

The Legal Nature of the Mechanisms for Integrating Artificial Public Domain into Algerian Legislation

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Abstract:

This research paper aims to study the mechanisms for integrating artificial public domain into the national domain through determining the legal nature of these mechanisms, which have often been known to raise multiple doctrinal issues.

Despite the Algerian legislator having stipulated various mechanisms for integrating artificial national public properties in Law No. 90-30, amended and supplemented, relating to national properties, and these varied between classification and listing according to the type of artificial national public property intended to be integrated, a thorough examination of the nature and objectives of these two mechanisms reveals a clear understanding that the legislator has erred in determining the legal nature of the listing mechanism in particular, necessitating action to regulate these mechanisms and accurately determine their legal nature.

Keywords:Artificial National Public Domain; Integration; Classification; Listing.

ملخص:

تهدف هذه الورقة البحثية لدراسة آليات ادراج الملك الوطني العمومي الاصطناعي وذلك من خلال تحديد الطبيعة القانونية لتلك الآليات التي كثيرا ما عرفت اشكالات فقهية متعددة

وبالرغم من كون المشرع الجزائري قد نص على مختلف آليات ادراج الأملاك الوطنية العمومية الاصطناعية في القانون رقم 90-30، المعدل والمتمم والمتعلق بالأملاك الوطنية، وقد تنوعت بين آليتي التصنيف والتصنيف وذلك بحسب نوع الملك الوطني العمومي الاصطناعي المراد ادراجه، إلا أن المتمعن في طبيعة وأهداف تلك الآليتين يدرك تمام الإدراك أن المشرع قد جانب الصواب في تحديد الطبيعة القانونية لآلية التصنيف خصوصا، مما يتعين عليه العمل على ضبط تلك الآليات وتحديد الطبيعة القانونية الدقيقة لها.

الكلمات المفتاحية: الملك الوطني العمومي الاصطناعي، الادراج، التصنيف، الاصطفاف.

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I. Introduction:

The Algerian legislator, in Law No. 90-30 dated December 1, 1990, which includes the law on national properties, amended and supplemented, stated that national public properties are divided into two types: one representing natural national public properties and the other representing artificial national public properties. The first type includes sea beaches, internal sea waters, airspace, territorial space, and other components that are not human-made, while the second type includes railways and their annexes, civil and military ports, public and express roads and their annexes, and other components that play a fundamental role in their creation.

The process of forming national public properties goes through a series of stages addressed by the same law, defined in two stages: the first is the acquisition stage, whereby the property is preliminarily owned by the concerned administration, and the second is the integration stage.

For artificial public property, the legislator requires an additional necessary stage, which is the preparation process, whereby the property is prepared for the purpose for which it was established. For example, if it concerns a public road, it is necessary to perform tasks such as tree removal and paving, among other works that achieve the desired purpose of constructing that road.

This research paper addresses an important stage in the formation of artificial national public property, which is the integration stage, where the legislator provided two main mechanisms for integrating artificial public property into the list of public properties: classification and listing, which have raised many issues. Therefore, the following problem was posed:

- To what extent do the classification and listing mechanisms produce their legal effect, which is the integration of the property into the list of artificial national public properties?

To answer this problem, a binary division within two sections was adopted, addressing the legal nature of the classification mechanism for integrating artificial public property in the first section, and the legal nature of the listing mechanism for the same purpose in the second section.

II. Section One: Concept of Artificial National Public Domain

Researching the legal nature of the mechanisms for integrating artificial public properties into Algerian legislation requires starting with the concept of this type of national public properties, through discussing its legislative concept and then its doctrinal concept, especially in French jurisprudence, considering it the cradle of the public property theory.

This will be addressed through the following two demands:

- ❖ **Demand One: The concept of artificial national public domain in Algerian legislation.**
- ❖ **Demand Two: The concept of artificial national public domain in jurisprudence.**

Demand One: The concept of artificial national public domain in Algerian legislation:

Research into the concept of artificial national public properties in Algerian legislation leads us to discuss the definition of this type of national public properties and then examine its contents or components, which will be done in the following two subsections:

- ❖ **Subsection One: Definition of artificial national public domain**
- ❖ **Subsection Two: Contents of the artificial national public domain**

Subsection One: Definition of artificial national public domain:

The Algerian legislator divided national properties into two main types: national public properties and private national properties, as stipulated in Articles 2 and 4 of Law No. 90-30. (Law No. 90-30) Since this study will focus on national public properties, it will not address private national properties.

Referring to national public properties, the same law divided them into two basic types: the first called natural national public properties and the second, which will be the focus of this research, called artificial national public properties. (law.) The Algerian legislator did not define artificial national public properties but mentioned their elements and components in Article 16 of Law No. 90-30, amended and supplemented as mentioned earlier.

However, referring to Article 12 of the same law, which includes a definition of national public properties stating that they consist of movable and immovable rights and properties used by everyone and placed at the public's disposal, either through direct use or via a public service.

Since artificial national public properties are an integral part of national public properties, the previous definition also applies to them, making artificial public domain those properties consisting of movable and immovable rights and properties placed at the public's disposal, which can be used directly or via a public service.

Subsection Two: Contents of the artificial national public domain:

The elements and components of the artificial public domain can be identified in Article 16 of the National Property Law, which lists them as follows:

- Artificially isolated lands from wave effects
- Railways and their necessary annexes for operation.
- Civil and military ports and their annexes designated for maritime traffic.

- Civil and military airports and their built or unbuilt annexes for the benefit of air navigation.
- Ordinary and express roads and their annexes.
- Major technical installations and other installations and their annexes built for public utility.
- Public monuments, museums, archaeological sites, and parks.
- Landscaped gardens.
- Public orchards.
- Objects and artworks forming classified antique collections.
- Basic cultural and sports facilities.
- National archives.
- Copyrights and cultural property rights destined for national public properties.
- Public buildings housing national institutions and administrative buildings designed or adapted for carrying out a public service.
- Installations and means of defense allocated for protecting the national territory by land, sea, and air.
- Data resulting from exploration and research related to mineral properties for hydrocarbons.

It should be noted that the elements mentioned in Article 16 above are components of the artificial national public domain listed as examples and not exhaustive, as confirmed by the Algerian legislator in the first paragraph of the same article: "The artificial national public domain especially includes...." The term "especially" indicates that the list is illustrative and not exhaustive.

Demand Two: The Concept of Artificial National Public Domain in Jurisprudence:

After discussing the concept of artificial national public domain in Algerian legislation, both in terms of its definition and its diverse components, we will address the same aspects in jurisprudence, especially French jurisprudence, considering that French legal thought played a significant role in establishing the concept of public property.

Therefore, we will examine these aspects in the following two subsections:

- ❖ **Subsection One: The doctrinal definition of artificial national public domain.**
- ❖ **Subsection Two: The doctrinal evaluation of the contents of the artificial national public domain.**

Subsection One: The Doctrinal Definition of Artificial National Public Domain:

Jurisprudence considers artificial public domain as that type of public property created by human hands (Hamid, 1983). It is the product of human labor and effort, controlled in its formation by human craftsmanship and will, contrasting with the natural national public domain created by nature. (Noui, 2018)

Subsection Two: The Doctrinal Evaluation of the Contents of the Artificial National Public Domain:

Given that the theory of public goods originates from French jurisprudence, the evaluation of the contents of the public domain, in general, began with French jurisprudence, which sparked extensive doctrinal debate.

Some jurisprudence went towards classifying public goods by looking at their components and elements, while another side divided these goods according to the public entity owning them, whether the state or one of its regional collectivities (province or town).

Others considered that the division of public goods' contents should be based on the nature of their allocation, which could be for direct public use or indirect public use serving public facilities. Lastly, some leaned towards dividing the contents of the public domain based on the origin of these goods, which could be from nature (natural goods) or human creation (artificial goods). (Qutb, 2016)

Since the Algerian legislator adopted within the National Property Law the doctrinal direction that divided the contents of the public domain based on how this domain was created, it will address those components as examples not exhaustive, as decided by the Algerian legislator.

These components include, but are not limited to, the following:

1. **Artificial maritime public properties:** These are installations built on sea shores, aimed at organizing maritime navigation and fishing operations, as well as coastal surveillance. They include many elements, such as ports, lighthouses, navigational marks, and others. (Hamid, 1983)
2. **Artificial water public properties:** This part of the artificial public domain includes a range of elements, including: (Article 16 of Law No. 05-12)
 - Installations and structures specifically designed for exploring, inspecting, and assessing water resources both quantitatively and qualitatively.
 - Treatment plants and tanks for water transport and distribution installations across networks of channels and pipes, and their facilities designated for public use to supply urban and rural communities with water, among others.
 - Water reservoirs, rainwater, filtration stations, and others.
3. **Artificial aerial public properties:** This includes military airports serving the defense facility, civil airports serving the transport and communications facility, and

possibly also airport annexes like aircraft hangars or repair yards, in addition to meteorological observation installations and others. (Qutb, 2016)

4. **Artificial terrestrial public properties:** The list of contents of this type of artificial public properties is long and varied, including:

➤ **Public roads:**

Encompassing all types of roads, whether national, provincial, or municipal, as well as sidewalks, drainage channels, and retaining walls supporting roads, among others. (Qutb, 2016)

➤ **Railway lines:**

Including installations related to service management on these lines, such as technical installations, buildings, and technical equipment for network operation, signaling, electrification, and other elements.

➤ **Archaeological and artistic properties:**

Consisting of real and personal properties of archaeological or artistic value, as well as places designated for the purpose of preserving these properties, which may also include churches, historical buildings, public museums, and public libraries with their manuscripts and books as designated for cultural service. (Hamid, 1983)

➤ **National military properties:**

Encompassing all military fortifications and their annexes (Hamid, 1983), precisely all installations and defense means directed towards protecting the land, sea, and air spaces of the territory, in addition to military forts, barracks, training fields, military airports, weapons and ammunition factories. (Noui, 2018)

Some jurisprudence has excluded from the scope of public ownership to the private ownership of the state buildings of camps, training fields for shooting, and military schools. (Hamid, 1983)

It's noteworthy that despite these inclusions being part of the public properties, unlike their counterparts of public properties characterized by their allocation for public use, either directly or via a public facility, military properties are not set for direct public use. The Algerian legislator stipulated the elements constituting military properties as follows: (Article 04 of Executive Decree No. 92-371, dated October 10, 1992, which defines the rules applicable to the management of real estate properties allocated to the Ministry of National Defense (military public properties).

- Protective shelters for combat sectors.
- Military air and naval bases and their built and unbuilt annexes.

- Naval bases and military port installations and their built and unbuilt annexes.
- Surface or underground command headquarters and their annexes and accesses.
- Installations protecting the National Gendarmerie units and services.
- Defense installations and means directed towards the land, air, and sea protection of the national territory or contributing to it, especially installations and wire and wireless communications.
- Military research centers.
- Fortresses and castles.
- Military industry institutions and their annexes.
- Training and technical administrative support institutions.
- Hospital and health facilities.

➤ **Public properties for communications:**

These are properties designated for the communications facility, including many components such as wirelines and all devices associated with them for organizing communication processes, like communication amplification centers on terrestrial lines for long distances, as well as undersea cables within territorial waters. (Hamid, 1983)

➤ **Public properties related to water, electricity, and gas distribution networks:**

Including the elements making up the main and subsidiary distribution lines, collection tanks, generation and control devices, and other devices. (Hamid, 1983)

➤ **Public parks and recreational areas:**

They are given the public status if owned by a public person and designated for public use. If these conditions are not met, they cannot be attributed public status. (Qutb, 2016)

➤ **Public libraries:**

This part of public properties is also classified within this list provided the conditions mentioned above are met.

➤ **Places of worship:**

With the completion of the mosque construction and the establishment of prayers in it, it is thereby allocated for public benefit, even if these mosques are managed by individuals. This includes the mosques, the lands on which they are built, the buildings, and the libraries they contain. (Qutb, 2016)

III. Section Two: The Legal Nature of the Classification Mechanism:

As previously mentioned, one of the most crucial stages in the formation of the public domain, in general, requires a fundamental action that endows the acquired property with a public character, and this action is integration.

Integration is defined as the legal or factual act that results in conferring public status on the property. It is also considered a precise process for determining the sector and objectives for which the public property integrated will be designated. (Hamid, The Legal Status of Public Money, A Comparative Study," First Edition, Khattab Printing, , 1983)

The integration process takes two different forms, depending on the nature of the public property to be integrated, whether it is a natural public property or an artificial public property (Article 28/1 of Law No. 90-30). If it concerns natural public property, the form of integration adopted is designation (law. A. 2.), while if it concerns artificial public property, the form taken is classification. (law. A. 2.)

Given that the study's subject relates to artificial national public properties, the classification procedure will be examined in this section.

The research into determining the legal nature of the classification mechanism involves defining it, then outlining the procedures taken concerning it, and finally, how it is annulled, as follows:

Demand One: Definition of Classification:

The Algerian legislator defined classification in Article 31/1 of Law 90-30, amended and supplemented, previously mentioned, which states: "Classification is the act of the competent authority that confers the character of artificial national public properties on the movable or immovable property."

From the content of the above article, it is deduced that the act of the competent authority, represented in the classification decision, is what integrates the public property into the list of artificial public property. Consequently, it results in designating that industrial public property for direct public use or allocating it for a public facility.

It should be noted that the classification decision within the list of artificial public property is independent of the procedures for the public legal entity's acquisition of the property, which results in incorporating that acquired property into the list of private properties, to be followed by the classification procedure. (Hamid, The Legal Status of Public Money, A Comparative Study," First Edition, Khattab Printing, , 1983)

Demand Two: Classification Procedures:

Reviewing Articles 31/4,3 and 33/2,1 of Law No. 90-30, amended and supplemented, previously mentioned, the act of the competent authority that includes the property in the list of artificial national public properties requires two fundamental procedures:

Pre-acquisition of the property, then its preparation, as follows:

Subsection One: Pre-Acquisition of the Property

The Algerian legislator mandated in the context of the classification process that the property to be classified must be owned by the state or one of the regional collectivities (Article 31/1 of Law No. 90-30), which means that the property must be pre-acquired to enter the scope of properties owned by the public entity and that the acquisition process results in these properties entering the list of national private properties. (law. A. 2.)

The property intended to be added to the state or its regional collectivities' properties can be acquired through two methods: one using private law means, and the other using public law means. (Articles 26/4)

Regarding private law means, they include contract, donation, exchange, prescription, and possession. (Articles 26/3) As for public law means, they include expropriation and preemptive rights. (Articles 26/4 3. o.)

It should be noted that the legislator erred in its formulation of Article 31/3 of the National Property Law when addressing the means of acquiring properties, referring to private law means as acquisition, exchange, and donation, where acquisition, considered a means of acquiring ownership according to the same article, is not entirely correct.

This is because acquisition is the broader process of gaining ownership, i.e., pre-acquisition, which is done through the methods mentioned earlier, including private law means.

Subsection Two: Preparation Process

For the property to be included in the list of artificial national public properties, the legislator required that the real estate intended for classification be a qualified property prepared for its designated function. It emphasized that the acquired properties could only be part of those properties after their preparation. (Article 31/5 of Law No. 90-30)

The legislator also stated that the acquired property does not fulfill its public interest purpose or allocation until after undergoing specific preparation considering its intended use (law. A. 3.). From the legislator's approach regarding the preparation process, it is inferred that properties, whether purchased or expropriated for public benefit, do not enter the scope of public properties within the list of artificial public properties until after undergoing the necessary modifications to align with their new allocation objectives. (Hamid, *The Legal Status of Public Money, A Comparative Study*, First Edition, Khattab Printing, , 1983).

Subsection Three: Annulment of Classification

Annulment of classification means stripping the property of its public status and relegating it to the category of national private properties (Articles: 31/2) if the property loses its nature and function that justify its inclusion in that category of national properties. (Article 06/3 of Executive Decree No. 12-827)

If classification, as previously defined, is an act of the competent administrative authority, its annulment must follow the same formalities. (law. A. 7.) If the classification decision is issued by the Minister of Finance or the governor, its annulment occurs according to the rule of

form equivalence (law. T. s.). The annulment of classification is carried out with permission from the Minister of Finance or the governor, each within their jurisdiction, after consulting the administration concerned with stripping state public property of its public status. (HananMisaw, 2015)Public property scholars (Article 06/1 of Executive Decree No. 12-427)have stated that property exits the realm of public status in three cases: the first relates to public entities losing ownership of those properties, which is unlikely due to the strong legal protection afforded to this type of property, especially in its civil aspect, which includes the three rules of protection: the principle of inalienability, the principle of immunity from seizure, and the principle of non-acquisition through prescription.

The second case concerns the public property losing its ability to fulfill its role and objective in achieving the public benefit for which it was allocated, which can be imagined in the case of natural national public properties when nature changes its features, like waters or lakes drying up. The last case leading to the loss of public status occurs when the property no longer achieves the goals of public benefit, resulting in the competent administration issuing its decision to end the classification, thereby removing that property from the realm of public properties.

In conclusion, the classification mechanism provided by the Algerian legislator in the National Property Law for including property in the list of artificial national public properties is considered a legal tool for conferring public status on the property intended to be integrated into artificial public property.

This is done through a legal act issued by the competent authority in the form of a ministerial decision or by the governor, and in some cases, by an executive decree, especially if it concerns the classification of certain types of artificial public properties in the field of roads, as will be discussed later. All this leads us to state that the legal nature of the classification mechanism is the legal act that confers public status on the property intended to be included in the category of artificial national public properties.

IV. Section Three: The Legal Nature of the Listing (Alignment) Mechanism

If the property is integrated into the list of national public properties through one of two procedures—boundary designation or classification, depending on whether the property to be integrated is a natural public property or an artificial public property—the Algerian legislator introduced another procedure related to a segment of artificial public property, which is classification or listing.

Article 28/3 of Law No. 90-30, amended and supplemented, previously mentioned, states that the integration into artificial national public properties is based on listing for transportation routes. This indicates that conferring public status on artificial public property is done through either classification or listing. While the classification procedure has been discussed in the previous section, especially in terms of highlighting its legal nature, this section will address the listing procedure and outline its legal nature.

The research into this procedure will examine two main points: its definition and its stages, as follows:

Demand One: Definition of Listing:

The Algerian legislator defined listing as the act by which the administration determines the boundaries of transportation routes and, consequently, the boundaries of adjacent properties. (Hamid, "The Legal Status of Public Property, A Comparative Study," 1983)

This definition aligns with what the legislator stated in Article 28/3 of the same law, which connects the listing process with artificial public properties in the area of roads. However, this latter used the listing process as a procedure for integrating the property into the list of artificial public property in the area of roads. The term "aligns" refers to the relationship between classification and transportation routes.

However, the content of the relationship differs between the two situations. If the first situation related to the content of Article 28/3 of the National Property Law embodies that relationship in that the listing process confers public status on artificial public property in the area of transportation routes, the second situation related to the content of Article 28/8 of Executive Decree No. 12-427 illustrates that relationship in the role played by the listing process in the area of artificial public properties.

Before defining the actual role played by listing in the formation of artificial public property, it is necessary to discuss the methods of conducting this process, which is the content of the second demand.

Demand Two: Methods of Conducting the Listing Process:

The legislator explained that the listing process is carried out through two stages: the first stage is through the general listing plan, while the second stage is through individual listing.

Subsection One: The General Listing Plan:

The legislator stipulated that this plan generally determines one of the roads or the boundaries of a group of roads (Article 29/1 of Executive Decree No. 12-427). If these roads are located within residential areas, their preparation is done according to the general design for listing or the approved urban planning tools (Article 30/3 of Law No. 90-30). In this case, the creation of a listing plan is mandatory. (Article 30/3 of Law No. 90-30) However, if the roads are located in rural or mountainous areas, the plan is prepared according to technical standards. (law. A. 3.)

Subsection Two: Individual Listing

Article 30/4 of Law No. 90-30, as amended and supplemented, states that individual listing clarifies for neighbors the boundaries of the road and the boundaries of their properties and has a declaratory nature. This plan is merely extracted from the general listing plan, restricted by the drawings in the listing plan. (decree.)

Individual listing is prepared based on a request from one of the neighbors to confirm property boundaries and separate them from the adjacent public property. (Ahmed Noui) This

may be motivated by a desire to perform maintenance and restoration operations. (HananMisaw, 2015)

Thus, this procedure is sought to understand what easements related to listing may burden the property subject to maintenance and restoration operations. From the above, it is noticeable that the listing process is largely related to determining the boundaries of artificial public property in the area of transportation routes with neighboring properties, as inferred both from the definition provided for listing and through its two stages. This leads to the conclusion that this process is entirely separate from integrating the property into the list of artificial public properties in the area of transportation routes.

This approach is confirmed by other stations in the legislation of national properties, where Article 30 of Law No. 90-30, as amended and supplemented, states that the purpose of listing is to prove the determination of the boundaries separating public roads and neighboring properties. Similarly, Article 29/1 of Executive Decree No. 12-427, previously mentioned, follows the same direction, stating that listing is the act by which the administration regulates the boundaries of transportation routes.

If so, how is public status conferred on artificial public property for roads?

The answer leads us to some regulatory legislation related to artificial public property for roads, especially Executive Decree No. 80-99 (Ahmed Noui) and Executive Decree No. 85-36 (Decree No. 80-99 & Decree No. 85-36).

Article 1 of Decree No. 80-99 states that roads are classified by a decree issued based on a report from the Minister of Public Works after consulting the concerned local community and hearing the joint ministerial committee charged with classifying roads as "National Roads."

Article 02/02 of Decree No. 85-36 states that the classification of "Expressways" is done in the same manner as the classification of national roads.

From the above decrees, it is understood that integrating property into the list of artificial national public properties in the area of transportation roads is done through the classification process, which alone confers public status on this type of artificial public properties.

The listing remains a process undertaken by the administration or upon individuals' requests, aimed at determining the boundaries of public properties for roads with neighboring properties only.

Conclusion:

In summary, integrating property into the list of national public properties is achieved through one of two mechanisms: either boundary designation if it concerns conferring public status on natural national public property, which is a declaratory mechanism meaning it reveals and does not create, or through classification if it concerns conferring public status on artificial national public property, which is considered a mechanism that creates property rights.

Additionally, the legislator introduced another mechanism in this context, considering it among the mechanisms for integrating property into the list of artificial national public property if it concerns transportation routes.

From the above, a set of conclusions have been reached as follows:

- Public status is conferred on artificial public property other than transportation routes by integrating them into that list through the classification process.
- Classification is considered the act of the competent administrative authority that confers the nature of artificial national public property on the property.
- Public status is also conferred on artificial public property in the area of transportation routes and integrated into that list through the listing process.
- Listing is a procedure aimed at proving the determination of the boundaries separating public roads and adjacent properties.
- Considering the listing process is related to determining the boundaries of artificial public property in the area of roads only, and upon reviewing legislative milestones, especially Decree No. 80-99 and Decree No. 85-36, it was found that the process of integrating property into the list of artificial national public properties in the area of roads is done using the classification mechanism, with listing having a targeted purpose as addressed.
- The legal nature of integrating property into the list of artificial national public properties is the legal action undertaken by the competent administrative authority to confer public status on that type of properties, which is achieved through the classification process regardless of the type of artificial national public property intended to be integrated.

Based on the conclusions reached, the following recommendations can be made:

- The legislator should work on objectively and formally distinguishing between the procedures of classification and listing. From a substantive perspective, it is urged that the legislator precisely define the mechanism for integration into the list of artificial national public properties by retaining the classification process only. This could be achieved by amending Article 28/2 of Law No. 90-30, as amended and supplemented, making classification the sole basis for integration into the list of artificial national public property.

- It is suggested to revise the content of Articles 30 and 31 of the same law to make Article 30 include the classification process as the basis for conferring public status on artificial national public property. In contrast, Article 31 should address listing as a process for determining boundaries only.

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