

## EXPLOITATION OF PRIVATE AGRICULTURAL PROPERTY IN ALGERIAN LAW

### استغلال العقار الفلاحي الخاص في القانون الجزائري

*Dr. Hatem Mouloud*<sup>(1)</sup>

*Mouloud Mammeri University-Tizi Ouzou (Algeria)*

*Mouloudhatem1590@gmail.com*

**RECEIVED**  
**21 - 06 - 2019**

**ACCEPTED**  
**13 - 07 - 2019**

**PUBLISHED**  
**30 - 07 - 2019**

#### **Abstract:**

*Agricultural real estate, whether public or private, is a basic rule in economic life, so it has received considerable legal attention in order to maintain and promote it through its effective exploitation, as evidenced by the promulgation of a series of real estate legislation, the most important of which is Law No. 90-25, which contains The real estate directive, which re-considered the real estate property of its repeal of the Agricultural Revolution Act.*

**key words:** *Agricultural Property - private property - mechanisms of exploitation- the penalty for non-exploitation - state intervention*

#### **المخلص:**

يعد العقار الفلاحي سواء كان ملكية عمومية أو خاصة قاعدته أساسية في الحياة الاقتصادية لذا حظي باهتمام كبير من الناحية القانونية بفرض المحافظة عليه وترقيته أمام ما تعرفه الجزائر من اسراف كبير وفوضى في استغلال العقار الفلاحي، وما لذلك من تأثير سلبي على الاقتصاد الوطني في حالة عدم استغلاله بصورة فعالة، وهو ما يتضح من خلال صدور مجموعة من التشريعات العقارية، أهمها القانون رقم 90-25 المتضمن التوجيه العقاري المعدل بموجب الأمر 95-26 والذي أعاد الاعتبار للملكية العقارية الخاصة بإلغائه لقانون الثورة الزراعية وإرجاع الأراضي الفلاحية لمالكها الأصليين.

#### **الكلمات المفتاحية:**

العقار الفلاحي - الملكية الخاصة - آليات الاستغلال - جزاء عدم الاستغلال - تدخل الدولة.

<sup>1</sup> - Corresponding author: *Dr. Hatem Mouloud* e-mail: *Mouloudhatem1590@gmail.com*

## **INTRODUCTION:**

The Algerian legislature organized private-owned agricultural property under the provisions of the Civil Code, the Land Directive Act, and Law No. 08-16, which contains agricultural guidance <sup>(1)</sup>. Law No. 90-25 <sup>(2)</sup>, which contains the land directive amended by order 95-26 <sup>(3)</sup>, defines private property ownership in article 27 as "the right to enjoy and dispose of real estate property and/or rights in kind in order to use the property according to its nature or purpose".

The owner of the agricultural property collects in his hand all the powers conferred upon him by law, he has the right to dispose of it and exploit it in various forms legally available, and the law of the real estate directive is a penalty for not exploiting the property under Article 51, which came with extremely serious provisions, depriving the owner of his property. What is supposed to be guaranteed under article 64 of the Algerian Constitution, and this requires that the mechanisms for exploiting the private agricultural property and the penalty for not exploiting it be addressed.

The exploitation of agricultural property will be studied by addressing the mechanisms for exploiting agricultural property in Algerian law (**section I**) and the effects of its non-exploitation (**Section II**).

## **SECTION I :**

### **MECHANISMS FOR EXPLOITING THE PRIVATE AGRICULTURAL PROPERTY**

More than ever, the Algerian state seeks to encourage private individuals to move towards exploiting their agricultural properties as an alternative and viable economic solution in order to achieve self-sufficiency by activating the legal rules that have been abandoned for a long time, as actual direct or indirect investment is the duty of each owner or holder of agricultural estates<sup>(4)</sup>. The exploitation of the privately owned agricultural property by the owner is personal (**A**), as may be the third party (**B**).

#### **A) DIRECT EXPLOITATION OF THE PRIVATE AGRICULTURAL PROPERTY:**

In order to encourage agricultural investment in privately owned land, the ministries of Interior and Agriculture issued a joint publication on 23 February 2011, under Number 108, for the establishment of agricultural investors in the

---

<sup>1</sup> - Act No. 08-16, of 30 December 2008, containing agricultural Guidance, vol. 46, issued on 10 October 2008. Law No. 90-25, dated November 18, 1990, containing the Law on Real Estate Directive, Vol. 49, promulgated on November 20, 1990.

<sup>2</sup> - Law No. 90-25, dated November 18, 1990, containing the Law on Real Estate Directive, Vol. 49, promulgated on November 20, 1990.

<sup>3</sup> - Order No. 95-26, dated 25 September 1995, amending and supplementing Act No. 90-25 on land Directive, Vol. 55, promulgated on 27 September 1995.

<sup>4</sup> - Article 48/2 of Law No. 90-25, containing the land directive, aforementioned.

unused lands, each owner of a peasant land who owns a peasant project can go to the interests of the Diwan National agricultural land for self-identification and project study.

The main objective of the measures taken under this publication is to expand the national agricultural base, as confirmed by Instruction No. 246 of March 24, 2011, directed at the governors to ensure the speedy and rigorous implementation of this ministerial publication. If approved by the Diwan, the owner of the property can benefit from a subsidized loan within 100.000.00 Ridge per hectare, and the owner can benefit from free studies prepared by the National Bureau of Rural Development Studies if it has an investment area of not more than 10 hectares. This contributes to the creation of new agricultural investors on unused land.

It should be noted that the Joint Ministerial Circular No. 108 stipulated that the beneficiary of the subsidized loan should be the owner of the property, thereby maximizing the agricultural land held by its owners without the ownership of the title deeds, thus identifying the extent of utilization and thereby reducing the amount of land exploited for agricultural purposes.

It is also considered as the direct exploitation of the agricultural property, the investment of the peasant lands owned by the common, since every owner in the common has the right to exploit the common agricultural property<sup>(1)</sup>, and the common agricultural property can be exploited by dividing whether it is a judicial division or dividing it and these The latter, in turn, is divided into two parts, as stipulated by the Algerian legislature through article 733 of the Civil Code:

-The Division of Spatial Skills: it is that each partner specializes in a section that is equivalent to its share in the common agricultural property, giving its partners the benefit of the rest of the parts, and the duration of this division is not valid for more than 50 years, if it does not require a period or expiry of the agreed period and did not receive a new agreement, was One year before renewal, and if it continues for 15 years, it will become final division unless otherwise agreed<sup>(2)</sup>.

-Divide the time period: partners can agree to take advantage of all the money that is common to each of them for a period commensurate with their share<sup>(3)</sup>.

---

<sup>1</sup> - "Every partner in the common is fully owned and may dispose of its fruits and use them so as not to harm the rights of other partners" – Article 714/1 of Order No. 75/58, containing the amended and complementary Civil Code of September 20, 1975, vol. 78 of September 30, 1975.

<sup>2</sup> - Article 733/2 of Order No. 75-58, , aforementioned

<sup>3</sup> - Article 734 of order No 75-58, aforementioned.

**B) INDIRECT EXPLOITATION OF THE PRIVATE AGRICULTURAL PROPERTY:**

The owner can submit his land to third parties in order to exploit it, which is reflected in law 90-25 by granting the possibility of exploiting the agricultural property indirectly, as the owner enters into a lease on this basis, and can submit his land as a share for the establishment of a company with others who participates with the financial resources necessary for exploitation or Offers his work and experience as a share in the company.

**1- EXPLOITATION OF PRIVATE AGRICULTURAL PROPERTY THROUGH RENT:**

Agricultural leasing was introduced as a mechanism for the investment of private agricultural property under article 53/1 of the Land Guidance Act, which provides that "the legislative provisions in place in the area of rental contracts shall be adapted as needed in order to provide for all legal forms that encourage the investment of land, in particular through Promotion of productive investments and improvement of the structure of the real estate investor ".

The lease is defined as a contract under which the tenant is able to avail himself of something for a specified period for a rent allowance, which determines in cash or any other work<sup>(1)</sup>, and the general rules of the lease specify the conditions of his judgment:

- Mutual consent
- Shop and Reason

Writing: Pursuant to article 324 bis 1 <sup>(2)</sup> and article 467 bis of the Civil Code <sup>(3)</sup>, article 53 of the Law on land guidance is particularly relevant in relation to agricultural leases, in contravention of the provisions of article 324 bis of the Civil Code, as it does not require formal registration and allows it to be concluded in the form of a customary contract, and Normal to the "private limit of the year" rule, the provisions of article 53 are applicable.

-Term of rent: which must conform to the objectives set forth in article 53/1 of the Law on real estate guidance.

---

<sup>1</sup> - Article 467 of Order No. 75-58, aforementioned.

<sup>2</sup> - Article 324 bis 1 provides that, "in addition to the contracts which the law orders to submit to a formal form, the contracts involving the transfer of property, real estate, commercial or industrial premises, the allocation of a component or shares of a company or shares in it, agricultural or commercial contracts or Industrial contracts in formal form, and the price must be paid by the public officer who released the contract ".

<sup>3</sup> - Article 467 bis states that "the lease shall be in writing and have a fixed date or otherwise void."

-Rental allowance: to be determined in accordance with the Agreement of the Parties.

## **2- EXPLOITATION OF AGRICULTURAL PROPERTY BY PRESENTING IT AS A SHARE IN A COMPANY:**

Article 416 of the Civil Code provides that "a company shall contract under which two or more natural or legal persons shall be bound to contribute to a joint activity by providing a share of work, money or cash, with the aim of sharing the profit that may result or achieving an economy or attaining a mutually beneficial economic objective, and shall bear the losses that may " The landowner may submit it as a share for the establishment of a company with others, the subject of which is the exploitation of agricultural property and the sharing of profits resulting from the establishment of this company.

## **SECTION II:**

### **EFFECTS OF NON-EXPLOITATION OF PRIVATE AGRICULTURAL PROPERTY**

The compulsory investment of agricultural property is a picture of the restrictions on private property ownership, with the positive reversal of other known restrictions in the general rules, which weigh the real estate, as the Algerian legislator made the investment of agricultural property a legal obligation of the owner Or holder <sup>(1)</sup>, which diminishes his powers over the property and restricts his freedom of use. In practice, however, there is a lack of exploitation of this type of property and, in contrast to this deficiency, the enactment of some provisions addressing the issue of untapped agricultural estates, which will be addressed by identifying what is meant by unused land (A) and the legal measures taken by the state If proven (B).

#### **A) DEFINITION OF UNUSED LAND:**

The untapped land is defined as every piece of agricultural land that is found not to be exploited by a direct another group or exploitation pattern for two consecutive seasons <sup>(2)</sup>. Article 48 of the Land Directive states that "the non-investment of agricultural land is an arbitrary act in the use of the right, given the economic importance and the social function it is vested in".

The non-exploitation of agricultural property is considered to be the abuse of the right, in view of its economic and social importance, and the arbitrariness provided for in article 48 above may be included in the first picture of the abuse

---

<sup>1</sup> - Article 14 of Law No. 08-16, containing agricultural guidance, aforementioned.

<sup>2</sup> - Article 49 of Law No. 90-25 on real Estate directive provides that "a land not invested in the concept of this Law shall be deemed to be an object of agricultural land which proves publicly that it has not exploited agricultural exploitation for at least two consecutive agricultural seasons."

in the use of the right, provided for in the general rules under article 124 bis of The Civil Code<sup>(1)</sup>, with the difference of the effect of arbitrariness, is the Civil Code for compensation to the aggrieved party, the Land Directive Act has provided for the effect of arbitrariness in article 05

**B) STATE INTERVENTION AS A MECHANISM FOR THE INVESTMENT OF PRIVATELY OWNED AGRICULTURAL PROPERTY:**

The role of the State in the preservation of agricultural property is demonstrated by the special human and material resources it has provided under the Joint Ministerial Circular No. 108 of the Ministry of the Interior and agriculture, and given the economic and social importance of agricultural land, the legislature has been given broad powers to intervene to ensure The optimum use of agricultural property, by not leaving Bora and preventing transactions that would reduce its productive capacity, under strict measures that may amount to expropriation.

**I- PROCEDURES FOR PROVING NON-EXPLOITATION:**

The state of de facto non-investment of agricultural land is evidenced by the inspections carried out by the authorized authority <sup>(2)</sup>, which is represented by a State committee appointed by a decision of the Minister of Agriculture for a period of 03 years, presided over by the Director of agrarian interests of the State <sup>(3)</sup>, with the participation of a member of state peasant chambers and member of the The people's Assembly of the state. The Committee is obliged to carry out the necessary investigations in order to prove that the agricultural land is not being effectively exploited and to prepare a case report to the competent wali and the Minister of Agriculture <sup>(4)</sup>.

The owner or holder of the agricultural property in case of proven non-exploitation of the property by the State committee is warned by a built-in message recommended with a receipt, and given a time limit for the direct exploitation, which is taken into account in determining the duration of the land

---

<sup>1</sup> - *"The arbitrary use of the right constitutes an error, especially in the following cases:*

*-If it has been intended to harm others*

*-If it is intended to obtain little benefit for the damage caused to others*

*-If it is intended to obtain an illicit benefit ".-Article 124 bis of Ordinance 75-58, containing the Civil Code, aforementioned.*

<sup>2</sup> - *Article 50 of Law No. 90-25, containing the land directive, aforementioned.*

<sup>3</sup> - *Article 01 and article 03 of Executive Decree No. 97-484, of December 15, 1997, which includes the seizure of the composition of the Special Commission as well as the procedures for proving the non-exploitation of agricultural Land, Vol. 83, promulgated on December 17, 1997, amended and supplemented.*

<sup>4</sup> - *Article 05 of Executive Decree 97-484, aforementioned.*

and the climatic conditions of the area in which it is located <sup>(1)</sup>, and In the event that the period specified by the committee expires without the owner or holder taking action to put the land under exploitation, the Committee shall make excuses for the second time with a one-year grant in order to do so <sup>(2)</sup>, and if it insists on its negative position, the Agrarian Land Settlement Bureau shall take one of the Per the land directive provided for in article 51 of the Law on real estate.

With regard to the State Committee, it is necessary to identify the bodies that may be consulted and to exclude the National Bureau of Agricultural Land, since it is illogical for the Diwan to be both a adversary and a judge

## **2- APPLICATION OF ARTICLE 51 OF LAW N° 90-25:**

The survival of agricultural land without investment after the completion of the procedures established in articles 60 and 70 of Executive Decree No. 97-484, allowing the National Bureau of Agricultural Land to apply the text of article 51 of the Law on Land directive to take one of the following measures:

### **2-A- PLACING THE LAND IN THE INVESTMENT OR RENTING IT TO AN ACCOUNT AT THE EXPENSE OF THE OWNER OR THE APPARENT HOLDER:**

The National Bureau of Agricultural Land shall ensure that the unused land is placed in the investment for the account and at the expense of the owner or holder as soon as the warning is notified, which is the procedure taken by the Diwan in case of temporary incapacity of the owner Or the winner of the land investment because of force majeure, so the scope of application of this procedure remains narrow, only if force majeure is achieved.

### **2-B- SALE OF UNUSED LAND:**

Except for temporary incapacity due to force majeure the unused land is offered for sale if it is of fertile or very fertile land <sup>(3)</sup>. In this way, the legislator has expanded the sale of agricultural land on the pretext of not exploiting it, which the cabinet can propose to buy by exercising the right of pre-emption on behalf of the state.

The sale of privately owned land is the indirect nationalization of agricultural land, resulting in the emptying of the real estate guidance law, as it came to repeal the nationalization law and the restitution of agricultural land to its original owner on the one hand, and on the other hand the state to sell private property and buy it back Through the National Bureau of Agricultural Land.

---

<sup>1</sup> - Article 6/1 of Executive Decree 97-484, aforementioned.

<sup>2</sup> - Article 07 of Executive Decree 97-484, aforementioned.

<sup>3</sup> - Article 52 of Act No. 90-25, on Land directive, aforementioned.

The dispossession of private owners, whatever their nature, is contrary to article 64 of the Algerian Constitution, which has established the constitutional principle that "private property is guaranteed". As the supreme law of the country, it is not permissible to enact provisions contrary to the principles it has established, in the form of article 51 of the Land Directive 90-25, which provides for provisions that would deprive persons of their private property.

**CONCLUSION:**

From the foregoing, it can be said that the real estate guidance law came with a new concept of exploiting the privately owned agricultural property, opening the way for indirect exploitation through rent and the company in order to achieve the best investment of the agricultural property, to devote to the compulsory exploitation, which remains a positive constraint that will achieve The public interest and at the same time benefit the owner who can benefit from a subsidized loan to carry out his agricultural project, and it contributes to the protection of the agricultural property which in Algeria is a physical encroachment at the expense of agricultural land in the face of the state's complacency in protecting it, despite being a strategic alternative In the long run in the face of the oil rents crisis, and its connection with achieving food sufficiency and thus preserving the sovereignty of the state, "those who do not have food do not have their own decision."

The theory of arbitrariness in the use of the right to law 90-25 and known in the Civil Code has been incorporated.

The owner who refuses to exploit his agricultural land for agricultural purposes is considered to be the subject of an abusive use of the right, with a different penalty, if the effect of compensating the aggrieved party in accordance with the provisions of article 124 bis of the Civil Code, its effect in law 90-25 is to apply the measures provided for In article 51 against an abusive person, which is extremely dangerous, as it may amount to dispossession.

We therefore conclude through this study:

-The unconstitutionality of article 51 of the Land directive 90-25 for fear of the text of article 64 of the Algerian Constitution, which is devoted to ensuring private property as a constitutional principle.

-The need to repeal article 51 of the Land directive, and to subject the effects of the non-exploitation of private agricultural property to general rules by obliging the person abstaining from exploiting it to pay appropriate compensation to the State on the basis of the theory of abuse of right, given the economic and social function of the agricultural property, thereby On the one hand, the principles of the Constitution are respected and, on the other hand, people are being exploited for their property in any of the ways provided for in law 90-25 under their civil liability.



**BIBLIOGRAPHY:**

**A) LEGAL TEXTS:**

- 1- *Constitution of the People's Democratic Republic of Algeria, JORADP No. 76 of December 08, 1996, as amended by Law 16-01 of March 06, 2016, JORADP No. 14 of March 17, 2016.*
- 2- *Order No. 75/58, containing the amended and complementary Civil Code of September 20, 1975, vol. 78 of September 30, 1975.*
- 3- *Law No. 90-25, dated November 18, 1990, containing the Law on Real Estate Directive, Vol. 49, promulgated on November 20, 1990.*
- 4- *Order No. 95-26, dated 25 September 1995, amending and supplementing Act No. 90-25 on land Directive, Vol. 55, promulgated on 27 September 1995.*
- 5- *Act No. 08-16, of 30 December 2008, containing agricultural Guidance, vol. 46, issued on 10 October 2008.*

**B) EXECUTIVE DECREES:**

- 6- *Executive Decree No. 97-484, of December 15, 1997, which includes the seizure of the composition of the Special Commission as well as the procedures for proving the non-exploitation of agricultural Land, Vol. 83, promulgated on December 17, 1997, amended and supplemented.*

