

Civil Legal Protection of Public National Property in Algeria

Salhi Farid *

Bouzekri Slimane

Tourism, Region, and Institutions Research Laboratory
PRFU: National Properties in Algeria - Protection and Development
University of Ghardaia, Algeria

salhi.farid@univ-gharadaia.edu.dz bouzekri.slimane@univ-gharadaia.edu.dz

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Abstract:

The idea of finding mechanisms to preserve public national property that is part of the components of public money is considered one of the most important challenges and pending issues in our time; To ensure the continuation of activity for the public good, full protection must be provided; Protection has many forms, including what is mentioned in the Civil Code; where Article 689 states: "State funds may not be disposed of seized; or owned by prescription."; This means that the Algerian legislator has established three basic rules for protection, which are: the inadmissibility of disposing of it; the inadmissibility of owning it by prescription; and the inadmissibility of seizing it; This is also what is stated in Article 66 of the National Property Law.

key words: Public national property; civil protection; inalienability; non-prescription; and non-seizure.

Introduction:

Countries possess a set of properties and rights, both real estate and movable, that fall within the components of public property. These are either used for their specific needs or made available to the public, either directly or through public utilities, and are referred to as "national assets" or the public domain.

The legal framework governing these assets is closely linked to the political and economic system of the state. While the scope of national assets shrinks in capitalist countries, which uphold private ownership, it expands in socialist systems that prioritize public ownership over private property.¹

In Algeria, the vast size of its territory and the diversity of its geography have resulted in the existence of a large and varied range of national assets. These assets have been enriched by the country's geographical location and have been subjected to different and evolving legal frameworks depending on the historical periods the country has gone through.

Based on the above, it is imperative that these assets are recognized and respected, both by their users and their owners. Consequently, the Algerian legislature has ensured the necessary protection for these assets, as they are

dedicated to public benefit and not for the private interests of individuals. Therefore, the state must provide the necessary protection against all forms of encroachment targeting public property by enacting laws and measures that ensure these assets fulfill their intended purpose and continue to do so. This protection extends to all public and private national assets, governed by constitutional, civil, administrative, and criminal laws.

In this regard, we have chosen to dedicate this academic research to the civil protection of public national assets, focusing on this specific type of protection since most studies have addressed other forms of protection, such as judicial and administrative protection.

From what has been previously mentioned, this research will examine the civil protection of public national assets by highlighting the most important mechanisms and tools provided by Algerian civil law. The study aims to benefit researchers and anyone related to the use of national assets and their protection measures. To comprehensively address the topic, we will explore it through the following problem statement:

What are the civil mechanisms through which public national assets are protected under Algerian civil law? What exceptions exist to the principles governing them?

To answer this question, the research follows a descriptive-analytical methodology to describe and define the concepts discussed in the study and analyze the legal texts relevant to the topic. These include Ordinance No. 75-58 on the Civil Code and Law No. 90-30 governing this type of property. This approach ensures the methodological sequence of the topic's elements is presented in a clear and accessible manner.

This research will examine the civil protection of public national assets in Algerian legislation, which is based on three fundamental principles to ensure their protection: the inalienability of public national assets in the first chapter, the immunity of public national assets from acquisition by prescription in the second chapter, and the immunity of public national assets from seizure in the third chapter.

I. The Inadmissibility of Disposing of Public National Property

The right of disposition is one of the primary real rights derived from ownership and is granted exclusively to the owner of the property, except in cases involving contractual representation. This right is widely applied in private law but is almost non-existent in public law, as public properties cannot be subject to transactions due to their allocation for public use.²

The Civil Code, in Article 689, stipulates: "State properties cannot be disposed of, seized, or acquired through prescription. However, laws that allocate these properties to one of the institutions mentioned in Article 688 define the conditions for their management and, where necessary, the

conditions for their disposal" (75/58, 1975).

Law No. 90/30 on national properties reiterates this principle in Articles 4 and 66 (30/90, 1990). However, dispositions concerning public national properties made between owning, managing, or allocating entities are valid as long as they do not conflict with the principle of allocation for public benefit. Thus, public property may be transferred between the state and public entities and vice versa.

1. Justifications and Scope of the Prohibition of Disposition of Public National Properties

This requirement addresses the justifications for prohibiting the disposition of public properties in section 1 and the scope of this principle in section 2.

1.1. Justifications for Prohibiting the Disposition of Public National Properties

Several justifications have been proposed for the administration's commitment to not disposing of the public properties it owns or has been allocated. These include.³

The intrinsic nature of public properties renders them non-disposable. They are inherently non-transferable to private ownership and fall outside the realm of commercial dealings.

- Public properties differ from private properties owned by individuals as they are designated for public benefit. The concept of public benefit is the distinguishing criterion between the two types. Therefore, the prohibition on disposing of public national properties stems from the potential harm such dispositions could inflict on their public allocation.⁴
- Civil transactions are generally characterized by permanence and stability. When movable property is transferred to a bona fide individual, it becomes irrevocable under the principle of "possession in movable property is title to ownership." However, this legal status does not suit the nature of movable public properties, which are designated for public benefit. Dispositions related to these properties are inherently temporary to prevent hindering public use or limiting administrative control over them.⁵

1.2. Scope of the Prohibition on Disposing of Public Properties

The properties allocated to various public administrations are diverse, as are the transactions that may apply to them. Therefore, it is essential to define the scope of the prohibition on the administration's disposition of public properties.

The scope varies depending on the nature of the property subject to the transactions. The legislator has extended the designation of public properties to both movable and immovable properties. Consequently, the administration's commitment not to dispose of public properties applies to both immovable and movable properties. However, the scope of this commitment has evolved with

amendments to the National Property Law (14/08, 2008).

The legislator explicitly allowed the disposition of private national properties. Regarding the type of transactions, the prohibition also extends to legal actions intended for the use of public properties, such as lease contracts, which may apply to public properties based on permits or agreements. (427/12, 2012)

2. Exceptions to the Prohibition of Disposition of Public Properties and Consequences of Non-Compliance

After discussing the justifications and scope of the prohibition on disposing of public properties in requirement One, this requirement addresses the exceptions to this prohibition and the consequences of non-compliance in two subsections.

2.1. Exceptions to the Prohibition of Disposition of Public Properties

The administration's commitment to not disposing of public properties is not absolute but rather subject to exceptions. The administration may carry out specific transactions without conflicting with the objectives and purposes of public properties. These exceptions include:

a. **Management Transfer:** This involves administrative and managerial actions that keep the property within the category of public properties. Although the property serves a particular function, it may be repurposed for another goal, always within the framework of serving the public interest.

b. **Temporary Occupation Licenses:** Whether issued as administrative decisions or contracts, these licenses do not infringe on the public's right to access public properties. The administration may revoke them at any time for public interest reasons.⁶

c. **Establishing Easement Rights:** The Algerian legislator permits the establishment of easement rights on public properties under the Civil Code. Article 687 states: "Easement may be established on a property as long as it does not conflict with the property's designated use."; The legislator does not distinguish between public and private properties in this regard⁷ also allows the establishment of real rights on public national properties and easements compatible with the property's designated use. This applies to installations, buildings, and facilities required for licensed activities, provided they are authorized through a contract or agreement.

2.2 Consequences of Non-Compliance with the Prohibition of Disposition of Public Properties

Key consequences include:

- Public national properties cannot be subjected to expropriation for public benefit as long as the property retains its public nature.
- Public national properties cannot be subject to the creation of real rights.
- Public national properties cannot be exchanged.

- Individuals cannot obtain privileges over public national properties.⁸

II. The Prohibition of Disposition of Public National Properties

The right of disposition is one of the primary real rights derived from ownership and is granted exclusively to the owner of the property, except in cases involving contractual representation. This right is widely applied in private law but is almost non-existent in public law, as public properties cannot be subject to transactions due to their allocation for public use.⁹ The Civil Code, in Article 689, stipulates:

"State properties cannot be disposed of, seized, or acquired through prescription. However, laws that allocate these properties to one of the institutions mentioned in Article 688 define the conditions for their management and, where necessary, the conditions for their disposal" (75/58, 1975).

Law No. 90/30 on national properties reiterates this principle in Articles 4 and 66 (30/90, 1990). However, dispositions concerning public national properties made between owning, managing, or allocating entities are valid as long as they do not conflict with the principle of allocation for public benefit. Thus, public property may be transferred between the state and public entities and vice versa.

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Public properties differ from private properties owned by individuals as they are designated for public benefit. The concept of public benefit is the distinguishing criterion between the two types. Therefore, the prohibition on disposing of public national properties stems from the potential harm such dispositions could inflict on their public allocation.¹¹

Civil transactions are generally characterized by permanence and stability. When movable property is transferred to a bona fide individual, it becomes irrevocable under the principle of "possession in movable property is title to ownership." However, this legal status does not suit the nature of movable public properties, which are designated for public benefit. Dispositions related to these properties are inherently temporary to prevent hindering public use

or limiting administrative control over them.¹²

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The scope varies depending on the nature of the property subject to the transactions. The legislator has extended the designation of public properties to both movable and immovable properties. Consequently, the administration's commitment not to dispose of public properties applies to both immovable and movable properties. However, the scope of this commitment has evolved with amendments to the National Property Law (14/08, 2008); The legislator explicitly allowed the disposition of private national properties. Regarding the type of transactions, the prohibition also extends to legal actions intended for the use of public properties, such as lease contracts, which may apply to public properties based on permits or agreements. (427/12, 2012)

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Article 21 of Law 08/14 also allows establishing real rights on public national properties and easements compatible with the property's designated use. This applies to installations, buildings, and facilities required for licensed activities, provided they are authorized through a contract or agreement.

2.2. Implications of the rule of non-acquisition of the public domain by prescription

The most important implications of the principle of non-prescription of public property are:

First: It is not permissible for individuals to gain public property by placing hands: individuals cannot gain public property by placing their hands on it through the statute of limitations, and the Civil Code has stipulated some provisions: Article 780 of the Civil Code stipulates that "Land owners of stagnant waters such as lakes and ponds do not own the land that these waters are exposed to, and their ownership does not cease to exist .Lands overwhelmed by water."

Possession in movable property in good faith of the holder's deed: This rule imposes the permissibility of the circulation of the movable and its transfer from one hand to another, but this is inconsistent with public funds, and therefore cannot be invoked to own movables within the scope of public funds, and as a result, the administration may recover the movable money from the hands of its holder, even if it is in good faith.

Second: Non-delivery of the certificate of possession: The seizure of a property that falls within the public property cannot obtain a certificate of possession, regardless of the duration of the seizure, and if he obtains the document, it is invalid, as the second paragraph of Article 2 of Executive Decree No. 91/251 on how to prepare and deliver the certificate of possession "The petition shall not be accepted unless the possession is practiced in accordance with the provisions of Article 413 of the Code of Civil Procedure, for at least one year and the matter is related to private property lands whose contracts are drawn up and located in a municipality or part of a municipality where land has not been surveyed."

Third: The right to remove all types of infringement: Since the possession of public national property is considered an infringement on these properties, the legislator has authorized the administration the right to remove these infringements by administrative and judicial means, so the administration can stop building on public property and demolish every building on public property, and the administration is also authorized to file a claim of entitlement at any time it wants and its right to this is not limited to a period, since the entitlement lawsuit known in private law cannot be applied to public property.

III. The inadmissibility of seizure of public property

In view of the importance of the rule of non-seizure of public property based on the serious justifications on which it is based, the legislator has enshrined it in a number of separate legal texts, namely article 689 of Ordinance No. 75/58 containing the Civil Code, article 04 of Law No. 90/30 containing the National Property Code, and finally enshrined in Law No. 08/09 containing the Code of Civil and Administrative Procedure.¹⁵

In Article 636/01, which affirms the inadmissibility of seizure of public funds owned by the State, territorial communities or public institutions of an administrative nature, there is no doubt that the general rule requires that all judicial rulings are enforceable, regardless of the individual who were issued in the face of them.

However, the problem of enforcement arises when the State or one of the other territorial people is the convict, so can compulsory execution procedures be initiated against these people?¹⁶

1. Justifications for the rule of inadmissibility of seizure of public property

Talking about the seizure of state property or one of the public legal persons, assumes the beginning that the latter owes a natural or legal person from private law and failed to pay its debt, in all cases the creditor has the right to obtain his dues through the judiciary and not through seizure and then execution on these funds, for the following reasons:

1.1. Matters relating to the State

First: Assumption of the solvency of the State: The principle of the attachment system is to force.

The debtor is to pay his debts due to doubt in his financial disclosure or because of his insolvency, and this is not suitable for the State or its public legal persons, because the latter assumes.

Solvency and the ability to meet all its debts and financial obligations, whatever their value, without pressure or coercion.¹⁷

Second: Without prejudice to the prestige of the state: The state and its various administrations are public legal persons who enjoy the privileges of public authority as they watch over in all their actions to achieve the public interest of the public, and this is what distinguishes them from private law persons, for this it is obligatory for them when they carry out various actions to be an example of honesty and trusted by all those dealing with it by its keenness to perform and implement all its obligations so as not to be in doubt, which makes its creditors indispensable to resort to methods of implementation. Forced.

1.2. Utilities and Public Benefit

First: Ensuring the proper functioning of public utilities: The rule for the proper functioning of public utilities is one of the most important. The rules governing the functioning of public utilities, whether administrative

or economic, are based on the vitality and importance of the services performed by public utilities and the extent of the damage caused to the state and individuals as a result of the suspension or disruption of a facility for a brief period as a result of its seizure, for example, and accordingly the administrative authority must work at all times to ensure the continuity of the functioning of public utilities, otherwise it has violated its duties towards individuals.¹⁸

Second: Conflict of attachment with the idea of allocating the public domain for the public benefit: Compulsory attachment, as is known in the general rules, ends with the forced sale of the money subject to attachment, this act, if it actually occurs, transfers the ownership of the public domain from the state or one of the regional groups to creditors, and this contradicts the idea of allocating it for the public benefit and wastes its value, especially if the creditor is a person of private law¹⁹, so the protection of the public interest is first over achieving the interest of the creditor.

2. The Scope of Application of the Non-Attachment Rule on Public Property and Its Consequences

In this requirement, we will discuss the scope of the rule of inadmissibility of seizure of public property in the first section, and the consequences thereof in the second section.

2.1. Scope of Application of the Non-Attachment Rule on Public Property

The importance of the rule of non-seizure of public property has led most comparative legislations to adopt it in order to confer the necessary protection on their public funds, but the scope of its application It varies from state to state and from one legal system to another:

First: The scope of application of the rule in terms of the nature of the public domain: Public property is of two types: public real estate property and movable public property, and the matter is no different for the two types, as most of the legislation is equal to the comparison between them in terms of their subjection to the rule that they may not be seized, because the fact that public money is movable does not detract from its value and capacity as long as it is allocated for the public benefit.²⁰

Second: The scope of application of the rule in terms of the two types of property belonging to the State and regional communities: The legislator does not explicitly provide in the Civil Code that distinguishes between public funds owned by the State or one of the territorial collectives and its private funds, Article 689 of which stipulates: "State funds may not be disposed of or seized..." To the effect that the legislator was directed to both without discrimination, as well as in the National Property Law, where the latter prohibited seizure except regarding Contributions allocated to public economic institutions.

2.2. Consequences of the Principle of Inadmissibility of Seizure of National Public Property

The principle of non-seizure of national public property has four consequences:

First: The lack of ancillary rights in kind: The wisdom of the inadmissibility of determining these rights is that they grant their owners rights that other ordinary creditors do not enjoy, such as the right of preference and the right of resale when selling the funds loaded with these rights, and this purpose is not achieved concerning public national property because it may not be sold and may not be subject to an official mortgage, possession, concession or allocation.

Second: The inadmissibility of seizing public national property from the public order: These are considered The rule is one of the rules related to public order, that is, every interested party may invoke it and at any stage the case was on it, and the judge must raise it on his own, so that the seizure of all of them is null and void because it is related to public order.

Third: The rule of non-seizure of public national property also requires that it is not permissible to impose receivership on it to protect it.

Fourth: This rule also entails that the provisions of expropriation for the public benefit shall not apply to public national property.

Fifth: This rule also entails that the provisions of expropriation for the public benefit do not apply to public national property, so that it remains allocated for public benefit, and because public property is originally allocated for the public benefit.²¹

Conclusion:

The study indicates that the Algerian legislator has provided comprehensive legal protection for public national property, through the adoption of administrative procedures such as inventory, maintenance and control of its use, in addition to imposing criminal penalties for those who violate the laws, which ensures the continuation of the activity of these properties to serve the public benefit. This protection has been secured by strict civil mechanisms, which are reflected in the prohibition of their disposal and seizure by the provisions of Ordinance No. 75/58 and subsequent laws (90/30 and 08/09).

Despite this, civil protection remains incomplete as a result of weak application and firmness in activating legal mechanisms, especially with the increase in attacks on these properties. The study concluded several key findings, including that public money aims to achieve the public benefit and may not be subject to private actions or attachment by creditors, and individuals cannot acquire public property through prescription or possession.

Finally, the study made a set of proposals to improve the protection of national public property, namely:

Updating and amending legal texts and regulations to keep pace with developments.

Accurately identify properties using GPS coordinates and publicize them.

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