METHODS OF STATE ACQUISITION OF PRIVATE PROPERTY UNDER LAW NO. 23-17 AND ITS IMPACT ON THE PRINCIPLES OF LEGAL SECURITY

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ABSTRACT

Objective: Algeria suffers from a shortage of prepared and suitable lands to attract investment projects, especially in the north of the country. Therefore, the legislator strives every time to find legal mechanisms that allow him to expand the state's real estate portfolio and which is directed to promoting industrial investment in particular. Among these mechanisms is the attempt to acquire lands owned by private individuals in order to re-grant them to investors. With the issuance of Law No. 23-17 on economic real estate and its related regulatory texts, we find that it has included two mechanisms in this regard: the mechanism for the state to acquire private real estate located in areas prepared and capable of receiving investment projects, in addition to the mechanism of pre-emption for the purpose of purchasing any economic real estate owned by private ownership and offered for assignment. The legislator's resort to these two mechanisms raises some concerns about the possibility of their infringement on the constitutionally established protection of private property, as well as their infringement on the principles of legal security, which will inevitably affect the attractiveness of the investment climate in Algeria, especially for foreign investors.

Methods: Through this article, we try to highlight the legal methods adopted by the legislator to acquire economic real estate owned by private individuals, and its impact on economic investment and the principle of legal security, relying on the descriptive and analytical approach appropriate for such topics.

Results: Among the results reached in this field, despite the noble objective of the legislator in developing the national economy, this new mechanism and the right of preemption may encroach upon individuals' rights and diminish the guarantees for the protection of their private property, especially if there is a violation of the principles of legal security.

Conclusion: At the end of this article, we present a set of recommendations that help make the legislative text regulating the state's acquisition of private real estate of an economic nature a legally controlled process that does not lead to infringement of the rights of owners or the principles of legal security.

Keywords: state acquisition, private property, law no. 23-17, legal security, right of preemption.

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MÉTODOS DE ADQUISICIÓN ESTATAL DE PROPIEDAD PRIVADA BAJO LA LEY NO. 23-17 Y SU IMPACTO EN LOS PRINCIPIOS DE SEGURIDAD JURÍDICA

RESUMO

Objetivo: Argelia sufre una escasez de terrenos preparados y adecuados para atraer proyectos de inversión, especialmente en el norte del país. Por ello, el legislador se esfuerza cada vez por encontrar mecanismos legales que le permitan ampliar la cartera inmobiliaria del estado y que esté dirigido a promover la inversión industrial en particular. Entre estos mecanismos está el intento de adquirir tierras de propiedad de particulares para volver a otorgarlas a inversores. Con la expedición de la Ley No. 23-17 sobre bienes inmuebles económicos y sus textos normativos relacionados, encontramos que se han incluido dos mecanismos al respecto: el mecanismo para que el Estado adquiera inmuebles privados ubicados en áreas preparadas y con capacidad para recibir proyectos de inversión, además del mecanismo de preferencia para la compra de cualquier inmueble económico de titularidad privada y ofrecido en cesión. El recurso del legislador a estos dos mecanismos suscita algunas preocupaciones sobre la posibilidad de que violen la protección de la propiedad privada establecida constitucionalmente, así como los principios de seguridad jurídica, lo que inevitablemente afectará el atractivo del clima de inversión en Argelia, especialmente para inversores extranjeros.

Métodos: A través de este artículo pretendemos resaltar los métodos jurídicos adoptados por el legislador para adquirir bienes inmuebles económicos propiedad de particulares, y su impacto en la inversión económica y el principio de seguridad jurídica, apoyándonos en el enfoque descriptivo y analítico adecuado a dichos temas.

Resultados: Entre los resultados alcanzados en este campo, a pesar del noble objetivo del legislador de desarrollar la economía nacional, este nuevo mecanismo y el derecho de preferencia pueden vulnerar los derechos de los individuos y disminuir las garantías para la protección de su propiedad privada, especialmente si hay constituye una violación de los principios de seguridad jurídica.

Conclusión: Al final de este artículo, presentamos un conjunto de recomendaciones que ayudan a que el texto legislativo que regula la adquisición por parte del Estado de bienes inmuebles privados de carácter económico sea un proceso legalmente controlado que no conduzca a la vulneración de los derechos de los propietarios ni de los principios de seguridad jurídica.

Palavras-chave: adquisición del estado, propiedad privada, ley no. 23-17, seguridad jurídica, derecho de preferencia.

MÉTODOS DE AQUISICIÓN ESTATAL DE PROPIEDADE PRIVADA AO ABRIGO DA LEI N.º 23-17 E SEU IMPACTO NOS PRINCÍPIOS DA SEGURANÇA JURÍDICA

RESUMEN

Objetivo: A Argélia sofre com a escasez de terrenos preparados e adequados para atraer proyectos de investimento, especialmente no norte do país. Assim, o legislador esforça-se sempre por encontrar mecanismos legais que lhe permitam expandir a carteira imobiliária do Estado e que se destine a promover o investimento industrial em particular. Entre esses mecanismos está a tentativa de aquisição de terras pertencentes a particulares para reatribuí-las a investidores. Com a edição da Lei n.º 23-17 sobre imóveis económicos e seus textos regulamentares relacionados, constatamos que esta incluiu dois mecanismos a este respeito: o mecanismo para o Estado adquirir imóveis privados localizados em áreas preparadas e capazes de receber projetos de investimento, além do mecanismo de preferência para fins de aquisição de quaisquer bens imóveis económicos de propriedade privada e oferecidos para cessão. O
recurso do legislador a estes dois mecanismos suscita algumas preocupações sobre a possibilidade da sua violação da protecção constitucionalmente estabelecida da propriedade privada, bem como da sua violação dos princípios da segurança jurídica, o que afectará inevitavelmente a atractividade do clima de investimento na Argélia, especialmente para investidores estrangeiros.

Métodos: Através deste artigo, procuramos evidenciar os métodos jurídicos adotados pelo legislador para a aquisição de bens imóveis económicos propriedade de particulares, e o seu impacto no investimento económico e no princípio da segurança jurídica, apoiando-nos na abordagem descritiva e analítica adequada a tais temas.

Resultados: Entre os resultados alcançados neste domínio, apesar do nobre objectivo do legislador no desenvolvimento da economia nacional, este novo mecanismo e o direito de preferência podem usurpar os direitos dos indivíduos e diminuir as garantias de protecção da sua propriedade privada, especialmente se houver constitui uma violação dos princípios da segurança jurídica.

Conclusão: No final deste artigo, apresentamos um conjunto de recomendações que ajudam a tornar o texto legislativo que regulamenta a aquisição pelo Estado de imóveis privados de natureza económica num processo legalmente controlado e que não conduz à violação dos direitos dos proprietários ou dos princípios de segurança jurídica.

Palavras clave: aquisição estatal, propriedade privada, lei nº 23-17, segurança jurídica, direito de preempção.

1 INTRODUCTION

Real estate is of great importance in the development of the national economy, as it provides the foundation for the implementation of investment projects. Therefore, the state has given attention to the legislative framework for investment, including industrial investment. In order to develop this sector, the legislator has enacted laws aimed at establishing a real estate portfolio to be utilized in this field, such as industrial zones and activity areas.

In the framework of improving the quality of legislation governing real estate for investment purposes with the aim of creating a real estate abundance and attracting a larger number of investors, Law No. 23-17 was issued, which specifies the conditions and procedures for granting economic real estate belonging to private state properties for the implementation of investment projects. This law assigns several tasks to the Algerian Agency for Investment Promotion, including the task of acquiring every privately owned property for the benefit of the state, provided that it is capable of implementing an investment project. The same law grants this agency the right to exercise preemption on the property of individuals subject to private law. The purpose of this newly established
mechanism for the state's acquisition of private real estate is to form a real estate portfolio for its utilization in all types of investments, especially in the industrial sector.

As we know, private property rights are protected under the 2020 Constitution in Article 60, which states: "property is guaranteed, and property shall not be expropriated except within the framework of the law and with fair and just compensation." However, the method of acquisition provided by the legislator in Law No. 23-17 may infringe upon individuals' rights to their property, as it does not clarify the nature of this mechanism, whether it is voluntary or compulsory, and this may affect the principle of legal security. Legal security ensures the protection of individuals' rights to the extent that guarantees stability and certainty in their legal relationships and positions. In order to establish legal security, it is necessary to prepare legal texts that possess quality in legislative drafting, are clear and sound, without violating any of its principles, including the principle of legal certainty, the principle of legitimate trust, and the principle of respect for acquired rights, which is constitutionally guaranteed in Article 34/4.

Based on the aforementioned, we raise the following problem: Is there a balance between the state's mechanisms for acquiring properties of private individuals with an industrial nature, as stipulated in Law No. 23-17, and the establishment of legal protection for private property while respecting the principles of legal security?

To answer the problem, we adopted the analytical approach, and the study was divided into two sections:

The first section: The state's right to acquire economic property belonging to individuals in accordance with Law No. 23-17.

The second section: The right to exercise preemption under Law No. 23-17 and its impact on achieving the principle of legal security.

The first section: The state’s right to acquire economic property belonging to individuals in accordance with Law No. 23-17.

In order to promote industrial investment, the legislator introduced the concept of the Algerian Agency for the Promotion of Investment's right to acquire any economic property belonging to individuals, whether natural or legal persons, on behalf of the state. This mechanism is considered a new way to form an exploitable real estate portfolio. However, it may infringe upon private property rights and affect the principles of legal security. At the same time, the legislator may adopt this approach based on a legal basis.
stemming from the social function of private property and other principles that will be addressed in this topic.³

2 THE FIRST REQUEST: THE METHOD OF ACQUISITION AND ITS LEGAL BASIS

The legislator has entrusted the Algerian Agency for Investment Promotion, under Law No. 23-17⁴ and its executive decree No. 23-486⁵, as well as executive decree No. 24-111⁶, which amends and complements executive decree No. 22-298⁷, with the task of acquiring all privately owned properties on behalf of the state that are capable of accommodating an investment project. This falls within the agency's responsibilities of managing and promoting the state's economic real estate portfolio. The objective behind this may be to ensure the optimal utilization of each property that is capable of accommodating an investment project, which serves an economic purpose that may find its legal basis in the social function of private property.

2.1 THE FIRST BRANCH: THE ROLE OF THE ALGERIAN AGENCY FOR INVESTMENT PROMOTION IN ACQUIRING ECONOMIC REAL ESTATE OWNED BY INDIVIDUALS

The Algerian Agency for Investment Promotion, in accordance with Article 08, paragraph 05 of Law No 17-23 is responsible for acquiring any privately owned property for the benefit of the state, provided that, it is capable of accommodating an investment

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³ The Algerian Investment Promotion Agency was established under Law No. 18-22 relating to investment, dated July 24, 2022. Article 02/02 of Executive Decree No. 298-22, which defines the organization and operation of the Algerian Agency, dated September 8, 2022, defines it as: “The Agency is a public institution of an administrative nature, with legal personality and financial independence, and is placed under the supervision of the Prime Minister.”
⁴ - Law No. 17-23, dated November 15, 2023, defines the conditions and procedures for granting economic land belonging to the private property of the state for the realization of investment projects, Official Gazette No. 73, issued on November 16, 2023.
⁵ -Executive Decree No. 486-23, dated December 28, 2023, defines the components of economic land belonging to the private property of the state intended for the realization of investment projects and eligible for granting the concession, Official Gazette No. 85, issued on December 30, 2023.
⁶ - Executive Decree No. 111-24, dated March 13, 2024, amends and supplements Executive Decree No. 298-22 dated September 8, 2022, which defines the organization of the Algerian Investment Promotion Agency and its operation, Official Gazette No. 19, issued on March 18, 2024.
⁷ - Executive Decree No. 298-22, dated September 8, 2022, defines the organization of the Algerian Investment Promotion Agency and its operation, Official Gazette No. 60, issued on September 18, 2022.
project. This is confirmed by Article 02, paragraph 09 of Executive Decree No. 24-111, which amends and complements Executive Decree No. 22-298.

As stated in Executive Decree No. 23-486, the conditions and procedures for acquiring ownership of private economic real estate by the agency are outlined. However, before discussing the conditions and procedures, it is necessary to understand the concept of economic real estate. According to Article 04 of Law No. 23-17, the Algerian legislator defines economic real estate as "any property belonging to the private assets of the state and/or any other private property acquired by the Algerian Agency for Investment Promotion for the benefit of the state, capable of receiving an investment project within the scope of the law related to investment…"

Economic real estate, which falls under the private assets of the state and is intended for industrial exploitation according to Article 02 of Executive Decree No. 23-486, consists of all land belonging to the private ownership of the state that is available and located within industrial zones, activity zones, prepared lands, the vicinity of new cities, or remaining or surplus real estate assets. The conditions for acquisition are stipulated in Articles 13 to 16 of the same decree.

2.2 THE SECOND BRANCH: THE LEGAL BASIS FOR ACQUIRING PRIVATE PROPERTY RIGHTS UNDER LAW NO. 23-17

Private property rights were initially exercised by the owner without any restrictions. However, with the social and economic developments occurring in society, this property right is no longer absolute. It has become a self-regulating right with a social function, aiming to balance the private interests of individuals with the public interest of the state and society as a whole. Consequently, private property rights are subject to limitations that affect the owner's freedom to dispose of their property or may result in encroachment and infringement upon their ownership.

2.2.1 Firstly: the social function of private property rights

The social function of private property rights is defined as directing these rights towards achieving the interests of society. Despite being a self-regulating right, the owner is not an isolated entity from the community. They live within a specific society based on
the principles of solidarity and social cooperation Therefore, it is incumbent upon the owner to fulfill their role towards their community. Hence, private property rights have a social function that they perform to achieve the public interest.

Most legislations have adopted the idea of considering the social function of private property, including the Algerian legislator who allowed for private property within narrow limits at first, under the socialist regime, and expanded its social function in return. To the extent that public ownership became the norm and private ownership the exception, as the socialist system is based on the principle of state ownership of means of production, including real estate properties.

However, the legislator rectified this matter starting from the 1989 Constitution, after adopting the capitalist approach, and attributed value to and ensured the protection of private property rights in all subsequent constitutions, until the 2020 Constitution. At the same time, it restricted these rights with legal limitations for the benefit of private and public interests, in order to fulfill its social function. Thus, the legislator denied the absolute self-sufficiency of property rights, as affirmed by Article 690 of the Civil Code, which states: "The owner must consider in the exercise of his right what is provided for by the laws in force, relating to public or private interest." The legislation in this regard does not imply a violation of private property rights, but rather aims to use them for social functions that serve the interests of individuals and the community.

2.2.2 Secondly: the public interest as the basis for acquiring private property rights

The public interest is considered one of the restrictions imposed on private property in order to fulfill its social function. Jamil Al-Sharqawi defined it as follows: "The public interest is the benefit that is achieved for the largest number of people without appointing them or causing harm to a group of people." This definition indicates that the scope of the public interest does not require achieving the common good for all people, but it is sufficient to be achieved for a significant group of people or to prevent harm from befalling them.

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8 - Mouzoud Folla, previous reference, pp. 61-64.
One of the principles of achieving the public interest as a basis for administrative restrictions on dealing with private property is:

- The requirement of legal authorization to restrict the right to deal with private property;
- The necessity to respect the private interest of the owner. Although the public interest is a reason to legitimize the restriction of the right to private property, it does not mean that it should be a means in the hands of the administration to encroach upon individuals' right to their private property and restrict their freedom to exercise it;
- The administration has discretionary power in making decisions related to the requirements of public needs. Therefore, when exercising this power, it is necessary for the administration not to abuse it for the purpose of achieving objectives\(^\text{10}\) unrelated to the public interest.

One of the areas where the public interest is linked to administrative restrictions on dealing with private property is:

**Acquisition of real estate for the benefit of the state:** In order to ensure the smooth operation of public facilities, the state employs several specific methods in the National Property Law to obtain properties. These methods may be ordinary through private law mechanisms such as purchase, exchange, and donation, where individuals voluntarily relinquish their real estate properties through mutual agreement without any coercion.

However, in the event that a property is not available to carry out a project related to the public interest through the aforementioned methods, the administration resorts to compulsory or coercive methods to acquire the property, utilizing its public authority privileges. The legislator has defined these methods in two exceptional ways or through public law mechanisms, namely expropriation for public benefit and administrative preemption.

\(^{10}\) Mouzoud Folla, *ibid.*, pp. 61-64.
3 THE SECOND REQUEST: THE IMPACT OF ACQUIRING PRIVATE REAL ESTATE OWNERSHIP ON THE PRINCIPLES OF LEGAL SECURITY

The method adopted by the legislator in Law No. 23-17 to provide a real estate balance for the implementation of investment projects, which consists of granting the Algerian Agency for Investment Promotion the right to acquire any private real estate for the account of the state for the purpose of implementing an investment project, appears to be a new approach in the system of providing economic properties and the state's acquisition of private properties. Particularly, the legislator did not specify the acquisition procedures and how they are carried out. At the same time, we wonder whether the legislator has ensured guarantees to protect private property rights and achieve the principles of legal security in this case. This is what we will attempt to answer in this article.

3.1 THE FIRST BRANCH: VIOLATION OF THE PRINCIPLES OF LEGAL SECURITY

Through examining the legal texts related to the Algerian Agency for Investment Promotion's right to acquire real estate owned by individuals for the benefit of the state in order to implement an investment project and analyzing them, we find several deficiencies and loopholes that violate the principles of legal security. We will mention the most important ones, for example, but not limited to.

3.1.1 Firstly: the extent to which the legal drafting conditions and language rules are met

Legal drafting is defined as: "a technical and procedural method that transforms values, principles, and higher ideals in society and formulates them into a technical framework to convert them into valid legal rules for application".  

11 - Khaled Hassan Ahmed Lotfi, The Concept of Legal Security and its Role in Encouraging and Developing Investment, Dar Al Fikr Al Jami'i, Alexandria, 2022, p. 44.
3.1.1.1 Failure to regulate the formulation of the definition of the economic property

When drafting legal texts, it is necessary for them to be clear and not formulated in a complex manner with the intended meaning being accurately defined when establishing a specific definition, while respecting the rules of language. Therefore, we will highlight the manifestations of encroachment on legal security in this aspect.

Referring to the text of Article 04 of Law No. 23-17, which defines the economic property, we find that the legislator relied on several criteria in the definition, including the organic criterion that the property is a part of the state's private property specifically. The text states that the economic property is: "every real property belonging to the state's private property and/or any other private property acquired by the agency...". The linguistic formulation, by combining the conjunction "and" and the disjunction "or," has an impact on the accuracy of the definition and the determination of the intended meaning, which creates confusion in the concept. The purpose of using the conjunction "and" and "or" was to indicate that the two matters are separate in action but share the same ruling. Thus, the economic property is: every real property belonging to the state's private property, and any other private property acquired by the Algerian Agency for Investment Promotion that is capable of receiving an investment project.

The truth is that linguistically, it is not possible to combine two conjunctions together, especially if we know that they both serve the same common meaning. It would be more appropriate to suffice with the conjunction "and" to indicate the occurrence of both matters under the same rule, because the conjunction and" in language implies the inclusion of what follows it in the rule that precedes it".

Therefore, if the legislator had sufficed with the phrase "property belonging to private ownership," because implicitly any real estate property acquired in the past or that will be acquired in the future falls within its scope, in addition to the legislator's oversight of the term "real estate" when mentioned in the definition of the phrase "another

12 - Abdelkader Aissaoui, Shadow Points in Law 23-17 Which Determines the Conditions and Modalities of Granting Economic Real Estate Belonging to the Private Property of the State to Implement Investment Projects, intervention in the 23rd National Forum on the Legal System for the Exploitation of Industrial Real Estate and its Role in Encouraging and Attracting Investments, Faculty of Law and Political Science, University of El Oued, held on 12/06/2023, p.6.
14 - Abdelkader Aissaoui, same reference, p.6.
private property," as this allows for interpretation that this private property is a real estate property or even a movable property such as facilities.

From the above, it is evident that the definition lacks precise regulation and does not respect the rules of language, which has affected the principle of legal certainty, because in order to ensure good drafting, the language used in the text must be sound and accurate, through which the provisions of the law are realized and the legislator's intention is clarified, and it should be easily understood without room for interpretation.15

3.1.1.2 The defect of deficiency in drafting and its impact on the principle of respecting acquired rights

We explain the defect of deficiency and the points of its presence in the legal text, and then we clarify its impact on the principle of respecting acquired rights.

3.1.1.2.1 The defect of deficiency in drafting

Deficiency is considered one of the defects that affect the formulation of legal texts, which some refer to as legislative gaps. This occurs in the following cases:

- When there is a lack of a procedure or ruling that necessitates its existence in reality;
- When legislation does not regulate specific legal consequences and resolve them in a definitive and conclusive manner, leaving no room for doubt about their application.16

This applies to the legal texts under study, as we find a legal vacuum related to the nature of acquisition its procedures, and its legal effects. As known in Algerian legislation, the means by which the state acquires its private property are specified in the National Property Law under Article 26. These means are either through private law means, such as contracts, exchange, donation, possession, and prescription, or through public law means, namely expropriation for public interest and administrative preemption.

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15 - Hanem Ahmed Mahmoud Salem, Guarantees for Achieving Legal Security and the Role of the Supreme Constitutional Court in Ensuring its Achievement, Dar Al Fikr Al Jam'î, Alexandria, 2021, pp. 74-75.
16 - Khaled Hassan Ahmed Lotfi, ibid., p. 46.
Referring back to the text of Article 94/03 of Executive Decree No. 12-427\(^\text{17}\), which was clear and explicit it stated that the acquisition of state-owned properties is done through agreement or expropriation. This decree and the National Property Law detailed the procedures, but Article 13 of Executive Decree No. 23\(^{-17}\) did not specify the method of acquisition, whether it is consensual or compulsory, as the legislator 486 clarified in the methods of acquiring tourist property\(^{18}\) mentioned in Law No. 03-03\(^{19}\). It is either done through amicable agreement according to Article 22/1, or through expropriation for public benefit in case all amicable methods are not feasible after a request submitted by the relevant administration to the Minister responsible for tourism, and it is subject to the expropriation procedures under Law No. 91-11, which includes the rules of expropriation for public benefit. However, the acquisition under Law 23-17 left it ambiguous without mentioning any details.

The issue of exploiting the property intended to be acquired by the owner before the acquisition process is of utmost importance. The legislator should have stipulated that the property intended to be acquired should not be utilized by the owner, as this would constitute an abuse in exercising the right based on the social and economic function of private property, in accordance with Article 124 repeated of the Civil Code. This provides a legally acceptable justification for the Algerian Agency for Investment Promotion to acquire this property without the consent of its owner.

Furthermore, the legislator stipulates that the acquisition should be made for a consideration equal to the commercial value of the property, which is determined by the competent regional property management authorities. However, the legislator left a legal vacuum in this matter as it did not specify the method of determining this price. Is it based on the real estate market price or on evaluation criteria followed by the state property authorities? All of the aforementioned has a significant impact on the principle of respecting acquired rights.

\(^{17}\) Executive Decree No. 427-12, dated 16 December 2012, defining the conditions and modalities of management and administration of public and private property belonging to the state, Official Gazette No. 69, issued on 19 December 2012.

\(^{18}\) For real estate: The acquisition of tourist property has also become subject to Law No. 17-23, but only for the purpose of clarifying the content of the study.

\(^{19}\) Law No. 03-03, dated 17 February 2003, relating to tourist expansion areas and tourist sites, Official Gazette No. 11, issued on 19 February 2003, repealed by Law No. 17-23.
3.1.1.2.2 The principle of respecting acquired rights

The jurist Patrick Auvert defined the principle of acquired rights as "The right arising from a legal act that establishes a legal position". According to this principle, it is not permissible for state authorities to deprive or violate rights acquired by individuals through legitimate and legal means, as long as they are associated with the exercise of public freedoms or fundamental rights guaranteed by the constitution. Their property rights can only be deprived within a legal framework, such as expropriation for public benefit or confiscation after criminal conviction.

As is well known, the right to private property is one of the sacred rights that cannot be infringed upon or violated. Article 17 of the Universal Declaration of Human Rights, issued on 10/12/1948, states that everyone has the right to own property alone as well as in association with others, and no one shall be "arbitrarily deprived of their property." Respecting acquired rights is considered one of the fundamental pillars of the principle of legal security.

However, the legal vacuum present in the legal texts of Law No. 23-17 and its implementing decree No regarding the Algerian Agency for the Promotion of Investment's ability to acquire any privately owned property for the benefit of the state, may lead to encroachment upon or infringement of the property owner's rights of acquisition. This constitutes a violation of the principle of legal security, as No Executive Decree No. 23-486, in Article 13, fails to provide any guarantees that protect the owner's rights. For example, it does not establish a committee to assess the property's suitability for an investment project, nor does it outline a mechanism for prior administrative investigation, as is the case in the Expropriation Law. Additionally, it doesn't provide for the owner's right to judicial appeal against arbitrary decisions during the acquisition process. Furthermore, the nature of this acquisition is not defined, as mentioned earlier, nor are its procedures, starting with notifying the owner of the process, how to submit the request, and other details. All of this undermines the principle of respecting vested rights.

3.1.2 Secondly, the text's susceptibility to reasonable anticipation

The principle of legitimate expectation in legal texts refers to the avoidance of surprising or contradicting individuals with the issuance of laws or regulations that deviate from their reasonable expectations and contravene existing legal provisions.\textsuperscript{23} This principle pertains to the continuous effect of legal positions that have arisen earlier, and it enforces the respect for acquired rights and procedures that work to preserve any privileges gained by individuals. It also activates transitional provisions with the aim of achieving relative stability in legal positions\textsuperscript{24}. The principle of constitutional supremacy imposes the alignment of all legal texts issued by the legislative and executive authorities with its provisions, while also requiring the consideration of the coherence of any law being prepared with the existing effective legal provisions\textsuperscript{25}.

According to the legislator, when legislating the mechanism of acquisition, he should take into consideration what the constitution guarantees in protecting the right of private property and what is included in the provisions of the current effective laws, such as Article 677 of the Civil Code, which states No one shall be deprived of his ownership except in the cases and conditions stipulated by law...". This is not taken into consideration by the legislator in the law regulating economic real estate, as previously stated, as it introduces a new and ambiguous mechanism, which could be considered a form of forced sales as it forces the owner to sell his property to the state. In this case, the principle of consent is violated, and private property is constantly threatened with expropriation, with the aim of granting it to private investors after integrating it into state property\textsuperscript{26}, which is a violation of the principle of legal security.

\textsuperscript{24} - Mohammed Palestine Hamza, \textit{ibid.}, p. 161.
\textsuperscript{25} - General Secretariat of the Government, \textit{ibid.}, pp. 21-23.
\textsuperscript{26} - Salakh Mohammed Lamine, \textit{Lectures in Industrial and Tourist Real Estate}, for first-year Master's students specializing in Real Estate Law, Faculty of Law and Political Science, University of El Oued, 2024, pp. 68-69.
3.2 THE SECOND BRANCH: MANIFESTATIONS OF LEGAL SECURITY IN THE PROVISIONS RELATED TO THE ACQUISITION PROCESS

Despite the legal loopholes that have undermined legal security, the legislator, on the other hand, has embodied several guarantees that enhance the right of private property in order to prevent the agency from resorting to arbitrary use of the acquisition mechanism or any violation that would undermine the rights of the owner. These guarantees include:

1- The condition that the agency acquires the real estate with private ownership only in the absence of economic real estate;

2- The real estate subject to the acquisition process must be capable of accommodating an investment Project;

3- To be implemented in prepared areas, activity zones, and industrial zones;

4- The acquisition process shall be carried out for a financial consideration based on the commercial value of the property, determined by the competent regional authorities of state property;

5- An administrative contract shall be prepared by the competent regional authorities of state property upon completion of the acquisition process;

6- In order to activate the acquisition process, the necessary financial resources must be available;

7- The agency shall be obliged to direct the economic property to investment projects exclusively, with the obligation to return any property that changes its destination to the state.

4 THE SECOND SECTION: THE RIGHT TO EXERCISE PREEMPTION UNDER LAW NO. 23-17 AND ITS IMPACT ON ACHIEVING THE PRINCIPLE OF LEGAL SECURITY

The legislator empowered the Algerian Agency for the Promotion of Investment in Article 23 of Law No and Article 02 of Executive Decree No. 24-111, as amended and supplemented by Executive Decree 17-23 No. 22-298, as well as Article 17 and subsequent articles of Executive Decree No. 23-486, to exercise the right of preemption.

27 According to Article 794 of the Civil Code, pre-emption (or right of first refusal) is: "A license that allows the pre-emptor to take the place of the buyer in the sale of real estate..."
on any immovable property originally owned by the state and subsequently transferred to private investors. When the beneficiary of the economic property wishes to transfer it to a third party the state, represented by the Algerian Agency for the Promotion of Investment, is not entitled to exercise the right of preemption to reclaim the property and re-register it in its real estate registry. Furthermore, the agency is also empowered to exercise the right of preemption on any privately owned immovable property owned by a natural or legal person. In this study, our focus is on the exercise of preemption on privately owned real estate and its impact on the principles of legal security.

4.1 THE FIRST REQUEST: PROVISIONS FOR THE EXERCISE OF THE RIGHT OF PREEMPTION ON PRIVATELY OWNED REAL ESTATE

The legislator clarified the conditions for exercising this right by the agency in Executive Decree No. 23-486 in its articles from 17 to 21. However, we question the adequacy of these conditions in not violating, individuals' rights to their property and, consequently, not compromising the principles of legal security. These conditions and provisions will be further explained in the following statement:

The Algerian Agency for Investment Promotion has the right to exercise preemption on behalf of the state over any privately owned property, whether owned by a natural person or a legal entity, provided that it is suitable for hosting an investment project and is located within prepared areas, including activity zones and industrial areas.

Article 19 of Executive Decree No. 23-486 stipulates that the agency shall be notified by the notaries of any transfer of property rights by the beneficiaries of economic property or by private individuals who own private property, provided that the conditions for exercising preemption are met.

4.2 THE SECOND REQUEST: EVALUATING THE PROCEDURES FOR EXERCISING PREEMPTION ON PRIVATE PROPERTY AND THE EXTENT TO WHICH THEY AFFECT THE PRINCIPLES OF LEGAL SECURITY

In this request, we will address the aspects that undermine the principles of legal security, as well as the aspects that reinforce them regarding the rules for exercising preemption by the Algerian Agency for Investment Promotion.
4.2.1 The First Branch: aspects undermining legal security

Referring to the general rules stated in the Civil Law, the right of preemption (shufaa) only applies to sales contracts. However, the legislator allowed through Law No. 23-17 for the agency to exercise the right of preemption in all cases of property transfer, whether it is for consideration or free of charge. This raises a question regarding the determination of the price for exercising the right of preemption if the transfer is without consideration. The legislator should have established a mechanism for determining the price for the agency's exercise of the right of preemption. Furthermore, the exercise of preemption by the state or one of its public administrative bodies does not deviate from the general rules, as there are no specific rules for the state's exercise of preemption except for those related to specific areas. Therefore, we question the availability of procedures for exercising preemption in Executive Decree No. 23-486 and its impact on the principle of legal security. To answer this, we will compare the procedures for exercising the right of preemption by the National Tourism Development Agency on behalf of the state in the field of tourist real estate with the provisions of the Economic Property Grant Law.

4.2.1.1 Firstly: the procedure of notifying the competent authority of the exercise of its right of preemption at a specific time

Regarding tourist real estate, Article 21 of Law No. 03-03 stipulates the following provision. The state has the right of preemption for every built or unbuilt property located within expansion areas and tourist sites that are offered for voluntary transfer, with or without compensation. This task has been assigned to the National Tourism Development Agency, which regulates the preemption procedures in this field through Executive Decree No. 06-385. The legislator authorized the National Tourism Development Agency to intervene and exercise preemption in any voluntary transfer process carried out by a private law owner of a property located within an expansion area or a tourist site, whether the property is built or unbuilt, but it must be capable of construction and under any form of transfer, whether with or without consideration. This is to prevent the

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28 Article 21, paragraph 2 of Law No. 03-03, ibid., and Article 6 of Executive Decree No. 98-70, dated 21 February 1998, regarding the establishment of the National Agency for Tourism Development and the definition of its basic law, Official Gazette No. 11, issued on 1 March 1998.
contracting parties from circumventing the preemption procedures stipulated in civil law, which can only be exercised in the case of property sale.

Where every private law owner who wishes to dispose of a buildable property located in an expanding area or a tourist site must notify the Minister responsible for tourism of this transaction in order to enable the agency to exercise its right of preemption. This notification is made by submitting a prior authorization to the Minister, as specified in a ministerial decision. The legislator has also provided for the nullity of any transaction involving a tourist property that has not been notified to the Minister, in addition to a penalty ranging from 100,000 DZD to 300,000 DZD. Therefore, it is evident that the best solution would have been to oblige the notary who prepares the transfer contract to directly notify the Minister.

After notification, the Minister informs the agency within a period of 15 days to allow it to exercise its right of preemption. The legislator has granted the agency a period of 03 months from the date of notification by the Minister to make a decision on whether or not to exercise its right of preemption in accordance with its bylaws. During this period, the agency prepares a technical study highlighting the description, content, evaluation, and necessary financial means for the acquisition of the property in question. We are then faced with two options. The first option is the agency's decision to exercise its right of preemption. In this case, the agency informs the Minister within the specified period, providing justification for its decision. The Minister then notifies the transferring owner within a period of 15 days from the expiration of the 03-month period. Thus, the agency replaces the buyer. However, a problem arises here, which is the determination of the transfer price, especially if the owner wishes to transfer the property without compensation. The legislator stipulates resorting to a mutual agreement between the owner and the agency. In the event of failure to reach an agreement, the

29 - Article 28 of Law No. 03-03, ibid., and Article 3 of Executive Decree No. 06-385, dated October 28, 2006, which defines the modalities of the National Agency for Tourism Development's exercise of the right of pre-emption within expansion areas and tourist sites.
30 - Ministerial Decree dated March 18, 2008, defining the model of prior declaration for the sale of property located within expansion areas and tourist sites, Official Gazette No. 25, issued on May 18, 2008.
31 - Articles 46 and 49 of Law No. 03-03.
32 - Article 4 of Executive Decree No. 06-385.
33 - Article 5 of Executive Decree No. 06-385.
34 - Article 6 of Executive Decree No. 06-385.
35 - Article 7 of Executive Decree No. 06-385.
36 - Instruction No. 01984 was issued by the General Directorate of National Property of the Ministry of Finance, dated March 10, 2011, regarding the determination of commercial values of land located in tourist expansion areas in the framework of exercising the right of pre-emption on behalf of the state by the National Agency for Tourism Development.
matter is referred to the competent court, which appoints an expert to determine the price\textsuperscript{37}. The second option is the agency's silence and failure to respond within the legal deadlines. In this case, the agency is deemed to have waived its right of preemption\textsuperscript{38}. After 4 months from the date of notification and the agency's failure to respond, the owner is entitled to proceed with the transfer procedures\textsuperscript{39}. There is no third option, which is the explicit rejection and waiver of the agency's right, as this option is not provided for in the executive decree, indicating that the agency, in the event of refusing to exercise its right of preemption, is only obliged to remain silent until the deadline expires.

The truth is that when the legislator set a deadline for the exercise of agency by proxy under the penalty of forfeiting the right to exercise it and the owner continuing with the transfer process, it was done in order to allow for the trading of tourist properties and not to hinder investment in this field.

However, upon referring to the provisions of Executive Decree No. 23-486 regarding the conditions and procedures for exercising agency, it did not specify the procedures and deadlines for notifying the agency by the notary. Furthermore, it did not make the notification by the notaries to the agency regarding the legal actions imposed on properties subject to agency a mandatory requirement. Additionally, Article 19 of the same decree did not clarify the legal provisions arising from the role of the notary in notifying the agency, whether their role is limited to informing the agency only, or if they should proceed with the transfer procedures, or if they should wait for the agency's response before continuing the process based on its authorization.

Most importantly, it did not mention the time period within which the agency is bound to accept or reject the agency. The failure to specify a deadline for the agency's response leads to obstacles in continuing the transfer procedures, especially in cases where the real estate registrar refuses to register the contract until receiving explicit rejection from the agency regarding its exercise of the right of agency. This infringes upon the owner's right to dispose of the property\textsuperscript{40}.

Therefore, the failure to specify the consequences of not informing the agency of the transfer and the fate of the transfer contract that was made without its knowledge, and the failure to set a specific deadline for notifying the agency by the notaries or setting a

\textsuperscript{37} - Article 9 of Executive Decree No. 06-385.
\textsuperscript{38} - Article 6, paragraph 2 of Executive Decree No. 06-385.
\textsuperscript{39} - Article 8 of Executive Decree No. 06-385.
\textsuperscript{40} - Salakh Mohammed Lamin, \textit{ibid.}, pp. 69-70.
deadline for the agency to exercise its right of preemption and other legal loopholes mentioned above, lead to a violation of the principles of legal security, as the legislator violates the principle of clarity of the legal rule.

4.2.1.2 Secondly, the method of determining the price

Referring to the general rules, when preparing the declaration of expressing the desire to exercise the right of preemption, the notary must include the identity of the seller and the buyer, information about the property subject to preemption, the agreed price, and the official expenses in accordance with Articles 799 and 800 of the Civil Code.

As we have also explained in the procedures for exercising the right of preemption under Law No. 03-03 concerning tourist real estate, the determination of the transfer price is done amicably, and in case of disagreement on the price, recourse is made to the judiciary to determine it by an expert\textsuperscript{41}.

However, articles 17 to 19 of Executive Decree No. 23-486 do not specify the price on which the agency's exercise of preemption is determined, whether it is the price set by the relinquished or the non-owners during the contractual process with the buyer, or the legal solution in case of disagreement in determining the price of the property subject to preemption, or in the event that the preemption contract is without compensation, which is a deficiency in legislation regarding the regulation of legal provisions related to the price of preemption, thus affecting the principles of legal security in this field.

4.2.2 Second Branch: manifestations of consolidating the principles of legal security in the procedures of exercising preemption on private property

Due to the lack of clarity in the legal rule and the deficiency in formulating the provisions related to preemption, the guarantees for ensuring the principles of legal security in order to protect private property were very few, namely:

1- Private property must be available and capable of accommodating investment projects;
2- It must be located in prepared areas, including activity zones and industrial áreas;

\textsuperscript{41} - Saida Hamel, \textit{ibid.}, p. 87.
3- Availability of financial resources to materialize the exercise of the right of preemption.

5 CONCLUSION

In order to promote the economic property portfolio, the legislator entrusted the Algerian Agency for Investment Promotion. With the possibility of providing a real estate balance that can accommodate an investment project, either through the acquisition of privately owned property or through the exercise of preemption rights on property belonging to individuals subject to private law, in accordance with the legal provisions stipulated in Law No. 23-17 and its implementing decree No. 23-486. However, although these provisions constitute a guarantee against encroachment on private property, they may not be sufficient to protect it from the agency's arbitrary use of its acquisition rights and preemption rights, which affects the respect for the principles of legal security that seek to stabilize individuals' rights and legal positions. Through the study, we have reached a set of results, the most important of which are:

1. By studying the legal texts related to the agency's right to acquire private property, we find that:
   - The lack of legal formulation that respects the rules of language, which is a fundamental condition for achieving legal security, as the formulation of the definition of economic property did not provide an which allows for, (Or) and (And) accurate definition, especially in terms of combining the two conjunctions multiple interpretations of the concept;
   - The existence of a defect in the formulation of Articles 13 to 16 of Executive Decree No. 23-486, as they fail to specify the nature of the acquisition process, whether it is voluntary or compulsory, in addition to the lack of regulation of the procedures and the resulting legal consequences;
   - The violation of the principle of respecting acquired rights, due to the absence of provisions guaranteeing adequate protection of private property rights, such as the establishment of a committee to assess the suitability of the property for investment projects;
   - The newly introduced method of acquisition in Law No. 23-17 is unclear and inconsistent with the existing effective legal provisions related to the protection
of private property rights, thus undermining the principle of legitimate expectation.

2- Regarding the right of agency to exercise preemption on privately owned property suitable for investment projects.

- The failure to specify the procedures for notifying the agency by the transferor of their property, whether the transfer is with or without consideration, in order for the agency to exercise its right of preemption if desired;
- The legislator did not require the notary to notify the agency of any transactions carried out on the immovable property subject to the exercise of the right of preemption, but rather provided a general formulation;
- The lack of such obligation results in the agency being deprived of its right to exercise preemption and renders any legal action taken without the agency's knowledge null and void;
- The legislator did not specify the deadlines for notifying the agency of the transfer of ownership of the property, nor did they specify the deadlines for the agency to respond regarding its exercise of the right of Preemption;
- Failure to specify the price of the transfer in amicable cases or in cases of disagreement between the transferor and the agency;

Based on the above results, we propose the following suggestions:

- Redefine the definition of economic property to avoid possibilities of interpretation;
- It would be preferable if the legislator stipulated that the property to be acquired should not be occupied by the owner;
- Precisely regulate the procedures for acquisition, starting with a friendly offer, and in case of refusal, resort to compulsory methods, in order to arrange the legal consequences, especially those that are in favor of the owner;
- The notification by the notary to the agency should be obligatory;
- Set deadlines for informing the agency of the transfer of ownership of the property subject to preemption and specify the deadlines for the agency to respond regarding its exercise of the right of preemption;
- Specify the determination of the price of the transfer of ownership of the property subject to preemption especially in cases of disagreement between the agency and the transferor, by resorting to the judiciary to appoint a specialized expert to
determine the price.
REFERENCES

The Algerian Agency for Investment Promotion was established under Law No. 22-18 dated 24/07/2022 as defined by Article 02/02 of Executive Decree No. 22-298, which regulates the Algerian Agency and its operations, dated 08/09/2022, as follows: "The Agency is a public institution with an administrative nature enjoying legal personality and financial independence, and is placed under the supervision of the Prime Minister.

Law No. 23-17, dated 15/11/2023, specifies the conditions and procedures for granting economic land belonging to private state property for the implementation of investment projects, as published in the Official Gazette No. 73, issued on 16/11/2023.

Executive Decree No. 23-486, dated 28/12/2023, defines the components of economic land belonging to private state property for the implementation of investment projects and eligible for concession, as published in the Official Gazette No. 85, issued on 30/12/2023.

Executive Decree No. 24-111, dated 13/03/2024, amends and complements Executive Decree No. 22-298 dated 08/09/2022, which regulates the Algerian Agency for Investment Promotion and its operations, as published in the Official Gazette No. 19, issued on 18/03/2024.

Executive Decree No. 22-298, dated 08/09/2022, determines the organization of the Algerian Agency for Investment Promotion and its functioning, Official Gazette No. 60, issued on 18/09/2022

Mawzud Fala, previous reference.


Mawzud Fola, previous reference.


Abdelkader Issaoui, Shadow Points in Law 23-17, which determines the conditions and procedures for granting economic real estate belonging to private state properties for investment projects, intervention in the 23rd National Forum on the Legal System for the Exploitation of Industrial Real Estate and its Role in Encouraging and Attracting Investments, Faculty of Law and Political Science, University of Ouargla, held on 06/12/2023.

Emil Badi’ Yakub, Dictionary of Syntax and Spelling, Dar Al-Ilm Lil-Malayin, Beirut, 1983.

Abdelkader Issaoui, same reference.
Mrs. Ahmed Mahmoud Salem, Guarantees for Ensuring Legal Security and the Role of the Supreme Constitutional Court in Ensuring it, Dar Al-Fikr Al-Jamei, Alexandria, 2021.4-75

Khaled Hassan Ahmed Lotfi, Ibid.

Executive Decree No. 12-427, dated 16/12/2012, determines the conditions and procedures for the -15 management and administration of public and private properties belonging to the state, Official Gazette No. 69, issued on 19/12/2012.

Regarding real estate, the acquisition of tourist real estate is also subject to Law No. 23-17, but only for the purpose of clarifying the content of the study.

Law No. 03-03, dated 17/02/2003, concerning tourist expansion areas and tourist sites, Official Gazette - No. 11, issued on 19/02/2003.


Mohammed Palestine Hamza, previous reference.

Salakh Mohamed Lamine, Lectures on Industrial and Tourist Real Estate, directed to first-year Master's students specializing in Real Estate Law, Faculty of Law and Political Science, University of Ouargla 2024.

According to Article 794 of the Civil Code, "The right of preemption allows the pre-emptor to replace - "...the buyer in the sale of the property.

Article 21, paragraph 02 of Law No. 03-03, previous reference, and Article 06 of Executive Decree No. 98-70, dated 21/02/1998, includes the establishment of the National Tourism Development Agency and the determination of its bylaws, Official Gazette No. 11, issued on 01/03/1998

Article 28 of Law No. 03-03, as referenced above, and Article 03 of Executive Decree No. 06-385,

The procedures for the exercise of the National Tourism Development Agency's right 2006/10/28.of preemption within expansion areas and tourist sites.
Ministerial Decree No. 28, dated 18/03/2008, specifies the pre-sale declaration form for the sale of property located within expansion areas and tourist sites, Official Gazette No. 25, issued on 18/05/2008

Article 46 and 49 of Law No. 03-03.

Article 04 of Executive Decree No. 06-385

Article 05 of Executive Decree No. 06-385

Article 32 of Executive Decree No. 06-385

Article 07 of Executive Decree No. 06-385

Directive No. 01984 was issued by the General Directorate of National Properties, under the Ministry of Finance, on 10/03/2011. This directive pertains to the determination of commercial values for lands located within tourist expansion areas, within the framework of exercising the right of preemption on behalf of the state by the National Tourism Development Agency.

Article 09 of Executive Decree No. 06-385.

Article 06, paragraph 02 of Executive Decree No. 06-385

Article 08 of Executive Decree No. 06-385.