

The jurisdiction of the administrative judiciary in the field of disputes related to the decisions of the real estate governor

اختصاص القضاء الإداري في مجال المنازعات الخاصة بقرارات المحافظ العقاري

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Abstract:

Due to the fact that real estate disputes are many and varied, our study will be limited to those disputes related to the decisions of the real estate governor, the latter who performs a number of behaviors deeds and actions authorized to him according to special texts, including those related to the issue of real estate registration, and some of them related to the process of deposit, procedure and signing of the real estate book as essential operations Complementary to the real estate survey system. And since these decisions are issued by a public institution represented by the real estate governorate (administration), it accepts appeals before the administrative court - in application of the organic standard - by initiating an annulment lawsuit aimed at canceling the real estate governor's decisions that violate the principle of legality, or claiming compensation for the serious mistakes that befall the injured. This is according to the compensation claim (recourse claim).

Keywords : Jurisdiction ; Administrative judiciary ; Decisions ; The real estate governor.

ملخص:

نظرا لكون المنازعات العقارية كثيرة ومتعددة فإن دراستنا ستقتصر حول تلك المنازعات الخاصة بقرارات المحافظ العقاري، هذا الأخير الذي يقوم بجملة من التصرفات والأعمال المخولة له بموجب نصوص خاصة منها ما يتعلق بمسألة الشهر العقاري، ومنها ما له علاقة بعملية الإيداع والإجراء وتوقيع الدفتر العقاري باعتبارها عمليات جوهرية متممة لنظام المسح العقاري. ولما كانت تلك القرارات صادرة عن مؤسسة عمومية ممثلة في المحافظة العقارية (إدارة) فإنها تقبل الطعن أمام القضاء الإداري-تطبيقا للمعيار العضوي-من خلال مباشرة دعوى الإلغاء الرامية إلى إلغاء قرارات المحافظ العقاري المخالفة لمبدأ المشروعية، أو المطالبة بالتعويض جراء الأخطاء الجسيمة التي تلحق بالمضررين وذلك بموجب دعوى التعويض (دعوى الرجوع).

الكلمات المفتاحية: الاختصاص؛ القضاء الإداري؛ قرارات المحافظ العقاري.

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Introduction:

In the Algerian system, whenever the administration is a part to a real estate dispute, jurisdiction falls to the administrative judiciary in application of the organic standard, and it is recognized that the administration, as a public legal entity, is the largest owner of the property, the situation that produces disputes of a real estate nature, and since the latter is linked to the property – by which it is intended In the sense of Article 683 of the Algerian Civil Code ; Everything that is settled in its space and fixed in it and cannot be moved from it without damage is real estate – which necessitates the necessity of declaring it, including all transactions and real estate rights related to it, in order to preserve and guarantee real estate ownership, which gives the property owner direct authority over it (he has the right to use it, occupy it, and dispose of it in a manner that does not conflict with legal systems).

Then comes the role of the real estate governor, who has the role of examiner in the field of the real estate survey system, by carrying out the process of investigating the identity of the contracting parties, in addition to investigating the authenticity of the documents related to the registration procedures, in addition to his mission in collecting registration rights and the real estate advertising fee for contracts under publication,

beside to other works and actions that he undertakes on the occasion of his management of the governorate, and in light of this huge number of roles played by the real estate governor, our study will be limited to two roles that are no less important than the previous roles ; The first role concerns preparing the real estate registry, in addition to the second role related to preparing the real estate book.

What leads us to wonder about the disputes that may arise from this ? What is the judicial authority competent to review the decisions issued by the real estate governor in the two intended areas ?

To answer this problem, the topic will be studied through the following two section :

The first section : Disputes regarding the preparation of the real estate registry.

The second section : Land registry and power of the administrative Judge in real estate disputes.

Referring to Article 800 of the amended and supplemented Civil and Administrative Procedure Code¹, we find it states : On : “Administrative courts are the bodies of general jurisdiction in administrative disputes, with the exception of ministrative judiciary is competent to hear all disputes in which the nation, state, municipality, or public institutions of an administrative nature are a party in application of the organic standard, with the exception of disputes entrusted to other judicial bodies under special texts.

Such disputes include disputes of a real estate nature – given the availability of the standard – including disputes related to the preparation of the real estate registry (first section) and those related to the real estate book (second section).

Section I: Disputes regarding the preparation of the real estate registry :

It is useful to point out that the real estate registry, as an important means in the field of proof, includes a set of legal rules and procedures aimed at determining the identity of the property, confirming its ownership, and declaring the rights and legal actions taking place over it, through records where people can view what is stated therein, and take statements about that².

Referring to Article 41 of Decree No. 76/63 related to the real estate registry, we find it stipulates : “The governor must have a filing register in which he records, day by day, in numerical order, the submissions of contracts, judicial decisions, and in general, the schedules of documents deposited for the purpose of implementing a special publicity procedure.”

As for the disputes that may arise on the occasion of preparing the real estate registry, they can be referred to disputes regarding refusal to deposit and the notarization procedure (A), and another type related to real estate numbering disputes (B).

A) Disputes of refusal to deposit and the registration procedure :

Both the decision to refuse the deposit and the registration procedure are considered a decision that affects the interest of the beneficiary of the real estate survey process, as the Algerian legislator gave the aggrieved person the right and authority to file a lawsuit against the decisions of the real estate governor if he did not observe the laws and regulations related to real estate registration³.

The rejection decision issued by the Real Estate Governor regarding the deposit or registration process must be reasoned. Among these reasons, we mention the following

- certification of the identity of the parties was not carried out in accordance with the conditions stipulated in Articles 62 to 65 and Articles 102 and 103 of Executive Decree No. 78.
- When submitting a document that does not meet the required proof.
- If the contract or the official copy deposited does not meet the formal requirements⁴.

There are other reasons included in Article 353/12 of Law No. 76-105 relating to registration⁵.

The Real Estate Governor decides to reject the deposit via a registered letter, as the letter contains a specification of the date of rejection and a mention of errors and deficiencies. With the reason, reasons for rejection, the governor’s signature along with the visa, and so on. Within 15 days from the date of deposit, if the contract editors correct their errors according to what was stated in the content of the notification letter, the real estate governor accepts the deposit and initiates the notarization procedure.

Upon rejection, he grants a period of two months, starting from the date of submission of the letter, to appeal before the administrative judiciary⁶.

Accordingly, the deposit process is a legal procedure that is necessary in this final registration process, which is part of the procedure through which the authenticity and final status of the property is given after ensuring that all the conditions of the contract and the identity of the parties are met.

Moreover, the decisions of the Real Estate Governor regarding this type of dispute – according to the text of Article 24 of Order 75/74 – are subject to competent judicial authority represented by the Administrative Court in application of the organic standard.

B) Land registration disputes :

The land registration process ends with the temporary registration of properties, which in turn becomes final registration. As for the disputes that may arise regarding this registration before the administrative court, they are as follows :

- 1- Temporary registration disputes :** Disputes related to registration are the result of the appearance of a party claiming to be the owner or holder during the legal registration period, which is 4 months or 2 years, depending on the case. This is to open the door for the submission of objections by the concerned parties. However, when the person in charge of recording objections receives the objection and the objection is accepted formally if it is submitted within the legal deadlines, and the objection is rejected if it is not submitted within the legal deadlines, the registration is final and the objection is rejected⁷.

After the land registrar receives the objection, he tries to reconcile the parties. If the reconciliation is successful, a memorandum of reconciliation is drawn up, which has the force of evidence and is binding on all parties. In case of failure of the reconciliation, a memorandum of non-reconciliation is drawn up and notified to the parties, and a period of 6 months is granted to them from the date of notification by the objector⁸.

This matter is stipulated in Article 15 of Executive Decree No. 76-63 regarding the establishment of the Land Registry⁹. Accordingly, the lawsuits of the judiciary aimed at annulling or invalidating or canceling or revoking rights resulting from documents that have been advertised cannot be accepted unless they have been advertised in advance¹⁰, in accordance with Article 85 of Executive Decree No. 76/63 and Articles 17 and 519 of the Code of Civil and Administrative Procedure 08/09¹¹.

- 2- Final registration disputes :** Article 12 of Executive Decree No. 76/63, as amended and supplemented, on the establishment of the land register, provides that final registration shall be for properties for which the owners or holders of rights thereon have documents that are admissible in law to prove ownership and land rights¹².

In contrast to some other legislations, the Algerian legislator has acknowledged the right of anyone with an interest to appeal to the courts against the decisions of the land registrar, without specifying a time limit. In this regard, we note that the Algerian legislator has left the matter to expire by the period of acquisitive prescription, which has the effect of not guaranteeing real estate credit and reduces the importance of eye registration¹³.

Section II: Land registry and power of the administrative Judge in real estate disputes :

The land registry is a legal document with strong evidence, where all land rights and transactions on real estate located in the surveyed areas are recorded. It is then delivered to each owner whose right is established and existing upon the occasion of the land register¹⁴.

It is permissible to challenge the land register resulting from the final numbering, and this is what the Executive Decree No. 76-63 states :

« The rights resulting from the final numbering which was made under Articles 12, 13, 14 of this chapter cannot be reviewed except through the courts. »¹⁵

Of the land register disputes, we mention the cancellation of the land register (A), and the compensation claim (B), and the powers of the administrative judge in real estate disputes (C)

A) Cancellation of the land register :

To accept the cancellation of the land register, a set of conditions must be met : formal and substantive conditions.

1- Formal conditions : The Code of Civil and Administrative Procedure includes a general rule that applies to all appeals and administrative lawsuits, and special conditions that are unique to each legal action¹⁶.

1.1. General formal conditions : Article 13 of the Code of Civil and Administrative Procedure states : « No person may litigate unless he has the capacity, and he has an existing or potential interest recognized by law.

The judge automatically raises the lack of capacity in the plaintiff or in the defendant.

He also automatically raises the lack of permission if the law requires it. »¹⁷

Article 65 of the Civil and Administrative Procedure Code adds : “The judge automatically raises the lack of capacity, and he may automatically raise the lack of authorization of the representative of the natural or legal person.”¹⁸

He is qualified to represent the state in real estate disputes, which arise between it and private individuals, especially in the process of canceling the real estate book, by the agents of the state property administration and real estate preservation in the state, and the defense petition is signed by the Minister of Finance in the name of the state.

However, if it is filed by individuals, it must be drawn up and signed by A lawyer party, and failure to respect these conditions leads to the invalidation of the case, even if it is acceptable in terms of the merits¹⁹.

1.2. Special formal conditions : The legislator organized these conditions in Executive Decree No. 76-63, as amended and supplemented, and related to the establishment of the land registry in Articles 15 and 16 and Article 23 of Order No. 75-74.²⁰

1.2.1. Judicial competence in the cancellation of the land register : The jurisdiction in the cancellation of the land register falls to the administrative courts, considering that the land register is issued by the land registrar in the form of an administrative decision.

Therefore, the lawsuits whose subject is the cancellation of the land register fall under the jurisdiction of the administrative courts.²¹

1.2.2. Time limit : It is required to set a deadline for filing the cancellation suit in order for it to be admissible, which runs from the date of publication of the decision or its announcement by the person concerned, and this same deadline is considered the deadline for the lapse of the lawsuit.²²

Referring to the text of Article 16 of Executive Decree No. 76-63, we conclude that the deadlines for filing a lawsuit are open, and in accordance with general rules, the statute of limitations for rights is 15 years, which reduces the evidentiary strength of the real estate book.

1.2.3. Publication of the lawsuit petition : The publication of the lawsuit petition is an obligatory procedure that results in the dismissal of the lawsuit in form, in accordance with the provisions of Articles 17 and 519 of the Code of Civil and Administrative Procedure.

Article 85 of Executive Decree No. 76-63, amended and supplemented, stipulates that : “Judicial suits aiming to pronounce annulment, invalidation, cancellation or reduction of

rights resulting from documents that have been published cannot be accepted unless they have been published in advance.”

Article 14 of Order No. 75-74, which includes the preparation of the general land survey and the establishment of the real estate registry, adds that proof of this declaration must be based on a certificate from the governor or the submission of a copy of the application containing the declaration visa²³.

To cancel the real estate booklet, it is necessary to take into account the objective conditions, such as a defect in form, a lack of jurisdiction, or a defect in the legal procedures. On this basis, the plaintiff establishes a lawsuit to cancel the real estate booklet²⁴.

B) Compensation claim related to the land register :

Anyone who has been harmed by the registration of real estate rights, and this after the deadlines for challenging the cancellation of the land register that was the result of the registration process, may go to court demanding compensation. However, there must be the necessary conditions for the admissibility of this lawsuit, including : general conditions, formal conditions, and substantive conditions²⁵.

A claim for compensation can be filed against the real estate governor, according to what was stated in the text of Article 23 of Order No. 75-74.²⁶ This lawsuit can also be filed against the administration even if the mistake was personal on the part of the real estate governor, and this is in consideration of the financial liability of the administration and the latter has the right to return to the property.

The real estate governor for compensation (recourse lawsuit), which is defined as a lawsuit filed by the state against the real estate governor requesting payment of the total amount it paid to the injured person and fulfillment of its right²⁷.

According to Article 23 of the amended and supplemented Order 75/74, we find that it specifies the deadline for filing the lawsuit, so that it must be filed within one year from the discovery of the error, otherwise the right will be forfeited and the lawsuit will expire after 15 years, starting from the date of discovery of the error, and this lawsuit will result in the issuance of a judicial ruling.

From the competent judicial authority, either by correcting the real estate governor for his mistakes, or obliging him to cancel all rights acquired in this capacity, and if this is not possible, the affected person will be financially compensated.”²⁸

c) Powers of the administrative judge in real estate disputes

The Algerian legislator, in accordance with Law 09/08 containing the Code of Civil and Administrative Procedures, and as previously mentioned above, created legal authorities that confirmed the positive role of the administrative judge and his actual ownership of the administrative dispute, granting him broad powers across all stages of the dispute. Among the most important disputes, we will choose two models of real estate disputes, which present Frequently on the dockets of administrative judiciary bodies, represented by functional housing disputes and real estate book disputes.

1- Job accommodation disputes

The administration’s action, according to which the employment housing privilege is granted, is considered an administrative decision granted by the sole will of the employing

administration, without regard to the will of the occupant, which gives jurisdiction or authority to the administrative judge in order to monitor the extent of the administration's arbitrariness in granting the privilege.

The role of the administrative judge appears in functional housing disputes, and more specifically in granting the decision to privilege functional housing, by examining its legality and subsequently canceling it in the event of its absence, and through his authority to expel people from functional housing and assess compensation.

1.1. The Administrative Judge's power to cancel the employment housing concession decision:

The general principle stipulated in the Code of Civil and Administrative Procedure is the jurisdiction of the administrative judiciary whenever one of the parties to the case presented to it is a public legal entity represented by the state, the municipal jurisdiction, or public institutions of an administrative nature. This is the principle that established the organic standard, as long as the administration is the one that issues The decision to privilege employment housing, which makes disputes related to this decision the jurisdiction of the administrative judiciary. With reference to Executive Decree No. 89-10²⁹, it stipulates that functional housing is granted to a public employee pursuant to a concession decision, which is considered an administrative decision and not a lease contract.

The Conflict Court confirmed this principle in its decision: "The administrative judiciary is competent to decide a dispute related to functional housing in which the administration is a party."³⁰

On this basis, the decision to privilege employment housing is an administrative decision as it is issued by the sole will of the legal persons which is the authority used, and it causes harm in itself and has executive power, which makes it have the status of an administrative decision that is generally revocable if it is flawed with the defects of the administrative decision in accordance with the general rules, as well as follows:

1.1.1. Cancellation of the decision to grant the functional housing concession:

The decision to grant the concession may be canceled due to a defect in the decision, the most important forms of which can be identified in:

- **Cancellation for lack of jurisdiction:** The functional housing concession decision is issued by the party legally authorized to issue it, and this is what we infer from reading Articles: 3, 4 and 5 of Executive Decree No. 10-89³¹, and from it the decision is prepared by the state property director if the housing belongs to the state, or the governor if it is affiliated with the state, or the head of the municipal people's council if it is affiliated with the municipality, and when it is affiliated with a public administrative institution with national jurisdiction, the privilege is granted by the decision of the director of the institution. Therefore, if the decision to grant or revoke the decision to grant employment housing privilege is issued by other than those mentioned in the text of the previous articles, the decision is considered to be tainted by the defect of lack of jurisdiction, which gives the administrative judge the authority to cancel it.
- **Cancellation due to defect in form and procedure:** Articles 3 and 4 of Executive Decree No. 89-10 dated 02/07/1989 stipulate that the granting or rescinding decision shall not be issued except after following the formalities:
A - If the decision to grant or cancel was issued by the head of the state property department in the state with regard to state property, the official who placed the beneficiary agent under his authority must be consulted.

B - If the decision to grant or cancel is issued by the director of the institution with regard to housing owned by public institutions³², then the decision to grant must be annotated by the head of the State Property Affairs Department in the state with regional jurisdiction. In the event that these procedures are burned, the concession decision will be subject to cancellation by the administrative judge, as it is tainted by a defect in form and procedures.

- **Cancellation due to the defect of deviation in the use of authority:** When issuing its decisions, the administration aims to respect the principle of legality, and this can only be achieved by achieving the public interest. Even though the goal deviates from that, the defect of deviation in the use of authority will be achieved. In this regard, a joint ministerial decision dated May 17, 1989³³ was issued and specifying the list of persons benefiting of the privilege in the context of the urgent necessity of the service exclusively and without paying rent. If a decision is issued to grant the functional housing privilege to an employee who occupies a position not legally specified in the previous decision with the aim of favoring that employee, for example, then the decision is considered tainted by the defect of deviation in the use of authority. Therefore, it is subject to cancellation, and the administrative judge must verify the reasons on which the administration relied in issuing its decision.

In addition to the fact that the decision to grant must respect the principle of legality, it is not possible for an employee to occupy functional housing without the concession decision to grant, otherwise the administration will be considered to have deviated from using its authority by allowing an employee to occupy functional housing without support, and this is the opinion of the State Council in its decision: "Occupying the granted housing Due to the urgent necessity of the service or for the benefit of the service, it may only be in accordance with a lien deed."³⁴

1.1.2. The authority of the administrative judge in cases of eviction from functional housing :

Executive Decree 10/89 dated 02/07/1989 specified the methods for occupying the places granted due to the urgent necessity of the service or for the benefit of the service. As a result, the reason for granting the decision to franchise functional housing is the work relationship or the employment relationship between the administration granting the franchise and the employee who benefits from functional housing. Therefore, with the end of the work relationship between the two parties, either through expulsion or referral to retirement, for example, there is no room for remaining in functional housing, and in the event of abstention, the person concerned is required to vacate the housing, and an expulsion lawsuit can be resorted to before the administrative judge, under penalty of a threatening fine.

Failure to prove the occupancy of the functional housing is subject to the concession document: represented by the decision to grant functional housing, it exposes the occupant to eviction, and this is in accordance with Article 2 of Executive Decree No. 10/89 of 02/07/1989, which prohibits all occupancy of housing owned by the state or local groups. Or public institutions without a concession, provided that in this case the administration can file an eviction lawsuit in accordance with Article 10 of the same decree.

2. Real estate book disputes :

The real estate booklet is an administrative document granted by the landed property registrar to the owners of real estate and/or real estate rights included in the land survey process and constitutes their title deed it³⁵.

The real estate booklet is the executive document that is delivered to the owners of fixed properties, permanently preserving their rights after going beyond the expected real estate planning and signing the real estate identity card for the property, as it contains all the information related to it and all the legal actions assigned to it. Among the most important disputes brought before the

administrative judge related to the real estate book are disputes related to its cancellation or modification.

2.1.Cancellation of the real estate booklet (final numbering):

Judges of administrative judiciary courts (administrative courts - the State Council) have traditionally used the term canceling the final numbering in the areas of the rulings issued... What is correct is to cancel the “real estate booklet” as it is the title deed in implementation of the text of Article 19 of Order 75-74 dated: 1975/ 11/12 related to preparing the general land survey and establishing the real estate registry, because the real estate registry is the one that has legal effects³⁶.

The Administrative Court has jurisdiction over objections to the final numbering or for lawsuits aimed at invalidating or amending the real estate booklet. Most of the disputes that are raised at the level of administrative courts “in the aspect related to real estate” are related to the cancellation of the final numbering of the “real estate book” and that reviewing the real estate numbering by “cancellation” is a legal claim because the final numbering is an administrative decision.³⁷.

The final numbering is a decision taken by the Real Estate Conservation Department after investigating the documents submitted by the parties and after the period specified in the law. The administrative judicial authorities have the jurisdiction to invalidate the final numbering³⁸.

As for the reasons for canceling the real estate booklet, considering that the latter is issued only by the real estate governor in the form of a decision, it is therefore subject to the extent of its legality or not to the general provisions for controlling the public lawsuit for administrative decisions.

Jurisprudence and the judiciary have unanimously agreed that the defects of the administrative decision that leads to its cancellation are the defect of lack of jurisdiction, the defect of form and procedure, the defect of lack of reason, the defect of violating the law, and the defect of deviation in the use of authority.

As for the defect of lack of jurisdiction: as if the real estate booklet was issued by someone other than the real estate governor, such as if there is a seal inside the real estate booklet belonging to the head of an interest in the real estate governorate, then it is subject to cancellation.

The real estate booklet may also be the subject of a lawsuit to cancel an institution from a substantive legal perspective, if the rule of temporal jurisdiction is violated, such as granting the real estate booklet before the end of the process of issuing the survey documents resulting from the real estate survey process³⁹.

As for the defect in form: it is inconceivable that it would occur on the basis that the real estate booklet has a specific shape.

As for the disadvantage of not being causal: the real estate book is drawn up based on what the survey committee reached when it conducted the field investigation, and therefore it is not possible to issue a real estate book based on material facts or legal actions other than those specified in Order 74-75 and Decrees 62/76 and 63/76. .

The defect of violating the law includes all defects of the administrative decision. If it becomes clear that the real estate governor violated the law when issuing the real estate booklet, it is possible to request its cancellation provided that the violating legal text is proven and clarified by the real estate governor, so that the administrative judge can either cancel it or reject the request for lack of establishment.

Regarding the defect of the deviation of authority: it is the administration's departure from the effort that it is supposed to work to achieve, which is the public interest.

The person requesting the cancellation must prove that the real estate booklet was delivered to the person concerned as a matter of favoritism or interest and not out of respect for the applicable laws and regulations⁴⁰.

According to the text of Article 800 of the Civil and Administrative Procedures Law, administrative courts are the bodies of public jurisdiction in administrative disputes, and are competent to adjudicate at the first instance, with an appealable ruling, in all cases to which the state, state, municipality, or one of the public institutions of an administrative nature is a party, as stipulated. Article 801 of it stipulates that "administrative courts are also competent to decide on lawsuits to cancel administrative decisions, declaratory lawsuits, and lawsuits to examine the legality of decisions issued by the state and non-centralized interests of the state at the state level..."

Accordingly, it is understood from these two articles that the jurisdiction to cancel real estate records falls within the jurisdiction of the administrative courts.

In the event of canceling the real estate numbering due to illegality, the administrative judge shall rule in accordance with the provisions of Article 978 and the following of the Code of Civil and Administrative Procedures and upon the request of the parties to restore the numbering in the direction for which the contested numbering decision was canceled⁴¹, and the administrative judge may resort to the means of investigation stipulated in Articles 858. To 865 of the Code of Civil and Administrative Procedure, especially experience, whenever a question of a nature within the meaning of Article 125 of the same law is presented to it.

The result of canceling the final numbering, which mostly concerns real estate that has been disposed of to others, may lead to the loss of the rights of the private successor. This is an issue that was addressed in Articles 86 and 87 of Decree No. 76-63 by protecting the private successor in good faith, which is what the State Council went on to enshrine in the decision. No. 33290 dated 02/06/2015 "...since the cancellation of the numbering of the real rights of the respondent does not apply retroactively to the party intervening in the dispute as he is a special successor to him who had previously declared his rights before the opening petition was published..."

2.2.Amending the real estate book :

There are cases that force litigants to file lawsuits in which they seek to amend the real estate booklet only instead of demanding its cancellation in its entirety. An example of this is a lawsuit to amend the real estate booklet "final numbering" by canceling a statement of incorrect data in it, such as registering the property in one of the fields in the real estate booklet as being in a mortgage state. While the owner possesses a mortgage lifting certificate.

Here, the judicial claim focuses on amending the final numbering by deleting only one of the data. Like every lawsuit, the appeal against the real estate book must be filed before the expiry of the deadline for its expiry, which is 15 years effective from the date of preparing the book. This is what can be seen from the decision of the assembled chambers of the State Council issued in 2012/07/30⁴².

Conclusion :

Based on this brief presentation of the topic « Jurisdiction of the Administrative Court in the field of disputes relating to governor decisions, » it is clear to us that the actions and transactions carried out by the governor ,whether related to the land registration or those operations that are

complementary to the land survey system, such as the deposit and execution operations in addition to signing the governor, which he carries out in connection with the management of the land registry, are in the form of decisions that can be appealed to the administrative judiciary; represented in the administrative courts in accordance with the organic criterion through the direct application of the cancellation lawsuit or the compensation lawsuit. This ensures the supervisory role of the administrative judge at the level of the administrative court, which in turn embodies the protection and guarantee for individuals in the fulfillment of their rights. On the other hand, the ability to challenge the judicial decisions against the decisions of the real estate governor is the embodiment of the principle of accountability, and from there the real estate governor bears responsibility for all his mistakes.

Based on the previous analysis, we try to highlight the most **important results** derived from this research, and we can summarize the most important of them as follows:

Distributing the investigation work to more than one body contributes to alleviating the pressure that the trial judge may be under, as these bodies help him decipher the case and decide on its merits, despite the inequality in the deadlines for creating reports for both the rapporteur and the state governor, as the former did not A deadline is set for him to submit his report, unlike the second, which is limited to one month to do so, starting from the day he receives the case file.

The Algerian legislator actually embodied the positive role of the administrative judge through the Civil and Administrative Procedures Code, granting him a positive role in conducting the investigation procedures ordered, especially his authority to direct orders to the administration. However, the biggest challenge facing the judge is the administration's refusal to justify its actions and to invoke the rule of confidentiality and the issue Acts of expropriation for public benefit.

- In addition to the procedural powers granted to the administrative judge in order to form his conviction, the latter may find himself obliged to use one of the means of investigation, such as resorting, for example, to appointing an expert, and the latter becomes an influential party in the judge's decision, and here the judge is caught in an unavoidable area. However, the judge may exclude the results of experience and justify his ruling in this area, and this is among the examples that highlight the judge's freedom to form his personal conviction and to follow the results of the investigation that he is comfortable with, provided that he explains the reasons he found.

- The legal framework stipulated by the Civil and Administrative Procedures Law bears witness to a group of referrals, which the practical side has shown to raise many problems when applied and in which the specificity of administrative cases or the nature of their topics were not taken into account.

- The legal texts did not precisely define the tasks of the state governor, but rather simply referred to assigning them the same tasks as the Public Prosecution, which included a referral again, which opens the way to raise several questions about what is meant by these tasks. Are they merely asking the governor to implement the law, or are there tasks that go beyond that? . It can be said that with these new principles, the judiciary has come to actually embody the positive role of the judge, as his authority will not stop at canceling the illegal decision, but will go beyond that to assigning the rights of the plaintiff and determining what the administration must fulfill, and this will change the existing relationship between the administrative judge and the administration and change From the stage that was characterized by the modesty and courtesy shown by the administrative judge in confronting the administration, whether under the pretext of separation of powers or under the pretext of the absence of any legal text, it was replaced by a stage in which one of the

most prominent features was the administration standing with individuals before the administrative judge on a great deal of equality.

Finally, we arrive at the inclusion of some **recommendations and suggestions** that we hope will work to improve the performance of the Algerian administrative judiciary, all with the aim of protecting the principle of legality, which are as follows:

- Activating the role of the state governor in Algeria more practically, through his efforts and guidance in resolving the administrative dispute.
- Benefiting from the experiences of countries that have greater experience in the field of administrative judiciary and learning about the findings of comparative judiciary and adopting them in its endeavors.

The administrative judge must play his primary role in the real estate dispute in order to achieve a balance between the private and public interest vis-à-vis the administration by respecting the latter for the rule of law and activating the mechanisms and powers that the legislator has assigned to him by embodying his jurisprudential role in finding solutions to the disputes presented to him.

- Activating the legislative role of the administrative judge, which is recognized whenever the reasons for it are available, which as a whole result in the defects that may affect the legal texts in terms of emptiness, shortcomings, contradiction, and ambiguity, especially what is known in the legal texts regulating real estate in Algeria, which are characterized by their abundance, complexity, and dispersion. The administrative judge is forced to decide on disputes. Submitted before him by any means, within reasonable time frames, and he cannot evade ruling on it under any pretext whatsoever. Article 62, paragraph 07 of the Basic Law of the Judiciary stipulates: "They are considered serious disciplinary errors, especially denial of justice."

- Activating the role of the administrative judge is his legislative role, as he must interpret texts, use analogy, or even rule according to the principles of natural law in the event that there is no legal text, or there is a legislative deficiency, contradiction, or even ambiguity.

¹ Law No. 22-13, dated July 12, 2022 (G.R. No. 3 of 2022).

² For more details on the subject of the real estate registry, see : Judge Houssein Abd Latif Hamdan, *The Real Estate Registry System*, D. I., Al-Halebi Legal Publications, Lebanon, 2007.

³ Bouchnaka Djamel, *The Month of Real Estate Transactions in Algerian Legislation*, ed., Dar Al-Khaldounia, Algeria, 2006, p. 207.

⁴ Bouchnaka Djamel, *ibid.*, p. 207.

⁵ Law No. 76 105, dated 02/09/1976, including the Registration Law, Section No. 81, issued on 12/18/1977, amended and supplemented.

⁶ Hamidatou Khadija, *Real Estate Book Disputes*, a supplementary for obtaining the Master's Degree, specialization : Administrative Law, Faculty of Law and Political Sciences, University of Kasdi Merbah Ouargla, 2013, p. 47.

⁷ Ahmed Belkhiri, The Role of the Administrative Judge in Real Estate Disputes, a memorandum within the requirements for obtaining a Master's degree in Law, specialization : Management and Finance, Faculty of Law and Political Science, Zian Ashour University, Djelfa, p. 18.

⁸ Chawabia Amal, Zarkan Maroua, The real Estate Booklet and its role in proof in Algerian legislation, master's thesis, Faculty of Law and Political Science, University of May 8, 1945, Guelma, 2016, p. 55.

⁹ See Article 15 of Executive Decree No. 76-63, dated 03/25/1976, amended and supplemented, relating to the establishment of the Land Registry, Paragraph No. 30, issued on 04/13/1976.

¹⁰ Aroudj Abd Latif (investigating judge), a lecture entitled "Due Legal Actions of the Month", Chalghoum Aleid Court, 2011, p. 08.

¹¹ Elami Sofiane, Real Estate Registration Disputes in Algerian Legislation, a memorandum supplementing the requirements for obtaining a Master's degree in Law, Mohammed Kheidhar University, Biskra, 2016, p. 27.

¹² See Article 12 of Executive Decree No. 76-63.

¹³ Chawabia Amal, Zarkan Maroua , previous reference, p. 55. Nassima Hachoud, Formalism in Real Estate Sales, An Analytical Study, Master's Thesis, Faculty of Law, University of Algiers, 2003, p. 150. Article 16 of Executive Decree No. 76-63.

¹⁴ Nassima Hashhoud, Formalism in Real Estate Sales, An Analytical Study, Master's Thesis, Faculty of Law, University of Algiers, 2003, p. 150.

¹⁵ Article 16 of Executive Decree No. 76-63.

¹⁶ Muhammad Al-Saghir Baali, Al-Wajeez fi Administrative Disputes, expanded and revised edition, Dar Al-Ulum for Publishing and Distribution, Annaba, Algeria, 2005, p. 144.

¹⁷ Article 13 of the Civil and Administrative Procedures Law.

¹⁸ Article 65 of the Civil and Administrative Procedures Law.

¹⁹ Labiedh Leila, Real Estate Registration Disputes in Algerian Legislation, a thesis submitted to obtain a doctorate in law, Faculty of Law and Political Science, Mohammed Kheidhar University, Biskra, 2011, p. 284.

²⁰ Mohammed Al Sghir Baali, previous reference, p. 145.

²¹ Ben Ammar Zahra, The role of real estate conservatorship in the real estate registration system and its disputes before the Algerian judiciary, graduation thesis submitted to obtain a master's degree within the framework of the doctoral school, specializing in administrative law, Faculty of Law, Badji Mokhtar University, Annaba, 2011, p. 176

²² Ourahmoun Noura, Proving Private Real Estate Ownership in Algerian Legislation, Master's Thesis, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2012, p. 229.

²³ See Article 14 of Order No. 75-74.

²⁴ Sradouni Rakika, Real Property Guarantees in Algeria, Thesis for the Master's Degree in Law, Branch : Administrative Procedure Law, Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, 2013, p. 156.

²⁵ Hamidatou Khadija, previous article. cit., p. 56.

²⁶ Article 23 of Order No. 75-74.

²⁷ Ammar Ouabdi , The Theory of Administrative Responsibility, 2nd edition, Office of University Press, Algeria, 2004, p. 110.

²⁸ Zadi Sid Ali, The competence of the administrative judge in real estate property disputes, a dissertation for obtaining a master's degree in law, specialization : Administrative dispute law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2014, p. 98.

²⁹ Executive Decree No. 10-89 of February 7, 1989 specifies the conditions for occupying housing granted due to necessity of service and the conditions for granting these housing as a concession.

³⁰ Resolution No. 47 dated 01/06/2008, Conflict Court, Supreme Court Journal, special issue, Conflict Court Documents Section, 2009, p. 121, quoted by Hamdi Pasha Omar, Real Estate Judiciary, previous reference, p.84

³¹ Text of Article 3 of Executive Decree No. 10-89: "The granting of real estate housing in the state, after consulting the official who placed the beneficiary agent under his authority, shall be owned by the state or benefit from it as a result of a decision issued by the head of the Department of State Property and Property Affairs, Article 04 of the decree:" The granting of housing owned by public institutions of an administrative nature shall be the result of a decision issued by the director of the institution and approved by the head of the state property affairs department in the state with regional jurisdiction." Text of Article 5 of the decree: "The granting of housing shall be granted to local communities or possessed for use or owned by institutions." The administrative public benefit from it, resulting, as the case may be, from a decision by the governor or the president of the municipal popular council."

³² Abdel-Azim Sultan, Management and Administration of National Properties in Algerian Legislation, Dar Al-Khaldounia for Publishing and Distribution, 2010, Algeria, pp. 206-207.

³³ A joint ministerial decision dated May 17, 1989 specifies the list of jobs and positions that grant the right to franchise housing due to the urgent necessity of the service or for the benefit of the service and the conditions for granting these housing (G.R. No. 1989/06).

³⁴ Resolution No. 968 - 2013 dated 06/15/2004, included in the State Council, 2004, Issue 04, p. 138, quoted from Hamdi Pasha, Real Estate Judiciary, previous reference, p. 86.

³⁵ Muhammad Khaloufi, Real Estate in Algerian Law, Dar Al-Khaldounia, Algeria, 2012, p. 233.

³⁶ Zarrouqi Laila and Hamdi Pasha Omar, Real Estate Disputes in Light of the Latest Amendments and Latest Rulings, Dar Houma, Algeria, 2020, p. 458.

³⁷ Decision No. 000111 dated: 04/09/2012, Conflict Court, published in the Supreme Court Journal, Issue 02, 2011, p. 387 "The numbering recorded in the real estate book is an administrative decision, taken by the Real Estate Custody Department.

The decisions of the Real Estate Conservation Administration, as a public institution with an administrative nature, are subject to judicial oversight.”

³⁸ Hamdi Pasha Omar, Real Estate Judiciary in Light of the Latest Decisions Issued by the Council of State, the Supreme Court, and the Conflict Court, Dar, Houma, Algeria, 2015, p. 60.

³⁹ Imad Al-Din Rahaimia, Legal Means of Proving Private Real Estate Ownership in Algerian Legislation, doctoral thesis specializing in law, Faculty of Law and Political Sciences, University of Tizi Ouzou, 2014, p. 295.

⁴⁰ Saifawi Salima, Real Estate Disputes in Algeria Legislation and Judiciary, doctoral thesis specializing in real estate law, University of Batna 1, Faculty of Law and Political Science, 2017, p. 206.

⁴¹ Zarrouqi, Laila and Hamdi Pasha, Omar, previous reference, p. 460.

⁴² Zarrouqi, Laila and Hamdi Pasha, Omar, previous reference, p. 462.

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