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The Legitimacy of Appeals in Final Real Estate Numbering and Their Reasons in Algerian Legislation

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Abstract:

Since independence, the Algerian legislator has been concerned with purifying and stabilizing real estate ownership, which is manifested through the establishment of a public land survey system. To this end, the state has implemented several regulatory measures and mobilized all material and human resources to generalize this system across the entire nation. The implementation of the real estate survey ultimately aims to deliver to each property owner in the country their real estate book, which serves as the official document to prove ownership. This achieves the protection and stability of real estate ownership. However, this stability remains relative because property owners in Algeria, under the system of in rem rights, remain at risk of losing their ownership since the legislator has granted the right to appeal final numbering and real estate registers. Undoubtedly, this situation has posed several challenges and is supported by a multitude of reasons, whether appearing at the beginning of the process, during the survey operations, or after the submission of documents and numbering process at the level of the property registry. Therefore, it is imperative to find deterrent solutions to reduce this problem, which threatens the stability of real estate ownership on one hand and burdens the judiciary with disputes that could be avoided. This can only be achieved by reconsidering many points, amending some procedures, reviewing some committees involved in the process, and eliminating the inconsistencies and disparities between texts and provisions so that we can have a robust survey and real estate registration system that achieves the goals and purposes set by the legislator in a manner that allows for the protection and stability of ownership.

Keywords: Real Estate Survey, Ownership Protection, Appeal Rights, Legal Challenges, Regulatory Measures

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Introduction:

After establishing the real estate registry, consisting of a set of property cards related to each property covered by the land survey process, and stabilizing real estate transactions by numbering these rights conclusively, real estate books are handed over as ownership documents and a direct

result of the final numbering process. Despite this, it has led to several disputes and issues related to challenging this numbering or amending it, considering that the legislator did not consider the absolute validity of ownership documents and granted the possibility of appealing this numbering, opening the door to several lawsuits related to final numbering.

Therefore, this study will address the concept of final numbering on one hand and the disputes arising from this numbering and the reasons leading to challenging the final numbering.

To address this issue, we propose posing the following problem:

What is the concept of final numbering and the legitimacy of appealing final numbering and its reasons?

To shed light on this issue and answer this problem, we divided the study into three axes. The first axis is dedicated to the conceptual framework of final numbering, where we discuss the concept of final numbering and the supporting documents, in addition to the real estate book, which is considered evidence of final numbering.

The second axis is dedicated to the legitimacy of disputes in final numbering and the Algerian legislator's stance on this.

As for the third axis, we dedicate it to the reasons leading to challenging final numbering and real estate registers, as outlined in the following plan:

First Topic Conceptual Framework of Final Numbering

After survey agents complete their assigned tasks, the survey documents are deposited with the relevant property registry, where the property registrar carries out the real estate numbering process. Each property is assigned two numbers, one representing the ownership group and the other representing the cadastral section in the municipality where the property is located. This numbering may be provisional, as the legislator has set a specific period for each type of numbering. When this period expires and no objections or protests are recorded, or if an objection is registered but later withdrawn or waived by the objector, the numbering becomes final. It can also be final immediately if the required legal grounds and supports are met.

Through this topic, we will discuss final numbering and the principles upon which the property registrar relies to assign final numbering to these properties, thereby delivering the real estate book to its owner. In this type of numbering, there are no legal deadlines for objections or protests from third parties, except through filing a lawsuit before the competent judicial authorities to cancel or amend the real estate book.

First Requirement Necessity of Final Numbering

Referring to Article 12 of Decree 76/63 dated 25/03/1976 (1), which states that "numbering is considered final for properties whose owners possess documents, contracts, or any other documents accepted according to the applicable legislation to prove ownership rights. The property registrar automatically transfers, when necessary, easements, mortgages, and undeleted allocation rights that have not expired in validity."

The legislator explicitly reaffirmed through Article 11 of the same decree that the property registrar assigns numbering to surveyed properties upon receiving survey documents from the legally authorized committee. It was also stated that the numbering is considered retroactive from the date of signing the delivery report related to the general land survey documents. The property registrar relies on all necessary information to determine the nature, boundaries, and area of the properties, which are found in the property card (T10). The study of this document reveals the following situations (2):

- Properties with documents.
- Properties without documents but subject to possession available under all legal conditions, i.e., peaceful, public, continuous, and for a period allowing the possessors to acquire them through adverse possession, as confirmed by the provisions of civil law (3).
- Properties not claimed by any person.

With different means of proof, the numbering varies. Final numbering is associated with the type and validity of the provided document and its compliance with the legislation in force to prove ownership rights because official documents and evidence are considered conclusive and leave no room for doubt regarding the ownership of the property in question (4). Therefore, the numbering becomes final, and the rights resulting from it cannot be reviewed except through judicial intervention, pursuant to Article 16 of Decree 76/63 (5).

In addition to the automatic final numbering directly after the deposit process, where the property is numbered, and its owner obtains the real estate book, temporary numbering can also be converted into final numbering after the specified period, depending on the situation, as stated in Articles 13 and 14 of the same decree mentioned above.

Second Requirement

Accepted Documents in Final Numbering

We will detail the documents relied upon as the basis for final numbering as follows:

Official Documents: These are documents issued by official authorities authorized to issue contracts related to property ownership rights, whether these documents are documentary, administrative, or judicial, whether stamped or unstamped, as follows:

Stamped Official Documents: These are official documents stamped and issued by a public official, officer, or person entrusted with public service, such as recognition contracts and property deeds under Law 07/02 dated 27/02/2007 (6), which establishes a procedure for examining property ownership rights and delivering property deeds through a survey. All other official contracts except those that did not clearly specify rights or accurate delineation of the property in terms of area and boundaries, for example, fall within the realm of temporary numbering for a period of (04) months, as previously mentioned.

Unstamped Official Documents: These are official documents that have not been stamped but are still relied upon to prove rights, such as unstamped documentary contracts related to unregistered partition contracts drafted before the issuance of Order 75/74 (7), which emphasized the necessity

of stamping, considering that stamping was optional previously, and thus, it can be considered a basis for final numbering.

Judicial Decisions: These are also official documents relied upon in final numbering issues when related to property ownership rights with specific and accurate rights granted to the numbering applicant. However, these decisions must have the force of *res judicata*, include precise determination of the property subject to final numbering, and involve the concept of violation. Any judgment that does not meet these conditions cannot be considered a basis for final numbering cases but can be included as a basis for temporary numbering (8).

Final numbering culminates in the delivery of the real estate book, which constitutes administrative evidence and strong proof of property ownership according to Article (19) of Decree 76/63 and is handed to the surveyed property owner. It must conform to the model specified by the Minister of Finance (9).

After explaining the principles relied upon by the property registrar in numbering properties and assigning them final numbering, regarding temporary numbering, an administrative certificate proving temporary numbering, considered by the legislator as evidence equivalent to a possession certificate under Article (39) of Law 90/25 dated 18/11/1990, which includes property guidance, is issued. However, for final numbering, the property registrar does not issue an administrative certificate proving final numbering. Instead, they prepare the real estate book as a consequence of final numbering (10). We have allocated the second branch of this requirement to explain how to prepare the real estate book and its legal nature.

Third Requirement:

The Real Estate Book as Evidence of Final Numbering

The completion of survey documents involves legal procedures that are entrusted to the property registrar for implementation. This is for the actual embodiment of the real estate register and the endorsement of field investigation results on property cards to ultimately deliver real estate books to those who prove their ownership rights. The real estate book is the sole legal document that confirms private property ownership in surveyed lands and is only delivered to individuals who can prove their ownership of the properties they possess. It is the natural spokesperson for the legal status of properties because it is not delivered until intensive investigations are conducted as required by surveying activities.

Second Section:

The Permissibility of Contesting Final Numbering

Legislations have differed regarding the principle of absolute validity of final numbering within the framework of the cadastral system, based on the notion that it purifies the property from all defects. Some argue that it has absolute validity, while others believe that this validity does not exceed relative validity. We will discuss this through this section and delve into the opinion of the Algerian legislator on this matter.

First Requirement:

The Principle of Absolute Validity of Final Numbering

Among those who adopted this principle is the Lebanese legislator, who considered that a stamped right acquires legal protection that renders it immune from any claim or objection in any form because, according to Lebanese law, cadastral surveying purifies the right from all defects except for cases of fraud. Similarly, the German legislator also adopted the principle of the purifying effect of stamping, and the Australian legislator followed suit (11).

Second Requirement:

The Principle of Relative Validity of Final Numbering

By examining the stance of the Egyptian legislator, we find that Article (37) of the Real Estate Registration Law states that: "The real estate register shall have the power to prove the accuracy of the data contained therein." However, we find that this principle has been contradicted in the executive regulations of this law in Article (116), which stated: "Entries in the section of the register regarding property rights ... and records of lawsuits aimed at challenging the rights recorded in the register, whether in terms of existence, validity, or enforceability." This led the Egyptian legislator to amend this article by deleting the last paragraph regarding lawsuits challenging registered rights due to its contradiction with the idea of adopting this principle (12).

Third Requirement:

The Algerian Legislator's Position

What we notice is that the Algerian legislator allows contesting rights that have been stamped. This can be understood through Article (85) of Decree 76/63, as well as the provisions of the new civil and administrative procedural law. These lawsuits only require the initial stamping of the lawsuit, indicating that the Algerian legislator did not adopt the principle of absolute validity of registration. This matter is explicitly confirmed by Article (16) of Decree 76/63, which stipulates that: "Rights resulting from final numbering granted under Articles (12), (13), (14) of this chapter cannot be reviewed except through the judiciary (13)." Therefore, reconsideration of final numbering, whether granted by the property registrar for properties whose owners hold acceptable documents to prove ownership or temporary numbering for a period of 4 months or 2 years after the mentioned period without any objections or withdrawal of registered objections, leads this numbering from temporary to final, as specified in the aforementioned Article 16. (14)

Through Article (16) of Decree 76/63 dated 25/03/1976, we notice that the Algerian legislator did not provide full judicial immunity to the real estate book as the sole document to prove property ownership in surveyed areas. Since the real estate book is issued in the form of an administrative decision, this decision is subject to scrutiny for its legality or otherwise under the general provisions governing administrative decisions. It should be noted that defects in administrative decisions include procedural defects, lack of reasoning, violation of the law, abuse of power, and lack of competence.

Third Section:

Reasons Leading to Contestation of Final Numbering

The legislator has mobilized various legal efforts and mechanisms to ensure the achievement of the objectives pursued by the surveying process and the preparation of the real estate register, aiming to purify and stabilize property ownership. However, these efforts remain insufficient to guarantee the expected effectiveness realistically, especially given the emergence of numerous challenges during the surveying process. Even after the deposition and numbering processes, which hinder the achievement of the objectives set since the 1970s, their realization remains a current issue. Therefore, effective solutions must be found to address these challenges and achieve the intended goal.

In this section, we will focus on the reasons leading to contestation of final numbering and real estate registers, namely those reasons that negatively affect the stability of property ownership, leaving it threatened and subject to challenge each time. We will discuss this in some detail through the following demands:

First requirement:

Challenges Arising During the Surveying Process

Due to several reasons, challenges are raised regarding the outcome of the work of the real estate survey teams, including:

Challenges related to the employees assigned to the survey:

Undoubtedly, the process of preparing public land surveys is carried out by employees assigned to this task according to the law, which prompts us to discuss the competence of these employees (15). It is noted that the real estate survey committee suffers from a lack of supervision over the employees responsible for surveying operations, necessitating vigilance from the supervisory authorities to devise a program aimed at improving their level in this field (16).

It is also worth mentioning that the survey committee consists of several representatives from different administrative authorities. This amalgamation of administrations makes it difficult for the committee members to convene and reach consensus due to differences in their views and orientations (17). Therefore, there is a need to reconsider the establishment of this committee in a specialized manner where each employee bears responsibility for the assigned task. It is also permissible to provide incentives to these employees related to their social and professional status, given the sense of marginalization felt by them today. This has led some of them to resort to manipulation and misuse of their positions, such as registering properties owned by their relatives and acquaintances, and other illicit methods, which in itself poses a challenge affecting the surveying and real estate register preparation processes.

Challenges Related to Property Owners:

In addition to the aforementioned challenges related to administration in general, there are issues concerning property owners that directly contribute to hindering the progress of the surveying process. These issues primarily revolve around property owners' failure to respond to invitations to participate during the surveying process. This can be attributed to two main factors. Firstly, there is a lack of adequate publicity and advertising for the process itself, which should be comprehensive and inclusive in all aspects and methods according to the nature of each area.

Secondly, property owners' ignorance of the objectives of the surveying process and their unawareness of its importance. Often, their initial concern is fear that the process aims to impose taxes, which is a significant misconception negatively affecting the process's progress. Therefore, it is necessary to educate property owners about this matter.

Material Errors Committed During the Surveying Process:

Despite the diligence and accuracy of the personnel responsible for fieldwork during the surveying process, their work is not flawless, as they are human. Therefore, they often make various material errors, including errors in boundary drawing, measurements, or calculation of area, and transferring information about property rights holders (18). Such errors have negative repercussions on property owners and may lead to several problems in the future, whether during the initial surveying stage, during the numbering period, or even after the delivery of the real estate register. This may prompt them to seek settlements they previously did not require, and the situation may escalate into disputes before the competent judiciary (19).

The legislator has granted the authority responsible for land surveying the power to inspect changes and correct minor errors that do not affect the legal status of properties (20). The General Directorate of National Property has addressed some errors through several memoranda and instructions, such as Memorandum No. 3883 dated 24/07/2004, which deals with how to handle discrepancies in area measurement if the difference exceeds a ratio of 1/20 (21). It should be noted that these errors cannot be corrected if the numbering becomes final except before the competent judiciary (22).

Temporary Boundary Issues:

Often, during the surveying process, disputes arise regarding the boundaries separating surveyed properties. Therefore, the legislator has granted the survey committee the authority to attempt reconciliation between the parties. In case this committee fails, a three-month period is granted to the disputants to reach an agreement or resort to litigation, without specifying the start date of this period (23).

As a result, this issue often remains unresolved and subsequently passes to the land registrar after the deposit, who has the authority to reconcile the parties. If the disputants choose to resort to the judiciary, the boundaries remain temporary until a final resolution of the dispute, which in turn hinders the surveying process and negatively affects the stability of property ownership.

It is worth noting, concerning the discussion of boundaries, that issues may arise in surveying border areas between municipalities. Often, a specific property, such as a stadium, lies between two municipalities (24). As a general rule, it is not permissible to divide it between the two municipalities, necessitating its inclusion in one municipality and the relinquishment of the other. This requires changing the boundaries between municipalities, a lengthy process that negatively impacts the progress of land surveying.

Aerial Imaging Challenges:

Aerial imaging used in surveying operations, especially concerning vast areas like desert surveys, often raises several issues related to boundaries and overlapping. This imagery frequently includes

possessions of individuals, prompting them to resort to the relevant judiciary to request the purification of portions of extensive property covered by desert surveys, which also affects property ownership stability.

Second Requirement:

Post-Deposit and Numbering Challenges:

During this stage, several issues may arise that could impact the completion of the land surveying process and, consequently, negatively affect property ownership stability. These include:

Deadlines related to objections to temporary numbering and reconciliation:

Among the challenges that arise after the deposit and numbering process is that sometimes the property is registered in the name of the apparent possessor. This occurs due to the latter's statement before the survey committee, presenting themselves as the property owner. In this regard, the real owner may appear, who is authorized by law to object to the numbering before the land registrar. This objection is recorded in a special register, and the land registrar has the authority to reconcile the parties and issue a report accordingly. The result of this objection can either lead to reconciliation and the drafting of a successful reconciliation report with probative force, or to the opposite scenario, where reconciliation fails, and a report is issued informing the parties, granting the objector a six-month period to resort to the relevant judiciary.

In the event of a lawsuit before the competent court, the temporary numbering remains in effect until a final judgment is issued. This situation itself poses a significant challenge that negatively impacts property ownership stability, as such cases may take a long time to resolve, involving various levels of courts, including the Supreme Court.

It is worth noting that the legislator has granted absolute freedom to the land registrar regarding the deadlines for reconciliation between the parties. Once an objection to temporary numbering is raised, it remains in effect, with no specific deadline for the land registrar to settle the objection through reconciliation or otherwise. This complicates matters further, leaving the process at a standstill, necessitating legislative intervention to rectify this issue.

The Problem of Clearing Unknown Accounts:

Properties registered under unknown accounts pose a barrier to the establishment of the real estate registry. By "property with an unknown owner," we refer to land identified during the surveying process as having an unknown owner (25). Several reasons contribute to this situation, including insufficient advertising and publicity means related to the commencement of the surveying process in the area. This includes inadequate notification methods, particularly since the process often relies on posting notices, which are ineffective in informing all property owners. Additionally, the lack of initiative from the property holder to approach the committee and register their property or the survey team's lack of diligence and responsibility during their tasks can also be reasons.

The issue of unknown accounts continues to cause serious problems, whether during the two-year period for temporary numbering or after this period, when it is converted to permanent numbering for the benefit of the state, revealing the real owner afterward.

Due to the abundance of properties registered under unknown accounts, the General Directorate of National Property has intervened through several memoranda and instructions aimed at resolving the status of these properties. The legislator has also intervened to address this challenging issue. Law (17/11) dated 27/12/2017, which includes the Finance Law for the year 2018 (26), represents the latest legislative intervention in this regard. Article (89) of this law amended the provisions of Article (23) repeated from Order (75/74) regarding the establishment of the new real estate registry under the Land Survey Law of 2015. It now states: "Every property belonging to private individuals not claimed during land survey operations and whose ownership cannot be determined by the survey authorities is registered in an account called 'Unclaimed Properties During Land Survey Operations' for a temporary period of fifteen (15) years from the date of depositing the survey documents at the land registry office.

If a claim is made based on a registered deed of ownership during the aforementioned period, the land registrar, in the absence of any pending legal action, conducts the customary investigations and inquiries with the state property authorities and the land survey department and issues the final numbering for the claimed property in the name of its owner.

If a claim is made based on an unregistered deed or on possession according to the applicable legislation within a period of two (02) years from the date of depositing the survey documents at the land registry office, the land registrar, after customary investigations and inquiries with the state property authorities and the land survey department, assigns temporary numbering for the property claimed for a period of two (02) years in the name of the concerned party, starting from the date of filing the request.

If it is determined during the investigation that the property claimed belongs to the state or local authorities, it is immediately assigned permanent numbering based on the investigation results.

After the expiry of the aforementioned fifteen (15) years, the property is permanently numbered in the name of the state."

In summary, through this amendment, the legislator has renamed the "unknown account" to the "Unclaimed Properties During Land Survey Operations" account. However, the novelty in this text is that these properties are temporarily numbered for a period of fifteen (15) years from the date of depositing the survey documents at the land registry office. This introduces a new type of temporary numbering, which lasts for 15 years, necessitating amendments to the legal texts in Decree (76/63) regarding types of real estate numbering to avoid conflicts and ensure consistency with the existing legislation.

During this period, in case of absence of disputes, an application can be submitted to the land registrar, who conducts necessary investigations and inquiries after contacting the state property authorities and the land survey department, then assigns numbering to this property in the name of its owner.

It is worth noting that if there is a registered deed associated with this property, the property is permanently numbered immediately. However, if there is no such deed, or if only informal documents are present, the property is temporarily numbered for two (02) years starting from the date of filing the settlement request.

If the land registrar determines during the investigation that the property belongs to the state or local authorities, it is immediately permanently numbered based on the investigation results (27).

As this article confirms, after the expiration of a full fifteen (15) years, the property is permanently numbered in the name of the state. From the foregoing, we can say that the legislator, in order to protect private property, extended the deadlines to give owners who were prevented from registering their properties for one reason or another the opportunity to do so. On the other hand, the legislator also acknowledged the acquisition of rights by the state after 15 years of non-claiming of the property. However, the validity of this ownership remains relative, as it can be challenged before the judiciary, especially if the absent and unclaimed owner possesses registered documents related to the property itself.

It is also notable in this text that the burden on the land registrar is increased through assigning them the task of investigations and inquiries, which require clarification of procedures and methods. On the other hand, the extended deadline negatively impacts the stability of property ownership, which remains pending for settlement.

The Third Requirement:

The Appearance of the Real Owner.

After the completion of the land survey process, depositing the documents with the land registry office, numbering the properties, and the expiration of the objections period to the temporary numbering, the property registers are handed over to the owners. Thus, the stability of property ownership is achieved. However, this stability remains relative because the possibility of challenging the property register persists. Often during this period, a real owner, who was absent during the survey phase, emerges, missing the opportunity to present documents proving their ownership or possession. Consequently, their property is registered under unclaimed accounts, or another person benefits from it through false declarations or claims of possession, leading to numerous lawsuits and disputes related to the cancellation of numbering and property registers. Due to several reasons, such as errors by survey teams during investigations, inaccuracies in boundary delineation and areas, or lack of seriousness and discipline in the work, especially concerning advertising and publicizing the survey process, the results of this work are often challenged (28).

The abundance of lawsuits related to the cancellation of numbering, in all its forms, is problematic as it reflects deficiencies in the work of survey and property preservation committees. Additionally, it negatively impacts the stability of property ownership, which remains threatened and subject to challenge each time. The low number of challenges and disputes regarding these numbers reflects the seriousness of the specialized survey and numbering committees. The more effective their work, the fewer challenges there are, and the more stable property ownership becomes.

Conclusion:

It is evident from the foregoing that the process of preparing the general land survey and establishing the real estate registry aims to purify and stabilize property ownership. There is no doubt that this is closely related to boosting the national economy, as the stability of property

ownership contributes to achieving economic goals, such as attracting investments that have remained limited due to their association with the legal status of property ownership.

It is noteworthy that Algerian legislation has not granted full immunity to the final numbering or the property register as the sole document to prove property ownership in surveyed areas. This indicates the principle of relative validity of the property register adopted by Algerian legislation.

Among the reasons leading to challenging the property register are the difficulties encountered during field investigations, such as those related to surveying personnel and owners, as well as the material errors committed during the survey process. Additionally, there are issues such as temporary boundary disputes after the deposit and numbering process, including objections to temporary numbering and reconciliation. All of these lead to numerous lawsuits related to the cancellation of temporary and final numbering, as discussed in this study.

Based on the aforementioned, we can conclude the following proposals:

The necessity of formulating a program by the competent authorities aimed at improving the level of personnel involved in the survey process to avoid many operational difficulties by studying and addressing the reasons leading to challenges in final numbering and property registers.

It is also necessary to reconsider the establishment of these committees in a specialized manner where each member bears responsibility for the assigned tasks. There should be no objection to providing incentives to these personnel related to their social and professional status.

The importance of focusing on the aspect related to advertising and publicity for the start of the survey process, ensuring comprehensive and inclusive informing of the residents of the surveyed area through various methods and means according to the nature of each area.

Additionally, there is a need to raise awareness among property owners about the objectives of the survey process and the necessity of respecting its legal deadlines through notices and various media.

Developing more skilled and accurate mechanisms and relying on experienced professionals in the field of boundary delineation to avoid numerous material errors.

The text should specify the start date of the three-month period granted by the committee to the disputants for agreement or litigation, avoiding leaving it open-ended, and the date of depositing survey documents with the land registry office should be considered.

Setting a specific deadline during which the land registrar commits to mediating between the parties to avoid the continued pending status of the concerned property.

There should be a reduction in the percentage of unclaimed properties in each current deposit section by not accepting sections containing high percentages of unknown properties and the necessity of returning them for field investigation to identify the holders, with a note to survey teams regarding this issue and the need for seriousness and responsibility in their duties to avoid the problems of unknown properties that have burdened administrative judiciary and made it handle hundreds of cases related to re-evaluating this numbering.

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