

DIVERSION OF AGRICULTURAL LAND IN ALGERIA



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Abstract :In Algeria the most fertile land is transferred to public Project through regulations and instructions against legal texts, issued by an executive authority that does not value this wealth, which is declining day by day, threatening national food security. The problem of converting agricultural lands is not limited to the non-application of laws, but go beyond them for historical reasons consistent with economic and political orientations, which have contributed to weakening the peasant's connection with the land. In order to deal with violations, it is imperative to impose restrictions on the legislative and regulatory authority to ensure that the area of agricultural lands are not reduced, adopt a method of constructions' prohibition on lands, provided that it is intended to serve agricultural land, and finally apply sanctions commensurate with the importance of this wealth.

Algeria has a limited agricultural area. However, the most fertile lands are transferred to the public project through regulations contrary to legal texts, issued by an executive authority, threatening national food security. The non-application of the laws is not the only problem of the diversion of agricultural land, there are economic and political reasons, which have contributed to weaken the link between the peasant to the land. In order to face the violations, it is imperative to impose legislative restrictions, to prohibit constructions on the land, and finally to apply severe sanctions to protect the land. agricultural.

Keywords: Conversion , Agricultural land- prohibition of construction- peasant- food security- most fertile land.

تحويل الأراضي الفلاحية في الجزائر .

ملخص: يتم تحويل أخصب الأراضي في الجزائر لصالح مشاريع ومرافق عمومية بقرارات تنظيمية وتعليمات صدرت من قبل سلطة تنفيذية ضاربة عرض الحائط النصوص القانونية ولا تقدر قيمة هذه الثروة التي تتناقص يوم بعد يوم بما يهدد الأمن الغذائي القومي وإشكال تحويل الأراضي الفلاحية لا يقتصر في عدم تطبيق القوانين بل يتجاوز ليعود لأسباب تاريخية تتماشى مع التوجهات الاقتصادية والسياسية مما ساهم في إضعاف صلة الفلاح بالأرض. وللتصدي للاعتداءات، من الواجب فرض قيود على السلطة التشريعية



والتنظيمية لضمان عدم تراجع مساحة الأراضي الفلاحية، وإعادة تفعيل دور الهيئات الإدارية التي طالما كان دورها مُغيبا ، واعتماد أسلوب حظر البناء على الاراضي شريطة أن يكون مرصوداً لخدمة الأرض الزراعية، وتطبيق عقوبات بما يتناسب مع أهمية هذه الثروة غير المتجددة .

الكلمات المفتاحية : تحويل، الأراضي الزراعية ، حظر البناء ، الفلاح ، الأمن الغذائي .

Détournement des Terres Agricoles en Algérie .

Résumé : En Algérie, Les Terres les plus fertiles sont détournées pour la domiciliation des installations publiques par des décisions réglementaires et des instructions émises par les autorités exécutives. Les textes juridiques ne valorisent pas cette richesse non renouvelable , menaçant ainsi la sécurité alimentaire nationale.

La problématique du détournement des terres agricoles ne se limite pas à la non-application des lois, mais les orientations économiques et politiques ont contribué à affaiblir le lien qui relie le paysan avec la terre.

Afin de stopper l'hémorragie qui consiste à réduire la superficie des terres agricoles, des restrictions doivent être imposées ; émettre des lois dans ce sens, redynamiser le rôle des organismes administratifs qui ont longtemps été absents, interdire l'urbanisation des terres agricoles. Enfin durcir les sanctions pénales en fonction de l'importance de cette richesse .

Mots Clés : Détournement , terres agricoles, interdiction de construire, paysan, sécurité alimentaire.



Introduction:

Agricultural lands in Algeria represent a cornerstone for national economy, since they are related to other sectors, and for having an effective role in economic and social development, as well, especially in our modern days. Moreover, the power is no longer limited to a State possessing weaponries and armaments, but it is rather inherent to the State able to provide national food security. Therefore, agricultural lands have gained attention in Nation's Constitution and successive governments that developed strategies, plans and a considerable legal arsenal for agricultural development, as a strategic cycle of production for all vital sectors and a strategic lever of production for economic and social development.

In fact, successive governments have, since their independence, put in place some legal and legislative mechanisms together with administrative organs to prevent depletion of this real estate property and protect it since promulgation of the Real Estate Orientation Law No.90-25 issued on 18th November 1990 until the enshrining of agricultural land's constitutional protection through the constitutional amendment of 2020¹, according to some statement¹ constitutionalizing the principle of the agricultural land's protection is in order to protect them from the concrete expansion which threatens food security, and fighting against real estate's mafia, in particular the silence of administration towards the conversion of land from its agricultural destination. Likewise, it alike stands for the basis of sustainable development, in line with the international Algerian commitments¹.

Although progress recorded in the field of legislation concerning preservation of agricultural land, the registered outcome which appertains to the declassification's processes of agricultural land across the jurisdiction, and destined for urban planning and industrialization, demonstrates a blatant aggression over large areas of agricultural land, which represents only 3.5% of the total area over the country¹. Nonetheless, according to the press reports from 2010 to the present day, it was

¹ - Presidential Decree No.20-442 issued on 30th December 2020, regarding the promulgation of the constitutional amendment, approved in a referendum on the 01st of November 2020, in the Official Journal of the People's Democratic Republic of Algeria, JORA No.82, issued on 30th December 2020.

¹ - www.elmihwar.com/ar/45745/html (last accessed 12/08/2022).

¹ - African Convention about the Conservation of Nature and Natural Resources, Ratified on the 11th of December 1982, JORA N°51, issued on 11th December 1982, entered into force on 16th June 1996. Kyoto protocol of the United Nations convention framework on climate change, ratified on the 28th April 2004, JORA No.29, issued on 05th September 2004, whose entry into force was on 16th February 2005.

¹ - Ministerial Circular issued by the Ministry of Agriculture and Rural Development No.558, issued on the 03rd of September 2014, p.01.



revealed that around 20,000 hectares¹ of lands are declassified, and consequently there was a regression of the efforts made by the State, for realization purpose of a sustainable national food security, which is still far from hopes, considering that Algeria still ranks first among the list of countries importing foodstuffs with an average bill estimated at 2.5 million dollars annually². Nevertheless, it is established that considerable areas take up from fertile agricultural land adjacent to the urban surroundings to cities, as some of them may exceed an area of 50 hectares prevailing real-estate³.

In light of the facts set out above, the recourse to agricultural land converting, including those owned by State, available or exploited by agricultural producers, without neglecting the private agricultural lands, incites us to enquire: What are the reasons behind converting vocation of agricultural lands from their main base even though it is a source of food security.

The answer to the problematic requires the division of our research paper into two topics that can be summarized as follows:

THE FIRST TOPIC: Historical and legal reason as a source of infringement on the Agricultural Lands.

THE SECOND TOPIC: The ineffectiveness of administrative and penal sanction in the protection of the Agricultural lands.

THE FIRST TOPIC: HISTORICAL AND LEGAL REASON AS A SOURCE OF INFRINGEMENT ON THE AGRICULTURAL LANDS.

The source of infringement on the agricultural lands is due to two main reasons, the first being historical reasons that break the link between the farmer and land ; the second reason is the regulatory texts as source of the violation against agricultural land.

First requirement: Historical reasons that break the link between the farmers and land

¹- Samira IMADALOU, "Great pressure on agricultural land 20 000 hectares sacrificed since 2010 for the benefit of the file the urbanization", El Watan Economie, Monday 06th of May 2013, Algeria, p.10.

²- Omar BASSAOUD, "Agriculture in Algeria from Agrarian Revolutions to Liberal Reforms 1963-2002", *Insaniyat / إنسانيات*, No.22, 2002, p.25.

³- Kamel TAKOUACHTE, Real Estate Retailing as a mechanism for the protection of unbuilt real estate, paper presented at the national forum entitled: The role of real estate in sustainable development, Faculty of Law and Political Sciences, University of Larbi Tebessa, 2018, p.4.



These reasons are related to circumstances that prevented without setting a peasant class linked to the land, starting with the Roman invaders, who invented a special system¹, where a workforce was formed of slave farmers inside these farms, this category of farmers did not get the personal deed, and by the arrival of Arabs, the description of the Western Maghreb regions all certified to the sophistication in dealing with the land and the serious exploitation of it and the experience gained in agriculture². However, a class of senior landowners of urban origin emerged and the number of the quintiles increased, but taxes were weighing on the small farmers and did not permit the expansion of small properties, especially in the suburbia. Nevertheless, there was a kind of social harmony³ in terms of concentration and stability in the agricultural fields overseeing the cities and some mountain heights and within the oases zones, it confide in those who were exposed to the "Kragle class"⁴.

During the era of colonialism, the "SenatusConsultum"⁵ of April 22nd, 1863 and the "Warnier"⁶ Law on July 26th, 1873 constituted a critical curve in the history of Algerian land real estate property, for the destruction and dismantling that it caused of the social and economic structure of real estate system⁷. These two Laws which had both a political and financial dimension⁸ established the removing of property rules derived from Islamic law, as well as expanding the scope of public domain of the colonial administration, distributing the lands of the throne or tribes among the

¹ - Omar Bassaoud, "Agricultural in Algeria from Agrarian Revolutions to Liberal Reforms 1963-2002", n°22, 2002, *Insaniyat / إنسانيات*, p 15.

² - Ibid.

³ - Ibid.

⁴ - A term used to refer to the mixing of the local population with the population of Ottoman origin.

⁵ - The Senatus-consult of April 22, 1863 is a law, voted by the French Senate under the Second Empire, aiming to organize land ownership in Algeria and to delimit the territories of the tribes and Douars.

⁶ - Law passed by France's National Assembly in 1873 to establish individual titles on previously undivided lands held by families and tribes in Algeria.

⁷ - The Hanancha tribe is one of the largest tribes with a great influence on the Beylik of the East, as it was in control of a large geographical area, where the invader in the first stage included subordinating its administration to the Guelma Military Department, then subjecting it to the SenatusConsultum law, which resulted in its division into three administrative units: Hanancha-Tiffech-Zaarouria set its features and borders, and dividing the tribe on this type and identifying it in a specific geographical area reduced its importance as an effective and influential force in the region, as it was resisting the colonizer strongly and forcefully, and opened the way to settlement on the tribe's lands, where the constructor Deron acquired an area estimated at 85 are and 80 centiare. For more, see: Ouarti Djamel "the mechanisms of French real estate policy and its role in changing the structures of Algerian society the Hanancha tribe as a model", *10 The teacher Forum magazine* Higher Normal School of Constantine, July 2011, p 143.

⁸ - Among the objectives of the application of the Presbyterian decision, the frenchification of lands and their subjection to the French tax system, the vocation of which is to create a colonial budget, see: Ouadda Ben Daha, the real backgrounds of property law in Algeria during the French occupation, previous reference, p.139.



douars after defining the parameters of their landmarks, and dividing those lands among individuals in the form of individual property, because the establishment of private property will facilitate putting an end to the indivisible and undivided collective property and definite it clearly that Algerian farmers can sell their lands easily, right up finally in the end to the dismantling of tribes (Defragmentation of tribes) and degraded it materially and morally, considering that the land is an area for solidarity and synergy among the members of the tribe - and in return the colonial administration assured a valuable reserve for the settlement of Europeans and created at the end of the fifties an Algerian peasant proletariat and/or quintlies¹.

The employees have occupied the vacant lands after independence, since July 1962, after the departure of the colonists, thereby a spontaneous method of real estate property management arose and supported by the state, which is the method of self-management², but this method did not exclude the advertising in Law 63-276 of July 26th, 1963 the State property about agricultural exploitation owned by physical or legal persons without Algerian nationality³.it then issued Order 66-102 of May 06th, 1966 including the transference of vacant real estate to the state⁴.

The arguments presented with regard to non-distribution of vacant land for the poor and the landless employees peasants is the need to maintain a peasant farms characterized by the modernity able to generate a surplus investment continues and refused to be delivered to the farmers in without technical experience⁵,and most importantly, the authority's fear of unrest between the various groups of society (the former owners whose property was confiscated and the earning peasants who devoted themselves to exploiting it)⁶,thus breaking the close link that the possessor feels to his land as a simple employee like the workers of industrial establishments.

¹ -Omar Bassaoud, "Agricultural in Algeria from Agrarian Revolutions to Liberal Reforms 1963-2002", 22, 2002, *Insaniyat / إنسانيات* at 15.

²- It was codified by Decree 63/59 of March 22, 1963 regarding the rules and modalities of self-management of agricultural exploitation, which organized the structural aspect of self-managed farms.

³- Fatiha Baouche, "The Evolution of Agricultural lands in Algeria through reforms" *rural law thesis*, University of Poitiers, France, January 28th 2014, p 48.

⁴ JORA N° 36, 1996.

⁵- Fatiha Baouche, "The Evolution of Agricultural lands in Algeria through reforms" *rural law thesis*, University of Poitiers, France, January 28th 2014, p 44.

⁶-The argument put forward to justify the rejection of the solution of distributing colonial lands to the landless peasantry and to the small peasantry, whose power nevertheless claimed, was the need to maintain modern farms, capable of releasing a investable surplus. During the 1962-1963 period, the government feared that a distribution of land for the benefit of the rural poor would lead to disturbances and violent disputes between different categories of the population " see : Ibid at 44



The lands placed simultaneously with these measures under the protection of the state, including the agricultural ones, possessed by the European bourgeoisie and some agents belonging to the local bourgeoisie under the Decree 63-168 of May Nine, 1963¹, but quickly tightened state control over the real estate policy in the agricultural field, which issued the Order 73/71 on 1971.8.11 including the agricultural revolution, which was applied in three phases: the first phase integrated into the agricultural lands of the public domain, the second involved the nationalization of absentee lands and the dismantling the links of the major real estate property of the private, and the authority was unable to set a final deadline for its completion due to the emergence of severe disputes between the administration and the big owners who resisted the measures², and the authorities believed then that growth and prosperity of agricultural field will be achieved only by an equitable redistribution of agricultural land through the dismantling of real property major monopoly link's by the local bourgeoisie.

But these measures have led to counterproductive wish caused the conversion of land from its destination peasant, the first result: the procedures of nationalization pushed the natives owners to recourse to two ways: the first expansion of built - up property area, leaving what is sufficient for their needs of agricultural lands, the second is mainly selling excess areas of agricultural land to destine it for construction³. This contradicts the state's policy to control and protect agricultural real estate.

The second result is the conviction's lack of beneficiary farmers about the devotion to service of the land, but many of them waive the exploitation of agricultural lands⁴. Because the relation between the farmer and the land no longer exists so that the farmer did not feel any holy gravity about it, he is acting as a mere simple employee giving minimal of his time and his effort in agricultural cooperatives and

¹-The decree n° 63-168 of May 9th, 1963 relating to the placing under state protection of movable and immovable property whose mode of management acquisition, exploitation or use is likely to disturb public order or social peace, JORA 30/1963.

²- The reform of 1971 met a great resistance from the owners of large farms, see: Cherif Omar "Algerian Agriculture Faced with Food Challenges Historical Trajectories and Perspectives", Third World review, 2/210, 2012 ,p 131 .

³ -The application of the second phase of the agrarian revolution, which limits large private real estate property, has prompted private owners to recourse to two options to prevent a possible nationalization of their land: either increase their built surface, leaving just this that it is necessary for their personal needs in agricultural lands, or sell the surplus of their inheritance at considerable prices in order to subdivide it ", see: Hayette Nemmochi "the land in the Algerian city, the example of Skikda'", The geographic information , n°04/72 , 2008 , p91.

⁴ -We had registered more than 7200 withdrawals of attributions across the national territory, representing globally 11 of the total of the beneficiaries of the agrarian revolution.



farms self – management¹. Therefore, he does not hesitate to waste the resources associated to it, considering that the incorporated lands in the Agricultural Revolution Fund are completely belonging to the state according to the provisions of Article 22 of Order 71-73 including the Agricultural Revolution.

These difficulties drives the state to think about introducing many reforms, so it enacted the Law 83/18 of 1983/08/13 regarding the acquisition of agricultural property to pave the way for the acquisition of agricultural property by the private at the expense of part of the state's lands through reform in the south, then in 1987 brought about an earnest restructure of the agricultural sector through which about 2.8 million hectares were distributed to the exploiter farmers under the law 87-19 of November 1987 these divisions were in the form of peasant collective and peasant individual investors entitles the exploiter to permanent usufruct right heritable and not waived, while the bare-ownership belongs to state.

However, this restructure opened up new prospects² to transform the land for its base the exploiters holding a benefit agreements changed the material status of the land. The agricultural investors land were divided between the exploiters without contract, and some exploiters which were partners with venture capitalists, others sold their exploitation from the land, while others transmit the exploitation to people who wasn't related to farming under civil contracts, and the rest abandoned the land entirely, leaving it unexploited.

The causes that led to the conversion of the property agricultural for its base in the private properties belonging to state under the law 87-19 are: the absence of a real jurisprudence for the farmers exploiters, because the beneficiaries changed its status of a simple employee to independent and responsible farmer producer through a precedent heritage, without being transition, fearing that they do not own the agricultural property belonging to the state.

Further complicating matters, was the restitution of the lands to their original owners under the Real Estate Orientation Law 90-25, which did not reassure them about their legal status³, and what casts doubt on exploiters was that the right of self-usufruct was raised in earlier periods during the era of the self-management method and the law of the agricultural revolution, and the right of usufruct would not have allowed the exploiters to obtain bank loans because it is usually granted according to

¹ -The farmer in the state sector behaves like a simple employee when he works for the self-managed estate or the cooperative (giving as little as possible of his time and energy while obtaining as much as possible".

² -Omar Bassaoud, " Agricultural in Algeria from Agrarian Revolutions to Liberal Reforms 1963-2002", *Insaniyat / إنسانيات*, n°22, 2002, p 131 .

³ - Fatiha Baouche, "The evolution of agricultural land in Algeria through reforms" *Rural Law thesis* University of Poitier France, p 108.



benefits decisions¹ without being able to live up to a bond with legal value, and even availability of financial resources, the exploiters alienate investment of capital in agricultural investors due to the vulnerability of the link that binds them to the land².

What contributed to the questioning is the issuance of legal sentences that do not inspire confidence in Law 10-03 of August 15th, 2010, defending the conditions and procedures for granting concessions on lands belonging to the private properties of the state, including: the reduction in the duration of granting the permanent usufruct right to granting the concession for a period of 40 renewable years, and the expansion of concessions on roof rights³, especially the term of article 07 of the same law to the exclusion of people from provisions of this law: those who have possess the agricultural lands mentioned in Article 02 above and who have made transactions or acquired usufruct rights and / or roof rights in breach of the provisions of the legislative and regulatory in force, and who were the subject of termination of right issued by the judiciary, especially those whose benefits have been overturned by governor's decision, was followed by Article 28 Paragraph 02, stipulating the sanctions created when the investor owner of the concession violates his obligations, and rules for the possibility of the concession contract termination by administrative means.

At least, the summary of disconnection between the land and the farmer and low visibility of the emergence of a farmers class have the leverage in power reins, is due according to some researchers⁴ to many factors, including historical because of the repeated invasion, the absence of complete title that make the farmer settled in his land and closely associated to it, and the emergence of conflicts over land, especially in semi-urban areas where the land suffers from the continuous development and urban planning.

¹ -The possibilities of financing come up against the absence of title deed in most cases the accession to the property is done by attribution certificate without any legal value", Cherif Omari and al" Algerian Agricultural Faced with Food Challenges, Historical Trajectories and Perspectives", n° 2/210, Third World Review, 2012, p 132.

²-Fatiha Baouche The evolution of agricultural land in Algeria through reforms" Rural Law thesis University of Poitier, France, January 28th 2014, p125.

³-Art 04 of Law 10-03 on August 15th, 2010 fixing the conditions and modalities for granting concessions on lands belonging to the private property of the state.

⁴ -Cherif Omar and al, "Algerian Agriculture Faced with Food Challenges Historical Trajectories and Perspectives", Third World review, 2/210 ,2012, p124.



Second requirement: Regulatory texts as source of the violation against agricultural land

The source of the attacks and ambiguity regarding agricultural lands stands out through the violation of the instructions on the principle of gradation of laws, and ambiguity in the instructions, which opens the matter to different interpretations, the lack of regulatory texts regulating how to regroup.

A -The instructions violate the principle of gradation of laws:

The constitutional amendment ratified in a referendum on November 1st, 2020¹, enshrines in the Article 21 the principle of the protection of agricultural land, and the results of Constitution's authority, and his hitting the top of the legal system in the state, that in the case of incompatibility of law or decree with the principle of constitutional protection in terms of the procedural or substantive rules², it must be repealed or amended whatever enshrines the protection. therefore, the provisions that contradict this constitutional principle must be repealed or amended, in particular Article 36 of the Real Estate Orientation Law 90-25 stating that the law³ authorizes the conversion vocation of fertile or very fertile agricultural lands to the type of rehabilitated lands, and identifies the technical and financial constraints that must accompany the completion of the transforming process. However, the problem refers Article 36 of the same Article to regulation in determining the modalities and procedures for conversion vocation of within the same context and the other items.

The referral in the Real Estate Orientation Law 90-25 to regulate the procedures for conversion vocation of agricultural lands for the benefit of the regulation, we consider

¹-Art 19 of Law N° 01-16 of March 06th, 2016 containing the constitutional amendment stipulates the following: "The state guarantees the rational use and preservation of natural resources for the benefit of future generations. The state protects the agricultural lands, as it protects the public properties of water the law fixes the modalities of applying this article. JORA , N° 14 of March 07th, 2016.

² -Aid Ahmed Al-Hassban "the effectiveness of fundamental rights in restricting the legislative powers of the legislator, journal of sharia and law studies", n°39/2 deanship of scientific research, University of Jordan, 2012, page 276.

³-The competence of the law in licensing the conversion vocation of agricultural lands that are very fertile or fertile is in line with the provisions of Article 140, paragraph 24 of the Constitution, in which the founder fixed the fields that Parliament would legislate under ordinary legislation. Among the topics in which the founder referred to the legislative competence is "the real estate system." However, some criticized the founder's use of the term "public order" in addition to several phrases: general rules, basic legislation, basic lines, because this suggests that the legislator is restricted in the field of legislation :Nabali Fetta, "the separation between the legislative and organizational competencies and the weakness of the means to protect their fields" paper presented at the National Legal Security Forum held ,December 05th and 06th, 2013 Faculty of Law and Political Science Kasdi Merbah University Press Ouargla ,p 27.



a violation of the constitutional guarantee, and contradicts the protection enshrined in Article 19 of the Constitution, which referred to the law of modalities and procedures for protection, and therefore Article 36 of the Real Estate Orientation Law 90-25 must be repealed or amended. In particular, repealing Article 15 of Law 08-16 on August 03rd, 2008 including the agricultural steering¹, which states repealing of the classification of lands that do not fall within the scope of very fertile or fertile agricultural lands by a decree issued by the Council of Ministers.

In this context, the agricultural lands located in the buildable sectors were subject to Finance act of 1998,² which states in Article 53 the restitution of agricultural lands belonging to national property if they are integrated into the urban sector according to the tools of development and urban planning after prior opinion of the Competent People's Provincial Assembly, and in application of Article 53 from above-mentioned law, the executive Decree 03-313 was issued on September 16th, 2003 to clarify the modalities and procedures for the restitution of agricultural lands belonging to the national properties integrated in the construction sectors³.

And always in the framework of conversion vocation agricultural lands, a circular No. 553 of November 11th, 2009 was issued by the Minister of Agriculture and Rural Development to define the procedures for conversion vocation or repealing the classification of agricultural lands for use as property tax base for the completion of development equipment projects⁴, as a committee is constituted at the province under the presidency of the governor, consisting of: the director of national properties, the director of agricultural services, the conservator of the forests - the director of construction and urbanism, the director of irrigation, the head of the agricultural chamber, the president of the concerned municipal people's assembly. The mission of this committee is to study and evaluate at the level of the province requests to repeal the classification of the agricultural property tax base presented by the various sectors based on technical and economic norms, after excluding the completion of development projects towards nonagricultural lands, and the committee writes a report including the committee's opinion and the justifications for selection and the

¹ -JORA n° 46 of August 10th 2008.

² - Law N° 97-02 of December 31th 1997 containing the Finance Act for the year 1998, JORA N° 89 of December 31th, 1989.

³ -JORA N° 57 of September 21st 2003 However Law 08-16 containing the agricultural orientation considered that the provisions contrary to this law cannot be implemented (Memory No. 12773 of 12/25/2012 containing the transform or repealing of the classification of agricultural lands to be used as real estate tax base for realization development equipment projects issued by the State Property Administration.

⁴ -Circular N° 553 of November 11th 2009 from the Minister of Agriculture and Rural Development fixing the procedures for conversion vocation or repealing the classification of agricultural lands for use as real estate tax base for the application of development equipment projects ,p 02.



request of the concerned sector, the minutes of the private committee, confirming the inexistence of non agricultural lands.

At another juncture, the National Committee composed of the Minister of Agriculture and Rural Development, the Minister of Finance and the Minister concerned by the project, shall manage that the procedures are respected and, if necessary, conduct field visits, and ratify the report sent.

After the report's ratification by the Central Committee, the Minister applicant to repeal the classification of agricultural land sends a file to the General Secretariat of the Government, a preliminary draft of law if it is related to very fertile or fertile land, or a draft decree if it is related to land with medium or low potential fertility accompanied by the provincial committee report and the opinion of the Central Committee, the acquisition takes place after the publication of the relevant text in the Official Journal of the People's Democratic Republic of Algeria .

The decrees issued by the executive authority, which are administrative acts according to the organic standard, and are considered as a law in view of the objective material criterion in distinguishing between legislative acts and administrative acts, were and still are the biggest source of violation of this non-renewable real estate wealth, for example, the issuance of the executive decree No 11-237 on July 09th, 2011 including the repealing classification of agricultural lands and allocated them for the completion of residences and public utilities in some province, such as Oum El Bouaghi :repealing the classification of 126 hectares of agricultural lands, Tebessa :registered the repealing of classification of approximately 756 hectares, Constantine: the repealing classification of 2099 hectares and 100 Ares of the agricultural lands distributed among Ain Abid, Massaoued Boudjariou, Hamma Bouziane, Ibn Badis, Ain Smara, and El Khroub.

Or shrewdly, in accordance with the Executive Decree 12-370 of October 24th, 2012¹ revoke classification of agricultural lands belonging to the private property of the state, which were considered as the most fertile lands in the territories of provinces of: Oum El Bouaghi, Blida, Bouira, Tebessa, Sidi Bel Abbès, Mascara, Ain Defla and Ain Timouchent to achieve a public projects for development.

The excessive exhaustion of the agricultural lands contributes in the issuance of instructions to facilitate and ensure flexibility to repeal the classification of agricultural land, including the joint ministerial instruction No. 191 on March 29th, 2011² which came as an application of the Prime Minister's Instruction No 01 on

¹-Inter-ministerial instruction by the Minister of Agriculture and the Minister of the Interior and Local Collectivities N° 191 of March 29th, 2011.

²-Ibid .



April 19th, 2010, paving the way, on an exceptional basis, for the consuming of agricultural lands outside the construction sector if they are irreversible to transfer the project to another municipality, and the request for a piece of agricultural land is considered, attached by a file¹ to a committee constituted at the Province level headed by the prefect or his representative, Director of agricultural services, the Director of development and urbanism, State Property Director, and Province Director concerned by the project, as for making decisions about the possession of these territories will be made after notification sent from the prime Minister concerning decisions of the Joint Ministerial Committee And report them to the concerned Prefect .

Followed by the Ministerial Instruction (Prime Minister) No. 02 of May 12th, 2013² regarding the restriction of agricultural lands in order to meet the necessary needs related to the completion of public development projects, as the latter instruction confirms what concerns repealing the classification of agricultural lands and their possession for completion projects in emergency need, whereas the repealing of classification is decided pursuant a decision of the province prefect before it were eventually enshrined under an executive decree though the acquisition of lands will take place forthwith elaboration of the repeal decision of classification and that of indemnities. This instruction came with arrangements transgressing the provisions of Article 15 related to the Agricultural Orientation Law 08-15, which requires the issuance of a decree, because it has permitted the Prefects to issue decisions to repeal classification before the issuance of decree.

The parallel instructions which contests the legislation, overrides the principle of legitimacy³, because it is supposed that these instruction's roles do not go beyond to provide orientation or interpretations that help the related staff in execution of various legal types texts according to the stipulated general policy. On the other part,

¹- The file contains the request of the concerned sector director, a certified copy of the master plan for development and urbanism, the decision to establish the project, the cadastral plan, if any, or the plan to determine the land, the minutes of the land selection committee, the decision to evaluate the state's property to compensate the owners, and the reason for resorting to excision of fertile lands very or fertile. In that see: The inter-ministerial instruction by the Minister of Agriculture and the Minister of the Interior and Local Collectivities, N° 191 of March 29th, 2011.

²- Prior to the issuance of Instruction N° 02 of May 12th, 2013, permitting the restitution of agricultural land by a prefectural decision to be enshrined later by executive decree, a Ministerial Instruction No. 01 of April 19th, 2010 was issued, stipulates that no refund or excision could be made at the local level, i.e. by the prefect's decision, but on the basis of a joint ministerial council's decision, for more on the topic: Lachache Mohammed "legal protection of real estate property "n° 2/ 5 review of legal and political science studies , 2019, p265.

³- The principle of legitimacy is one of the principles on which the state of law is based, which means that the works of the public authority in the state and its decisions are not valid and do not have their effects towards the addressees unless the legal rules above them come.



it contributed to an excessive and unprecedented consuming of the agricultural land recognized by the Circular Ministerial No. 558 of September 03rd, 2014¹ despite the existence of legislative and regulatory provisions that frame this process. This unprecedented situation in the process of transfer agricultural character of the lands is caused by the violation of laws and regulations by resorting to easy solutions in excision the lands, which are usually at the expense of agricultural lands, including irrigated and plant ones.

And in the midst of implementing the previous instructions, transgressions occurred in the field, according to Instruction No. 03 of May 27th, 2018 issued by the Prime Minister², where a excision of agricultural investors was registered while they were in activity unduly, and the restriction of agricultural lands and their possession was doubled by administrative decisions issued by the Prefect before the joint ministerial committee decided on these files, and more than that without the Council of Ministers have taken decrees enshrining these procedures.

In view of these transgressions, the Instruction No. 03 above stipulates the prohibition of repealing the classification of land for collective and individual agricultural investors, and every contradicting and exceptional decision must be approved in advance at the level of the joint ministerial committee in charge of the agricultural land file, which decides on the matter based on the report of the joint sectorial mission for evaluation under the supervision of the Minister in charge of Agriculture. The agricultural lands that are not affiliated to the agricultural investors and are not affiliated to the very fertile or fertile agricultural lands are restricted through the field mobility of the joint sectorial prefectural committee, which is headed by the prefect accompanied by representatives of the concerned administrations. This committee must prepare a detailed report signed by the prefect about the quality of the lands, which will be presented to the joint prefectural committee for deliberation and disposes on it, and its deliberation becomes executive only when the relevant decree is taken in the Council of Ministers.

Regarding the governor's responsibility to protect agricultural land in Islamic jurisprudence³ according to the legality of owning land, even if it is dedicated for agriculture, in return, Al-Shara gave the prefect the authority to control individuals in

¹-Ministerial Circular No 588 of September 03rd, 2014 addressed to the prefects issued by the Minister of Agriculture and Agricultural Development, p. 01.

²- Instruction No 03 amends and completes instructions No. 01 and 02 regarding the excision of agricultural lands in response to the crisis needs related to the application of public development projects issued by the Prime Minister on May 27th, 2018.

³- Allah Almighty said: "O you who believe, spend of the good things you have earned, and of what we have brought forth for you from the earth" Surah Al-Baqarah, verse 267.



a way that preserves the public interest. The imam may intervene with the order of someone whose profession was agriculture to farm the land of the militants (Mujahids), and that is to maintain the two interests: the interest of jihad and the interest of cultivating the land¹. The matter evolves until the proprietor's recognition of the right to establish the ownership of agricultural land, because this would expand the widespread of small properties between the farmers, so they are active in their exploitation and challenge occurs between them, which leads to an increase in agricultural production and an improvement in its quality². Rather, the matter rises to the point of preventing the destruction of agricultural lands by building construction on them or selling them to those who build residences or factories on them, as this is detrimental to public interest due to the reduction in agricultural areas.

This phenomenon has been widespread in the country since independence, when cement invaded large agricultural zones, either to implement the industrial policy that consumed vast areas of agricultural land, such as: the Industrial Complex Sidi Moussa, the National Development Society for Construction, previously (ESIDNC) which has been settled in the most fertile agricultural plain in Mitidja in a wooded area, sitting on an area estimated at 166 hectares, without seeking the opinion of the urban development officials or local authorities,³ or to erect a cement factory in El Hamma Constantine, which ruined agricultural lands that produced many varieties of fruits and vegetables⁴.

B- The ambiguity in the instructions opened up the door for different interpretations:

The joint ministerial decision of December 13th, 1992 regarding construction rights on lands located outside the urban parts of the municipalities which, in view of its first article had set special rules to determine the constructions rights.

And the legal basis emanating from the first article of this decision states that only buildings that are used exclusively for residence are licensed, which value the general economy for this activity or for residential use, in other words, buildings that need a construction permit are those that respect vocation of the land, when it comes to agricultural lands, the buildings that are included in the development of the

¹-Kamal Ledraa, "the ruler's responsibility in protecting agricultural lands in Islamic jurisprudence" 22/23 Journal of Emir Abdelkader University, May 15th 2007, p52.

²- Ibid, p 62.

³- George Mutin, Industrial Implantation in Algeria and Regional Planning, 55/81, Journal of geography Lyon, 1980, p 18.

⁴-Kamal Ledraa, "the ruler's responsibility in protecting agricultural lands in Islamic jurisprudence", 22/23 Journal of Emir Abdelkader University, May 15th 2007, p74.



investor (warehouses, stables, private spaces for depositing or storing products that fall within the investors), and they are the only ones granted a construction permit corresponding to the vocation, and in regard to the residence of the agricultural investor, the aforementioned decision appoint the construction rights by defining in Article 5, 1/250 of the total area, the area allotted for the construction of buildings for residential use.

After nearly 17 years, a memory was promulgated by the Minister of Housing and Urbanism No. 659 on May 27th, 2009 to the directors of Urbanism and construction, where it was discovered that upon implementation the aforementioned decision knew extensive interpretations that led to different applications from one prefecture to another and even from one municipality to another, as it revealed that the construction rights for a definition of 1/250 are at times granted for each one of members within a collective agricultural investor, although this area concern the agricultural investor as a legal person (the agricultural civil company).

These different interpretations led to harmful situations and illegal occupation of agricultural lands, and construction permits were issued by the competent authorities with projects that contradict the reference legislative texts, such as the Law 90-29 of December 01st, 1990 regarding the development and urbanism, amended and completed.

C- Non-issuance of implementing regulations governing the method of grouping:

The first law that encouraged the grouping mechanism to preserve agricultural lands, is the Real Estate Orientation Law 90-25 in Article 58, and after eighteen (18 years) the Agricultural Orientation Law 08-16 encouraged this principle in Chapter Three of the section Three marked Provisions regarding agricultural real estate, followed by Law 10-03 fixing the conditions and modalities for the exploitation of agricultural lands belonging to the private property of the state, which urged in Article 11 structures amelioration of agricultural exploitation by the state's initiative of every incitation measure aimed the encouraging of agricultural grouping investors, especially through land consolidation operations of Agricultural land concedes.

However, the non-issuance of regulatory and implementation regulations to clarify the grouping procedures and modalities yet, make the grouping provisions an empty container and in vain.

The violations and ambiguity of the regulatory which organizes governing agricultural lands are accompanied with the ineffectiveness of administrative mechanisms and deficiencies penal sanction have contributed to the damage to agricultural lands.



THE SECOND TOPIC: THE INEFFECTIVENESS ADMINISTRATIVE AND PENAL SANCTION IN THE PROTECTION OF THE AGRICULTURAL LAND

The ineffectiveness of administrative mechanisms and Deficiencies in the penalsanctions affected Agricultural land .

First requirement: INEFFECTIVENESS OF ADMINISTRATIVE MECHANISMS RELATED TO THE PROTECTION OF AGRICULTURAL LANDS:

The ineffectiveness of administrative mechanisms for the protection of agricultural lands is reflected into the absence of effective administrative control to monitor non-exploitation of agricultural lands, and the ineffectiveness of exercising the right of administrative pre-emption, the ineffectiveness of the instruments of development and urbanism, the non-attainment of agricultural orientation tools their goals, and finally the non-confront of agricultural lands parceling problematic.

A-The absence of effective administrative control to monitor non-exploitation of agricultural lands:

Although the existence of a considerable legal arsenal to pursuit the control of the non-exploitation of agricultural lands, whatever its legal nature, accompanied by a management structure in charge of this mission, but it was established the absence of effective control according to recognition of the memorandum No. 917 of November 02nd, 2013 issued by the Minister of Agriculture and Rural Development addressed to the prefects, raises the case of non-exploitation of agricultural lands by their holders despite the facilities incorporated by the state in the field of granting credits¹, which demonstrates that there is no effective control monitoring in this field, and the same warrant urged the reactivation of the bodies charged of this mission², Rather, it was established according to some official reports³ that device of statement for non-

¹ Oppositely to the enthusiasm registered by the many requests for lands formulated, as much by young people as by investors, there are unfortunately lands not exploited by their holders despite the facilities put in place for access to bank credit and support for the State”, see note minister of agriculture and rural development n ° 917 of November 2nd, 2013 addressed to the prefect (wali).

²- Oppositely to the enthusiasm registered by the many requests for lands formulated, as much by young people as by investors, there are unfortunately lands not exploited by their holders despite the facilities put in place for access to bank credit and support for the State”, see note minister of agriculture and rural development n ° 917 of November 2nd, 2013 addressed to the prefect (Wali).

³- The obligation to work the agricultural land is instituted by the decree n ° 97-482 of 20/12/1997, which sets up an ad-hoc body at the level of the prefectures to note the case of non-exploitation of the land and to apply the sanctions provided for by law n ° 90-25 of 12/18/1990 on land orientation (the notice of the exploiters concerned); This device did not work, see: Algerian Democratic and Popular Republic National Economic and Social Council, perspective and economic and social



exploitation of agricultural lands organized by Executive Decree 97-482 has never worked.

Moreover, there are legal vacuum that allow the way for ineffectiveness of monitoring the exploitation of private agricultural lands, in accordance with Article 49 of the Real Estate Orientation Law 90-25, the non-exploitation is related to the period, so that it is realized if it effectively continues at least along two successive seasons, and consequently the possibility of evading this principle is by exploiting the term “at least two successive ones”, thus exploiting it in a season to gain time and neglecting it another season.

Also, the multiplicity of structure in charge of monitoring the non-exploitation of agricultural lands contributed which ranges between the Commission of non-exploitation of agricultural lands in the properties belonging to private, and the National Office of agricultural lands in property national belonging to State, and a Commission to estimate the completion of reform programs¹ constituted at the sub prefecture in the context of property acquisition by reform of lands, without neglecting the agricultural services and the State Property Directorate services, in lack of precision and the inflation of the monitoring body.

B- The Ineffectiveness of exercising the right of administrative pre-emption:

One of the most important tools that permit the protection of agricultural lands is the exercise of the right of administrative pre-emption² which constituted under articles 52 and 62 of Real Estate Orientation Law 90-25, it is a right that allows the National Office of the agricultural lands³ in the name of the state by the right of priority or

development commission, the configuration of land in Algeria a constraint to economic development 24th plenary session at 51 .

¹- Art 20 of Executive Decree 83/724 of December 10th, 1983 fixing the modalities for implementing Law 83/18 of August 13th, 1983 on the acquisition of agricultural land property stipulated the composition of the committee consisting the Director of the Agriculture and Development Committee in the Municipal People's Assembly - the local representative of the National Union of Algerian Farmers, The local representative of the agricultural technical services, the local representative of the irrigation services, the local representative of the State Property Administration.

²- Pre-emption is defined in Article 794 of Ord 75-58 containing the Civil Code as: A license permitting the substitution of the buyer to sell real estate within the conditions and circumstances stipulated in the following articles.

³- Article 55 of the Real Estate Orientation Law 90-25 stipulates that real estate transactions that are focused on agricultural lands are to be completed in the form of authentic contracts....., bearing in mind the application of the provisions of Article 36, and exercising the right of pre-emption stipulated in Article 52 above, “Article 04 of Executive Decree 96-87 of February 20th, 1996 stipulating the establishment of the National Office of agricultural lands, amended and completed: the Office is a public body charged of real estate regulation as stipulated in Articles 52, 56, 61 and 62 of Law No. 90-25 “JORA. N°. 15 of February 28th, 1996.



precedence over the transactions established on agricultural lands to preserve them and protect the public interest, which was confirmed by Article 02th of rulebook¹, the consequences of the public service of the National Office of Agricultural Lands, amended and completed.

The National Office of Agricultural Lands also advances in exercising the right of pre-emption in the case of real estate transactions focusing on private agricultural lands in violation casetowards provisions of Article 55 of the Real Estate Orientation Law. The concerned transaction damages the land's viability of investment or led it to transform its agricultural vocation or fragment it contrary to the referential area. The right of administrative pre-emption is not limited to right of property, but extends, according to the provisions of Article 62 of the Real Estate Orientation Law, to the right of usufruct (currently the right of privilege) on the occasion of the assignment of acquired parts under the Agricultural Investors Law 10- 03². Thus, the state summons up the elements of the property right (both the bare property and the right of exploitation).

Despite the existence of legal texts that allow the state to use the right of administrative pre-emption, but the absence of regulatory texts that clarify legal conditions and modalities that state or the National Agricultural Land Office should be followed to exercising this right, except Articles 18, 19, 20, 20 of Executive Decree 10- 326 fixing modalities of implementing the concession right to exploit agricultural lands belonging to state's private property which makes the matter subject for interpretations and conflicting jurisprudence.

And, most importantly, the ineffectiveness of exercising administrative pre-emption on private national property is reflected by Article 15 of Law 10-03 on August 15th, 2010, which fixes the conditions and modalities for exploitation of agricultural lands belonging to the private property of the state, which arranged the National Agricultural Land Office in next rank after the other investors. Where it comprising: In the case of ceding the privilege right, other investors who have the privilege of the same agricultural investor or, when required, the National Agricultural Land Office may exercise the right of pre-emption in accordance with the applicable legislation, and that the term "required" inspires that the exercise of pre-emption right by the

¹ - In the context of its missions, the Office is assigned, in particular, with the following: "..... exercises the right of pre-emption to possesses the lands offered for sale in accordance with Article 52 of Law N° 90-25 of November 18th, 1990, mentioned above....", JORA N°15 of February 28th, 1996.

²-Art15 of Law 10-03 on August 15th, 2010 fixing the conditions and modalities for the exploitation of agricultural lands belonging to the private property of the state stipulates the following: "In the case of assignment of the concession right, other investors who have the concession of the same agricultural investor or, when required, the National Agricultural Land Office may exercise the right of pre-emption in accordance with the applicable legislation.



Office is not mandatory. the same rank is confirmed in Articles 19 and 20 of Executive Decree 10-326 of December 23th, 2010.

The ranking of the office in this way is incompatible with the objectives of establishing this right to protect agricultural lands, prevent speculators, and monitoring the agricultural real estate market to protect this non-renewable housing stock.

Furthermore, the exercise of pre-emption administration right has not been implemented in the field for unavailability of material and human resources that enable the bodies to perform their functions, accompanied by a lack in work of the National agricultural land Office since its creation in 1996¹ which is considered as a industrial and commercial character of public establishment and an instrument belonging to state acting for its account in implementing the national agricultural real estate policy, until its reactivation in 2009² in prevision of the promulgation of Law 10-03, including exploitation of agricultural lands belonging to the domain state.

C- The ineffectiveness of development and urban planning instruments:

The development and urban planning instruments (the master plan for development and urban planning and land occupation soil plan)³ are instruments that organize the

¹-The National Agricultural Lands Office, in the form of a public industrial and commercial establishment. Not operational since its creation in 1996, NALO was reactivated in 2009 in prevision of the promulgation of the law regarding the mode of exploitation of agricultural lands in the private domain of the State, see: Ahmed Ali A, agricultural land legislation in Algeria and forms of access to land In: Elloumi M (ed), Jouve (ed), Napoléone (ed), Padi (ed) "Land regulation and protection of agricultural lands in the Mediterranean", Montpellier: CIHEAM, 2011 (Mediterranean option: Series B. Study and research page 41.

²- Executive Decree 09-339 of October 22th, 2009 amending and completing Executive Decree 96-87 of February 24th, 1996, which includes the constitution of the National Office of Agricultural Lands JORA N° 61 of October 25th, 2009 .

³-The capital master plan for the development and urban planning defines the general allocation of lands on total territory of the municipality or a group of municipalities, and determines the expansion of residential buildings, the emplacement of services and activities, and the nature and location of major installations, It also defines zones of intervention in urban fabrics and areas to be protected, such as lands designated for agricultural activities and protected areas that contain archaeological monuments of historical importance. In the context of the capital master plan for development and urban planning, the land occupancy plan defines the rights of land uses and construction and defines in detail for the sector or sectors the urban form, constructions rights and land use, it specifies the maximum and minimum amount of construction permitted, especially the public and green areas, it defines easements, neighborhoods, streets, memorials and sites to be protected, and most importantly it defines the sites of agricultural lands to be prevented and protected ,see Art 18 and 31 of Law N°. 90-29 regarding the development and urbanism, amended and completed .



production and uses of lands accepting urban planning and transformation of building frame conception.

These instruments pinpoint in a particular way the conditions allowing rationalization the use of some sensitive parts of national territory, such as the areas designated for agricultural activities and protection of keeping areas and sites which have historical, natural or cultural characteristics. This was confirmed by Article 66¹ of the Real Estate Orientation Law 90-25.

The designs of the development and urbanism plans (the guiding plan for the development and urban planning and the plan of land soil occupation) do not have any local or national architectural specify adopted from the French system which abandoned it, thus, makes it missing Algerian identity and reality, and it doesn't match with preservation of this non-renewable real estate wealth because it is basically, according to some researchers, contributing on urbanism and horizontal expansion in detriment of agricultural lands².

The ambiguity of some legal provisions contributed to the ineffectiveness, including the text of Article 48 in Law 90-29 amended and completed, regarding the development and urban planning about limiting the construction rights on agricultural lands with high or good potential efficiency in the vital necessary buildings for agricultural exploitation and constructions of public interest and on modifications applied for existing buildings.

The ambiguity is reflected in the quality and characteristics of national interest establishments or necessary for collective equipment, and the norm that are taken to permit their settlement in lands with high or good agricultural potential efficiency. Are they related to agrarian exploitation? And if they are not related to agricultural exploitation, it will allow many transgressions, especially in the absence of regulation that explains modalities of implement provisions related the article. The only regulation³ organizes acceptable density and construction rights expressed in the areas of the parcel of land devoted to construction, surmounting and allotment.

¹- The instruments of development and urban planning de fine the strength of the peopled or buildable lands, and the mentioned instruments must reflect the rational and intensive occupation of the lands within the framework of preserving agricultural lands and upgrading and reforming the areas and sites mentioned in Article 22 above."

² Kamel Takouachte, "Real Estate Retailing as a mechanism for the protection of unbuilt real estate", paper presented at the national forum marked the role of real estate in sustainable development, Faculty of Law and Political Science, University of Larbi Tebessa, 2018, p 4.

³- Joint Ministerial Decree of September 13th, 1992 regarding the construction rights applicable to lands outside the urban zones of municipalities, JORA issue 86 of 1992.



D-The Failure of the agricultural orientation instruments to reach their objectives:

According to the concept of Article 07 of Law 08-16, the agricultural orientation instruments are: agricultural master plans, agricultural and rural development plans and programs, agricultural real estate framework instruments. Concerning the agricultural master plan¹ constitutes the reference frame for the conservation and preservation of agricultural spaces, their rational exploitation and their best use within the respect of natural capabilities, while the plan of agricultural and rural development programs aims to adapting production systems, intensifying agricultural production, improving agricultural production and productivity, developing the activities of branches in the agricultural field, valuing Agricultural Production, preservation of animal and plant genetic resources and their development, land reform, afforestation and reforestation, fighting desertification, development of agriculture in desert zones, development of mountain agriculture, development of pastoralism and steppe lands grassland and semi-desert . As for the agricultural framework instruments applied to the agricultural lands belonging to the state and private real estate, it is represented in index defined capabilities of real estate properties of agricultural or agricultural vocation and also used as a basis for the state's intervention - a map of agricultural landmarks and agricultural vocation lands identification.

However, reaching the objective is long-range, and the arguments are multiple, as there are no regulatory texts that explain the mechanisms of settling index determines the capabilities of agricultural real estate properties, their management and registration in the map of agricultural lands identification, thus, requires considerable time given in regard of complex legal status concerning regularization of agricultural real estate legal status.

Regarding the effectiveness of the schemes², bureaucracy and the absence of serious prior consideration on distribute financial and technical support modalities caused the wasteful cases, as neglected irrigation reservoirs were found, fruitful trees were planted in areas unsuitable where farmers had no experience in this field, and irrigation kits were distributed without explaining their uses to farmers, all these factors impeded the schemes from reaching their objectives.

E- Unaddressed for problematic parceling of agricultural lands:

The prohibition on parceling of agricultural lands came in order to reduce the fragmentation of agricultural real estate and ensure an ideal exploitation for it to

¹ -Art 08 of Law 08-16 containing the agricultural orientation.

²-Fatiha Baouche, The Evolution of Agricultural lands in Algeria through reforms, *rural law thesis* University of Poitier , January 28th 2014 , France, p 222.



achieve global economic development, for reason that would minimize the cultivable area and its loss, the practical reality appears the occurrence of disputes over succession, which causes the abandonment of agriculture, moreover the parceling lead to reduce cultivable areas as well as high costs, it may also disrupt the use of agricultural machinery because the large number of unorganized channels and landmarks, the thing that makes owners of small farms cannot use the machine¹.

Executive Decree 97-490 of December 20th, 1997 intervened² to control the conditions for the parceling of agricultural land by the possessor, who is no longer free to dispose of his property whatever he likes, as he should respect the referential areas sets defined in Article 03 of the same decree.

In the case of undivided property, it should be examined after division what if smallest part is considered within the referential area, and if without that, the division must be rejected by the notary who requires a license from the Directorate of Agriculture at the prefecture where the undivided agricultural property is situated.

In the case of unavailability of the cadastral quorum related agricultural land, the notary³ must reject partners' request about dividing the real estate, and they have only to recourse in justice, which must abide by referential area and if impossible, the real estate will sell in auction according to the Civil and Administrative Procedures Law, which is called the division of liquidation⁴.

The same restriction is imposed on the investor who is granted right of privilege on the agricultural lands belonging to private property of the state in the multi-member investor, whom wish to form an individual farmer investor, thereby, he must submit a request to the National Agricultural Land Office, which decides on it according to the decree subject the area of agricultural farmer investor⁵, it is the same thing imposed in the context of agricultural real estate possession through reclamation

¹ -Hassoun Obid Hadjidj, Tamer Ramadan Amine, justifications of the criminal protection of agricultural lands property a comparative study'', journal of the faculty of basic education for educational and human sciences university of Babylon, December 2014, p 29.

² -OJ issue 84 of December 21th, 1997, p. 18.

³ -Art 07 of Executive Decree 97-490 fixing the conditions for the parceling of agricultural lands and the above-mentioned stipulated that notaries and real estate conservators charged with issuing documents for the processes of the parceling of agricultural lands or the transforming of property must ensure that these processes are conform with the provisions of the decree.

⁴ -Art 728 of Ordinance 79-58 of September 26th, 1975, including the civil code, stipulated: if division in kind is impossible or would cause a significant decrease in the division of the money to be divided, this money shall be sold by auction in the manner specified in the Civil Procedures Code, and the auction shall be restricted to the partners only if they demand this unanimously.

⁵ -Art 11, paragraph 02 of Law 10-03 of August 15th, 2010, fixing the conditions and modalities for the exploitation of agricultural lands belonging to the private property of the state.



lands, after determining the list of area granted under reclamation land by prefect's decision¹, the area is divided into plots that consider in its dimensions the minimum area that was relinquished with development works².

The parceling of agricultural lands in violation of parceling conditions is null and void, in application of Article 55³ and Article 56 of the Real Estate Orientation Law which stating: " each treatment done on violating Article 55 above is null and void " which is the same guideline of article 23 of the Agricultural Orientation law 08-16 of August 03rd, 2008⁴ in which the following stated" : It is prohibited, under penalty of nullity, any disposal of agricultural lands and lands of agricultural vocation that leads to form farmer investors with areas less than minimum borders determined by regulation, depending on the agricultural master plans established in accordance with Article 08 of Law."

The restrictions set by the legislator in every process of parceling and dividing the agricultural land will emptying the protection of its content because of the impossibility of dividing the agricultural property in specie, there will be many disputes and conflicts between the partners that will inevitably lead to neglecting agricultural lands and as a result not being exploited, and he had to guarantee an ability without prejudice to no parceling agricultural lands rule by stating that the heirs can come out of the undivided land case to agree among themselves who will obtain the agricultural land, stipulated the chosen one to paid the parts holding by the rest of partners. And if it couldn't to be compromised, the matter submits to competent tribunal for dispose to whom the undivided agricultural lands will vest to.

And matters get complicated in the field of agricultural land parceling, as memorandum No. 4270 of April 21th, 2014 was issued⁵ confirms the necessity of respect towards provisions of Executive Decree 97-490, because it was shown that small undivided rights were sold between (200 m and 300 m) on private property

¹-Art 04 of Executive Decree 83/427 of December 10th, 1983 fixing the modalities for application Law 83/18 of August 13th, 1983 regarding the acquisition of agricultural real estate property.

²- Art 05 of Executive Decree 83/724 fixing the modalities for application Law 83/18.

³- Real estate transactions that are focused on agricultural lands are completed in the form of authentic contracts. These transactions must not harm the lands' ability to be invested, nor lead to a transform their agricultural base, nor cause the formation of lands that contradict their size with the real estate orientation standards and programs. This is done in application of the provisions of Article 36 above and the exercise of the right of pre-emption stipulated in Article 52 above.

⁴- JORA issue 46 of August 10th, 2008.

⁵ - The instruction issued by the Ministry of Finance represented by the Director of the Real Estate Conservation and Land Cadaster addressed to regional inspectors for state property and real estate conservation and directors of state property for all prefectures No. 4425/MF/./ of April 21th, 2014 concerning the contracts registration that include concession to undivided rights of agricultural lands, p 151.



agricultural lands by real estate agencies and enshrined into notarial contracts that were used as real estate container base for illegally constructed buildings(without a parceling or construction permit), which led to damage to the agricultural real estate.

In addition to the ineffectiveness of administrative protection, the legal protection is not the most effective; we will explain it in the next paragraph.

Second requirement:Deficiencies in the penal of protection of Agricultural lands:

The agricultural lands have a great importance in realizing national food security,and to achieve this, the legislator must resort into legal texts to criminalize any act affecting economic system in the field of agricultural lands, and the perpetrator is punished with a just and repressivepunishment,especially since agricultural lands in Algeria are still subjected to a number of infringement and the violations that justify the necessity of providing legal protection for them, and the penalties for crimes occurred on agricultural lands, and derived from the Penal Code according to their gravity, ranged from felonies, misdemeanors,and infractions, some of them we will expose their forms because of the impossibility of discussing all of them.

A-TheCrimes occurred on the agricultural real estate which formalized the qualification of felonies:

Among the crimes classified as felonies on agricultural 20) years - and it does not significant the means used in burning, and penal protection here extends on agricultural land real estate, is the crime of arson, for which the legislator included the text of Article 396, the fourth and fifth paragraphs of the Penal Code, and provided penalties of temporary imprisonment from ten years to twenty (and what were related decision and removability to it, whether if it is real estate by nature, such as trees, buildings, dwellings, or workshops which are not inhabited or not used for housing .Protection extends to movables according their vocation, such as existing crops, tree parts, or wood placed in piles and in form of cubes and hay or crops placed in heaps or bundles.

The penalty is increased by the application of imprisonment reclusion penalty if the crime of arson is related to state property or local groups, institutions or bodies subject to public law ¹. Or the burning causes a permanent injury or impairment to a person².This penalty is mitigated to temporary imprisonment from five to ten years in two cases, first: the perpetrator deliberately set fire on things that were owned by him or not, and they were placed in such a way that the fire may spread, and this

¹ - Art 396 bis, Ord 66-156 of June 08th,including Penal Code, amended and completed.

² - Art 399/2 of the Penal, the same previous reference.



extension led to setting fire in property owned by others, as for the second case, he set fire in property owned by him, or he forced others to put it on fire - or he set fire under order of possessor, and deliberately caused harm to others.

We notice in all cases, the determination of penalty settled in Article 396 of the Penal Code when assaulted real estate subordinates to third parties and it get unproven if actor was the possessor, the Algerian legislator linked again in the text of article 406 of the Penal Code relating to criminalization deliberate vandalism on buildings and demolition, which may include agricultural lands built within its field due to the fact that property which is subject of the crime committed, is owned by others, which is considered as shortcoming, although these acts that could be committed by possessor himself affect the public interest as much national food security.

B-The Crimes occurred on the agricultural real estate which formalized the qualification of misdemeanors and infractions:

The text of Article 386 from Penal Code constitute the general text that was expressly stated to ensure penal protection of real estate property from infringement, including agricultural lands, whatever its legal nature¹, it is punished by imprisonment from one years to five years and a fine of 20,000 to 100,000 DA whoever snatched a real estate owned to a third parties², by stealth or by fraud, which present two special elements in this crime, provided that the penalty will increase by imprisonment from two to 10 years and a fine of 20,000 to 100,000 DA if the property-grabbing occurred at night by threats and violence, or by climbing, or breaking, by several person, or with apparent or concealed carrying weapon by one or more perpetrators.

However, the Criminal Chamber of the Supreme Court, decided in their decisions to not apply Article 386 from Penal Code, unless the sentenced party returned to grab without awareness and consent of its owner and unlawfully after his expulsion in

¹- Article 136 of Law 30/90 of December 01st, 1990, including the National Property Law, amended and completed, stipulates that “all types of prejudice to national property are punished as defined by the law in accordance with the Penal Code”- thus, public national property and private national property are subject of the same provisions.

² - And the difference between the two texts of Arabic language and French language led to confusion in the jurisprudence about whether if Article 386 means property or extends to possession, so that the matter is settled when property is not limited, but rather goes beyond it to include also legal possession, and the misdemeanors, infractions’s Chamber proceeded in two unpublished decisions containing : the legislator does not mean by the term owned by others the real property of real estate, but it also means the effective property, citing by : Abdelmadjid Benmoussa “ Protection of agricultural lands a comparative study between Islamic Sharia and Algerian law” Faculty of Humanities and Social and Islamic Sciences Department of Islamic Sciences Ahmed Draia University 2017-2018 ,p 360.



a legal way, and if complainant person wanted to take public action against the infringer, he has to attach his complaint by judicial decision or executive bond that pronounced the expulsion, and the statement proving that notification and enforcement procedures are respected, all does not give the necessary protection, because whoever assaulted real estate for a first time is not considered criminally responsible in application of provisions from Article 386 of Penal Code .

And always in the context of the crimes described as misdemeanors, the Article 406 bis of Penal Code states that punishment by imprisonment between two months until two years and a fine of 20,000 to 100,000 dinars for each person who ruined deliberately and partly real estate owned by a third parties and clearly failure of crime in the case if land or building habitat does not belong to a third party .

And always in the similar sequence of crime's qualification, and without breach of provisions regarding conversing vocation of very fertile or fertile potential agricultural land stipulated in Article 36 of the real estate orientation law requiring the issuance of a legislative text, it's unavailable to declassify the other agricultural lands unless with decree of Council Ministers¹.

In view of agricultural lands which consist a non-renewable real estate wealth, penal legislator stipulates in article 87 of law 16-08 regarding agricultural orientation, the penalty imprisonment of (1) year to five (5) years and a fine of one hundred thousand dinars (100,000 dinars) to five hundred thousand (500 000) dinars for each person who changes the agricultural nature of a land classified as agricultural or agricultural vocation in violation of provisions settled in Article 14 of the same law, which states interdiction for all use of non – agricultural land classified as an agricultural land or an agricultural vocation, whatever his nature, and without distinction between those within urban perimeter and outside it.

Unlike previous texts, current text formalizes a special protection to agricultural lands, where perpetrators are punished even he is the possessor, but the penal legislator didn't take importance to some crimes although their dangers on the agricultural lands, such as the fragmentation operation by minimizing cultivable areas due to Acts of mutation property, thus make exploitation of agricultural land without feasibility² and the crime of erosion which consists in removing the topsoil of agricultural lands in a manner that would detect the soil's crust, and the cause in interdiction of erosion is that the infrastructure of agricultural lands are less fertile than what exalted it because of decrease in proportion content of organic material

¹- Art 15 of the Agricultural Orientation Law N°08-16.

² - Hassoun Obid Hadjidj ,Tamer Ramadan Amine “ justifications from criminal protection of agricultural lands property” journal faculty of basic education for educational and human science university of Babylon Irak , January 2014,p 26 .



and the main elements of plant nutriment which affects soil viability for germination and leads consequently to productive capacity deterioration¹.

Conclusion:

Agricultural lands have a clear influence on national economy as an indispensable natural wealth, because it is related to people's lives and to society interest, as well as its effective contribution to stability's state and sovereignty, despite the vast geographical area of Algeria, agricultural lands are limited and every excision from it, is regarded as direct excision for a part of Algeria's lunchbox, which is an act contradicting provisions of sustainable development and threatens Algerian food security.

This is demonstrate that Algerian state focus more attention on oil wealth, and fell short of agricultural wealth, although agricultural production is the basis for achieving food security, which is one among two types of human security and a steady continuous resource that is inexhaustible, and the proof is shown in cement invasion in vast agrarian zones, it portends that Algeria will exacerbate its food dependence on Western countries. Rather it established that after the popular movement (Al-Hirak), thousand hectares of agricultural lands were drained.

Also, the absence of political will to preserve agricultural lands, which is a non-renewable real estate wealth, where manifested in the legal system that establish protection mechanisms, either because of the non-issuance of regulatory texts fixing modalities of implement protection mechanisms or the absence of an effective monitoring by institutions and bodies charged of protection, And the non-effective work for entire decennial, such as that one related the National Office of Agricultural Lands, but the non-observance of public authority toward respecting the principle of constitutional agricultural lands guarantee through regulatory texts and instructions which become parallel of legislation issued on several occasions by executive authority which consecrate converting vocation of agricultural or agricultural vocation lands into class populated lands, so it was established that after popular movement (el Hirak), pseudo-investors have access to thousands hectares with low prices, therefore, all accompanied by a failure on confront against problem of parceling in agricultural real estate, for reason that possessor is restricted in parceling of lands by regarding referential areas without even defining sites and classification of agricultural lands.

Therefore, we present the following suggestions:

1-The constitutional former has to impose restrictions on legislative authority in regulating protection of agricultural lands, or the constitutional former had to make

¹ - Ibid, p 28.



protection in absolute formula without stipulating regulation on legislator, and in this case, constitution specifically was forming itself the role of regulator, and then legislator may not transgress these limits, whether by regulation nor restriction, thereby the guarantee contained in constitution without reference or condition, as a fortress that may not be invaded by legislator, and the only way to restrict them is by amending constitution in itself which requires passing through specific procedures that carry a kind of complexity.

2-Reactivation role' institutions, administrative organs and committees, and the combination of their efforts to monitor exploitation of agricultural land to deal with the converting vocation of agricultural lands.

3-The issuance of regulatory texts explaining mechanisms devoted to protect agricultural lands, especially to avoid different interpretations.

4- The inclusion of legal provisions in case of the inability of dividing the agricultural real estate by text stating that the heirs can exit status of undivided cases, provided that they agree with themselves by choosing the member whom will devolve to the agricultural lands when area's land is less than the referential area.

5- Abandoning plans development and urban planning in favor of plans enshrining vertical urbanization in order to avoid horizontal urban extension.

6- Accelerating the establishment of an index fixing capabilities of agricultural real estate properties and their management, and registration in the map of identifying agricultural lands.

7- Sort the Office firstly on administrative pre-emption right to prevent speculators, and monitoring agricultural real estate market, prevent depletion of this real estate and protect this non-renewable wealth.

8-Protecting agricultural lands from every transgression, even if emended from possessor or holder himself, by criminalizing all acts that could harm or deplete agricultural lands.

8 -Supporting legislative tendencies which adopt method of interdicting construction on agricultural lands as an asset and establishing this construction as an exception, provided that it is intended to serve agricultural land. And we suggest adding an article that would be formulated as follows: It is prohibit without prior approval of Minister of Agriculture and in agreement with the Ministers of farming welfare and Justice, to construct any buildings or establishments in agricultural lands of whatever type and gender, or their fragmentation in any manner whatsoever.



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