

Mechanisms for Investing Endowment Properties in Algerian Legislation

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Abstract

Endowment properties are charitable projects that benefit individuals and the country, given their effective role in achieving social and economic development through the investment of their assets and profits in projects that bring great success and general benefit to society. To ensure the continuity of this effective role of endowments and their involvement in the development process, there must be an independent administrative system that supervises their management, organization, and regulation through adopting mechanisms that align with the unique nature of this charitable action and the nature of endowment real estate wealth. This was restored and invested through Law No. 91-10 related to endowments and its legal texts.

Keywords: Endowment propertiest investment , management,

ملخص:

تعتبر الأملاك الوقفية مشاريع خيرية تعود بالنفع على العباد والبلاد، وذلك بالنظر لدورها الفعال في تحقيق التنمية الاجتماعية والاقتصادية من خلال استثمار أصولها وأرباحها في مشاريع تحقق نجاحا كبيرا وفائدة عامة على المجتمع، ولضمان استمرار هذا الدور الفعال للأوقاف وإشراكها في عملية التنمية لابد من وجود نظام إداري قائم بذاته يشرف على إدارتها وتسييرها وتنظيمها من خلال انتهاز آليات تتفق وخصوصية هذا التصرف التبرعي، وتتماشى وطبيعة الثروة العقارية الوقفية والتي عملت على استرجاعها واستثمارها من خلال القانون رقم 91-10 المتعلق بالأوقاف وملاحقه من نصوص قانونية.

الكلمات المفتاحية: الأملاك الوقفية. استثمار ، تسيير.

Introduction

Endowment (Waqf) is a manifestation of Islamic civilization, considered a means of charity and drawing closer to God, as it brings rewards in both this world and the hereafter. It is also a source of economic funding and social solidarity, contributing to economic, social, and cultural development.

Algeria is among the Islamic countries that possess a significant and diverse endowment wealth. Endowments were a prominent feature of its civilizational and economic landscape, especially during the Ottoman era, when their revenues peaked. However, this changed with the French colonization, which sought to appropriate and Gallicize real estate, including endowment properties.

After gaining independence, Algeria faced a severe legal vacuum and sought to transition and revive the national economy, gradually shedding the remnants of colonial policies. Consequently, French laws continued to be applied, except those affecting national sovereignty or contradicting Islamic law.

The situation remained unchanged even after the issuance of Decree No. 64/283 on 07/10/1964 concerning public endowment properties, as it was not implemented. Moreover, it did not define the legal provisions required for the administration to protect endowments from loss and decay. Subsequently, Law 71/53 on the Agrarian Revolution was enacted, resulting in numerous violations and appropriations of sacred endowment properties.

Until the enactment of Law No. 90/25 concerning land orientation, which marked the first initiative in the field of endowment protection by defining, classifying, and subjecting it to a specific law, Law 91/10 dated 27/04/1991, concerning endowments, was considered the true and actual beginning of the Algerian state's interest in the protection, management, and investment of endowment properties.

One of the reasons for studying this subject, specifically the mechanisms for investing endowment properties in Algerian legislation, and the disputes it raises, is due to several considerations. The most important is that Algeria recently has been contemplating the recovery, exploitation, investment, and development of endowment properties according to the desired form and in accordance with Islamic Sharia, which will particularly contribute within the state to giving greater importance to the subject by raising awareness of its economic and social aspects and encouraging greater interest in it.

Based on the above, the main issue addressed in this study is: Has the Algerian legislator succeeded in establishing a comprehensive legal system for the investment of endowment properties? This question encompasses several sub-questions, the most significant of which are:

- What are the traditional mechanisms for investing endowment properties in Algerian legislation?
- What are the innovative mechanisms for investing endowment properties in Algerian legislation?

To answer the main issue, we adopted the descriptive method to review the mechanisms related to the investment and development of endowment properties and the analytical method when presenting the various legal texts addressing the topic.

To thoroughly explore the research problem and answer the related questions, we followed a plan that includes two main axes: the first axis relates to the traditional mechanisms for investing endowment properties in Algerian legislation, and the second axis pertains to the innovative mechanisms for investing endowment properties.

The Algerian legislator did not stop at managing and striving to recover endowment properties but also endeavoured to invest and develop them in various sectors, particularly the economic sector, given the significant economic and social gains that endowments represent.

Endowment investment aims to increase the capital value of endowment properties by increasing the volume of utilized endowment funds to yield more profit than before. The investment of endowment properties is evident in traditional methods, primarily lease contracts, and innovative mechanisms for investing endowments. Hence, we will address lease contracts for endowment properties as a traditional mechanism for investing endowment properties.

Axis One: Lease Contracts for Endowment Properties as a Traditional Mechanism for Investing Endowment Properties

The lease contract is one of the oldest forms of endowment investment. Article 467 of the Civil Code defines ¹ it as: "A contract whereby the lessor enables the lessee to benefit from a thing for a specified period in return for a known rental fee."

The Endowment Law 91/10 played a role in regulating the lease provisions of endowment properties through Article 42, which states: "Endowment properties are leased according to the current legislative and regulatory provisions, while considering the provisions of Islamic Sharia"².

First: Elements of Leasing Endowment Properties

A lease contract for endowment property cannot be concluded unless there are elements and a basis that ensure its validity and compliance with legal conditions, summarized as follows:

1. Subject Matter of the Lease Contract for Endowment Property: This includes the following:

A. Endowment Assets that Can Be Leased: In principle, all endowment assets can be leased, provided their form allows for leasing, according to Article 22 of Executive Decree No. 89-381, which states: "Endowment property is leased in accordance with the provisions of Article 42 of Law 91-10... whether it is a building, undeveloped land, agricultural land, or forested land... The only exceptions are those whose nature or legal status conflicts with leasing or if the endower stipulated benefiting from it through leasing³. An example of this is

¹ Law 05/07 dated May 13, 2007, amending and supplementing Ordinance No. 75-58 dated September 26, 1975, which contains the Civil Code.

² Law No. 91-10 dated April 27, 1991, related to endowments, Official Gazette, Issue No. 21, 1991. Amended and supplemented by Law No. 01-07 dated May 22, 2001, Official Gazette, Issue No. 29, 2001.

³ Executive Decree No. 98/381, specifying the conditions for managing, administering, and protecting endowment properties and the modalities thereof, Official Gazette, Issue No. 90, 1998.

money, which cannot be leased but must be invested in ways that suit its nature. Similarly, places of worship such as mosques cannot be leased, even if they need repairs"¹.

B. Rent for Endowment Property: The lessee's obligation is the rent, which is the compensation for the lessee's benefit from the leased property. Generally, the contracting parties are free to determine the rent, but the legislator subjected the lease contract for endowment property to special procedures for determining the rent², either through public auction or mutual consent according to Articles 22 and 23 of the aforementioned Executive Decree 98/381. The fair market value is determined as a minimum price through expertise and inspection, and by consulting the relevant services of the State Property Administration³.

2. Lease Duration: The Algerian legislator stipulated the necessity of specifying the duration of an ordinary lease contract. The same applies to the lease of endowment property, as confirmed by Article 27 of Executive Decree 98/381, which states: "Leasing endowment property for an indefinite period is not valid...", which aligns with the consensus of jurists and is adopted by the Ministry of Religious Affairs and Endowments in the model lease contract for endowment property, particularly in its second article⁴.

The duration of the lease contract for endowment property is determined according to the type and nature of the property, in accordance with Article 27/2 of the aforementioned decree, which states: "The lease duration is determined according to the nature and type of the endowment property."

If it is real estate, the duration is longer compared to movable property and usufruct rights. However, the Algerian legislator did not address this matter explicitly, necessitating reference to the provisions of Islamic Sharia ⁵ according to Article 02 of the Endowment Law 91/10. For residential houses or shops, the lease duration should not exceed one year, while for agricultural lands, the lease duration should not exceed three years⁶.

The Ministry of Religious Affairs adopts a specific model for endowment lease contracts prepared by the Endowment Committee under its jurisdiction. The lease duration for endowment properties, such as commercial premises⁷, is 20 months and cannot be exceeded. For other endowment properties, the lease duration does not exceed 3 years, according to Article 468 of Civil Law 05/07 ⁴.

Second: Methods of Leasing Endowment Properties

The Algerian legislator has organized the methods of leasing endowment properties in Articles 23 and 25 of Executive Decree No. 98/381 as follows:

1. Lease by Auction: According to Article 23 of the aforementioned executive decree, the general rule for leasing endowment properties is by auction. This allows everyone to lease

¹ Kheireddine Ben Mechrinen, "Management of Endowments in Algerian Law," Master's Thesis in Local Administration Law, University of Aboubakr Belkaid, Tlemcen, Algeria, 2011-2012, p. 174.

² Kheireddine Ben Mechrinen, op. cit., p. 174.

³ Ibid., p. 175.

⁴ Ibid., p. 179.

⁵ Khadeeja Ghazi, "The Legal System of Leasing Public Endowment Properties in Algerian Law," Doctoral Thesis, Department of Law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2019, p. 80.

⁶ Kheireddine Ben Mechrinen, op. cit., p. 180

⁷ Ibid., p. 180

such properties without any preference for one party over another. This auction is conducted under the supervision of the religious affairs supervisor, who manages and administers the endowment property, in collaboration with the Good Paths Council. The auction must be announced in the national press or other recognized methods at least twenty days before the auction date¹.

The minimum lease price is set at the fair rental value according to Article 22 of Executive Decree No. 98-381. However, this rule is not absolute; the endowment property can be leased at four-fifths (4/5) of the fair rental value if necessary, especially if the property is burdened with debt or if no higher bids are received. If the opportunity arises to lease at the fair rental value, a new lease contract must be drafted².

Additionally, the model terms of reference signed between the lessor and the lessee must specify the following details: the lease duration and the general and specific conditions imposed on the lessee³.

2. Lease by Mutual Agreement: The legislator has approved this method as an exception to the general rule, according to Article 25 of Executive Decree No. 98/381. This method is applied in special cases, such as when the endowment property is used for educational purposes, to encourage research, or for charitable purposes.

In such cases, leasing by mutual agreement requires authorization from the minister in charge of religious affairs after obtaining approval from the Endowment Committee⁴.

It is observed that Law 01-07, which amends and supplements Law 91/10 on endowments, refers the regulation of lease contracts for residential and commercial endowment properties to the provisions of civil and commercial law.

Third: Effects of the Endowment Property Lease Contract and Its Termination

The effects of the endowment property lease contract include the obligations of both the lessee and the endowment supervisor. It is also necessary to address the reasons for the expiration of the endowment property lease contract, whether general or specific. These will be detailed as follows:

1. Obligations of the Lessee and the Endowment Supervisor:

A. Obligations of the Lessee:

According to Article 26 of Executive Decree No. 98-381, the lessee is obliged to:

- Pay the rent for the endowment property on a monthly and regular basis and cover the costs associated with its use, including electricity, gas, water, etc⁵.
- Maintain the leased property and refrain from any form of transfer or alteration, whether total or partial (e.g., gifting, selling, or transferring)⁶.

¹ Article 468 of the Civil Law states: "A person who only has the right to perform administrative acts may not lease for a period exceeding 3 years, unless otherwise provided. If a longer lease is made, the duration is reduced to 3 years, and the lease contract ends at the end of its term."

² Abdelhadi Lahzeel, "Mechanisms for Protecting Endowment Properties in Algerian Legislation," Master's Thesis in Personal Status Law, University of El Oued, Algeria, p. 87.

³ Abdelhadi Lahzeel, op. cit., p. 88.

⁴ Ibid., p. 88.

⁵ Abdelhadi, Lahzil. Previous Reference, p. 87.

⁶ Khadija, Ghazi. Previous Reference, p. 212.

- Not make any changes to the endowment property without written approval from the Ministry of Religious Affairs, provided by a registered receipt¹.
- Carry out necessary repairs resulting from the use of the endowment property and any restoration work due to damage caused by issues such as fires².
- Generally adhere to laws and public morals concerning cleanliness, security, and
- good neighborliness. Failure to comply will result in the contract being terminated by law³.

B. Obligations of the Waqf Supervisor: The Waqf supervisor has been assigned several obligations according to Article 33 of the Waqf Law, which states: "The management of waqf properties is undertaken by the Waqf supervisor in accordance with regulations set by the organization." Article 12 of Executive Decree 98-381 also states: "The direct management of waqf property is entrusted in accordance with Law No. 91-10." The main obligations of the Waqf supervisor can be summarized as follows:

- Delivering the leased property and its annexes to the tenant without interfering in the management of the agricultural waqf property⁴.
- Maintaining the leased waqf property.
- Refraining from infringing on the tenant's rights to enjoy the leased property.

Termination of the Waqf Lease Contract

2. Termination of the Waqf Lease Contract: This contract can end due to general or specific reasons, summarized as follows:

A. General Reasons for Termination:

- The lease contract terminates upon the expiration of the agreed duration according to Article 469 bis 1 of the Civil Code, which states: "The lease contract ends with the expiration of the agreed duration..."
- The lease contract terminates due to rescission.
- The lease contract terminates due to the destruction of the leased waqf property.

B. Specific Reasons for Termination:

- The lease contract terminates legally upon the death of the tenant. It can be reissued in favor of the legal heirs of the tenant after rescinding the original contract while adhering to the terms of the original contract and maintaining its content, according to Article 29 of Executive Decree No. 98-381. If the lessor dies and the beneficiary is still alive, the contract must be reissued to the original tenant until the expiration of the original contract, adhering to the initial terms and content. In all cases, the terms of the lease contract can be reviewed at the end of each year from the date the contract starts or is renewed, including its duration and value⁵.

¹ Khadija, Ghazi. Previous Reference, p. 207.

² Zardoum Ben Ammar, Souria. The Legal System of Endowment Properties in Algerian Legislation, Master's Thesis in Real Estate Law, University of Hadj Lakhdar, Batna, Algeria, 2009-2010, p. 136.

³ Khadija, Ghazi. Previous Reference, pp. 209-210.

⁴ Kanaza, Mohamed. Legal Methods for Establishing and Forming Public Endowments in Algerian Legislation, Journal of Jurisprudence and Law, Issue 13, November 2013, pp. 165-166.

⁵ Khadija Ghazi, previously cited, p. 216.

Second Section: Newly Established Mechanisms for Investing Waqf Properties

Given the significant economic and social importance of waqf, the Algerian legislator has introduced new mechanisms and methods for investing and developing waqf assets within the framework of the current economic openness policy in Algeria at all levels. This is evident from the Waqf Law 91/10, which opens up various opportunities for exploiting and investing waqf properties, both domestically and internationally. All these efforts aim to contribute to the state's treasury and stabilize its economy..

Therefore, we will address the mechanisms for investing in waqf agricultural lands or lands designated for agriculture, the mechanisms for investing in built or buildable lands, the mechanisms for investing in built or buildable waqf properties, and finally, the mechanisms for investing waqf funds.

First: Mechanisms for Investing in Waqf Agricultural Lands or Lands Designated for Agriculture

The Algerian legislator has defined three types of contracts for the exploitation and investment of waqf agricultural properties through Article 26 bis 01 of Law No. 01-07 dated May 22, 2001, which amends and supplements the Waqf Law No. 91/10. These contracts are: the crop-sharing contract (muzara'ah), the watering contract (musaqah), and the long-term lease contract (hikr).

1. Crop-Sharing Contract (Muzara'ah): The term "muzara'ah" derives from "zar", meaning to plant. Article 26 bis 01 of Law 01-07 defines it as: "A crop-sharing contract aims to give the land to the farmer for cultivation in exchange for a share of the crop agreed upon at the time of the contract's conclusion." From this text, it is understood that a crop-sharing contract involves two parties: the landowner and the farmer who undertakes the cultivation in exchange for a known and undivided portion of the yield. Both parties must have consent and legal capacity, and the contract should not include any ambiguous terms or lead to exploitation¹

This contract is one of the prominent types of investment for the productive use of agricultural waqf land for public benefit², so it does not remain idle. The crop-sharing contract generally ends either by the expiry of the agreed-upon period, by mutual agreement of the parties, or by termination due to one of the known reasons for termination in general rules, such as the beneficiary disposing of the land's ownership or changing the nature of the crop-sharing contract³.

2. Watering Contract (Musaqah): The Algerian legislator defines it in Article 26 bis 01 as: "A watering contract aims to give the trees for care to someone who will tend to them in exchange for a portion of the fruit." It is understood that a watering contract involves two parties: one is the owner of the property (trees) and the other is the worker who undertakes watering and caring for the trees in exchange for a known wage from the harvested fruits⁴.

¹ Souria Zerdoum Ben Ammar, "The Legal System of Waqf Properties in Algerian Legislation," previous reference, p. 140.

² Yasmine Maiz, "Public Waqf," Master's thesis in Law, University of Algiers 01, 2010-2011, p. 82.

³ Khaled Ramoul, "The Conceptual and Organizational Framework of Waqf Properties in Algeria," Houma Publishing, Algeria, 2004, p. 135.

⁴ Souria Zerdoum Ben Ammar, "The Legal System of Waqf Properties in Algerian Legislation," previous reference, p. 141.

For a watering contract to be valid, certain conditions must be met:

a) The share of both the worker and the tree owner must be known at the time of contracting.

b) The trees involved in the contract must be present and known at the time of the contract to prevent uncertainty and avoid disputes.

c) The worker must exercise the care of an ordinary person in his own land and carry out all necessary tasks to maintain the palm or trees as customary.

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d) If the land subject to the musaqat contract has any taxes or levies, they are the responsibility of the landowner, not the worker, because they are associated with the land itself, whether planted or not. As for zakat (almsgiving), it is paid by whoever meets the nisab (minimum amount) threshold, whether it is the worker (saqi) or the landowner¹.

Regarding the end of the musaqat contract, it terminates either due to unforeseen reasons that necessitate its termination or by the dissolution of the contract. This could happen if the worker dies or becomes incapacitated before starting the planting process. If the worker dies after starting the planting, his heirs can continue the musaqat. The contract also ends by mutual agreement between the parties².

3. Hikr (Ihkar) Contract: This is a real right that allows the tenant to benefit from waqf land for construction or planting in return for a specified rent³. Therefore, the land's ownership remains with the waqf, while the usufruct belongs to the tenant, which does not lapse upon the tenant's death but can be inherited by his lawful heirs for the duration of the contract. Article 26 bis 02 of Law No. 01-07 states: "Idle waqf land can be invested through a Hikr contract, which allocates a portion of the idle land for construction or planting for a specified period in return for an amount reflecting the development of the waqf land at the time of the contract, with the investor obligated to pay an annual rent specified in the contract for the right to benefit from the construction and/or planting and to inherit it during the contract period, subject to the provisions of Article 25 of the Waqf Law No. 91/10."

Provisions of the Hikr Contract: These can be summarized as:

- It is a contract used when there is a need to develop the waqf through the annual rent collected, which is dedicated to development purposes. This rent must be specified in the Hikr contract and calculated based on the current market rate³.

- Being a fixed-term contract, it must specify its duration to prevent neglect and devaluation of the waqf due to the long duration⁴.

- The ownership of the land itself (the corpus) cannot be transferred by any means, such as gifting, selling, or relinquishing.

Termination of the Hikr Contract: The contract ends for general reasons known in contract theory, such as the expiration of the specified term. It also ends for specific reasons related to the Hikr, including¹:

¹ Khaled Ramoul, previous reference, p. 137.

² Mohamed Kanaza, previous reference, p. 171

³ Abderrazak Boudiaf, "Management of Endowment Funds and Methods of Investing Them in Islamic Jurisprudence and Law," Dar Al-Huda, Ain M'lila, Algeria, 2012, p. 131.

⁴ Souria Zardoum Ben Ammar, "The Legal System of Endowment Properties in Algerian Legislation," previous reference, p. 144.

- The death of the tenant before commencing the planting process.
- The removal of the endowment status from the leased land.
- Issuance of an administrative decision to terminate the duties of the authority overseeing the charitable endowment.

Second: Mechanisms for Investing Endowment Lands that are Built or Buildable

This includes endowment lands that are built or capable of being built upon and developed, where the endowment land is occupied by a cluster of buildings even if the land is not equipped with all facilities or green spaces, as well as any plot of land designated for development within certain deadlines, using planning and development tools, and applying Article 26 bis of Law No. 01/07 mentioned above. Accordingly, built or buildable endowment lands can be exploited and invested in the following ways:

1. Observation Contract: This is a "contract that allows the lessee to build on the land in return for exploiting the building's revenues"².

The lessee has the right to transfer it by prior agreement throughout the investment value consumption period. The observation contract is considered a lease of the public endowment of a special and distinctive nature that applies to built or buildable lands according to Article 26 bis 5. However, the Algerian legislator has appended any changes, whether construction or planting, to the endowment property, with the endowment building remaining legally irrespective of the type of change³, according to Article 25 of the Endowment Law 91/10.

2. Barter Contract: This is a type of opposition contract. Article 413 of the Civil Code defines a barter contract as: "A barter is a contract whereby each of the contracting parties undertakes to transfer to the other, by way of exchange, ownership of a property other than money." The Endowment Law defines it through Article 26 bis 6 of Law 01-07 as "the contract by which a part of the land is exchanged," where part of the building is exchanged for part of the land while considering the interests of both the endower and the endowed upon. All this is within the framework of Islamic law, and even the Algerian legislator has specified, exhaustively, the cases of replacement or compensation of the endowment property according to Article 24 of the Endowment Law 91/10⁴, to protect endowments from appropriation and extinction⁵

¹ Ibid., p. 144.

² Lahzeil Abdelhadi, previous reference, p. 94

³ Hamza Ramli, "Opportunities for Financing and Investing Algerian Endowments Using Waqf Sukuk," a research paper presented at the International Conference on Innovation and Financial Engineering Products and Applications between Traditional Financial Industry and Islamic Financial Industry, Setif, Algeria, May 5-6, 2014, p. 99

⁴ Lahziel Abdelhadi, previous reference, pp. 94-95

⁵ Article 24 of the Endowment Law 91/10 states: "A trusted property may not be compensated or replaced with another property except in the following cases:

When exposed to loss or extinction.

When the utility of the trusted property is lost, and it is impossible to repair it.

In cases of general necessity, such as the expansion of a mosque, cemetery, or public road, within the limits allowed by Islamic law.

When the trusted property is no longer beneficial and does not provide any benefit, provided it is compensated with a property that is equivalent or better."

3. Contracting Contract: The Algerian legislator has approved the contracting contract under Article 26 bis 6¹, which states: "Endowment properties can be exploited, invested in, and developed as follows: 1- By contracting contract: whether the price is fully or partially present within the framework of Article 549 and subsequent articles of Order 75-58... containing the Civil Code." Referring to Article 549, which is referred to in the organization of the endowment contracting contract, it defines the contracting contract as: "A contract whereby one of the contracting parties undertakes to put something or perform work in return for a fee to be paid by the other contracting party. If the fee is not specified in advance, it must be determined according to the value of the work and the contractor's expenses in accordance with Article 562 of the Algerian Civil Code."

4. Urbanization and Restoration Contract: The legislator has focused on developing ruined and destroyed endowment buildings through:

a) Restoration Contract: This refers to the repair of old, dilapidated buildings or those on the brink of ruin and extinction through technical building operations carried out by specialists². Restoring this type of endowment may require costs that sometimes exceed the revenues of the endowment³. This has led the legislator to open the door for natural and legal persons interested in benefiting from the endowment building that needs restoration through a rental process where the tenant spends on the restoration operations required by the endowment building. This is done in the form of rent in exchange for deducting what was spent from the future rent amount, applying Article 26 bis 07⁴ of Law 01/07 mentioned above. Although, as a general rule, the restoration contract does not require an explicit license from local authorities since it is related to an existing building, major restorations require an explicit license from the competent authorities⁵.

b) Urbanization Contract: The Algerian legislator did not define the urbanization contract in Article 26 bis 07 of Law 01-07 and left it open. However, referring to Law No. 90/29 related to planning and urbanization, it requires obtaining a construction certificate according to Article 51, which states: "Any natural or legal person can, before starting studies, request a construction⁶ certificate to specify their building rights and the conditions to which the concerned land is subject". By interpreting the provisions of this article and applying them to the endowment field, it is found that urbanization of endowment property requires the

¹ Souria Zardoum Ben Ammar, "The Legal System of Endowment Properties in Algerian Legislation," previous reference, p. 148.

² Souria Zardoum Ben Ammar, "The Legal System of Endowment Properties in Algerian Legislation," previous reference, p. 148.

³ Khaled Ramoul, previous reference, p. 145.

⁴ Article 26 bis 07 of Law 01/07 states: "Built endowment properties that are at risk of ruin or extinction can be exploited, invested in, and developed through restoration or urbanization contracts, where the tenant pays an amount equivalent to the restoration or urbanization costs, with future rent deductions."

⁵ Souria Zardoum Ben Ammar, "The Legal System of Endowment Properties in Algerian Legislation," previous reference, p. 149.

⁶ Law No. 90/29, dated December 1, 1990, containing the Planning and Urbanization Law, Official Gazette, No. 52, 1990.

beneficiary to issue a license in the form of a construction certificate from the competent authority¹.

Both the restoration and urbanization contracts are considered special lease contracts whereby the ruined and endangered endowment property, which has no income to maintain it, is repaired. They are concluded in the same manner as regular lease contracts but differ in that...

The tenant only has a personal right to the endowment property and is therefore not granted any rights over the restoration or urbanization they carried out, except for a creditor's right, unlike a regular lease which establishes a real right to the endowment property and any buildings or plantings on it².

Third: Newly Introduced Mechanisms for Investing Endowment Funds

The Algerian legislator has introduced new mechanisms and methods to develop endowment funds and transform them into productive investments. These mechanisms can be summarized as follows:

1. Qard Hasan (Benevolent Loan): The Algerian legislator defined it in Article 26 bis 10 of Law 01-07, which states: "Qard Hasan is lending to those in need according to their needs, to be repaid within an agreed-upon period." This means that the endowment legislator uses the term "Hasan" to refer to loans that do not involve prohibited interest (riba)³. Notably, Qard Hasan has two forms: the first is when endowment institutions provide benevolent loans to those in need as part of their charitable services, which is the original form. The second form is when endowment institutions that lack the financial capacity to invest the principal of the endowment receive loans from Islamic banks and philanthropists, motivated by the desire for ongoing spiritual rewards facilitated by effective media⁴.

2. Endowment Mudarabah: Generally, Mudarabah refers to giving money to someone who trades with it for a share of the profit⁵. The legislator has institutionalized endowment Mudarabah through Article 26 bis 10 of Law 01-07, which states: "Endowment Mudarabah involves using some of the endowment revenue in banking and commercial activities by the authority in charge of endowments, in accordance with Article 02 of Law 10/91 dated 27/04/1991 mentioned above." Therefore, the parties to endowment Mudarabah are the authority in charge of endowments and the capital provider. Multiple investors are permitted, allowing the endowment authority to invest endowment revenue with several banking or commercial institutions, provided that each institution's share of the profits is specified⁶.

¹ Souria Zardoum Ben Ammar, "The Legal System of Endowment Properties in Algerian Legislation," previous reference, p. 149.

² Intisar Amjoudj, "Civil Protection of Endowment Properties in Algerian Law," Doctoral Thesis, specializing in Private Law, Mohamed Khider University of Biskra, Algeria, 2015, p. 149.

³ Souria Zardoum Ben Ammar, "The Legal System of Endowment Properties in Algerian Legislation," previous reference, p. 151.

⁴ Ibid., p. 151.

⁵ Yasmin Maiz, "Public Endowment," Master's Thesis in Private Law, University of Algiers 01, 2010-2011, p. 94.

⁶ Souria Zardoum Ben Ammar, "The Legal System of Endowment Properties in Algerian Legislation," previous reference, p. 152.

3. Endowment Benefit Deposits: This mechanism allows an individual with a sum of money not needed for a certain period to hand it over to the authority in charge of endowments as a deposit. The individual can retrieve the deposit whenever they wish, while the endowment authority invests the deposit along with other endowment funds. This is stipulated in Article 26 bis 15 of Law 01-07 mentioned above.

According to this article, endowment benefit deposits are classified as loans because they are to be retrieved after benefiting from them¹, in accordance with Article 598 of the Civil Code².

Conclusion

The endowment (waqf) is a distinctive Islamic legal, social, and cultural system. It is an economic pillar rooted in Islamic traditions since the dawn of Islam, characterized by its unique properties and the flexibility of its rulings, making it a fertile ground for human creativity in providing benefits, services, and charitable works to achieve social solidarity and push the wheel of development forward in the state.

It can be said that the Algerian legislator has attempted to establish an integrated legal system that includes a set of rules and mechanisms by defining the concept of endowment, its pillars, management bodies, and investment mechanisms. The legal mechanisms created by the Algerian legislator for investing endowment properties are effective and positively impact both the endowment properties and the beneficiaries.

Through this modest study, we have reached the following conclusions:

1. The Algerian legislator has addressed and organized the rules of endowment in various legal texts, most notably the Family Law, the Land Guidance Law 90/25, and the Endowment Law 91/10, which is considered the primary reference for organizing endowments, in addition to all circulars and instructions related to its management, protection, and investment. This is to create an effective system that organizes endowments according to Islamic law to achieve the objectives of endowments.

2. The Algerian legislator has attempted to search for, inventory, and recover endowment properties by issuing some ministerial decisions and instructions. However, this remains minimal compared to the size and value of the seized endowment properties. This issue requires serious political will and significant material and human resources. Therefore, the best way to protect real estate endowments from loss is through the formalization and registration of the contracts related to them. This formality is required for the contract's validity, not just for proof.

3. The Algerian legislator has sought to maximize the revenue of endowments and invest them by creating a set of contracts and formulas that accommodate all endowment investments, whether traditional or modern, while adhering to Islamic law. This is considered a fundamental source of endowment wealth, contributing to alleviating the burden on the state's budget, especially since endowments cover some activities and service sectors such as basic and higher education and the health sector.

¹ Ibid., p. 150.

² Article 598 states: "If the deposit is a sum of money or any other consumable item and the depositor has been authorized to use it, the contract is considered a loan."

In conclusion, this study highlights the importance of strengthening and organizing the endowment system in Algeria to maximize its benefits for society and ensure the sustainability of endowments. Based on the study's findings, the following recommendations are made:

1. **Establish a Dedicated Endowment Office:** It is recommended to create an independent endowment office separate from the Ministry of Religious Affairs. This independence would provide greater flexibility in management and more effective oversight, leading to improved administration and investment of endowments.

2. **Create a Local Endowment Fund:** It is advisable to establish a local fund to collect and distribute the revenues from public endowments, rather than relying on a central fund. This approach would enhance public trust in the endowment system and encourage the establishment of new endowments, supporting endowment projects and increasing their financial sustainability.

3. **Invest in Human Capital:** Organize training sessions for those involved in the management and investment of endowments to enhance their skills and capabilities. This should be done with the assistance of experts and specialists in the field.

4. **Utilize Purposeful Media:** Use media effectively to raise public awareness and educate people about the role and value of endowments, both in religious and social contexts, to revive the tradition of endowment.

5. **Encourage Investment Projects:** Motivate investors to establish and support various endowment projects, fostering greater involvement in endowment-based initiatives.

6. **Guide Postgraduate Research:** Direct postgraduate students in universities to focus their research on endowments, contributing to the academic and practical understanding of the field.

7. **Increase Conferences and Workshops:** Intensify the organization of conferences, seminars, and practical competitions related to endowments to promote knowledge sharing and development.

8. **Align Development Plans:** Ensure that any government plans to promote endowments are aligned with the nature of existing and potential endowment properties to effectively address their specific needs and potentials.

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