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The legal system of tourist real estate in Algeria

Medjdoub Abderrahmane^{*}

¹ Mediterranean Laboratory for Legal Studies, Faculty of Law and Political Science, University of Abou Bakr Belkaid, Tlemcen (Algeria),
medjdoubabderrahmane4@gmail.com

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^{*}Correspondingauthor

Abstract:

Tourism is one of the largest growing industries in the world. Algeria aspires to enter the tourism market, by opening the way for national and foreign private investment in the tourism sector, because of its contribution to advancing the national economy, as it represents the country's national income outside the oil and gas sector owned by Algeria.

Tourist real estate is the backbone of tourism. For this reason, the legislator allocated several legal texts to it for the proper management of this national wealth, adequate providing protection of the tourist real estate, and the advancement of the tourism sector in Algeria.

Keywords: Tourism; Tourist real estate; Mechanisms for exploiting tourist real estate; Investment; Sustainable development.

Introduction:

Tourism real estate is one of the biggest investment incentives and one of its most important requirements, whether it comes to internal or external investment. Given the importance of tourism in financing national income, the legislator worked to encourage dealers in this sector by granting those privileges, most notably facilitating access to a private tourist real estate container and Algeria has enormous natural potential, both inland and coastal.

To mitigate the negative effects resulting from the drop in fuel prices on the internal and external financial balances of the state and because of the decline in global economic growth and the collapse of oil prices, which affected the financial capabilities of the state. The state worked to make optimal use of the great diversity of material and human capabilities, including the tourism sector, according to a strategy that relies on diversifying the economic alternative to hydrocarbons. And is to provide only material means and financial resources, promote and facilitate investment, and simplify the administrative procedures for investing in this sector, in exchange for preserving the ownership of lands granted to investors who have completed full tourism projects. In addition, according to the concession formula that is not transferable to a waiver, which is considered necessary to preserve the lands belonging to the national property, the preservation of lands in the hands of the state is the greatest guarantee for the preservation of the properties of the national group.

Thus, a strategy was developed that combines making Algeria one of the largest centers of tourist attractions such as Tunisia and Egypt..., and maintaining the real estate container destined for tourism investment. Concerning the mechanisms established by the legislator for the exploitation of tourist real estate for investment, it can be said that they have developed according to the legislator's vision for investment as a result of the diminishing role of the state and its internal

or internal needs. The external private sector is mainly associated with franchising.

The year 2011 is a turning point in removing the various obstacles that stand in the way of promoting tourism investments in Algeria, and attracting a large number of investors of all kinds, to create and maintain jobs. The public auction is no longer feasible because of the long and costly procedures it includes, which has resulted in a new approach to investors in some areas, especially those with limited cash capital due to the high cost.

About a concession contract, its significance is that it authorizes an individual or a company rather than a public authority to manage the thing in question. The concession is often through a legal monopoly, and the administration granting the concession imposes some obligations on it, especially in choosing the contractor, including how to conclude the concession contract and the terms contained in the contract towards the concessionaire. He finds himself responsible for managing the property with the money of machinery and equipment that he owns and is also responsible for respecting the performance of the service by the terms stipulated in the concession contract.

Since tourist real estate is considered one of the real estate destined for investment, the Algerian legislator decided to specify the mechanisms through which the investment is made, and what is related to the contracts through which the real estate is used, such as selling, reselling, renting, or a hotel or administrative contract. And in this we will focus on the concept of tourist real estate, and what are the mechanisms for acquiring tourist real estate in Algeria. Moreover, how effective are these mechanisms in attracting investment and maintaining the real estate base?

THE FIRST TOPIC: The concept of tourist real estate

Referring to the various texts of the law related to tourist real estate, no text defines tourist real estate in general but rather defines some types of tourist real estate, such as the areas of tourist expansion, the tourist site, or hot water areas.

Before dealing with the concept of tourist real estate, we will discuss the concept of tourism.⁽¹⁾

First requirement: The concept of the arena

Tourism is one of the most important features of economic development and the circle of interest of all countries because of its role and importance in supporting the national economy. Therefore, the concept of tourism must be taken into account, and this is through Addressing the definition, characteristics, and importance of tourism.

First section: Definition of Tourism

There are many definitions provided by those interested in the field of tourism, but they can be defined from the linguistic and idiomatic standpoints as follows:

a. Linguistic concept:

The use of the term “**tourists**” goes back to the Latin word **TORNO**, to move later to the use of the term “**TOURISM**” in 1643, which denotes travel and roaming from one place to another. It includes which includes various professions that satisfy the different needs of travelers, as the term defined several interactions between travel Which can be considered tourism if it stems from desire, not from compulsion, and temporarily, and not search for work or profitable activities. And the term was known in the Arabic language meaning them to go, travel and roam on the face of the earth.⁽²⁾

b. Idiomatic concept:

There are many definitions of researchers in this field. but we can single out the definition of the International Tourism Academy, which is: "the sum of the relationships and phenomena that result from travel and temporary residence of a foreign person in a place. As long as this temporary residence does not turn into permanent residence, As long as it is not profitable, this stay does not become a business trip for this foreigner".⁽³⁾

Tourism means the temporary residence of a person outside his usual place of residence as long as these temporary residences do not turn into permanent residences. Such as residence in hotels, tourist villages, resorts, tourist vehicles, spas, and camps in mountains, deserts, forests, valleys, and beaches...

The legislator defined some types of tourism, such as cultural tourism, conference and business tourism, Tourism at sea, desert tourism,⁽⁴⁾ and recreational tourism, as it defined the latter as: “Every recreational activity practiced by tourists during their stay at tourist sites or in tourist establishments such as Entertainment and recreation parks, mountain sites and cultural and sports facilities”.⁽⁵⁾

Second section: Characteristics and importance of Tourism

Tourism has advantages and importance that we present below:

a. Tourism advantages:

Based on the various works presented by specialists in the field of tourism, it is characterized by a set of characteristics, the most important of which are the following:

- The scope of competition for the tourism sector extends beyond the territory of a single country, which makes it vulnerable to changes in the general environment.

- The target market for the tourism sector is also characterized by the diversity of its characteristics and affiliations, as well as its behavioral patterns because it extends from citizens of one country to citizens of other countries.

- All segments of society participate in presenting a distinctive image of a mixture of special services to tourists in that country. The impact of this sector on the rest of the sectors takes the nature of a multiplier effect, which means that this effect is compound and expands permanently.

- That is why tourism is considered one of the most service sectors contributing to improving national income in modern economies, as it represents an integrated system of various activities.

- Tourism is characterized by extremely rare elements that are very sensitive to the constant changes that dominate the various sectors of human activity, both the landscapes that abound in the state and the ancient and modern civilizational legacies, including all infrastructure and complementary services.

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b. The importance of tourism:

- The arena is an important mechanism in the national economy and the main engine for revitalizing and promoting economic development, and it is represented in the following points:

- Tourism in general contributes to the formation and employment of manpower through various centers and institutes, which also in turn achieve compatibility between them and tourism needs such as hotels and other training disciplines...

- Tourism is an important and wide entry point to bring in hard currency, which is not considered an easy thing. Algeria is striving to achieve this goal as much as possible.

- Tourism is considered an entry point for development, especially for developing countries, and this is what is attached to the great importance that tourism acquires as a source of income in the world, as its contribution rates exceeded what was achieved in the petroleum sector, cars, electronic machines, textiles, and others...(7)

Second requirement: The concept of tourism property

Before studying the issue of waiving tourist real estate, we present some definitions of tourist real estate.

First section: Definition of tourism property

The interest in tourist real estate since the beginning of independence is due to the various legal texts that the legislator singled out in this regard to ensure good management, enhance the activity of the latter and create the appropriate environment for its activity and proper exploitation. And which provided for the establishment of a guard body for vacant properties of a tourist nature or used in

tourism, Decree No. 67/281, related to excavations and the protection of historic places and monuments. ⁽⁸⁾ Here it says in Article 2 Paragraph 1: "**All cultural and real property, assignable, and movable properties, found on the land of national property and in within it, owned by natural or legal persons affiliated with private law...**". ⁽⁹⁾ However, it is noted that the legislator did not give a definition of the tourist real estate, and in its definition, reference was made to the meaning of the term real estate as stipulated in Article 683 of the Civil Code, ⁽¹⁰⁾ which means: "Everything is stable ". And to the meaning of the term tourism, means the temporary residence of a person outside his usual place of residence, as long as this temporary residence does not turn into a permanent residence as we mentioned earlier. And so for us to have a tourist property, it must be a property in the legal sense In addition to the need to contain it and associate it with tourist activities that attract tourists. ⁽¹¹⁾

Some jurisprudential definitions have also appeared, based mainly on extrapolating what is contained in the light of the total legal and regulatory texts regulating tourist real estate, and among these attempts, we find those who defined tourist real estate: It is a right to use the tourist sites within the limits of the laws regulating the tourism sector. ⁽¹²⁾

Some defined it as "everything that is fixed in the field of tourism, such as hotels, tourist vehicles, hospital baths, and tourist villages completed within the framework of investment. Or it is the container of specific lands classified as tourism to be exploited in the field of tourism. It was also defined as the sum of allotted lands and buildings for the tourist activities that are part of the tourist expansion areas, in addition to the monuments and archaeological cities recognized for their historical or cultural importance. From these definitions, we conclude that the tourist property falls within the protected areas and sites. ⁽¹³⁾

Second section: Characteristics of the tourist property

Algeria is an important destination for tourists, and this is due to the wealth that it has from tourism resources, and this is due to the diversity of both the natural and cultural resources that it possesses. Among the most important characteristics of the Algerian tourist property, Article 2, paragraph 6 of Law 01/03 provides: "**And a valorization of natural, historical and cultural capabilities**". ⁽¹⁴⁾

a. Natural Resources:

Algeria has a strategic geographical location, as it is located in the north of Africa, and overlooks the Mediterranean Sea, in the middle of the Great Arab Maghreb. There are also three types of climate, the Mediterranean climate

prevailing on the coasts extending from east to west. and an average temperature from October to April Hot and humid weather during July and August. and a semi-continental climate in the areas of the high plateaus dominated by a long, cold, and humid season from October to May, but in the rest of the year it is dry. and the desert climate about the south and oases regions is characterized by a long hot and dry season From May until September, and a warm Mediterranean climate during the rest of the year, which activates the movement of tourists during the winter season. in addition to the mountainous areas in which the country abounds from heights, caves, caves, and freshwater springs characterized by cold in summer and warm in winter. All of these are considered attractions for tourists.

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b. Cultural and historical resources:

Algeria abounds with diverse tourist, cultural and historical resources, perhaps the most important of which is what UNESCO has classified as Timgad, Tipaza, Djamila, Tassili, Qal'at Bani Hammad, and the Mizab Palace and Kasbah.

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Third section: The formation of the tourist property

In the context of determining the legal form of tourist real estate, the Algerian legislator defined it in three main forms, which are represented in the tourism development scheme, the lands belonging to the national properties, public and private, and those belonging to the private, which we will explain in the following:

a. Tourist expansion areas:

According to Article 01/02 of Law 03/03,⁽¹⁷⁾ these areas are represented in **"every region or extension of a region characterized by natural, cultural, human and creative characteristics and peculiarities suitable for tourism, eligible for the establishment or development of a tourist facility and can be exploited in the development of one or more types of profitable tourism"**. Therefore, it is represented in the protected, classified, and defined spaces according to legal texts that include planning within the national plan for preparing the region charged with directing hotel and tourism equipment.

Article 3 of Law 03/03 indicated the specifications of the areas of tourist expansion as having to be distinct. And characterized by particularities and represented in: beaches of the seas and valleys, rivers, green spaces, zoos and amusement parks, mountains, caves, squares, and streets with human and commercial movement, ancient alleys, Markets that sell traditional products,

historical monuments and palaces, archaeological places, snow and sand areas, traditional industries, folklore, and traditional foods and drinks ...⁽¹⁸⁾

b. Tourist location:

Every landscape or site is of historical, artistic, mythical, or cultural importance, its originality must be valued and preserved from damage and extinction, whether by nature or man.⁽¹⁹⁾

The Algerian legislature divided tourist sites into two types. The first type is the natural tourist sites, which include sea beaches, lakes, other water spaces, and mountain and desert tourist sites. Public and cultural facilities and others...⁽²⁰⁾

c. protected areas:

The third paragraph of Article 2 of Law No. 03/03 defines it as being part of a tourist expansion area or a non-buildable tourist site that requires special protection to preserve its natural privacy and qualifications, such as national parks or archaeological or cultural reserves such as cultural parks.⁽²¹⁾

Accordingly, it can be said that the tourist property is that container that, due to its climatic, geographic, and cultural characteristics, was considered a center for attracting the public for comfort and recreation, whether these characteristics were created by the Creator or man-made, and the legislator, on the other hand, classified it as a tourist property. Whether it is built or not. Tourist real estate is characterized by the nature of the public benefit, and it also contributes to the development of the national economy the development of tourist real estate is linked to the laws of environmental protection.⁽²²⁾

THE SECOND TOPIC :The legal nature of the tourist real estate

The legal frameworks for classifying tourist real estate in Algeria are determined in three main forms, according to Algerian law, which are as follows.

First requirement: The tourist property is public or private property

National real estate is divided into public national real estate and private national real estate, which we show as follows:

First section: Tourist real estate is national public ownership

About this classification, it is all the lands located within the areas of tourist expansion and tourist sites that are exploitable and tourist real estate investment according to the tourism development plan. Which has been classified among the national public properties, whether natural, marine properties, shores of lakes, or artificial, such as archaeological sites and public parks, according to Article 16 of Law 90/30⁽²³⁾ relating to a national property, as amended by Article 7 of Law 08/14. This includes national property As

stipulated in Article 8 of Law 98/04, ⁽²⁴⁾ relating to the protection of cultural heritage, states: The real cultural property includes the following.

- Historical monuments.
- historical location.
- urban and rural groups.

It should be noted that the lands belonging to the national public property are not subject to expropriation for the public benefit and that the expropriation for the public benefit concerns only private property, or is placed for public use in practice or by law. Therefore, national property consists of rights, movable and immovable properties used by everyone and at the disposal of the exploited public directly or through public interest.

The Algerian legislature divided the national public property into two types, natural public property, which includes beaches, lakes, and other bodies of water. The second type is known as National Industrial Property, which includes facilities intended for public reception, such as parks and cultural facilities. However, the origin is that both types of national property are public, and at the same time considered tourist property, as they include tourism activities.⁽²⁵⁾

Second section: Tourist property is private property

This classification means those properties that are owned by individuals but are of a tourist nature, that is, they are located within the tourist areas so that their owner is prohibited from using or exploiting them outside the main purpose for which they were allocated, which is clarified by the text of Article 19 of Law 03/03.⁽²⁶⁾

In this case, the tourist property is in the form of private real estate, which is the right to enjoy and dispose of real estate money or rights in kind, to use the property according to its nature or purpose.

Thus, the tourist property owned by the private in this case is on the lands that belong to the original property of the private, but it is of a tourist nature and is located within the areas of tourist expansion or the tourist areas. In addition, it is subject to what is contained in the tourist preparation plan prepared for construction according to the law. And if It was necessary, to resort to the National Agency for Tourism Development to acquire it.⁽²⁷⁾

Accordingly, in this case, the tourist property is assumed to be either a building property or contains a protected tourist property, but in most cases, there are tourist hotels, touristic villages, and restaurants that were present in the framework of tourism investment for the private sector.

Second requirement: The mechanisms of acquiring tourist property in Algerian law

The Algerian legislator has determined the methods of owning or acquiring a tourist property, defined the legal frameworks and the available rights and

obligations to protect the tourist property and its owner, and focus on directing it to serve the public interest, and this is through three basic forms, which are as follows:

First section: Use of the right of pre-emption

The right of pre-emption is defined as the exclusive right of others to replace the purchaser before the transfer of ownership of the thing sold.⁽²⁸⁾ And the text of Article 1/21 of Law 03/03. And the text of Article 6 of Executive Decree No. 70/98,⁽²⁹⁾ specify the entity eligible to use the right of pre-emption⁽³⁰⁾ in its favor. It is the National Tourism Development Agency and is a public institution of an industrial and commercial nature that undertakes the promotion of tourism. It is the subject of the transfer of ownership of the property, and the ownership of the tourist property is transferred to the mentioned agency.

Decree 06/385 came to specify the modalities for exercising the right of preemption by the National Agency for the Promotion of Tourism as follows.⁽³¹⁾

The agency exercises the right of pre-emption on every property, built or not, located within the tourist expansion area specified within the tourist development plan.

The sale process takes place according to the mutual agreement between the agency and the owner, and if there is a difference between the two parties about the price, the competent judicial authority shall determine the price of the property subject to the right of pre-emption.

Second section: Friendly Acquisition

The amicable acquisition represents a consensual acceptance between two or more parties, and the Algerian and French legislators have gone to differentiating between agreement and contract, as they considered that the agreement is the agreement of two or more wills to create, transfer, modify or terminate an obligation. As for the contract, the two will agree to create the right. Where it was stated in Article 54 of the Civil Code, that the contract is an agreement under which a person or group of other persons, is obligated to grant, do or not do something. While the Egyptian legislator went to mix the two concepts, and considered them one thing, as he considered that the contract is an agreement between two persons or on the establishment of Legal association, modification, or termination.⁽³²⁾

Regarding Law 03/03 related to tourist expansion areas and tourist sites, especially about the friendly acquisition of a tourist property, which confirms that it is a contract between the property owner and the legally qualified interest to own the property in his possession, provided that the agreement is drawn up

before a notary. Where the ownership transfers to the state or one of its subsidiaries is based on a contractual relationship, and on this basis, the contractual agreement is made between the National Tourism Development Agency and the owner of the property to be sold. As stated in Article 22/1: **"Individuals can own buildable tourist properties under an amicable agreement between the two parties"**.⁽³³⁾

Third section: Expropriation for the public benefit

Expropriation for the public benefit is one of the mechanisms that the state relies on to carry out various investment activities, despite the sanctity of ownership and constitutional protection, but this option may be resorted to achieve the public benefit and achieve various economic and social needs. The administration shall also compensate the owner with fair compensation, covering all damage resulting from expropriation.⁽³⁴⁾

As stated in Article 22/2 of Law 03/03: "... the state may, upon the request of the minister responsible for tourism, own these lands by the legislation and regulations in force related to expropriation for the public benefit".⁽³⁵⁾ To encourage tourism in Algeria, the state may resort to expropriation, and this is for the public benefit while giving the owner appropriate compensation, for example, expropriating private land for the construction of a mineral bath.⁽³⁶⁾

Fourth section: Franchise contract

The concession by mutual consent within the framework of tourist real estate is considered the only legal means adopted by the Algerian legislator for the exploitation of tourist real estate. Where the tourist real estate can be exploited by way of concession for the investments that fall on the tourist real estate belonging to the national property, whether it is related to areas of tourist expansion or tourist sites Or beaches or hot water.⁽³⁷⁾

The concession can be defined as an administrative contract, and it is also one of the ways of managing the public facility. Where a person of private law, who is the concessionaire, is assigned to establish and manage the public facility at his expense and responsibility and under the supervision of the administration granting the concession in exchange for the benefits paid by the beneficiaries of the public facility.

Referring to the text of Article 22 of Law 02/03⁽³⁸⁾. The concession can also be granted in the form of compromise, according to what was stated in Article 15⁽³⁹⁾ of Law 12/12, which states: **"... the concession is granted based on a book of conditions by mutual consent on the lands belonging to the private property of the state..."** Concession by mutual consent by a decision of the governor, after the approval of the National Agency for Tourism Development on the lands belonging to the tourism expansion area and after the approval of the relevant minister of the sector.

Third requirement: Obstacles to tourism investment related to real estate

Tourist real estate in Algeria witnessed, in the past years, a wave of speculation, as it became a source of quick profit, causing severe damage to the tourism sector.

First section: Administrative obstacles

The administrative obstacles are mainly:

- The procedures adopted by the bodies assigned to allocate real estate are complex and take a long time, and this has led to the spread of nepotism.
- The high costs of preparing tourism real estates, such as hotels and tourist centers.
- Interruption to complete tourism projects.
- Lack of strict and actual application of the regulation for the protection of tourist expansion areas.
- The lack of tools and mechanisms allocated to the management of the tourist property.
- Lack of financial resources for general studies for tourism preparation.⁽⁴⁰⁾
- The problem of the multiplicity of ownership of tourist property in Algeria to several people, whether it is private ownership or public ownership, constitutes damage to tourism due to the dispute over the property.
- The spread of chaotic and illegal constructions in areas of tourist expansion.
- The areas of tourist expansion areas have decreased due to the deterioration in the tourist sites.⁽⁴¹⁾

Second section: Tourist property looting

Tourist property in Algeria is subjected to continuous looting, which made officials warn of the danger of this phenomenon and demanded the establishment of a special data bank, to protect tourist property from looting, and this file has been raised in different states. The state has to put in place the protection of tourist properties, and thus the development of the national economy.⁽⁴²⁾

An example of this is what the tourist property near the beaches is exposed to, where buildings are being constructed by the private without building permits. Chaotic buildings that are growing like fungi along the coastal strip, in the form of individual buildings, take advantage of the absence of administrative control, although these properties are affiliated with For private property of the state, or belonging to the areas of tourist expansion.

Conclusion:

We concluded through this study that Algeria has good tourism potential, whether natural, human, or even material under the current circumstances. but the lack of interest in the tourism sector and tourist real estate harms the latter.

Investment in tourist real estate is the main driver in this sector, as it supports the national economy, and is a factor in attracting investors. Therefore, the legislator surrounded him with a set of texts that prevent its exploitation in a way that does not serve the desired purpose.

Tourist real estate witnessed many obstacles such as the spread of bribery and speculation, and the remnants of the previous economic policy that resulted in the closure of tourist structures without exploitation, as a result of the intertwining of administrative interests organizing the tourist real estate, Which led to the migration of these facilities.

These results can be presented:

- The Algerian legislator identified mechanisms for exploiting tourist real estate, which will activate the exploitation of real estate directed to investment in the tourism field, and on the other hand, preserve the public real estate container.

- The government has canceled the legal texts that allow the assignment of private property to the state destined for the establishment of investment projects, due to the dire consequences that resulted from the smuggling of many tourist properties.

- The mechanism for exploiting the tourist real estate is mainly represented in the concession contract, which is for the investments that fall on the tourist real estate belonging to the national public and private properties.

- The buildable tourist property is sold as a container for the implementation of the investment programs of the National Tourism Development Agency, by the state with a friendly agreement and the agency cannot resell these lands.

Based on these results, the following recommendations can be made:

- The government should control the real estate market by conducting a census of private tourist properties, reconsidering the real estate reference price, and eliminating the black market in real estate.

- Algeria abounds with enormous natural potential in limbo and is not classified as tourist real estate, so the legislator must reconsider these possibilities and classify them as tourist real estate so that they are covered by protection.

- The legislator must reconsider how to deal with the files related to investment in tourist real estate and introduce digitization because it saves effort and time, whether on the investor or the authority granting the concession.

- The legislator should add a kind of stability to the legal system for investment to attract investors in the field of tourist real estate.

- The government should raise the budget for tourism investment to get tourist real estate out of marginalization.

- The legislator must set appropriate penalties to deter looters of tourist property to protect this national revolution from being lost.

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