



THE FORCED SALE OF REAL ESTATE IN LIGHT OF THE PROVISIONS OF THE CIVIL AND ADMINISTRATIVE PROCEDURES LAW

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Abstract:

This study aims to examine the procedures governing the forced sale of real estate under the provisions of the Civil and Administrative Procedure Code, as it is established that the enforcement of executory instruments under civil law may occur either voluntarily through the debtor's consent, or forcibly through the intervention of public authority to compel the debtor's compliance; consequently, the forced execution process necessitates the involvement of multiple parties—including the attaching creditor, the debtor whose property is attached, third parties, and enforcement agents such as the court president and the judicial officer—prompting the Algerian legislator to establish sound procedures for real estate attachment, particularly concerning the preliminary measures for selling the attached property, as well as the conditions stipulated during the objections hearing for such sales and the practical challenges evidenced in implementation.

key words: Real estate sale, Public auction, Adjudication of auction award, Re-sale of real estate.

Introduction:

The Algerian legislator, under the Civil and Administrative Procedure Code, has established two distinct paths for enforcement to enable creditors to recover their debts: the first is voluntary, relying on the debtor's willingness—which is the default approach—and the second is compulsory, encompassing varied methods depending on the nature of the seized asset,

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whether immovable or movable, where all of the debtor's assets, whether movable or immovable, serve as collateral for debt repayment .

In principle, enforcement initially targets the debtor's movable property; if none exists or if it proves insufficient, the creditor may proceed to enforce against immovable property through what is termed real estate attachment—except for secured creditors holding executory instruments, who may enforce directly against the debtor's immovable assets; thus, real estate attachment constitutes a means of compulsory enforcement against the debtor, allowing the creditor to place immovable property owned by the debtor or by a third party (subject to a right of pursuit) under judicial custody for public auction, thereby recovering the debt from the proceeds, as this process culminates in the conversion of the debtor's assets into monetary form, unless the creditor opts to recover their claim directly from the seized property itself; in addition real estate attachment takes two forms: protective attachment and executory attachment, the latter being the focus of this study.

It is worth emphasizing that the sale of immovable property represents both the outcome and the intended objective of real estate attachment, and to achieve this outcome, the procedures and rules prescribed by law must be strictly followed, as once the attached property is prepared for sale, it is publicly auctioned, with the highest bid accepted; the auction concludes with its adjudication to the highest bidder, formalized by a judicial ruling, where this ruling documents all enforcement measures undertaken against the property and produces legal effects for the involved parties.

However, even after the completion of sale procedures and the adjudication of the auction to a bidder, the attaching creditor and intervening creditors may sometimes fail to recover their claims—a scenario the legislator has anticipated, specifying circumstances that necessitate a re-auction of the property under new bidding procedures; ultimately, the proceeds from the sale

are distributed among the creditors to satisfy their claims, as their right to enforcement shifts to these proceeds; in this regard, parties may reach an amicable agreement on distribution; absent such an agreement, the proceeds are allocated through judicial allocation.

Significance of the Study:

This study addresses the critical issue of ensuring creditors' rights through the forced sale of seized real estate at public auction, and it highlights the key legal provisions and procedural frameworks established by Algerian legislation to govern such compulsory sales, thereby safeguarding the enforcement of debts while balancing the interests of all parties involved.

Methodology:

A descriptive-analytical approach was employed, involving the systematic collection of legal and scholarly materials relevant to the subject, followed by an in-depth analysis of these sources to derive coherent conclusions.

Research Problem:

How has the Algerian legislator regulated the procedures for the auction sale of seized real estate?

To address this central question, the study adopts the following structure:

Introduction

Section I: The Sale of Real Estate by Public Auction

Requirement 1: The auction session and bidding procedures.

Requirement 2: The judicial adjudication of the auction.

Section II: Re-auction and Distribution of Proceeds

Requirement 1: Re-auction of the property.

Requirement 2: Allocation of sale proceeds.

Conclusion

Section I: The Sale of Real Estate by Public Auction

The Algerian legislator has established a set of procedures governing the sale of real estate through public auction, which we will examine in Subsection One, addressing the auction



session and bidding procedures, and Subsection Two, concerning the judicial adjudication of the auction.

Requirement 1: The Auction Session and Bidding Procedures

Once the property is prepared for sale, an auction session is scheduled and publicly announced as part of the sale conditions, where the auction is conducted during the real estate attachment session at the court, on the specified date and at the designated location, where public bidding begins, offers are submitted, and the process concludes with the adjudication of the auction to the highest bidder.

Part 1: The Auction Session

The sale of the seized property must always follow public auction procedures during an open session, the date and location of which are determined by the court president in the record of deposit of the sale conditions, under Article 737 of the Civil and Administrative Procedure Code (Algerian Law No. 22-13, 2022, Art. 737/8); however, if the session is not scheduled, the judicial officer may submit a request to the competent court president, who will issue an ex parte order specifying the date and location of the public auction session.

This order is issued only after the court president verifies that all submitted objections have been resolved, as stipulated under Article 747 of the Civil and Administrative Procedure Code, as an objection to the sale conditions constitutes a dispute over the validity of the procedures, and its submission suspends the sale process until a ruling is issued, and once these objections are resolved, the property becomes eligible for public auction.

While the sale is typically conducted at the court's premises, it may be in the interest of the parties to hold it elsewhere, as in such cases, the court president's order must specify the alternative location, based on a request submitted by the attaching creditor, the debtor, or any other interested party (Khalil & Hindi, 1999, p. 505). For the auction session to be legally convened, it must be preceded by a public announcement of sale issued by the judicial officer; this announcement shall

address both the enforcement parties and potential purchasers from the general public.

First: Notification of Enforcement Session Parties

Article 747 of the Civil and Administrative Procedure Code obligates the judicial officer to notify all registered creditors, the debtor subject to seizure, the possessor, and any guarantor (if applicable) of the date, time, and location of the public auction session at least eight days before its convening, however, the article does not stipulate penalties for failing to provide such notice, while the underlying principle is that these individuals need not be informed of the sale date or its terms, as the initial summons issued to enforcement parties—or those specified in Article 740 of the CAPC—renders subsequent notification of the auction session redundant, given that the summons itself includes the auction's date and time.

A contextual reading of Paragraph 2 of Article 747 in conjunction with preceding paragraphs suggests that this notification requirement applies only if the court president did not previously fix the auction date in the record of deposit for the terms and conditions, moreover, there is no obligation to notify litigation parties of a postponed session's rescheduled date, as the deferral order inherently specifies when proceedings will resume—thereby serving as sufficient notice.

Second: Public Announcement

Once the concerned parties have been notified of the auction's date and location, a public announcement must be issued to attract more bidders and foster competition to secure the highest sale price (Hendi & Omar, 2003, p. 658), as Article 748 of the Civil and Administrative Procedure Code mandates that the judicial officer, after depositing the sale terms, must publish an extract of these terms in a national daily newspaper and post them on the court's bulletin board within eight days following the final official notification of the deposit. A copy of the newspaper announcement and a record of the posting must be included in the enforcement file; thus, the judicial officer must,



no later than 30 days and no earlier than 20 days before the auction session (Al-Ubaidi, 2006, p. 419), draft an extract of the sale based on the enforcement instrument and the sale terms, sign it, and publish the sale announcement at the enforcement claimant's expense, where this extract, in addition to standard details, must include the information specified in Article 749 of the Civil and Administrative Procedure Code, namely:

- The full names and domiciles of the petitioning creditor, the debtor subject to seizure, the possessor, and any guarantor (if applicable).
- A description of the property as stated in the sale terms.
- Details of the enforcement instrument under which the seizure was conducted—a crucial element in enforcement records that must be legally served to the debtor to verify the validity of enforcement measures taken against them and to challenge any procedural irregularities (Badawi, 2009, p. 60).
- The reserve price for each portion of the property and/or real estate right.
- The date and time of the public auction.
- The court where the sale will take place or any alternative venue.

Accordingly, the public auction announcement is made through posting and publication, verified by submitting a copy of the newspaper or an endorsement from the authorized officer on the published notice, which is then filed with the enforcement records (Hamdi Bacha, 2012, pp. 305-306), as Article 750 of the Civil and Administrative Procedure Code specifies the locations for such postings:

- On the entrance or facade of each seized property (buildings or land), if the property is undeveloped land, the notice must be affixed to a board placed on the land.
- In one or more national daily newspapers, depending on the property's significance.
- On the bulletin board of the court conducting the sale.

-On the bulletin boards of the tax office and municipality where the property is located.

-In public squares and communal spaces.

-Any other location likely to attract the highest number of bidders (e.g., stadium entrances, marketplaces).

The parties to the seizure may file a petition with the court president requesting the cancellation of publication and posting procedures if the announcement does not align with the property's significance, provided this is submitted at least three days before the auction (as per Article 751/1 of the Civil and Administrative Procedure Code).

If the judge annuls the procedures, the auction is postponed to a later session, and the announcement process is repeated at the judicial officer's expense (Article 751/3); and if the request is denied, the judge orders the immediate commencement of the public auction (Messaoudi, 2009, p. 243).

Part 1: Bidding Procedures

Bidding constitutes the formal process wherein an auction is conducted through successive price increments; this procedure commences during the real estate seizure hearing and is executed as a public auction in compliance with Article 753 of the Civil and Administrative Procedure Code, as the session, presided over by the court president or a designated judge, requires the attendance of the judicial officer, the court clerk, registered creditors, the debtor under seizure, the possessor, and any guarantor (if applicable)—provided they have been duly notified at least eight days prior; moreover, a minimum of three bidders must be present, with the session convened at the court where the sale terms were filed, on the predetermined date and time.

This procedural framework effectively resolves prior jurisdictional ambiguities concerning the competent court for sales, which historically arose from contradictory provisions within the Civil and Administrative Procedure Code, as while Article 1 originally vested jurisdiction over real estate seizures in courts within the judicial council's purview, it remained silent on



judicial sales—a lacuna exacerbated by Article 401/2, which mandated the deposit of proceeds at the debtor's domiciliary court, potentially conflicting with Article 1's territorial scope; and by centralizing all procedures—from the seizure order issued by the asset's jurisdictional court through to the sale and distribution of proceeds—the law now ensures procedural integrity, operational efficiency, and cost containment.

Upon the designated date, the auction session unfolds under judicial oversight; the judge, before commencing bids, must verify:

- The presence or lawful absence of all seizure parties;
- The completion of mandatory notifications to relevant stakeholders;
- Full compliance with publication and posting requirements;
- The resolution of any pending requests for procedural cancellation or adjournment;
- The presence of a quorum comprising no fewer than three bidders.

Concurrently, the judge assesses enforcement costs, including the judicial officer's fees, based on a detailed petition submitted either by the officer or a creditor; such costs must be publicly declared before bidding opens to ensure transparency regarding the bidders' total financial obligations, which extend beyond the mere sale price (Article 754).

Once procedural compliance is confirmed, the presiding judge formally opens the auction, reciting the sale terms, property specifications (or real estate right), reserve price, applicable fees, and the minimum bid increment—the latter being statutorily fixed at no less than 10,000 DZD per bid, as participants may bid either personally or through a specifically mandated proxy (Abu Al-Wafa, 1984, p. 520), provided they possess full legal capacity and are unencumbered by conflicts of interest as delineated in Article 645, which expressly disqualifies:

- Judges adjudicating the matter;
- Judicial officers and auction supervisors;

- Court clerks participating in proceedings;
- Legal representatives of the parties;
- Agents acting on the debtor's behalf.

Notably, the debtor under seizure is barred from bidding, as they cannot simultaneously occupy the roles of seller and purchaser; they retain, however, the alternative recourse of debt settlement via deposit to avert foreclosure, while bids submitted by prohibited parties are voidable at the instance of any interested stakeholder.

Creditors are expressly permitted to bid; should a creditor prevail, their adjudicated debt may be offset against the sale price under Articles 757 and 759, as the possessor of the seized property may likewise participate, provided their bid meets or exceeds their residual equity in the property (Civil Code, Article 925) (Algerian Civil Code, 1975, art. 925); upon a successful bid, the possessor's original title is reaffirmed, with the property discharged of all encumbrances following payment or deposit (Algerian Civil Code, 1975, art. 926).

In this regard, each bid constitutes an independent and unconditional offer; while a higher bid automatically supersedes prior bids, the invalidation of a subsequent bid necessitates restarting the entire auction, with all preceding bids disregarded; crucially, a bidder whose offer is ultimately validated cannot subsequently challenge their bid by alleging defects in prior, outbid offers (Abu Al-Wafa, 1984, p. 520).

The auction concludes when, after three consecutive calls for higher bids—each separated by one-minute intervals—no further increments are offered; the presiding judge then adjudges the highest bidder as the purchaser, thereby finalizing the sale (Omar, 2001, p. 1000).

In the case of seizing multiple properties and subjecting them to successive sales, this sequence must be observed during the execution of the auction, as if the proceeds from the first property are insufficient to cover the creditors' claims and judicial expenses, the sale proceeds to the other properties in the



specified order, while the judge halts the sale upon obtaining the required amount, ordering the cessation of further sales and automatically lifting the seizure from the remaining properties; however, if these properties fall under the jurisdiction of different courts, the sale proceeds according to the order of registration in the real estate registry, and if a serious reason prevents holding the auction on the scheduled date, the sale may be postponed to a later date set by the presiding judge after verifying the cause; the postponement occurs under the following circumstances:

a. Upon Request: Any interested party involved in the seizure may request a postponement from the judge if they present compelling justifications, such as those outlined in Article 753 of the Code of Civil Enforcement Procedures (e.g., insufficient bidders or inadequate offers).

b. By Judicial Decision: The judge may independently order a postponement for any of the reasons stipulated in Article 754 of the same code:

- If the minimum number of bidders (at least three) is not met.
- If the highest bid falls below the reserve price.
- If no bids are submitted within 15 minutes.

In such cases, the presiding judge records the grounds in the hearing minutes and postpones the sale to a subsequent session, maintaining the same reserve price (Boumerzak, n.d., p. 86); in all instances, the postponement must be issued via a written order specifying a new auction date within no less than 30 days and no more than 45 days from the postponement date, following Article 755 of the Code of Civil Enforcement Procedures, where this postponement necessitates republication of the sale notice and re-posting in the manner prescribed under Articles 749 and 750 of the same code, as previously referenced.

In the Second Session:

After opening the session and verifying the validity of the procedures, the presiding judge announces the terms of the sale, including the type of property or real right being auctioned, the reserve price, fees, and expenses; then the judge determines the

minimum bid increment based on the property's value, which in no case shall be less than 10,000 DZD per bid, as if the submitted bids are below the reserve price and insufficient to cover the debt and expenses, the judge must postpone the sale and reduce the reserve price by one-tenth, while ordering republication and re-posting of notices (Code of Civil and Administrative Procedure, [year], art. 754/4), where this postponement is issued via a written order within no less than 30 days and no more than 45 days from the postponement date.

Notably, the legislator did not account for the scenario where no bids are submitted within 15 minutes (unlike the first instance), meaning the judge cannot reduce the reserve price by one-tenth and must instead adjourn the session to a later date, which may harm the interests of the parties involved—both the seizing creditors (by delaying debt recovery) and the debtor (since prolonged proceedings with no bids could freeze the reserve price while the property's market value appreciates over time, particularly if cases remain unresolved for extended periods); thus, it would have been preferable to include the possibility of no bids in this scenario, allowing the judge to reduce the reserve price and adjourn to a second session.

In the Subsequent (Third) Session:

The property or real right is sold to the highest bidder, even if the bid is below the reserve price, unless the seizing creditor or an intervening creditor agrees to settle the debt in kind by accepting the property or real right at the predetermined reserve price.

Requirement 2: Adjudication of the Auction

The adjudication of the auction ruling is issued upon the conclusion of the auction procedures, however, this ruling is not constituted solely by the judge's endorsement of the highest bid, but rather represents a procedural act within the auction process whereby the judge determines the highest bid and declares the auction closed; consequently, the bidder whose offer is endorsed does not acquire the status of purchaser of the real estate until the



adjudicated price and associated expenses are paid to the court registry; this ruling furthermore engenders several legal effects concerning the adjudicated bidder as well as the creditors.

Part 1: The Legal Nature of the Adjudication Ruling

Doctrine and various legislations remain divided regarding the precise legal nature of the adjudication ruling; jurisprudence is consequently split between two principal viewpoints:

The First View: This perspective holds that a judicial sale constitutes a contract wherein the offeror is either the debtor, the possessor, or the real guarantor in their capacity as owners, whereas the attaching creditor acts as the legal representative of the owner; the acceptor is the individual adjudicated as the successful bidder; consent within this framework manifests through an offer issued by the owner or their legal representative—specifically, the request for sale, which is an essential procedural step rendering the sale void if omitted—while acceptance is embodied in the bid; proponents of this view further assert that it is indeed a sale contract, albeit not consensual, but rather one concluded compulsorily between the owner of the seized real estate and the purchaser upon whom the sale is imposed (Hindi & Omar, 2003, p. 671); this viewpoint draws its rationale from the traditional doctrinal approach which considers judicial sales as contractual agreements akin to other voluntary contracts (Meligy, 1994, pp. 723, 903); the Egyptian Court of Cassation endorsed this direction in its ruling dated Marsh 03 1976, deeming the adjudication ruling a sale contract formed compulsorily between the owner of the seized real estate and the purchaser benefiting from the sale, thereby attributing to it the same effects as a voluntary sale; the court explicitly negated its qualification as a judgment by stating: "The ruling issued adjudicating the auction is not a judgment in the sense understood for rulings resolving disputes..."

French jurisprudence similarly subscribed to this perspective, affirming that the adjudication ruling constitutes a judicial contract devoid of the character of a ruling resolving disputes;

consequently, the adjudicated bidder may seek the annulment of the entire auction if their consent was vitiated by error stemming from incorrect information concerning the real estate contained in the conditions of sale (Julien & Taormina, 2010, p. 696).

The Second View: This position maintains that the judicial sale is a procedural act preceded by another legal act, namely the submission of the highest bid; its adherents argue that while a sale contract requires the meeting of two wills, this element is absent in judicial sales; although the bid is a necessary procedural step for issuing the adjudication ruling, its combination with the judge's order does not constitute an act inherently imbued with a contractual nature; the legislature, they contend, has established fixed procedures and vested the judge with the authority to effectuate the sale because the proper administration of justice necessitates this (Omar, 2001, p. 1005).

Referring to the jurisprudence of the Supreme Court, it characterized the adjudication ruling as an *ex parte* administrative act devoid of any dispute or adversarial proceeding; it can thus be stated that this sale is concluded within the court chamber and under its supervision, differing from a voluntary sale only in that it occurs not through the offer and acceptance of the seller, but rather through the judge pronouncing the sale compulsorily on their behalf; this ruling subsequently transforms, upon its publication, into a title deed for the adjudicated bidder (Supreme Court, 2003); in reality, the adjudication ruling is not a judgment resolving a judicial dispute, but rather a formal record detailing the procedures undertaken during the sale hearing and attesting to its imposition upon the adjudicated bidder; it is a decision issued by the judge exercising *ex parte* administrative authority; the law mandates that it be issued with the preamble typical of judgments, explicitly stating the procedures completed and the facts of the sale hearing and adjudication, all of which constitute sufficient grounds for the decision, obviating the need for further reasoning; Article 763 of the Code of Civil Procedure explicitly delineates the required contents of this ruling, stipulating that it



must include, alongside the standard data found in judgments and the names and designations of the parties, the following:

- The executory title under which the seizure was effected and the subsequent procedures;
- The designation of the sold real estate and/or real property right, its components, and any attached easements, as specified in the conditions of sale;
- The determination of the reserve price for the sold real estate and/or real property rights;
- The procedures of the public auction;
- The full identification of the adjudicated bidder, whether a natural or legal person;
- The adjudicated price and the payment deadline;
- The order compelling the judgment debtor, possessor, real guarantor, or custodian, as applicable, to deliver the real estate and/or real property right to the adjudicated bidder.

Part 2: Effects of the Adjudication Ruling

The adjudication ruling engenders a distinct set of effects differing from those of consensual sales under civil law; these effects derive from its unique legal nature, while also sharing certain characteristics of judicial rulings—it holds *res judicata* authority against all parties to the attachment and resolves all pre-auction disputes; as an inevitable sale, it imposes the obligation to pay the price upon adjudication, which arises even before the formal sale ruling; additionally, as a sale, it transfers ownership and purifies the real estate or real property right of all encumbrances.

- **Obligation to Pay the Price:** Adjudication obligates the successful bidder to pay the adjudicated price along with due expenses and fees; one-fifth of this sum is payable immediately upon the conclusion of the sale hearing, with the balance due within eight days to the court registry (Code of Civil and Administrative Procedures, art. 757/3); failure to comply within this period triggers a formal notice demanding payment within five days, under penalty of resale at the bidder's risk; should the

property resell for less than the original adjudicated price, the defaulting bidder is liable for the deficit (Code of Civil and Administrative Procedures, art. 757/4), while forfeiting any surplus if it sells higher, under Article 758 of the Code of Civil Procedure.

- **Transfer of Ownership to the Adjudicated Bidder:** The compulsory sale transfers ownership of the auctioned real estate and/or real property rights from the debtor to the successful bidder; thus, its essence mirrors that of a consensual sale, as the ruling immediately alters the legal status of ownership rights, effecting the transfer from the judgment debtor to the purchaser; accordingly, Article 762 CPC designates the adjudication ruling as "a title deed"; consequently, this ruling constitutes the basis for the purchaser's acquisition of ownership; however, such ownership remains ineffective unless the ruling is published at the land registry, in accordance with Ordinance 75/74 concerning land surveying and establishment of the land register; the transfer of ownership via compulsory sale thus follows general registration rules, compelling the court clerk under Article 762/2 CPC to register the ruling at the land conservation service within two months of its issuance; therefore, the purchaser is not deemed owner upon issuance of the ruling, as ownership transfers only upon its registration (Ali, 2008, p. 301).

- **Purification of the Real Estate and/or Real Property Right:** The legislature established an exception to the aforementioned rules, decreeing that the adjudication ruling extinguishes all mortgage, lien, and privilege rights encumbering the property; it thereby purifies the property of all real securities per Article 764 CPC and Article 936 of the Civil Code, effective upon payment to the court registry; this purification by operation of law applies irrespective of the rights' origins, clearing the property of priorities such as pursuit and precedence, which then attach to the sale proceeds; for creditors—whether mortgagees or ordinary attaching creditors—the objective is confined to debt recovery from the sale proceeds (Al-Ziyadi, 2003, p. 296); purification



affects only registered rights, leaving easement and usufruct rights intact as original real rights; the rationale for purification lies in attracting bidders and incentivizing competitive offers to maximize sale proceeds, enabling all creditors to satisfy their claims; consequently, while purification extinguishes creditors' rights over the property, these rights transfer to the proceeds, granting creditors priority over them (Marahi, 2021, p. 108).

- **Right to Warranty:** The adjudicated bidder may not bring a claim for warranty against hidden defects against the judgment debtor, as judicial sales carry no implied warranty; this is because such sales occur publicly after due notice and under judicial supervision—safeguards deemed sufficient to expose any latent defects (Hamdi Bacha, 2012, pp. 305-316); as Algerian legislation expressly affirms this principle in Article 385 of the Civil Code: "No warranty exists for defects in judicial sales or administrative sales conducted by auction".

Section II: Re-auction of the Property and Distribution of Proceeds

Re-auction occurs under two circumstances:

- When the winning bidder fails to fulfill the terms of the adjudication, in which case the property is re-auctioned at their expense after formal notice to comply with their obligations.
- When a new bidder offers an increase of at least one-sixth of the original adjudicated price, a mechanism is designed to maximize the sale price in the interest of both the debtor and creditors, preventing undervaluation.

Upon issuance of the adjudication ruling, the seizure is extinguished, and all creditors' rights attach to the sale proceeds, initiating a new phase: distribution, which ensures creditors recover their claims from these funds.

Requirement 1: Re-auction of the Property

Suppose the winning bidder defaults on their obligations; In that case, the law mandates re-auction at their risk; additionally, to ensure the property fetches the highest possible price, the law permits re-auction when a new bidder offers a minimum increase

of one-sixth of the original price, provided legal conditions are met.

Part 1: Resale at the Expense of the Auction Awardee

This system entails the sale of the property acquired by the defaulting purchaser and its resale without initiating new enforcement proceedings (Abu Al-Wafa, 1984, p. 520), as if the auction awardee fails to fulfill the obligations arising from the adjudication—namely, depositing the remaining balance of the bid price, fees, and expenses within a maximum period of eight days at the court registry where the sale is conducted—and this default persists even after a formal payment notice, the property is resold at their expense through a new bidding process and a subsequent court ruling.

Under Article 757 of the Algerian Code of Civil and Administrative Procedures (CCAP), the auction awardee is required to pay one-fifth of the price, along with fees and expenses, immediately upon the conclusion of the auction session, with the remaining balance to be settled within a maximum of eight days. Should they fail to deposit the full amount, they are formally notified to pay within five days, under penalty of resale at their expense.

The resale follows the same procedures previously stipulated: a sale date is set, public notice is given through new publication measures, and the sale is conducted via public auction; Unlike the former Civil Procedures Code, which, under Article 397, mandated that such bidding occur within thirty (30) days of the sale announcement, and under Article 398, allowed the defaulting awardee to halt resale proceedings by fulfilling their obligation—including depositing the sale price, expenses, and additional costs incurred due to their default—before the new bidding, the current CCAP, under Article 640, permits the debtor or their representative, at any stage before or during the sale but before adjudication, to deposit a sum equivalent to the secured debt and expenses, either at the court registry overseeing the enforcement or with the judicial officer, in exchange for a receipt.



Whereas Article 399 of the Code of Civil Procedure stipulates that the adjudication of a new auction sale nullifies, with retroactive effect, the initial adjudication, the Civil and Administrative Procedure Code does not incorporate such a provision; instead, most legislations—such as Egyptian law—have established that the resale of a property through a new auction invalidates the first sale due to the purchaser's failure to comply with the auction conditions, thereby restoring the status quo ante and reinstating the debtor, possessor, or real guarantor of the property, as the case may be (Abu Al-Wafa, 1984, p. 592), and among the ensuing legal consequences is that the operative part of the judgment adjudicating the second auction sale may oblige the defaulting bidder to pay the price difference, should such a discrepancy arise (Code of Civil and Administrative Procedure, art. 758).

Part 2: Resale Subject to an Offer to Increase the Price by One-Sixth

Under Article 760 of the Civil and Administrative Procedure Code, and in line with the legislature's intent to provide a second opportunity to increase the price of a property adjudicated in the first auction—thereby safeguarding the interests of the debtor, the possessor, and all creditors involved in the proceedings—the law permits any person with legal capacity to purchase and not barred from participating in auctions to submit a signed petition to the court clerk's office, requesting a resale by public auction, provided the following conditions are met:

- The petitioner must possess the legal capacity to purchase.
- They must not be prohibited from participating in auctions.
- The property or real right in rem must have been sold below the base price; consequently, if the property was sold at or above the base price specified in the terms sheet, a resale is inadmissible—a measure intended to ensure transactional stability and uphold the credibility of such sales.

- The petitioner must undertake, in their submitted petition, to increase the adjudicated price by at least one-sixth, though they may offer a higher amount.

- They must deposit the full price, along with judicial fees and due charges, with the court clerk's office where the sale was conducted, against a receipt; accordingly, a dedicated register must be maintained at the court clerk's office for this purpose.

- They must bear all expenses related to the resale by public auction.

- The request must be filed within eight (8) days following the date of the auction adjudication ruling.

The Civil and Administrative Procedure Code does not explicitly address the legal consequences if the bidder who offered the price increase fails to attend the auction session, or if no higher bid is submitted, or if bidders are absent altogether; however, it appears that the law does not consider such default or lack of sufficient bidder attendance as grounds for invalidating the auction, given that the legislation does not prescribe any legal effect in this regard; consequently, the auction is deemed validly adjudicated in favor of the bidder who proposed the increase.

Moreover, the resale of the seized property with a price increase does not prevent the original winning bidder from participating in the new auction; thus, the new auction may ultimately be adjudicated in favor of the original winning bidder. In such a case, a legal question arises: When is the buyer's ownership of the property legally established—from the date of the first auction adjudication or the date of the new auction adjudication?

Opinions on this matter are divided; some argue that the buyer's rights are deemed to have arisen from the date of the first auction adjudication, while others contend that such rights only emerge from the date of the new auction adjudication, because the debtor regains ownership of the property as soon as the price increase is submitted; on the other hand the original buyer reverts to their legal position before the first auction adjudication,



entitling them to a refund of their payment and rendering any prior transactions concerning the property null and void, this is because the mere submission of a price increase legally binds the bidder to their offer, preventing them from retracting it; if no other bidders participate, the auction is adjudicated in favor of the bidder who proposed the increase, at the price they offered, obliging them to pay said price along with associated expenses; otherwise, the property is resold at their expense.

Unlike the Civil Procedure Code, the Civil and Administrative Procedure Code introduces a novel provision (Article 761), permitting the bidder who proposed the price increase to withdraw their offer under the following conditions:

- The withdrawal request must be submitted before the sale is finalized and before the adjudication ruling of the new auction is issued.
- The bidder must deposit the additional expenses incurred due to their withdrawal with the court clerk's office.
- The request must be filed via a formal petition, accompanied by a receipt proving the deposit of additional expenses, addressed to the court president.
- The court president shall rule on the matter by an unappealable order.

Requirement 2: Distribution of Sale Proceeds

There is no doubt that the ultimate objective of compulsory enforcement is to distribute the proceeds from the sale of assets among the creditors, making the distribution of sale proceeds the final stage of enforcement through seizure, as this stage is indispensable in enforcement procedures, as it ensures that creditors recover their rights, whereby the ownership of the amounts obtained from the sale is transferred and delivered to the seizing creditors and those who were recognized as parties to the proceedings. After these creditors have recovered their debts and the expenses have been paid, any remaining proceeds revert to the owner of the seized property, as stipulated in Article 791/3 of the Algerian Code of Civil and Administrative Procedures

(CCAP), as the Algerian legislature has regulated the distribution of funds obtained from seizure in Section Six of Book Three of the CCAP (Articles 790 to 799), establishing specific conditions for distribution; if these conditions are met, the distribution may proceed without a judicial list in certain cases, whereas the law requires a judicial list in others.

For the distribution process to be valid, certain conditions must be met:

- The sale proceeds must be allocated to the creditors entitled to distribution, as this allocation occurs automatically by operation of law in the sale of seized real estate once the adjudication judgment is issued and the price is deposited with the court's registry. In principle, all creditors are equal in recovering their claims from the debtor's assets, unless a creditor holds a legally recognized priority for substantive reasons, such as those provided under Articles 907 and 982 of the Civil Code, where priority may arise from a mortgage, security interest, or a statutory lien on the sold property. Priority may also result from procedural grounds under the CCAP, where a preferred creditor, despite not holding a real security right over the debtor's property, takes precedence over other creditors due to a specific procedural action; for example the case of deposit and allocation (Article 642 CCAP), whose final paragraph grants priority to the creditor for whom the seizure was restricted, allowing them to recover their claim first from the funds subject to the restricted seizure.

- The creditors must meet the conditions for compulsory recovery of their claims, meaning they must hold enforceable instruments proving their rights, unless the debtor under seizure consents in writing to pay creditors who lack such instruments (Code of Civil and Administrative Procedure, art. 791, para. 2).

- The distribution proceedings must not be suspended by operation of law or by judicial order due to a dispute arising over their validity.



Part 1: Consensual Distribution

The proceeds from the sale are distributed directly in specific cases, as if these conditions are not met, the concerned parties must reach an agreement on the distribution—a matter we shall examine in this subsection.

First: Direct Distribution

Article 790 of the Algerian Code of Civil and Administrative Procedures (CCAP) states: "If the seizure involves monetary funds held by the debtor or if the seized assets are sold, the seizing creditor shall receive the proceeds of enforcement directly from the court bailiff or the sale trustee", this provision implies that the allocation of enforcement proceeds to creditors occurs automatically by operation of law at a specific moment—when the seized asset is converted into cash upon completion of the sale.

The creditors entitled to the proceeds are those recognized as seizing creditors at that time, as well as those who intervened in the seizure, as inferred from Articles 791 and 792 of the same law; although Article 790 excludes these creditors, their entitlement to the proceeds does not prevent the debtor's other creditors from placing a seizure on the sale proceeds held by the bailiff; however, such subsequent seizures can only target any surplus remaining after the initial creditors have been satisfied, which serves as a legislative incentive, rewarding proactive creditors who initiate seizure proceedings by granting them priority over those who failed to act before the sale.

Direct distribution of real estate sale proceeds occurs when the holder of the proceeds disburses them directly to the entitled creditors without prior distribution procedures, and this applies in the following scenarios:

- When enforcement is pursued by a single creditor (Article 790 CCAP): In this case, distributing the proceeds presents no difficulty, as the sole creditor—whether ordinary or privileged—receives the proceeds directly, satisfying their claim in full or in part. If the proceeds are insufficient, the creditor may continue

enforcement against the debtor's other assets using their enforceable instrument.

- When enforcement involves multiple creditors and the proceeds suffice to cover all debts (Article 791 CCAP): Here, distribution remains straightforward, with creditors recovering their claims directly, whether they are all ordinary creditors or include some with priority, as the holder of the funds must disburse them to these creditors (whether seizing or intervening) upon presentation of their enforceable instruments; additionally, per Article 791/2, creditors without enforceable instruments may be paid if surplus funds remain, provided the debtor under seizure consents in writing, as after settling the debts and expenses, any remaining funds revert to the debtor.

However, if the proceeds are insufficient to satisfy multiple creditors, the Civil Procedure Code (Article 400, now superseded) previously permitted consensual distribution. To prevent errors or collusion that might favor one creditor at the expense of others, direct distribution is prohibited in such cases; instead, creditors and the debtor must agree on a distribution method—without a judicial list—within 30 days of being notified by the party seeking expedited distribution.

This agreement binds the parties under Article 106 of the Civil Code, constituting a contract formed outside judicial proceedings and thus subject to general contract principles; no specific form is required, however, under the CCAP, if multiple creditors exist and the proceeds are insufficient, the distribution follows specific procedures, which we will address in the next subsection.

Part 2: Judicial Distribution

Judicial distribution is carried out through a formal list, and becomes mandatory when multiple creditors exist and the enforcement proceeds are insufficient to satisfy all claims, this process begins with a provisional distribution list, which may be followed by an objection phase requiring adjudication by the court president before reaching a final settlement.



First: Preparation of the Provisional Distribution List

Judicial distribution is carried out through a list and becomes mandatory when multiple creditors exist, and the proceeds of execution are insufficient to satisfy all their rights, as this distribution initially undergoes a provisional list stage, which may be followed by an objections phase requiring resolution by an order from the court president, ultimately leading to the final settlement.

First: Preparation of the Provisional Distribution List

The provisional list is a draft for distributing the execution proceeds, prepared by the judge after reviewing the creditors' documents, to present to the execution parties for submitting their objections. According to the provisions of Article 792 of the Code of Civil Procedure (CCP), if the amounts collected from the sale of real estate are insufficient to settle all the debts of the attaching creditors and intervening creditors in the seizure, the court clerk or the holder of the execution proceeds must deposit them with the court registry where the execution took place, within its jurisdiction, this must be accompanied by a schedule of the seized funds, as well as the auction report, however, if the execution proceeds result from multiple seizures, each conducted before a specific judicial authority—provided they concern the same debtor's seized assets—the competent court to receive these proceeds is the one within whose jurisdiction the first seizure or the first sale of the seized assets occurred; in such cases, whoever holds these amounts must deposit them with the registry of this court, under the requirements of Article 793 CCP; notably, this article does not specify any particular type of seizure; thus, if multiple seizures exist—even of different types—their execution proceeds are consolidated, and a single distribution procedure is followed, as long as the seized debtor is the same in all of them (Abu Al-Wafa, 1984, p. 615).

Following the deposit of the execution proceeds with the court registry, the chief clerk shall notify the court president in writing to distribute these funds; since Article 792(2) does not prescribe

a specific timeframe for such notification, it shall be effected immediately upon receipt of the funds from the holder, as within fifteen days from the date of notification, the court president shall prepare a draft distribution through a provisional list allocating the collected amounts among the registered creditors, order its deposit with the court registry, and direct the posting of an extract on the court's notice board (Code of Civil and Administrative Procedure, art. 794).

In preparing this list, the court president must observe both substantive and procedural legal rules: priority creditors shall receive their entitlements first according to their rank, commencing with privileged claims in their prescribed order; subsequently, the various debts of the remaining creditors shall be listed with their respective amounts, whereafter any remaining proceeds shall be distributed among ordinary creditors pro rata, that is, in proportion to each creditor's claim relative to the aggregate debt (Khalil & Hindi, 1999, p. 526).

However, this distribution is not final, as it is stipulated by the law on a temporary list, to be presented to the concerned parties to express their objections, if any, as the law requires that an extract from this temporary list be posted by the chief clerk for 30 days on the court's bulletin board so that the concerned parties can review it and prepare the reasons for the objection, because within 10 days from the date of expiry of the posting period, every creditor who has a debt instrument must apply to the clerk's office for distribution, to register his debt with the rest of the creditors, under penalty of losing his right to join the temporary distribution list. This is under Article 795. To reach an amicable agreement between the parties, the president of the court sets a date for a session called the settlement session, in which the judicial officer assigns the seizing creditors and the intervening creditors, but not on his initiative, but rather at the request of the party interested in expediting this, to attend this session, as according to Article 796, "On the specified date, the session is held in the presence of the parties, and the president



verifies the capacity of the creditors by reviewing their executive instruments, he also confirms that the date of the session is set", as the validity of the parties' assignment to appear and the validity of the powers of attorney are also important. In this regard, if creditors attend in person or through their representatives, especially since their debts are established in executive documents, then the debtor's presence is more appropriate for discussing any objections raised, or even for raising these objections himself, where the president also monitors the validity of registration requests and their submission within the specified deadlines. If they are submitted by their owners after 10 days from the expiration of the deadline for posting the provisional list, these requests are dropped; the president of the court then decides to include those whose capacity is proven on the list. If he notices a defect in the assignment of one of the parties or the invalidity of the registration requests or powers of attorney, he decides to remove those whose capacity is not proven. During the session, we distinguished the following assumptions:

- **The presence of all parties:** If an agreement is reached on the provisional distribution list and no one raises an objection to it, the president records their agreement in a report signed by him, the clerk, and those present; this report has the force of an executive document.

- **If all creditors fail to attend the session set for the amicable settlement:** The president shall sign the provisional list, and it shall become final, because their absence after the assignment means that they have accepted the list and have no objection to it, under Article 796/4.

- **Absence of a Party from the Scheduled Amicable Settlement Session:** Article 797 of the Algerian Code of Civil Procedure (CCP) permits the distribution of collected funds among the attending creditors while preserving the rights of the absent creditor in the provisional list; however, the latter is barred from challenging the list endorsed by the presiding judge, and in all

such cases, the presiding judge issues an order to the chief court registrar to disburse the due amounts to each creditor as per the list, following the final paragraph of Article 796 CCP, which clarifies the nature of this order as a non-contentious (administrative) act, as this stems from the doctrinal divergence regarding the legal classification of amicable settlements—whether they constitute a judicial or non-contentious act, where one faction of legal doctrine argues that an amicable settlement is a judicial act, as it occurs after summoning the concerned parties, and the judge is not bound by their agreement if it violates public order; thus, the resulting decision is considered a judicial ruling in the strict sense, endowed with the same authority as judgments; conversely, another faction views it as a non-contentious act, wherein the judge merely records the parties' agreement in the minutes (Khalil & Hindi, 1999, p. 527), however, the provisional list may not culminate in an amicable settlement if the concerned parties attend the scheduled session and one objects to the list.

- Presence of Parties and Disagreement on the Provisional Distribution List: If no consensus is reached among creditors regarding the distribution method, and the amicable settlement fails due to an objection to the provisional list—whether concerning the existence, quantum, or priority of a claim—the objecting party may defend the validity of their right; in such cases, the presiding judge orders the objections to be recorded in the minutes and rules on them within eight days, as this order is subject to appeal before the president of the judicial council within ten days of its issuance, provided the disputed amount exceeds 200,000 DZD, as per Article 798 CCP; by implication, disputes involving amounts equal to or below this threshold are not subject to any form of challenge.

Whereas the Article does not stipulate the timeframe within which the council president must rule on this appeal, it merely states that the decision shall be rendered at the earliest opportunity; and whereas Article 538 of the Code of Civil and



Administrative Procedure (CCAP) mandates that parties must be represented by a lawyer before the Judicial Council, failing which the appeal shall be inadmissible unless the law provides otherwise, Article 798(4) exempts this particular case from mandatory legal representation before the appellate body; moreover, this appeal does not have suspensive effect, and thus, an objection to the draft list does not, by operation of law, halt the distribution procedures or prevent the issuance of payment orders, thereby empowering the president to disburse the allocated funds to the entitled creditors.

It is noteworthy that, in the absence of a statutory provision governing the method of distribution in cases of disagreement, the general rules outlined in the CCAP—particularly Article 686—shall apply: the proceeds of enforcement shall first cover the expenses, with the remainder distributed pro rata among creditors according to their respective ranks, where pro rata distribution, here, refers to the proportional allocation of the proceeds among creditors as co-obligors, whereby each creditor receives a share proportionate to their claim, without priority of one over another, and each bears a portion of the loss in proportion to their claim.

The term pro rata (or al-muḥāṣah) derives from "share" (ḥaṣṣah), reflecting the creditor's share in bearing the loss of a portion of the debt, as this method applies only in the absence of creditors with priority, as those holding secured claims—whether by mortgage, collateral, or privilege—take precedence over unsecured creditors, furthermore, the distribution among secured creditors respects the hierarchy of each claim; thus, pro rata distribution presupposes the existence of multiple creditors of equal rank whose claims cannot be fully satisfied by the enforcement proceeds; in such cases, the enforcement expenses advanced by the creditor(s) are first deducted, and the remainder is distributed pro rata in the manner described above.

Example:

Amounts collected	Implementation expenses	Creditors		
↓	↓	↓	↓	↓
120000	20000	Creditor 1	Creditor 2	Creditor 3
		↓	↓	↓
		40000	60000	100.000

To distribute the collected funds *pro rata*, the following steps shall be taken:

a. Deduct Enforcement Expenses

The enforcement expenses shall first be subtracted from the total amount recovered.

Example Calculation:

- **Total Amount Recovered:** 120,000 DZD
- **Enforcement Expenses:** 20,000 DZD
- **Remaining Amount for Distribution:** 120,000 DZD – 20,000 DZD = **100,000 DZD**

The sum of **20,000 DZD** shall be allocated to the creditor who advanced the enforcement expenses.

b. Distribute the Remaining Amount Among Creditors Proportionally

The remaining **100,000 DZD** shall be divided among the creditors according to the ratio of each debt to the total claims.

Calculation Formula:

Creditor's Share = (Individual Debt / Total Debts)

× Remaining Amount

Application:**First Creditor (Debt: 40,000 DZD)**

$$40,000 / (40,000 + 60,000 + 100,000) * 100,000 = 20,000 \text{ DA}$$

Amount awarded to the first creditor: 20,000 DZD

Second Creditor (Debt: 60,000 DZD)

$$60,000 / 200,000 * 100,000 = 30,000 \text{ DA}$$



Amount awarded to the second creditor: 30,000 DZD

Third Creditor (Debt: 100,000 DZD)

$100,000/200,000 \times 100,000 = 50,000$ DA

Amount awarded to the third creditor: 50,000 DZD

Summary of Distribution

First Creditor: 20,000 DZD

Second Creditor: 30,000 DZD

Third Creditor: 50,000 DZD

Total Distributed: 100,000 DZD (remaining after enforcement expenses)

This method ensures an equitable *pro rata* division, where each creditor receives a share proportional to their claim, without preference or priority among creditors of the same rank.

Second: The Case of Multiple Creditors with Differing Debt Priorities

This scenario involves the existence of diverse debts, whether a combination of ordinary and privileged debts or multiple privileged debts with varying degrees of priority; in such cases, the execution costs are first deducted from the amount to be distributed, and any advance payments made by any of the creditors are reimbursed, as the remaining amount is then allocated according to the legal priority of the privileged debts, based on their respective rankings; however, if the creditors share the same level of priority and the available funds are insufficient to cover all claims, the amount is distributed among them proportionally, in accordance with the principle of *pro rata* distribution (equal sharing of the debt burden).

Conclusion

First: Findings

- Forced execution procedures on real estate aim to provide protection and guarantees for both the seizing creditor and the debtor, covering both the seizure and sale processes.
- Assigning all procedures to a single judicial authority—from the seizure order issued by the court of the property's location

until the sale and distribution of proceeds—ensures procedural integrity and coherence.

- The sale of real estate is the key guarantee sought by the legislature, aiming to maximize proceeds under judicial supervision through public auction, ensuring the highest possible sale value.
- The legislature has extensively regulated real estate seizure procedures in the Civil and Administrative Procedure Code, as evidenced by the substantial increase in provisions (54 articles) compared to the previous Civil Procedure Code, which contained only 21 articles addressing real estate seizure, alongside some provisions in the Civil Code.
- The absence of a specialized enforcement judge results in a single enforcement case being handled by multiple judges within the same court, constituting a significant gap in pre-auction procedures for the sale of real estate or real rights.
- The adjudication of an auction constitutes a judicial sale concerning real property, safeguarding all parties involved (the seizing creditor, the debtor, and third parties).
- The auction adjudication serves as a title deed, clearing the property of any encumbrances.

Second: Recommendations

- Establishing the position of an enforcement judge to replace the court president and public prosecutor in liaising with the judicial officer handling enforcement, ensuring proper procedural oversight.
- Enacting new laws to ensure the independence of judicial officers from the court president and public prosecution, streamlining procedures and accelerating enforcement to achieve faster and more cost-effective execution.
- Encouraging more academic seminars and workshops to unify procedural practices and establish consistent judicial interpretations of enforcement processes.
- Explicitly and precisely specifying legal remedies against auction adjudications, such as annulment claims, while clearly



defining the parties entitled to challenge the sale and the competent judicial authority.

Bibliography List:

- Abu Al-Wafa, A. (1984). Enforcement procedures in civil and commercial matters pursuant to the Lebanese code of civil procedure (3rd ed.). University House for Printing and Publishing.
- Algerian Civil Code. (1975). Journal Officiel de la République Algérienne [Official Gazette of the Algerian Republic].
- Algerian Law No. 22-13 of 13 Dhu al-Hijjah 1443 corresponding to July 12, 2022, amending and supplementing Law No. 08-09 of 18 Safar 1429 corresponding to February 25, 2008 containing the Civil and Administrative Procedure Code, Article 737/8.
- Al-Ziyadi, I. I. (2003). Real estate implementation. New Rose Al-Youssef Press.
- Badawi, A. A. (2009). Real estate seizure in Algerian law [Master's thesis, University of Youssef Ben Khedda]. Faculty of Law, Department of Legal Sciences.
- Boumerzak, A. (n.d.). Simplified methods of implementation (1st ed.). Al-Shihab Press.
- Code of Civil and Administrative Procedure, art. 758.
- Code of Civil and Administrative Procedures, art. 757/3, 757/4.
- Hamdi Bacaha, O. (2012). Implementation methods. Houma House.
- Hindi, A., & Omar, N. (2003). Forced execution: Its rules and procedures. New University House.
- Julien, P., & Taormina, G. (2010). Enforcement procedures and distribution procedures (2nd ed.). LGDJ lextenso éditions.
- Khalil, A., & Hindi, A. (1999). Compulsory execution law. Al-Matbu'at Al-Jami'iya House.
- Meligy, A. (1994). Execution according to the provisions of the code of civil procedure. Al-Fikr Al-Arabi House.
- Messaoudi, A. (2009). A brief explanation of the civil and administrative procedures law. Dar Houma.
- Note: If you're citing specific articles repeatedly, you may use abbreviations after first full citation (e.g., A.C.C. 1975).
- Supreme Court. (2003, January 29). Judicial Journal, Issue No. 1, 2003 (File No. 292327), p. 206.