

Expropriation in the Public Interest for the Construction of New Cities

Mecheri Radia¹, Hamidani Salim²

¹Environmental Legal Studies Laboratory, University 8 Mai 1945 Guelma (Algeria).

²Environmental Legal Studies Laboratory, University 8 Mai 1945 Guelma (Algeria).

The Author's E-mail: mecheri.radia@univ-guelma.dz¹,
hamidani.salim@univ-guelma.dz²

Received: 05/2024

Published: 11/2024

Abstract:

Expropriation in the public interest is an exceptional measure by which the State seeks to establish projects of public interest while guaranteeing the fundamental rights enshrined in the Constitution. In light of the State's increasing use of expropriation to establish major strategic projects aimed at comprehensive economic and social development, as well as the expansion of the infrastructure base - in particular the construction of new cities - the Expropriation Law No. 91/11 was significantly amended in 2005 in relation to the introduction of special procedures for the transfer of property, which differ from the normal procedures in several respects. This raises the question of the extent to which these procedures conflict with the legal and constitutional guarantees of the right to private property.

Keywords: New cities, Expropriation for public benefit as major projects with national and strategic dimensions, Infrastructure.

INTRODUCTION

The emergence of new cities was a response to high population densities in large cities, increasing infrastructure problems, significant housing shortages in large urban areas and a lack of services. This initiative aims to reduce population density, provide better services and attract economic activities concentrated in large urban centres. Given the importance of new cities as a crucial element in the dynamics of urban and regional development in many countries, especially those on a growth path such as Algeria, a new urban strategy has been adopted to improve the effectiveness of urban planning, keep pace with development and meet the challenges of sustainable development.

Given the importance of new cities, Algeria hastened to draw up a plan for their establishment in specific areas. To achieve this goal, the state relied on land resources, some of which belong to public entities. However, there are times when it may be necessary to expropriate private property for public benefit in order to establish new cities.

Expropriation in the public interest involves the compulsory acquisition of property from its owners in order to carry out a project in the public interest. It is a mechanism by which the administration acquires property rights from owners in order to achieve public benefit and create a property reserve. This can only be achieved through legislation and in accordance with procedures, guarantees and fair compensation. This process follows the failure of the administration's efforts to acquire these assets amicably. The Algerian legislature has given the administration broad powers to determine the public interest and its effectiveness, but these powers are not unrestricted; they are bound by legal and judicial guarantees. Given the state's need for land resources, it resorts to expropriation in order to carry out operations of public interest and implement major strategic projects, as well as to develop the infrastructure base, particularly for the construction of new towns. This need has required the establishment of special expropriation procedures, especially in light of the 2005 amendment, within the framework of infrastructure development and major national and strategic projects. This has led to these procedures being considered as special, differing in

several respects from ordinary expropriation procedures, which means that the legislator has created an exception to the exception.

This study raises the question of what are the specific characteristics of public expropriation procedures for the construction of new cities, given that they involve infrastructure and major national projects with a strategic dimension. Furthermore, do these specific characteristics of public expropriation procedures in new cities pose a threat to the legal guarantees of private property owners?

In order to address this question, we have adopted an analytical approach that involves the analysis of legal and regulatory texts, in particular the law on expropriation for public benefit, which has established these specific procedures. The aim is to identify the aspects of this specificity and to study its various legal implications, following a descriptive method when discussing certain definitions related to the subject.

Chapter One: The Specificity of Expropriation Procedures in the Public Interest for the Construction of New Cities

The State's increasing reliance on expropriation procedures to carry out large-scale projects within the framework of comprehensive economic development has led the legislator to provide specific procedures for certain types of projects following the amendments to the Law on Expropriation for Public Benefit in 2005. This concerns the establishment of special expropriation procedures for the implementation of infrastructure and major projects with a national and strategic dimension, aimed at accelerating the completion of projects and avoiding delays caused by the usual expropriation procedures. New provisions have been introduced as exceptional measures compared to the expropriation procedures defined in Law 91/11 and Decree 93-186¹.

Section One: Considering New Cities as major projects with a national and strategic dimension

¹- Decree 93/186 dated July 27, 1993, specifies the modalities for the implementation of Law 91/11 as amended and supplemented, Official Gazette No. 51, issued on July 28, 1993.

In view of the significant importance and strategic dimension of New Cities - as a new type of urban settlement - and their role in relieving pressure on large cities, they are considered to be projects of national interest. Consequently, their realisation requires prompt action in the expropriation process. In order to examine whether new cities can be considered as major projects with a national and strategic dimension, we will first look at the concept of new cities, followed by a definition of major projects with a national and strategic dimension, and examine the applicability of this concept to new cities.

Section One: The Concept of New Cities

In order to understand the concept of New Cities and to explore their status as major projects with national and strategic dimensions, we will first define New Cities and then examine the criteria that must be met for them to be classified as such.

1. Definition of New Cities

New cities represent a distinct policy for regional redevelopment, development and spatial organisation in many countries, particularly in the face of urban sprawl resulting from demographic growth and increased migration. Scholars have made efforts to define new cities, and Algerian legislation has also addressed their definition.

A. Academic definitions of new cities

Scholarly definitions of new cities vary. A general definition by the scholar “Kenz” describes a new city as follows: “A new city is one that provides all its inhabitants, regardless of their socio-economic level, with all their needs, so that no particular group inhabits it. It also provides all services close to residential areas”¹. It is noteworthy that this definition overlooks crucial aspects, such as the economic factors that underpin the city. It does not mention the importance of having an economic base that utilises labour and employs residents, nor does it address the city’s infrastructure and effective planning. Nor does it consider the environmental aspects of the city.

¹- Definition quoted from Mohamed Mahmoud Abdullah Youssef, "The Impact of Industrial Extension in New Cities on Population Settlement," Master's Thesis, Faculty of Economics and Political Science, Cairo University, 2008, p. 33.

In contrast, Salah Basyouni defines new cities as “the newly created local community, established on the basis of comprehensive and integrated planning in all its economic and physical aspects. It involves the relocation of selected human elements under specific conditions in order to achieve a social and economic situation superior to that of traditional cities. The aim is to develop human and economic resources and raise social standards”¹. This definition is broader than the previous one.

B. Legal definition of new cities

In terms of legal definition, the Algerian legislator defined new cities in article 3 of law 01/20 on regional planning and sustainable development². Subsequently, in Law 02/08 on the conditions for the establishment and preparation of new cities, the legislator provided a more precise definition of new cities than that contained in Law 01/20. It is noteworthy that the legislator’s definition of a new city includes all the necessary elements required for a city³.

2. Conditions for the creation of new cities

According to the provisions of Law 02/08 on the creation and preparation of new cities, several conditions are established for the creation of new cities, as follows

A. Location

Due to the concentration of the population in the capital cities, Law 02/08 on the Establishment and Preparation of New Cities established certain locations for the establishment of new cities in the northern plateau and in the south. It considered the establishment of new cities in the highlands and the south to be fundamental, while the establishment of cities in the north was considered exceptional, as it was subject to conditions aimed at relieving pressure on major cities such as Oran,

¹- Definition quoted from Mustafa Omar Hamada, "New Cities: A Study in Urban Anthropology," Dar Al-Ma'rifa Al-Jami'ya, Egypt, 2013, p. 39.

²- Article 03 of Law 01/20 states that new cities are: "a fully programmed urban agglomeration located in the site of cells." See Law 01/20 dated 12/12/2001 concerning regional planning and sustainable development, Official Gazette No. 77, issued on 15/12/2001.

³- Article 02 of Law 02/08 states: "All human settlements of an urban character established in a vacant site or based on one or several existing residential nuclei are considered new cities. New cities serve as a center for social, economic, and human balance, providing opportunities for employment, housing, and facilities." See Law 02/08 dated 08/05/2002 concerning the establishment and planning of new cities, Official Gazette No. 34, issued on May 14, 2002.

Algiers, Constantine and Annaba¹. This is reflected in Article 4 of Law 02/08 on the establishment and preparation of cities.

B. Land status

The legislature has been strict in determining the location of new cities; however, it has been even stricter in prohibiting the establishment of new cities, even partially, on agricultural land. According to Article 08 of Law 02/08, new cities can only be built on barren land or on land unsuitable for agriculture in rocky or mountainous areas. The legislator emphasised that the creation of new cities on arable land, which is considered a rare natural resource, is completely prohibited. This restriction is the result of the bad situation of the land due to poor organisation and management, which has led to the risk of urban expansion affecting industrial and agricultural areas².

C. Procedural conditions

The creation of a new town must be by executive decree, which requires the opinion of the relevant regional authorities. Its creation must comply with town planning regulations, since the project concerns land belonging to these municipalities³. The municipality is legally responsible for the management of new cities. In addition, the creation of a new town cannot be limited to a single municipality, but may extend to several municipalities, as there may not be enough land within a municipality to cover the legally defined area of the town. Therefore, after obtaining the approval of the municipalities, the decree establishing the city must be based on the planning instruments related to the municipalities concerned. The arbitration and final approval of the planning scheme of the new city will remain the responsibility of the Government, which will ratify it by means of an executive decree⁴.

¹- Ait Joudi Asya, Ait Aissa Warda, "The Legal Status of New Cities," Thesis for obtaining a Master's degree in Regional Communities and Planning, Faculty of Law and Political Science, Abdel Rahman Mira University, Bejaia, 2014-2015, p. 28.

²- Kettaf Karima, "The Concept of New Cities through Law 02/08," Thesis for obtaining a Master's degree in Public Administration and Regional Law, Faculty of Law and Political Science, Mentouri Brothers University, Constantine 01, 2012-2013, pp. 38-39.

³- Jamila Douar, "New Cities in Algerian Legislation," Journal of Communication in Administration, Economics, and Law, No. 38, June 2014, p. 230.

⁴- Kettaf Karima, op. cit., p. 50.

Section Two: Definition of major projects with a national and strategic dimension and their applicability to new cities

The legislator first introduced the terms “infrastructure” and “major projects with a national and strategic dimension” in Article 65 of the 2005 Finance Act, which amends Law 91/11 through Articles 12 bis and 12 bis 01. However, these terms were not explicitly defined. Two years after the amendment to the Expropriation Law, a Joint Ministerial Circular (07/43)¹ was issued, specifying the implementation of Article 65 of the 2005 Finance Law and Executive Decree 05/248. This circular provided a definition of major projects with a national and strategic dimension, indicating that these projects are of significant importance and have a significant social and economic impact on the national community and public interest.

According to Article 37 of the 2014 Finance Law, Article 12 bis 03 introduced for the first time a category of infrastructure projects that are of public benefit and have national and strategic dimensions².

Thus, infrastructure projects are essentially large projects of public utility with national and strategic importance. However, some argue that there is no need to use both terms, as most major projects with a national and strategic dimension are merely infrastructure developments, as in the case of new cities.

Thus, it can be said that the creation of new cities involves the development of infrastructure and constitutes major projects of national and strategic importance, to which special procedures apply in view of their importance and national and strategic dimension.

The aforementioned circular explained the reasons that led the legislator to adopt special expropriation procedures for major projects of national and strategic importance. This was due to the slowness and delays in the initiation of projects caused by the normal expropriation procedures. In order to avoid these delays, the legislator adopted these exceptional measures because the expropriation procedures in ordinary cases may face obstacles, such as legal disputes, which

¹- Law No. 04/21 concerning the Finance Law for the year 2005, Official Gazette No. 85, issued on 29/12/2004.

²- The Joint Ministerial Circular 07/43 on Expropriation for Public Benefit in the Context of National and Strategic Infrastructure, issued on 22 December 2007, Collection of Texts Issued by National Assets, Ministry of Finance, 2007, pp. 99-110.

could delay the transfer of the property and the start of the project. Therefore, it was necessary to establish special procedures for these projects because of their importance, which requires an expedited procedure. As new cities are major projects of national and strategic importance, such procedures are essential to achieve speed in their implementation. However, some argue that this distinction is unjustified and unwarranted, as it favours certain projects over others¹.

Section 2: Aspects of uniqueness of expropriation procedures in the public interest for the creation of new cities

In light of the above, the creation of new cities falls within the framework of infrastructure development with national and strategic dimensions, characterised by unique procedures that manifest themselves in two phases: the declaration of public interest and the transfer of ownership. Before discussing the uniqueness of these procedures, we will look at the concept of expropriation in the public interest.

Subsection 1: The concept of expropriation in the public interest

The shift towards expropriation mechanisms became evident in a series of nationalisations adopted by several socialist regimes, including Algeria in the 1960s and 1970s². Expropriation in the public interest is a mechanism used by the state to acquire real estate in order to carry out operations in the public interest. There are various definitions, both doctrinal and legal, which will be clarified below:

Legal definition:

There are several definitions which can be presented as follows:

The jurist Al-Sanhouri defined it as: “a matter in which the ownership of property belonging to an individual is transferred to a public body for the purpose of achieving public benefit, in exchange for fair compensation”³.

¹- Amina Tawoula, "Procedures for Expropriation in the Implementation of Public Utility and Nationally Significant Infrastructure Projects", *Journal of Legal Studies*, Vol. 07, No. 01, March 2020, p. 213.

²- Previous reference, p. 215.

³- Nationalisation is defined as: the process aimed at transferring the ownership of private projects to the state, thereby becoming the property of the community to meet social and economic needs, in exchange for compensation to the owners of these projects for the nationalised rights. This has fundamentally changed the theory of absolute private ownership, which represented a relationship between two parties: the first signifying the absolute

Meanwhile, the French lawyer André Délopadar defined it as: “an administrative act by which the administration compels a person to relinquish ownership of property in order to obtain a public benefit, in exchange for a predetermined fair compensation.”¹

Abdel Ghani Basyouni Abdullah defined it as: “a privilege that allows the administration to forcibly deprive the owner of his property in order to achieve public benefit, in exchange for compensation”².

Thus, the process of expropriation in the public interest refers to the legal ability of the administration (the competent authority) to transfer private property to itself according to procedures established by law, provided that fair and just compensation is paid to the expropriated owner.

2. Legal definition of expropriation in the public interest

The Civil Code dealt with the definition of expropriation in Article 677³. The first law on investment, Law No. 63-227, also referred to expropriation and established it as a right granted by the State⁴. This principle was further confirmed by Decree No. 66-284 on the Investment Code⁵, which stipulated that the State must exercise its right of expropriation in accordance with the law when circumstances so require, thus indicating the State’s orientation towards extensive nationalisation.

With the enactment of Decree No. 76/48 of 25 May 1976, which established the rules for expropriation in the public interest, there was an attempt to regulate the issue of private expropriation for public interest. It is noteworthy that this article did not specify the timing of the payment of compensation and emphasised that

sovereignty of the owner and his authority over the second party and the subject of ownership. The relationship now involves three parties: the community, the subject of ownership and the owner.

¹- Quoted from: Mohamed Abdel Latif, "Expropriation for Public Benefit", Dar Al-Kutub Al-Qanuniya, Al-Mahalla Al-Kubra, 1992 edition, p. 09.

²- Definition quoted from: Aqila Wanas, "The Legal System of Expropriation for Public Benefit in Algerian Legislation", Master's thesis in Administrative Law, Faculty of Law, Haj Lakhdar University, Batna, 2006, p. 04.

³- As cited from: Mohamed Abdel Latif, Expropriation for Public Benefit: A Comparative Study, Dar Al-Nahda Al-Arabiya, 1988, p. 8.

⁴- Article 677 of the Civil Code states: "The right of the public administration to expropriate all or part of real estate or to expropriate real rights for public benefit in exchange for fair and just compensation." This is stated in Order 75-58 dated 20 Ramadan 1395 (corresponding to 26-09-1975), which includes the Algerian Civil Code, Official Gazette of the People's Democratic Republic of Algeria, No. 78, Year 12.

⁵- See Law No. 63-227 concerning investment dated July 26, 1963, Official Gazette, No. 53, issued on August 2, 1963.

no international treaty could prevent the application of expropriation procedures in the public interest¹.

After the 1989 Constitution, the Algerian legislator placed the right of expropriation under a separate law, Law No. 91/11 of 27 April 1991, which repealed the provisions of Decree 76/48. This law was amended and supplemented by Decree No. 93/186, which laid down the procedures for implementing Law No. 91/11². The legislator's aim was to provide effective protection for individuals against the abuse of power by the administration when it resorts to compulsory expropriation in the absence of any means of achieving public benefit or without following the prescribed procedures or providing prior compensation to property owners.

These legislative efforts resulted in the issuance of Ministerial Decrees No. 57 of 26 January 1993 and No. 0007 of 11 May 1994, which govern expropriation operations. This led to the issuance of Executive Decree No. 05/248³, followed by Executive Decree No. 08-202⁴, both of which supplemented Executive Decree No. 93-186. All this took place in the context of the Algerian legislator's desire to keep pace with the economic changes taking place in Algeria and to adapt to the investment environment and the needs of urban planning and economic expansion, in line with the government's action plans that emerged in the decade following the 1999 presidential elections.

Section Two: The Specificity of the Stages of Expropriation for the Public Good in the Construction of New Cities

Expropriation in the public interest generally involves two main stages: the declaration of public interest and the transfer of ownership. The Algerian legislator has assigned specific characteristics to the construction of new cities,

¹- See Law No. 66-284 concerning investment dated September 15, 1966, Official Gazette, No. 80, issued on September 17, 1966

²- See Order No. 76-97 dated November 22, 1976, concerning the issuance of the Constitution of the People's Democratic Republic of Algeria.

³- See Law No. 93/186 dated July 27, 1993, concerning the rules for expropriation for public benefit, Official Gazette, No. 51, Year 30, p. 26.

⁴- See Executive Decree No. 05-248 signed on July 10, 2005, amending Executive Decree No. 93-186 dated July 27, 1993, which specifies the methods for implementing Law No. 91-11 dated April 27, 1991, regarding rules related to expropriation for public benefit, Official Gazette, No. 48, Year 42, p. 5.

considering them as projects of national and strategic importance in these two stages, which we will discuss below:

1. Special features of the public interest declaration stage

The first step in expropriation for public benefit is the need to demonstrate public benefit. This requires a report demonstrating that the proposed project has the characteristics of a public utility and is consistent with urban planning objectives, thereby justifying the use of expropriation. This report must state that the land in question is intended for public use and that the purpose of this use is to achieve urban planning and development objectives and to create major facilities or installations of public benefit¹.

In addition, the report should detail the efforts made to find available land for the implementation of the project or projects of public interest.

In general, with reference to the various provisions relating to the expropriation of private property for public benefit in Algerian legislation, we note that there are many procedures that clarify this, as follows:

The ordinary expropriation procedures consist of five stages, and it is necessary to ensure the availability of funds for fair and just prior compensation for the properties and rights to be expropriated².

Article 10 of Decree 93-186 sets out the methods for declaring the public interest. In general, this is done by means of a provincial decision, which is the standard procedure. These procedures are simplified and start with the expropriation beneficiary submitting his file to the relevant governor. The governor then prepares a report on the presence or absence of public interest in the proposed project and submits it to the same governor, who issues a decision declaring public interest³.

¹- Executive Decree No. 08-202 signed on July 7, 2008, amending Executive Decree No. 93-186 dated Safar 7, 1414 (corresponding to July 27, 1993), which specifies the methods for implementing Law No. 91-11 dated April 27, 1991, regarding rules related to expropriation for public benefit, Official Gazette, No. 39, Year 45, p. 12.

²- Tafi Anim Khataria, Expropriation for Public Benefit in Algerian Legislation, Journal of Urban Planning and Construction Legislation, Issue 4, December 2017, p. 276.

³:- The process consists of five stages³

- .1 Declaration of public benefit.
- .2 Identification of all properties and real rights to be expropriated.
- .3 Division of the properties and real rights concerned with expropriation.
- .4 An administrative decision regarding the disposability of the concerned properties.

These procedures apply when the properties are located within a single jurisdiction. However, if the properties to be expropriated are located in two or more jurisdictions, the declaration of public interest in this case is made by a joint ministerial decision or decisions between the relevant Minister, the Minister of the Interior and Local Communities and the Minister of Finance.

Specificity during the stage of declaration of public interest

With regard to the establishment of new cities, which include infrastructure of public interest and are projects of national and strategic importance, the declaration is made on the basis of an executive decree, as provided for in Article 12 bis of Law No. 91/11, as supplemented by the 2005 Finance Law. In application of this article, Decree-Law No. 05/248 was issued, which, according to its second article, which supplements Article 10 of Decree-Law No. 93-186, establishes the same procedure. This means that the legislator, by means of executive decrees, has entrusted the Prime Minister with the task of issuing the decision declaring the public interest for expropriations for the creation of new cities¹.

The method of involving several competent authorities in the declaration is compatible with the creation of new cities, as these are major projects of national and strategic importance. Therefore, the central authority, represented by the Prime Minister, is the one that determines the public interest of these projects.

One aspect of specificity at this stage is the content of the executive decree containing the declaration of public interest. In addition to the objectives of the operation, the area of the land in question and the nature of the works, as is usual, it must also include the amount of the funds to cover the expropriation process to be carried out and their deposit with the Treasury². This provision serves as a guarantee for the right-holders whose properties are to be expropriated, as it allows the judge to monitor the availability of the funds allocated to the operation and their deposit with the Treasury.

2. Special features of the transfer of ownership phase

5. An administrative decision for expropriation.

¹- Ait Joudi Asia, Ait Aissa Warda, Previous Reference, p. 28.

²- Amal Tawoula, Previous Reference, p. 217.

The transfer of ownership phase is the critical phase in the expropriation process, following a series of procedures from the preliminary investigation to the decision on the feasibility of the transfer. After the estimated amount of compensation has been deposited in the Public Treasury, the Governor issues a decision on the transfer of ownership to the beneficiary.

Comments on the transfer of ownership decision It should be noted that the competent authority to issue this decision is always the Governor, even if the declaration of public utility has been issued in the form of joint ministerial decisions or by executive decree within the framework of infrastructure projects of public utility and national and strategic importance. Once the procedures have been completed, ownership is transferred in the following cases: if an amicable agreement is reached; if no appeal is lodged within the time limit set out in Article 26 of Law No. 91/11; if the owner accepts the amount of compensation and refrains from taking legal action, it becomes an implicit agreement between the two parties after the legal period of one month has elapsed without any legal action being taken¹.

If a final decision is issued by the administrative justice, the expropriation decision is subject to notification procedures for both the owner and the beneficiary of the expropriation, and it is subject to real estate registration.

However, under the 2008² Finance Law, Article 59 added a fourth case to Article 29 bis, which established that the transfer of ownership of infrastructure projects of public interest and of national and strategic importance takes place immediately after taking possession through an administrative expropriation contract, subject to real estate registration procedures. It negated any suspensive effect of appeals by the parties concerned for compensation on the execution of the transfer of ownership procedures in favour of the State.

Accordingly, the specificity of the transfer of ownership in the creation of new towns, based on Article 29 bis, is reflected in the different format of the transfer of ownership. It is carried out by means of an executive decree, which formalises an administrative expropriation contract, as opposed to the usual procedures,

¹- Article 10/02 of Executive Decree 93-186 mentioned above.

²- Belkhir Tayeb, The Separate Administrative Decision – Decision of Expropriation of Private Property for Public Benefit under Algerian Legislation, Algerian Journal of Law and Political Sciences, Vol. 8, No. 1, 2023, p. 493.

which are carried out at all stages by means of administrative decisions. It starts with the declaration of public interest through an executive decree, followed by a decision on the feasibility of the transfer of ownership through an administrative decision, and then the transfer of ownership through an administrative decision for expropriation.

There are those who argue that the term “administrative contract” referred to in Article 29 bis should be amended and replaced by “administrative decision”, in order to bring it into line with the general framework for expropriation set out in Law No. 91/11, Executive Decree No. 63/186 and its Supplementary Decree, which stipulate that expropriation procedures are carried out by administrative decision and not by contract¹.

Second peculiarity of the transfer of ownership for new cities

The second specificity in the transfer of ownership for new cities is that the legislator has designated the expropriation process within the framework of public utility infrastructure and major projects of national and strategic importance as a special case. The decision on expropriation is taken immediately after taking immediate possession of the property, which occurs after the presentation and disclosure of the compensation, through a decision on the feasibility of relinquishing ownership. This means that the governor does not wait for an amicable settlement, the expiration of appeal periods or the issuance of a court decision. Instead, as soon as the procedures for publishing the decision on the feasibility of relinquishment and depositing the compensation amount have been completed, the governor issues a decision on immediate possession for the owners.

This procedure is necessarily followed by a decision on expropriation for the purpose of transfer of ownership, together with notification to the owners of their expropriated property and registration in the Property Register. Accordingly, the legislator, in accordance with Circular No. 07/43, has established specific procedures for the implementation of new cities, due to their great importance, which include the addition of the decision of immediate possession to the expropriation procedure. However, it is noteworthy that the legislator has not

¹- Law No. 07/12 concerning the finance law for the year 2008, issued on 30/12/2007, Official Gazette issued on 31/12/2007, No. 82.

sufficiently clarified the provisions regarding the decision of immediate possession, which may raise legal questions.

Chapter Two: Effects of the Specificity of Expropriation Procedures for Establishing New Cities

It is observed that the legislator granted the right to individuals who have an interest in objecting to the decisions issued during the stages of the expropriation process for public benefit. Thus, the administrative dispute regarding expropriation revolves around three decisions: the decision declaring public benefit, the expropriation decision, and the compensation decision.

Section One: The Impact of the Specificity of Expropriation Procedures for Public Benefit on the Dispute Regarding the Declaration Decision

The system of expropriation of private property for public benefit is linked to the necessity of having an administrative decision that consists of the declaration of public benefit, outlining its features and limits as an entry point for expropriation¹. Given that it is a legal act with a direct impact on individuals' properties, it is essential for the administration to adopt procedures, as this method affects rights. It has thus been permitted under specific formal and substantive conditions, which the competent authority must follow before making the decision to declare such benefit.

Subsection One: Formal Conditions for the Expropriation Decision

According to Article 11 of Law No. 91/11, the decision declaring public benefit is subject to annulment under the following conditions:

1. The decision declaring public benefit must be published according to its nature, whether it is a central or provincial decision, and the publication must occur as follows:

- If it is a central decision (by the Minister of Interior or Finance), it must be published in the Official Gazette of the People's Democratic Republic of Algeria.

¹- Amine Tawoula, Previous Reference, p. 222.

- If it is a provincial decision (by the provincial governor), it must be published in the administrative decisions register of the province.

2. The decision must be communicated to all concerned parties, with the stipulation that appeals against the decision are only permissible within a maximum period of one month from the date of notification or publication.

3. The decision declaring public benefit must be posted at the municipal headquarters where the property to be expropriated is located, in designated areas, indicating the decision under the threat of annulment, as well as the procedures of the committee, the opening and closing dates of the investigation, and providing a detailed statement that includes the purpose of the operation and a plan to define the nature and location of the works to be carried out. The investigation file must be made available to the public¹.

Subsection Two: Substantive conditions for the declaration of public interest

From the content of Law No. 91/11, it is clear that the legislator emphasises the formal aspect of issuing the decision declaring the public interest, given the exceptional nature of the system of expropriation for the public interest and its serious implications as a restriction of property rights.

1. Clarification of the objectives of the expropriation to be carried out.

2. The specification of the area of the properties, their location and their specifications.

3. Description of the works to be carried out.

4. Indication of the expenditure required for the expropriation, which must be covered within a maximum period of four years.

With regard to infrastructure projects of national and strategic importance, such as the establishment of new cities, some specific conditions have been added to Article 10 after the amendment. The declaration of public interest is made by means of an executive decree, which must clarify the following points:

1. Clarification of the purpose of the expropriation to be carried out.

¹- Article 10 bis of Executive Decree 93-186 amended by Article 03 of Executive Decree 05-248 mentioned above.

2. Specification of the area of the properties and/or rights to be expropriated and their location.
3. Description of the works to be carried out.
4. Existence of funds to cover the expropriation, deposited in the Public Treasury¹.

If the above information is not included in the decision declaring the public interest, any interested party may file an appeal within one month from the date of notification or publication of the decision. In this case, the implementation of the contested decision shall be suspended until a final decision has been taken on the matter².

In this context The legislator has emphasised the need to publish the decision declaring the public interest in the Official Gazette and in the Provincial Register of Administrative Decisions. In order for this decision to be considered legal, it must comply with the requirement of notifying the parties concerned, under threat of annulment, as provided for in Article 11 of Law No. 91/11³.

In ordinary cases of expropriation, Article 29 of Law No. 91/11 and Article 40 of Executive Decree No. 93/186 postpone the conclusion of the procedure until the annulment action has been decided. The purpose of this is to avoid losses that may not be recoverable at a later date, which constitutes an effective protection and a strong guarantee for individuals against the privileges enjoyed by the public administration.

However, the situation is different with regard to the creation of new cities, which involve infrastructure and major projects of national and strategic importance. Article 12 bis 01 of Law No. 91/11 states in its second paragraph: “Appeals submitted by the parties concerned to the judiciary shall in no way suspend the execution of the immediate possession procedure”. This means that an appeal against the decision on the feasibility of the expropriation does not suspend the expropriation procedures for the establishment of new cities, which include

¹- Ramzi Hohou, The Legal System of Expropriation of Private Property for Public Benefit, Legal Forum Journal, Professional Competence Section in Law, Biskra University, No. 6, 2009, p. 74.

²- Ammar Maasho, The Role of the Judiciary in Protecting Human Rights, Law Journal, Setif Department, No. 1, 2004, p. 53.

³- Ismail Bougara, Alaeddine Qali, Judicial Oversight of the Declaration of Public Benefit in the Field of Expropriation*, Journal of Legal Studies – Sovereignty and Globalization Laboratory, University of Medea, Vol. 4, No. 1, January 2018, p. 265.

infrastructure and major projects of national and strategic importance. This provision required the legislator to work to facilitate its implementation by not delaying immediate possession due to appeals against the decision to relinquish ownership¹.

While this approach may seem favourable given the urgency of completing major projects, it represents a significant loss for the owners of the expropriated properties.

Section Two: The Impact of Compensation Disputes on New Town Expropriations

The process of expropriation in the public interest involves compensation, which is a legal obligation imposed on the expropriating authority. Since compensation for the expropriation of private property is, in principle, essential to the completion of the expropriation process, any disputes that may arise are primarily concerned with the assessment of this compensation.

The party affected by the expropriation process, after being notified of the expropriation decision prepared by the Governor or the Minister on the basis of a report by the Department of State Properties, expresses its opinion on the amount of compensation within a period of fifteen days from the date of notification. If the proposed compensation amount is not accepted, the party has the right to contest the compensation decision on two main grounds:

1. Failure to consider the principles of justice and fairness in determining the compensation.
2. Failure to provide for additional compensation.

Thus, the process of expropriation in the public interest is fundamentally linked to compensation, which is a legal obligation for the expropriating authority. As compensation for the expropriation of private property is essential to complete the

¹- Article 11 of Law 91/11 regarding publication and notification states:

- The decision declaring public benefit is subject to nullification if it does not:
- Publish, as appropriate, in the Official Gazette of the People's Democratic Republic of Algeria or in the administrative decisions register of the state,
- Notify each of the interested parties,
- Post in the municipality where the property to be expropriated is located, according to the methods specified in Article 6 of this law, for the duration stipulated in Article 13 of this law.

expropriation process, the disputes that arise are primarily centred on the assessment of this compensation.

Subsection One: Request for Reassessment of Compensation

The party affected by the expropriation process, after being notified of the expropriation decision prepared by the Governor on the basis of a report by the Department of State Properties, shall express its opinion on the amount of compensation within a period of fifteen days from the date of notification. If the proposed compensation amount is not accepted, the party has the right to contest the compensation decision on two main grounds:

- Failure to take into account the principles of justice and fairness in determining the compensation.

Algerian administrative practice has established that the administration is prohibited from taking possession of property if the proposed amount of compensation is not accepted. This compensation must be fair, predetermined, equitable and effective. The Algerian legislator considers any breach of this principle to be a serious offence for which the administration is liable¹.

It is quite difficult to define the concept of justice and fairness precisely, as it remains a general concept that varies from one judge to another when assessing compensation. What one judge may consider to be just and fair, another may not. This difference can be illustrated by examining several cases that have come before Algerian courts, both first instance and Council of State judges².

The administrative judge has a wide discretion in determining the amount of compensation. It should be noted that the judge may not adhere to the compensation proposed by the administration. The inability to reach a clear understanding of the principle of justice and fairness, combined with the judges' lack of familiarity with technical issues related to real estate valuation and the lack of specialisation among judges in real estate matters, has created an urgent need for judges to consult real estate experts who still have limited legal training³.

¹- See: Decision of the Council of State, Second Chamber, dated 11-04-2007, No. 031027, Journal of the Council of State, Issue 09, 2009, p. 82 et seq.

²- Amina Tawoula, cited above, p. 229.

³- Sid Ali Zadi, cited above, p. 114.

- Lack of additional compensation

The decision to expropriate private property in the public interest is linked to the need to comply with a series of interrelated rules, as mentioned above. When the decision to expropriate is notified to the affected party, it is accompanied by the payment of the compensation to the Provincial Treasury. The affected party must comment on the proposed amount. If they can argue that the amount is unfair, they can also appeal to the Administrative Tribunal on the grounds that additional compensation has not been included.

In this context, the administration may err on this claim in one of the following ways:¹

1. If the Department of State Property determines the market value of the expropriated property in a manner that is inconsistent with the realities and requirements of the local real estate market, by failing to adopt the actual prevailing market price or by making an error in the selection of the appropriate valuation method.

2. If the valuation report fails to take into account additional compensations, which may be listed as follows:

A. Compensation for loss of use

Based on the principle that compensation is linked to the losses suffered and the profits lost, the expropriated person has the right to claim compensation for the damage suffered and for the loss of earnings during the transitional period between his departure and his return. The assessment of the events that occurred during this period is left to the discretion of the Department of State Property, in accordance with the principles of justice and fairness².

B. Compensation for resettlement and diminution in value

The party affected by expropriation for public use demands that the compensation offered should cover all expenses related to their removal from the property. These expenses include transportation, reinstallation, new rental requirements,

¹- Khaled Baouni, Disputes of expropriation for public benefit in the Algerian legal system, thesis submitted for the doctorate in public law, Faculty of Law, University of Algiers 01, 2011, p. 243.

²- Previous reference, p. 236.

and any material costs necessary to restore the affected party's establishment to the commercial level it had prior to expropriation.

C. Compensation for expenses incurred in finding alternative accommodation

It is very important that the compensation granted to the expropriated person covers notary fees, stamp duties, registration fees and the cost of registering the property¹.

In the event of a dispute over the amount of compensation, the amount must be determined by a judicial decision, and this determination should not prevent possession of the expropriated property. The administrative judge has considerable powers to resolve disputes relating to compensation for expropriation in the public interest. They can re-evaluate the compensation proposed by the administration and have the power to initiate investigative proceedings in relation to expert reports and inspections².

The filing of an action for compensation does not suspend the expropriation procedure, even if it is filed within one month of the notification of the decision to abandon, since it is not related to the legality. Article 29 bis, which was added in 2008, explicitly clarifies the non-suspensive effect of a compensation action in the case of expropriations for the construction of infrastructure and major projects of national and strategic importance. This principle is in line with Article 40 of Decree-Law No. 93/186, as amended by the aforementioned Decree-Law No. 08/202.

Conclusion

Expropriation for public use for the creation of new cities requires accelerated procedures that differ from ordinary procedures, given its importance as a major project of national and strategic importance involving infrastructure development. Although there is no explicit text referring to them as exceptional procedures, our study of the 2005 Finance Law and Joint Ministerial Circular 43/07 shows that they do indeed fall under these exceptional and different procedures, given the importance of the new cities. The legislator has attempted to guarantee the

¹- Khaled Baouni, previous reference, pp. 238-244.

²- Hakima Amoura, *The Legal System of Expropriation for Public Benefit*, thesis submitted for the Master's degree, Faculty of Law, Haj Lakhdar University, Batna, 2009, p. 213.

guarantees and rights of the property owner under Law No. 91/11, as amended and supplemented with regard to expropriation for the public good. However, certain exceptional procedures, in particular immediate possession, may violate these rights.

Through this research study, we have identified the main peculiarities of expropriation for public benefit for the establishment of new cities, which are as follows:

- The declaration of public interest for the creation of new cities is made by executive decree.
- The rapid transfer of ownership in expropriation for public benefit, with governors preparing immediate possession decisions immediately after the declaration of public benefit, even if the actual transfer has not taken place.
- Expropriation lawsuits do not suspend the expropriation process for the creation of new towns.

We can make the following recommendations:

- It is essential to include explicit provisions stating that new cities fall under the establishment of infrastructure and major projects of national and strategic importance, in order to subject them to exceptional procedures.
- There is a need to clarify the ambiguities surrounding immediate possession procedures and to unify the legal texts dealing with them.
- There is a need to revise and unify the texts relating to expropriation in the public interest, both in relation to ordinary and exceptional procedures.