

EXPROPRIATION OF PRIVATE PROPERTY FOR PUBLIC INTEREST IN THE ALGERIAN LEGISLATION

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Submission date: 13/06/2025 Acceptance date: 16/08/2025 Publication date: 01/10/2025

Abstract:

The Constitution enshrines the citizen's right to private property. However, this right is counterbalanced by the State's authority to expropriate private property when justified by considerations of public interest, provided that those whose property is expropriated receive just compensation. The requirement of just compensation is itself a constitutional guarantee, intended to ensure that citizens do not experience injustice or insecurity. The sanctity and inviolability of private property are most clearly demonstrated when expropriation is treated as an exceptional measure, invoked only for reasons of public interest, which takes precedence over individual interests. Such expropriation must be conducted with transparency and in accordance with specific legal procedures that the State is obligated to follow, all under judicial oversight.

Keywords: private property, expropriation, just compensation, transparency, judicial oversight

Introduction:

There is no doubt regarding the sanctity of private property, as evidenced by its protection under the Constitution. Algerian constitutions, in their various iterations, have consistently affirmed the citizen's right to private property, considering it a fundamental and entrenched right. This is reflected, for example, in Article 64 of the 2016 Constitution, which states: "The right to private property is guaranteed". At the same time, however, these constitutions have enshrined another principle, namely, the permissibility of expropriation for public interest. This notion was first introduced in the 1976 Constitution, under Article 17, which provides: "Expropriation may only take place within the framework of the law and shall give rise to fair and equitable compensation." This wording has been reiterated in all subsequent constitutions up to 2016, with only minor variations in terminology or numbering. Expropriation of property from¹. any citizen constitutes a serious encroachment upon a fundamental right of

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citizenship. For this reason, the legislature has treated expropriation as an exception² to the general principle of private property protection. It must not be viewed as a rule; otherwise, it would directly conflict with the constitutional safeguards of property. Therefore, expropriation can only be understood as a narrowly defined exception, justified by specific texts and strictly linked to considerations of public interest. It is a power reserved for public authorities or entities entrusted with public administration. From these constitutional provisions, one can infer a clear intent to prioritize the protection of private property as the rule, while permitting its infringement solely as an exception. The exception is tolerated only by overriding public interest, which alone justifies the subordination of individual rights to collective needs. Nonetheless, justice requires that such infringement, however justified, be subject to clear limits, predefined procedures, and unwavering administrative compliance. Moreover, any expropriated party must receive fair compensation, which serves as some measure of solace for the loss sustained. While these theoretical safeguards may foster a sense of legal security among citizens, actual practice may vary. Public authorities may, in effect, stretch the notion of “public interest”—a flexible and ambiguous term—to serve broad administrative discretion. Likewise, they may relax procedural safeguards under the pretext of public authority privileges, or assess compensation from a subjective lens, which might not reflect objective fairness.

This leads us to a timely and pressing question: Is the issue with Algeria’s expropriation regime one of legal structure or one of administrative practice?

I. Public Interest as the Legal Basis for Expropriation

Given that depriving citizens of their private property constitutes an act that contradicts the sanctity of the right to ownership, fosters a sense of social injustice, and breeds hostility towards the state and its institutions, it is imperative to clearly define the fields in which the concept of public interest is genuinely realized. The administration must also adhere strictly to the legal limits set by the law in the process of expropriation and must provide adequate compensation to property owners and rights holders for their losses.

1. The Criterion of Public Interest

The administration may perceive all its actions as serving the public interest, even though it is difficult to determine exactly what is meant by this concept. Public interest remains an ambiguous term without a clear legal definition, which works in favor of the administration, as it retains

the ability to interpret its meaning whenever it sees fit. Additionally, the lack of a precise delineation of activities considered to be within the realm of public interest further serves the administration's advantage.

1.1. The Difficulty of Defining the Concept of Public Interest

One of the fundamental safeguards protecting citizens from arbitrary administrative decisions regarding expropriation is ensuring that its purpose is to achieve public interest, as defined by the constitution and expropriation laws, or at least by specifying the activities that qualify as public interest. However, the concept of public interest is highly flexible and ambiguous³—an inherently broad and vague terms. It lacks a precise definition, and some argue that this omission is intentional, given that the concept itself is inherently undefined and relative, constantly evolving.

According to some perspectives, this ambiguity serves the administration's interests, allowing it to evade legal constraints⁴. Others criticize the lack of definition, arguing that public interest imposes a restriction on private property rights, and any restriction should be considered an exception—an exception that must not be left undefined⁵. Beyond the conceptual dilemma surrounding public interest, which most legal systems struggle with, another critical issue arises: determining the specific activities that qualify as public interest⁶ and that the administration may invoke to justify expropriation. This problem is particularly pronounced in Algerian legislation.

1.2. Defining Public Interest Through the Restriction of Expropriation Activities

The legislator should have specified the nature of activities that justify private property expropriation, given the ambiguity surrounding the concept of public interest. Defining these activities within the expropriation law would help citizens mentally prepare and eliminate the element of surprise. Some legal scholars advocate restricting the cases that fall under public interest. We believe that such a limitation could help clarify the concept of public interest and reduce the administration's unchecked authority, ensuring that expropriation is only exercised in legally specified situations where the meaning of public benefit is evident.

However, this notion might seem somewhat unrealistic, as even legislations that explicitly list activities qualifying for expropriation for public interest do so merely as examples rather than exhaustive definitions. Algerian legislation, particularly Law No. 91/11 concerning expropriation for public interest, follows a broad and general wording that is open to multiple interpretations. This approach is inclusive, as it allows the administration to consider any expropriation it conducts as serving the

public interest, based on its status as a public authority. At the same time, it is exclusive ,enabling the administration to classify various commercial and industrial activities under public interest ,even though, when the state engages in such activities, it operates under private lawFor instance, the ⁷ . second paragraph of Article 2 outlines the objectives of expropriation as follows:

... "Moreover, expropriation shall only be possible when implemented through systematic procedures such as urban planning, land development, and zoning, related to the establishment of collective infrastructure, major facilities, and projects of public interest".

By contrast, Egyptian legislation provides a more detailed framework. Article 2 of Law No. 10 of 1990 explicitly defines what qualifies as public interest activities, including:

- Construction, expansion, modification, or extension of roads, streets, and squares, as well as the creation of new residential districts.
- Water and sewage projects.
- Energy projects.
- Construction or modification of bridges, surface crossings, and underground passages.
- Any activity recognized as public interest under other laws.

Clearly specifying activities that justify expropriation help delineate the areas where the administration has the right to act. It also allows the administrative judiciary to oversee potential abuses, serving as the primary regulatory authority over government actions. Moreover, this legal clarity strengthens citizens' trust in the administration, alleviates concerns over arbitrary expropriation, and mitigates fears of legal injustice—ultimately supporting the principle of legal security. *An Example of This Ambiguity* One example of this ambiguity is the declaration of public interest that was annulled by the Administrative Chamber of the Supreme Court on December 25, 1991 ,as well as the property transfer decision issued by the Governor of M'Sila on March 19, 1995 ,which aimed to expropriate land for the construction of private housing. The Administrative Chamber based its ruling on the second paragraph of Article 2 of Law No. 91/11, considering that the administrative decision did not fall within the provisions of the article⁸. We cannot definitively affirm the correctness or error of the Administrative Chamber's decision in this case due to the flexibility of Article 2. It is possible that the ruling considered the subdivision of land for private housing not to constitute a major project.

2. Public Interest as a Legitimate Pretext for Private Property Expropriation

The principle of expropriation for public interest is based on two foundations, one objective and the other legal. The objective foundation refers to the essential needs that serve the population and cannot be fulfilled except through the encroachment on private property. As for the legal foundation, it pertains to the legal provision that grants legitimacy to the act of expropriation.

2.1. The Objective Basis

One of the fundamental duties of the state is to meet the various needs of its citizens through its legal mechanisms. These mechanisms are embodied in different ministries, each responsible for overseeing a specific sector and managing its various services.

For instance, the Ministry of Health oversees all public health-related services, including hospitals. The Ministry of Education manages and administers all institutions related to education and schooling. The Ministry of Higher Education supervises and directs universities and institutes. Similarly, this applies to the Ministry of Interior, the Ministry of Housing, and other ministries. Each ministry is dedicated to a particular sector, covering its various fields through its respective branches. The continuity of these sectors and the need for facilities, the continuous operation of various sectors and their ability to provide consistent and high-quality services to citizens require facilities dedicated to maintaining these services. In some cases, the services themselves necessitate a physical location for their delivery, such as the need to establish a hospital, build university residences for students, construct essential infrastructure for institutes and faculties⁹, or open roads to break a city's isolation.

Generally, the state relies on its property reserves to implement such projects. However, there are instances where these projects cannot be realized without utilizing privately owned land. In these situations, the state faces two challenges: first, its duty to serve citizens in the best possible manner, and second, the limitation imposed by the lack of available land to provide those services. This is where the objective foundation for the principle of expropriation emerges—where the appropriation of private property becomes a legitimate necessity as it serves public purposes that benefit all citizens.

There is no doubt that collective interest takes precedence over individual interest; when individual rights conflict with the needs of the community, the latter is prioritized. This principle was affirmed in a State Council ruling issued on May 26, 1984, which upheld the legitimacy of

expropriation for the needs of a public facility. The ruling stated: "It is evident from the case file that the planned expropriation for public interest, aimed at acquiring premises for housing the administrative services of the Municipality of Sidi M'hamed, holds the characteristics of a genuine public utility, as the planned operation is intended to serve a local community and meet the needs of a public service"¹⁰.

Although the ruling did not explicitly state that fulfilling public service needs inherently involves managing services directly related to citizens, its implications clearly express this idea.

2.2. The Legal Basis for Private Property Expropriation

As mentioned in the introduction, Algerian constitutions, despite their differences, all include a legal provision that enshrines the state's right to expropriate property for public interest. Even if this were the only legal text available, it would suffice to legitimize expropriation. Nevertheless, the principle of expropriation is also stipulated in civil law, which serves as the general legal framework governing property ownership. Article 677 of the Algerian Civil Code states:

"No one may be deprived of their property except in the cases and conditions prescribed by law. However, the administration has the right to expropriate real estate, or parts of it, or to revoke real property rights for public interest, in exchange for fair and equitable compensation".

Expropriation has been defined as "the administrative process by which the government compels a private individual to relinquish ownership of their property for public interest, in exchange for fair and prior compensation".

An expropriation decree is legally described as "an administrative decision issued by a competent authority to remove ownership of a privately held property for public interest, in return for fair compensation".

The French legislator similarly addressed this principle in Article 545 of the French Civil Code, maintaining its wording in the revised version: "No one may be forced to give up their property except for reasons of public utility, and in exchange for fair and prior compensation".

Furthermore, Algeria has enacted special legislation to govern expropriation: Law No. 91/11, issued on April 27, 1991¹¹, later amended through the Finance Laws of 2005 and 2008.

The law was implemented via Executive Decree No. 93/186, issued on July 27, 1993, and subsequently amended by Executive Decree No. 05/284, dated July 10, 2005, which defines the general rules concerning expropriation for public interest. We do not need to enumerate the various

previous repealed laws that addressed this principle.

II. Guarantees for Citizens Facing Expropriation of Their Private Property

If we consider the clarity of what is meant by “public interest” as an indirect guarantee for citizens, then the process of expropriation proceeds through a series of administrative procedures ,all of which are conducted under the supervision and oversight of the judiciary (First Requirement). The citizens must also receive fair financial compensation (Second Requirement), which is subject to judicial review and reconsideration.

1. Procedural Guarantees

One of the fundamental guarantees that protect the citizen from arbitrary expropriation of private property—especially given the ambiguity of the concept of public interest and the ease with which the administration may invoke it as a reason for expropriation—is that the legislator has required the administration to prove the existence of the public interest it seeks to achieve. This is stipulated in Article 4 of Law 91/11: “The procedure for declaring public utility must be preceded by an investigation aimed at establishing the existence of such utility.” To this end, the administration is obliged to follow a set of administrative procedures, which, if properly observed ,ultimately lead to the expropriation of private property.

While Algerian laws have considered expropriation to be a purely administrative matter, carried out solely through administrative stages, the French legislator has distinguished between the administrative and judicial phases. The French system assigns all procedural and formal matters to the administration—such as the preliminary investigation, the declaration of public utility, the identification of owners and right-holders, and the assessment of property—while the substantive aspect relating to expropriation and compensation is entrusted to the judiciary¹².

1.1. The Decision Declaring Public Utility

The first crucial stage in the expropriation process is the issuance of a decision establishing the existence of public utility in the properties intended for expropriation from their owners. This is known as the “decision declaring public utility.” However, this decision is not issued by the competent authority until after an important preliminary stage, namely, the pre-investigation phase.

1.1.1. The Preliminary Stage for the Issuance of the Expropriation Decision

This procedure is mandatory and obligatory¹³, undertaken by a neutral special committee appointed by the administration for this purpose. The

committee supervises the investigation process and examines whether there is a public utility

A. The Prior Administrative Investigation :Article 6 of Law No. 91/11

defined the content of the decision, stating that it includes the committee's working procedures and composition, the date of opening and closing the investigation, determining the location of the intended works to be carried out. It must also mention in the decision to open the prior investigation the purpose of the operation, meaning that this decision must include the precise and clear objective of the operation .It is not sufficient to mention the type of project, whether it is development, works, or constructions, but rather the components of the operation must be specified. Article 6 of Executive Decree No. 186/93 stipulated the conditions that must be met in the decision, including its publication at the concerned municipality center, in two national newspapers, and in the collection of administrative decisions of the wilaya (province), 15 days before opening the investigation.

B. The Nature of the Decision to Open the Investigation :

The decision to open the investigation is issued by the territorially competent Wali (Governor). This decision includes a provision for conducting the investigation and appointing the committee responsible for carrying it out. This decision is considered a non-contentious administrative measure¹⁴; it is merely a preparatory act that cannot be challenged before the administrative courts, as it does not affect the rights of those whose property is subject to expropriation¹⁵.

a. The Independence and Impartiality of the Committee :

The independence of the committee's investigators is inferred from the fact that its members are former employees whose relationships with their previous administrative bodies have ended .Therefore, they no longer have any personal interest or obligations of obedience that the principle of hierarchy previously imposed on them ;these are the only two factors that could potentially affect how they conduct the investigation. This applies to former employees. As for former judges, independence is presumed from the outset, as the judge, by his function, is accustomed to the independence of his judicial decisions¹⁶.

Impartiality, on the other hand, is evident from the legislator's requirement that the investigators have no connection whatsoever with either the expropriating administrative authority or the individuals whose property is being expropriated, as stipulated in Article 3 of Law 91/11. Some may argue that the fact that the investigators' fees are paid by the

expropriating administrative authority could undermine the impartiality and independence of the investigation committee; however, the committee's independence is reinforced by the fact that it receives remuneration fixed by law, regardless of the outcome of the investigation.

b. The Nature of the Committee's Report:

Article 9 of Law 91/11 stipulates that, upon the completion of its report—which must explicitly¹⁷ state its opinion, whether confirming or denying the existence of public utility, within the prescribed period of 15 days from the closure of the investigation file—the investigation committee must submit the complete file, along with its report, to the competent administrative authority that appointed the committee. The authority is also required to provide, upon specific request, with a copy of the investigation results for the individuals concerned.

However, the important question here is: What is the legal nature and value of the committee's report? The result of the investigation has no direct effect on individuals' rights or legal positions, and it is not, in fact, addressed to the citizens but rather to the administrative authority that appointed the committee. The proper question to ask here is whether the Wali (Governor) has the right to reject the committee's report. The answer to this question determines the legal value of the report: can it be considered an administrative decision or merely a non-binding advisory opinion?

Upon reviewing the provisions of Law 91/11, there is nothing to indicate—even implicitly—the possibility of appealing the committee's report before the administrative courts. This is contrary to the approach adopted by the French legislator, who allows appeals against such reports based on the declaration of public utility or illegality¹⁸. In fact, French judicial decisions have established that the decision establishing public utility is an administrative decision that may be withdrawn and challenged by way of annulment, as it is not considered a preparatory act. Jurisdiction over annulment appeals against such a decision lies with the Council of State if the declaration of public utility was issued by decree, and with the administrative courts if it was issued by decision. As for territorial jurisdiction, the competent administrative court is the one in whose district the property to be expropriated is located¹⁹.

In summary the committee's report does not constitute a genuine guarantee for citizens against potential administrative abuse, since the outcome of the entire investigation process results only in an advisory and informational opinion, not a decision. The administration is entitled to disregard it, as the law does not oblige it to comply, granting the

administration sole discretion in assessing public utility. The prior investigation is thus a preparatory act in the expropriation process, which does not affect individuals' legal positions, create new legal statuses, modify, or abolish them; rather, it merely informs the administration about the effectiveness of the intended public utility underlying the project under investigation²⁰.

1.1.2 The Stage of Issuing the Declaration of Public Utility Decision :

The declaration of public utility decision is the administration's formal announcement and acknowledgment of the existence of public interest in the intended project²¹. This marks the beginning of the most crucial phase in the process of expropriating private property for public utility and is perhaps one of the most important stages preceding the final expropriation of ownership.

The Algerian legislator did not specify a particular period for the competent administration to issue the declaration of public utility decision from the date it receives the preliminary investigation committee's report, unlike the French legislator, who set this period at one year.

The declaration of public utility decisions is issued regardless of the will or wishes of the owners and rights holders subject to the expropriation procedure. Although this decision does not suspend their authority over their properties, it does prevent them from making improvements to their properties. Should they make such improvements after the issuance of the declaration of public utility, those improvements will not be considered as part of the compensation elements.

Article 10 of Executive Decree No. 186/93 defines the administrative authority empowered to issue this decision, which, depending on the case, may be Walis (Governors), Ministers, or the Prime Minister.

A. The Obligation to Publish the Declaration of Public Utility Decision :

It is understood from Article 11 of Law 91/11 that the decision declaring public utility is subject to nullification if it is not published. Given the seriousness of its impact on citizens' rights, the legislator requires the administration to publish it as follows: in the register of administrative decisions at the wilaya (province) if the decision is issued by the Wali (Governor), or in the Official Gazette if the declaration is issued by a joint ministerial decision or by an executive decree. In all cases, it must be notified to the parties concerned and posted at the headquarters of the municipality in which the real property subject to expropriation is located, in the designated areas for public notices. According to Article 6 of Law 91/11, it must remain posted for a full month, which is the period specified

in Article 13 of the same law for the concerned property rights holders to challenge this decision.

An exception is made for secret projects related to national defense, which are exempt from the preliminary investigation and publication requirements, but not from notification. This is stipulated in Article 12 of Law 91/11.

B. The Nature of the Declaration of Public Utility Decision :

There is no dispute regarding the classification of the declaration of public utility as an administrative decision; this is a matter of consensus among both legal scholars and the judiciary .However, the debate has arisen as to whether it should be considered a regulatory (general) decision or an individual decision. Regardless of the criteria used to distinguish between individual and regulatory decisions, the Algerian legislator did not differentiate between them regarding the right to challenge such decisions. Article 13 of Law 91/11 states that any interested party may challenge the declaration of public utility before the competent court, with the determination of jurisdiction referring to the Code of Civil Procedure²².

C. The Specificity of Challenging the Declaration of Public Utility Decision :

The legislator, in Law 91/11, departed from the traditional rules of the Code of Civil Procedure regarding the time limits and effects of appeals. Article 13, paragraph 1 of Law No. 91/11 provides: “Any interested party has the right to challenge the declaration of public utility decision before the competent court, in accordance with the procedures set out in the Code of Civil Procedure.” Paragraph 2 of the same article states: “The appeal shall only be admissible if it is filed within a maximum period of one month from the date of notification or publication of the decision”.

Thus, the time limit granted to those affected by the expropriation procedure—whether owners or rights holders—to challenge the declaration of public utility decision is only one month, contrary to the four-month period stipulated in the general rules of the Code of Civil and Administrative Procedure for challenging administrative decisions. The legislator also introduced another, even bolder ,provision in paragraph 3 of the same Article 13, which states: “In this case, the execution of the decision declaring public utility shall be suspended.” The rationale behind shortening the appeal period and suspending the decision’s execution is the legislator’s desire to expedite expropriation procedures, given their connection to public utilities²³.

1.2. The Decision of Transferability (Decision of Disposability)

This is provided for in Law 91/11 in Article 23 thereof. It is an expression by the expropriating administration declaring that these properties and rights have become eligible for transfer, either by mutual agreement—if the owners accept and reach an agreement with the administration—or through an expropriation decision. This is an important decision because it determines the real estate units subject to the expropriation process, identifies their owners and rights holders who are entitled to compensation, and is also necessary because it clarifies the administration's position and intention regarding proceeding with the expropriation process or abandoning the idea altogether. The declaration of public utility alone is insufficient, as the administration may, after issuing the public utility decision, halt the project or discontinue the expropriation procedures²⁴.

1.2.1. Partial Investigation

The decision of transferability is not issued except after a partial investigation process undertaken by a commissioner appointed by the territorially competent Wali (Governor). The partial investigation process may appear to be a routine procedure if we limit its purpose to identifying the real property rights subject to expropriation and their owners, since these real property rights were already known from the initial file submitted by the beneficiary administration that owns the project. The investigation was entrusted to a special committee appointed by the Wali, which conducted the investigation publicly, where the decision of its appointment was published and it heard from all those connected to the real properties subject to the expropriation decision, enabling them to present evidence proving their rights to those properties. Then the declaration of public utility was issued, declaring the existence of a public utility and granting owners and rights holders the right to challenge it before the administrative judge. Now the law requires Wali to appoint a person to undertake another investigation whereby the land plots and their owners are identified.

The partial investigation is conducted by a commissioner appointed by the territorially competent Wali after 15 days following the publication of the declaration of public utility, by decision from among surveyors and real estate experts accredited with the courts²⁵.

After the territorially competent Wali receives the final report from the investigating commissioner, he sends it ,accompanied by the declaration of public utility, to the National Property Administration services, which undertake the evaluation process of the properties subject to expropriation

procedures. This is stipulated in Article 20 of the new Law 91/11, which states: "The National Property Administration services prepare an evaluation report for the properties and real rights to be expropriated after being notified by means of a file containing the following: the declaration of public utility, the partial design accompanied by the list of owners and rights holders as provided for in Articles 18 and 19 of this law ".The National Property Administration undertakes the evaluation of properties and rights subject to expropriation procedures, relying on specific calculation rules and with the assistance of competent administrations in accordance with paragraph 2 of Article 33 of Executive Decree 186/93. After that, it prepares the compensation report and sends it to the Wali²⁶. Just as the preliminary investigation phase was crowned with the issuance of the declaration of public utility, the partial investigation and subsequent property evaluation are crowned with the Wali's decision on the transferability of the property.

1.2.2. The Nature of the Transferability Decision and Its Oversight:

Wali's (Governor's) decision regarding the transferability of property constitutes a declaration by the administration of its serious intent to proceed with expropriation and continue the related procedures. This decision is considered an individual (personal) administrative act, as the legislator expressly stipulated that it must be individually notified to the parties concerned. Article 25 of Law 91/11 states: "The administrative decision regarding transferability shall be notified to each of the owners , holders of real rights, or beneficiaries." This is also confirmed by Article 38 of Executive Decree 93/186.

Article 24 of Law 91/11 clarifies that this decision is subject to appeal, stating: "The administrative decision regarding transferability shall include the list of properties and other real rights to be expropriated, and in each case, under penalty of nullity ,shall specify the identity of the owner or rights holder, as well as designate the properties based on the partial plan, and state the amount of compensation and its calculation basis".

Article 37 of Executive Decree 93/186 further explains the contents of the decision as follows:

- The list of properties designated according to the partial plan and other real rights to be expropriated.
- The list of owners and holders of real rights.
- The amount of compensation.
- The method of calculation.

In addition to the data that the legislator required to be included in the transferability decision under penalty of nullity ,there are also procedures ,

although not expressly mentioned in the text ,that may constitute grounds for challenging the decision. These include all the procedures that preceded its issuance at its various stages²⁷.

1.2.3. The Expropriation Decision

Article 29 of Law No. 91/11 refers to it as the "decision of property transfer," while Article 40 of Executive Decree No. 186/93 terms the "expropriation decision." This constitutes an error in expression, as the term "expropriation" is a general expression that encompasses all stages and procedures of expropriation. This decision can only be issued by the Wali (Governor), as stipulated in Article 40 of Executive Decree 93/186. Despite the importance of this decision, the legislator did not indicate in Law 91/11 or Executive Decree 93/186 the possibility of challenging it, nor the time limits for appeal, nor the authority competent to adjudicate such challenges. This matter refers to the general rules of administrative litigation.

Article 30 of Law 91/11 mandates the obligation to notify and register the expropriation decision, stating: "The administrative decision of expropriation shall be notified to the expropriated party and shall be subject to the legal formalities required in the field of real estate transfer." Article 41 of Executive Decree 93/186 confirms this and clarifies that registration in the land registry must occur within one month from the date of notification of this decision and specifies that it takes place in the land registry office within whose jurisdiction the property is located. Real estate registration is mandatory for the transfer of ownership of real property and real property rights. The wisdom behind registering the expropriation decision serves the same purpose as registration in general: protecting third parties. The data in the real property register serves as the reference for determining the legal status of real estate.

Article 41 emphasized the matter of notification, as in addition to the registration requirement, it mandated the publication of the property transfer decision in the administrative decisions register of the wilaya (province) and required its notification to those concerned with the expropriation. This makes it a hybrid decision—individual by virtue of the requirement for individual notification, and regulatory by virtue of its publication in the wilaya register, and it serves as a property deed for the expropriating authority²⁸. Legal effects of the property Transfer decision . Upon the issuance of the property transfer decision, the property owner loses his status as owner and retains only the status of possessor. This results in his loss of the ability to dispose of the property, whether through

acts that transfer ownership such as sale and gift, or those that encumber the property such as easements or mortgages. He also cannot pursue any action based on ownership rights aimed primarily at claiming a right, such as requesting a building permit. He also loses legal standing regarding disputes related to the right to remain in premises or eviction therefrom, even if eviction notice procedures were completed before the issuance of the expropriation decision. Retention of Actual Possession the law²⁹ provides for the retention of actual possession by the owner despite the issuance of the expropriation decision, linking the continuation of this possession until he receives the compensation amount. While the law provides for the transfer of ownership rights to the expropriating party from the date of issuing the expropriation decision, the provisions of the same law have made the transfer of actual possession to the expropriating party conditional upon the latter's payment of the legally prescribed compensation, in accordance with the principle of prior compensation. Property Purification effect the effect of the property transfer decision on the expropriated property is that it is purged of all real and personal rights, contrary to the general principle of ownership-transferring transactions under civil law, which do not result in the termination of third-party rights over the property subject to the ownership-transferring disposition³⁰.

2. Compensation and Judicial Oversight

The expropriation decision results in the obligation to compensate the party harmed by this decision, and the constitution mandates that such compensation must be just. However, determination of what is considered "just" must be made objectively, independent of what the administration or the citizen may deem sufficient. In principle, the administration should base its assessment on the market value of the expropriated property at the time of expropriation. Given that the administration may act arbitrarily in this assessment, it is essential that its determination be subject to judicial oversight.

2.1. Just Compensation

When we expropriate someone's property, we are already causing harm to them in the name of public interest. But if we then grant them unjust compensation, we are harming them twice—something that is unacceptable both logically, legally, and ethically³¹.

Although compensation is the only solace or remedy for the citizen whose property has been expropriated, under Algerian law, compensation does not even rise to the level of an administrative decision, as no independent decision³² is issued in this regard. Instead, it is merely a detail

or an item within the transferability decision. As previously mentioned, compensation is assessed by the Department of State Property, making it a purely administrative matter and giving the impression that the administration acts as both adversary and judge at the same time. This is contrary to French law, which considers issues of compensation and expropriation decisions to be matters handled by a specialized civil judge for expropriation.

We believe that the French legislator's approach represents a middle ground, as it combines administrative procedures carried out by the administration with the issues of compensation and expropriation decisions, which are handled by a specialized civil judicial authority responsible solely for expropriation matters. This approach distances the risk of arbitrariness that may be faced by the expropriated party.

Despite the existence of administrative judicial oversight over the various decisions issued in the expropriation process, the scope of administrative justice is, by its nature, far removed from the civil law system and its regulation of property and real rights. This raises issues regarding its ability to handle property disputes and its inherent inclination toward the administration, as it is known as the "judge of the administration," which reduces the level of protection granted to litigants³³.

Although "compensation" is the term used by the legislator as the counterpart for expropriation, it is not the same as the compensation known in civil law. The obligation to compensate arising from expropriation cannot be referred to the general rules; rather, its source is the law itself, specifically the rules of expropriation established under Law 91/11 and its implementing decrees. Therefore, when discussing the foundations and conditions of compensation, reference should be made exclusively to the rules of this law³⁴.

The compensation required to be paid to the owner under the Expropriation Law, as Professor Anwar Tolba states, "is in reality the price of the property³⁵." He also adds: "The assessment is not carried out according to the general rules established in civil law based on the rules of tort liability, since the entitlement to compensation is founded in the law itself... not in an unlawful act³⁶".

2.2. Judicial Oversight of Compensation Assessment

Since compensation is the sole remedy that covers the loss of the expropriated party, the law has stipulated that it must be just. However, what is considered just compensation by the administration that

determined it is not necessarily considered as such by the rights holders. It is natural that those subjected to expropriation procedures would not be satisfied with the amount determined as compensation for this procedure. Apart from the emotional and moral considerations that bind a person to the expropriated property, their right to object is legally guaranteed, given that the compensation was assessed by the State Property Administration services according to their own evaluation of the property.

But which judiciary should they turn to? Among the issues that have sparked debate in the Algerian judiciary is determining the competent authority in compensation matters, especially since Law 11/91 and its implementing decree 93/186 did not definitively resolve the matter with explicit text. Article 30 of Law 91/11 merely used the phrase "competent authority," and Executive Decree 93/186 followed suit by referring to "the competent judge".

Given this situation, it is necessary to refer to the rules that determine the criteria for administrative disputes, as enshrined in Article 800 of the Code of Civil and Administrative Procedure, which adopts the organic criterion. Since the authority that issued expropriation decisions, including compensation, is an administrative body, jurisdiction over disputes related to them inevitably falls to the administrative courts. The administrative judge has the authority to review and assess compensation, and has the power to seek expert assistance, given that these are technical matters that may be difficult for him to comprehend³⁷.

Conclusion:

From our examination of the subject of expropriation and public interest and its procedures through the provisions of Law 91/11 and Executive Decree 93/186, we observe that the legislative approach chose to make the entire matter purely administrative and opted for the expropriated citizen to face either the administration or, at best, the administrative judiciary. Perhaps one of the fundamental guarantees that should protect the citizen from the outset is the clarity of the concept of public interest through the legislation establishing the principle of expropriation, which we have not observed. Moving to the procedures established by these laws, we see that they focused on the aspect of speed at the expense of the interests of those whose property will be expropriated. For example, the appeal period for the declaration of public interest decision and the transferability decision is only one month. The question arises: how can a citizen prepare his files that form the basis of his case within one month, when we know that real estate disputes under normal circumstances continue for years? Of course, the only explanation for this emphasis on speed is the idea of not delaying

projects because their purpose is public interest.

We have also seen that the compensation decision and its assessment are subject to administration, and the supervisory authority over this assessment falls under the administrative judge, even though the properties to be expropriated belong to private individuals. Practice: to the question, we posed as a problem in the introduction—whether the expropriation system for public interest is a problem of regulation or practice—we answer that it is primarily a problem of regulation, then a problem of practice.

Therefore, we hope that the legislator will regulate precisely as follows:

- Clearly and precisely define the areas of public expropriation.
- Permit the administration to expropriate private property only in cases where it is impossible to find real estate units belonging to the State, to prevent the administration from being lenient with the idea of arbitrary expropriation.
- Extend the appeal periods for administrative decisions taken within the framework of expropriation so that citizens can prepare their files.
- Consider compensation in civil expropriation to be under the jurisdiction of the civil judge, given that he is competent according to civil law regarding private real estate.

Bibliography List:

1 the same text appeared in the 1989 Constitution with the addition of the word 'prior' in Article 20. The text was repeated numerically and verbatim in the 1996 amendment, but the word 'prior' was omitted in Article 22 of the 2016 Constitution. Official Gazette No. 14, dated March 7, 2016. However, we do not know whether it is permissible to say that the legislator has reverted to the text of the 1976 Constitution

2 "This is exactly what Article 2 of Law No. 91/11, dated April 27, 1991, refers to, stating: "Expropriation is an exceptional method for acquiring property or real estate rights"

3 Chetouane Hanan, *The Extent of Application of the Theory of Separability of Decisions in Expropriation for Public Utility in Algerian Administrative Jurisdiction*, Ilizi Journal for Research and Studies, University Center of Ilizi, Issue 3, 2018, p. 295

4 Jaber Mahna Shibl, *The Legitimacy of Private Property Expropriation and the Guarantees Ensuring Its Protection*, Journal of the Faculty of Law / Al-Nahrain University, 2015, Volume 17, Issue 2, pp. 96-97

5 Op.cit ,p97.

6 Saleh Ahmad Al-Luhaibi, Ibrahim Ahmad Ibrahim, *The Concept of Property Expropriation for Public Utility*, Journal of the Faculty of Law for Legal and Political Sciences, Volume 8, Issue 38, 2019, p. 278.

- 7 Anwar Talba, *Property Expropriation for Public Utility*, Modern University Office, Alexandria, Egypt, 2020, p. 47
- 8 Brahimi Siham, *The Declaration of Public Utility in Expropriation, A Comparative Study*, Dar Al-Huda Ain M'lila, Algeria, 2012, p. 145
- 9 Joud Issam Khalil Al-Atira, *Private Property Expropriation for Public Utility in Palestinian Legislation*, master's Thesis, Discussed on 13/10/2010, Graduate Studies Faculty, An-Najah University ,p. 6.
- 10 Supreme Council Decision No. 36595 issued on 26/05/1984, *Judicial Journal*, Issue 1, Algeria, 1990, p. 192
- 11 Official Gazette, Issue 21, Year 1991.
- 12 Hamdan Djilali, *Administrative Procedures in Property Expropriation for Public Utility*, Doctoral Thesis, Discussed during the Academic Year 2017/2018, Faculty of Law and Political Science, Djilali Lyabes University, Sidi Bel Abbès, p 31.
- 13 Ismail Bouguera, Alaa Eddine Kalil, *Administrative Judge's Control over the Declaration of Public Utility in the Field of Expropriation*, *Legal Studies Journal*, Algeria, Volume 4, Issue 1, 2018,263.
- 14 Chetouane Hanan ,op.cit ,p.297,306
- 15 Brahimi Siham, op.cit ,p90.
- 16 Hamdan Djilali, op.cit ,p46.
- 17 Brahimi Siham, , op.cit ,p97.
- 18 Brahimi Siham, op.cit ,p98.
- 19 Chetouane Hanan ,op.cit ,p307.
- 20 Hamdan Djilali, op.cit ,p53.
- 21 Brahimi Siham, op.cit ,p104.
- 22 Hamdan Djilali, op.cit ,p118.
- 23op.cit ,p136.
- 24Wanas Akila, *The Legal System of Property Expropriation for Public Utility*, master's Thesis, Department of Legal Sciences, Faculty of Law, Hadj Lakhdar University, Batna, 2006, p4.
- 25 Article 12 of Executive Decree 93/186
- 26 Wanas Akila ,op ,cit,50.
- 27 Hamdan Djilali, op.cit ,p280.
- 28 Hamdan Djilali, op.cit ,p301.
- 29 Wanas Akila ,op ,cit ,p56.
- 30 op ,cit ,p57,58.
- 31 Mohammed Al-Kabshour, *Property Expropriation for Public Utility*, Dar Al-Salam for Printing and Publishing, Rabat, 2007, p198.
- 32 Being part of the decision on the possibility of relinquishment does not prevent filing a lawsuit to annul the decision on relinquishment separately from a lawsuit to review the amount of compensation, if there is no obstacle to filing both lawsuits =separately, provided that they are filed within one month from the date of notification of the decision.
- 33 Ahlam Harrach, *Judicial Jurisdiction in Disputes overcompensation for Expropriation for Public Utility: A Comparative Study*, *Journal of Legal and Political Sciences*, Issue 12, January ,2016p169.
- 34 Anwar Tolba ,op ,cit ,p167.

35 Anwar Tolba ,*op ,cit ,p82.*

36 *op ,cit ,p83*

37 Asma Belili, Salah Eddine Boujlal, *The Discretionary and Restricted Powers of the Administrative Judge in Determining Compensation for Private Property Expropriation for Public Utility*, *Journal of Rights and Freedoms, Algeria, Volume 10, Issue 2, 2022* p820.