after the beneficiary proves that all attempts to obtain the property by mutual consent have failed, by negotiating with the concerned owners and rights holders before resorting to expropriation, as this is a step in accordance with public order.

The party benefiting from the expropriation compiles a file and submits it to the competent governor for the purpose of expropriation. The governor then initiates a preliminary administrative investigation before declaring the public benefit, by appointing a committee to investigate the effectiveness of the public benefit.

However, a public benefit may be declared without prior investigation in relation to secret operations related to national defiance, in which case the decision is not subject to publication, provided that it is communicated to all those whose property may be expropriated in accordance with Article 12 of Law 91/11.

The preliminary investigation shall be opened in accordance with the provisions of Article 6 of the aforementioned law in all cases by a decision of the regionally competent governor, under penalty of nullity, which shall include the following:

- The purpose of the investigation
- Investigation start and end date
- Committee composition (members' names, titles and descriptions)
- How the committee works (public reception times and locations, complaint registration books, and methods of consulting the investigation file).
- The stated objective of the operation
- Situation plan to determine the nature and location of the work to be carried out.

According to Article 5 of the above-mentioned law, the investigation is conducted by a committee consisting of three persons chosen from among those on a national list prepared annually according to methods determined by the organization, and it is required that they do not belong to the expropriating administrative body, and that there is no relationship involving interest with the expropriated. The investigation file is placed at the disposal of the public, and providing this broad consultation to the public will contribute to a sound assessment of the facts and help in making the right decision regarding the public benefit, based on the text of Article 7 of Executive Decree 93/186.¹⁹

The purpose of the preliminary administrative investigation before announcing the public benefit is to confirm the existence of this benefit from the project to be implemented, and to provide this project with all legal and realistic guarantees to avoid harming the interests of the community and individuals.²⁰ It is a mandatory procedure under penalty of nullity - as stated in Decision No. 80812 issued by the Administrative Chamber of the Supreme Court: "Whereas the project to construct a public landfill without a prior administrative investigation in accordance with the requirements of the law exposes the contested decision to nullity."²¹

Referring to Article 10, paragraph one, of Decree 93/186, the decision to declare public benefit is issued by two administrative bodies, as it states the following: "Public benefit is declared as follows:

By a joint decision or decisions between the relevant minister, the Minister of the Interior and Local Authorities, and the Minister of Finance, if the real estate properties or rights to be expropriated are located within the territory of two or more provinces.

By a decision of the governor if the aforementioned real estate properties or rights are located within the territory of one state.

According to Article 11 of the above-mentioned decree, it must be published, as the case may be, in the Official Gazette or in the register of administrative decisions of the state, and must be communicated to every concerned person, and must be posted in the center of the municipality in which the property to be expropriated is located, according to the procedures and within the period specified in the law. The legitimacy of the decision to declare public benefit is subject to the fulfillment of the condition of notifying the concerned parties, under penalty of invalidity.

The decision to declare public utility is an administrative decision and a mandatory procedure, the failure to do so leads to the invalidity of the expropriation decision, as stated in Decision No. 62458 issued by the Administrative Chamber of the Supreme Court.²² "Therefore, the governor's decision to expropriate property in order to acquire land to build a road linking two villages without referring to achieving public benefit, nor to any decision declaring public benefit, is in violation of legal requirements, and when this is the case, the contested decision must be annulled."

Based on the text of Article 10, paragraph two of Law 91/11, the decision regarding the declaration of public benefit must include, under penalty of nullity, the following:

The objectives of the intended expropriation

The area, location and specifications of the plot

The structure of the works to be started

Estimate of expenses covering expropriation operations

The decision must also specify the maximum period specified for the completion of the expropriation, which cannot exceed four (04) years. It can also be renewed once for the same period if it is related to a major operation of national interest. In this regard, a decision was issued by the Supreme Court stating:²³ "It

is legally stipulated, within the framework of expropriation for public benefit, that Article 10 of Law 91/11 requires the state to take an expropriation decision within 4 years following the decision to authorize the expropriation, and it has the right to renew this period once.

It is established in the present case that the state did not respect these procedures, which makes the decision to expropriate the disputed property in violation of the law.

Any interested party has the right to appeal the decision to declare public benefit before the judicial authorities, according to the forms stipulated in the Civil and Administrative Procedures Law, within a maximum period of one month from the date of notification or publication of the decision, under penalty of inadmissibility, in accordance with the text of Article 13 of Law 91/11. In this case, the implementation of the decision declaring public benefit shall be suspended, as Article 14 thereof stipulates: "The competent court shall decide on the appeal within a period of one month."

Appeals are subject to the Code of Civil Procedure.

The judicial authority competent to consider the appeal must issue its ruling within a maximum period of two months, starting from the date of the appeal."

The final court ruling is considered valid for each person in person, based on Article 15 of the same law. This constitutes a departure from the general rule stipulated in the Civil and Administrative Procedures Law.

Section Two: Decision to expropriate for public benefit

After completing the partial investigation process and evaluating the properties to be expropriated and identifying the rights holders, on the basis of which the State Property Directorate prepares the compensation report granted to the expropriated, a decision is issued by the governor on the eligibility to relinquish the properties to be expropriated in accordance with Article 23 of Law 91/11. This decision includes a list of the properties and property rights to be expropriated, as well as a statement of the identity of the owners and property rights holders, the amount of compensation and how it is calculated in accordance with Article 24 of the same law. The decision is communicated to all concerned parties, with the possibility of attaching a proposal for compensation in kind in accordance with Article 25 of the same law.

The transferability decision is an administrative decision in which the governor declares the transferability of properties that are included in the projects to be carried out within the framework of expropriation. It does not in itself transfer ownership from the expropriated person to the beneficiary, as the original owner remains the actual and legal owner of the properties, until the final decision to transfer ownership is issued and registered in the real estate registry.²⁴.

The legislator has restricted the issuance of an expropriation decision in the text of Article 40 of Executive Decree 93/186 to the person of the governor. The legislator has enumerated a number of conditions upon which the issuance of an expropriation decision depends, as stipulated in Article 29 of Law 91/11, which are essentially the following:

If an agreement is reached by mutual consent, the regional governor may issue a decision to transfer ownership.

Not to appeal the decision on the eligibility of the waiver, as Article 26 of the aforementioned law sets the deadline for appealing this decision at one month from the date of notification. Therefore, appealing administrative decisions taken within the framework of the expropriation process, especially the decision to declare public utility and the decision on the possibility of transfer, stops their implementation to protect property and achieve legal security. This is contrary to the general rule stipulated in the Code of Civil and Administrative Procedures, where the appeal does not have a suspensive effect, as stipulated in Article 833, where the administration is presumed to have acted lawfully.²⁵.

The event that a final decision is issued in favor of the expropriator, meaning that the expropriation decision is legitimate and legal.

The most important consequence of the expropriation decision is the transfer of ownership of the expropriated real estate and property rights to the beneficiary, after the announcement of this decision. Article 30 of Law 91/11 stresses the necessity of announcing the expropriation decision in order for the real effect of the transfer of ownership to be produced, like other legal transactions.

After completing the notification procedure and the real estate registration of the decision related to expropriation, the concerned parties must vacate the premises, and they are forced to vacate under penalty

of penalties. In addition, the beneficiary party bears the financial consequences. However, if the administrative decision does not specify the beneficiary party of the expropriation decision, the governor is the one who orders the disbursement of the financial envelope allocated to any sectoral project, as a decision was issued by the State Council, which stated:²⁶: "The administrative body obligated to pay compensation for expropriation. Law 90/09 and Decree 94/2015 stipulated the appointment of the governor as the state's representative at the level of regional groups. As a result, he is the one who orders the disbursement of the financial envelope allocated to any sectoral project if the administrative decision does not mention the beneficiary of the expropriation process or if there is a serious dispute regarding this status. Decree 80/257 also assigned the governor the responsibility of calculating the state's expenses for housing the victims of the Chlef earthquake and giving him the authority to order secondary disbursements."

The appeal against the expropriation decision is subject to the general rules of the Civil and Administrative Procedures Law. Whether it is a case of annulment when these decisions are tainted by a defect of illegality, or a case of compensation when the compensation proposed by the State Property Administration is insufficient and does not reflect the true value of the properties and property rights.

It is also possible to demand, based on the text of Article 32 of Law 91/11, the return of ownership of the property upon the request of the person from whom it was expropriated if the actual commencement of the works intended for completion has not taken place within the deadlines specified in the contract or the decisions authorizing the relevant operations. In this regard, a decision was issued by the State Council stating:²⁷:"...because the provisions of the Expropriation for Public Benefit Law stipulate that if the expropriation for public benefit decision is not implemented within 5 years, the property owners may request the return of the property.

Whereas the cancellation of an administrative decision occurs when the decision is tainted by a defect that renders it invalid and subject to cancellation, while the decision was correct and legitimate, and in the event of its non-implementation for a period specified by law, the owners of the right and the property may then demand not the cancellation of the decision but rather the return of the property because the project for which it was seized was not completed in time...

We would like to emphasize that surveying operations may coincide with expropriation procedures, which raises a problem regarding the references that must be relied upon to prove various real estate rights, especially The real estate register prepared on the basis of the municipality's real estate cards and land survey constitutes the only starting point for establishing evidence of the origin of real estate ownership, as the real estate register is the only evidence to prove real estate ownership in accordance with Article 19 of Order 75/74.²⁸And also Articles 32 and 33 of Decree 73/32²⁹.

Whereas Article 16 of Decree 76/73³⁰The law relating to the establishment of the real estate registry stipulates that the rights resulting from the final numbering carried out pursuant to Articles 13, 13 and 14 cannot be reviewed except through the judiciary. This is what judicial reasoning went for in the decision issued by the Supreme Court on 02/23/2005 under No. 282811 when it adopted the following principle: "The rights resulting from the final numbering of the properties embodied in the real estate registry cannot be reviewed or disputed except through the judiciary."³¹.

Conclusion

The law on expropriation for public benefit is one of the most important tools used by Algerian real estate policy to provide the land needed for construction, despite the existence of other, less complex tools, such as acquisition by mutual consent or through the exercise of a pre-emption licence.

Since the right to property is a sacred right under the Constitution, international conventions and domestic laws, no one shall be forced to give up his property unless the condition of public benefit is met.

Law 91/11 stipulated in its first article that pre-compensation should be provided, but the 2016 Constitution revoked the pre-payment rule. Furthermore, under the financial laws, the administration is now authorized to take immediate possession of the property to be expropriated before pre-payment is made.

Referring to the legal texts regulating the expropriation process, we find that they do not address all the damages incurred by the expropriated party, such as the rent and all relocation costs. They also do not explicitly specify the nature and identity of the party that can benefit from the expropriation process.

The expropriation law and the decrees regulating it did not address the method of evaluation, the specific period for that, or the method and percentages of compensation corresponding to some real estate rights, such as the right of privilege, the right of residence, and some other rights.

The compensation determined by the State Property Directorate often does not satisfy the original owner, who is surprised by the meager amount proposed by the latter. Therefore, the Algerian legislator has granted the injured party the right to appeal the compensation amount before the competent judicial authorities, in accordance with Articles 24 and 26 of Expropriation Law 91-11.

In many cases, expropriation decisions could not be registered due to differences in the real estate card at the level of the real estate registry, and their difference from what is present in the expropriation decisions. This is primarily due to the failure to complete the general land survey operations, and in other cases, the difference in the information available in the survey documents from that present in the expropriation decisions.

In order to provide adequate guarantees in the event of expropriation for public benefit, we propose the following:

- Providing serious guarantees for those whose property has been expropriated by redrafting legal texts related to expropriation to keep pace with rapid developments in the field of digitization, enhancing transparency and enshrining the protection of rights.
- Accelerating real estate clearance processes by addressing the delay in the general land survey process, which is the backbone of the success of any real estate policy.
- Obligating the administration to identify the beneficiary who bears the burden of compensation for decisions issued within the framework of expropriation for the public benefit.
- Determine more precisely the nature of the assets that may be subject to expropriation.
- The need to adopt clear mechanisms for assessing compensation for decisions to expropriate property for the public good, by taking into account the views of the affected party whose property has been expropriated when assessing compensation, and by appointing an expert to evaluate the property subject to the expropriation process.

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