Contemporary Readings in Law and Social Justice
ISSN: 1948-9137, e-ISSN: 2162-2752
Vol 17 (01), 2025
pp. 1084 – 1095

The Social and Economic Dimension of Employment Contracts for Public National Property in Algeria.

Dr. Faiza Fekir[1]*

[1]Lecturer Class A, specialising in Contracts and Liability, Lounici Ali University, Blida 02, Algeria.

fayzafekir313@gmail.com

Abstract: Due to the importance of real estate belonging to the public domain, the legislator has provided it with exceptional protection, particularly with regard to its exploitation. The principle of the non-disposability of public national property is noteworthy, as it prohibits any handling, prescription or encroachment, thereby ensuring protection from administrative and individual interference. This guarantees effective protection for such real estate.

The Algerian legislator has confirmed the possibility of temporarily using these properties, including both real and movable public national properties, with this exception. This temporary use can take various forms, reflecting the state's role in establishing regulations and restrictions for utilising this public property. This promotes public service and ensures continued benefit from public property. This promotes social and economic development for citizens.

Thus, the state seeks to enter into administrative contracts that inherently carry a social and economic dimension for managing these properties. The state relies on concession contracts as a general rule for exploitation, or unilateral administrative licences as an exception. This approach respects the constitutionally enshrined right of citizens to utilise and benefit from such properties.

Keywords: Public national property, temporary use, public benefit, administrative contracts, administrative licences, concession contract.

Received: 20/04/2024 **Accepted: 01/09/2025** **Published: 19/10/2025**

Introduction

The Algerian legislator has demonstrated a clear interest in the real estate sector, particularly with regard to the regulation of property ownership in its various forms. The Algerian Constitution recognises three categories of ownership: national property, private property and endowment property. This mirrors the classification established by Law 90-25 regarding real estate guidance[1].

Following the distinction made within national properties by Law 90-30, national properties are divided into public and private categories.[2] The legal framework for national properties in Algeria has evolved alongside the political and economic systems adopted by the state since colonisation. During this period, national properties experienced three phases. The first phase began immediately after the country gained independence and freedom, prior to the establishment of a legislative system, when properties were divided into public and private. Jurisprudence commonly accepts that public properties primarily serve the public good, while private properties primarily generate profit and provide the state with financial resources.

As a necessary step for the implementation of socialism, Law No. 84/16 was enacted on 30 June 1984 as the first specific law on national properties. It introduced two terms that are more ideological than legal:

‘national property’ and ‘national group’. The former was used to unify the two types of national ownership, while the latter referred to the state, provinces and municipalities as owners of public property.

As a result of the negative effects of Law 84/16, it was abolished under the Constitution in 1989, which officially ended the socialist system, particularly in Articles 17 and 18 that reinforced the principle of liberalism[3]. Article 17 defined the scope of ownership, which includes a set of properties and rights, both movable and immovable, possessed by the state and its local communities, along with activities deemed strategic and vital for the national group. Additionally, Article 18 of the same constitution reinstated the concept of distinguishing between the state’s public and private properties and affirmed local communities’ right to ownership. The 1989 Constitution also paved the way for the enactment of Law 90-30 on 1 December 1990, which further established the duality of national properties in Articles 17, 12, 3 and 2, specifying the contents of each category. The 1996 Constitution followed this approach, too, reaffirming the principle of duality and distinction between the public and private domains according to Article 18.

Thus, national properties are considered essential for carrying out various functions, particularly in terms of achieving social goals and promoting social and economic development. The state enters into administrative contracts with a social and economic dimension to manage these properties, generally relying on concession contracts and, in exceptional cases, unilateral administrative licences. The legislator has established a set of rules for the use of these properties while respecting the constitutionally enshrined rights of citizens.

This brings us to the following question:

‘Does granting public status to national properties confer an absolute administrative real right arising from contracts for their use, or are there regulations and restrictions on the use of this public national property that ensure the promotion of public service and continued benefit from public property, thereby achieving social and economic development for citizens?’

We will address this issue according to the following plan:

First Axis: The Legal Status of Public National Properties

1. Legislative definition of public national properties.

2. Jurisprudential definition of the contents of public national properties.

Second Axis: The Social Dimension in the Use of Public National Properties

1. Collective use of public national properties.

2. Indirect use of public national properties.

Third Axis: The Economic Dimension of Contracts for the Use of Public National Properties

1. Administrative licensing for the use of public property.

2. Contractual use for managing public national property.

Fourth Axis: The Employment Contract between Public Benefit and Property Valuation

1. The administrative real right arising from the employment agreement.

2. Valuation of the exploitation of public national property.

First Axis: The Legal Status of Public National Properties

1. Legislative definition of public national properties.

The legal status of national properties under Algerian law has evolved in line with the political systems adopted by the state. Article 2 of the law defines public national properties as follows: 'National properties include all properties and rights, both movable and immovable, held by the state and its regional communities in the form of public or private ownership.' These properties consist of:

Public and private properties belonging to the state;

Public and private properties belonging to the province.

Public and private national properties belonging to the municipality".

From this text, it can be inferred that the Algerian legislator has retained the term 'national properties', thereby emphasising the principle of territoriality of ownership[4]. Public national properties are defined in Article 12 of Law 90-30, also known as the National Property Law. Public national properties consist of rights and properties, both movable and immovable, that are used by everyone (either directly or through a public facility), meaning they are designated for public use. These properties are subject to the triple prohibition rule: non-disposability, non-prescriptability and non-attachment[5].

Additionally, the Algerian legislator has compiled a list categorising some public national properties into two types: natural and artificial. Article 688 of the Civil Code states: 'The state's properties are the real estate and movable properties that are designated, either in fact or by legal text, for collective use, public interest, administration, public institutions or bodies, self-managed units or cooperatives within the scope of the agricultural revolution.[6]'

The term 'designated for public interest' is used, whereas the French text refers to 'general use'. As the term 'public interest' encompasses designation for general use as well as for administration or public institutions, it would be more accurate to supplement the Arabic text by adding properties designated for general public use, thereby providing a comprehensive overview of state assets.

Thus, the legislator relied on the idea of designation to define public properties, attempting to establish that the designation of public property for a public facility proves state ownership of that property and confers its public status[7]. However, the legislator limited this term to properties owned by the state, failing to mention other local communities (such as provinces and municipalities). This renders the status of these local communities unclear. Furthermore, the principle of unity of state properties and the issuance of the Civil Code mean that there is no distinction between public and private state properties.

Article 689 of the Civil Code stipulates the legal regime governing state properties, providing them with special protection by adopting the principles of non-disposability, non-attachment and non-acquisition by prescription[8].

2. Jurisprudential definition of the contents of public national properties:

Legal scholars disagree about the legal nature of public ownership. Some deny public property ownership status, arguing that ownership rights encompass disposal, use and exploitation rights, and that the state does not have absolute rights over public property as it is non-disposable, non-assignable and non-attachable. In other words, the state cannot dispose of it. However, the evolution of public properties has surpassed the concept of absolute rights. Instead, they are defined by their characteristics and are limited by the triple prohibition rule[9]. This rule does not apply to private national properties, which can be disposed of through various legal transactions, such as sale, exchange, and contracting.

In this context, Algerian law takes a traditional approach to defining public properties, addressing them specifically rather than exhaustively and relying on the principle of exclusive enumeration[10]. The old school, including the French jurist Décroix, asserted that public property consists of land designated for public use which, by their nature, cannot be subject to private ownership. Thus, designation is the basis for distinguishing public ownership in modern jurisprudence, which adopts the notion of publicness as inherent to public facilities. Another group, including professors Salay and Ruy, argued that public properties are only those designated for the direct benefit of the public, such as roads and public parks.

However, direct designation is not a condition of public property. For example, the public may be prohibited from accessing certain public properties due to their nature or designated purposes, such as Ministry of National Defence properties[11].

In light of this debate, the jurist Marcel Wallein considered public properties to be those necessary for meeting public needs. Law 90-25 on national properties, dated 18 November 1990, confirmed that national properties consist of a hierarchy of real properties and real rights owned by the state and its local communities. These properties are classified as national properties and include public and private properties belonging to the state, provinces and municipalities.

Law 90-30 on national properties defines the components, methods of formation, management and protection of these properties, categorising them as follows:

1. Public national properties.

2. Private national properties.

Article 26 of Law 90-30, as amended, outlines the methods for acquiring national properties and states that they can be acquired through legal means or natural processes. In order for real estate to acquire public status, the administration must undertake specific procedures relating to the inclusion of properties within the category of public national properties, as well as the process of designation for public benefit. These stipulated mechanisms are important because they provide a legal guarantee for the protection of such real estate. We will therefore clarify the procedures for inclusion and designation as mechanisms for protecting real estate belonging to public national properties[12].

1. Procedures for inclusion in public national properties:

This involves the intervention of the relevant administrative authority, which takes technical and administrative measures including boundary designation, classification and layout. The process varies depending on the nature of the property[13], with a distinction being made between natural and artificial public national properties.

A. Inclusion in Natural Public National Properties:

Inclusion in these properties requires a boundary designation method. This is an administrative procedure whereby the relevant authority examines the boundaries of the natural national real estate in question. It is also a declaratory procedure, as the administrative decision is limited to identifying the natural boundaries established by natural and geographical phenomena. This ensures protection for public real estate and adjacent properties. The boundary designation process varies according to the nature of the property in question[14]. However, boundary verification requires an administrative investigation conducted by specialised administrative services in irrigation and state property management[15].

B. Inclusion in Artificial Public National Properties:

Article 27 of Law 90-30 concerning national properties states that inclusion in artificial public national properties is based on the layout of roads and transport systems, and on the classification of other properties according to the nature of their operations.

B.1 Layout

This procedure clarifies the boundaries of the road and specifies the dividing lines between public roads and adjacent properties. It outlines the extent of the public road and, consequently, the point at which private properties do not extend into the public road area. The layout process requires technical procedures and the identification of geographical landmarks, leading to the issuance of a decision that designates the boundaries. A general layout plan is then prepared, along with an individual layout plan that is declaratory in nature. This plan shows the boundaries of the road and the limits of adjacent properties, in contrast to the general layout plan. The layout is based on a decision from the relevant regional governor and requires a public procedure that aligns with graphic representations of urban planning and development, taking into account the components of these artificial properties.

B.2 Classification

Unlike the layout process, classification is a legal act or factual situation through which a property is categorised as part of the public estate. The state must acquire these properties through private law methods, such as purchase, exchange or possession, or public law methods, such as expropriation. Once acquired, the property is prepared for its designated function[16]. This is done by a decision from the Minister of Finance or the regionally competent governor, based on a proposal from the relevant administration after consultation with the responsible official of national property management in the region, or based on a proposal from the relevant service following consultation. The inclusion of properties belonging to local communities is carried out in accordance with the provisions of municipal and provincial laws.

2. Designation as a Mechanism for Protection:

This mechanism grants real estate public status, as demonstrated by the legislator's stance that this should be done by the state for the benefit of industrial and commercial institutions, research and development centres, and independent administrative bodies under the title of equipment. It should be noted that designated properties fall under the category of real estate belonging to artificial public national properties[17].

The governor issues the designation decision if it concerns decentralised services, public institutions and local public bodies present in the province. Otherwise, the president of the municipal council issues the decision after deliberation. The designation can be revoked if the designated property no longer serves its designated purpose. Clearly, all these procedures aim to protect the designated properties.

Second Axis: The Social Dimension in the Use of Public National Properties

The rules governing the use and exploitation of public national properties differ from those for private national properties. The Algerian legislator has established a set of regulations for their use under Law 90-30, which was amended by Law 08-14, and Executive Decree No. 12-427, which repealed Decree 91-254. These properties are non-transferable and belong to the national community, constituting part of its sovereignty.

Therefore, the legislator has imposed a series of restrictions on their use, necessitating the definition of the general rule of collective use of public national properties, while the private use of public properties occurs through administrative contracts granted by the state, either unilaterally or bilaterally, in the form of administrative licences or concession contracts[18].

1. Collective Use of Public National Properties

The legal basis for this use can be found in Article 61 of the National Properties Law, as well as in Articles 59, 60 and 63 of Decree 12-427. These texts define direct use of public national properties as use that all citizens can engage in under the same conditions and without mediation. This use is based on the principles set out in Article 62, paragraph 2 of Law 90-30: 'The collective use of public national properties exercised by the public is subject to the principles of freedom, equality and gratuity, taking into account certain exceptional licences.[19]'

A. Principle of Freedom:

This means that all citizens have equal rights to use public property without the need for a contract or permission from the administration. However, this right is subject to several regulations.

- The use must be ordinary according to the purpose for which the public property was designated.

- All citizens must comply with any changes to the licence.

The administration has the right to protect public order in its three dimensions: public security, public health and public tranquility.

- Public properties must be preserved according to their intended use.

B. Principle of Equality:

This principle is enshrined in the Constitution, as set out in Article 37 of Presidential Decree 20-442. This includes a constitutional amendment that states: 'All citizens are equal before the law.' The principle of equality in the use of national properties is further emphasised in Articles 63(4) and 68 of Decree 12-427 concerning the management and administration of national properties.

C. Principle of Gratuitousness:

According to Article 62(2) of Law 90-30 concerning national properties, the final paragraph of Article 64 and Article 67 of Decree 12-427 relating to the management and administration of national properties, the principle of public use of national property is freedom of use. Large fees are not required for its use; rather, a nominal fee may apply, making it essentially free, except for some exceptional licences that may incur a charge.

2. Indirect Use of Public National Properties:

While management of national properties is primarily granted to the state alone, exceptions to this principle are stated in Article 60(2) of Decree 12-427 concerning the management and administration of public properties. Indirect use refers to the use of public national properties by legal entities governed by public or private law, or natural persons appointed by the administrative authority for specific uses, through a licence or administrative contract. This is also supported by Article 61, paragraph 1 of Law 90-30 concerning national properties, where use occurs through a public service and management takes the form of either a concession contract or an agency contract[20].

1. Use of public national property through a public service under a concession contract:

Public national property is exploited and managed by a public service under a concession contract, which is provided by a state-affiliated service. This is done according to the concession format, whereby the administration grants the public service the right to utilise public property in order to provide a public service. Examples include:

- Allocating national public property to the National Ports Authority to establish the facilities necessary for carrying out its tasks as the managing body of public port services.

- Sonelgaz occupying public property under a concession contract.

- Airport management institutions operating under a concession contract to develop and exploit essential facilities and public airport properties.

To ensure the provision of public services and the use of these properties for this purpose, the public service must adhere to the following, as stated in Article 79 of Executive Decree 12-427:

- undertake all necessary works to ensure the exploitation of public property in accordance with its designated purpose;

The right of the public service to grant licences and contracts for the occupation of spaces.

- The right of the public service to collect revenues and fees resulting from the exploitation of public national property.

- The right to claim compensation from the public entity if its right to use public property is infringed or its allocation altered.

2. Use of Public National Property through Direct Agency:

The entity that owns the public property places it at the disposal of one of its own services or an external service, in order to provide a public service, under a concession contract[21].

The agency can take two forms:

A. Internal direct agency:

This occurs through a concession contract between the owning entity and one of its affiliated services. In this case, there are no issues regarding revenues or maintenance, as the owner and the allocated entity are the same.

B. External Direct Agency:

In this case, public property is made available to a public figure, public body or research centre for tasks undertaken by the public service or in an area of public benefit belonging to the owning entity.

Whether through a concession or direct agency, the rights and obligations of the owner of the public property and the benefiting entity are significant in this use of public property by the public service[22]. The entity to which the public property is allocated has full authority to use and exploit it, while the owning entity retains the right to oversee its use.

Third Axis: The Economic Dimension of the Concession of Public National Properties

Public national properties are closely linked to the state's land, economic and financial policies. They represent a significant financial resource for the public treasury and play a vital role in providing land for various development projects, which are funded by both domestic and foreign investments.

Using public national property strikes a balance between the public aspect, ensuring the social right of the public to benefit from it, and the primary purpose of utilising national properties. These properties are governed by the well-known global principles of freedom, equality and gratuity. Generally, there are no restrictions on the use of public national property, and its use and management have an investment and developmental dimension.

The private use of public properties is temporary and can be revoked for the benefit of the public or to maintain public order[23].

1. Administrative Licence for the Use of Public Property:

This refers to the specific use of public property granted by the administration through a unilateral administrative contract, as represented by licences for parking and roadway use. Management of this is carried out by individuals specified in a decision from the granting administration. This decision grants these individuals the right to use and exploit a portion of public property. We will examine this in relation to licences for parking and roadway use[24].

1. Licence for parking:

According to Articles 24 and 70 of Executive Decree No. 12-427, which concern the management and administration of public state properties, the administration intervenes to grant a licence to any individual (whether natural or legal) for a specified period and in a particular form. This is defined in Article 71 of Decree 12-427 as follows: 'A parking licence authorises the occupation of a piece of public property for private use without the construction of any permanent structures.' Thus, it is a temporary licence and use of public property does not require permanent connection to the property; there is no risk in granting it for public property. The licence is issued by the governor if it is within national or provincial roadways outside residential areas, by the competent administrative authority or the authority responsible for traffic safety through the national properties facility, or by the president of the municipal council if it is within national and provincial roadways.

2. Licence for Road Use:

This licence grants the temporary right to occupy a portion of public national property from the public road, provided that its basis has been altered and public facilities have been established. It is defined in Article 72 of Executive Decree 12-427, which sets out the conditions for managing and administering state-owned private and public property and regulates its modalities. Examples include granting licences to companies to lay railway lines over public roads, drill for oil and gas, extract minerals and connect water supplies.

Thus, the road licence is an administrative decision made by the relevant authority, but its application is set out in specific legal texts[25]. It is granted according to the area of the public property in question. If the public property is managed by a specific authority, the road licence is issued by the authority responsible for its management. Alternatively, it may be granted by the president of the municipal council or the governor if the management of the public property facility is not under the jurisdiction of another administrative authority. The minister responsible for managing the relevant national properties may issue the licence when the intended works or authorised activities fall within the jurisdiction of these provinces.

Granting a road licence is not a standard administrative act and is subject to certain restrictions. Use must align with the designated purpose, not cause harm to the property and not infringe the rights of other users.

The administration is not granted discretionary power to issue the licence, but is governed by specific terms of reference that set out the conditions for the use and management of the property. These terms do not detract from the property's individual nature, as they include technical or legal conditions. Fees in the form of royalties are imposed, resulting in rights and obligations.

2. Contractual Use for Managing Public National Property:

This refers to specific use through a special administrative contract, grounded in Article 63 of Law 90-30 concerning national properties, as amended and supplemented, which states: "...private use may take the form of either a license or a contractual nature." Additionally, Article 75 of Executive Decree 12-427 states: "Public properties allocated for common use by the public can be used privately based on a contract that includes granting a concession for the use of public properties."

Private use is considered a license that falls within the realm of contractual relationships where conditions for individuals to occupy a portion of public properties are defined. This use is established through a contract between the administration and individuals, subject to the provisions governing administrative contracts.

The state intervenes in granting this licence, taking into account the economic dimension of managing public properties, and the role of real estate in achieving economic development, by providing individuals with opportunities to exploit it for the public good.

1. Concession Contract for the Use of Public National Property:

The recent amendment to Law 90-30 concerning national properties in 2008 provided a detailed definition of the concession contract with regard to various aspects of national properties[26]. Article 64 bis defines this contract as follows: 'The granting of a concession for the use of public national property, as stipulated in this contract, allows the public entity that owns the property — referred to as the authority with the concession rights — to exploit the property, or to finance, build or operate a public facility for public services, for a specified duration.' At the end of this period, the facility or equipment subject to the concession returns to the authority with the concession rights." The terms of reference related to the granting of the concession specify the particular conditions that must be met to fulfil the requirements of public service.[27]'

Thus, the elements of the concession contract are as follows:

1. The public administration grants a natural or legal person the right to exploit public property, or to finance, build or operate a public facility for public service purposes.

2. The concession is temporary and does not exceed 65 years.

3. Both the granting state and the beneficiary (whether a natural or legal person) have rights and obligations.

2. Model Terms of Reference:

The concession contract for managing or exploiting national properties in Algeria is considered an administrative contract, accompanied by model terms of reference which specify the obligations of the granting administration and the beneficiary of the concession contract.

A. Obligations of the concessionaire:

The concessionaire is subject to a set of obligations defined in Article 3 of the terms of reference attached to Executive Decree 12-427, which concern the management of public or private national properties.

The concession contract gives rise to mutual financial obligations involving the expenditure of funds to establish the public facility in accordance with the agreed regulatory and contractual conditions. Once operational, the concessionaire manages and exploits the facility based on the terms of the concession contract. This applies to public facilities and, since the concession contract is binding on both parties, the concessionaire must receive financial compensation corresponding to the expenditure incurred in establishing the project. This compensation is generated through the exploitation of the facility and the collection of fees from users until the end of the contract period, at which point the concessionaire will have recovered their expenditure and expected profits. At this point, the facility will return to the granting authority.

In cases where the concession involves the private use of public national property, or the concession of private properties owned by the state, the financial obligation is for the concessionaire to pay annual fees to the granting authority for the duration of the contract, as stipulated in the terms of reference attached to the concession contract[28].

Fourth Axis: The Special Use Contract between Public Benefit and Property Valuation

The private use of public national properties establishes a real right, whether through a roadway licence or by concession. To determine the nature of this right in relation to original and ancillary real rights, one must consider the applications granted to the holder by the use document and the validity of the right as collateral for personal rights[29].

First: The administrative real right arising from the use document:

This allows the holder to establish facilities on the property in exchange for bank loans, with the bank acting as a privileged creditor[30].

We have previously studied the triple prohibition principle regarding public national properties (non-transferability, prescription and non-attachment of public property). Therefore, it is necessary to define the nature of this administrative real right and how it enables the beneficiary to act in relation to it, including pledging or transferring it to heirs. Is this not a form of special ownership? This is based on the provisions of Article 69 bis/2, which grants the owner of facilities, buildings and real estate-related equipment the ability to transfer or convert them within the context of property transfers between living persons, or in the event of mergers, integrations or company separations, all within the duration of the private use document.

From this, we can infer that the holder of the private use document owns the usufruct right and is therefore entitled to establish ancillary real rights over their property in accordance with the general rules. In this context, we can question the extent to which the licence holder can create a legal mortgage on the usufruct right they possess under the specific provisions of Article 69 bis, paragraph 3, mentioned earlier. However, this real right is subject to the following conditions:

1. The ancillary real right must be represented by a mortgage; however, the legislator has not specified the type of mortgage required[31].

2. The mortgage must secure loans obtained by the holder of the real right for the purpose of transferring, executing, amending or expanding their investment in appended public national property subject to special use licensing.

3. Although the usufruct right is inherently transferable to heirs, it only serves as a special guarantee for financiers; ordinary creditors cannot initiate enforcement proceedings.

4. The ancillary real right (mortgage) expires when the document expires, adding this method to the usual modes of extinction[32].

Second: Valuation of the Exploitation of Public National Property:

The amendment to the Law on National Properties and the addition of a new section to Law 08-14, specifically Article 69 bis1, emphasises the valuation of public real estate by strengthening the legal status of property occupants, thereby encouraging investment in infrastructure to stimulate the economy through real estate. The consolidation of real rights arising from the private use document strikes a balance between valuing these properties and the necessity of preserving them[33].

In addition to the previously discussed conditions for establishing real rights, there are further conditions for mortgaging these administrative rights to financial entities that fund projects on the real estate. This enables the holder of the document to obtain financing in the form of loans from privileged banks.

According to Algerian law, this right is an administrative real right (as stipulated in Article 69 bis1), which does not confer ownership rights on the holder of the private use document, but rather indicates that they have the powers and obligations of an owner. Thus, the real right referred to in this context may be an administrative real right that grants certain property rights, necessitating the specification of financing mechanisms.

This raises questions regarding the legal nature of this emerging real right, particularly given the lack of clarity from the Algerian legislator on how it compares to lease agreements or agency relationships.

Conclusion:

Real estate is a source of wealth and a driver of economic development. Our study has shown that public national properties are exploited through two types of use document: the unilateral administrative contract, represented by the roadway licence; and the bilateral administrative contract, represented by the concession for implementing investment projects. These documents grant their holders an administrative real right, enabling them to obtain financing from financial entities that are considered privileged creditors. This emphasises the state's role in achieving social and economic development through its administrative contracts for the exploitation of public national property.

In reinforcing public real estate and protecting its principles, the Algerian legislator has relied on the criterion of its allocation for public benefit. Granting it to individuals to manage carries a social and economic dimension. Thus, the contract for the use of public properties strikes a balance between achieving public benefit and valuing public property, with exploitation granted according to the administrative conditions set out in the terms of reference model. This is the optimal solution for achieving economic development. The legislator has sought to regulate the process of granting these contracts to ensure maximum protection, and has tried to establish rules for managing these properties to guarantee their exploitation and fulfil their role in driving the national economy. Therefore, the following proposals should be considered:

- Set up a comprehensive protection system for these properties, starting with the authorities and procedures responsible for granting contracts on behalf of the state.

- Monitor these properties and strictly oversee their management and exploitation.

Enhance the administrative system for national properties by introducing a digital system for granting electronic use contracts.

- Reassess and reformulate the legislative framework to align it with current developments, closing legal gaps to provide optimal solutions to these issues.

- Reevaluate the identification card system for properties to protect them from corrupt management and allocation to undeserving individuals.

- Train employees responsible for managing and administering these properties.

- Ensure a complete understanding of this right, defining its legal nature as either a lease or an agency, in order to regulate financing operations.

Footnotes:

[1]- 1. Article 18 of the 1989 Constitution, as well as Article 23 of Law 90-25, dated 18 November 1990. This includes the Law on Land Orientation (Official Gazette No. 49, published 18 November 1990), amended and supplemented by Order 95-26, dated 25 September 1995 (Official Gazette No. 55, published 1995).

[2]- Law 90-30 of 1 December 1990 concerning national properties (Official Gazette No. 52 of 2 December 1990), amended and supplemented by Law 08-14 of 2 July 2008 (Official Gazette No. 44 of 3 August 2008).

[3]- The 1996 Constitution, issued by Presidential Decree No. 96-439 on 7 December 1996 (Official Gazette No. 76, published on 8 December 1996), amended by Law No. 02-03 on 10 April 2002 (Official Gazette No. 25, published on 14 April 2002), amended by Law No. 08-19 on 15 November 2008 (Official Gazette No. 68), amended by Law No. 01-16 on 6 March 2016 (Official Gazette No. 14, published on 7 March 2016).

[4]- Massoud Gharab, Real Estate Ownership in Algeria, Dar Al-Awtan for Printing, Publishing and Distribution, Algeria, 2012, p. 105.

[5]- Hanan Messaoui, 'Distinguishing Between State Properties (Public Domain, Private Domain)', Master's Thesis in Public Law, Faculty of Law, Tlemcen, 2005, p. 23.

[6]- Order 75-58, dated 26 September 1975, concerning the Civil Code (Official Gazette No. 78, published 30 September 1975), amended and supplemented.

[7]- Massoud Gharab, Previous Reference, p. 69.

[8]- Hanan Messaoui, Previous Reference, p. 43.

[9]- Mohamed Mostafa Zarbani, 'Protection of National Properties in the Face of Economic and Social Challenges', Local Studies in Law and Politics, No. 4, June 2016, p. 365.

[10]- See: Suleiman Tamawi, Principles of Administrative Law: A Comparative Study, Book Three: Public Administration Funds and Their Privileges, 1973 edition, Dar Al-Fikr Al-Arabi, Cairo.

[11]- Fathi Al-Sukari, 'The Evolution of the Theory of Public State Properties and Their Protection', Tunisian Journal of Public Administration, No. 20, 1996, p. 12.

[12]- Public national properties are divided into natural and artificial categories; see Articles 14–16 of Law 90–30, as amended and supplemented.

[13]- See Article 27 of Law 90-30, as amended and supplemented.

[14]- The specific boundaries for the marine domain and public water properties are yet to be determined.

[15]- Please refer to Articles 17 to 23 of Executive Decree No. 12-427, dated 16 December 2012. These articles specify the conditions and modalities for managing and administering public and private properties belonging to the state. The decree was published in Official Gazette No. 69 on 19 December 2012.

[16]- See Article 31 of Law 90-30 concerning national properties, as amended and supplemented.

[17]- Leila Zarouki and Omar Hamdi Pasha, Real Estate Disputes, Dar Houma, Algeria, 2015, p. 108.
[18]- Ghazi, Khadija and Al-Sadiq, Zarifi, 'Methods of Using Public National Properties in Algerian Legislation', Journal of Knowledge, Vol. 16, No. 1, June 2021, p. 43.
[19]- This principle has exceptions related to public interest, as set out in Article 68, paragraph 3 of Decree 12-427 concerning the management and administration of national properties.
[20]- Maïouf Othman, 'Protection of State-Owned Real Properties', Master's Thesis in Law, Branch of Administrative Dispute Law, Faculty of Law and Political Science, Mouloud Mameri University, Tizi Ouzou, 2016, p. 155.
[21]- Amour Yahiaoui, Theory of Public Funds, Dar Houma, Algeria, 2002, p. 95.
[22]- Maïouf Othman, 'Previous Reference', p. 158.
[23]- Article 7 of Executive Decree No. 12-427, which concerns the conditions for managing and administering public and private state-owned properties and regulates the modalities thereof.
[24]- We exclude the parking licence from the study and in-depth discussion of the emerging real right because it does not grant its holder a real right that can be mortgaged to obtain financing loans. The exception to this is the roadway licence, under which the beneficiary can establish facilities on the real estate that can then be financed through bank loans.
[25]- The Law on Mining Activities; the law concerning the exploration, research, exploitation and transportation of hydrocarbons by pipelines; the new Mining Law; and the Law on Postal and Telecommunications Services.
[26]- Hanan Messaoui, 'Previous Reference', p. 33.
[27]- Sultan Abdel Azim, Management and Administration of National Properties in Algerian Legislation, Dar Al-Khalduniya, Algeria, p. 299.
[28]- In this way, the right to the facilities and buildings constructed on appended public property arises, as guaranteed by the recent amendment to Law 08-14, which amends and supplements Law 90-30 concerning national properties. This is stated in the repeated section titled 'Private Use Contract Establishing Real Rights in the Management of Public Properties'.
[29]- Maïouf Othman, Previous Reference, p. 160.
[30]- Article 69-03 of Law 90-30, as amended and supplemented by Law 09-14 concerning national properties, allows for the mortgaging of the administrative real right. This is a special type of legal mortgage in favour of the bank financing the project to establish the facilities.
[31]- This mortgage is a special type of legal mortgage because the mortgagor does not own the property, but holds an administrative real right. Thus, the mortgage expires when the document expires.
[32]- Sultan Abdel Azim, Previous Reference, p. 103.
[33]- In the legislative recognition of real rights over public properties, two phases are involved: the prohibition phase, followed by the recognition phase, during which the conditions for the establishment of these rights are determined.