

The Devolution of Vacant Properties in Algerian Law

أيلولة الأملاك الشاغرة في القانون الجزائري

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Abstract :

This research paper addresses the topic of the transfer of vacant property ownership in Algerian law, with a particular focus on the legislative interventions enacted to regulate this matter across different historical periods since independence. It also sheds light on the legal stakes and practical challenges related to determining how such properties are transferred, as well as the implications of their ownership passing to the state. The study involves a review and analysis of relevant legal and regulatory texts, and concludes with a set of recommendations aimed at addressing the identified gaps and shortcomings.

Keywords : Vacant properties; Procedural framework; Vacant funds; Public property; State ownership.

ملخص:

تتناول هذه الورقة البحثية موضوع أيلولة الأملاك الشاغرة في القانون الجزائري، محاولة التركيز على التدخل التشريعي المكرس لمعالجة هذا الموضوع عبر مختلف الفترات الزمنية المعاشة منذ الإستقلال، كما تسلط الضوء على الرهانات القانونية والتحديات العملية المرتبطة بتحديد كيفية أيلولة الأملاك الشاغرة، والآثار المترتبة على انتقال ملكيتها إلى الدولة، وذلك عبر استعراض وتحليل مجموعة من النصوص القانونية والتنظيمية ذات الصلة، ثم إقتراح جملة من التوصيات الكفيلة بسد الثغرات والاختلالات المسجلة.

الكلمات المفتاحية: الأملاك الشاغرة؛ الإطار الإجرائي؛ الأموال الشاغرة؛ الملكية العامة؛ ملكية الدولة؛

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Introduction:

The issue of the devolution of vacant properties occupies a significant place within the Algerian legal and economic framework, especially in light of the post-independence context marked by the mass departure of settlers and the consequent abandonment of numerous properties. This situation prompted the Algerian legislator to intervene and regulate the legal status of these properties—particularly those left behind by former colonial occupants—through the adoption of various legal instruments whose content evolved substantially between the pre-1975 and post-1975 periods. Together, these texts reveal the gradual and adaptive approach taken by the Algerian legislator in organizing the management and transfer of vacant assets.

While the overarching aim of these legal provisions was to ensure that ownership of such properties devolved to the State, thereby guaranteeing their protection and proper management, the implementation process gave rise to a series of legal and practical challenges. These challenges revolved around the interaction between private property rights and the State's prerogatives in consolidating public ownership and asserting sovereignty over such assets. The approach adopted thus reflected the complex interplay of social, economic, and political considerations that shaped Algeria's legislative policy over time. The regime evolved from a provisional administrative mechanism to a fully codified legal framework ensuring the permanent transfer of vacant property to the State.

In pursuit of this objective, this paper seeks to analyze the legislative treatment of vacant properties in Algeria by identifying the mechanisms and procedures established to regulate their devolution and by examining the legal implications of such transfer. It addresses the following central questions: What are the main instruments and mechanisms used by the Algerian legislator to regulate the devolution of vacant properties? And what are the legal effects resulting from this transfer of ownership to the State?

To answer these questions, the research adopts both analytical and descriptive methods to trace and interpret the evolution of the relevant legal provisions within their socio-economic and political context. The historical method is also used to situate these legislative developments within Algeria's broader legal history, given the historical legacy of property relations in the country.

In accordance with the adopted methodology, the paper is structured around two main sections:

1. The mechanisms governing the devolution of vacant properties;
2. The legal effects resulting from such devolution.

Section I: Mechanisms Governing the Devolution of Vacant Properties

As previously indicated in the introduction, the Algerian legislator's approach to regulating vacant properties evolved through two major stages: the period preceding 1975—often referred to as the “revolutionary phase”¹—and the period following 1975. The legal instruments and procedures governing the inclusion of such properties within the State's assets therefore differed according to the legislative phase in which they were enacted. The following subsections analyze the mechanisms applicable in each phase.

A) Procedures Applied Before the Adoption of the Civil Code

In the aftermath of independence, and in an effort to consolidate national sovereignty, the Algerian legislator enacted several legal instruments aimed at regularizing property ownership.

These measures sought to restore social stability disrupted by the mass exodus of European settlers, which had resulted in widespread economic dislocation due to the closure of farms, factories, and commercial premises. To address this situation, specific procedures were entrusted to competent administrative authorities, as detailed below.

A)-1: Procedures for the Inclusion of Vacant Properties Prior to 1975

An examination of the legal instruments enacted after independence and before Ordinance No. 66-102 of May 6, 1966 (concerning the transfer of vacant property to the State)² reveals the following:

- **Ordinance No. 62-20 of August 24, 1962**, on the occupation of vacant dwellings, authorized provincial governors (walis) to seize and manage all properties that had remained vacant for more than two months. This measure could be taken within thirty days of the ordinance's publication in the *Official Gazette of the Algerian State*, without the need for prior notice or publication. However, this ordinance did not explicitly determine the ownership status of the properties declared vacant.³
- **Decree No. 62-03 of October 23, 1962**, concerning the regulation of transactions, sales, and leases of agricultural land, prohibited all dealings with vacant property,⁴ whether movable or immovable. Article 5 of the decree further stipulated that property subject to annulled transactions was to be treated as vacant property and governed by the relevant legal provisions. Yet, like the previous text, it did not specify the administrative procedures for transferring such property to the State.
- **Decree No. 63-88 of March 18, 1963**, regulating vacant property, provided that any declaration of vacancy must be issued by the competent wali and published in the *Official Gazette* within fifteen days.⁵ The decree also allowed affected parties to contest the declaration before the summary judge within two months of publication. Once this period elapsed without challenge, or if the challenge was rejected, the declaration became final.⁶ The decree placed the management of such properties under the administrative supervision of the Presidency of the Republic.⁷ Despite these provisions, it did not clearly outline the procedures for incorporating such property into the State's assets.
- **Decree No. 63-168 of May 9, 1963**,⁸ on property placed under State protection, authorized the wali to place industrial, commercial, artisanal, and agricultural properties under State protection following an investigation if their exploitation was deemed prejudicial to public order or social peace. Yet, this decree, too, failed to detail the procedural steps for such protection or the mechanism for declaring vacancy,⁹ although it referred to Decree No. 63-88 for the management of these properties.

From the foregoing, it appears that, while these early legal texts collectively recognized the existence of "vacant properties," they did not definitively determine the process of their devolution. This legal gap was addressed by **Ordinance No. 66-102 of May 6, 1966**, which unequivocally transferred ownership of all vacant property—movable or immovable—to the Algerian State.

Before the enactment of this ordinance, the **General Directorate for Vacant Property and Real Estate Management** had been established under **Decree No. 65-174 of May 15, 1965**, under the authority of the Ministry of Housing and Urban Planning, to manage all matters relating to vacant property.

After the issuance of Ordinance No. 66-102, ownership of all vacant property passed automatically to the State, without the need for additional administrative procedures. The

management of these assets was subsequently entrusted to **provincial housing offices**, later reorganized into **Offices for Housing Promotion and Real Estate Management (OPGI)**.

Later, **Ordinance No. 74-26 of February 20, 1974**, on the creation of municipal land reserves,¹⁰ authorized municipalities to incorporate built-up land into their reserves when located within urban areas. This effectively allowed municipalities to include vacant properties in their land reserves, subject to approval by the municipal assembly. This system remained in place until **Law No. 90-25 of November 18, 1990**, on land-use orientation,¹¹ repealed Ordinance 74-26 through Article 88.

A)-2: Uthorities Involved in the Process Before 1975

During this early phase, the wali (provincial governor) was the sole authority empowered to act, based on the principle of “**dual representation**”, under which the wali was considered both a representative of the State and of the province.¹²

Under Decree No. 63-168, the wali could place properties under State protection if their use endangered public order. As such, walis held extensive powers in managing vacant property—powers strengthened by the absence of deliberative institutions at the time.¹³

B) Procedures Applied After the Adoption of the Civil Code

Within the Algerian Civil Code, the regulation of vacant property is addressed in a single provision—**Article 773**—which, although it definitively confirms the transfer of ownership of vacant property to the State, does not specify the procedures by which such transfer occurs.¹⁴

The same principle was reaffirmed by **Law No. 90-30 of December 1, 1990**, on national property (*Code du domaine national*), particularly in Articles 18 (paragraph 8) and 48, which confirmed that vacant property is incorporated into the State’s private domain (*domaine privé de l’État*), excluding other public legal entities. The following subsections detail the procedural framework established under these texts.

B)-1: Procedures for the Inclusion of Vacant Property After 1975

The inclusion of vacant property within the State’s private domain requires compliance with the procedures prescribed by the **Law on National Property (Law No. 90-30)**¹⁵ and the **Executive Decree No. 12-427 of December 16, 2012**,¹⁶ defining the conditions and modalities for the administration and management of State-owned public and private property.¹⁷

Under these texts, when a wali or the relevant Department of State Property (*Direction des Domaines*) becomes aware—by any means—of the existence of an unowned property (movable or immovable), they are required to follow the legal procedures for incorporating it into the State’s private domain, as described below.

B)-1-1: Procedures in the Case of Absence of an Owner or Heir

According to **Article 51** of the Law on National Property, the devolution of a vacant property to the State due to the absence of an owner or heir follows three main stages:

1. Investigation and search for heirs;
2. Obtaining a judicial order declaring the absence of heirs and placing the estate under judicial custody;

3. Declaration of vacancy and transfer of the estate to the State.

However, Article 51 lacks precision regarding the authority responsible for conducting investigations, the time limits, and the procedural means (whether by petition or formal claim). It also fails to identify the entity entrusted with judicial custody.

In contrast, **Articles 180 and 181** of Executive Decree No. 12-427 provide greater procedural clarity, as detailed below.

- **Investigation and Search for Heirs**

Under **Article 180** of Executive Decree No. 12-427, when the property is of unknown ownership, the territorially competent **Director of State Property** must initiate an investigation with the land registry and tax authorities, and, if necessary, with the relevant consular services if the property was previously held by a foreign national.

Simultaneously, a public notice seeking the possible owner or heirs must be published in at least two national newspapers and displayed in all municipal offices of the wilaya for a period of four months. Where possible, notice must also be served at the last known address of the owner, and if the property is occupied, the occupant or user must likewise be informed.

- **Application for a Judicial Order to Place the Property Under Custody**

Unlike Article 51 of the Law on National Property, which does not specify how to engage the court, **Article 181** of the Decree explicitly provides that, if no ownership claim is made within one year following the four-month notice period, the **Director of State Property**, acting on behalf of the Minister of Finance, may petition the competent court for an **order placing the property under judicial custody**.

This order authorizes the State Property Administration to manage the property for the duration of the acquisitive prescription period established by the Civil Code. During this period, the administration is responsible for the property's preservation and maintenance, and may lease it or grant temporary concessions revocable at will.

- **Judicial Declaration of Vacancy**

Once the prescription period expires, the court—upon the filing of a claim—may issue a **judgment declaring the property vacant** and ordering its transfer to the State. This judgment must be recorded in the land registry (*conservation foncière*).

Upon registration, the property is formally incorporated into the State's private domain and managed in accordance with existing regulations. This interpretation is consistent with **Decision No. 4396 of May 27, 2002**, issued by the Council of State.¹⁸

After the property's integration, its management is entrusted to the **Directorate of State Property**, pursuant to **Article 8(3) of Executive Decree No. 91-65 of March 2, 1991**, which regulates external services of the State Property and Land Registry administration.¹⁹

It is important to note that the State's rights over vacant estates are subject to deductions for funeral expenses, confirmed debts of the deceased, and any valid testamentary dispositions.²⁰

If a potential heir later emerges, the law guarantees their right to reclaim the estate incorporated into the State's property. They may file a lawsuit before the competent court within the prescription period provided under **Article 829 of the Civil Code**, seeking restitution of the estate and the release of the State's possession.²¹

Should the claim be legally substantiated, the court must apply **Article 182 of Executive Decree No. 12-427**, which refers to **Article 54 of the Law on National Property**, allowing the claimant either to recover the property (if possible) or to receive compensation equivalent to its value at the time ownership is recognized. The State must then return the property and any profits derived therefrom, deducting maintenance and improvement costs.²²

Some legal scholars argue that the State's ownership becomes final only after the 33-year prescription period under Article 829 of the Civil Code has elapsed, while others, such as **Professor A. Yahiaoui**,²³ maintain that this interpretation is illogical, since the State's ownership arises not from possession but from a **final judicial judgment** duly registered in the land registry.²⁴

- **Practical and Procedural Controversies**

Finally, it is worth noting some of the controversies that have been raised regarding the implementation of the provisions of the two articles (Article 51 of the Civil Procedure Code and Article 181 of Executive Decree 12/427 of December 16, 2012, mentioned above). We will attempt to address these issues through the following:

- The two previous texts (Article 51 of the Civil Procedure Code and Article 181 of Executive Decree 12/427) are criticized for not specifying the legally authorized body to file a vacancy claim. Is it the governor or the director of state property?

- The two previous texts (Article 51 of the Civil Procedure Code and Article 181 of Executive Decree 12/427) are also criticized for not specifying the judicial authority with jurisdiction, both locally and qualitatively, in this type of claim. This is another controversy that has divided jurisprudence: is it the ordinary judge or the administrative judge?

- Finally, the two previous texts (Article 51 of the Civil and Commercial Procedure Code, Article 181 of Executive Decree 12/427) are criticized for not specifying the party against whom the lawsuit related to the declaration of vacancy is to be filed. Or rather, who is the defendant therein?

Therefore, this controversy relates to the principles and conditions for filing lawsuits. According to Article 15 of Law 08/09, which includes the aforementioned Code of Civil and Administrative Procedure, it stipulates that the petition in which the lawsuit is filed must include information about both parties to the lawsuit, including name, surname, etc. However, in the present case, the law did not specify, through the text of the two articles (Article 51 of the Civil and Commercial Procedure Code, Article 181 of Executive Decree 12/427), who the lawsuit is to be filed against.

In practice, it is observed that lawsuits filed to obtain a ruling declaring a vacancy due to the absence of an owner or heir may be rejected on the grounds of formality, as the defendant in the lawsuit is unknown. Consequently, the lawsuit is not admissible upon filing with the court clerk. This places the State Property Directorate in a difficult position: "Against whom is the lawsuit filed?" This is imposed by the legal vacuum and practical reality. Those charged with handling disputes at the State Property Directorates have endeavored to find a solution to accept lawsuits filed in such cases and, consequently, obtain a ruling declaring the vacancy from the competent courts.

Initially, the request was submitted in the form of a registered letter to the president of the competent court, requesting a declaration of vacancy due to the absence of an owner or heir. However, the court rejected the request on the grounds that it did not meet the legal requirements for filing the lawsuit. This is because the law requires that a lawsuit be filed, not a request, in accordance with Article 181, Paragraph 4 of Executive Decree 12/427 mentioned above.

Then the lawsuit was filed against the public prosecutor on the basis that he is aware of all cases in which the state is a party, but it was met with the same fate, as it was rejected on the grounds of lack of legal basis indicating that the lawsuit was being filed against the public prosecutor or that he was legally qualified to be in the position of the defendant in this type of lawsuit. Thus, the problem still exists: “Against whom is the lawsuit being filed?” In practice, such claims are often rejected on procedural grounds because the defendant is unidentified. To overcome this, practitioners have experimented with various procedural strategies—such as filing a registered letter to the court president or suing the public prosecutor—but these, too, were dismissed for lack of legal basis. The question of “against whom the claim should be filed” therefore remains unresolved in both law and practice

B)-1-2: Procedures in the Case of Renunciation by an Heir of His Share in the Estate

Under **Article 53 of Law No. 90-30 on National Property**, a renunciation by an heir of his share in the estate in favor of the State must follow judicial procedures. The State is entitled to bring a civil action before the competent court to establish the validity of the renunciation and to have the property placed under the judicial custody of the **State Property Administration**. However, the effective transfer of ownership does not occur until a **judgment declaring the property vacant** is issued, in accordance with **Article 51** of the same law.

In this context, **Article 176 of Executive Decree No. 12-427 of December 16, 2012** confirms that, in such cases, the administrative procedures governing **donations and bequests** apply. The decree expressly refers to **Articles 169 and 170**, which regulate the formalities applicable to gifts and legacies made to the State.

Professor **Amar Yahiaoui** supports the application of the decree’s provisions in this context, emphasizing that the act of renunciation is the result of the heir’s **free and informed will** and should therefore be treated analogously to a **voluntary donation**, provided it is free from vices of consent and does not constitute an abuse of right. Consequently, Yahiaoui argues that an heir may lawfully transfer his hereditary share directly to local public entities, as such a transfer amounts to a donation rather than a devolution of vacant property—which, by law, can only accrue to the State.²⁵

B)-1-3: Procedures in the Case of Property Belonging to Missing or Absent Persons

A **missing person (mufqūd)** is one whose whereabouts and life or death are unknown, whereas an **absent person (ghā’ib)** is someone who, due to force majeure, is unable to return to his place of residence to manage his affairs personally or through a representative, to the detriment of his interests. Under Algerian law, the absent person is assimilated to the missing person for purposes of property management.²⁶

This situation is governed by **Article 177 of Executive Decree No. 12-427**, which establishes the State’s right, through the **Minister of Finance**, to claim ownership over property belonging to missing or absent persons, as defined by **Article 31 of the Civil Code** and **Articles 109 and 110 of the Family Code**.

In such cases, the Minister of Finance must bring a legal action before the competent court seeking a judgment **declaring the person missing or absent**, in accordance with **Article 111 of Law No. 84-11 of 1984 on the Family Code**, as amended and supplemented.

After the lapse of the investigation and waiting period determined by the court, the Minister of Finance may petition the court to issue a **judgment declaring the person presumed dead**, which opens the succession proceedings pursuant to applicable inheritance laws. Should the missing person later reappear, the property rights are restored in accordance with the provisions of the Family Code.

Accordingly, the State, represented by the Minister of Finance, must undertake **two distinct judicial proceedings**:

1. The first, to obtain a declaration of absence or disappearance;
2. The second, to obtain a judgment of presumed death, which triggers the transfer of the estate to the State.

B)-2: Authorities Involved in the Devolution Process After 1975

Following the enactment of **Law No. 90-30 on National Property**, the range of actors involved in the devolution of vacant property expanded beyond the wali, who had been the sole actor during the pre-1975 period. The post-1975 legal framework brought several administrative and institutional actors into play, as outlined below.

B)-2-1: Directorate of State Property (Direction des Domaines)

The management and protection of national property are entrusted to the **Directorates of State Property**, established under **Executive Decree No. 91-65 of March 2, 1991**.²⁷ These decentralized administrative bodies exist in every wilaya (province) and operate under the Ministry of Finance.²⁸

Their primary responsibilities include:

- The management, preservation, and valuation of State property;
- Conducting inventories of State assets;
- Drafting and authenticating deeds related to property transactions involving State assets; and Administering vacant and unclaimed estates.²⁹

They also play a central role in the **investigation and verification process** preceding the petition for judicial custody and subsequent incorporation of the property into the State's private domain.

B)-2-2: The Wali (Provincial Governor)

Under **Law No. 12-07 of February 21, 2012** on the organization of the wilaya,³⁰ **Article 110** designates the wali as the representative of the State and the government within the province.

Regarding vacant property, **Article 192(2) of Executive Decree No. 12-427** provides that: "The territorially competent wali shall, in respect of State-owned property located within his jurisdiction, exercise legal actions for the protection of the State's property interests, unless otherwise provided by law." Accordingly, the wali may represent the State in judicial or administrative proceedings involving vacant or unclaimed property within his province.

B)-2-3: The Notary

As a public officer responsible for drafting and authenticating official instruments, the **notary** plays an important role in the management of vacant property. Pursuant to **Articles 169 and 173 of Executive Decree No. 12-427**, the notary is legally obligated to **notify the Minister of Finance** and the relevant public institutions as soon as an estate involving potential vacant property is opened.

This ensures that the State is duly informed of cases where it might have an interest as a potential successor or beneficiary of unclaimed assets.

B)-2-4: The Office for Housing Promotion and Real Estate Management (OPGI)

As mentioned earlier, the **Ordinance No. 66-102 of May 6, 1966** definitively transferred ownership of vacant properties to the State. In the years following, the management of these properties was progressively reorganized. Initially handled by provincial housing departments, it was later assigned to the **Housing Promotion and Real Estate Management Offices (Offices de Promotion et de Gestion Immobilière – OPGI)**, established by **Ordinance No. 74-63 of June 10, 1974**.³¹

The OPGIs were subsequently restructured under **Decree No. 85-270 of November 5, 1985**, which classified them as **public industrial and commercial establishments** with legal personality and financial autonomy.³² Later, **Executive Decree No. 91-147 of May 12, 1991**, as amended by **Executive Decree No. 93-08 of January 2, 1993**,³³ subjected these offices to the rules of **commercial law** and placed them under the supervision of the **Minister of Housing** instead of the wali.³⁴

Their role in relation to vacant property was further clarified by **Executive Decree No. 93-290 of November 28, 1993**, concerning the transfer of ownership of vacant property previously devolved to the State under Ordinance No. 66-102 to the OPGIs.³⁵

Under **Article 1** of this decree, full ownership of unoccupied premises—whether residential, commercial, or professional—transferred to the State under Ordinance 66-102 and not yet sold to occupants under **Law No. 81-01 of February 7, 1981**, was transferred to the OPGIs.

Article 2 excluded from this transfer any premises assigned to public institutions, authorities, or agencies. The process required a **joint inventory** by the local Directorate of State Property and the regional OPGI director, approved by a **joint ministerial decision** between the Ministers of Finance and Housing. Upon publication of that decision, the properties were deemed fully owned by the OPGIs.³⁶

It should be noted that **nationalized industrial enterprises** were excluded from this transfer process, and ownership of properties not transferred to the OPGIs remained vested in the State, with their management entrusted to the **Directorate of State Property**.

Section II: Legal Effects of the Devolution of Vacant Properties

The preceding analysis has demonstrated that the Algerian legislator's treatment of vacant property has evolved through two distinct historical and legal phases, each characterized by its own conceptual and procedural framework.³⁷ It is therefore essential to distinguish between the legal

effects produced under the **pre-1975 legislation**, on the one hand, and those arising from the **post-1975 legal framework**, on the other.

Accordingly, this section examines, first, the effects of the devolution of vacant property prior to 1975 (A), and second, the consequences of such devolution under the subsequent legislative instruments adopted after 1975 (B).

A) Effects of the Devolution of Vacant Property Before 1975

Once the conditions of vacancy were established—whether concerning real estate, farms, or agricultural land—the property was deemed *vacant*. However, unlike the French Civil Code, particularly **Article 539**, which provides that vacant property automatically devolves to the State, the Algerian system accorded these assets a distinct legal character.

The legal nature of these assets was the subject of significant doctrinal debate, particularly concerning the legal implications of the **declaration of vacancy**. Certain scholars argued that such a declaration was merely a **precautionary administrative measure**, not a definitive transfer of ownership to the State, nor an act of nationalization. They supported this position by referring to **Article 12 of Ordinance No. 62-20 of August 24, 1962**, which permitted the reinstatement of owners wishing to return and manage their former estates.

Conversely, **French jurisprudence** regarded the declaration of vacancy as a definitive **transfer of ownership** to the Algerian State.³⁸

From a legal standpoint, the declaration of vacancy suspended the original owner's rights of administration and management, without necessarily extinguishing ownership itself. As Dr. Ben Rokia Ben Youssef observed, the Algerian regime of vacancy during the 1960s was **less radical** than that established by **Articles 539 and 713** of the French Civil Code, which categorically vested ownership of all unclaimed property in the State.³⁹

Consequently, the declaration of vacancy produced specific legal effects, as reflected in **Ordinance No. 62-20**, notably in **Articles 2, 3, 12, and 13**, which allowed the original owner to reclaim his property upon return and permitted creditors to take precautionary measures to secure their claims.

Thus, ownership formally remained with the absent owners, albeit under significant administrative restrictions imposed by the following decrees:

- **Decree No. 62-02 of October 23, 1962**, which established management committees for vacant farms,⁴⁰ subjected the return of absentee owners to the discretionary approval of the provincial authorities, who could either accept or reject their reintegration.
- **Decree No. 62-03 of October 23, 1962**, which prohibited any sale, lease, or sharecropping of these farms except to public bodies or legally recognized management committees, effectively limiting the owner's rights to mere personal use or exploitation.
- **Decree No. 63-64 of February 18, 1963**,⁴¹ which regulated rent and occupancy compensation for unoccupied residential and professional premises, requiring occupants without written proof of ownership or lease to pay compensation determined by the wali.
- **Decree No. 63-88 of March 18, 1963**, which forbade creditors of absentee owners from exercising precautionary or enforcement measures against the property of declared vacant farms.⁴² Article 15 of this decree invalidated any legal provisions inconsistent with its terms.

Enterprises declared vacant under this decree acquired **private legal personality**, either through a verification process or a formal decision of the wali (Article 4). They were required to register in the commercial registry within two months of publication (Article 5). Hence, each declaration of vacancy created a **new legal entity**, as if the enterprise had been reconstituted *de novo*, ensuring the settlement of debts and continuity of operation.

Article 12 of the same decree further stipulated that no enforcement proceedings could be initiated against property declared vacant, from the date on which the declaration took effect. Creditors of the former owners retained recourse only against their debtors' non-vacant assets.

The issue of ownership of residential and commercial premises classified as vacant remained unsettled until **Ordinance No. 66-102 of May 6, 1966**, which definitively resolved the matter by declaring that **ownership of all vacant movable and immovable property transferred to the State**.⁴³ The ordinance, concise yet decisive, comprised three articles:

Article 1: "Ownership of vacant movable and immovable property shall be transferred to the State."

Article 2: "The implementation modalities of this ordinance shall be determined by decree."

Article 3: "All provisions contrary to this ordinance are hereby repealed."

Through this ordinance, the Algerian legislator **definitively and irreversibly vested** ownership of vacant property in the State.

Some scholars, such as **Borella**, have suggested that the term "vacant property" (*biens vacants*) in the context of this ordinance referred primarily to **residential premises**, as agricultural and industrial properties had already been incorporated into **self-managed enterprises** (*autogestion*) under **Decree No. 63-88 of March 18, 1963**.⁴⁴

This interpretation aligns with the declaration of **President Houari Boumediene** on May 8, 1966,⁴⁵ in which he affirmed that most of the properties abandoned by settlers after independence were considered vacant and, as such, had become **State property**,⁴⁶ without compensation. Unlike nationalization, which could entail indemnity,⁴⁷ the devolution of vacant property to the State occurred *ipso jure* and without restitution.

Occupants of such property were granted only **usufructuary rights**, while legal ownership remained vested in the State. This arrangement generated numerous disputes, reflecting the tension between individual aspirations for ownership and the State's socialist economic policy, which prioritized social utility over profit.⁴⁸

Ordinance No. 66-102 was further complemented by **Decree No. 68-88 of April 23, 1968**, establishing the basic law governing the occupancy of residential and professional premises transferred to the State. The decree also applied to annexes and dependencies, whether built or unbuilt (Article 3).⁴⁹

Under **Article 4**, authorization to occupy such premises was granted by the wali or the district chief, following an administrative investigation. The resulting authorization served as a **rental permit** and had to be regularized within six months,⁵⁰ failing which occupants could be evicted by order of the wali (Articles 23–24).

Occupants were required to:

- Accept the premises in their existing condition;
- Personally use them and refrain from transferring occupancy;
- Maintain and preserve the property;
- Pay rent and a three-month security deposit;
- And obtain prior authorization for any modifications.⁵¹

Violation of these obligations resulted in eviction.⁵² These provisions thus established a regulated tenancy regime, maintaining public control over property management while granting limited private use.⁵³

B) Effects of the Devolution of Vacant Properties under the Post-1975 Legal Framework

The principal legal effect of deeming property *vacant* under the post-1975 framework is its incorporation into the **State's private domain**, as stipulated by **Law No. 90-30 of 1 December 1990** on national property, and the subsequent regulations governing the management of State property (notably **Executive Decree No. 12-427 of 16 December 2012**). Once incorporated, such property is administered and disposed of in accordance with the norms and procedures applicable to State assets.

B)-1: Effects under the Civil Code

Article 773 of the Algerian Civil Code confirms that vacant assets — whether movable or immovable — become State property. However, the article does not expressly specify whether such assets enter the State's **public domain (domaine public)** or its **private domain (domaine privé)**. This lacuna leaves room for interpretative analysis and administrative practice to determine the legal regime applicable to each specific category of asset.

B)-2: Effects under the Law on National Property (Law No. 90-30)

The only effect of considering a property vacant under the aforementioned National Property Law 90/30 of December 1, 1990, is its inclusion among the state's private national properties, to be managed and administered under the provisions of Executive Decree 12/427 of December 16, 2012, which specifies the terms and conditions for the management and administration of public and private state properties.

It is also worth noting the provision contained in Article 27 of Legislative Decree 93/03 of March 1, 1993, relating to real estate activity,⁵⁴ which stipulates that administrative contracts related to the granting, leasing, or sale of previously vacant properties, drawn up in accordance with the legislation that applied to them, are not invalidated by the cancellation of the contracts and decisions that originally classified these properties as vacant properties.

In this capacity, and depending on the case, the following applies:

- For each sale made pursuant to Law 81/01 of February 7, 1981,⁵⁵ as amended and supplemented, the administration is only required to pay the original owner the actual sale price, if necessary, with an additional amount corresponding to the value of the discounts granted by the state to holders of current legal rights and interests.

- For legal occupiers as tenants, their right to remain in the premises is imposed on the original owner, who thus replaces the lessor role previously assumed by the entity or public utility holding the property.

The provisions contained in this article constitute exceptional provisions that operate contrary to those known in general rules, which are based on the principle that "what is built on falsehood is falsehood." This means that, had this principle been applied, administrative decisions and/or contracts relating to the granting, leasing, or sale of previously vacant properties would have been invalidated as a result of the invalidity of the contracts and decisions that were the basis for classifying these properties as vacant properties.

However, it is clear that the legislator, by establishing these provisions, intended to protect the situations arising from the disposal (grant, sale, or lease) of properties classified as vacant. Indeed, these provisions remain in effect to this day, despite the repeal by Law 11/04 of February 17, 2011, which sets the rules governing real estate development activities,⁵⁶ of the provisions of Legislative Decree 93/03, with the exception of a single article, Article 27, which remains in effect. This means that the aforementioned provisions remain in effect to this day.

In the same context, Article 42 of Order 10/01 of August 26, 2010, including the 2010 Supplementary Finance Law,⁵⁷ stipulates the nullity of all transactions made by the original owners, inside or outside the country, regarding real estate properties whose ownership has been transferred to the state as a result of nationalization measures, transfer to the state, or the owners' abandonment of the property. The text of Article 42 mentioned above, in its second paragraph, also prohibits the recovery of such properties if they are relinquished by the state.

Conclusion:

This research has sought to shed light on the legal regime governing the devolution of vacant properties in Algerian law. By tracing the legislative and regulatory instruments enacted since independence, the study has shown that the Algerian approach has evolved from **temporary, protective administrative measures** to a **codified legal framework** culminating in the definitive transfer of vacant assets to the State. This evolution reflects an interplay of historical legacies, socioeconomic priorities, and public policy objectives that shaped legislative choices during pivotal phases of Algeria's modern history.

Several principal conclusions emerge from the analysis:

1. The Algerian legal regime for the devolution of vacant property has passed through two distinguishable phases: a **pre-1975 period** characterized by politically and socially driven (revolutionary) measures, and a **post-1975 period** marked by progressively more detailed statutory and regulatory instruments (notably Law No. 90-30 and Decree No. 12-427).
2. Despite legislative progress, the existing corpus of law still contains **procedural lacunae and ambiguities** — particularly in relation to the specification of competent judicial bodies, the legal capacity of the defendant in actions for declaration of vacancy, and the precise procedural standing of various administrative actors.
3. The absence of clear procedural rules concerning whom to sue, which court has jurisdiction, and which authority is competent to initiate vacancy proceedings continues to generate legal uncertainty and practical difficulties in litigation involving vacant estates.
4. While the State may ultimately become the effective owner of vacant assets, such ownership is notionally contingent upon the completion of prescribed legal procedures; moreover, the law preserves potential restitutive remedies for rightful owners or heirs who come forward within the legally prescribed periods.

Recommendations

On the basis of the foregoing findings, the following recommendations are proposed to improve legal clarity and procedural efficiency:

1. **Legislative Reform:** The Algerian legislator should undertake a targeted amendment of the current statutory framework to address the procedural gaps identified — notably, to designate explicitly the authority (wali, Director of State Property, or Minister of Finance) empowered to institute vacancy proceedings, to define the defendant in such proceedings, and to determine the competent judicial forum (ordinary or administrative).
2. **Harmonization of Legal Texts:** It is essential to harmonize the overlapping and sometimes inconsistent provisions governing vacant property across the various instruments (Ordinance No. 66-102, the Civil Code, Law No. 90-30 on national property, Family Law provisions, and related decrees) to eliminate ambiguity and ensure coherent application.
3. **Inter-Institutional Coordination and Practical Guidelines:** Strengthen coordination among the institutions involved (Directorates of State Property, walis, land registries, courts, OPGIs, notaries) by issuing comprehensive practical guidelines and procedural manuals. Such instruments should set out step-by-step procedures for investigation, publication, judicial referral, custody, inventorying, and final registration, thereby enhancing transparency, speed, and legal certainty.

This paper constitutes an initial effort to clarify the legal architecture of vacant-property devolution in Algeria. It is hoped that these findings and recommendations will contribute to informed legislative reform and to improved judicial and administrative practice in the management of vacant estates.

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¹ BLANC Pierre, *Algeria 50 Years Later*, L'Harmattan, 5–7 rue de l'École Polytechnique, Paris, 2011, p. 136.

² Ordinance No. 66/102 dated 06/05/1966, concerning the transfer of vacant properties to the State, Official Journal of the Algerian Republic, No. 36 of 1966, dated 06/05/1966.

³ Art. 1, Ordinance No. 62-20 of 24/08/1962 concerning the protection and management of vacant properties, Official Journal of the Algerian Republic, No. 12, 1962, dated 07/09/1962.

⁴ Art. 1, Decree No. 62-03 of 23/10/1962 regulating transactions, sales, rentals, leases, and concessions of movable and immovable properties, Official Journal of the Algerian Republic, No. 01, 1962, dated 26/10/1962.

⁵ Art. 6, Decree No. 63-88 of 18/03/1963 regulating vacant properties, Official Journal of the Algerian Republic, No. 15, 1963, dated 22/03/1963, repealed by Decree 80-278 of 29/11/1980, Official Journal of the Algerian Republic, No. 49, dated 02/12/1980.

⁶ Art. 8, Decree No. 63-88 of 18/03/1963, *Op. cit.*

⁷ Art. 14, Decree No. 63-88 of 18/03/1963, *Op. cit.*

⁸ Art. 14, Decree No. 63-168 of 09/05/1963, concerning the placing under State protection of movable and immovable properties whose method of acquisition, management, exploitation, or use may disturb public order or social peace, Official Journal of the Algerian Republic, No. 30, 1963, dated 14/05/1963.

⁹ GUECH Nacereddine, *Legislation of Vacant Properties in Algeria*, Algerian Review of Legal, Economic and Political Sciences (RASJEP), No. 01, 1964, p. 137.

¹⁰ Ordinance No. 74/26 dated 20/02/1974, Official Journal of the Algerian Republic, No. 19 of 1974, dated 05/03/1974.

¹¹ Law No. 90/25 dated 18/11/1990, Official Journal of the Algerian Republic, No. 49 of 1990, dated 18/11/1990.

¹² MAHIOU Ahmed, *Lectures on Administrative Institutions*, translated by Mohamed Arab Sacsila, University Press, Algiers, 5th edition, 2009, p. 226.

¹³ See MAHIOU Ahmed, *Lectures on Administrative Institutions*, previous reference, p. 229.

¹⁴ Ordinance No. 75/58 dated 26/09/1975, concerning the Civil Code, amended and supplemented, Official Journal of the Algerian Republic, No. 78 of 1975, dated 30/09/1975.

¹⁵ Law No. 90/30 dated 01/12/1990 concerning the National Property Law, Official Journal of the Algerian Republic, No. 52 of 1990, dated 02/12/1990, amended and supplemented by Law 08/14 dated 20/07/2008, Official Journal of the Algerian Republic, No. 44 of 2008, dated 03/08/2008.

¹⁶ Executive Decree 12/427 dated 16/12/2012, Official Journal of the Algerian Republic, No. 69 of 2012, dated 19/12/2012.

¹⁷ The provisions of Executive Decree 91/454 have been deliberately omitted as they became unnecessary after being repealed by the aforementioned Executive Decree 12/427.

¹⁸ SAIS Jamal, *Algerian Jurisprudence in Real Estate Law*, Part Two, Click Publications, El Mahdiyya, Algeria, 2nd edition, 2013, pp. 894–895.

¹⁹ Executive Decree 91/65 dated 02/03/1991, Official Journal of the Algerian Republic, No. 10 of 1991, dated 06/03/1991.

²⁰ YAHIAOUI Amar, *Summary of Private Properties Belonging to the State and Local Communities*, Houma Press, Algiers, 2001, p. 60.

²¹ See Hamdi Bacha Omar & Zerouki Leila, *Real Estate Disputes*, Houma Press, Bouzareah, Algeria, 1st edition, 2003, p. 248.

²² Although this last judgment provides protection for constitutionally recognized private property, it contradicts the principle of *res judicata*, because if the estate is incorporated into State private property by virtue of a vacancy declaration, the same case cannot be reopened in the competent court as it has been definitively judged. Reopening procedures may destabilize real estate transactions. For more, see YAHIAOUI Amar, *Summary of Private Properties Belonging to the State and Local Communities*, previous reference, p. 62.

²³ The judgment is recorded in the Real Estate Registry to transfer ownership to the State and is valid against all according to Article 15 of Ordinance 75/74 dated 12/11/1975 concerning the preparation of general land surveys and the establishment of the land register.

²⁴ See YAHIAOUI Amar, *Summary of Private Properties Belonging to the State and Local Communities*, previous reference, p. 59.

²⁵ See YAHIAOUI Amar, *State Property Disputes*, Houma Press, Algiers, 1st edition, 2004, p. 71. “This opinion is contrary to the provisions of Article 53 of Law 90/30 concerning national property, mentioned above.

²⁶ See Article 109 of Law No. 84/12 dated 09/06/1984, concerning Family Law, amended and supplemented by Ordinance 05/02 dated 27/02/2005, Official Journal of the Algerian Republic, No. 15 of 2005.

²⁷ See Article 8 of Executive Decree 91/65 dated 02/03/1991, previously mentioned.

²⁸ These directorates are organized in the following divisions: General Affairs and Means Division, State Property Operations Division, Appraisal and Real Estate Expertise Division.

²⁹ See Article 8, Paragraph 3 of Executive Decree 91/65 dated 02/03/1991, previously mentioned.

³⁰ Law 12/07 dated 21/02/2012, Official Journal of the Algerian Republic, No. 12 of 2012, dated 29/02/2012.

³¹ Ordinance No. 74/63 dated 10/06/1974, Official Journal of the Algerian Republic, No. 49 of 1974, dated 18/06/1974.

³² Decree 85/270 dated 05/11/1985, Official Journal of the Algerian Republic, No. 46 of 1985, dated 06/11/1985.

³³ Executive Decree 91/147 dated 12/05/1991, Official Journal of the Algerian Republic, No. 25 of 1991, dated 29/05/1991.

³⁴ Article 1, Executive Decree 93/08 dated 02/01/1993, Official Journal of the Algerian Republic, No. 2 of 1993, dated 06/01/1993.

³⁵ Executive Decree 93/290 dated 28/11/1993, Official Journal of the Algerian Republic, No. 79 of 1993, dated 01/12/1993.

³⁶ See Articles 4 and 5 of Executive Decree 93/290, previously mentioned.

³⁷ For more on the varying concept of vacant property in Algerian law, see: ELKETBI Mohammed, “The Conceptual Framework of Vacant Properties in Algerian Law,” Algerian Journal of Legal and Political Sciences, University of Benyoucef Benkhedda, Algiers, Algeria, Vol. 59, No. 2, 08 June 2022, pp. 434–465.

³⁸ BENRAKIA Ben Youssef, *Explanation of the Agricultural Investment Law*, National Office of Educational Works, no place of publication, 1st edition, 2001, p. 54.

³⁹ See BENRAKIA Ben Youssef, previous reference, same page.

⁴⁰ Decree No. 62-02 of 22/10/1962 establishing Management Committees in vacant Agricultural Enterprises, Official Journal of the Algerian Republic, No. 01, 1962, dated 26/10/1962.

⁴¹ Decree 63/64 dated 18/02/1963, Official Journal of the Algerian Republic, No. 09 of 1963, dated 01/03/1963.

⁴² See Article 12 of Decree 63/88, previously mentioned.

⁴³ BENCHENEB Ali, *Litigation over Properties Devoted to the State by the Ordinance of 6 May 1966*, Algerian Review of Legal Sciences (RASJ), 1979, p. 635.

⁴⁴ POMEL Bernard, *Contribution to the Study of State Domain and Its Legal Regime*, Algerian Review of Legal, Economic and Political Sciences (RASJEP), Vol. 05, No. 03, 1972, p. 728.

⁴⁵ He said: “...Many residential premises were left abandoned after independence. A survey of these properties was carried out. This national heritage must be protected from any damage, and we cannot accept that through subsequent complex negligence it suffers degradation. There are no vacant properties in our country; this infrastructure is now inseparable from our national heritage. The government has taken important decisions regarding the management, revaluation, and maintenance of its State properties.

⁴⁶ BORELLA François, *Economic Public Law of Algeria*, Algerian Review of Legal, Political, and Economic Sciences (RASJEP), Nos. 3–4, 1966, p. 733.

⁴⁷ GRIMAUD Nicole, *Algeria's Foreign Policy: 1962–1978*, KARTHALA Edition, Amazon France, p. 61.

⁴⁸ See FAROUK Abdelhamid Mohamed, *The Contemporary Development of Public Property Theory in Algerian Law – A Comparative Study under the National Property Law*, Master Thesis, Algiers, 1988, p. 240.

⁴⁹ Decree 68/88 dated 23/04/1968, Official Journal of the Algerian Republic, No. 38 of 1968, dated 10/05/1968.

⁵⁰ Ordinance No. 74/26 dated 20/02/1974, Official Journal of the Algerian Republic, No. 19 of 1974, dated 05/03/1974.

⁵¹ DEB Abdel Salam, *Civil Lease Contract*, National Office of Educational Works, Algiers, 2001, p. 166.

See Articles 7, 8, and 9 of Decree 68/88, previously mentioned.

⁵² See Article 12 of Decree 68/88, previously mentioned.

⁵³ Although the decree grants the administration the authority to evict and terminate leases, in practice this is only executed after resorting to the judiciary.

⁵⁴ Legislative Decree 93/03 dated 01/03/1993, Official Journal of the Algerian Republic, No. 14 of 1993, dated 03/03/1993, repealed—except Article 27—by Article 80 of Law 11/04 dated 17/02/2011 regulating real estate promotion activity, Official Journal of the Algerian Republic, No. 14 of 2011, dated 06/03/2011.

⁵⁵ Law 81/01 dated 07/02/1981, Official Journal of the Algerian Republic, No. 06 of 1981, dated 09/02/1981.

⁵⁶ Law 11/04 dated 17/02/2011, Official Journal of the Algerian Republic, No. 14 of 2011, dated 06/03/2011.

⁵⁷ Ordinance 10/01 dated 26/08/2010, Official Journal of the Algerian Republic, No. 49 of 2010, dated 29/08/2010.

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