

The legal system for the exploitation of agricultural lands

By concession in the Algerian legislation

النظام القانوني لاستغلال الأراضي الفلاحية عن طريق الامتياز في التشريع الجزائري

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Abstract:

The Algerian legislator tried through the law n° 10-03 of August 15th, 2010, to define the terms and conditions of exploiting the agricultural real estate belonging to the private property of the state, to activate the investment of the agricultural real estate in a new legislative step that moves the agricultural investor from the character of inertia to the concession mechanism as a modern tool that ensures greater flexibility in the exploitation of state agricultural estates.

Keywords: Agricultural lands, exploitation, investor, concession contact, Commitments...

ملخص:

حاول المشرع الجزائري من خلال القانون رقم 10-03 المؤرخ في 15 أوت 2010 الذي يحدد شروط وكيفيات استغلال الأراضي الفلاحية التابعة للأموال الخاصة للدولة، تفعيل استثمار العقار الفلاحي، وذلك في خطوة تشريعية جديدة تنتقل بالمستثمر الفلاحي من طابع الجمود إلى آلية الامتياز كأداة عصرية تضمن مرونة أكبر في استغلال الأراضي الفلاحية التابعة للدولة.

الكلمات المفتاحية: أراضي فلاحية، استغلال، مستثمر، عقد امتياز، التزاما

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Introduction

Agricultural real estate is one of the main pillars in the process of economic and social development, since this real estate is the key to food security for any country or society. Achieving this security is linked to the extent of the stability of the status of agricultural real estate, and the extent to which its exploitation is directed according to its main and original nature.

After its independence, the agricultural real estate in Algeria witnessed several attempts to establish a new agricultural policy through different methods in its management (Ordinance No. 71-73 of November 8, 1971 containing the agricultural revolution law).

Within the framework of the organization of socialist farms and the privatization of agricultural production, the law no. 87-19 of December 8th, 1987 was issued. It includes the control of the exploiting agricultural estates methods belonging to the national property and defines rights and duties related to producers no.03-10 of August 15th, 2010 specifying terms and modalities for the exploitation of agricultural estates belonging to the private property of the state, which came to complete the law that includes agricultural guidance, and thus aims to stabilize the exploitation of agricultural estates belonging to the private property of the state, which remain owned by the state and to secure the farmer investor within the framework of a clear concession .

Based on the foregoing, we pose the following problem statement: What is the legal framework for the exploitation of agricultural estates through the concession system?

Answering this main question, the subject of the research will be divided into two sections, so that we discuss in the first section the concept of agricultural estates as the subject of exploitation, and we discuss in the second section the study of the agricultural concession contract as a mechanism for the exploitation of agricultural estates.

1 - The concept of agricultural estate

We discuss the concept of agricultural estates by defining agricultural estates, and then explaining their types.

1 – 1 Definition of agricultural estates

The Algerian legislator defined agricultural estate under the provisions of Law No. 90-25 of November 18th, 1990, which includes the Real Estate Orientation Law, as follows: “Agricultural or agricultural estate, in the concept of this law, is all estate produced by human intervention annually or during several years of production.” It is consumed by humans or animals, or consumed in industry, directly or after its transformation” according to its Article 04 .

By extrapolating the text of this article, it can be said that the legislator has defined agricultural estate through the following characteristics:

- It is productive estates, as non-productive estates are not considered peasant estates, rather they must be produced through human intervention through plowing¹, planting, watering and other conditions suitable for agricultural production², using traditional or modern devices, and in the sense of the violation, estates that are produced naturally without human intervention are not It is considered a peasant estate, rather it is considered a pastoral, allied or forest estate, as it has a vegetation cover produced by nature.

- Its production is annually or over several years, as the production may be (cyclical) such as the production of grains and legumes, or during several years, such as fruit trees, where the fruits are harvested during several years and then turn periodically when they become fruitful.
- It has an economic role represented in satisfying the needs of humans and animals, by exploiting its agricultural produce in industry, that is, after converting it into an industrial product, such as canning tomatoes, picking vegetables and fruits, etc³

Through the foregoing, we note that the Algerian legislator relied on several criteria to define agricultural estate, unlike the Tunisian legislator, who focused on the topographical criterion of the estate, which is represented in its containment of natural and climatic energies⁴, as defined by the first chapter of Tunisian Law No. 83-87 of November 11th, 1983 relating to the protection of agricultural estates, as follows: “Agricultural estates, according to the concept of this law, mean all estates that have natural and climatic potentials and that have been allocated for agricultural or forest production, or that can be a estate for that production, as well as estates that have been arranged as agricultural estates with examples of preparation that are approved by law.” legal in urban, touristic and industrial areas⁵

Also, the Algerian legislator, through this definition, did not differentiate between agricultural estates belonging to private national property, agricultural endowment estates, or private estates, due to their meeting in the economic and social function, which calls for non-discrimination between these estates in the concept of this law.

1 – 2 Classes of agricultural estates

The Algerian legislator distinguished, within the framework of the Real Estate Orientation Law, between two types of agricultural estate classifications, the first of which is the topographical classification, and the second is the legal classification, and we will try to explain them in two points, respectively:

1. Topographical classification of agricultural estate

The Algerian legislator has relied on purely topographical criteria for the classification of agricultural estates that tend to the science of agricultural economics, which explains the legal relationship that comprises the agricultural property, which is soil, climate, slope, and the ability of the soil to be irrigated⁶

- Very fertile and fertile agricultural estates

With regard to the very fertile agricultural estates, which the legislator defined as estates with high productive capacity, which are characterized by depth and good soils that are irrigated or capable of being irrigated, according to Article 06 of Law No. 90-25 of November 18th,1990, which includes the estate directive⁷

As for fertile agricultural estate, it is meant, according to the provisions of Article 07 of Law No. 25-90, which includes the aforementioned Real Estate Guidance Law, that it is medium-depth, irrigated or irrigable estates, or well-depth unirrigated estates, located in humid or semi-humid areas and does not contain No topographical obstruction.

- Agricultural estates of medium or low fertility

As for the estates of medium fertility, they are the estates defined by the legislator through its inclusions, which include irrigated agricultural estates that contain medium obstacles in topography and depth, and non-irrigated estates of medium depth and the rate of rainfall in them is variable, and does not contain topographic obstacles, in addition to the unirrigated estates that contain Intermediate topographical and deep obstacles, and its solidity is large and the rate of rainfall in it is variable. It also includes non-irrigated estates of medium depth, and the rate of rainfall is medium or high with medium obstacles in topography, and this is in accordance with Article 08 of Law No. 90-25 mentioned above.

As for agricultural estates of poor fertility, the legislator defined them, according to Article 09 of the same law, as estates that contain large topographical obstacles and obstacles in terms of rainfall, depth, salinity, structure and erosion.

2. Legal classification of agricultural estate

The legislator has classified agricultural property into three categories. It can be affiliated with the national property, i.e. affiliated with the state, or affiliated to the private, or affiliated to the endowment property.

- Agricultural estates belonging to the national property

Agricultural estates are classified as private state property in accordance with Article 18 - Clause 11- of Law No. 90-30 of December 1st,/1990 containing the National Property Law. Law No. 10-03 of August 15 th, 2010, which defines the conditions and modalities for the exploitation of agricultural estates belonging to the private property of the state, by establishing concession as a mode of exploitation⁸

Although Article 18 of the aforementioned Law No. 90-30 considers agricultural estate belonging to national property exclusively the property of the state, some judicial authorities violate this principle by recognizing the ownership of agricultural estate by the municipality in a judicial ruling, as stated in the unpublished decision No. 202362 of 08/05/2000 of the Council of State, Chamber I, the following: “Contrary to what was stated in the merits of the appealed decision, and after the issuance of the construction tools, especially the master plan for the wilaya of Algiers, the estate in question was not allocated for construction, but rather preserved its agricultural nature, as is established by Through the documents issued by the concerned authorities, especially the Ministry of Agriculture and the Directorate of Development and Development of the wilaya of Algiers, and it should be noted that the agricultural nature of the estate is determined according to the Planning and Development Law No. In this case, it is not permissible to transfer the agricultural destination of the estate for the purpose of building on it, and this is even if the municipality owns it, as is the case in the case⁹

The ownership of the state, through its various central and decentralized agencies, gives wide powers and powers, such as the authority to continuously monitor the methods of exploiting these estates, and the authority to impose penalties when investors violate their legal and contractual obligations.

- **Private agricultural estate**

The Algerian legislator defined ownership in general, according to Article 674 of the Civil Code, as "... the right to enjoy and dispose of things, provided that it is not used in a way prohibited by laws and regulations."

Through this text, it is clear that the Algerian legislator has made the right of ownership a right that is restricted by respecting the legislation and regulation in force. The legislator was not satisfied with this general definition of ownership to set a specific definition of real estate ownership according to the provisions of Article 27 of Law No. 25-90 aforementioned, as it stated the following Private real estate property is the right to enjoy and dispose of real estate money and/or real rights in order to use the property according to its nature or purpose.

Through the foregoing, we find that the legislator, according to the real estate guidance law, expanded the concept of real estate ownership by clarifying its contents, which is the ownership of the property itself - the ownership of the neck - as well as the ownership of the real estate rights deriving from it.

Also in this regard, the legislator restricted the real estate owner to the need for his use of his real estate ownership to be in accordance with the nature of the real estate or according to what was prepared for it.

In view of the economic and social function of private agricultural estate ownership, the Algerian legislator made the exploitation of private agricultural estate a legal duty for every owner of it, and set penalties for violating this obligation¹⁰

- **Endowment agricultural estates**

As the Algerian legislator defined the waqf in more than one law and at different periods of time, Article 213 of the Family Law defined it as: "Waqf is the sequestration of money from the ownership of any person on the basis of perpetuity and charity."

As defined by Article 31 of Law No. 25-90 aforementioned, it is defined as: "Waqf property is real estate property that its owner confiscated of his own free will to make enjoyment of it permanent for a charitable organization or association with a public benefit, whether this enjoyment is immediate or upon the death of the mediator trustees who appointed by the aforementioned owner.

Finally, Article 03 of Law no. 91-10 of April 27th, 1991, which includes the endowment law, defined it as: "Waqf is the withholding of an eye from owning perpetually and giving alms for the benefit of the poor or in any aspect of benevolence and benevolence."¹¹

We note, by examining the provisions of the above-mentioned articles, that the Family Law expresses the word endowment in the word money, which includes movable and real estate, while the Real Estate Directive Law made it a monopoly on real estate alone, to the exclusion of others, while the Endowment Law included real estate, movables, and usufruct in other than that. These laws all agree on the idea of perpetuity in the endowment and its charitable nature.

In addition, the legislator specified how to exploit the agricultural endowment property as a type of real estate property. With regard to the arable endowment estates, the legislator singled them out in a share-sharing contract, and in this contract the endowment property is invested in if this property is agricultural estate devoid of plants or trees, as stipulated. Article 26 bis 01 - first paragraph - of the Awqaf Law, amended and supplemented by Law No. 01-07 of May 22nd, 2001¹²

As for the agricultural estates planted with trees and the like, the legislator singled them out for the musaqah contract, and in this contract the waqf property is invested in it if this property is agricultural estate planted with trees, according to what was stipulated in Article 26 bis 01 - paragraph 02 - of the same law, and the source of these two contracts goes back to Islamic law These are agricultural leases of a special nature, the aim of which is to invest the endowed agricultural estates by cultivating and serving them through others¹³

As for the fallow agricultural estates, the legislator singled them out for the hekr contract, which is one of the long-term leases, which derives its origin from the Islamic Sharia. on the endowment property¹⁴

2 - The agricultural concession contract as a mechanism for the exploitation of agricultural estates

Through this axis, we discuss the concept of the agricultural concession contract, and then we study the effects of this contract by clarifying the rights and obligations of the concessionaire investor¹⁵

2 – 1 The concept of the agricultural concession contract

In order to study the concept of the agricultural concession contract, it is necessary to address the definition of this contract, and then clarify its characteristics¹⁶

1. Definition of the agricultural concession contract

The agricultural concession constitutes the basic foundation upon which Law No. 10-03 of August 15th, 2010 was built, relating to the determination of the conditions and modalities for the exploitation of agricultural estates belonging to the private property of the state.

It was the appropriate solution to replace a new, modern and flexible legal system with a legal system that is no longer in line with the new economic vision of the state

The Algerian legislator defined the concession contract according to Article 04 of Law No. 10-03 aforementioned as “...the contract under which the state grants a natural person of Algerian nationality called, in the request of the text ‘the concessionaire investor’, the right to exploit agricultural estates belonging to the private property of the state As well as the surface properties related to it, based on a book of conditions determined by regulation, for a maximum period of forty (40) renewable years, in return for paying an annual royalty that determines the methods of its identification, collection and allocation according to the Finance Law.

In the concept of this law, “surface property” means the total property attached to the agricultural plantation, especially buildings, plantations and irrigation installations.

It appears through this text that the Algerian legislator has defined the concession contract for the exploitation of agricultural estates belonging to the private property of the state by defining its various elements, which are as follows:

- Identifying the parties to the concession contract as an administrative contract, where the first party is represented by the granting administration, which is the state, while the second party is the obligor, which is the natural person of Algerian nationality.
- Determining the subject of the contract, which is the right to exploit the agricultural estates belonging to the private property of the state and the surface properties related to it.

- Determining the period of exploitation of the agricultural property for a period of 40 years with the possibility of renewal, noting that the Algerian legislator has been silent about the number of renewal times.
- Determining the consideration in the contract by paying an annual royalty.
- The contract between the two parties is according to a book of conditions.
- Limiting the concession holder to a natural person without the possibility of granting the right to exploit agricultural estates to legal persons, as that natural person has been identified and he has Algerian nationality, and therefore the Algerian legislator has closed the door towards foreign investment in the exploitation of agricultural estates belonging to the private property of the state.

It is also noted through this article that the Algerian legislator distinguished between benefit contracts granted to members of agricultural investments, so the owners of well-known official contracts can be limited to the owners of administrative contracts, the owners of notarial contracts drawn up by the notary on the occasion of the waiver of the permanent usufruct right, as well as the holders of notarial certificates in their possession. The beneficiary on the occasion of the perpetual usufruct right bequeathed to them.

However, the Algerian legislator excluded the owners of notarial contracts that are not publicized, and the owners of customary contracts from converting the permanent usufruct right into a privilege right.

2. Characteristics of the agricultural concession contract

According to Articles 12, 13 and 16 of Law n° 10-03 mentioned above, we find that the agricultural franchise enjoys the following advantages:

- Determine the duration

Article 04 of the aforementioned Law n° 10-03 specified the term of the agricultural concession for a maximum period of forty (40) years, subject to renewal at the request of the concessionaire investor in cases of breach of the obligation to exploit these estates according to their allocation.

- Transferability

The right of concession does not end with the death of the investor who owns the concession, but rather it is transferred to the heirs, and they have a period of one year starting from the date of the death of their legator in order to:

- Choosing one of them to represent them and take care of the rights and burdens of their inheritance in the invested property, taking into account the provisions of the Family Law in the case of minors.
- Assignment for a fee or free of charge to one of them.
- Waiver of their rights according to the conditions specified in this law, and after the expiration of this period, and when the heirs do not choose one of the cases indicated in the article, the National Office of Agricultural Estates notifies the competent judicial authority of that.

- Assignability

The concession right is subject to transfer in accordance with the provisions of Article 13 of the aforementioned Law 10-03. In the event of assignment of the concession right, other investors holding

the same concession as the agricultural investor, or when necessary the National Office of Agricultural Estates, can exercise the right of pre-emption in accordance with the applicable legislation. It is not possible whoever has the right to gain more than one privilege across the entire national territory, and this is as stipulated in Articles 15 and 16 of the same law.

- **Mortgage ability**

In accordance with the provisions of Article 12 of the aforementioned Law 10-03, the privilege stipulated in this law entitles the establishment of a mortgage that burdens the real estate right resulting from the concession in favor of the credit organizations, and this mortgage is exercised in compliance with the provisions of this law.

- **The ability to book**

The agricultural concession is subject to seizure, in accordance with the provisions of Law 03-10 as it is a real estate right.

- **The right cannot be stripped except within the framework of expropriation for the public benefit**

The agricultural concession right can be stripped from its owner when all or part of the agricultural estate is designated by the realization of a project of public benefit or public interest, provided that the legal procedures stipulated in the legislation and regulation in force are respected, in particular articles 02 to 33 of law n°. 91-11 of April 27th, 1991 which defines the rules related to expropriation for the public benefit¹⁷

2 – 2 Effects of the agricultural concession contract

The agricultural concession contract establishes a real-world right, and this right entails several other rights granted to the investor who holds the concession right, so that he can exploit and invest the agricultural estates granted to him. The franchisor, then to the obligations incumbent upon him.

1.The rights of the franchisee investor

The aforementioned Law n° 03-10 granted several rights to the concessionaire investor to freely exploit the agricultural estates granted to him, the most important of which are:

- **Freedom to waive the privilege**

According to the provisions of Article 13 of the aforementioned Law n° 10-03, the concession right can be waived, but this right is not absolute, especially if the agricultural investment is collective i. The latter notifies the other members of the same investor in writing, with a view to their possible exercise of their right of pre-emption.

- **Freedom of exploitation and investment**

Article 23 of the aforementioned Law n° 10-03 granted the concession holder the right to exploit and invest agricultural estates and surface properties, provided that this is for the purposes of his farmers, while respecting the law and the book of conditions.

- **The possibility of inheriting the right of concession**

In accordance with the provisions of Articles 13 and 14 of the aforementioned Law 10-03, the Algerian legislator granted the right to bequeath the privilege to the legal heirs, and he granted them a period of one year, starting from the date of the death of their inheritor, in order to choose one of the cases mentioned in the core of Article 25 of the same law.

2. Obligations of the Investor

In exchange for the rights granted by Law n° 10-03 aforementioned to the investing party with the concession right, it has at the same time imposed on it some obligations as follows:

- Concessionaire investors must manage their agricultural investments directly and personally in accordance with the provisions of Article 22 of the same law.
- The management, exploitation and protection of the agricultural estates and surface properties attached to them granted concession must be carried out on a regular and permanent basis and in accordance with the provisions of the legislation in force and the provisions of this law as well as the terms, conditions and obligations specified in the book of conditions, and this is according to Article 23 of the same law.
- Payment of the annual royalties as a result of the exploitation of the agricultural property at the state property departments, where the methods of determining, collecting and allocating them are determined according to the Finance Law, in application of the text of Article 04 of the same law.
- Commitment not to transfer the agricultural destination of the estates and surface properties, as well as not to lease these agricultural estates and surface properties subject to the sub concession contract, according to Article 29 of the same law.

It should be noted that, and in application of the provisions of Article 28 of the same law, in the event of any breach of the investor's obligations mentioned above, the penalty for this breach is the termination of the concession contract, after examining the breach by a judicial report, and after warning the concessionaire investor by the National Bureau. For agricultural estates, and the expiry of the period mentioned in this notice, and the termination decision issued by the State Property Administration is subject to judicial appeal within a period of two months from the date of notification of this decision by the National Office of Agricultural Estates.

Conclusion:

We conclude, through our study of the issue of the exploitation of agricultural estates through the concession contract, that the Algerian legislator has guaranteed the basic principles that govern the regulatory framework for agricultural estates belonging to the private property of the state through some mechanisms, including:

Keeping agricultural estates owned by the state

- Relying on the method of concession as a new pattern for the exploitation of agricultural estates.
- The inability to exploit agricultural estates by foreigners.

Determine the maximum term of the contract at 40 years, subject to renewal.

On the other hand, we extracted a set of complex problems that this law carried, including the maintenance of the state of communism, an increase in the clear dedication to the authority of the administration represented by the governor or the state director of the National Office of Agricultural

Estates, especially with regard to the authority of the administration to terminate the concession contract by its own will and without resorting to the judiciary.

In order to avoid these problems, we suggest granting the authority to terminate the agricultural concession contract to the competent administrative judge, while granting the right to foreigners to exploit agricultural estates, and to benefit from their expertise in this field, especially since preventing them from doing so contradicts the new investment law, and in the end we say that the problem of agricultural real estate must be subject to harmonious study and regulation within the wheels of the national economy under a clear and comprehensive strategy.

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²Dugish Ahmed, Shafa'a of the State and Local Communities. The National Forum on Real Estate in Algerian Law and Comparative Law, University Center, Bechar, 22 and 23 April 2008, Algeria, 2008, p. 198

³Haji Naima. Throne estates in Algerian law. Ain Melilla, Dar Al-Huda, Algeria, 2007, p. 75

⁴Ferchichi Mounir. Lectures on Tunisian real estate law. Publications of Al-Atrash Complex for Specialized Books, Tunis, 2011, pp. 59, 60

⁵Official Gazette of the Republic of Tunisia, No. 74. (1983).

⁶Jilali aja . The Agricultural Real Estate Crisis and Proposals for its Settlement, Dar Al-Khaldoniyah, Algeria, 2005, pp. 238 and 239

⁷Official Gazette of the People's Democratic Republic of Algeria, No. 49. (1990)

⁸Official Gazette of the People's Democratic Republic of Algeria, No. 46. (2010).

⁹Hamdi Pasha Omar. Real estate judiciary, Dar Houma. Algeria, 2005, p. 96

¹⁰Borcan fadila. Non-exploitation of agricultural estates, master's thesis, Faculty of Law, Saad Dahlab University, Blida, Algeria, 2005, pp. 23 and 24

¹¹Official Gazette of the, People's Democratic Republic of Algeria, No. 21. (1990)

¹²Official Gazette of the, People's Democratic Republic of Algeria, No. 29. (2001).

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¹⁴Bushma Khaled., The Problem of Reference in Regulating the Waqf King's Investment, Journal of Legal and Political Research and Studies, Faculty of Law, Blida University 02. Issue 05, Algeria, 2013, pp. 24 and 25

¹⁵Official Gazette of the People's Democratic Republic of Algeria, No. 46. (2010).

¹⁶Zarrouqi Laila, and Hamdi Pasha Omar. Real estate disputes. Houma House. Algeria, 2013, p. 127

¹⁷Official Gazette of the People's Democratic Republic of Algeria, No. 21. (1991).

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