PISSN : 2572-0007 - EISSN : 2661-7250

Legal Protection of National Real Estate Properties in Algerian Legislation - The Principle of Inalienability as a Model

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Received: 26 / 11 / 2025 **Accepted**: 13 / 01 / 2026 **Published**: 11 / 06 / 2026

Abstract:

This research highlights the exceptional legal safeguards established by the Algerian legislature for national real estate properties, founded upon the principle of inalienability as a fundamental guarantee. This protection is manifested through a comprehensive legal framework, extending from constitutional provisions to regulatory texts, which proscribe the transfer of ownership and criminalize encroachments upon these assets.

The study elucidates the practical mechanisms of this protection, emphasizing the preventive role of administrative authorities in oversight and management, alongside the supervisory role of the administrative judiciary in adjudicating disputes and imposing penalties. It concludes that this framework establishes a delicate equilibrium between the imperative of preserving the national real estate wealth as a collective right and the requirements for achieving sustainable development through its utilization within the confines of regulated exceptions.

Keywords: Legal Protection, Inalienability, National Real Estate, Properties.

الملخص

يُبرز هذا البحث الحماية القانونية الاستثنائية التي يكرسها المشرع الجزائري للأملاك الوطنية العقارية، مستنداً إلى مبدأ عدم التصرف كضمانة أساسية. وتتجلى هذه الحماية في منظومة قانونية متكاملة تبدأ بالنص الدستوري وتنتهي بالنصوص التنظيمية، والتي تحظر التصرف الناقل للملكية وتجريم الاعتداء عليها. ويلقي البحث الضوء على الآليات العملية لهذه الحماية من خلال الدور الوقائي للإدارة في الرقابة والتسيير، والدور الرقابي للقضاء الإداري في فصل المنازعات وفرض العقوبات. ويخلص إلى أن هذا الإطار يشكل توازناً دقيقاً بين ضرورة الحفاظ على الثروة العقارية الوطنية كحق جماعي، ومتطلبات تحقيق التنمية المستدامة من خلال استثمارها في إطار الاستثناءات المضبوطة.

الكلمات الفتاحية: الحماية القانونية، عدم القابلية للتصرف، الأملاك الوطنية العقارية، الرقابة الإدارية والقضائية.

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I. INTRODUCTION

National real estate properties represent a fundamental pillar in building the national economy and achieving social stability, making them a focus of interest for the Algerian legislature, which has been keen to fortify them with distinct legal protection. Within this framework, the principle of inalienability emerges as a legal guarantee that prevents the squandering of this strategic national wealth. The importance of this research stems from its addressing of a vital topic directly linked to national sovereignty and public interest, as national real estate properties constitute a collective asset for present and future generations. This importance is also manifested in the attempt to monitor the complementary role between the administration and the judiciary in protecting this public property. The research aims to analyze the constitutional and legislative foundations of the principle of inalienability and to monitor the practical mechanisms that ensure the protection of national real estate properties. It also seeks to evaluate the effectiveness of legal and oversight means in confronting attempts of encroachment and unlawful seizure.

The main research problem revolves around how to achieve a balance between the requirements of stringent protection for national real estate properties and the necessities of their utilization within the framework of public interest? And to what extent are the legal and judicial mechanisms effective in achieving this protection? To answer this problem and others, the research relies on the analytical method in studying legal texts and judicial jurisprudence, and the descriptive method in monitoring the reality of administrative protection of national properties. The research plan will be divided into two main chapters: the first addresses the legal framework of national properties, and the second is dedicated to administrative and judicial protection mechanisms.

1. The Legal Basis of the Principle of Inalienability in National Real Estate Properties

The principle of inalienability in national real estate properties derives its legitimacy from an integrated legal system starting from constitutional texts and ending with executive regulations. The constitution establishes the special nature of these properties as public properties that are inalienable, while ordinary laws and regulations detail the limited conditions and exceptions that allow for usufruct without affecting the right of ownership.

This legal system is characterized by its rigor and clarity in protecting national properties from any disposition that might undermine state rights. It also balances the requirements of development and the needs of public interest on one hand, and the necessity of preserving the national real estate heritage on the other, within a limited timeframe and strict oversight controls. Here we can provide some examples of legislative texts that adopted the principle of inalienability in national real estate properties as follows:

1.1 Legislative Texts Organizing the Principle of Inalienability in National Real Estate Properties

The principle of inalienability in national real estate properties is based on an integrated legislative framework that defines the fundamental controls for preserving these properties. Legal texts establish guarantees that prevent alienation, fragmentation, or any form of unlawful disposition, ensuring the protection of public interest and safeguarding collective rights in these national wealth, which represent a strategic asset for the state and future generations.

1.1.1 Constitutional Texts Organizing the Principle of Inalienability in National Real Estate Properties

The Algerian Constitution of 1996 stipulated the principle of inalienability in national real estate properties by stating: "Public property is owned by the people. National properties enjoy the protection of the law. They are inalienable and imprescriptible. (96-438, 1996) "

Article 20 of the Constitution of the People's Democratic Republic of Algeria (of, 30 December 2020) stipulates to the effect that public property is owned by the people. It consists of natural and energy resources, mines and quarries, water resources and forests, as well as rail, maritime, and air transport, post and telecommunications, and other properties defined by law, managed by the State in accordance with the law, ensuring transparency of management and oversight. They can only be disposed of within the framework of the law and with transparency.

Given that national real estate properties are an integral part of public property and public ownership, Article 20 of the Algerian Constitution represents the entrenched constitutional framework for protecting national real estate properties, affirming that these properties are an integral part of public ownership owned by the people and may not be disposed of except within the limits permitted by law. These properties include lands and real estate owned by the state, which are managed according to strict controls that prevent their alienation or fragmentation, except in specific exceptional cases defined by law, such as temporary usufruct contracts or allocation for public interest, while maintaining the inalienable character at the core of these properties.

Thus, the text of Article 20 of the Algerian Constitution guarantees the protection of national real estate properties from any exploitation or unlawful disposition, as their management is subject to standards of transparency and oversight, ensuring their use in accordance with public interest. It also establishes the legal basis upon which subsidiary laws, such as the National Properties Law and the Public Procurement Law, rely in regulating processes of ownership and usufruct, while imposing deterrent penalties for any violation affecting these properties. Thus, this article constitutes a constitutional guarantee for preserving collective rights in the national real estate wealth and preventing any squandering thereof.

1.1.2 Legislative Texts Organizing the Principle of Inalienability in National Real Estate Properties

a. This is considered the fundamental criterion adopted by the legislature when formulating the text of Article 3 of National Properties Law No. 90-30 (90-30, 1990), which stipulated the following: "In application of Article 12 of this law, public national properties represent:

- Properties stipulated in Article 02 cannot be subject to private ownership by virtue of their nature or purpose.
- Other national properties not classified as public properties and which serve a specific financial and ownership function."

Article 4 of National Properties Law No. 90-30 adds that: "Public national properties are inalienable, imprescriptible, and unseizable. As for the management of movable and immovable properties and rights belonging to private national properties, their disposition is subject to the provisions of the legislative and regulatory texts in force in the field of private properties."

The legislature emphasized its consecration of this criterion through the text of Article 25 of Land Orientation Law No. 90-25 (90-25, 1990), which stated: "Public national properties consist of properties that cannot be owned by private individuals due to their nature or designated purpose. As for other national properties, they are private property of persons subject to law."

Accordingly, private national properties can be subject to private ownership, while public national properties cannot under any circumstances be subject to private ownership, as they are subject to the triple rule of prohibition:

- Inalienability
- Imprescriptibility
- Unseizability (Hidouri, 2017, p. 242)

b. It can be said that the text of Article 386 bis of the Algerian Penal Code of 2024, issued by Ordinance 24-06, came to criminalize every unlawful seizure or ownership of national real estate properties, whether through physical encroachment (such as unlicensed construction or agriculture) or through fraudulent means (such as forgery or abuse of influence). A severe penalty ranging between 10 and 20 years imprisonment is applied, with a financial fine of up to two million Algerian dinars, to ensure effective deterrence against any attempt to seize state lands or dispose of them without right. The penalty also includes cases of unlawful fragmentation or illegal sale, reflecting the legislature's emphasis on protecting public property from any violation (66-156, 1966).

Article 395 of the Algerian Penal Code also came to address crimes of encroachment on private and public real estate properties. Article 395 stipulates the punishment of anyone who commits an encroachment on a real estate owned by others, whether this real estate is private or state-owned, with a penalty of imprisonment from two months to two years and a financial fine. These encroachments include acts such as unlicensed construction, unlicensed agriculture, or any physical seizure of the real estate without right. The penalty increases if the perpetrator commits the encroachment using violence or threats, or if he was carrying a weapon during the commission of the crime.

This article is characterized by its application to all types of real estate encroachments, with a particular focus on protecting both private and public property alike. It also allows the court the possibility to order the removal of encroachments and the restoration of the situation to its original state at the expense of the convicted person. The importance of this article lies in it constituting a first line of defense against real estate violations, alongside the more stringent

1 2. The Legal Nature of National Real Estate Properties

National properties are divided into public national real estate properties and private ones. As for public national properties, national real estate properties are characterized by a unique legal duality ranging between the public status subject to stringent protection that prevents their disposal, and the private status that allows their investment within specific controls, creating a flexible system that balances the requirements of public interest and the necessities of economic development while preserving national sovereignty over these strategic resources.

They include all real estate properties allocated for public use, either directly "waterways, sea shores..." or through a public facility "railways, airports, ports... (Kaddour, 2021, p. 79)", as well as properties specifically developed for performing a public service "public buildings, schools, courts..." They also include, according to Article 12/01, "movable and immovable rights and properties used by everyone, made available to the public, whether directly or through a public facility, provided that in this case – by virtue of their nature or their specific development – they are exclusively or primarily suited for the specific purpose of this facility."

Article 14 confirmed this when it stipulated that public properties consist of natural public properties and artificial public properties, and Articles 15 and 16 enumerated these properties respectively. It is noted that the text of Article 12 mentioned above is influenced by the settled opinion in France, applying the text contained in the draft amendment of the French Civil Code referred to earlier. We have seen that the public status of the public domain arises from the idea of allocation by law, which the Algerian legislature adopted as stated in Article 13. Furthermore,

Article 36 of Law 84-16 stated that "the formation of public properties can result from two distinct processes: either boundary demarcation, or classification. (Muhammad, 2011, p. 05)"

As for private national real estate properties, according to the text of Article 18 of Algerian National Properties Law No. 90-30, they include the state's private real estate comprising buildings and lands not classified as public properties, real estate for residential, professional, or commercial use, in addition to properties whose classification in public national properties has been canceled. This category also includes all buildings and lands owned by the state, devolved to it, or constructed by it and remained its property.

2. Protection of National Real Estate Properties under the Principle of Inalienability

The principle of inalienability in national real estate properties results in profound legal and practical effects that preserve the rights of the state and society. This principle entails the establishment of a special system for legal protection represented in the nullity of any disposition that transfers ownership or changes its original nature, with all forms of disposition restricted by the exceptional conditions and limitations imposed by law.

2.1 Legal Effects of the Principle of Inalienability in National Real Estate Properties

The practical effects of this principle are manifested in consecrating real guarantees for the sustainability of national real estate resources. It also creates a delicate balance between the requirements of investment and development on one hand, and the necessities of preserving public properties for future generations on the other, within a legal framework that preserves the rights of all parties without compromising the supreme interest of the state.

It finds its legal basis in Law 90-30, which explicitly states the impermissibility of disposing of public properties. This principle constitutes a constitutional guarantee for the preservation of public funds, as the Supreme Court considered it in its decision No. 1254/2015 to be "of public order." Several effects result from this principle, the most important of which are : (Makhlouf, 2023-2024, p. 22)

- **Nullity of Dispositions Transferring Ownership of National Real Estate Properties:** Resulting from the special nature of national real estate ownership and the principle governing it, which is inalienability, is the nullity of any disposition transferring ownership such as sale, donation, or exchange. This nullity is inherent to the validity of these dispositions, so the administrative authority, regardless of its level, may not squander this property which is allocated for public utility and a guarantee of its continuity, thus preserving these properties as a permanent asset for the state to achieve its developmental and strategic goals.
- **Impermissibility of Permanent Allocation of National Real Estate Properties to Others:** The impermissibility of permanent allocation of national real estate properties to others falls within the same legal framework governing their nature, as this permanent allocation contradicts the principle of inalienability and constitutes a form of hidden alienation of competencies. Establishing a permanent and stable right for others over these properties strips them of their status as public property allocated for public utility, and freezes them from performing the required role to meet the evolving needs of society, which necessitates maintaining their flexibility and full freedom of disposition to ensure the achievement of public interest.
- **Prohibition of Mortgage and Long-Term Lease of National Real Estate Properties:** Resulting from the principle of inalienability in national real estate properties, which means preventing their sale or transfer of ownership, is the prohibition of mortgage and long-term lease of these properties; because these dispositions are considered as an alienation of the essential competencies of the state or the public entity owner, or restrict them for very long periods that conflict with the nature of these properties, which must

remain free and available to achieve public interest and implement developmental policies and programs that serve the common good.

2.1.1 The Role of the Administration in Protecting National Real Estate Properties from Encroachment

National real estate properties are among the most important issues addressed by legislation, especially as they have become a fundamental pillar upon which the national economy is based, achieving stability and thus development in several fields. Therefore, it was incumbent upon the Algerian legislature to surround this wealth with necessary protection against any violation, which prompted it to regulate the right to property and recognize its protection constitutionally. Since the principle of inalienability in national real estate properties is based on a legal philosophy aimed at protecting public properties as a national wealth that cannot be alienated or fragmented. This principle consecrates state sovereignty over its lands and strategic resources, guaranteeing their continuity as a collective right for current and future generations. The importance of this principle lies in it being a fundamental guarantee for preserving territorial unity and the state's real estate wealth. Legislative texts prevent any disposition that might affect these properties, while leaving a narrow margin for exceptions subject to strict controls that serve public interest and are subject to administrative oversight. (Moussaoui, 2025, p. 52)

Article 04 of National Properties Law No. 90-30 stipulates that public national properties are not subject to disposition, prescription, or seizure, while the management of movable and immovable properties and rights belonging to private national properties and their disposition is subject to the provisions of the legislative texts in force. It is noted from this text that the legislature used the term "disposition" to denote the legal act transferring ownership, and did not mean acts of administration and management. This re-emphasizes its adoption of the criterion of the disposability of private national real estate properties as a criterion for distinguishing them from public national real estate properties that are inalienable, considering that they are not available for private ownership. However, this theory has been criticized for being illogical and contrary to the nature of things, as there is no property that is inherently unownable, otherwise the legislation would not have defined property as "a thing inherently capable of being owned." The inability of property to be privately owned is a result of its consideration as public property, not a reason for considering it as such. The legal regime of public properties requires their protection and ensuring their allocation remains outside the scope of circulation (Hidouri, 2017, p. 242).

The Algerian legislature has conventionally termed the legal procedure by which property acquires public status as "Inscription in the Public Domain", and inscription is considered the first form of legal protection for public national properties. It means "introducing a specific property into this category of properties (public properties)". The inscription process differs according to the type of property, whether natural or artificial. The former are formed by nature and do not require human intervention, and acquire public status through the procedure of boundary demarcation, while artificial properties are produced by humans through available means, and acquire their public status through the procedure of classification (Boulguas, 2021, p. 502) .

Considering that one of the most prominent functions of the modern state is its use of funds to meet its own needs, in addition to providing basic necessities and aspiring to achieve the requirements demanded by the public, which cannot be achieved without allocating movable and immovable properties that are realized through their allocation for direct use or through a public facility for public interest, which cannot be attained if the principles of using public funds are not supported by legal protection (Hadi, 2018, p. 764) .

From the foregoing, it is clear that the administration in Algeria undertakes a pivotal role in protecting national real estate properties from the phenomenon of encroachment, through several preventive and remedial procedures to safeguard these properties. The administration pays great attention to the processes of monitoring and direct management of national real estate properties belonging to the state, by conducting periodic field tours to detect any attempts of seizure or

unlicensed construction. It also prepares and determines the legal documents for each property (such as ownership certificates and allocation certificates) which represent legal evidence against encroachers, and registers these properties to protect them from any unlawful transaction.

2.1.2 The Role of the Judiciary in Protecting National Real Estate Properties from Encroachment

National real estate properties enjoy exceptional legal and judicial protection represented in their inalienability for transferring ownership, their inability to be acquired by prescription, and the impermissibility of their seizure. The administrative judge plays a pivotal role in protecting these properties by adjudicating disputes related to them, especially those related to possession, acquisitive prescription, or challenges to ownership documents. The research also focuses on the legal and regulatory rules upon which the judge relies in consecrating this protection, such as the texts on the devolution of vacant properties to the state and the rule of imprescriptibility of national properties, with emphasis on activating these mechanisms under the real registration system, which is the cornerstone of real estate ownership stability. The research concludes with the necessity of the administrative judge's commitment to applying these rules to protect national properties from any assault or attempt of unlawful ownership, while proposing legislative amendments to reduce real estate disputes.

The action for boundary demarcation is among administrative disputes that do not affect the core right of ownership but aim to define the boundaries of national properties in accordance with public interest. Decisions of boundary demarcation can be challenged before the administrative judiciary, which verifies their legality, while the administration retains the right to readjust the boundaries in conformity with judicial rulings. Here, the role of the judge emerges in monitoring the conformity of these decisions with the rules of protecting national properties and preventing the granting of any unlawful rights to others. As for lawsuits concerning the exploitation of national properties through licenses or concession contracts, they are subject to the oversight of the administrative judge when challenging decisions of cancellation or withdrawal. The judge has broad discretionary power in assessing the legality of these decisions, especially in cases of breach of contractual obligations, ensuring their conformity with legal protection mechanisms that prevent the squandering of national properties or infringement of state rights (Aroussi, 2017, p. 105) .

Since the administration, by virtue of law, possesses deterrent legal mechanisms to deal with cases of encroachment immediately upon discovery. Through its agents legally qualified, it records detailed reports (procès-verbaux) that prove the encroachment, to be a document of proof before the judiciary. Its status as a public person enables it to file urgent lawsuits to obtain orders for the demolition of what was built illegally, the evacuation of the property, and its return to the state's possession. The National Properties Law No. 90-30 and its amendments are considered the fundamental legal framework that grants the administration and the judiciary these powers, as Article 04 thereof confirmed that public national properties are "unseizable", strengthening the administration's position in facing any attempt to seize them.

Article 136 of the aforementioned Law No. 90-30 stipulates the punishment of anyone who causes damage to public property in accordance with the Penal Code, and judicial prosecution is carried out against violators according to the procedures stipulated in the Code of Criminal Procedure. Accordingly (Bahmawi, 2011, p. 362), the legislature established penal rules related to infringement upon properties and violations of the rules specific to the system of their preservation according to Article 66 of the National Properties Law, in addition to establishing administrative protection through the inventory of public national properties and the commitment to their maintenance and oversight (Hadi, 2018, p. 765).

By referring to the Penal Code, the actions criminalized by it and which affect national real estate properties can be identified, and for each action a penalty is prescribed according to the nature

and severity of the crime, including the crime of encroachment on real estate property provided for and punishable under Article 386-01 of the Penal Code (66-156, 1966). And the misdemeanor of sabotage affecting national properties provided for and punishable under Article 400 of the Penal Code, and crimes of theft affecting national properties criminalized and provided for by virtue of Article 350 of the Penal Code, in addition to the crime of arson and misdemeanors related to national properties. What can be concluded from the content of these articles is that the legislature has extended penal protection to all elements of national properties regardless of their legal nature and legal regime, i.e., without distinction between state public funds and its private funds (Rezkallah, 2023, pp. 2077-2078).

From here, it becomes clear that the legislature establishes an integrated system to ensure the protection of national real estate properties, based on the complementarity of roles between the administration and the judiciary, where administrative bodies undertake the tasks of preventive oversight and detection of encroachments, while the judiciary undertakes its supervisory and penal role through litigation mechanisms and deterrent penalties, forming an integrated system that preserves state rights, ensures the deterrence of violators, and provides means of fair litigation for all parties.

II. Conclusion:

Through this research, it is evident that the Algerian legislature has established an integrated legal system for the protection of national real estate properties, headed by the control of "inalienability" as a fundamental guarantee. This protection has been embodied through a legal hierarchy starting from the constitutional text and ending with executive texts, making these properties a shield for protecting economic sovereignty and a collective wealth for generations. The research also revealed the effective complementary role of the administration through its preventive and oversight mechanisms, alongside the administrative and penal judiciary, which forms a bulwark against any attempt of assault or unlawful ownership. The ultimate goal of this system remains to achieve that delicate balance between the requirements of stringent protection for this strategic asset and the necessities of its exploitation within the framework of public interest to achieve sustainable development. Based on the foregoing, it can be said that the research concluded with a set of findings and recommendations, which we present as follows:

Findings:

- ✓ The constitutional and legislative framework (such as the Constitution and National Properties Law 90-30) guarantees absolute protection for national real estate properties through the principle of inalienability; however, the permitted exceptions (such as usufruct contracts) may create potential loopholes for squandering ownership in the long term.
- ✓ The study showed the effectiveness of administrative mechanisms in oversight and management (such as inventory, demarcation, and registration processes), but they face practical challenges such as weak material and human capabilities, especially in remote areas, which facilitates encroachment operations.
- ✓ The judiciary plays a central and deterrent role in protecting national properties through possession claims, compensation, and severe penal sanctions (Article 386 bis of the Penal Code), but the slowness of judicial procedures may reduce the preventive effectiveness of the penalties.
- ✓ There is a potential conflict in application between the stringency of the principle of inalienability and the requirements of investment and development, where complex procedures may disrupt projects of public utility or deter investment.

- ✓ Despite the integrated legal system, the phenomenon of encroachment on national properties persists, indicating a shortcoming in the preventive and awareness aspect, and weak coordination between different bodies (administration, judiciary, local communities).

Recommendations:

- ✓ The necessity to review the regulatory texts organizing exceptions (such as usufruct contracts and allocation) to narrow their scope and subject them to more stringent administrative and judicial conditions and oversight, with the determination of short renewable terms rather than ownership.
- ✓ Supporting departments responsible for managing national properties (Land Conservation, Directorates of State Properties) with modern techniques (Geographic Information Systems GIS, drones) and training human resources to enhance field oversight and rapid detection of encroachments.
- ✓ Activating specialized judicial circuits for national property disputes to expedite the adjudication of cases, while encouraging the judiciary to use urgent orders aimed at stopping encroachment immediately and restoring the situation to its original state at the expense of the encroacher.
- ✓ Establishing a clear and unified procedural guide at the national level that clarifies the steps and conditions required for utilizing national properties within the framework of developmental investment projects, while ensuring transparency and equality to avoid arbitrariness and encourage investment within the law.
- ✓ Developing a comprehensive national strategy to raise awareness about the dangers of encroachment on national properties and their economic and social importance, through media and educational institutions. And enhancing institutional coordination through a unified digital platform for sharing information between concerned administrations, the public prosecution, and the National Gendarmerie to confront the phenomenon proactively.

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