



ADMINISTRATIVE AND JUDICIAL SUPERVISION OF THE REAL ESTATE INVESTIGATION PROCESS IN THE ALGERIAN LEGISLATION

DR. LAMINE LARIT

Sovereignty and Globalization Laboratory, Faculty of Law and Political Science, University of Yahya Fares - Medea (Algeria).

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Abstract

This article aims to study the practical aspect of the Law No. 07-02 of 02/27/2007, which includes establishing a procedure to ascertain the right of ownership and delivery of title deeds through the real estate investigation. This can occur in the administrative side through examining the legal conditions necessary for its application; as well as the procedures followed until the title deeds are delivered, or in the judicial sense, through the treatment of disputes arising from the application of this law, especially in terms of determining the types of lawsuits filed and the judicial authority competent to tackle these lawsuits.

Keywords: Real estate investigation; Supervision; Ascertainment; Property ownership; Dispute.

Introduction

A few years after launching the general land survey process, the public authorities realized the difficulty of achieving the desired results, due to the difficulty of the process itself in addition to other reasons related to the lack of material and human capabilities and the deficiency of experience at this stage. Accordingly, serious thinking about other mechanisms parallel to the process that guarantee the delivery of title deeds was necessitated.

This is what prompted the Algerian legislator at that time to enact the Decree No. 83-352, which included enacting a procedure for proving the statute of limitations of gain and preparing a notarial contract that included admission of ownership¹.

Then the legislator intervened again through the Decree No. 91-254 to determine the methods of preparing and delivering the possession certificate ², with the aim of submitting a debenture that guarantees the activation of the new rules of real estate ownership, the formation of a cadastre after ensuring the registration and publication of this bond, and its final liquidation by completing the land surveying works.

However, due to the problems resulting from the notarial contract, and the reluctance of citizens to work with the possession certificate, the Algerian legislator introduced a new system that is applied in parallel with the general land survey process. This latter allows people to inspect the private estate property rights and submit title deeds, under the supervision of the real estate conservation services at the level of the relevant wilaya. This was embodied in the Law No. 07-02 of 02/27/2007, which includes establishing a procedure for inspecting the right of real estate ownership and submitting title deeds through a real estate investigation.³

Accordingly, the following question is proposed: What supervisory role how do the administration and judiciary contribute in the processes of submitting title deeds through a real estate investigation? Through this problem, it seems clear that this article aims to highlight the practical side of this law by shedding light on how administrative and judicial authorities monitor the real estate investigation process.

To answer this problem, we will rely in our approach on description and analysis by dividing the study into three main points. Initially we will address the supervisory role of the administration in

examining the availability of legal conditions for implementing the real estate investigation system (**Section One**). Then we will discuss its oversight over the extent to which legal procedures are respected for the conduct of investigation operations (**Section Two**), and finally we will study the judiciary's supervision of real estate investigation operations, by addressing the disputes arising in this field (**Section Three**).

Section One: Administration's supervision over the availability of legal conditions for implementing real estate investigation

Real estate investigation refers to all the operations whose purpose is investigation and research, aiming to establish a relationship between the person and the property. This procedure is applied on unsurveyed lands in parallel with general land survey operations. It is a mechanism for real estate cleansing using specific procedures, which aims to inspect the property right and submit the title deeds at the request of the person concerned who exercises legal possession.⁴

In this regard, the concerned administration (the wilaya's real estate conservation services) exercises strict supervision that begins before the process of opening the real estate investigation and continues after it. The administrative supervision defines the topic studied in this article as "a function performed by the competent authority with the aim of ensuring that the work is proceeding efficiently in accordance with the prescribed objectives at their specified time as it is therefore an indispensable necessity for the completion of work"⁵. It is self-monitoring, as the administration monitors itself by itself.⁶

Therefore, within the framework of their supervisory authority, the property conservation services at the state level must initially ensure the availability of the conditions stipulated by the Algerian legislator for the implementation of the previously mentioned Law 07-02.

To benefit from this procedure, a set of conditions are required, including those related to the real estate investigator himself, those related to the real estate under investigation, and those related to the possession and the acquisition of the property.

1. The conditions related to the real estate investigator who initiates the investigation

Based on the text of Article 09 of the Law No. 07-02 mentioned above, it is possible to extract some conditions that must be met by the person conducting the investigation himself, which can be summarized as follows:

- The investigations must be conducted under the authority and control of the wilaya director of real estate conservation services.
- The real estate investigator, who is appointed by the wilaya director of the real estate conservation services, must be among the corps of state property inspectors. When necessary, the Minister of Finance may assign this process to any assistant affiliated with the corps that are equivalent to the corps of state inspectors. The requirement of this condition is due to the effective role that the real estate investigator plays in investigating and inspecting real estate properties.
- The wilaya director of real estate conservation services must state the name, title and rank of the real estate investigator who is conducting the operation, in addition to the extension of his mission and the date of his transfer to the location. This was stipulated in Article 07 of the Executive Decree No. 08-147 related to real estate investigation operations and the delivery of title deeds.⁷

2. Conditions related to the property under investigation

The application of this procedure requires conditions related to the concerned property and its legal nature, regarding the privately owned properties that were not included in the survey process and their holders do not have title deeds, or they have title deeds but issued before March 1, 1961, so that they no longer reflect the current real estate situation. Accordingly, it is possible to summarize the legal conditions for applying the aforementioned Law 07-02 as follows:



2.1. The property must be located in an area that has not been subject to survey:

This procedure, which includes inspecting the property through a real estate investigation, must be established on unsurveyed properties in accordance with the Article 2/1 of this law.

2.2. The property must not be supported with a title deed unless it is issued before March 1, 1961:

If the above-mentioned Decree, 83-352, included the establishment of a notarial contract on the properties belonging to private ownership that is not supported with a title deed, as is the case for holders of customary contracts issued after January 1, 1971, then Law 07-02 also included the ability of the holders of title deeds issued before 1st March 1961 to benefit from the provisions of this law. This is in order to determine the current and actual status of the real estate properties concerned with this law.

2.3. The property must not belong to national real estate properties, Waqfs, or the lands of Al-Arsh:

Article 3 of Law 07-02 stipulates: “the provisions of this law do not apply to national real estate properties, including the lands that are previously called Arsh and Waqfs properties.”

This means that only privately owned properties are intended for real estate investigation operations.

3. Conditions of the acquisition process:

Article 14 of Law 07-02 states: “If the real estate investigation proves that the applicant is exercising possession that would allow him to obtain the right of ownership through the statute of limitation in accordance with the provisions of the Civil Code, his ownership of the property or his real estate right that is subject to the investigation shall be recognized.”

Accordingly, the intended possession is the correct legal possession indicated by the provisions of Articles 808-827 of the Algerian civil Code in accordance with the general rules. It takes into account the availability of the material and moral element in it as this possession must be quiet, public continuous and free of defects, in addition to fulfilling the period specified in Article 827 of the Algerian code.

The material element of possession is achieved by undertaking the physical actions that the owner usually performs on the property, which is represented in using, exploiting and benefiting from it. As for the moral element, it is the intent and intention of the possessor to use the thing for the purpose of owning it.⁸

Section Two: The administration’s supervision of the extent to which legal procedures respect the operations of real estate investigation

When verifying the availability of the above-mentioned conditions, the concerned administrative authorities must examine the administrative procedures of the real estate investigation process, and ensure their integrity from both the formal and objective aspects, including examining official documents and records. This supervision continues throughout the procedural stages that the real estate investigation process passes through, which starts from opening the investigation, then starting to apply the process in the field, until the real estate numeration is conducted and the title deed is delivered.

1. Opening the real estate investigation process

According to Article 6 of Law 07-02 mentioned above, a real estate investigation is opened individually at any time, but it may be opened collectively within the framework of implementing real estate construction or development programs, whether rural or urban.

1.1. The procedures of opening an individual real estate investigation process



In accordance with Article 04 of Law 07-02, requests to open a real estate investigation are directed from the holder to the state director of the regionally competent real estate conservation services, where the request includes a set of data and documents stipulated in Articles 03 and 04 of the Executive Decree No. 08-147 mentioned above.⁹

Then the wilaya director of the real estate conservation services shall issue, within a maximum period of one month from the date of receiving the request, a decision to open a real estate investigation, which will be sent to the president of the concerned municipal popular council with the intention of posting it at the municipal headquarters for a period of 15 days before the real estate investigator travels to the location.¹⁰

1.2. The procedures of opening a collective real estate investigation process

Regarding the case of a collective investigation within the framework of implementing programs for construction or development of rural or urban real estate, the governor shall take a decision on his own initiative or by the head of the competent Municipal People's Assembly, to open a collective real estate investigation.¹¹

This decision locates the region or regional areas concerned and determines the period equal to at least 15 days during which the person concerned shall deposit to the Real estate Conservation Directorate a file that contains the same documents mentioned previously¹². This decision shall be widely published, then the wilaya director of the Real estate Conservation Services shall issue a decision to appoint A real estate investigator to elucidate some necessary information.¹³

2. Conducting inspection and investigation operations

The real estate investigator searches for all the information, statements, and documents necessary to determine the right of real estate ownership and studies them at the level of the services of real estate conservation, land surveying, state property, tax, and when needed, at any other services. Then, on the determined date, he\she travels to the area for the aim of inspecting the property in the presence of the person concerned and recording all the information and statements which he\she receives in order to verify them.¹⁴


Additionally, he\she prepares a temporary report to record the initial results of the investigation, within the legal deadlines, in addition to recording the protests and objections raised in a register allocated for this purpose for the wilaya director of the Real estate Conservation Services. Add to that the attempts to bring about reconciliation between the parties and record the resulting outcomes in a special report.

Finally, a final report is prepared in which the results of the investigation are recorded, in accordance with Article 13 of Law 07-02, based on which the real estate expert engineer, in the presence of the real estate investigator, sets the boundaries of the property, at the expense of the applicant or the person concerned. A report is prepared about this and is signed by the real estate investigator, who completes, afterwards, the topographic plan by indicating the boundary features and the real estate unit number, then submits it to the real estate investigator.¹⁵

3. Conducting real estate registration and delivering the title deed

In case that the right of the owner of the property under investigation is proven, and his ownership is admitted on the basis of the statute of limitations¹⁶. A final report shall be prepared by the wilaya director of the real estate conservation services, which will be the basis for the real estate registration process entitled for the owner in a prescribed form and shall be sent to the real estate governor to implement it. ¹⁷

Afterwards, the real estate governor performs the real estate registration by recording the rights inspected during the real estate investigation in the real estate registry. As a result, implementing of this procedure, the title deed is prepared and sent to the wilaya director of the real estate



conservation services, for the purpose of delivering it to the concerned person, according to Article 16 of the same law.

It is worth to mention that the preparation of this bond constitutes merely the implementation of the real estate registration decision that is prepared by the wilaya director of the regionally competent real estate conservation services, within the powers granted by real estate registration operations. Add to that the necessity for the delivered bond to be identical to the model attached to the above-mentioned Decree No. 08-147.¹⁸

However, if the investigation process proves that the possession of the person concerned does not allow him to own property on the basis of the statute of limitations, then the wilaya director of real estate conservation prepares a reasoned decision to reject the real estate registration, which informs the person concerned of the case or the governor within a period of 6 months from the date of submitting the request to open the real estate investigation.¹⁹

Section Three: Judicial supervision over real estate investigation processes

It is represented in those lawsuits and disputes that are submitted to it and that arise on the occasion of these operations, whether at the stage of directing the inspection and investigation operations, or at the stage of conducting the real estate registration and submitting the title deed.

1. The judicial supervision during the stage of conducting inspection and investigation operations

We have previously indicated that the real estate investigator, during the investigation process, must write a report that includes the preliminary results of the investigation, in addition to restricting objections and protests to these results. In fact, these objections are often expressed by neighbouring owners or others who have titles or possession, before the person concerned in the investigation process takes possession of it as the investigator attempts to bring about reconciliation between the parties. However, if the reconciliation fails, the real estate investigator writes a report of non-reconciliation which he delivers to the parties. In this case, each party can file a lawsuit to the judiciary within two months from the date of receiving the report²⁰. The opening petition for this lawsuit must be published in the competent real estate governorate within a period of 08 days at most, following the two-month period in the group of temporary real estate cards²¹ as the investigation procedures are suspended until the judicial ruling is issued.²²


As for the competent judicial authority in this case, it is the real estate department of the court of first instance, within whose jurisdiction the property under investigation falls in accordance with the general rules.

2. Judicial supervision during the stage of conducting real estate registration and submitting the title deed

With regard to the judicial oversight of administrative decisions issued on the occasion of real estate registration operations, two cases can be distinguished as follows:

2.1. The judge's supervision over the decision of rejecting registration

This situation occurs, as we mentioned, when the investigation processes end without outcomes, i.e., the final results do not lead to the admitting ownership of the investigation applicant, due to the lack of possession elements. The wilaya director of the real estate conservation services rejects the registration through a reasoned decision, which is notified to the person concerned or the governor(wali), depending on the case. This decision is subject to appeal by cancellation in front of the Administrative Court in whose jurisdiction the property under investigation is located. The administrative judiciary is considered to be competent in this case, given that the decision subject to appeal was issued by one of the external services of the Ministry of Finance. Moreover, we note that the Algerian legislator did not set a specific deadline for conducting the judicial appeal²³. Rather, he was satisfied with the phrase "legally prescribed deadlines," which means referring to



the general rules, which set the deadline for appealing the cancellation to 4 months from the date of notification.²⁴

2.2. The judge's supervision over the promulgated real estate registration decision

Article 18 of Law 07-02 states: "In case that a registration is discovered on the basis of incorrect statements or the submission of forged documents, the official of the wilaya real estate conservation services shall file a lawsuit to demand the cancellation of the real estate registration in question and submit a complaint in front of the Public Prosecutor to initiate a public lawsuit."

This situation occurs when the wilaya director of the real estate conservation services is aware that the conducted real estate registration that was performed on the basis of false, incorrect statements or based on forged documents. Here, the wilaya director of the real estate conservation services has the right to file a lawsuit to cancel the real estate registration decision, in front of the administrative court within whose jurisdiction the property under investigation falls. We find that judicial jurisdiction in this case also falls to the administrative judiciary, considering that the plaintiff party in this case is considered one of the Not-centered services of the state at the wilaya level, as previously mentioned.

The issuance of a judicial ruling to cancel the registration decision results in the cancellation of all its effects, including the title deed prepared by the real estate governor following the promulgation of the real estate registration decision.²⁵

At the same time, the wilaya director of the Real estate Conservation Services has the right to file a complaint in front of the Public Prosecutor to initiate a public lawsuit, as a result of false statements and forgery. We note in this matter that this law has restricted the authority to file a public lawsuit to the wilaya director of the Real estate Conservation Services that is regionally competent, without the rest of those affected by these false statements and/or forged documents. It would have been better to leave the initiation of public lawsuits to all those affected by these criminal acts, such as the real owner or the previous holder, or whoever has another right over a property, in accordance with the general rules.

Conclusion

At the end of our study of the issue of administrative and judicial oversight over real estate investigation processes established under Law 07-02 of 02/27/2007, we find that this process is subject to broad supervision by both the administration and the judiciary, as it takes place under the authority and control of the wilaya director of the regionally competent real estate conservation services, starting with examining the availability of legal conditions and the extent to which established procedures are followed, up to the delivery of title deeds. This administrative supervision over the process aims to make the settlement of private real estate title deeds free from any recorded violations, Contrary to what was common with regard to the notarial deed, when the absence of direct and strict control by the concerned administrative authorities was recorded at the time, thus, the result was that many people seized private properties, public properties and even Waqfs.

As for judicial supervision in this regard, there is no possibility to deny its role in the success of this process, in its various stages, which guarantees the rights and interests of individuals, within the framework of the principle of legality.

In spite of this, there has been some shortcomings in this field, most of which are due to the lack of training of real estate investigators and their weak capabilities. Although they are public employees affiliated with the corps of state property inspectors, or equivalent corps, their training remains administrative and not legal. This may cause a difficulty in examining documents and ensuring the legal status of the property under investigation, in addition to the absence of a legal framework that independently regulates the profession of the real estate investigator, as is the case for the real estate expert engineer, for example.



In order to solve these problems, the following suggestions can be presented:

- Scheduling training courses for real estate investigators and providing this profession with an independent organization to ensure effective oversight.
- Providing all financial capabilities for the real estate investigator to perform his supervisory duties as necessary.
- Realizing coordination between the various relevant public administrations in order to tighten the supervision process, such as the State Property Directorate, survey services, Waqfs... etc.
- Making the public lawsuit resulting from forgery and false declaration within the framework of the real estate investigation one of the rights of any affected person, and not limiting it to the wilaya director of the real estate conservation services.

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- [3] Law No. 07-02 of 02/27/2007, which establishes a procedure for inspecting real estate ownership rights and submitting title deeds through a real estate investigation. *Official journal*, No. 15 of 2007.
- [4] Instruction No. 03, which is dated on September 27, 2008 issued by the General Directorate of National Property, regarding the conduct of real estate investigation operations, inspection of real estate ownership rights, and delivery of title deeds, p. 02.
- [5] Omar Muhammad Murshid Al-Shoubaki, *Principles of Control over the Administrative Works and Their Applications in Jordan*, Arab Organization for Administrative Sciences, Amman, 1981, p. 55.
- [6] Madjed Ragheb Al-Helou, *Administrative Judiciary, Mansha'et Al-Maaref*, Alexandria, 2000, p. 58.
- [7] Executive Decree No. 08-147 of 05/19/2008 regarding real estate investigation operations and the delivery of title deeds, *Official journal*, No. 26 of 2008.
- [8] M'hammadi Farida (Zwawi), *Possession and Prescription Gain*, Office of University publications, Algeria, 2000, p. 12-22.
- [9] These data and documents are represented in the following: - The name, surname, father's name, date and place of birth, nationality, profession, and address of the applicant - The capacity in which the applicant acts as either a holder or joint owner - All positive or negative burdens and easements that may burden the property under investigation, according to the applicant - A topographic plan of the property, accompanied by a descriptive card prepared by a real estate expert at the expense of the applicant, which shows the physical nature of the property, its area and value, as well as the names of the neighbouring occupants - every document that would allow the applicant to prove his right to it.
- [10] Article 08 of the Executive Decree No. 08-147 , *Op.cit.*
- [11] Art. 07 of the Law No. 07-02, *Op.cit.*
- [12] Art. 05 and 06 of the Executive Decree No. 08-147, *Op.cit.*
- [13] Art. 09 , *Ibid.*
- [14] Art. 10 and 11, *Ibid.*
- [15] Art. 13, *Ibid.*
- [16] Art. 14 of the Law 07-02 , *Op.cit.*
- [17] Art. 15 , *Ibid.*
- [18] Art. 21 of the Executive Decree No. 08-147 , *Op.cit.*
- [19] Art. 17 of the Law 07-02 , *Op.cit.*
- [20] Art. 12 , *Ibid.*
- [21] Art. 17 of the Executive Decree No. 08-147 , *Op.cit.*
- [22] Art. 18 , *Ibid.*
- [23] Art. 17 of the Law 07-02 , *Op.cit.*
- [24] Art. 801 of the Law 08-09 of 02/25/2008 relating to the Civil and Administrative Procedures Law, *Official journal*, No. 21 of 2008.
- [25] Art. 21 of the Executive Decree No.08-147, *Op.cit.*