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Legal protection of forest property in Law 23-21

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Abstract :

Forest real estate is considered a national wealth and the property of the national group. This wealth must be protected and contributed to its sustainable development, as the Algerian legislator, through the new law, Law No. 23-22 relating to forests and national forest wealth, stressed that the sustainable management of forests and lands Of a forest nature, it is considered a basic priority in economic and social development policy and falls within the path of regional planning. On this basis, measures were approved to Multiple and varied protection For forest real estate, And that It is characterized by extremes at times, This is in recognition of the importance of this king Gabi, Which is often exposed to some violations, which are distorted into an image Setting fires and Individuals usurp part of this Forest property And put his hand on it And build on it where The legislator approved some measures to protect the forest property, which: Ranging Of protection Administrative, civil to criminal, and it ranges from protection through prevention to protection through deterrence This is to avoid the dangers of damage and neglect, and the dangers resulting from use, meaning that it is protection from the public person who owns this money, and from the person for whom it is intended., Finally, it is a protection against the infringements of individuals who use and benefit from this Forest properties.

Keywords: Protection of public property ; Forest fires ; Forest property ; Forest police.

introduction:

There is no doubt that the state's performance of its functions as desired requires, in addition to the efficiency of its administrative apparatus, its ownership of a lot of property. Therefore, since its inception, states have intended to expand the size of this ownership, and their keenness to do so has increased after it has transcended its role, from the traditional research role to the interventionist role. Active.

In view of the great importance that ownership of forest real estate occupies as one of the important pillars of the economies of countries, statutory laws have been keen to guarantee this ownership effective protection, and to affect it with a special legal system different from that which governs the property of individuals.

There fore, it was necessary for states to protect this type of forest real estate and maintain it so that it is a distant goal, or difficult to reach from the hands of those who tamper with it, by all methods and means that make it immune to any form of harm to it, so that it achieves one of the goals of the state, which it seeks to achieve, and leads to To its inability to carry out its duties to achieve the public good.

Similar to the legislation of many countries, we note that the Algerian legislator's interest in forest property was clear, through the development of a set of legislative texts that criminalized infringements on forest property in general, and on this basis he issued a new law in the year 2023, which bears No. 23- 21 issued on December 23, 2023 relating to forests and forest wealth, which aims to preserve, value and rationally exploit them within the framework of a comprehensive and sustainable outlook.

Hence the importance of this issue emerges, as the importance enjoyed by the public forest property necessarily requires dedicating the necessary protection to it, so that the desired objectives of it are not disrupted ,This is why we find that the Algerian legislator has granted some material means and various legal measures to ensure the preservation of real estate properties. In addition, it often deviates from the general rules in order to achieve the greatest possible amount of protection, because it believes that these properties are the backbone of the continuity and existence of the state, and that the right to invest and exploit it is the pulsating spirit in it.

On this basis, the purpose of studying this topic was to gain knowledge of the new procedures introduced by the Algerian legislator through the text of the new law 23-21 relating to forests and forest wealth, and to identify the scope of protection of forest property, and the powers granted to administrative authorities in the field of consecrating protection. necessary for these forest properties. Anyone who follows the status of these properties in Algeria easily notices that they are subject to many encroachments, from different sides, and sometimes seriously, which leads to questioning the means and rules that the Algerian

legislator has established through this law for the administration to do this, and the extent to which Its ability to eradicate this type of infringement by individuals or the administration itself, which necessarily leads to the following problems:

-What are the means given to the administration to protect the forest property?

-How effective are the new measures stipulated in the new Forest Law 23-21, and are they considered sufficient?

Researching this topic and reaching a solution to the problem requires an exceptional effort due to the great expansion and dispersion of the legal texts that deal with this topic, in addition to the fact that the research requires us to become familiar with new topics included in Law 23-21 related to forests and forest wealth, and therefore it was necessary We have to, in order to answer these questions, and out of my desire to cover all aspects of the topic, I wanted to rely on more than one scientific method, because the nature of this research requires that.

On this basis, at the beginning of this study, I relied on the descriptive approach to understand conceptsAndCharacteristics related to forest property, then I relied on the analytical approach in order to analyze the various legal texts and jurisprudential opinions in the field of protecting these properties, and to devise appropriate provisions.This is done by relying on a bilateral plan:

The first topic: the concept of forest real estate

The second topic: protecting forest property

The first topic: the concept of forest real estate

Forest property is considered one of the renewable natural resources in any country, as it plays an important role in the environmental structure in all countries, as forest products constitute an important source of national income because of the enormous vital wealth they provide, such as wood, cork, and some fruits, not to mention their other benefits. Because it plays a very important role in preventing erosion and desertification, contributing to creating a rich environmental and natural diversity, rich in various trees, providing oxygen gas, reducing pollution to the environment, protecting it, and giving an order and aesthetic view with its picturesque scenery.

Algeria, like other countries, has been concerned with this sector since the dawn of its independence. We find that the Algerian legislator intervened in accordance with a set of legal texts to put an end to these threats, whether natural or material, and perhaps the most important of them is the law.the new 23-21Historian V23 December 2023 Related to forests and forest wealth¹This law outlines the scope of legal protection from the dangers that threaten the forest property and ways to prevent them.

The forest is included in the name of real estate in Algerian legislation because it applies to the descriptions and conditions of real estate included in the text of Article 683 and the following of the Civil Code, which states: "Everything that is settled in its space and fixed in it and cannot be moved from it without damage is real estate."

This applies to the forest, as it is stable in its space and fixed in its place, and the forest cannot be moved from one place to another if we exclude the possibility of moving some trees, which is partial, as it is not possible to move the forest with its soil, trees and plants in its entirety from one place to another.²

In addition, the Algerian legislator defined the forest, through Article 2 of Law 23-02, as: "Every land, regardless of its legal nature, is covered with forest species in the form of a forest cluster with a density of not less than one hundred (100) trees per hectare in dry and semi-arid areas, and three hundred (300) trees per hectare in humid and semi-humid areas, consisting of: One or more types of forest, either spontaneously, afforestation or reforestation, extending over an area of ten (10) hectares or more in one plot.

And on himIn this section, we discuss the definition of forest property in (the first requirement), then its characteristics in (the second requirement).

The first requirement: Definition of forest property And its classification criteria

The basis for the distinction between real estate and movable property is due to the nature of the things themselves. The basis of real estate is the land itself, as it cannot be moved from one place to another, noting that some parts of it can be moved from the land without damage, such as moving some rocks. The Algerian codification presents three types. Of real estate, real estate by nature, real estate according to its subject, and real estate by specification³ This is what makes the forest property have a set of characteristics that distinguish it from the rest of the properties. On this basis, we will discuss the definition of the forest property through (first section), and then we will address the criteria for classifying forest properties (second section).

first section: Definition of forest property

The Algerian legislator defined it through the text of Article 02 of the new Law 23-21 of December 23, 2023 relating to forests, where he gave it the description of the public forest property as one of the natural public national properties that contains a space consisting of all forests, thickets and lands of a forest nature. of the state.

It is noticeable from the text of the new law 23-12 that the Algerian legislator did not content himself with setting a single definition for the forest property or the forest by nature, but rather stipulated other definitions related to lands of a forest nature, which he defined as "Every land is covered with natural

plant formations in terms of size and density resulting from forest degradation after cutting, fires or grazing. These lands include jungles and woods, and also include authentic mountain hill formations and wood or grass formations necessary to protect coastal areas."

Referring to the previous repealed law 84-12, we note that the Algerian legislator defined forests in Articles 08 to 11 of the law, where Article 8 of it stipulates that: "Forests mean all lands covered by forest types in the form of forest clusters in a normal state."⁴

Article 10 also stipulates: "This means lands of a forest nature:- All lands covered by trees and forest types resulting from forest degradation that meet the conditions specified in Articles 8 and 9 of the same law."

In addition, Article 11 of the same law stipulates that: "means other forest formations All plants are in the form of trees, strips, windbreaks, and barriers, regardless of their condition. The first observation regarding these materials is what the legislator means by the term trees, and this Arabic word that has no origin in all language dictionaries.

As stated Real Estate Directive Law 90-25 of 11/18/1990, especially the text of Article 13 of it, we find that it defines forest real estate as: "Every land covered by a forest in the form of plants whose density exceeds 300 trees per hectare in the humid and semi-humid areas and 100 trees in the arid areas." It is semi-arid, with a total area of more than 10 continuous hectares⁵

Second section: Standards for classification of forest real estate properties

Since the Algerian legislator quotes legal and jurisprudential theories from French jurisprudence and jurisprudence, and the theory of public money is a theory of French origin and origin, which is based on the distinction between public state property and private property, where the importance of distinguishing between the public domain and the private domain appears in the different legal systems. Which is subject to it, so the jurists differed and the theories that were proposed differed in trying to determine a specific standard, to differentiate between the public and private domains (⁶).

If the French legislator did not specify a clear standard for distinguishing public property Including the forest This task is left to jurisprudence and the judiciary to seek *ijtihad* in determining a comprehensive standard in this regard. What is the position of the Algerian legislator in this regard?

The legislator's distinction between properties belonging to the state and regional communities has led many to question the criteria he relied on in determining these properties.

The Algerian legislator has adopted Through the text of the first section of the new law 23-21 In determining the property General forest It relies on a set of

traditional standards derived from French jurisprudence and jurisprudence, which is represented by the standard of inappropriation of propertyThe forestOfTPrivate property, customizable standardForest propertyFor general public use or for useRIn general, in addition to some standards specific to Algerian law.

First: The criterion of inalienability of propertyThe forestFor private ownership:

Article (3) of Law 90/30, which includes national property, stipulates:Amended and supplemented by Law 08-14On: “National properties are formed from those properties referred to in Article 17 of the Constitution, which cannot be private property by virtue of their nature, or be allocated for the purpose for which they were created.”⁷.

Anyone who studies this article will easily notice the standard used by the legislator to determine propertyThe forest, which is its inability toTYour own property, as this idea is one of the French theories that depend on natureThe jungle kingIn itself, only what is by nature not subject to private ownership is considered public property. Therefore, the quality of publicity exists inForest propertybefore we acknowledge it to the administration, and that the administration’s recognition of it to him is nothing but a revealing act on its part, and not a matter of origin, as jurisprudence has agreed to return the general character to the nature of this.The propertyIn and of itself, as unattainableTo ownprivate.

Second: Allocation criterion:

Article (12) of the National Property Law stipulates that: “National public property consists of the rights and movable and immovable properties that are used by everyone and placed at the disposal of the public, either directly or through a public utility, provided that in this case they are absolutely adapted, by their nature or special configuration.” Or basically with the specific purpose of this facility, as well as property that is considered public property...».

It appears from this definition that the Algerian legislator has returned to the standard of public benefit, as it is assumed that propertyThe forestDedicated to the public good. It was also based on the criteria contained in French jurisprudence and jurisprudence, which divides public property into property designated for general public use and property designated for public facilities.

1-Standard for allocating money for public use:

Properties designated for public use are those properties that individuals use directly without resorting to a specific facility.

Therefore, this collective use is not limited only because individuals can use some properties individually, such as:ForestsThe French judiciary added that some funds allocated for public use do not constitute public property unless a special preparation is given to them to prepare them for public use..

2- Allocation criterion for public facilities:

Allocating property to a public facility means an administrative procedure aimed at transferring the possession that is considered a form of state ownership to the possession of this facility, through which it aims to contribute to achieving one of the public benefit tasks assigned to a public facility.

We have pointed out that all properties owned by public facilities do not meet the conditions for public property, because the judiciary and “French” jurisprudence require that the property be necessary for the exploitation of the public facility, and for this reason the judiciary set two conditions that the Algerian legislator emphasized:

- It must be propertyForest real estateInherently suitable for public utility.
- to beForest real estateSpecially adapted for public utility purpose.

Since the incorporation of some properties into the elements of public property designated for a public facility does not require special preparation, these propertiesThe forestIt constitutes, by its nature, a means of public utility,Referring to the Algerian legislator, it is seen that he took the criteria set by the French judiciary, and it can be said that the definition of propertyThe forestIn Algerian law, it is a legislative definition, meaning it came through legislation and not through the judiciary, as is the case in French law⁸.

Third: The standard of Algerian law.

Article 17 of the Constitution of February 23, 1989 specified the list of public property when it stated: “Public property is the property of the national group, and includes the subsoil, mines, quarries, natural energy resources, and mineral, natural and living resources in the various areas of the national maritime property.” Water and forests.

Let us define propertyThe forestThe legislator has relied on several means, by appointing its owner, which is the national group. We note that he did not refer to the state, but the question arises about the legislator’s intention in using the phrase “national group,” knowing that the latter does not have the legal capacity to own property except for legal persons. It is known that the representation of the national group is limited to the state.

In addition to this, the legislator resorted, through the constitution, to enumerating propertiesThe forest within PropertyGeneralitythe problemOf natural resources and wealth.

If you specify the propertyThe forestIt results in several legal consequences. At the judicial level, the legislator’s intervention in determining these properties makes the role of the judiciary in this field limited from many angles, requiring the search for explanations or justifications for this.

1-Legislative interpretation:

The legislator determines the list of national properties which includes forest real estate. It makes the Algerian judge restrictive and binding. In the event of a public or private property dispute, he resorts to the rules of law determined by the legislator in an “exclusive” manner that does not accept any room for “diligence.” Therefore, what concerns us in this case is that the judge is the one who determines the nature of the property, whether it falls within the scope of public ownership or not, and not the legislator, and so in contrast to the Algerian constitutional founder who determined the list of public property, which led to a reduction in the role of the judiciary in deciding cases. presented without deviating from these provisions.

The legislative definition is only theoretical. If we assume that the legislator listed the public property exclusively, and the intervention of nature after that led to changing the nature or description of this property. Do we need another legal text (i.e. amending the law) in order to restore the property list, or do we need an administrative decision? In order to remove this money from public ownership.

2-The effects of legislative interpretation on the legal system of property

We know that the traditional definition of property was based on the idea that these properties are allocated for the use of the public collectively, directly, or indirectly through public facilities, where privatization in the traditional theory constitutes the main driver for giving the property a public character. As for the properties stipulated in Article 17 of the Constitution, they are allocated for public use and not for public facilities.

It can be said that national properties have lost their unity as a group designated for public benefit. From a legal standpoint, public properties are no longer subject to unified legal rules, so that the rules governing and managing natural resources and wealth differ from those provisions governing other properties stipulated in Article (17). of the Constitution, as it is subject to special legal rules, among which we mention Law 84/12 of June 23, 1984 relating to the legal system of forests.⁹...etc.

The second requirement: characteristics of the forest property

Forest property is characterized by characteristics that distinguish it from other natural properties, and one of its most important characteristics is: It is considered part of public natural property (the first section) and that it is public property that cannot be alienated (the second section), seized (the third section), or acquired by prescription (the fourth section).

First section: National forest properties are part of the propertyNatural general

The Algerian legislator has risenThrough Law 90-30 containing national property, amended and supplemented by Law 08-14EnumeratedForest real estateWhich he placed on the list of public properties, but what is noted is that he kept the list open to the possibility of including some properties that meet the conditions for granting public status., AndBy natural property, we mean those properties whose source is natural factors, and not the result of human work, and the state has no choice but to prove its existence and define its scope as general national property.

AlsoArticle 12 of Law 84-12, which includes the general forest system, is considered national forest property.GeneralPart of the economic property belonging to the state or local groups, and this proposition was confirmed by Article 78 of the National Property Law 90-30 by saying: "The exploitation of forest resources and the rights to use national forest lands or those with forest property are licensed within the framework of the laws and regulations applicable to National forest wealth and nature protection, resulting in financial revenues whose allocation is regulated in accordance with applicable legislation."¹⁰.

As Article 74 of the National Property Law No. 90-30 stipulates that: "The legal system for natural resources and wealth, the patterns of their exploitation and the rules of their management are subject to the special legislation that applies to each of them."

Forest properties are subject to their own system, and this is what the legislator confirmed in Executive Decree No. 12-427, which specifies the conditions and methods for managing and managing public and private properties belonging to the state, as stated in the text of Article 2 thereof: "The provisions of this decree do not apply to resources and Surface and subterranean natural resources whose legal system, legal pattern, exploitation pattern, as well as the rules of their management are subject to the special legislation and regulations applied to them."

Second section: National forest properties are inalienable

Article 14 of the law containing the general forest system stipulates that: "National forest properties are inalienable, subject to limitation, and subject to pilgrimage."g, This principle established in Algeria and in Egypt by law does not

find a basis for it in French legislation, but in France it is a product of jurisprudence and the judiciary, as the requirements of practical life called for it.

This principle means taking out Forest property From the department of dealing by law, and therefore the public person (state, state, municipality) may not transfer ownership of these public properties to an individual or a private body,

The main purpose of not disposing of these properties is to protect them, and this prohibition is not absolute and eternal, but rather is relative and exists as long as the money maintains its public nature due to its allocation for public use.

It is sufficient for a public person to be stripped of his ownership Gabilts general character ends with its allocation for public use until it is transferred to the scope of abstract properties, and is subject to the provisions of all civil dispositions. Moreover, the prohibition is limited to civil actions, excluding administrative actions, and does not apply, for example, to exchanges that take place regarding public money between public law persons through allocation and transfer of management.

These public properties may also be (The forest) is a substitute for actions conducted by the administration with individuals, such that the administration grants individuals a commitment to a public facility, or licenses individuals to use these properties and benefit from them in accordance with the law and regulations, provided that these licenses are of a temporary nature and the administration may withdraw them, as we have explained.

Looking also at the situation in Egypt and France, we find that the rule of not disposing of property is permissible The forest It was based on clear legislative texts in Egypt, but the situation in France was that this rule lacked legislative support, so it was a creation of jurisprudence, and was confirmed by the judiciary, until it became legitimate after that according to Article (81) of the 1957 law¹¹ State funds issued in 1975.

This shows that the meaning of not disposing of these properties applies here in a different way to its meaning in private law, and includes a different meaning, as it is no more than a legislative restriction imposed by the law on the authority of the administrative person. where The rule of non-disposal of forest properties applies to civil disposals, not administrative ones. The basis of the rule, as we mentioned above, is due to the objectives of allocation for the public benefit. The scope of this rule applies to administrative works, not civil disposals, which leads to the end of the allocation, and the removal of the properties from the administration's responsibility, whether Whether it belongs to the state or to one of the persons of public law (department, utility, or regional), the management body does not have the right to dispose of these forest properties by selling, for example, donating, or bequeathing them.¹² Or something similar, as these civil

actions follow the rules of private law, which are undoubtedly incompatible with the idea of allocation for the public benefit.

Section Three: Forest properties Not bookable

The rule of impermissibility of seizure of forest real estate properties is an important aspect of the protection that these funds enjoy in civil codification. If the reason for the impermissibility of disposing of forest properties is their allocation for public benefit, then this rule - the impermissibility of seizure of public property - is fulfilled. For the same reason, in addition to that, it is inconceivable that administrative action by the owner, whether the state or a public legal entity, would be out of the question and prohibited, and that forced implementation and removal of funds from the hands of the administration would be compulsory on its behalf ⁽¹³⁾This would lead to the transfer of ownership of the property and its transfer from the responsibility of the administration or the owner to the responsibility of others, which would lead to the cessation of use of it.

First: The basis of the rule that it is not permissible to seize public property:

The basis of this rule is due to the explicit text of Article 689 of the Civil Code, which stipulates that it is not permissible to dispose of, seize, or possess it by statute of limitations, and the goal of this is always to allocate it for the public benefit. Therefore, it is inconceivable that there will be a forced implementation of these funds that are It has public status until it fulfills the purpose for which these properties were prepared.

In addition to this principle, it is not permissible to arrange real rights on these properties, whether they are an official mortgage or a legal right...etc. Therefore, these rights, as security, aim to distinguish their owners over other personal creditors in the amounts obtained from the sale of real estate properties loaded with these real rights. Forced sale, and this purpose does not apply to public real estate properties.

However, we note that the Algerian legislator, through Article 69 of Law 08/14, which includes national property, has granted the holder of a private occupation license for public property the right to create or arrange real rights on the real estate that he constructs above the public property in order to carry out a specific activity, as he has been granted the possibility of mortgage. These rights are of a real estate nature to guarantee loans obtained by the occupant of the public domain.

Second: The scope of the rule that it is not permissible to seize forest real estate properties:

The scope of application of the seizure rule includes all elements of public property, including forests, in their various forms, and regardless of how different their allocations are for public benefit, as this rule does not extend to private state funds, and thus differs from the rule of impermissibility of appropriation by

prescription that we will see in What follows is the state's private funds, and it applies to all forms of debt. In this area, there is no way to distinguish a debt according to which the administration can demand it through forced execution, outside the scope of this rule, and this is due to the fact that this rule is considered one of the rules related to the system. General terms that may not be deviate from under an agreed upon condition.

In France, we note that French law approved the rule that it is not permissible to seize public property in codifying the state's domain, and the scope of this rule extended to both public and private real estate funds owned by the administration, as French jurisprudence saw this as an important advantage related to all property. The administration, whether public or private, has nothing to do with considerations of public benefit for which public funds are allocated, as it is agreed that it is not permissible to initiate forced execution against public persons under any circumstances.

Section four : It is not permissible to acquire forest property by prescription

If the previous general rule is that it is not possible to dispose of these...Forest propertiesDesigned for my father-in-lawGet lostOne of the abuses of the administration is the impermissibility of acquiring real estateThe forestThe statute of limitations belongs to the state and regional groups, mainly to protect them from the danger of individuals' encroachments, which aim to own these properties by seizing them for a certain period. This is why some believe that the formulations for approving the principle of the inadmissibility of alienating them, and thisIn responseThose who say that supporting the permissibility of disposing of these properties entails the impermissibility of owning them by prescription, is an offshoot of it

The purpose of this principle is to seize possession of the propertyGabiNo matter how long it lasts, he does not acquire ownership if it occurs after allocating this money for public use. As long as it is not permissible to dispose of it by transferring its ownership to others, it is for the most part not permissible to acquire ownership of it by prescription, because the result has been prohibited by the legislator, whatever its cause, and this is what was stated in civil codification. In Article 698, which we mentioned previously, it was applied by the judiciary through a decision issued by the Supreme Court in this regard, which stated: "If the dispute is based on a piece of land within the public domain, then it is not permissible to plead in it by statute of limitations, because this cannot be acquired." The real estate has a statute of limitations in terms of its legal nature... which makes the appeal of his decision in this matter inadmissible due to lack of incorporation."¹⁴.

In another decision issued by the State Council,¹⁵It states: "State property is subject to all legislation and principles established for its protection, especially the principle of not acquiring it through prescription, as stipulated in Article 66 of

Law No. 90/30 of 12/01/1990.”

If there is a need to provide the administration with what it means to respond to the infringementHer forest estateIts need to protect these properties is greater than the actions it may take on them,It is also not possible to invoke the rule of adhesion to acquire thisForest propertiesBecause if the principle of attachment is that the less important money is merged into the more important money to which it is attached, and as long as the propertyThe forestIt cannot be owned by prescription, so its attachment has no effect on its quality.

Therefore, this rule cannot be applied to real propertyThe forestBecause it conflicts with its allocation for public benefit, and this also results in the squatter taking possession of a property falling within the category of propertyThe forestHe cannot obtain a contract of fame, nor a certificate of possession, regardless of the duration of the seizure.

First: The basis of the rule of inadmissibility of acquisition Forest propertyBy statute of limitations

The basis of the rule is to ensure that the appropriation continues for the public benefit, as the squatter On forest propertiesIt leads to the lack of continuity of this allocation, and it is also considered a violation of the principle of regular and steady operation of public facilities.

The rule is that it is not permissible to acquire real property The forest By statute of limitations, it is essentially inadmissible to dispose of it, as it derives its basis from the allocation of property The forest For direct public use or through a public facility, to protect this allocation, the rule of impermissibility of alienation has been established, which can apply to the rule of impermissibility of acquisition by prescription.

In addition, the public interest always requires that the interest of the administration prevail over the interest of individuals. When the administration or a public administrative person disposes of one of the propertiesThe forestOf its public property, the disposal is for the purpose of achieving the public interest, either in the case of seizure by individuals or the case of usurpation of the property.The forestHere, the individual interest is the one that has the upper hand, which clearly reveals the clear manifestation of bad faith in giving priority to the individual interest over the public interest, as this is due to the nature of the human being and the life he is born into.

Second: The scope of the impermissibility ruleAcquiring forest propertyBy statute of limitations

According to the text of Article 689 of the current Civil Code, it is not permissible to own public propertyThe forest By seizing ownership, no matter how long it lasts, we saw how this protection extended to all state funds and public legal persons. Through that rule, we find that there are secondary consequences

that result from it. The principle is that these properties are not acquired by statute of limitations, and the rule also prevents the acquisition of any real rights. Others on these properties, such as acquiring an easement by prescription.

In contrast, we find easement rights granted to real estate properties. The forest. It does not expire with the passage of time for the benefit of others, as these easements are designated to serve a public utility, so they take effect throughout the duration or validity of the allocation.

So the rule protects Forest real estate Owned by the state or by a public legal entity from the absence or possibility of ownership by statute of limitations, protection also extends to include the easement rights established for these Property. Because it takes the same ruling as long as the allocation remains for the public benefit. On the contrary, it is not permissible to acquire any easement rights through prescription for the benefit of others - individuals - over the property. The forest.

However, we note that the Algerian legislator, through the text of Article 21 of Law 08/14 relating to national property, stipulates the possibility of establishing real rights for the holder of a private occupation license for property. The forest. Generality, as well as the establishment of easements that correspond to the allocation of the property in question.

In addition, the administration may allow the opening of a passage or spillway in one of the areas Her properties. The forest. For the benefit of neighboring owners, provided that this does not contradict the goal for which public money was allocated, and in this regard it has discretionary authority.

Likewise, it is not permissible for a squatter to seize real property. The forest. To protect his hand with one of the lawsuits stipulated in the law, which are sequestration lawsuits, as the latter is legislated for legitimate or legal possession, as for individuals' possession of real estate. The forest. It is without support from the law, so it is considered illegal possession and is not protected by the law, and therefore it is not protected by seizure lawsuits¹⁶.

Likewise, good faith is not taken into account in cases of seizure. Forest real estate. Owned by the state and allocated for public benefit, the squatter has no right to challenge that if he possessed these properties, he was unaware that he was violating the property or right of others.

Third: The results arranged according to this rule

The basic principle according to this rule is that it is not permissible to acquire real property. The forest. We also saw that the scope of the rule extends to protecting the easement rights assigned to these properties throughout the period of allocation for public benefit. In addition, we said that the same rule prevents others from acquiring any easement rights over Property. The forest. If the goal is to establish the rule, then it is logical to extend this to include all the reasons that

lead to the ownership of these properties The forest Despite the management's will The side Owner ship, that is, this ruling applies to other legal reasons that lead to a similar result, and it follows that the rule of “possession in movable property is the title deed and the principle of attachment does not apply to these properties.”

theThe second topic: protecting forest property

The importance of forest wealth is not limited to the fact that it is a vast green cover, but rather because of its economic and industrial dimension, which requires imposing protection on this wealth in order to preserve environmental order and balance, the latter of which has become threatened, especially by criminal groups seeking to sabotage and plunder. This wealth, and benefiting from its destruction in illegal trade, without caring about the seriousness of the resulting harm..

This is what prompted the Algerian legislator to provide protection for forest wealth by enacting a legal arsenal that specifies ways to protect and exploit it, and to limit violations affecting it, especially since it is one of the most threatened and damaged environmental resources to date..

And I have...I was devotedThis protection is found in many legal texts. We find Law No. 03-10 relating to environmental protection within the framework of sustainable development, in addition to the Penal Code, and Law No. 84-12 relating to the general system of forests, to which protection was granted.Administrative (first requirement) ,AndPenalAgainst everyone who touches herHe violates it (the second requirement)

The first requirement: administrative protectionFor forest real estate

The forest is a renewable natural resource. Since independence, the Algerian legislator has given great importance to it because of its role in human social, economic and environmental life. He decided to enact many legislations to protect it from the various types of damages it affects. However, these legal legislations remain useless if they are not supported. Central and local administrative devices, mechanisms and structures work to implement and embody this protection in the field, by updating this legislation according to developments taking place in this forest environment.¹⁷.

Therefore, we will address this requirementMeans of protecting forest property (First section), and the agencies responsible for protection in (Second section).

First section:Means of protecting forest property

Since independence, forests have been among the competencies of forest management, represented by directorates located mostly at the level of the Ministry of Agriculture, where their name was changed with every ministerial

reshuffle, and among the tasks that were assigned to these directorates was protecting forests..

However, these directorates were only a simple interest of the Ministry of Agriculture, as the issue of protecting forests was a secondary task until 1979. The Ministry of Agriculture was entrusted with the task of managing forests and their affairs and delegated its authority to the General Directorate of Forests at the central level, while the Forest Governorate assumed this task. At the regional level.¹⁸

First: Administrative means

If we return to the standard set by the legislatorIn the definition of forest real estate, which the Algerian legislator came up with through the text of Law 23-21 relating to forests., thatForest property is public natural property, that is, it is subject to NoIt will be used by the public directly or through a public facility, as we note that there is a risk of harm to propertyTo you, Al-Ghabi,aOnce it comes from users, by not respecting the rules of use, and trespassing on propertyThe forestOr by the owner or management, through neglect, lack of maintenance, and negligence in monitoring its use.

Therefore, the Algerian legislator has required the administration that manages or uses these propertiesThe forestTo ensure his protectionaThis is by taking all necessary measures to prevent and preserve it.

1- Maintenance:

One of the aspects of protection established for real estate propertiesForestry established through Law 23-21, Commitment to maintenanceForest real estateAs this is intended to preserve these properties, and for this purpose the public person is obligated to take all measures necessary to achieve the purpose, and therefore it is her duty to maintain the properties that she supervises or manages. If she is negligent or refrains from doing so, this may lead to obstructing the allocation of these properties for the public benefit. This is something that we do not find an equivalent in individual property, since if its owner does not maintain it, he will not be punished for neglecting it, in contrast to what was previously said with regard to public property, in which the administration is required to carry out some physical work to preserve it, and every negligence may lead to the destruction of the property.GabiAnd until its disappearance, as the prevailing opinion tends to attribute the legal basis for maintenance rules to being an authority derived essentially from the legal system of public property, which was established by the legislator with the aim of ensuring the protection of property elements.Forest real estate, which is characterized by its extreme exposure to several dangers due to the basic tasks it performs, whether it is intended for direct use or for the benefit of a public facility.

The duty of maintaining these properties falls on the administrative person

who owns them, as there is no other specific person to bear this burden, and the property maintenance commitment is integrated. The forest in range Preserving it because it constitutes a public wealth. This obligation is not limited to normal maintenance duties, but rather extends to include all means by which better protection of these properties can be achieved, and therefore in order to achieve the goals for which they were allocated.

This obligation is usually subject to the administrative persons that use it without these properties belonging to or owned by them, and in this case the burdens of maintenance are distributed to the owner of this property.^aThe property Gabi And the facility that was allocated to him, where he undertakes the appropriate maintenance expenses, and conformity with the uses that he exercises on these properties. The forest¹⁹ However, some believe that the facility assigned to it will bear the burden of maintenance unless a unified legislative text or agreement places the burden of maintenance on the owner administration.

2-General inventory

This process is considered one of the most important means available to the administration in order to preserve its properties. Forest real estate And to ensure its protection, and the administration's first step towards achieving this goal is the duty to identify and verify these properties, and this can only be achieved through an inventory of its elements and contents.

It is noted that this administrative procedure applies to all public property, whether natural or artificial, as the techniques for inventorying these properties differ, which are determined through ministerial decisions. If there are some elements of public property that require a special inventory, an inventory must be prepared in accordance with the specificities of this element.

He lost a text Executive Decree 91/455 forms And How and conditions for carrying out the inventory process, as national institutions, whether administrative or commercial, regional or departmental in nature, are required to keep inventory books for all real estate funds in their possession, whether in their public capacity or allocated to them.

This process represents all real estate properties, based on an inventory of the properties of the state and regional groups, and its continuous preparation and control whenever necessary.

3 –Censor ship

The Algerian legislator granted Through Law 23-21 The administration has broad powers, and gave it a basic position through which it can ensure Protecting the forest real estate belonging to it This is done by exercising its powers and powers to ensure the extent of respect for the use of property The forest, and how to manage it, in addition to enforcing respect for its use by individuals)²⁰.

Referring to the division of these properties, which are distributed among a group of public persons (the state, the state, the municipality), we find that the latter is obligated to carry out the work of monitoring the properties belonging to each of them within the framework of the powers granted to it..

The legislator also required Forestry interests or recipient bodies. The process of allocating or possessing these properties is required to comply with every summons directed to it in the context of exercising the right to control these properties.

in addition to The Forestry Department and Directorates Obligated to notify decisions related to controlling the boundaries of real estate properties The forest And inclusion therein, or the creation of easements encumbering neighboring properties, to the competent national property administration regionally within the framework of constant monitoring, with the aim of registering and recording them in the state property records and constantly controlling them.

Second section: Devices charged with protection Forest real estate

The Algerian legislator paid great attention to the forest environment. In addition to the central agencies entrusted with protecting this, he created several agencies at the regional and local level entrusted with the task of caring for this sector. The two most prominent bodies for this purpose are the state forest governorates and the National Forestry Foundation..

First: Forest Preservation

The current concept of forest conservation was not established until after the enactment of Forest Law 12-84 in 1984, as the law granted it important powers in the field of management and protection and assigned it technical and judicial tasks in addition to administrative tasks.²¹ It was established pursuant to Executive Decree No. 333-95 of 10/25/1995, which includes the establishment of a state forest governorate, and defining its organization and work, amended and supplemented by Executive Decree No. 93-97 of 03/17/1997..

The state forest governorate is managed by a state governor appointed by executive decree based on the proposal of the Minister in charge of forests, who manages the human, material and financial means placed at his disposal and undertakes the sectoral preparatory operations related to his field of competence..²²

The mission of the state forest governorate is to develop forest and allied wealth, and to manage and manage it within the framework of the national forest policy by assigning it to multiple tasks, the most important of which is:

- Implementing programs and measures in the field of developing forest and allied wealth within the framework of development and management plans.

-It follows up and organizes preventive measures against fires and parasitic diseases that infect plants, ensures the implementation of legislation in this field, and organizes the intervention of forest management corps in the field of forest police..

-It studies, in contact with the relevant external departments, files related to applications for licenses stipulated in legislation and regulation, and also controls the continuation of the inventory process of forestry, allied and hunting materials..

-Implementing guidance, awareness, and activation programs related to the preservation of forest, halafawiya, and fishing wealth, collecting, processing, and disseminating information related to its field of specialization, and preparing, collecting, and evaluating periodic reports..

second: General Directorate of Forests

The General Directorate of Forests is the organization currently in effect. It was established pursuant to Executive Decree No. 200-95 of 07/25/1995, which includes the organization of the central administration of the Ministry of Agriculture, while its central structure was organized and determined by Executive Decree No. 201-95 of 07/25/ 1995, and it is a specialized administration with functional independence in management, placed under the supervision of the Ministry of Agriculture, and it came to replace the previously established National Forestry Agency..

The General Directorate of Forests is responsible for managing national forest properties and allied covers and their sustainable management, and its work is based on the following main axes:

-Managing, protecting, developing, valuing and expanding national forest properties and allied cover..

-Contributing to the preservation of natural resources by conserving water and soil and combating desertification.

-Preserving natural habitats and protecting wild animals and plants.

-Promoting protected areas and environmental education.

-Develop permanent fishing and fishing activities.

The Directorate is headed by a Director General who is appointed by presidential decree and is assisted by two Directors. The first is entrusted with the task of organization, disputes, and communication, while the second is entrusted with the task of cooperation with international partners. The central administration, under the authority of the Director General, also includes the General Inspectorate, the organization and operation of which is determined by a special text.²³.

Third: National parks and nature reserves

Forests and forest formations designated primarily for the protection of rare forests of natural beauty or forests for recreation and rest, whether in the natural environment or in the field of scientific research, education, or national defense, are classified as national parks and nature reserves.²⁴.

The national park is run by a steering council headed by the Minister in charge of forests and includes representatives from many sectors, the most important of which are defence, interior, finance, environment, national education, youth and sports, health, etc. The council deliberates on all issues related to the tasks of the national park.²⁵.

The Scientific Council is considered a third body that works to propose, direct, and evaluate the scientific programs of the National Park. It consists of the director of the National Park, heads of departments in charge of protecting natural resources, and eight researchers representing institutes and research bodies whose specialization is related to the activities of the National Park, while the members of the Council are appointed. By decision of the Minister in charge of forests for a period of three years, subject to renewal, and it is headed by one of the members elected by a simple majority from among its members..

The second requirement: criminal protectionFor forest real estate

What is meant here is to protect real propertyThe forestFrom infringements by individuals through the rules of legislationCriminal, which is determined by the Penal Code, by criminalizing acts of trespassing on these properties, and imposing penalties on those who commit these acts..

The Algerian legislator did not limit himself to protecting forest property through the provisions of the Penal Code only, but also stipulated special protection through the provisions of the new law 23-21 related to forests and forest wealth, of which the third chapter was devoted under the title of protecting the national forest wealth from forest fires and protecting it from desertification. And from unauthorized grazing and water erosion, protecting the genetic resources of forests, and protecting the forest property from various encroachments that may cause its disappearance.

If the assault on private real estate grants the right in principle to demand civil compensation from the aggressor, and the criminal law does not apply to the latter except in the event that he seriously infringes on these funds, then the matter is different regarding property, The forest Since every physical attack on it requires the imposition of a criminal penalty, even if the attack was not intentional, but rather the result of negligence or lack of precaution, therefore these propertiesThe forestShe enjoys a great deal of protection, as this can be seen through the legislator's criminalization of intentional assault that occurs against her, or through its severity in imposing the penalties resulting from that.²⁶).

This protection is represented by the totality of the penal texts adopted by the Algerian legislator to protect these properties. These are separate texts that are not united by a single legislation. Rather, there are many texts included in other laws, such as legislation related to forests and the environment.,The texts provided by the Penal Code and other laws to protect real estate propertiesThe forestMany and different, because the assault on this money takes many forms, varying according to the nature of the property affected by this assault.

AlsoArticle 17 of the ConstitutionClassifiedForests are within the public property of the national group, while the National Property Law stipulates that they are part of the natural public property belonging to the state, and accordingly, once their existence is inspected, and without the need to classify them according to an administrative decision as part of the national public property, they enjoy all types of protection prescribed for public property.

The forest administration, as well as the governor and mayor, have the powers of public authority to promote and preserve them, and to suppress every action that harms them.,The Forestry Law also gives Forest Department employees the power of judicial officers to inspect violations committed in forest lands, and to prosecute those who commit them criminally..

Article 21 of the Criminal Procedure Law 06/22 stipulates the persons responsible for inspecting these violations, as it stipulates: “The heads of departments, engineers, technical assistants, and technicians specialized in forestry, land protection and reclamation shall search, investigate, and inspect misdemeanors and violations of the forest law, hunting legislation, and the law.” management and all the systems in which they were specifically appointed, and recording them in records within the conditions specified in the special texts.”

Thus, through this text, we note that the Algerian legislator has numbered persons qualified to inspect and follow up on perpetrators of attacks on forest property, whether Building within or near the forest within legally specified distancesOr plowed without a license from the department in charge of forests, orBurning forests and setting fire to them, cutting down their trees and taking away their wood and plants,AndUnauthorized overgrazing, stripping her land, emptying the land, extracting materials from his land.a ,The act is defined as a crime of trespassing on real estate property belonging to the state, and accordingly the Ministry of Agriculture or its representative (the Forest Governorate) can file a complaint against the perpetrators before the criminal courts, in addition to the penalties stipulated in Article 60 of the National Property Law. , for the employee who allowed this,The lawsuit is filed through a complaint filed with the Public Prosecutor of the regional competent court, or through a civil prosecution before the investigating judge if the Public Prosecutor procrastinates.

First Section :Examples of encroachments on forest property

Property assault crimesForest real estateIt is a crime that is harmful to the

public interest, and on this basis, the role assigned to these properties makes them vulnerable to many infringements. Since the field of our research is not a criminal research topic, we will limit ourselves to referring to some assaults and the penalties prescribed for them, given the multiplicity of crimes committed against Forest property.

First :The crime of setting fire to forest property

The crime of intentionally setting fire to forests is considered one of the most serious crimes in the Penal Code, which prompted the Algerian legislator to describe it as a felony, and this is in accordance with the text of the articles 136 to 142 of Law 23-21 relating to forests and forest wealth, as well as articles 396, 396 bis of the Penal Code, and this is to protect forests and the trees and plants they contain, as well as to protect human health., where The crime of intentionally setting fire to forests is one of the most serious crimes under the law forests and Penalties, which prompted the Algerian legislator to describe them as a felony Article 138 of Law 23-21 stipulates: “Anyone who intentionally sets fire to forest property of the state, local groups, institutions or bodies subject to public law with the intention of attacking the environment or the surroundings or destroying forest and animal wealth or for any other purpose shall be punished with life imprisonment.” Illicit ", And The point is Protecting forests and the trees and plants they contain, as well as protecting human health.

where We find that the crime of burning forests and forest properties is a positive act or behavior And This includes intentionally setting fire to forest property such as land, trees, and plants, whether in their natural state or after they have been cut down, with the aim of burning them by any means, such as throwing matches, gases, flammable materials, or cigarettes, and other means that achieve setting fire to the property of others or state property.²⁷.

second:The crime of harming livestock

Article 149 of Law 23-21 relating to forests and forest wealth, stipulating that: “He shall be punished with a fine of twenty thousand dinars (20,000 DZD) for every cubic meter of live wood and five thousand Algerian dinars (5,000 DZD) for every cubic meter cut from dry trees.” Twenty thousand dinars (20,000 DZD) for each pole, and anyone who cuts, uproots, or uproots trees without a license from the public forest domain and other forest or wooded areas.”

Third:The crime of construction and illegal occupation inside the forest property

Article 145 of Law 23-21 relating to forests and forest wealth stipulates that: “The penalty shall be imprisonment from seven (07) years to twelve (12) years and a fine from seven hundred thousand dinars (700,000 DZD) to one million two hundred thousand dinars (1,200 DZD). 000 DZD) for anyone who constructs a building inside public forest property other than the buildings stipulated in this

law. In addition, the competent judicial authority shall order the removal of the structures at the expense of the convict.

Second section :procedures Criminal follow-up

Articles 124 to 134 of Law 23-21 relating to forests and forest wealth stipulate all procedures and persons authorized to inspect crimes affecting forest property, as well as carry out criminal follow-up procedures. The purpose of this Criminalization is only achieved by prosecuting the perpetrators of crimes affecting real estate property. Those who are proven by evidence to have committed these violations, and those who are followed up with the aim of achieving justice and preserving the right of society, through the Public Prosecution, as soon as it becomes aware of the occurrence of the crime in accordance with the provisions of the Code of Criminal Procedure.:

And inform the Public Prosecution of the crimes committed against them. Forest property This is done either directly by submitting a complaint to the Public Prosecutor, or through the judicial police, in accordance with the text of Article 32 of the Code of Criminal Procedure, which stipulates:

“Every regulatory authority, and every officer or public employee who becomes aware of a felony or misdemeanor while carrying out his job duties, must inform the Public Prosecution without delay, provide it with all information, and send it the reports and documents related to it.”

Therefore, any legally qualified person stipulated in the Code of Criminal Procedure and other laws can resort to the competent public prosecutor locally, in order to take the necessary legal measures after being informed of the necessary information about this attack, and knowing the perpetrators of it, and the latter has the right to initiate immediate action. The public lawsuit, by assigning the judicial police to investigate the matter and prepare records thereof

Article 28 of the same law stipulates that every governor may, in the event of a felony or misdemeanor against the security of the state, including what relates to its property, and only in case of urgency, if he has not learned that the judicial authority has been notified of the incident, he may personally take all necessary measures. To prove the crimes or misdemeanors committed, or the competent judicial police officers are assigned to do so in writing.

If the governor uses this right granted to him, he must immediately notify the public prosecutor within 24 hours following the start of these procedures, relinquish them to the judicial authority, send the papers to the public prosecutor, and present all the arrested persons, as every judicial police officer must. Which he received from the governor when he carried out work in accordance with the previous provisions, and every employee who was informed of the receipt of notifications in accordance with these same provisions must send these requests, and communicate these notifications without delay to the Public Prosecutor.

Also, the Code of Criminal Procedure, and some laws regulating the use and protection of real property. The forest. It has given the administration's employees the power of judicial officers to inspect the violations committed on these properties, and to prosecute the perpetrators of them, as well as if the matter exceeds the seizure of part of the real estate. The forest. Whether by residing in it, building on it, or violating it without a license from the competent administration, the act is classified as a crime of trespassing on real property. The forest. belonging to someone other than those stipulated, and punishable under Article 389 of the Penal Code.

Accordingly, the administration or its representative can file a complaint against the perpetrators before the criminal courts, in addition to the penalties stipulated in the National Property Law through Article 60 for the employee who allowed the attack on this property or neglected to do so.

And if it is. Various laws have granted the management that owns or manages these. Real estate. The forest. The right to exercise all lawsuits related to property protection. The proud real estate. The Algerian Constitution has made contributing to the protection of these properties a national duty, and every person must be careful to do so. Therefore, even if the infringement on these properties occurs due to the administration running them or through negligence on the part of its employees, every citizen can inform the competent authorities of the need to stop these violations that it conflicts with the concept of the public benefit allocated to it, and although the administration is considered the owner of these funds by law, its ownership is restricted by the provisions of Article 17 of the Constitution, which stipulates that these properties are the property of the national group.

Conclusion:

It was and still is. The property remains forest. Of particular interest to the Algerian legislator, as we have seen this through the spirit of successive constitutions, in addition to the various legal texts and regulations governing these properties.

The most recent of which was the new law 23-21 related to forests and forest wealth, which came with new legal provisions and procedures to devote more protection to forest real estate.

Law 23-21 affirmed that forest real estate is a national wealth and the property of the national group, and every citizen must protect this wealth and contribute to its sustainable development, stressing that the sustainable management of forests and lands of a forest nature is a basic priority in economic and social development policy. It falls within the regional planning process.

The protection. Forest property. Of the types of encroachments, it is only a manifestation of the legal protection of public property, by criminalizing some

acts that would cause harm to it, as we note that the legislator has developed means to protect this type of property, and made it multiple and diverse in a way that makes it compatible with different types of property. Types of infringement Property the Naturally, the administration's positive intervention through material means (maintenance), or issuing regulations, and various administrative procedures authorized to it may not be sufficient to eradicate these violations, and here the legislator allowed it to resort and seek the assistance of a judge who imposes this protection by adhering to civil rulings, or imposing penalties, or Penalties in accordance with the provisions of the Civil Code and the Penal Code.

However, due to these violations that it is exposed to Forest property They are similar in essence, as they originally result from negligence on the part of the owner or the person assigned to him, or rape and destruction by individuals. However, it is noted from the texts of the laws devoted to this protection that they have relied on the traditional division of the types of these infringements, and the penalties stipulated in Penal Code.

This is the traditional approach to protecting real property The forest It makes this protection subject to the prevailing path in the field of follow-up, as well as the imposition of the penalty.

The work of searching and investigating these violations does not lead to the desired result, unless the bodies legally charged with this process are fully aware of the course adopted by the legislator, starting with monitoring the use and exploitation Forest property And issuing reports on misuse and all types of infringement, leading to notifying the competent public prosecutor to initiate a public lawsuit, and punishing the aggressors for these crimes Forest properties.

Where as, despite the degree of attention he received Forest property How ever, what is observed on the ground of violations and practices against it is not due to the lack of legal texts, or the ineffectiveness of these means, as much as it is due to the negativity of the persons aggressing against it, whether they are natural or legal persons. In many cases, the administration does not resort to To the means provided by the legislator against others who commit these violations, in addition to its negligence in carrying out its duties towards these properties, which are to preserve and maintain them, and this is clearly evident through the condition of some of the properties. The forest Which is subject to destruction As a result of not taking the necessary precautions to prevent exposure to fires, cutting down trees to build alongside them...etc., as well as the laxity of department employees in carrying out inventory operations and exercising control over their users..

On this basis, and after reviewing this issue from its various aspects, we decided to provide some observations that must be taken into account to ensure better protection for this type of property The forest In order to maintain the role assigned to it, which is to achieve public benefit for members of society.

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