

The Legal System of Natural Marine Public Property in Algerian Legislation as an Effective Mechanism for Renewable Energy

النظام القانوني للأموال العمومية البحرية الطبيعية في التشريع الجزائري كآلية فعالة للطاقات المتجددة

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Abstract:

Since independence, Algeria has sought to protect public property by establishing and formulating laws that safeguard it. These properties are essential for preserving the marine environment and ensuring the sustainable use of marine resources. They are also significant in guaranteeing people's rights to enjoy recreational and economic activities related to these natural resources.

Despite the diversity of national public property, marine public property is among the most extensive, especially natural marine public property, which primarily includes territorial waters and the areas beneath them, as well as internal waters. These are crucial for generating electricity and heat.

Researchers have often been uncertain about the legal status and ownership of these waters, an issue our research aims to clarify.

Keywords: National property, seawater and waves, marine energy.

ملخص:

منذ الاستقلال سعت الجزائر الى حماية الممتلكات العامة و هذا من خلال تعيينها و صياغة قوانين تحميها كونها تعتبر أساسية للحفاظ على البيئة البحرية و ضمان استخدام الموارد البحرية بشكل مستدام كما تعتبر أساسية لضمان حقوق الناس في الاستمتاع بالنشاطات الترفيهية و الاقتصادية لهذا المورد الطبيعي .

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ورغم تنوع الأملاك الوطنية العمومية ، إلا أن الأملاك العمومية البحرية تعد من أوسعها لا سيما الأملاك العمومية البحرية الطبيعية التي تضم بشكل أساسي المياه الإقليمية و ما تحتها و المياه الداخلية التي تعتبر عاملا أساسيا لتوليد الطاقة الكهربائية و الحرارة .

و لطالما اختلط على الباحثين النظام القانوني لهذه المياه و لمن تعود ملكيتها ، وهو ما سنحاول تسليط الضوء عليه في بحثنا .

الكلمات المفتاحية : أملاك وطنية ، مياه البحر و الأمواج ، طاقة بحرية

Introduction:

The Algerian legislator has paid particular attention to marine public property as a category of national property by listing its elements in the supreme laws and other legislation and clarifying the mechanisms for its inclusion and boundary designation. However, the National Property Law does not dedicate a specific section to marine public property; it only mentions its two types—natural and artificial—and classifies each within the relevant category of national public property.

Marine public property has been regulated by several legal texts, with the legislator consistently attempting to provide the necessary provisions for the state to fulfill its goals concerning this property. This property represents an important asset for advancing the national economy and is a vital component in asserting the state's sovereignty over its maritime territory.

In the context of the state's efforts to seek alternatives for promoting the national economy beyond hydrocarbons, renewable energy has emerged as the most promising candidate to achieve this role.

What is the concept of natural marine property, and what are the mechanisms for its inclusion within marine public property under Algerian legislation?

To address this problem statement, we have divided our research into two chapters:

First Chapter: The Conceptual Framework of Natural Marine Public Property

Second Chapter: Administrative Methods for Inclusion in Marine Public Property.

First Chapter: The Conceptual Framework of Natural Marine Public Property:

The term "marine public property" is a type of property classified under "public property," which is part of the broader category of "national property." Thus, it is necessary to clarify these terms to define marine public property as expressed in several legal texts.

First Section: The Legal Definition of Natural Marine Public Property:

This definition can only be fully achieved by reviewing the most significant legal texts, starting with the highest-ranking one, the Constitution, and extending to specific laws.

Firstly, in the Algerian Constitution:

National property is paramount to the state, as enshrined in the highest laws, through the 2020 constitutional amendment. The Constitution elaborates on the concept of national property by listing its components. This property category includes public and private property owned by the state, the province, and the municipality, thereby adopting a dual classification of national property.

The national collective owns public property and includes:

- Subsurface land, mines, quarries, energy resources, and natural and living resources in various areas of national marine property, waters, and forests.
- It also encompasses rail transportation, maritime and air transport, postal services, telecommunications, and other properties specified by law.

National property is determined and managed by the law (Articles 20/22, 2020).

From these constitutional provisions (Constitutional amendment 2016), the following can be observed:

1. A legal entity always is owned by public property and cannot be owned by natural persons.
2. Public property is exclusively owned by the state, the province, and the municipality, excluding other legal entities such as public institutions of an administrative, economic, or commercial nature and public economic institutions.
3. Public property comprises a significant range of assets and activities.

4. The definition and management of national property, whether public or private, are governed by law, a domain where the Parliament legislates (Constitutional amendment 2016).
5. The constitutional legislator could have more exhaustively defined public property but by way of example, leaving it to laws to specify other property types.

Secondly, in the National Property Law and the Maritime Law:

The concept of marine public property can be clarified within both the National Property Law and the Maritime Law.

1. In the National Property Law:

The National Property Law of 1990, as amended in 2008, provides a detailed definition of this type of property (Law 90/30, 1990). Article 2 states: "National property includes all property and rights, movable and immovable, owned by the state and its territorial entities in the form of public or private property. This national property consists of:

- Public and private property belonging to the state.
- Public and private property belonging to the province.
- Public and private property belonging to the municipality (Law 90/30, 1990). "

This article is a detailed explanation of the text of Article 20, Paragraph 2 of the constitutional amendment, defining national property by its components. It refers to all property and rights, movable and immovable, possessed by the state and its territorial entities as public or private property, reaffirming the dual division of national property adopted by the Constitution.

Thus, the Algerian legislator defined national public property by distinguishing and comparing it with national private property. The inalienability of public property by its nature or purpose applies only to public property, not private property, characterized by financial and proprietary functions.

This means public property includes all assets intended to serve the public interest. In contrast, private property encompasses all assets that do not serve a public function and are subject to financial and proprietary functions in accordance with private law principles (Law 90/30).

The Algerian legislator has continued with the same approach to distinguish between the two types of national property, adding another distinguishing feature: national public property is not subject to disposition, prescription, and seizure (Maamar, 2011, p. 28).

2. In the Maritime Law:

The provisions of the Maritime Law (Ordinance No. 76/80, 1973) do not include a definition of marine public property. Instead it merely lists its elements and types, as outlined in Articles 15 and 16 of the amended and supplemented National Property Law. These articles detail the types of national public property, demonstrating that marine public property is one of them.

Therefore, the following definition of marine public property can be derived:

Natural marine public property is a category of national public property distinct from national private property. Due to its nature or purpose, it cannot be owned by individuals or private entities. It is exclusively owned by the state.

Second Section: Components of Natural Marine Public Property:

As previously mentioned, natural marine public property is a category of public property, and its components have been determined in the National Property Law, the Maritime Law, and some special laws.

Firstly, in the National Property Law:

It is the will of the legislator that confers the natural feature on public property; there is no property inherently public by nature. The legislator assigns specific properties to the category of natural public property. This designation comes from the legislator, not the administration, as can be seen from the provisions of the National Property Law. The components of natural marine public property that can be derived from this law include:

Maritime shorelines, the seabed and its subsoil in territorial waters, internal maritime waters, and the foreshore and its enclosures (Article 15), as the legal text does not exclusively address natural marine public property. However, it also includes other public properties, such as river public property, the general air domain, and natural resources.

Secondly. In the Maritime Law:

According to this legal text, natural marine public property, in addition to what is mentioned in the above legal text, also encompasses the following:

- Territorial waters and the subsoil beneath them,
- Internal waters located on the side of the baseline from which the breadth of the territorial sea is measured, encompassing small bays and shores including the coastal area covered by the highest tide

during the year under normal weather conditions, as well as areas of recession and maritime contact (Article 7).

Thirdly, in the specific laws:

1. Law on Coastal Protection and Enhancement:

This law does not explicitly mention the components of the natural maritime public domain. However, by clarifying the concept of the specific zone along the coast, it refers to the area known as the " Littoral zone," as stipulated by the National Property Law, which includes:

- The natural shoreline, islands and islets, internal marine waters, the surface and subsoil of territorial waters (Article 8, 2002).

2. Law Defining the General Rules for the Use and Tourist Exploitation of Shorelines:

This law addresses one component of natural marine public property, particularly the beach. It defines the beach as:

“A strip of the natural coastline covered by the highest level of sea waves during the year under normal weather conditions, encompassing adjacent areas whose boundaries are determined by their location and suitability for tourism development, intended for tourism use (Article 3, 2002).”

3. Decree Defining the Conditions and Procedures for Managing and Administering Public and Private Property Belonging to the State (Executive Decree No.12/427, 2012):

Although this legal text is dedicated to the mechanisms for defining and managing public and private property belonging to the state. Moreover, it includes explanations of specific terms associated with natural marine public property, as mentioned earlier in the National Property Law and the Maritime Law:

- **Shoreline:** The part of the coast covered by the highest sea water level at times and exposed to the lowest level at other times.
- **Marine Deposits** (Article 15): Areas of land formed by silt deposited by the sea on the shore, appearing above the highest level reached by the waves.
- **Receding Lands** (Article 7) : Land areas left exposed by the sea when it recedes and no longer covered by waves at their highest levels (Executive Decree No. 12/427).

Chapter Two: Administrative Methods for Inclusion in Marine Public Property

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The formation of national public property does not occur automatically but through methods specified by the legislator, encompassing two distinct procedures: boundary delimitation or classification. Both procedures result in the inclusion of property in the category of national public property.

Each method pertains to the nature of the property, whether it is natural public property or artificial public property. Inclusion in natural national public property is established through the administrative process of boundary delimitation, while classification is a mechanism for including artificial public property.

Section One: Boundary Delimitation as a Mechanism for Inclusion in Marine Public Property

Boundary delimitation is a mechanism for incorporating natural public property into the national public domain. To clarify this process, it is significant to define it first and then outline its procedures.

Firstly: Definition of Boundary Delimitation :

Given the nature of the property involved in this process, this method can be defined and its features outlined in two key elements:

1: Boundary Delimitation Definition:

It is an administrative procedure sought at incorporating a specific property into this category of property. Under this procedure, the competent authority assesses the boundaries of natural marine public property utilizing methods based on exceptional rules that distinguish it from those applied to boundary delimitation for private property. This involves determining the geographical or regional scope of the inclusion (Executive Decree. No 12/427) process by establishing the maritime boundaries of the targeted area. The goal is to maintain the integrity of these properties and protect them from individual encroachments.

2: Characteristics:

The boundary delimitation process is distinguished from the classification process due to the nature of the property involved. Its features are as follows:

- a. One of the main features of the boundary designation process for natural marine public property is that it occurs without human intervention; the boundaries are determined and exist by virtue of nature.

- b. The administration acquires property due to its natural state, not by a legal act. Integration occurs automatically without the need for an administrative decision. The administration's role is limited to announcing and revealing the natural boundaries of the property (Executive Decree. No 12/427).
- c. The process involves the participation of various bodies, including:
 - The relevant minister, (Executive Decree. No 12/427)
 - The regionally competent governor,
 - The administration responsible for maritime affairs (Presidential Decree No.17/01),
 - The public works administration.
- d. It is a public process conducted in the presence of adjacent property owners, both public and private, to allow them to provide their observations, rights, and claims.

Secondly: Procedures for Boundary Delimitation of Natural Marine Public Property

The process of boundary delimitation is carried out according to precise procedures:

1. Content of the Boundary Delimitation Mechanism:

The minister responsible for maritime affairs collaborates with local authorities to establish a program to determine the boundaries of natural marine public property and oversee its implementation.

- Marine boundaries are defined by examining the land, starting from the point where the shoreline reaches the highest wave level during the year under normal weather conditions. In this case, the part of the shoreline covered by the waves is regarded as part of natural marine public property.
- The boundaries are confirmed by a decision issued by the local governor following a public inspection. This inspection encompasses the participation of relevant authorities when the waves reach their highest level, and a report of the inspection is prepared accordingly.
- Residents and stakeholders are invited to attend the public inspection, where they are asked to record their observations, rights, and claims. Opinions from legally concerned parties are also collected.
- After the public inspection, the boundaries are determined by a decision based on whether there are any objections. If no

objections are raised, the governor sets the land boundaries of the marine public property by decree and informs the State Property Services. If objections are present, the boundaries are set by a joint ministerial decree coordinated between the relevant ministers and the Minister of Finance (Executive Decree. No 12/427).

2. Characteristics of the Boundary Delimitation Process:

Since this process includes natural maritime public property, which is regarded as a part of national property, it has a unique nature that adapts to the process. This can be highlighted as follows:

- The governor can reserve a coastal strip not exceeding 20 meters in width from the demarcated boundary of the public property, extending along the shore and adjacent land parcels. Any construction or modification in these reserved areas is subject to existing regulations.
- Due to the sensitive nature of the coastal environment, construction restrictions and activities requiring proximity to the sea can extend up to 300 meters (Article 18).
- Areas of marine deposits and receding lands (Executive Decree No.12/427) reclaimed from the sea and isolated from wave action, in accordance with applicable laws and regulations, may be stripped of their public property status for use in economic or social purposes specifically.
- If complex technical difficulties arise in determining the boundaries of marine public property, an advisory committee of experts is formed under the supervision of the minister responsible for maritime affairs. The committee's task is to establish criteria and standards that assist the governor in making the appropriate decision (Executive Decree. No 12/427).

Conclusion

Marine public properties hold considerable significance as they are fundamental to sustainable development for future generations. Consequently, their protection is a top priority for the Algerian state. This objective has been pursued by the Algerian legislators through the legal texts enacted since independence. Therefore, marine public properties, in their different forms, have been included within national properties, thereby

safeguarding them from any encroachment by individuals due to their non-transferable nature and protection against prescription and seizure.

However, an examination of these legal texts demonstrates several gaps that have allowed for infringements on these properties by third parties. This is evident from the numerous disputes brought before the courts concerning these properties, particularly by neighboring parties or users who attempt to bypass regulations by avoiding the payment of required fees or neglecting proper use. In our view, various reasons can be highlighted for these issues:

- The lack of precise definition of natural marine public properties is due to continuous changes in these boundaries caused by climatic and physical variations and the failure of the relevant administration to keep up with these changes. This allows unauthorized parties to encroach on these properties with ease.
- Frequently, when the state permits the use of marine public properties according to legally allowed methods, it needs to adequately monitor the use by others, which often results in misuse or irrational usage, causing harm, especially to beach exploitation licenses.
- The presence of contradictions among several legal texts and some shortcomings necessitates the legislator's attention to better protect these properties.

To address the negative aspects that pose a risk to marine public properties, we recommend the following:

1. **Alert the Administration:** Ensure that the administration responsible for defining marine public properties conducts regular inspections, especially following weather fluctuations, to determine new boundaries and prevent any encroachment by unauthorized parties.
2. **Regular Monitoring:** Continuously monitor the holders of licenses for utilizing marine public properties to detect any misuse or neglect that harms these properties and impacts the public's free access to them.
3. **Review Legislation:** Revise the maritime law and other relevant legal texts to address existing contradictions and shortcomings, especially in the following cases:
 - Despite replacing the term "shoreline guards" with "coast guards" by the Algerian legislator, many legal texts, encompassing maritime law, still utilize the old term.
 - Given that marine public properties are among the broadest categories of national public properties, the legislator should

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allocate a specific section for them within the national property law.

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