

Legal protection of national property under Law 23/18

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Abstract:

National property is considered to be a set of assets owned by the state or one of its local authorities. Given its significance, the Algerian legislator has enacted a special law for national property, as well as several related laws intended to protect and preserve it. National property is also granted special protection in administrative, civil and criminal spheres. Accordingly, Law No. 23-18 was issued to strengthen precautionary measures for the protection of state property and combat disorderly construction. This law also addresses the phenomenon of encroachment upon national property.

Keywords: national property, administrative protection, civil protection, criminal protection, punishment, encroachment, national property.

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1. INTRODUCTION

States possess a body of real and movable property rights, which they either use for their own needs or make available to the public, either directly or through public facilities. These are commonly referred to as ‘national property’ or ‘public domain property’.

The legal regime governing these assets is closely linked to the state’s political and economic system. Thus, in capitalist states that prioritise individual ownership, the scope of national property tends to diminish, whereas in socialist systems, which favour public ownership over private ownership, the scope of such property expands. In Algeria, however, the vastness of the territory and the diversity of the resources have resulted in substantial national assets in terms of size and content. The country’s geographical location has also enriched them. These properties have been subject to different and evolving legal regimes depending on the historical periods through which the country has passed.

Recognising the importance of national property, the Algerian legislator issued Law No. 90-30 and enacted several other laws within the same framework. Each of these laws concerns the administration or institution managing state-owned assets, with the aim of protecting and preserving them. This raises the following question: What are the most important legal texts adopted by the Algerian legislator to protect national property?

We will answer this question using the following plan:

Section One: Administrative and civil protection of national property.

Section Two: Criminal protection of national property.

2. Administrative and civil protection of national property

In this section, we will examine the two forms of protection. Administrative protection, which includes a set of legal and regulatory texts requiring the administration to take the necessary measures to manage and protect these assets.

Civil protection comprises principles that were prevalent in ancient

societies. They consist of a set of principles enacted by the legislator to protect national property, and they fall under civil law. This protection essentially relates to the inadmissibility of disposing of public national property in any way that ordinary persons would dispose of property.

2.1 Rules of administrative protection of national property

The law requires administrative authorities to protect public national property in order to prevent encroachment or corruption affecting it, whether by individuals or by public employees (or persons deemed equivalent), using administrative methods rather than resorting to judicial authorities and waiting for a final enforceable judgement to be issued (Qotb, 2006, p. 163).

Administrative authorities ensure protection by relying on a set of legal means, which can be summarised as follows: inventory listing (census/inventory), supervision (control) and administrative police regulations (orders/regulatory instruments of administrative control).

2.1.1 Inventory of National Property

Article 8 of the National Property Law states that the general inventory of national property consists of the descriptive and evaluative registration of all assets held by various state institutions and their regional and local bodies (Article 8 of Law No. 90-30, dated 1 December 1990).

Likewise, Article 2 of Executive Decree No. 91/455 states: ‘General inventory of national property’ refers to the descriptive and evaluative recording of all private and public assets belonging to the state, wilayas and municipalities, held by their respective establishments, institutions and bodies, and allocated to public institutions and structures (Article 20 of Executive Decree No. 91/455, dated 23 November 1991,).

Accordingly, the inventory is an administrative procedure that public bodies must carry out to record public national property. The purpose of this procedure is to protect these assets and ensure they are used for their intended purpose. This is achieved through descriptive and evaluative recording:

Descriptive recording consists of setting out all the components and characteristics of the public asset.

- Evaluative recording consists of establishing the monetary value of the public asset.

Therefore, inventory is a comprehensive procedure that covers all national property, both private and public, except for items that are expressly excluded by law. Excluded categories include consumable items and items that cannot be used upon first use, whose unit purchase value does not exceed an amount determined by the Minister of Finance (Rahmani, 1996, p. 168).

2.1.1.1 Inventory of Real Estate (Immovable) National Property

All administrations and public bodies attached to the State, local authorities and public institutions and bodies managed on a commercial basis must prepare an inventory of real estate belonging to the public domain that they hold, by virtue of either allocation or a binding concession. They must also draw up an identification card (asset reference card) and record all the necessary information on it. The managing body of the real estate retains a copy of the card and sends copies to:

- the Directorate of State Property, if the body is attached to the State;
- the wali (governor) if the body is attached to the wilaya;
- the mayor (head of the municipality) if the body is attached to the municipality (Articles 4, 4 February 1992).

2.1.1.2 Inventory of Movable National Property

Movable assets are excluded from this inventory procedure only if they are:

- Items consumed by first use; or
- Non-consumable items whose unit purchase value is exceeded by an amount set by the Minister in charge of Finance through a decision.

The process of recording in the inventory registers covers all movable items and equipment, including live walking devices, regardless of their nature or source. This applies to items held by departments, offices and public institutions of the state and local authorities, provided they are not subject to Order No. 75-35 of 29 April 1975 relating to the national accounting plan, and to bodies subject to that order. These bodies include:

- Public industrial and commercial establishments;

- Mixed-economy companies;
- Institutions subject to the taxation system based on real profit, whatever their form.

Books, publications and compiled works purchased by offices and placed on their premises, and then transferred by staff, are recorded in a separate inventory register. This register is kept by the officer in charge of the library and is their personal responsibility (Article 20 of Executive Decree No. 91/455, dated 23 November 1991,).

Movable assets treated as a single unit are recorded in the inventory under a single number. This applies to vehicles, for example, and includes all equipment supplied with the vehicle when it leaves the factory (Article 20 of Executive Decree No. 91/455, dated 23 November 1991,).

If tyres, batteries or similar components are replaced, they must be cancelled or removed from the inventory register relating to the vehicle's registration number.

Also, replacement spare parts are recorded under a distinct number. If the parts are damaged or destroyed, this must be recorded in the register alongside a destruction (disposal) report. In cases of theft or loss, the head of the relevant department must be notified and the reference number of the document evidencing the incident must be recorded in the inventory register.

Public assets located abroad that are owned by the State and used by diplomatic and consular missions must also be inventoried. This is done using an identification card for real estate (immovable assets) and inventory registers for movable assets. Diplomatic and consular missions carry out this process under the supervision of the Ministry of Foreign Affairs (Yahiaoui, 2009, p. 109).

2.2.1 Supervision/control as a system for protecting public national property

This control mechanism is provided for under Article 24 of Law No. 90-30, which states: "The internal oversight bodies, which act pursuant to the powers granted to them by law and by the supervisory authority, shall

ensure the proper use of national property according to its nature and the purpose for which it was allocated. The external oversight institutions, for their part, shall carry out their functions according to their respective areas of specialisation, within the limits of the powers granted to them by legislation” (Article24).

Accordingly, the oversight/control system is one of the means established by the Algerian legislator to protect public national property. It is also a preliminary measure for any other forms of protection of national property. This type of oversight is preventive in nature and covers all types of public national property, whether natural or artificial. The control procedure is carried out through legal measures specified by law and implemented by the relevant bodies.

2.2.1.1 Control procedures

Control is carried out by following specific legal procedures. These procedures are implemented by the bodies to which the law assigns this task. These bodies must preserve all documents, contracts and instruments relating to these assets, and protect them. In particular, control includes:

- determining/establishing the boundaries of national property (or the relevant facility), integrating it into its perimeter and the site plans.
- Dividing/splitting the land and classification designs/plans, as well as the contracts connected to them.
- Preparing and setting up public national assets and allocating them.
- acquisition or construction, whether with the final or temporary assistance of the state or through expropriation.
- Acquisition with private funds.
- Licences and contracts for the occupation of premises, whether from a concession or a lease of a holding/estate, delivered or concluded in accordance with applicable legislation or regulations (Article185).

2.2.1.2 Competent oversight bodies and their functions

The law provides for the creation of administrative bodies entrusted with monitoring national property. The most important of these bodies is the Directorate of State Property.

The national property administration has an ongoing right to supervise

the conditions under which state-owned movable and immovable assets — whether private or public — are used or maintained, and to oversee the allocation, assignment or placement of these assets at someone's disposal.

The Directorate also monitors the conditions under which these assets and rights were acquired or created/undertaken, and verifies that they are being used for their intended purpose. Furthermore, the law requires all entities to notify the Directorate of State Property of all decisions relating to:

- establishing and defining the boundaries of public national property;
- including/registering these assets;
- creating easements (servitudes) that burden adjacent properties;

This ensures that they are recorded and entered into the national property registers and land registries. These registers must then be continuously updated (Article 185).

2.1.3 Preservation of public national property

To address the risks that may affect public national property, entities benefiting from and making use of these assets must ensure their protection and preservation. The law also requires users and beneficiaries of national property, as well as holders of such property, to comply with the applicable laws and regulations when using them, regardless of their capacity. Furthermore, they are responsible for any damage arising from the use, exploitation and guarding of these assets, whether they were assigned to them by way of a complete transfer for use/benefit purposes or they are simply in their possession.

The legislator has granted the administrative authorities responsible for managing public funds the means to protect these assets, enabling them to fulfil their functions and achieve public interest objectives (Qotb, 2006, p. 249). These means may be either material or legal.

2.3.1.1 Material means for preserving public national property

This obligation is set out in Article 67 of Law No. 90-30, which provides that 'the protection of national property entails two types of ancillary obligations:

- 1) the obligation to maintain public national property, including

delegation of the rules governing the body or service managing it, as well as the owning public entity in the event of carrying out major repairs. This is done under the conditions provided for in national planning, in accordance with the related procedures.

The second type of obligation is neighbourhood burdens in favour of public national property, meaning public-law obligations arising from administrative easements for the benefit of public roads, such as road easements and ditch outlets, as well as planting, pruning, water drainage and sweeping markets. There are also burdens that are stipulated by law. (Article 67)'

2.3.1.2 Legal Means to Preserve Public National Property

There is no doubt that images and incidents of individual violations affecting public property are numerous, whether they occur as a result of misusing public funds or taking possession of them with the intention of owning them. Accordingly, the penalties imposed for these violations are intended to protect public property.

These measures are represented by the administration's power to issue regulatory instruments. These administrative police regulations enable the Administration to confront all infringements and violations committed against public property within their authority. Administrative police regulations fall into two categories: general administrative police regulations and special administrative police regulations (Yahiaoui, 2009, p. 111).

General administrative police regulations include criminal penalties that are imposed when they are violated. They are generally applied to all public property and aim to ensure security. Special administrative police regulations are those that each administration establishes to organise the use of its public funds and ensure their preservation. They also include criminal penalties (Yahiaoui, 2009, p. 250).

For this reason, individuals must comply with them under threat of criminal sanctions (No 66.156, dated 8 June 1966). The National Property

Law also sets out rules aimed at preserving these assets. This is made clear by Article 68 of Law 90-30, which states that:

‘The preservation system, alongside the use of national property, constitutes an element of the national property system and aims to ensure the preservation of public national property.’ Under appropriate legislation attached with criminal penalties, and to ensure the material preservation of certain appurtenances of national property, the administrative authority responsible for the preservation of public national property shall be granted the power to enact regulatory rules.’

2.2 Civil protection of national property

Algerian Civil Law defines public funds as follows in Article 688:

‘Public funds of the State are real estate and movable property that are allocated, or are to be allocated by virtue of a legal text, for the benefit of the public, an administration, a public institution, an administrative entity, a socialist institution, an autonomous management unit or a cooperative included within the scope of the agrarian revolution.’

Article 689 also provides that:

‘It is not permitted to dispose of state property, to seize it, or to acquire it by adverse possession. However, the laws that allocate these funds to one of the institutions referred to in Article 688 shall determine the conditions for their management and, as applicable, the conditions under which they may not be disposed of.’

In addition to what the legislator stated in Article 689 of the Civil Code, the National Property Law reinforces these principles. This is evident in Articles 4 and 6, which establish three fundamental rules to ensure the protection of national property. These can be termed civil protection rules.

- The rule that national property is not disposable.
- The rule permitting the acquisition of public property through adverse possession.
- The rule prohibiting the seizure of national property.

2.2.2 Non-disposability of national property

This rule is based on allocation for uninterrupted public benefit; therefore, it remains in place for as long as this allocation exists.

Consequently, the rule exists and disappears alongside the allocation, rather than being dependent on the nature of public funds themselves, as some argue that public funds are capable of ownership.

However, modern legal scholarship bases this rule on the distinct criterion of allocation for public benefit. Allowing the disposal of such property would remove it from the administrative entity's assets, undermining the allocation principle. In other words, the 'public' character of the property is linked to its allocation for public benefit (Chatnawi, p. 274).

This rule is derived from Article 689 of the Civil Code:

'It is not permitted to dispose of state funds...'

This principle is also enshrined in Article 4 of Law 90-30, which states: 'Public national property is non-disposable' (Articles 4, 4 February 1992).

Therefore, the principle of non-disposability of public property is based on its allocation for public benefit. If it were not allocated, State funds would not be used for the benefit of the general public. This explains why protection is so robust here: it focuses on allocation, ensuring the stability and permanence of these funds so that the state can maintain development momentum and progress (Qotb, 2006, pp. 63-64).

2.2.2 Prohibition on acquiring public property by adverse possession (prescription)

Under the Civil Code, one of the grounds for acquiring ownership is adverse possession (acquisitive prescription). This means that possessing an immovable property for the period specified by law results in acquiring ownership.

However, this does not apply to public property because its purpose is public benefit. As public benefit property is non-disposable, it follows that it cannot be acquired through adverse possession or any other means (Yahiaoui, 2009, p. 98).

The legislator addressed this issue in both:

Article 4 of Law 08/04 on national property, as amended and supplemented by Law 90/30; and

Article 689 of the Civil Code.

This is considered one of the three most important restrictions established to protect public property. After the prohibition on disposing of and seizing national property, it is the most significant restriction.

This is understandable: it is difficult to imagine the state or a public administrative authority disposing of public property, unless they were unaware of its nature. Similarly, it is unlikely that a creditor would seek to seize the administrative authority's public assets, let alone its private assets, because the administrative authority is usually solvent, meaning the creditor would not need to resort to compulsory enforcement against its property.

This principle is important because it protects national property and prevents its acquisition by individuals, unless doing so conflicts with the principle that national property is non-disposable.

2.2.3 Prohibition on seizing (foreclosing on) national property

This rule is based on the explicit wording of Article 689 of the Civil Code, which states:

‘It is not permitted to dispose of state property, to seize it, or to acquire it by adverse possession.’

This is also reflected in Article 66 of the National Property Law, which states:

‘The general rules for protecting public national property are derived from the following principles: non-disposability, non-adverse possession (non-prescription) and non-seizability.’

Likewise, Article 4 of Law No. 08/14 states:

‘Public national property is non-disposable, non-prescribable and non-seizable.’

The rationale for this is public benefit. Therefore, it is inconceivable that there could be compulsory enforcement over assets that have the character of public property, since they must fulfil their intended purpose (Qotb, 2006, pp. 77-78).

Moreover, seizing public funds ultimately leads to the forced sale of those assets in order to pay the debts for which the seizure was ordered. As an optional sale by the owning entity is only possible under conditions

provided by law, it is also inconceivable that there could be a forced sale.

Accordingly, the scope of the rule prohibiting the seizure of public funds is limited to allocating them for public benefit. Furthermore, it is inconceivable that the owning authority — whether the state or another public legal entity — would not dispose of them administratively; therefore, compulsory enforcement would result in these assets being transferred from the administration's possession to another party, which would deprive the public of the means to benefit from them (Yahiaoui, 2009, p. 99).

3. Criminal Protection of National Property

This section will examine the criminal protection of national property under Algerian legislation, focusing on two key areas. The first subsection will address the protection provided by Law 23-18 on the protection of state property. The second will address criminal protection in other laws.

3.1 Protection provided in the Law on Protecting and Preserving State Lands

This law can be divided into three main areas related to strengthening precautionary measures to protect state lands, combatting unlawful/chaotic construction, and strengthening criminal protection.

3.1.2 Principles and mechanisms for protecting state lands

Law 22-18 sets out who has the authority to protect state property.

3.1.2.1 Persons authorised to protect state lands

In addition to the powers granted to them under municipality and wilaya laws, Law No. 22-18 further strengthens these powers. Article 4 provides that the wali (governor) and the head of the municipality may increase state lands and carry out the necessary investigations at any time. They may also request administrative and technical documents relating to state lands within the framework of mechanisms for protecting state lands and preventing interference with them.

Article 5 states that managers of state lands are personally responsible for any damage arising from their failure or refusal to perform the duties imposed on them by applicable legislation and regulations. Likewise, managers of state lands may apply to the relevant court for all necessary procedures and measures to protect them (Articles 4 and 5, 23-18 of 28

November 2023).

3.1.1.2 Civil society and the media

Civil society in Algeria plays a prominent role in promoting a culture of integrity and strengthening participation and citizenship through its effective contribution. It also demonstrates a strong dedication to tackling corruption by engaging with government bodies and authorities, and by raising awareness among various sections of society (Boukrin, 2024, p. 756).

The Algerian legislator emphasised this in Article 7 of Law 23-18, which states:

‘The State, through its various institutions, shall encourage the participation of civil society and the media at local and international levels to promote a culture of citizenship, protect state lands and preserve them, and notify the relevant authorities of any occurrences that may interfere with them. (Article7)’

3.1.2 Rules Applied to Illegal Buildings and Structures Erected on State Lands

The Algerian legislator addressed the phenomenon of interference with state lands by enacting Law 23-18, which includes strict rules and procedures. These are applied after the offence of interference has been examined and proven by duly authorised inspection agents. These procedures and rules include:

- Any building or structure erected without the required permits must be demolished, unless a legislative text provides otherwise.
- Prohibiting the connection of illegally erected buildings or structures on state land to public utility roads and networks.
- Setting up local cells to monitor cases of interference and illegal construction on state lands and to promptly notify the relevant authorities of any proposals aimed at protecting and preserving state lands.

The demolition of illegally constructed buildings and structures on state lands is carried out by a decision issued by the chairperson of the municipal people’s assembly (APC) within eight days of receiving the report of the offence recorded upon inspection. If the APC chairperson does

not proceed with demolition, the wali (governor) will carry out the demolition within ten days of the time limit granted to the APC chairperson expiring, as provided for in Article 9 of Law 23-18.

Decisions ordering demolition may be challenged in the courts in accordance with applicable legislation, and execution of the demolition decision may be suspended until a ruling is issued (Article 9).

In line with the constitutional principle of access to justice, the legislator has provided an opportunity for violators to submit their objections to the competent judicial authorities for examination in accordance with applicable laws.

3.1.2.1 Authorised personnel for investigating and inspecting offences of interference with state property

Through Law No. 23-18, the Algerian legislature significantly expanded the list of officials responsible for investigating and inspecting offences relating to state property.

Article 11 of the same law provides that:

‘In addition to judicial police officers and agents, the following persons are authorised: urban planning police; judicial police officers and agents attached to the Forests Administration; State property inspectors; agricultural administration agents; environmental inspectors; tourism inspectors; heritage protection inspectors and agents; and water police agents belonging to the relevant public administrations.’ Within the scope of the powers legally granted to them, they may carry out visits to state lands, request all necessary documents and conduct any investigations they deem necessary to identify any interference with state lands.’

The legislator also granted supervisory agents the authority to supervise and inspect at any time, including rest days and public holidays. Furthermore, supervisory agents and the aforementioned individuals may request the assistance of the public force when carrying out supervision and inspection activities as defined by this law (Article 11).

3.1.2.2 Duties and Powers of Investigation and Supervisory Agents

After completing the inspection, an accurate inspection report must be

drafted. This should include the name(s) of the authorised agent(s) and their status/capacity; the date, time and place of the inspection; the facts observed; the nature of the offence; the identity of the offender; and their statements. The report must be signed by the agents and by the person who committed the offence. If the latter refuses to sign or if their identity cannot be established, this must be noted in the report.

The report has evidentiary value until proven otherwise (Article 11 of Law 23-18). A copy of the report must be sent to the relevant public prosecutor (Prosecutor of the Republic), the Wali and the Municipal Council President within seventy-two hours. Upon receiving the report, the public prosecutor automatically initiates public criminal proceedings.

The judicial representative of the Treasury represents the state; the wali, the wilaya; and the president of the municipal people's council, the municipality (Article 15 of Law 23-18). Depending on the type of offence, criminal penalties and sanctions are then taken against the violators and aggressors. In Law 23-18, the Algerian legislator classified offences relating to State land as distinct offences and established a specific criminal penalty for each one (Articles 15).

3.1.3 Classification of Offences of Interference with State Land and Their Criminal Provisions

Law 23-18 classifies offences of interference with state land.

3.1.3.1 Acquisition and exploitation for personal use or for the benefit of another

Article 17 provides for the punishment of anyone who acquires or exploits State land for personal purposes or for the benefit of another, or who builds buildings or structures on State land that they previously acquired. The punishment for acquisition and exploitation is imprisonment for a period ranging from five to ten years and a fine ranging from 500,000 to 1,000,000 DZD.

Article 14 also provides for the punishment of anyone who constructs or builds on state property without justification: imprisonment from seven to twelve years and a fine from 700,000 to 1,200,000 DZD.

3.1.3.2 Obtaining Permits for the Purpose of Connecting to Public Utility Networks

Article 18 of the same law states that anyone who carries out or knowingly authorises the connection of buildings or structures constructed unlawfully on state land to public utility networks, such as electricity, gas, water and sewage networks, is punishable by imprisonment from two to five years and a fine from 200,000 to 500,000 DZD.

3.1.3.3 Changing the nature of state land

This refers to a change in the land's character from agricultural to residential or industrial use, or vice versa, as set out in Article 19.

The offender shall be punished by imprisonment for a term ranging from three to seven years and a fine ranging from 300,000 to 700,000 DZD.

3.1.3.4 Regularising the status of buildings and facilities constructed on state land

Any person who intentionally regularises the status of a building or facility through an illegal method — meaning regularisation by granting any certificate or administrative document falling within the framework of regularising the status — shall be punished by imprisonment for a term of five to ten years and a fine of not less than 500,000 DZD and not more than 1,000,000 DZD.

3.1.3.5 Negligence and leniency leading to encroachment on state property

Article 21 states that officials responsible for state land, as well as public employees who are negligent or lenient in performing their duties and thereby lead to encroachment on state property, shall be punished by imprisonment for a term ranging from three to five years and a fine ranging from 300,000 to 500,000 DZD.

The same penalty applies to public employees who fail to carry out their obligations under applicable legislation and regulations for protecting state land, causing harm to it. They shall be punished by temporary imprisonment of between seven and twelve years, and a fine ranging from 700,000 to 1,200,000 DZD (Article 21).

Likewise, the manager of state land or the public employee complicit

in encroachment or causing damage to state land shall be punished by temporary imprisonment of between ten and fifteen years, and a fine ranging from one million to one and a half million DZD (Article 21) (Article21).

3.1.3.6 Revenge, threats and intimidation against whistleblowers reporting crimes involving encroachment on state property

The Algerian legislature did not overlook the protection of whistleblowers reporting crimes involving encroachment on state land. Article 22 provides protection for anyone who reports such a crime, as well as for their family members and anyone connected to them, against any form of assault, revenge, intimidation or threats.

The person who commits the crime of encroachment shall be punished by imprisonment for a term ranging from six to five years and a fine ranging from 100,000 to 500,000 DZD (Article22).

3.1.3.7 Preventing or obstructing oversight activities and providing false information

Article 23 states that anyone who prevents or obstructs members of oversight teams, the monitoring cell or public authorities from carrying out their duties under Law 23-18, or provides them with false, misleading or incorrect information, shall be imprisoned for between six and three years and fined between 50,000 and 300,000 DZD (Article23).

3.2 Criminal protection of national property in other laws

The criminal protection of national property in other laws will be examined in three stages: first, protection under the Penal Code; second, protection under the Water and Mines Law; and finally, protection under the Forests Law.

3.2.1 Protection under the Penal Code

The Penal Code addresses crimes involving negligence, embezzlement and destruction of national property.

3.2.1.1 Crime of negligence of public national property

Negligence towards public money may apply to all types of public money. The types of public money affected by negligence are classified as follows: immovable public property, movable public property, and

benefits/rights derived from public property.

The legislator determined the penalties for this crime through Article 119 bis of Ordinance 66-165, as amended and supplemented, which states that:

‘Any public official, as defined in Article 2 of Law 06-01 dated 20 February 2006 on the prevention and combating of corruption, who—through gross negligence—causes the theft, embezzlement, destruction or loss of public or private funds or assets, or documents, instruments, contracts or movable funds placed under their control by virtue of their position, shall be punished by imprisonment for a term of six to thirty-six months and a fine ranging from 50,000 to 2,000,000 Algerian dinars. (No66-156, of 8 July 1966)’

3.2.1.2 Crime of embezzlement of national property

Embezzlement is considered one of the most serious crimes against public funds, as it threatens the structure of society. It is the act that is defined and punished under Article 29 of the law on preventing and combating corruption (No06 & 01, of 20 February 2006).

Also, Article 119 bis of the Penal Code—upon reviewing this text—shows that it aims to protect public funds when they have been entrusted to a public official in the context of their duties or because of them.

The crime of embezzlement requires two elements.

- the material element (the act);
- the mental element (intent).

Additionally, there is a presumed element, namely that the person committing the offence is a public official.

Accordingly, the accused must return the embezzled funds and items, which constitutes a form of compensation. As for the penalty of dismissal, the legislator did not specify this directly in the text. Instead, reference is made to the general provisions in the Penal Code, namely: Restricting or forbidding residence, deprivation of certain direct rights, partial confiscation of assets belonging to the person, and publication of the judgement (Ahlam, 2016, p. 78).

3.2.1.3 Crime of destruction of national property

Article 120 of the Penal Code provides that:

‘Any judge, public officer or public constable who, through fraud and with intent to cause harm, destroys or removes documents or instruments, contracts or movable funds in their custody or handed to them in the course of their duties, shall be punished by imprisonment for two to ten years and a fine of between 500 and 5,000 DZD. (Article120)’

Additionally, anyone who intentionally burns or damages records or copies of commercial or banking documents that include obligations, transactions, or releases shall be punished by temporary imprisonment of between five and ten years.

If the damaged documents relate to public authority contracts, the penalty shall be imprisonment from two to five years and a fine from 500 to 3,000 DZD if the matter concerns any other documents (Boumezir, 2011-2012).

3.2.1.4 Crimes of sabotage and attacks on national property

The Algerian legislator criminalised the deliberate sabotage of buildings, dwellings, vessels or vehicles, as well as railways and aircraft, under Article 400 of the Penal Code.

Arson is one of the material crimes, committed by intentionally setting fire to something. Offenders use this method when they intend to destroy public property. This is reflected in Articles 395 and 396, and the penalties are more severe when the matter concerns state property, property belonging to local communities, or institutions and bodies governed by public law.

There are also crimes involving attacks on national property, such as encroachment on public roads and related offences. The law provides for many offences connected to this. One example is provided for in Article 408 of the Penal Code (Articles 395).

3.2.2 Protection under the Water and Mines Laws

The Algerian legislator included protection of national property in the Water and Mines Laws.

3.2.2.1 Protection under the Water Law

Article 161 of Law 05-12, dated 4 September 2005, on the Water Law,

provides for persons with legal standing to detect and handle violations relating to water as a form of public property. It states:

‘Investigations, inspections and inquiries carried out by officers of the judicial police and water police officers established under Article 159 above shall apply to the violations under review. (LawNo05 & 12, of August 4, 2005)’

The law also prohibits the extraction of silt materials by any means, especially by establishing dredging installations in the beds or courses of seasonal valleys, unless authorised by a licence granted under a concession framework. Offenders are punished with imprisonment of between one and five years and a fine ranging from 200,000 to 2,000,000 DZD. The law also allows for the confiscation of equipment, tools and vehicles used to commit the offence and increases the penalty in the event of recidivism.

Additionally, it is prohibited to discharge dirty water, regardless of its nature, into wells, springs, public drinking places or valleys. The legislator also bans the placement of non-sanitary substances capable of polluting groundwater through natural seepage or artificial refilling/recharge. It is also prohibited to dump animal carcasses in valleys, lakes, and areas near wells, springs, and public drinking places. In the event of a violation, the offender shall be punished by imprisonment for one to five years and a fine ranging from 50,000 to 1,000,000 DZD.

Accordingly, water resources may not be used by natural or legal persons except on the basis of a licence or concession.

3.2.2.2 Protection under the Mines Law

Mining police officers carry out investigations and inspections of violations related to mineral or rock materials. This is done in accordance with Article 14 of Law 14-05, which contains the Mines Law, as well as Article 145 of the same law, which states that:

‘Any person who exploits land protected by a decree, by any means whatsoever, without a prior decision/approval from the competent administrative authority, shall be punished by imprisonment for two to two years and a fine ranging from 100,000 to 500,000 DZD. (No14-05, of

February 24, 2014)’

Any operator who continues exploitation work in disregard of the prohibition set out in Article 50 of the Mines Law shall be imprisoned for six to three years and fined between one and two million DZD, in accordance with Article 147 of the same law. The same penalty applies to the holder of a mining licence who fails to notify the National Agency for Mining Activities of the opening or resumption of a pit or gallery extending to the surface.

Additionally, Article 24 of the Mines Law stipulates that (Article 24), prior to engaging in mining activities, the operator must obtain one of the documents referenced in Article 116. These activities comprise the total extracted and prepared reserves, demolished ore and structures located on the surface and underground, as well as works carried out on the surface and underground, including buildings, equipment, machinery and storehouses, and the non-material elements linked to them.

These documents are issued by the National Agency for Mining Property after consulting the relevant territorial governor.

Article 211 of the same law provides the same penalty for the same offence if it occurs in Algerian maritime waters. In the event of a repeat offence, the penalty is doubled. Furthermore, the period of imprisonment may be increased to up to four years, and the court may order additional measures where appropriate.

3.2.3 Protection under the Law on Forest Wealth

Forest police officers and judicial police officers belonging to the Forest Administration perform their duties in accordance with the Criminal Procedure Code and the Law on Forests and Forest Wealth, dated 23 December 2023. This law expanded their powers to preserve and protect forests, which are classified as public property and considered a natural public resource (Law 23 & 21, of December 23, 2023).

In order to protect, preserve and value forests, the Algerian legislator imposed strict penalties for forest-related crimes. These include:

1. Crimes relating to the burning and damage of forests, as set out in Articles 136, 137, 138, 139, 140, 141 and 142 of Law 23-12 on Forests and

Forest Wealth.

2. Crimes relating to deforestation, land stripping, grazing and ploughing are punished under Articles 143 and 144 of Law 23-21.

3. Crimes relating to illegal construction and work on public forest property are punished under Articles 145 and 146 of Law 23-21.

4. Crimes relating to illegal prospecting, exploration, drilling and mineral extraction, as well as the placement of construction materials and gravel on public forest property, are punished under Articles 147 and 148 of Law 23-21.

5. Crimes relating to the illegal exploitation and use of forestry materials (wood and non-wood) are punished under Articles 149, 150 and 151 of Law 23-21.

6. Crimes relating to the harm caused to animal and plant resources are punished under Articles 152 and 153 of Law 23-21.

These crimes also incur the penalties set out in the Penal Code and the Law on the Protection of State Property and its Preservation (23-12).

4. Conclusion

The Algerian legislature has granted national property special, strict and multifaceted protection, as required by its legal designation as assets for the public good. This differs from private assets belonging to individuals and all other forms of national property. The forms of protection established for public assets are numerous and the risks to which they may be exposed are varied. These risks may stem from the management of public funds, negligence in their administration or their unlawful disposal.

They may also stem from the public through the unlawful use of public funds, prolonged seizure or confiscation, or any damage inflicted on them. For this reason, the Algerian legislature has ensured their protection through administrative, civil and criminal measures.

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