

Restrictions on Private Real Estate Ownership Under Algerian Legislation

Dr.Tahar BRIK

University of Annab –Algeria.

tahar.brik@univ-annaba.dz

Dr. Karima HADJI

University of Skikda-Algeria

k.hadji@univ-skikda.dz

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Abstract:

This study aims to demonstrate that private real estate ownership is a sacred right, for which the legislator has guaranteed protection through the Constitution and various branches of law, tailored to the type and degree of infringement. Consequently, this protection may be administrative, civil, or penal, deriving its legal basis from the provisions of Ordinance 75/58, which contains the amended and supplemented Civil Code. This Code defines the right of ownership and clarifies the methods of its acquisition and transfer. Given that the right of ownership is not an absolute right but is rather subject to a set of restrictions distributed between private and public constraints, among the most prominent restrictions are those related to the owner's use, exploitation, and disposal of the real estate, whether for reasons related to public utility or for the protection of all individuals.

In general, the most important restrictions include expropriation for public utility and restrictions associated with neighborhood rights, such as preventing the abuse of rights and neighborhood disturbances. Accordingly, we would like to state that these restrictions were introduced to protect the rights of others and achieve the public interest, meaning the realization of a balance between individual interest and public interest.

It is worth noting that these restrictions do not constitute a diminution of or an infringement upon the right of private real estate ownership. Rather, their objective is a legal adjustment and regulation to protect public order, achieve sustainable development, and embody the real estate promotion system—that is, achieving urban, economic, and social development while preserving individual rights and ensuring the non-abuse of private real estate ownership.

Keywords: Private Real Estate ; Ownership ; Public Restrictions ; Viewpoints ; Expropriation .

Introduction:

The law is divided into several classifications from multiple angles. According to the degree of obligation, it is divided into mandatory rules and supplementary rules, and

regarding the relationship it regulates, we find public law and private law, with branches for each division. Corresponding to the divisions of law are other divisions related to the classification of rights, where we find that among the most important rights is the right of ownership, whose legal basis is Ordinance 75/58 containing the Civil Code (Ordinance No. 75-58, 1975), which defined the right of ownership for us as the general law, and on the other hand, due to its relationship with all divisions and branches of law.

It is worth noting that Article 690 of Ordinance 75/58 containing the amended and supplemented Civil Code states the following: (The owner must, in the exercise of his right, comply with the legislation in force relating to the public interest or private interest, and he must also comply with the following provisions). By referring to the previous text and the articles that follow it regarding the restrictions that attach to the right of ownership, it becomes clear that the owner is obliged to respect the boundaries set by the law.

This is because the Algerian legislator classified the restrictions imposed on private real estate ownership and clarified their legal basis, as we find restrictions of a constitutional, administrative, civil, urban, and environmental nature. These do not infringe upon the right of ownership itself, but rather came to regulate and adjust how it is exercised—meaning the regulation of use, exploitation, and disposal in a manner that achieves the public interest, private interest, and public order, and contributes to the protection of real estate properties, because the law is a mechanism and a tool for regulation, not a method of restriction.

Accordingly, our research will focus on studying **"Restrictions on the Right of Private Real Estate Ownership Under Algerian Legislation"** in view of its importance, which is represented in the following :

0.1. Scientific Importance :

Real estate refers to land and any permanent structures attached to it, while **private real estate** specifically denotes properties owned by individuals or corporations for personal, residential, or commercial purposes. Ownership of these properties is primarily acquired through **purchase** via contractual sale, **inheritance or gift** from family or benefactors, or legal mechanisms like **adverse possession** (claiming title after long-term, uninterrupted use) and government **expropriation** for public utility.

0.2. Practical Importance :

Fostering a robust legal culture among real estate researchers is essential to provide the academic and analytical framework needed to safeguard property rights and guide policy effectively. Simultaneously, real estate managers and property registration authorities must remain highly vigilant regarding the critical value of private real estate, given that improper, fraudulent, or poorly regulated transactions can destabilize ownership security, trigger protracted litigation, and severely disrupt regional economic stability.

0.3. Personal Motives:

On a personal level, this research topic is directly aligned with our specialized field of scientific study, allowing us to apply advanced theoretical frameworks to a highly relevant practical issue. Furthermore, the distinct scarcity of specialized academic literature addressing this specific subject underscores the urgent need for comprehensive research, driving our motivation to fill this critical scholarly gap and contribute a foundational study to the field.

0.4. Objective Motives:

The ambiguity surrounding this topic, due to the complexity of the status of real estate and the multiplicity of legal systems governing it, as well as the multiplicity and variation of successive legislations, instructions, and memoranda, which has led to raising various issues and disputes across different judicial bodies.

0.5. Research problem :

Standing on the role of the authorities concerned with real estate conservation, especially the land registries (real estate conservations) and state property directorates. Accordingly, studying and analyzing this topic can only be achieved by answering the following problematic: How effective is Ordinance 75/58 containing the Civil Code in regulating the restrictions imposed on private real estate ownership? Is ownership truly an absolute right, and is the owner obliged to respect the boundaries set by the law?

0.7.Objectives: It should be noted that to study and analyze this topic, we seek to achieve the following goals:

*** Practical Objectives:**

This study aims to identify the core practical and bureaucratic hurdles embedded within the legal framework governing real estate, particularly the regulatory bottlenecks that stifle efficient property exploitation and daily management. Ultimately, uncovering these systemic friction points serves as the foundation for developing a targeted set of legal results and actionable policy recommendations designed to streamline operations and enhance legal certainty for stakeholders across the real estate sector.

*** Scientific objectives :**

- By thoroughly analyzing the latest fiscal adjustments, this study aims to serve as a foundational baseline for future academic research, particularly in light of the new regulatory and tax restrictions introduced under the recent Finance Law to keep pace with rapid socio-economic developments. Furthermore, it seeks to clarify the practical mechanisms and procedural steps required to exercise and enforce these new restrictions, ensuring that both practitioners and researchers can effectively navigate the evolving legal landscape governing property management.

1. Restrictions Related to Private Interest

The right of ownership is of paramount importance from the social, economic, and political aspects, which has made the value of properties, especially real estate, in continuous increase. In addition, the right of ownership is the most important of the

real rights and the broadest in scope (Law No. 90-25, 1990). therefore, the method of acquiring and exploiting ownership is considered a vital issue that controls to a large extent the development of countries. For this reason, and like other legislations in the world, many legislations have been issued in our country to manage and organize properties of various types, especially in terms of their acquisition methods, since the acquisition of ownership differs according to the properties—meaning movable or real estate—and also differs according to the type of real estate properties because each type has a special legal system.

It is worth noting that there are many jurisprudential definitions of the right of ownership, whose authors attempted to clarify the right of ownership in terms of its content and essence. We find among the most important of them the definition of Dr. Mohamed Shanab, where he defined the right of ownership by saying: *"The right of ownership is a direct power of a person over a specific material thing that empowers him to monopolize the use of this thing, its exploitation, and disposal."*

It is clear through this definition that it came general, as it did not place any restriction on the owner's powers, even though the right of ownership is no longer an absolute right but is rather a restricted right due to its social function. In addition to that, many legislations related to urban planning have been issued which constitute restrictions on the right of ownership, and therefore we address another definition that may be more comprehensive and accurate. Dr. Al-Sanhuri also defined the right of ownership by saying: *"The right of ownership is the right to monopolize a thing by using it, exploiting it, and disposing of it in a permanent manner within the limits of the law."*

It appears through this definition that it differs from the previous definition as it came clear, through which he defined the characteristics and elements of ownership, and also indicated that the right of ownership is not absolute by saying "within the limits of the law," meaning that the owner must not abuse his right and must respect all legislations (within the limits of the law).

In addition to the previously explained jurisprudential definitions, we would like to state that since independence to the present day, many legislations have been issued to organize and regulate private real estate properties, most notably Ordinance 75/58. By referring to its provisions, it becomes clear that the legislator defined private real estate properties through Article 683, which states that: *"Everything that is stable in its space and fixed in it and cannot be moved from it without damage is real estate, and everything other than that of a thing is movable."*

Article 674 of the same law states that: *"Ownership is the right to enjoy and dispose of things, provided that it is not used in a manner prohibited by laws and regulations."* The legislator also defined private real estate ownership in Article 27 of Law 90/25 containing the Real Estate Orientation Law by saying: *"Private real estate ownership is the right to enjoy and dispose of real estate property, or real rights for the purpose of using properties according to their nature or purpose."* (alasıdi, 2016, pp. 16-17)

By analyzing the previous articles and according to the texts that referred to the right of ownership, we notice that real estate ownership is the right to enjoy and dispose of the real estate, and this is considered a general definition of ownership. It is also incumbent upon the owner to respect laws and regulations with the aim of regulating ownership, even though it is a constitutional right, because the legislator was keen, as he stipulated respecting the manner of use, and this is considered a protection and guarantee for the owner and at the same time for others.

The proof of this is the intervention of the Algerian legislator and his placement of provisions related to restrictions concerning private interest for private real estate properties, and this is in Articles 690 to 712 of Ordinance 75/58 containing the amended and supplemented Civil Code. However, these restrictions differ, meaning they may relate to the powers of use and disposal, and they may relate to the power of exploitation (Maguellati, 2019, pp. 19-201). Accordingly, we find the restrictions consist of the non-abuse of the exercise of the right, and also the neighborhood relationship between owners, in addition to the restrictions introduced by Law 08/09 containing the Civil and Administrative. (Law No. 08-09, 2008). Procedure Code represented in the seizure of real estate, and this is what we address in detail through the following subsections:

1.1. The Owner's Obligation Not to Cause Unfamiliar Neighborhood Disturbances (Non-Abuse of Private Real Estate Ownership):

The rule of abuse of right was not limited to the right of ownership but included all rights. Since the right of ownership is one of the widest original real rights in scope, the field of application of the theory of abuse of right is clear and applies regarding private properties (Zerara, 2009, p. 56). Accordingly, by referring to the text of Article 691 of Ordinance 75/58 containing the amended and supplemented Civil Code, it states the following: *"The owner must not abuse the exercise of his right to an extent that harms the property of the neighbor, and the neighbor has no recourse against his neighbor for familiar neighborhood disturbances; however, he may request the removal of these disturbances if they exceed the familiar limit, and the judge must take into account the custom, the nature of the real estates, their location relative to one another, and the purpose for which they were allocated."*

It is clear from the previous text that there is a restriction imposed on the right of ownership represented in the owner's obligation, when exercising his right, not to harm his neighbor —meaning the owner has a negative obligation to refrain from using his right in what harms the neighbor's property with an unfamiliar harm.

It is worth noting that the owner is not held responsible for familiar neighborhood disturbances among neighbors because they arise due to the neighborhood relationship and cannot be avoided as they are beyond the owner's control. Consequently, liability arises from unfamiliar neighborhood disturbances; however, the Algerian legislator did not define these disturbances and left the matter to the judge, who has discretionary power, as he is obliged to take into account certain

points represented in: custom, type and nature of the property, the purpose for which the real estate is allocated, and its location. (Zerara, 2009, p. 89)

Where custom plays an effective role, it is either complementary or helpful to legislation, through which damages are determined starting from discussing the idea of time and place, because determining and estimating damage requires taking into account the custom of the area where the adjacent real estates are located. This is because there is a custom applicable in any society, just as every district or residential neighborhood may have customs that its residents are accustomed to. As for the circumstance of place, it is also considered part of custom, where we find a difference between regions and provinces, just as we find a difference between the countryside and the city; what is considered a familiar harm in one place is not considered as such in another place. (Alsinhuri, 1967, p. 698)

As for the nature of the real estates, it is a criterion that the judge must take into account to estimate unfamiliar damage, because there is a difference and variation between real estates, where we find residences have a specificity that differs from hotels, shops, or activity zones, meaning industrial zones. (Zerara, 2009, p. 91)

In this case, judges, when issuing judicial rulings, must take into account urban planning schemes to adopt the criterion of the nature of real estates because it is a purely legal issue within the core of the judge's role.

Meanwhile, the location of each real estate relative to the other real estate and the purpose allocated for the real estate is in turn considered an essential criterion for determining the nature of neighborhood disturbances.

Where we find the matter differs between divided properties and joint (undivided) properties; in joint properties, due to the contiguity of the real estates, it is necessary to coexist with certain behaviors and sounds required by the conditions of logical and natural use of residences. But if the behaviors constitute noise during night hours or otherwise, here we face an unusual matter and it is considered an unfamiliar harm. However, the matter also differs where it is necessary to discuss the element of the purpose for which the real estate was allocated, meaning does its owner possess a license or not, just as it is necessary to respect the law and embody the provisions related to real estate promotion and sustainable development. This is because the idea and criteria for distinguishing neighborhood disturbances require the Algerian legislator to intervene regarding them and review them, especially with the new concepts and mechanisms adopted regarding urban planning. (Zerara, 2009, p. 91)

In the context of our discussion on neighborhood disturbances, we would like to state that practically, complications occur when adjudicating disputes brought before judicial bodies. Where we find judicial bodies that stipulate the existence of official deeds of ownership, just as they monitor the extent of the availability of urban planning contracts—meaning buildings violating the law, their owner cannot file a neighborhood disturbance lawsuit. And there are judicial bodies that have different opinions, where they adjudicate the dispute and a judgment is rendered before ruling on the merits by appointing experts and assigning tasks, among the most important of

which is verifying the status and nature of the building and opining on the neighborhood disturbances.

There is also an overlap in the issue of jurisdiction, because we find some resort to filing lawsuits before the civil section and the dispute is adjudicated, and some resort to filing lawsuits before the real estate section. What can be said regarding this point is that these lawsuits are actually within the core competence of the real estate judge due to their specificity. However, in order to reduce pressure on the real estate section and create a balance between sections at the level of sections and judicial bodies, the civil section adjudicates this type of dispute. The other justification is that the civil section is considered an original section, meaning the possessor of general jurisdiction, as it adjudicates all cases, even though the legislator, when introducing the real estate section, had justifications. On the other hand, the legislator through Law 08/09 containing the Civil and Administrative Procedure. (Law No. 08-09, 2008).

Code placed clear provisions regarding the distribution of jurisdiction and clarified the referral procedures and payment of fees. Accordingly, we would like to say that it is necessary to decide on the issue of jurisdiction to limit the overlap between the civil and real estate sections and unify judicial jurisprudence, especially since jurisdiction belongs primarily to the court in whose jurisdiction the real estate is located.

Where the Algerian legislator in previous stages did not clarify precisely the subject of neighborhood disturbances and only referred to real estate disputes, which were in turn previously within the competence of the civil section. However, the Ministry of Justice separated it in 1994 by virtue of a decision dated April 11 from the civil section due to the nature of real estate disputes, and accordingly, the real estate section was introduced which adjudicates real estate disputes (Boudiaf, 2003, p. 238).

After the issuance of the Civil and Administrative Procedure Code in 2008, which was in turn amended, real estate disputes were explicitly stipulated, which take many forms, being within the competence of the real estate judge, especially with the issuance of Law 11/04 relating to real estate promotion, regarding which many complications and disputes are raised.

1.2. Placing Boundary Landmarks:

Article 703 of the Civil Code states that: *"Every owner may compel his neighbor to set boundaries for their contiguous properties, and the expenses of demarcation shall be shared between them."*

Based on the provisions of the previous article, it appears that the Algerian legislator placed special provisions related to setting boundaries, and this is what many legislations have gone towards, we mention in particular the Yemeni Civil Code which adopted the same mechanisms and conditions (alsalwa & Mansour, 2008, p. 111).

This is because the case of setting boundaries is embodied by the fulfillment of conditions, i.e., when two contiguous properties exist, where the two owners differ, (A) and (B) owning a real estate. In this case, one of them can compel his neighbor to set boundaries to distinguish the two real estates, especially since the Algerian

legislator was keen, as he made the demarcation expenses shared between them, and also clarified procedures and methods for appointing boundaries between private individuals, which are done in two ways:

1.2.1. The First Method: Determining boundaries by mutual consent, meaning the agreement of the two owners and taking procedures in an amicable way, where they go to a specialized expert and, in coordination with the notary, a project is prepared and minutes related to determining boundaries are drawn up. This is done after scrutinizing the documents proving the real estate properties and verifying the nature and status of the real estates, meaning whether they were covered by general land survey operations or not. In some cases, real estate conservation authorities are contacted with conducting a field inspection to adjust the boundaries, determine them, and place clear and fixed landmarks so that the consensual demarcation produces its effects.

1.2.2. The Second Method: Determining boundaries by resorting to the competent judiciary, because the owner in all cases is restricted to setting boundaries for his property and cannot protest or argue that he is free not to determine his property. Contrary to that, it makes the concerned party and the person of interest resort to the judiciary by filing a lawsuit before the competent departments and sections, which is primarily the real estate section, through which he petitions for a judgment to set boundaries.

But questions may come to mind for some if the real estate properties differ—meaning private, national, or endowment properties. If the two neighbors are such that one of them is an owner of a private property and the second is a public property, in this case, the power to appoint boundaries belongs to the public administration. However, as a protection for the owner of private property, the legislator allowed the owner of private property the right to appeal against the demarcation decision before the administrative judiciary bodies represented in the administrative courts and the administrative courts of appeal, and this is in application of the provisions of Article 29 of the State Property Law.

1.3. Viewpoints (Mutilat) and Air Shafts (Manawir):

1.3.1. Viewpoints (Mutilat):

Viewpoints mean the openings made in the walls of the building with the aim of letting in air and light and overlooking the outside, such as windows and balconies... etc. These viewpoints may lead in some cases to infringement upon the privacy of neighbors, and accordingly, it is necessary to respect legislations and obtain licenses and certificates because the right of use and exploitation is restricted by special texts and is not absolute, but rather a license or a legal deed is required, such as demolition and building. In this case, the rules of urban planning stipulated in Law 90/29 relating to Town and Country Planning, amended and supplemented(15), must be respected , as well as Executive Decree 15/19 which determines the methods of preparing and delivering urban planning contracts .(Law No. 90-29, 1990).

In general, viewpoints may constitute a form of infringement if they violate the law, i.e., violating urban planning rules or what are called urban planning contracts according to the recent amendments under Algerian legislation. This is what comparative legislations have gone towards, including the Egyptian legislator who placed restrictions on building in the case of land subdivision, where these restrictions oblige buyers of land plots after subdivision not to let the building exceed a certain amount of the sold plot, or not let the building exceed a certain height, or oblige them to do both things together. The goal of this is the endeavor to embody real estate promotion and create cities and areas that enjoy the specifications of healthy, quiet housing.(Al-Djamel, p. 107)

It is worth noting that viewpoints according to the provisions of Articles 709 and 710 of the Civil Code take several forms; it may be a direct (facing) viewpoint or an oblique (perverted) viewpoint. Therefore, the Algerian legislator regulated these viewpoints through the two previous articles due to the complications and disputes that are raised regarding these viewpoints. The proof of this is the issuance of decisions by the Supreme Court, where we find among the most important of them Decision No. 54887 dated 19/10/1988 which stated: *"It is legally established that a neighbor is not allowed to have a viewpoint adjacent to his neighbor at a distance less than two meters,"* and also the decision related to File No. 338735 issued on 15/03/2006, the case of (Heirs of M-A) against (Heirs of B-S), which concluded that: *"The owner of a common wall is not allowed to make openings in it, or reduce its height or thickness, or perform any work that affects its durability."*(Supreme Court Decision No. 338735, 2006)

1.3.2. Air Shafts (Manawir):

Air shafts are: *"An opening whose base rises above the height of a normal person for the purpose of passing air and the penetration of light, without it being possible to overlook and look from it at the neighboring real estate."*(Arafa, p. 105)

It is worth noting that air shafts do not require any distance to be opened, and it is stipulated in them that the height of their base must not be less than the height of a normal person, which is 190 cm. If it is less than that, we face a viewpoint, just as it is stipulated in them that overlooking from them must be impossible, because non-respect of these conditions makes us in front of viewpoints, and in this case, a request to close them can be and is permitted.

In the context of our discussion on air shafts, we would like to say that in some cases, the special conditions for air shafts are respected, but their owner may abuse them through misusing them, where he diverts them from the purpose for which they came. The example of this is to look out from them onto his neighbor's property or throw and cast waste on neighbors; here, the party harmed by opening air shafts on his property has the right to request their closure. (Arafa, p. 105)

In general, air shafts do not differ from viewpoints except in terms of the possibility of looking or lack thereof, where air shafts are considered openings in walls that allow the penetration of air, but it is not allowed to use them for looking, as they are

constructed at a height that exceeds the height of a person, estimated at two meters from the room's floor, and this is what Article 711 of the Civil Code referred to.

1.4. Right of Way:

The owner bears the right of way granted or given by the legislator to the owner of the enclosed land—meaning the land that has no outlet to the public road due to the surrounding of neighbors' lands around it from all sides. The owner of this land has no choice but to pass through the neighbors' lands; however, in this case, it is required to open the passage through the least harmful side, with the obligation of compensation—meaning this right is in return for a compensation that is proportionate and matches the damages that can occur as a result of this procedure. This is what the legislator indicated in Articles 693 to 702 of the Civil Code. Also, several judicial decisions were issued by the Supreme Court in this regard, most importantly Decision No. 55985 dated 15/11/1989 which stated: *"It is legally established that the right of way must be taken from the side where the distance between the real estate and the public road is appropriate..."*

1.5. Seizure of Real Estate:

Real estate ownership is a manifestation of pride and prosperity, and it is a sacred right. Accordingly, we find the Algerian legislator, when organizing the issue of execution and seizure, took into account the importance of the real estate and its standing (Ben Said, 2019, p. 159). The proof is that execution and seizure of real estates comes as the last link, just as it requires respecting a set of procedures and conditions imposed by the Algerian legislator when we are in the process of execution and seizure of real estates, because there is a legal consideration lying in that private ownership is stable and protected by law, and therefore seizure upon it is considered an exception that must not be abused.

It is worth noting that seizure is placing the property under the hand of the judiciary, whether the property is a real estate or a movable, in preparation for its sale and the satisfaction of the creditor's right from its price (Basha, 2025, p. 148). It is of two types: executory seizure and conservatory seizure. Also, the methods of seizure differ according to the nature of the property required to be seized. The legislator stipulated through Articles 646 and 652 of the Civil and Administrative Procedure Code regarding the creditor's conservatory seizure of his debtor's real estates through presenting a request to the President of the court of the real estate's location. It is he who issues a seizure order registered at the real estate conservation (land registry) within a period of 15 days from the date of its issuance under penalty of nullity, where the registration is considered a conservatory procedure whose goal is guaranteeing his right from his debtor's real estates. However, this procedure is only embodied on real estates that have pre-published deeds at the real estate conservations. As for executory seizure on real estates, it differs, as the legislator distinguished between published and unpublished real estates, given that executory seizure on real estate is a seizure levied in order to sell it by public auction and satisfy his debt. (Basha, 2025, p. 190)

In general, seizure is considered one of the restrictions imposed on private real estate ownership, because seizure occurs on an asset among the debtor's assets, whether the assets are movable or real estate. Where it is placed under the hand of the judiciary either in preparation for its sale and the satisfaction of creditors' rights from its price, or it is done as a preventative measure to prevent the debtor from disposing of the asset to the detriment of the creditor. The legislator referred to the provisions of seizure in Articles 646 and 652 through the Civil and Administrative Procedure Code, and in general, seizure is considered a restriction on private real estate ownership.

2. Restrictions Prescribed for Public Interest

By referring to the provisions of Ordinance 75/58 containing the Civil Code, it becomes clear that the restrictions prescribed for the public interest are represented in the following:

2. 1.Expropriation for Public Utility:

Real estate properties are divided into three categories, which are national properties, endowment (wakf) properties, and private properties, and each category has its own legal system. We find national properties are among the most important properties where projects are embodied; however, in some cases, the execution of public projects requires them to be on private real estate properties (Brahimi, 2012, p. 16), meaning we return their ownership to individuals according to the documents and deeds proving private real estate ownership. However, it may be difficult for administrative authorities to obtain the real estate base through mutual consent with the owners, where they refuse to cede the real estates. For this reason, we find the administration may carry out the seizure of properties and commence the execution of projects, especially if they are urgent, or resort to expropriation for the sake of public utility, given that the Algerian legislator granted the administration the right to expropriate private property for public utility, and this is what the legal provisions clarify.

Where by referring to the text of Article 677 of Ordinance 75/58 containing the Civil Code, we find it states that: *"No one may be deprived of his property except in the cases and conditions stipulated in the law; however, the administration has the right to expropriate all or part of the real estate property, or expropriate real estate real rights for public utility in return for a fair and equitable compensation, and if a dispute occurs regarding the amount of compensation, this amount must be determined by a judicial ruling; however, the determination of the compensation amount must not in any case constitute an obstacle to taking possession of the expropriated properties."* (Brahimi, 2012, p. 16),

It is clear through the previous text that public utility is the essential condition and the sole justification relied upon by the Algerian legislator in permitting expropriation, because the purpose of expropriation is achieving public utility, meaning completing projects that fall within the field of public utility. Accordingly, expropriation is considered a purely administrative procedure or a mechanism adopted by the administration by virtue of which it obliges a private individual to cede his fixed real estate property by virtue of clear and legal ownership deeds, and this is in realization

of the public good, and it is in virtue of a return represented in paying compensations, where the compensation must be equitable and fair according to the explicit text, which makes expropriation a restriction on private real estate ownership and it is an exceptional procedure⁽²⁵⁾, meaning it cannot be resorted to except after exhausting all ordinary methods represented primarily in purchasing operations. (Maguellati, 2019, p. 252)

This is because the administration has the right to expropriate all elements of ownership or part of them, and this is in keeping with the conditions, cases, and reasons of expropriation. In view of the importance of the right of ownership and what entails from it, we notice that the administration has been subjected to the oversight of the judiciary (Article 02 of Law 91/11). The proof is that in the case of a dispute occurring related to the return of compensation, in this case it becomes clear that the legislator was keen, as he balanced between public and private interest⁽²⁸⁾; the determination of the compensation amount does not constitute an obstacle before taking possession of the real estate subject to expropriation, because the legislator gave the party stripped of his property the right to file an administrative lawsuit to demand raising the compensation.

It is worth noting that practically, owners find difficulties and complications, especially if the real estate base subject to expropriation relates to many heirs or owners in common (joint ownership). Because upon appealing—meaning when filing a lawsuit before the administrative judiciary bodies for the purpose of requesting raising the compensation—the ruling may be either non-acceptance of the lawsuit in form according to Articles 14 and 15 of the Civil and Administrative Procedure Code, or a ruling of non-acceptance of the lawsuit according to Articles 13 and 67 of the same law.

But in the case of accepting the lawsuit, the judgment before ruling on the merits is appointing an expert, and in some cases, three expertises may be appointed, and this contains an infringement upon the rights of the owners and may inflict severe damages upon them. Rulings may be issued after three expertises and are appealed before the administrative courts of appeal, which we notice adjudicate the dispute after a year or more, and an appeal may be filed before the Council of State, and lawsuits are registered to stay execution, and all of this is considered an infringement upon the owners. In view of the prolongation of the dispute, legal positions may change—meaning the owner or one of the owners in common may die, which creates complications in execution. Accordingly, it was incumbent upon the legislator to intervene and organize the time limits and provisions related to compensation lawsuits resulting from expropriation for public utility, preserving the owner's right starting from the idea and principle that the right of ownership is a sacred right.

2.2. The Right of Administrative Preemption:

By referring to various legislations, we find them organizing preemption, and we mention as an example the Egyptian legislator, where he permitted in the sale of real estate for the preemptor to replace the transferee if the conditions of preemption are

met, and he defined preemption as: *"A license that permits in the sale of real estate replacement of the buyer in the cases and under the conditions stipulated in the law."*(Al-Djamel, p. 413)

Accordingly, preemption is considered a restriction among the restrictions imposed on private real estate ownership, given that it limits the will of the contracting parties regarding disposal.(AtaAllah, p. 227).

Preemption is of two types: civil and administrative. Where the preemptor regarding administrative preemption is considered one of the persons of public law, and in this case, the administration has the right, when a private individual announces his desire to sell his property, to nominate itself as a buyer with priority, with the goal of achieving a public interest or public utility, and this is what Article 71 of the Real Estate Orientation Law 90/25, amended and supplemented by Ordinance 95/26, indicated.

What is observed is that the procedures for exercising preemption and the bodies exercising this right have been determined because it is considered a restriction imposed on private real estate ownership. This matter made the Algerian legislator, through the Finance Law for the year 2026, intervene again and review the right of preemption, where he came with different provisions, and the goal is protecting real estate properties.(Ben Rekaia, 2001, p. 76), fighting tax evasion, and fighting tampering with real estate properties , as well as combating some crimes, especially those related to corruption and money laundering.

2.3. Nationalization:

Article 678 of Ordinance 75/58 containing the Civil Code states that: *"It is not allowed to issue a nationalization decree except by a legal text, provided that the conditions and procedures for transferring ownership and the manner in which compensation is made shall be determined by law."*

It appears from the foregoing that nationalization is considered a restriction among the restrictions imposed on private real estate ownership. Among the applications of that is the Agrarian Revolution Law, which came in order to achieve economic and social goals, and the Hydrocarbons Law. However, it requires respecting conditions, where it can only be by a legislative text, contrary to the expropriation procedure which is based on an administrative decision issued by competent authorities (Brahimi, 2012) Also, it requires re-converting the stripped funds and publishing (registering) them at the real estate conservation because they in this case become included within national properties, to which the legislator granted protection embodied through the guarantees that must be respected so that this type of property is protected in view of the importance played by national properties.

2.4. Requisition (Seizure/Acquisition by the State):

Requisition takes several forms, where we find temporary requisition occurs in exceptional cases because the administration has the right to requisition some real estates with the goal of the continuity of public utilities for a certain duration. However, it ceases with the cessation of the requisition state, and it applies to real

estates and movables by virtue of an administrative decision that does not transfer ownership, which makes it differ from some restrictions such as expropriation and nationalization, because in these cases, the legally prescribed procedures are taken and ownership is transferred.

2.5. Placing Land Under the Protection of the State:

Placing land under the protection of the state leads to depriving the owner of his rights, especially the right of disposal and exploitation in a temporary manner, because its exploitation is initially undertaken by a guardian who is appointed and granted a return in exchange for these works. This matter made this case listed within the restrictions prescribed for the public interest. (Ben Rekaia, 2001, p. 60)

It is worth noting that the legal basis for this case is Decree 63/168 dated 09/05/1963 containing placing the properties of persons who had hostile positions towards the liberation war under the protection of the state(35). Where by referring to Law 90/25 containing the Real Estate Orientation, amended and supplemented by Ordinance 95/26, and in application of Articles 85 and following, we notice that the legislator gave paramount importance to these real estates through determining conditions and procedures for recovering lands placed under the protection of the state. This procedure consists in expropriating the property of the owner's person and giving it to another person for the sake of managing and conducting these real estates.

Conclusion:

Private real estate ownership is a sacred right, a matter which made the Algerian legislator consecrate it as a constitutional right, where he guarantees for the owner the power of use, exploitation, and disposal starting from the characteristics of the right of ownership because it is a collective, exclusive, permanent right. Despite that, private real estate ownership remains a relative right, so it is not an absolute right—meaning a set of restrictions are imposed on it, varying between what relates to private interest and what relates to public interest. Despite the importance of these restrictions in organizing the real estate field, practical application raises complex complications and disputes resulting from the abundance and complexity of procedures and their conflict in some cases, because real estate law is not codified into a single code. Where we find many legislations, just as we find in some cases conflict and variation between them, in addition to that, we notice that the legal texts do not keep pace with the developments witnessed by the real estate field.

It is worth noting that restrictions related to private interest differ from restrictions prescribed for public interest, where the difference lies in the legal basis, procedures, and effects resulting from these restrictions. In general, restrictions related to private interest are represented in the following: The owner's obligation not to cause unfamiliar neighborhood disturbances (non-abuse of private real estate ownership), setting boundary landmarks, in addition to the right of way, and seizure of real estate.

The right of private real estate ownership is considered a relative right and not absolute; therefore, restrictions related to private interest differ from restrictions prescribed for public interest in terms of procedures and effects. The legal basis for

the restrictions is Ordinance 75/58 containing the Civil Code, which was issued fifty years ago, and accordingly, it is necessary to reconsider the provisions related to the right of ownership and restrictions in view of the developments witnessed by society, especially in the field of real estate properties.

The primary goal of the legislator is achieving regulation and balance between public and private interest through imposing restrictions. Therefore, the legislator clarified the restrictions and determined the conditions, and contrary to that is considered an infringement and transgression upon real estate properties, a matter which drives owners to demand the endeavor to apply the law, protect real estate properties, and assist judicial bodies to adjudicate real estate disputes and execute judicial rulings, especially when we are in the process of expropriation for public utility.

Based on the results concluded by this study, we put forward a set of recommendations aimed at regulating the real estate system, foremost among which is the necessity of strict compliance with the legal provisions relating to the restrictions imposed on private real estate ownership, and activating their actual application to ensure the achievement of the goals intended from them.

We also emphasize the importance of each administrative authority inventorying and determining its real estate bases accurately, especially national properties ; this is to overcome the practical difficulties resulting from not settling the legal status of expropriated real estates for public utility, which remain a subject of dispute due to not officially transferring their ownership.

In a related context, we call for developing clear legal texts organizing the methods of compensation for expropriation, with the necessity of accelerating the disbursement of owners' dues to avoid harm.

Finally, we stress the inevitability of executing judicial rulings issued regarding ownership restrictions and embodying them on the ground, in a manner that guarantees the rule of law and achieves the intended legal and social effects from them.

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