

Mechanisms for Clearing Private Real Estate Ownership Between Legislation and Judiciary



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Abstract

The legislator aimed to address colonial-era issues by establishing an integrated real estate system to ensure stability in transactions. This led to adopting a property-based registration system, replacing the flawed personal registration method. Comprehensive land surveys were initiated to accurately identify property ownership, resulting in detailed listing and issuance of property registers.

Due to slow land surveying, alternative mechanisms were introduced to expedite property deeds, such as the “Act of Fame,” which was abolished in 2007 due to its complications and impact on public and waqf properties. It was replaced by real estate investigations, and the Land Orientation Law introduced the certificate of possession. These mechanisms share common conditions: non-application in surveyed areas and protection of public, waqf, and tribal lands. However, they remain insufficient, highlighting the need for more effective tools to support land surveys and property cleansing. The judiciary is also urged to unify its stance and align with the legislator’s objectives.

Keywords

Real Estate Ownership
Purification;
Legislation;
Judiciary;
Real Property Registration;
Land Records.

الكلمات المفتاحية

تطهير الملكية العقارية؛
التشريع؛
القضاء؛
الشهر العيني؛
السجلات العقارية.

آليات تطهير الملكية العقارية الخاصة بين التشريع والقضاء

ملخص

سعى المشرع إلى معالجة الأوضاع الموروثة عن الحقبة الاستعمارية من خلال خلق نظام عقاري متكامل يهدف إلى ضمان استقرار المعاملات العقارية. لذلك، تبنى نظام الشهر العيني بدلاً من الشهر الشخصي الذي كان يعاني من العديد من السلبيات، وبدأ عمليات التطهير العقاري عبر المسح الشامل الذي يساعد في تحديد هوية العقارات بدقة. يسهم نظام الشهر العيني في جرد وتحديد كافة الملكيات العقارية وتسليم الدفاتر العقارية. ومع ذلك، فإن بطء عمليات مسح الأراضي استدعى البحث عن بدائل وآليات موازية لتسريع إصدار سندات الملكية العقارية، مثل عقد الشهرة، الذي ألغي في 2007 بسبب تعقيداته وتأثيره السلبي على الأملاك الوقفية والوطنية، واستبدال بالتحقيق العقاري. بالإضافة إلى ذلك، تم استحداث شهادة الحيازة كآلية جديدة. تتفق هذه الآليات في عدم جواز تطبيقها في المناطق الممسوحة وعدم المساس بالأملاك الوطنية والوقفية. رغم هذه الجهود، تبقى الحاجة إلى آليات أكثر فعالية لدعم عمليات المسح وتطهير الملكية العقارية، مع توجيه القضاء لتوحيد موقفه ودعم توجهات المشرع.

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I- Introduction:

Undoubtedly, the historical phases that Algeria has gone through have influenced the real estate situation, given its financial value as a source of wealth. During the Ottoman rule, Islamic law predominantly governed the processes of real estate transactions, exploitation, acquisition, and inheritance. Most lands were owned by families before the system evolved towards individual ownership. There were also uncultivated lands, known as "dead lands," which were left unused and were distant from populated areas. Private properties were directly utilized by their owners, who had full freedom to manage them. Communal lands were those in which the holder had only the right to usufruct. Baylik lands were subject to the authority of the Bey, while endowment (waqf) lands were reserved for charitable purposes, with the proceeds benefiting the public interest for which they were intended.

During the colonial period, multiple legislative texts were enacted to incorporate as much land as possible into the ownership of the French state. The aim was to seize the lands and sell them to settlers by encouraging real estate exchanges, including sales, leases, and mortgages. This led to speculative practices in the land market. Consequently, the colonial real estate system was unsuccessful, leaving a complex, ambiguous, and even unstable real estate situation, which adversely affected the post-independence period.

From the beginning of this period (i.e., independence), efforts were made to extend the application of certain laws left by the colonial administration as long as they did not affect national sovereignty. The Supreme Court at that time confirmed, through a decision dated February 15, 1967, that all colonial laws concerning real estate ownership that conflicted with national sovereignty should be abandoned and not enforced.

In an effort to rectify these inherited conditions and to establish integrated real estate systems that ensure the stability of real estate transactions, owners, and holders, the legislator intervened with a series of legislative and regulatory measures. This included adopting the cadastral registration system instead of the previously applied personal registration system, which had many flaws and did not guarantee the rectification of defects attached to transactions. Ordinance No. 74-75, dated November 12, 1975, was issued, which involved the preparation of a general land survey and the establishment of the Real Estate Registry ([Ordinance No. 74.75, 1975](#)). This ordinance initiated comprehensive real estate purification operations through surveying, which is a technical legal process aimed at determining all necessary information for a complete and clear understanding of the property's identity, including its location, boundaries, structure, type, owner's name, ownership reasons, and real rights associated with it. The surveying process is an essential tool for establishing property identity information ([Weiss, 2014, p. 218](#)).

Purification implies that the existence of real rights through registration in the cadastral register can be asserted against all parties, while unregistered rights do not exist and cannot be enforced. Thus, purification⁽¹⁾ is the result of the principles of legality and the probative force of registration.

To expedite this national project, the National Agency for Land Surveying was established by Executive Decree No. 123-89, dated December 19, 1989 ([Official Gazette Issue No. 54](#)). The cadastral registration system necessarily leads, upon the completion of surveying operations across the entire national territory, to the precise identification and inventory of all real estate properties, regardless of their type, and facilitates the preparation and issuance of real estate titles.

Additionally, Ordinance No. 70-91, dated December 15, 1970, concerning documentation, which came into force on January 1, 1971, emphasized a mandatory legal principle requiring the formalization of transactions transferring real estate ownership under penalty of nullity ([Article 12, 1988](#)).

With the promulgation of the 1989 Constitution and the clear shift towards a market economy, it became evident that legislation needed to align with this fundamental transformation. Thus, Law No. 25-90, dated November 18, 1990, concerning land orientation, was issued and later amended and supplemented. This law restored significance to private real estate ownership to harmonize it with the general land surveying operations.

The real estate purification process, which is conducted through surveying, allows financial institutions to operate more effectively in providing mortgage-based real estate loans.

However, the considerable delays in land surveying operations⁽²⁾, combined with the necessity of stimulating the real estate market in this field, required intervention by introducing new and parallel alternatives and mechanisms. These measures aimed to issue titles for real estate ownership to support the field work of land surveyors and reduce the intensity and complexity of disputes brought before judicial authorities.

The main issue at hand, therefore, pertains to identifying these mechanisms that have contributed and will continue to contribute to the process of real estate purification during the transitional period between the personal registration system, applied in unsurveyed areas, and the cadastral registration system, which is linked to the comprehensive land surveying

operations that must be completed nationwide. Additionally, this study seeks to explore and analyze the judiciary's stance on all of these matters.

Addressing this topic requires discussing two primary concepts. The first concerns the documents related to the registration of possession as parallel mechanisms introduced by legislative and regulatory texts to purify real estate ownership. The second concerns the judiciary's role in this process. This will be approached using a descriptive, analytical, applied, and even critical method.

I.1. Documents of Possession Registration:

To achieve the purification of real estate ownership, the legislator established parallel mechanisms in preparation for land surveying, namely the documents for possession registration. So, what are these documents?

I.1.1. Requirement One: The Fame Contract:

The poor results of surveying operations prompted the introduction of the regulatory text in Decree No. 352.83, dated May 21, 1983, which established procedures for proving adverse possession and drafting the fame contract that recognizes ownership. The fame contract is based on procedures for acknowledging ownership grounded in the general principles of possession and adverse possession as stipulated in civil law.

The decree did not provide a specific definition of the fame contract, which led some to define it ([Bacha, 2013, p. 17](#)) as an official document drafted by a notary in accordance with legal procedures and within their authority and jurisdiction. It involves the recognition of ownership based on adverse possession and is registered upon the applicant's declaration.

The fame contract⁽³⁾ is considered a declarative document, serving merely as a simple presumption of ownership because it is recorded under the personal registration system only.

The decree established certain conditions for obtaining a fame contract, including those related to the property itself and those concerning possession and its conditions. Article 01 states: "Any person who possesses a property classified as private within the municipalities not yet subjected to the procedure established by Ordinance No. 74-75, dated November 12, 1975, and enjoys continuous, uninterrupted, undisputed, public possession that is free of ambiguity, in accordance with the provisions of Ordinance No. 58-75, dated September 26, 1975, regarding the Civil Code, may request a fame contract from the notary responsible for the competent regional notary office, acknowledging ownership."

I.1.1.1. Conditions Related to the Property to Be Acquired:

Through Law No. 25-90, dated November 18, 1990, concerning land orientation and its amendments, the legislator emphasized that the classification of real estate properties, regardless of their type, falls under three categories: national properties, private properties, and endowment (waqf) properties ([Article 23, 1990](#)).

Following the amendment of Article 85 of the aforementioned law by Ordinance No. 26-95, dated September 25, 1995, "communal lands" were added and classified as state properties.

Thus, the drafting of a fame contract must concern private properties, excluding both types of national properties (public and private), endowment properties, and communal lands.

In this context, the State Council, in its decision dated February 11, 2002, No. 5763 ([Decision Published in the Journal of the Council of State, 2002](#)), affirmed that communal lands belong to the state and are not subject to the provisions of Decree No. 352.83. The decision's rationale included the following:

"However, it is evident from the case documents that the appellants, before approaching the notary ... to draft a fame contract, had previously approached another notary ... who, in accordance with the procedures set forth in Decree No. 352.83, notified the State Property Department and requested the legal status of the disputed properties. The State Property Department of the province ... responded to the notary, confirming that the properties were of a communal nature and part of the collective investigation No. 32 as stated in letter No. 2732, dated September 25, 1998.

Thus, the case documents show that the disputed lands are of a communal nature and, therefore, state-owned, and consequently, the provisions of Decree No. 352.83 do not apply. The judges of the ... Council, by ruling to dismiss the appellants' case, have based their decision on a legal foundation, warranting the upholding of the contested decision."

Furthermore, the property must be located within the territory of a municipality not yet subjected to land surveying, and its ownership must not be confirmed through an official document. Individuals holding only customary documents are entitled to draft a fame contract.

I.1.1.2. Conditions Related to Possession:

Possession is considered a visible indicator of ownership, as in most cases, the possessor of a property is presumed to be its owner. Thus, it is said that the apparent situation is presumed to be the original state, and anyone claiming otherwise bears the burden of proof. Possession is a factual authority where an individual exercises control over a material object, with the intent to appear as the owner or as having another real right over it (Al-Munji, 1985, p. 11).

In this sense, possession is neither a real right nor a personal right; rather, it is a basis for acquiring the right through physical control over the object. The Algerian legislator did not define possession but merely identified its elements and conditions. The concept of possession aims to protect ownership, as the law considers it a presumption of ownership. Furthermore, possession ensures the protection of security and public order in society by legally safeguarding the possessor of the property against any infringement, even if committed by the owner (Zouda, 2015, p. 140).

The Civil Code sets forth general rules on possession in Article 827, which states: "Anyone who possesses movable or immovable property, or a real right over movable or immovable property, without being its owner or having exclusive rights over it, shall acquire ownership if their possession continues uninterrupted for a period of fifteen years."

Therefore, both the material element of possession, which involves physical control over the property, and the intentional element, which entails the intent to own, must be present. Additionally, the conditions of possession must include publicity, peace, continuity, and the absence of interruption. The possession must last for the legally defined period (15 years, or 30 years if possession began before July 5, 1975, when the French Civil Code was still in effect).

Disputing a fame contract for the purpose of obtaining a judicial ruling to annul it⁽⁴⁾ requires presenting the case before the ordinary courts (the real estate court), where the claimant must prove their possession of the property in question according to the rules of adverse possession. Decree No. 83-352 mentioned earlier does not explicitly provide for the direct filing of a claim for entitlement if the true owner emerges, unlike the provisions for issuing a possession certificate (Article 45, 1990).

If the claim is filed by a public law entity (such as the municipality or province), the case must be brought before the administrative court in accordance with Article 800 of the Civil and Administrative Procedures Code. Despite being drafted by a notary, a fame contract is not considered an administrative contract. This was confirmed by the decision issued by the Court of Conflicts on December 21, 2008 (Court of Conflict of the Supreme Court, 2009) following a positive jurisdictional conflict between ordinary and administrative courts regarding this matter.

It should also be noted that in all cases, such a claim must be filed within fifteen years from the date the fame contract was recorded at the real estate registry, as ruled by the Supreme Court in its decision dated February 12, 2015, No. 0895214, published in the Supreme Court's Judicial Journal, 2015, Issue 01. This ruling established the principle that the statute of limitations for annulling a fame contract is fifteen years from the date of its registration.

I.1.2. Real Estate Investigation:

Due to the flaws that emerged from the application of Decree No. 352.83 mentioned above—particularly its superficiality and lack of precision in drafting the fame contract, which occasionally resulted in the appropriation of some endowment (waqf) and even private national properties—the legislator repealed the aforementioned decree and enacted Law No. 07-02, dated February 27, 2007. This law introduced a procedure for verifying real estate ownership rights and issuing title deeds through a real estate investigation process (Decree No. 352.83, 1983).

The real estate investigation involves gathering and examining all necessary information, declarations, or documents on-site to establish the right of ownership. This investigation is conducted at the level of the property registry services, land surveying departments, state property authorities, and tax departments, and, if necessary, at any other relevant service (Article 10, 2008). It is a systematic inquiry based on collected testimonies, leading to the drafting of a report that highlights the results by presenting all facts and statements that enable decision-making. Through this report, the administration collects information to establish a right, with the aim of drafting a real estate title that is enforceable against all parties (Mahmoudi, 2010, p. 124).

When enacting Law No. 07-02, the legislator retained the same conditions stipulated in Decree No. 352.83 regarding the property to be acquired. The property must not be located in surveyed areas, must not be classified among national properties, endowment properties, or communal lands, and must meet the conditions of possession leading to ownership through adverse possession, in line with the requirements of the Civil Code.

This raises the question of how the verification is conducted through a real estate investigation to achieve the goal of issuing and delivering a title deed to the applicant.

I.1.2.1. The Process of Verifying Real Estate Ownership through Real Estate Investigation:

Any individual or legal entity that exercises possession over a property, either directly or through another person, or holds a title deed drafted before March 1, 1961, which no longer reflects the current legal status of the property, may request

the initiation of a real estate investigation to verify their ownership right and to receive a title deed ([Article 04 of Law No. 02.07, 2007](#)).

The request to initiate a real estate investigation is submitted to the provincial director of the property registry and must include all information related to the applicant's identity and all legal and technical details about the property. The request must be accompanied by the deed or deeds—if available—drafted before March 1, 1961, that no longer reflect the current status of the property, along with a receipt of submission.

Just as a real estate investigation can be opened individually, it can also be opened collectively for the purpose of implementing collective building programs or urban or rural real estate development projects ([Article 02 of Law No. 02.07 Dated: 27.02.2007, 2007](#)). This collective initiation can be carried out at the governor's initiative through a decree to commence collective real estate investigation procedures or at the request of the president of the relevant municipal council ([Article 03 of Executive Decree No. 147.08, 2008](#)).

The real estate investigator relies on all primary indicators that suggest the applicant meets the conditions for ownership based on adverse possession, particularly the duration, elements, and conditions of possession, and the legal nature of the property as private ownership. The investigator also considers other indicators derived from the records of land surveying departments, the Directorate of State Properties, and the property ownership register ([Bacha, 2013, p. 149](#)).

I.1.2.2. Issuance of the Title Deed:

After submitting the file to the regional property registry office, the director of this authority issues a decree appointing the real estate investigator, who proceeds to inspect the property in the presence of the concerned party to record their statements. The investigator also gathers information from neighboring property owners regarding the status of the property under investigation to protect their rights.

The real estate investigator must draft a provisional report within 15 days of the inspection, detailing the investigation's findings. In the following eight days, this provisional report is published at the municipality office where the property is located for a period of 30 days. This allows anyone with an interest in the property to submit objections to the investigation's results.

Objections are recorded in a designated register, which may prompt the director of the property registry to instruct the investigator to revisit the site to assess the validity of the objections. If the objections are found to be legitimate, the investigator attempts to mediate between the parties. If the mediation is successful, a settlement report is prepared. However, if mediation fails, a report of non-settlement is drafted, and a copy is provided to both parties. In this case, the interested party must file a claim with the ordinary court (real estate judge) within two months. If no legal action is taken within this period, the real estate investigation continues.

If no objections are raised against the provisional report, the investigator drafts a final report, which serves as the basis for the issuance of a decision by the director of the regional property registry office. This decision registers the land parcel in the applicant's name and instructs the relevant property registrar to execute it ([Bacha, 2013, p. 169](#)).

Following the publication of the registration decision, the property registrar prepares the title deed and forwards it to the regional property registry office for delivery to the concerned party. The issuance of the title deed under the real estate investigation framework adheres to a specific format outlined in the annex of Executive Decree No. 147-08, dated May 19, 2008, concerning real estate investigations and the issuance of title deeds.

If the request to initiate a real estate investigation submitted by the concerned party results in a negative outcome, the director of the regional property registry office—under such circumstances—issues a reasoned decision of rejection, which can be appealed before the administrative court.

I.1.3. Certificate of Possession:

Article 39 of the amended and supplemented Land Orientation Law states: "According to the concept of Article 823 of Ordinance No. 58-75, dated September 26, 1975, any person who exercises ownership of private lands not documented by contracts, in a continuous, uninterrupted, peaceful, and public manner, free of any doubt, may obtain a possessory title called 'Certificate of Possession.' This certificate is subject to registration and real estate publicity in areas where the land survey register has not been prepared."

The Certificate of Possession is a nominative possessory deed prepared by the president of the municipal council, in accordance with legal procedures within their authority and jurisdiction, based on the request of the possessor. It is subject to registration and real estate publicity ([Article 02 of Decree No. 254.91, 1991](#)).

Like the fame contract and the deed issued following a real estate investigation, the issuance of a Certificate of Possession requires that the property be classified as private real estate and located in unsurveyed areas. Thus, national properties, endowment properties, and communal lands are excluded. Additionally, the possessor must maintain peaceful, public, continuous, and uninterrupted possession without defects for a duration of only one year.

The Certificate of Possession has specific characteristics that distinguish it from other possessory registration documents, and its issuance requires following specific procedures.

I.1.3.1. Characteristics of the Certificate of Possession:

The Certificate of Possession allows the holder to exercise the powers associated with real estate possession and assists the holder in obtaining a title deed when surveying teams pass by. Therefore, it has a set of distinctive features.

- **Nominative Nature:** The Certificate of Possession is nominative, meaning that it is issued with consideration for the beneficiary. If the holder dies, the property covered by the certificate does not automatically pass to the heirs. The heirs must seek a Certificate of Possession in their names within one year of the holder's death by submitting an inheritance certificate, failing which the deceased's certificate will be canceled ([Article 42 of the Land Guidance Law No. 25.90, Amended and Supplemented, 1990](#)).
- **Non-Transferable Nature:** Although the holder of the Certificate of Possession may act as if they are the actual owner of the property⁽⁵⁾, they are legally prohibited from transferring ownership of the property, whether for consideration or not. Thus, the property is restricted from being sold, donated, bequeathed, exchanged, or subject to any legal action that would lead to a transfer of ownership. However, the holder can obtain building and demolition permits and arrange for mortgage liens, but only in favor of lending institutions and as collateral for medium- and long-term loans ([Article 44, 1990](#)).
- **Does Not Alter Legal Status of the Property:** The Certificate of Possession does not change the legal status of the property, in consideration of the possibility of the true owner emerging. This legal principle is reaffirmed in Article 43 of the Land Orientation Law.

I.1.3.2. Procedures for Issuing the Certificate of Possession

The issuance of the Certificate of Possession involves several procedures, some initiated by the candidate for possession and others under the jurisdiction of the competent municipal council president.

I.A. Preparing the File and Submitting it to the Municipality

Individuals wishing to obtain a Certificate of Possession must prepare a file that includes the following:

- A written petition detailing all relevant information about the property, including its location, area, status, and the identity of the possessor(s), along with any encumbrances on the property if present.
- A sworn declaration drafted according to the model attached to Decree No. 254.91, dated July 27, 1991, which specifies the procedures for preparing and issuing the Certificate of Possession. This declaration must include the identification of the property, the identification of the petitioner, and the testimonies of two witnesses confirming the candidate's possession of the property, along with a civil status certificate for the petitioners.
- A schematic plan showing the property's location.

To implement rural or urban modernization programs of public benefit, or real estate regrouping projects, the responsible authority (represented by the governor) determines the territorial scope of the concerned municipality or municipalities through a decision that is filed and posted at the municipality office and public spaces for two months ([Mahmoudi, 2010, p. 221](#)). This allows any interested party to submit an individual request.

I.B. Investigation and Inquiry

After the candidate for possession submits the file to the competent municipality, the date and number of the submission are recorded in a designated register, numbered and signed by the municipal council president. The concerned party receives a receipt for submission.

Decree No. 254.91 ([Article 08 of Decree No. 254.91, 1991](#)) emphasizes the need for appropriate publicity by posting a summary of the petition at the municipality office and public spaces for two months. Additionally, if the property is located in a municipality with a population of fewer than 20,000 residents, publication in a national newspaper is mandatory.

This wide publication allows anyone with an interest to submit objections within two months to the same municipality, which directs the parties to the competent court (the real estate judge). The claimant challenges the status of the possessor who applied for the Certificate of Possession. The candidate for possession may also file a lawsuit against anyone who challenges their possession.

The municipal council president is also required to contact the Directorate of State Properties to obtain information about the legal status of the property in question, particularly to confirm that it is not classified as national property, endowment property, or communal land.

If it is confirmed that the property meets the legally required conditions ([Article 39, 1990](#)), and no objections are raised, the municipal council president proceeds to issue the Certificate of Possession. The certificate's format is specified in the model attached to Decree No. 254.91. The certificate must undergo registration procedures at the registration and stamp department and must be subject to registration at the competent property registry office, following the personal registration system since the Certificate of Possession is originally issued in areas not subjected to land surveying.

The legislator also considered the possibility of the true owner emerging and thus granted them the right to file a claim for entitlement ([Article 45, 1990](#)) and to request the cancellation of the Certificate of Possession, which must be addressed before the administrative court.

II.2. The Role of the Judiciary in the Real Estate Purification Process:

While the legislator has introduced these mechanisms primarily aimed at supporting the process of purifying real estate ownership by facilitating the work of land surveyors, the question remains regarding the judiciary's role in achieving this goal. Has the judiciary supported the legislator's efforts, or has it created situations that might contradict them through the disputes presented before judicial authorities?

The most prominent disputes directly affecting the issue of real estate purification are those related to:

- Customary deeds
- The applicability of adverse possession rules in surveyed areas
- Disputes regarding registration

II.2.1. Disputes Related to Customary Deeds:

During the colonial period and even after independence (through Ordinance No. 157-62, dated December 31, 1962, which extended the validity of colonial laws as long as they did not conflict with national sovereignty), real estate transactions were often conducted by mere agreement.

Ordinance No. 91-70, dated December 15, 1970, effective from January 1, 1971, introduced a mandatory legal principle requiring that the transfer of property ownership and real rights over real estate must be carried out in an official form under penalty of nullity. This provision was later transferred verbatim to Article 324 bis 1 of the Civil Code after the repeal of Ordinance 91-70.

Based on these two historical periods, two types of disputes emerged:

II.2.1.1. The Period Before January 1, 1971:

According to Article 02 of the amended and supplemented Civil Code, the law does not have retroactive effect. Therefore, customary deeds with a fixed date before January 1, 1971, are deemed valid between the contracting parties and even against third parties, as ruled by the Supreme Court in its decision dated April 12, 2006, No. 34178, published in the Supreme Court's Judicial Journal, Issue 01, 2006, page 435.

It is also important to note that Decree No. 63-76, concerning the establishment of the Real Estate Registry, exempted those holding customary deeds with a fixed date before January 1, 1971, from the principle of the additional effect of registration. It permitted their submission to notarial offices and their registration at the property registry (Articles 88 and 89).

II.2.1.2. The Period After January 1, 1971:

Despite the issuance of clear legal texts stipulating that official documentation is a requirement for the validity of real estate ownership transfer contracts, the judiciary remained inconsistent in its decisions on this matter for some time. The Commercial Chamber of the Supreme Court consistently ruled that transactions lacking official documentation were null, while the Civil Chamber⁽⁶⁾ upheld their validity. This inconsistency persisted until the decision issued by the Unified Chambers of the Supreme Court on February 18, 1997 ([Judicial Journal of the Supreme Court, 2001](#)), which unified the judiciary's stance by affirming that official documentation is a requirement for the validity of real estate ownership transfer contracts.

It is essential to emphasize that this decision by the Unified Chambers is not considered judicial interpretation but rather a reaffirmation of the application of a clear and explicit legal provision. Judicial interpretation is only resorted to in cases

of ambiguity in the text or in the absence of a legal provision, which is not the case concerning the requirement of official documentation for real estate contracts.

Therefore, reverting from the requirement of official documentation—which ensures the accuracy of contract data—or relying on customary deeds would, in effect, undermine the cadastral registration system based on precise and costly land surveying procedures.

II.2.2. Disputes Related to Land Surveying and Adverse Possession:

Although the legislator resolved the issue concerning possession documents (such as real estate investigations and Certificates of Possession) by stipulating that these documents cannot be issued in areas subjected to land surveying, as per the Land Orientation Law (Article 39) and Law No. 07-02 (mentioned above), the legislator did not seek to amend the provisions related to acquiring real estate ownership through adverse possession, as outlined in the Civil Code. This omission has led to conflicting judicial rulings.

II.2.2.1. The Position of the State Council:

The State Council, which represents the highest authority in administrative judiciary, has consistently ruled against the application of adverse possession rules in surveyed areas. In its decision issued by the Administrative Chamber (currently the State Council) on March 9, 1998, No. 129947 (unpublished), it ruled as follows: "A property owned by an officially registered deed in the property registry is not subject to adverse possession."

II.2.2.2. The Position of the Supreme Court:

The Supreme Court, which represents the highest authority in the ordinary judiciary, had long upheld the permissibility of applying adverse possession rules in surveyed areas, even if the property owners held real estate titles. The Court's stance was based on the absence of a clear and explicit provision in the Civil Code that excludes these areas or titleholders from the application of adverse possession rules. In its decision dated July 16, 1997, No. 157310 (published in the 2000 Judicial Journal), the Court emphasized the need to verify whether the conditions for adverse possession were met without considering whether the right was registered in the cadastral register.

However, the Supreme Court's Real Estate Chamber recently reversed this position in its decision dated January 14, 2021, No. 1206937 (unpublished), affirming that adverse possession rules cannot be applied in surveyed areas.

Nevertheless, it remains essential to urge the legislator to intervene and settle the matter through a clear provision in the Civil Code that explicitly prohibits the application of adverse possession rules in surveyed lands. Otherwise, what is the purpose of conducting complex and costly land surveying operations if they do not have a decisive legal impact? It is unreasonable to undermine all these efforts and costs by recognizing ownership based on adverse possession in surveyed areas.

II.2.3. Disputes Related to Registrations:

During the land surveying operations and after submitting the documents to the property registry, the registrar announces this submission to the public through the press. This allows anyone with an interest to object to the registration. The registration becomes final if the properties are proven to be owned by official deeds or judicial rulings. Temporary registration is set for four months for properties where owners do not have legal ownership documents but exercise possession that may allow them to acquire the property through adverse possession. Temporary registration can extend up to two years for those who have no documents but maintain possession.

The property registrar receives objections to temporary registration and attempts to mediate between the parties. If the mediation is successful, a reconciliation report is drafted. In case of failure, the registrar drafts a report and notifies the parties. The interested party then has six months from the date of notification to appeal to the competent court to dispute the temporary registration and request its cancellation.

Article 516 of the Civil and Administrative Procedures Code stipulates that the real estate division handles disputes related to temporary registration in the property registry between individuals subject to private law. The article explicitly affirms that disputes concerning temporary registration among private law entities fall under the jurisdiction of ordinary courts, unlike disputes over final registration, which are handled by administrative courts. The same applies to temporary registration disputes involving public law entities.

Disputes regarding temporary registration arise over both procedural and substantive issues.

II.2.3.1 Procedural Issues in Registration Disputes:

Some courts, based on the role of the land surveying committee, have insisted that lawsuits aimed at disputing temporary registration must be preceded by an objection to the committee. However, the Supreme Court addressed this judicial approach and issued a decision on April 12, 2012, No. 704846, published in the Supreme Court's Judicial Journal, Issue 02 of 2012, affirming the following:

"Whereas the council judges ruled that the plaintiff's case (i.e., the claimant) was inadmissible on procedural grounds because he did not comply with the procedures stipulated in Decree No. 63-76 concerning the preparation of the property registry, as he failed to file an objection before the committee headed by the judge."

Referring to Decree 63-76, particularly Articles 12 to 16, which regulate temporary registration and the procedures for objecting to it before judicial authorities, there is no requirement for the claimant to file a prior objection before the committee chaired by the judge. Therefore, when the council judges ruled to dismiss the claimant's lawsuit on the grounds that he did not file a prior objection before the committee, their ruling lacked a legal basis, which makes the claim valid and warrants the annulment and nullification of the contested decision."

Accordingly, the aforementioned decision affirmed the following principle:

The law does not require, for the subsequent acceptance of a lawsuit before the judiciary, a mandatory prior objection to temporary registration before the municipal land surveying committee.

II.2.3.2. Substantive Issues in Registration Disputes:

In some cases, the judiciary, while reviewing claims for canceling temporary registration, has investigated the possession that leads to ownership through adverse possession. They examined whether the conditions and elements were met in the property for which judicial protection was sought by the claimant. This was done by hearing witnesses and conducting on-site inspections with the assistance of specialized technical experts, without discussing the documents presented by both parties to support their claims. Consequently, the Supreme Court intervened to clarify the matter in its decision dated February 25, 2004, No. 246259, published in the Judicial Journal of the Supreme Court (Journal of Jurisprudence of the Real Estate Chamber), Part Three, 2010.

The decision stated: "Since the claimant opposed the temporary registration of the disputed land parcel, which becomes final after a period of two years according to Article 14 of Executive Decree No. 123.93, dated May 19, 1993, the judges of the subject matter court should have studied and discussed the contract submitted by the claimant and determined whether it corresponded to the disputed land. They should have also examined the documents presented by the defendant to register the disputed land in their name and evaluated the evidentiary strength of these documents according to Article 14 of the aforementioned decree. If necessary, they should have considered earlier possession to apply Article 13 of the same decree. The judges of the subject matter court did not adequately justify their decision, rendering it subject to annulment."

Accordingly, the aforementioned decision affirmed the following principle:

Resolving objections to temporary registration should involve evaluating the evidentiary strength of the documents presented by the parties, and if necessary, giving preference to the rightful possession.

Regarding disputes over final registration, the Supreme Court in its decision dated February 23, 2005, No. 282811, published in the Supreme Court's Judicial Journal, Issue 01, 2005, affirmed the following principle: Reconsideration and disputes over the rights arising from final registration of properties documented in the real estate register can only be challenged judicially.

This principle applies according to Article 16 of Decree 63-76 concerning the establishment of the Real Estate Registry.

Conclusion:

During the transitional phase—from the personal registration system inherited from the colonial era to the cadastral registration system established on land surveying since the 1970s—the legislator aimed to facilitate land surveying operations by addressing certain cases of unverified property ownership. This was achieved through mechanisms such as the real estate investigation, the fame contract, and the Certificate of Possession. While these mechanisms contributed practically to the partial purification of real estate ownership and supported the work of land surveyors, they also led to the emergence of complex legal disputes, especially when legitimate owners with official deeds came forward.

In this context, it is essential not to overlook Law No. 15-08, dated July 20, 2008, which sets the rules for building conformity and completion. This law was introduced to combat the phenomenon of unregulated constructions and establish deterrent measures in the field of construction and urban planning compliance. The legislator's primary goal is to purify real estate ownership by adopting a cadastral registration system. Although this law is characterized by its deterrent nature and limited period of effectiveness, it has not sufficiently resolved all issues related to unregulated constructions.

Therefore, the legislator is called upon to introduce new, more effective mechanisms to further support land surveying operations and contribute to the purification of real estate ownership in Algeria. The judiciary, in turn, is urged to unify its positions and support the legislator in this endeavor.

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Note:

- [1] Linguistically, purification refers to the act of eliminating anything related to a specific matter or cleansing it of any impurities or associated elements.
- [2] The National Land Survey Agency, which was established to undertake this significant national project, has demonstrated its failure in fulfilling this mission, despite having been in existence for over thirty years. Consequently, it was dissolved under Decree No. 251.21, dated 2021.06.06, as published in the Official Gazette No. 47.
- [3] Decree No. 352.83 employs the term "contract," although it is prepared based on a declaration made by the applicant to the notary, following the verification of the conditions and elements of possession that lead to

ownership through acquisitive prescription, as well as the legal nature of the property. Consequently, it lacks the agreement between two or more parties as defined by the concept of a contract stipulated in Articles 54 and 59 of the amended and supplemented Civil Code.

- [4] Article 102, Paragraph 02 of the Civil Code states: "The action for nullity expires after a period of fifteen years from the time the contract was concluded." Consequently, most nullity actions currently brought before the courts often result in judgments of inadmissibility, based on the provisions of Article 67 of the Civil and Administrative Procedures Code, when the defendant asserts the expiry of the claim. This is particularly relevant given that Decree No. 352.83 ceased to be in force following its repeal in 2007.
- [5] The disposition of property can be legal, such as through its sale, donation, or other legal acts. It can also be material, such as constructing a building on the plot of land. The latter (i.e., the material disposition) is one of the prerogatives granted to the property owner.
- [6] The Civil Chamber of the Supreme Court sought to align itself with the prevailing practical situation (serving a social rather than a legal role).