

Regulations of Algerian Law for the Construction and Development of Protected Areas within the Constraints of Urban Expansion.

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Abstract:

The significant interest in designated protected regions and areas, as stipulated in the Real Estate Direction Law and the Development and Planning Law, is due to various considerations such as historical, cultural, scientific, archaeological, and touristic reasons, as well as for the preservation of animals, plants, agricultural lands, and their protection. This is accomplished through specific legislative provisions that reinforce the general regulations of development and planning, aiming to control and restrict the boundaries of development contracts, licenses, and certificates. The level of protection has reached the point of an outright ban on construction over these areas, given the roles played by each protected zone. Consequently, disputes arise regarding these regions, largely centered around unauthorized construction and the misappropriation of their designated purposes by their users.

Keywords: Development, Construction, Protected Areas, Urban Expansion.

Introduction:

The regulation of urban development must inherently strike a balance between the private interests of individuals and the public interests of society as a whole. While property owners possess the freedom to use and exploit their property in ways that serve their personal interests, this freedom is restricted to ensure it doesn't conflict with the public good. This necessitates the establishment of guidelines to govern construction processes according to required architectural principles.

Algeria, like many other countries, has actively and indirectly sought to organize the realm of urban development to safeguard both individual rights and the public interest. This has been achieved through legal texts aimed particularly at ensuring a judicious use of urban space, regulating the production of developable lands, and offering better protection to specific areas from inappropriate expansion at their expense. Such expansion threatens the true significance of these designated regions.

Despite the legislature's significant interventions to protect designated areas, the complex situation of property ownership in Algeria and the imbalances in housing and regional planning have led to a widespread proliferation of buildings that violate urban principles on unsuitable lands, including protected zones. These unauthorized structures have become a prominent feature of the urban landscape, challenging the effectiveness and existence of urban development laws, despite legislative efforts towards amendment and revocation.

Due to the significance of protected areas, the controversies surrounding them, and the resulting penalties, we have dedicated this research paper to examining its elements. We have

adopted a descriptive-analytical methodology, utilizing a compilation of scattered laws. This approach leads us to the question: To what extent does the legislation concerning protected areas regulate the rules of construction and development on this specific type of land? What are the nature of the constraints imposed to curb urban expansion in these regions? This is explored through the following points:

- **The first section:** The concept of protected areas.
- **The second section:** Conditions for construction and development in protected areas.
- **The third section:** Penalties resulting from violations of development regulations in protected areas.

Section One: The Concept of Protected Areas:

Protected areas hold immense importance within the development and planning policy in Algeria. Regulating their rules in alignment with their uniqueness has led to legislative interest in defining and categorizing them based on their various types. In this section, we will delve into the concept of areas covered by protection, focusing on two subsections:

* **The first subsection:** Defining protected areas.

***The second subsection:** Legal classification of protected areas.

Subsection One: Defining Protected Areas:

The Real Estate Direction Law 90/25¹, in Article 22, defines protected areas² as follows: "Considering historical, cultural, scientific, archaeological, architectural, or touristic considerations, and for the purpose of preserving and protecting animals and plants, spaces or sites falling within the aforementioned categories may exist or be designated, in accordance with specific legislative provisions".

Indeed, Law 90/29 also addresses these areas under special provisions that apply to certain parts of the national territory, as per Article 43. Accordingly, protected areas can be defined as: those regions or territories possessing distinct natural, cultural, historical, or prominent civilizational features and also high-yielding agricultural lands or productive forests, warranting a specific protection mechanism and oversight, encompassing structures, procedures, and penalties. This recognition is due to their significant political, economic, social, cultural, and ethical value, which can be attributed to the environment itself.

Consequently, the law establishes new regulations that align with the strategic goals of urban and architectural growth, and that aim to restore balance to the urban environment at the national, regional, and provincial levels³. Given that most of the adverse effects of urban

¹ - Law 90-25 dated November 18, 1990, encompasses real estate direction, published in the Official Gazette, issue number 49 of the year 1990.

² - Additionally, the term "sensitive areas" is used interchangeably with protected areas. Article 03 of Law 01-20 dated December 12, 2001, concerning regional planning and sustainable development, published in the Official Gazette, issue number 77 of the year 2001, defines these areas as: "Ecologically fragile areas where developmental operations cannot be conducted without considering their uniqueness."

³ - Ibrahim Gharbi, Chaotic Construction in Algeria, Master's thesis in Law, Department of Real Estate Law, University of Algeria, 2011-2012, p. 82.

expansion on the environment manifest in the lack of consideration for the distinct characteristics of the surrounding environment and the failure to adhere to the principle of preserving its natural and economic equilibrium⁴.

As a result, the legislator has linked the protection of this type of special areas to environmental conservation and the extent of their impact. In this regard, Article 02 of Decree 90/78 related to environmental⁵ impact assessment states that the prior procedure of environmental impact assessment applies to all works, development activities, or major installations that, due to their importance, scope, and effects, could directly or indirectly harm the environment. This especially concerns public health, agriculture, natural areas, fauna, flora, the preservation of sites and artifacts⁶, and maintaining a harmonious environment.

Moreover, the unregulated expansion over these areas leads to severe consequences, including significant economic costs due to the wasteful and irrational use of land, as well as the degradation of fertile agricultural lands, while also harming the natural surroundings⁷.

The Algerian legislator has established two criteria that allow for the definition and identification of works and development activities subject to environmental impact assessment. These criteria are based on the dimensions and effects of the projects. This involves analyzing the original state of the location and its surroundings, with a specific focus on natural resources, agricultural, forest, marine, and aquatic areas, as well as recreational sites that may be affected by the proposed works, development activities, or installations⁸.

Subsection Two: Legal Classification of Protected Areas:

Based on the above definition of protected areas, these areas can be determined and classified, whether administratively or technically, according to the rules specific to each region's law. This is elaborated in the following points:

First Subsection: Areas with Prominent Natural and Cultural Features.

Second Subsection: Coastal Areas and Tourist Expansion Zones.

⁴ - Slim Zawia, Reflections of Urban Expansion on the Surrounding Environment of Constantine and the Confrontation Strategy, Article published in the Urban Planning Journal issued by the Research Laboratory in Law, Urban Planning, and Environment, Faculty of Law, University of Annaba, special issue for the National Forum on Urban Planning, June 4-5, 2000, p. 9.

⁵ - Executive Decree 90/78 dated February 27, 1990, concerning Environmental Impact Studies, Official Gazette, issue number 10 of the year 1990.

⁶ - In the field of conserving protected areas from encroachment, Article 9 of Law 06-06 dated February 20, 2006, encompassing the Guiding Law for Cities, Official Gazette, issue number 15 of the year 2006, stipulates that urban and cultural spaces aim to control urban expansion by preserving agricultural lands, coastal areas, and protected zones.

⁷ - Directorate of Development and Construction in Annaba, Urban Policy in Algeria - Reality and Prospects - Article published in the Urban Planning Journal issued by the Research Laboratory in Law, Urban Planning, and Environment, Faculty of Law, University of Annaba, special issue for the National Forum on Urban Planning, June 4-5, 2000, p. 37.

⁸ - Benasser Youssef, Building Permits and Environmental Protection, Article published in the Urban Planning Journal issued by the Research Laboratory in Law, Urban Planning, and Environment, Faculty of Law, University of Annaba, special issue for the National Forum on Urban Planning, June 4-5, 2000, p. 60.

Third Subsection: Agricultural Areas or Areas with Agricultural Purpose.

First Subsection: Areas with Prominent Natural and Cultural Features:

These are classified as cultural reserves, referring to spaces characterized by the prevalence of cultural properties present on or significant to them, detached from their natural surroundings⁹.

Article 08 of Law 98/04 concerning the protection of cultural heritage¹⁰ of immovable cultural properties states the following: Historical landmarks, archaeological sites, urban or rural ensembles.

As for Article 17 of the same law, it defines historical landmarks as any singular or collective architectural structure bearing witness to a specific civilization or a significant historical development or event.

Regarding archaeological sites, Article 28 of the above-mentioned law defines them as built or unbuilt spaces without an active function, displaying human activities or interaction with nature, including the underground connected to them, holding historical, archaeological, religious, artistic, or scientific value.

Furthermore, Article 41 of the same law defines preserved sectors as urban or rural property ensembles, such as cities, palaces, villages, and traditional residential complexes. These areas hold historical, architectural, artistic, or traditional significance due to their architectural and aesthetic homogeneity and unity, necessitating their protection, restoration, revitalization, and development.

Articles 46-47 of Law 90/29 stipulate that the determination and classification of these areas should be carried out in accordance with the legislative provisions applicable to them. These provisions also regulate the specific obligations that apply to such protected areas, particularly concerning land use and management, including aspects related to construction, location, services, building establishment, architecture, and fabric techniques.

Second Section: Coastal Areas and Touristic Expansion Zones:

Article 07 of Law 02/02¹¹ defined the coast as follows: "All islands, islets, and continental shelf, as well as a land strip with a width of at least 800 meters along the sea..."

Furthermore, Article 04 of the same law stipulated: "The State and regional communities, within the framework of preparing the relevant planning and development tools, must guide the expansion of existing urban centers towards areas distant from the coast and seaside..."

Article 10 of Law 03/03¹² classified these areas as protected tourist areas, thereby subjecting

⁹ - Yahia Wanas, Legal Mechanisms for Environmental Protection in Algeria, Doctoral thesis in Public Law, University of Tlemcen, 2007, p. 198.

¹⁰ - Law 98-04 dated June 15, 1998, concerning the Protection of Cultural Heritage, Official Gazette, issue number 44 of the year 1998.

¹¹ - The Law 02-02 dated February 5, 2002, regarding the protection and valorization of the coast, was published in the Official Gazette, issue number 10 of the year 2002.

¹² - The Law 03-03 dated February 17, 2003, concerning expansion areas and tourist sites, was published in the Official Gazette, issue number 11 of the year 2003.

them to special protection measures. The Law of Urban Planning and Development 90/29 also addressed this type of area in Articles 44 and 45, in the same context as Article 04 and 07 of the aforementioned Law 02/02.

Third Section: Agricultural Areas or Areas with Agricultural Purpose:

Article 04 of Law 90/25 states that: "Agricultural land or land with an agricultural purpose, in the context of this law, refers to any land that produces annual or multi-year human-intervened production consumed by humans, animals, or used in direct industrial consumption or after transformation." This context is also reiterated within Article 48 of Law 90/29.

Chapter Two: Building and Development Regulations in Protected Areas:

Based on the above information outlined in the previous section, the legislator has specified, in Law 90/29 and related laws, certain parts of the national territory that are subject to special regulations for their use. This is due to their natural, cultural, or economic significance. The legislator has provided special protection for these areas, manifested by the establishment of various conditions for construction and development within these regions. Additionally, obtaining prior authorization from the relevant authorities is necessary before commencing any construction activities within these areas¹³.

We will delve into these conditions within the following two requirements:

Requirement 1: Conditions for construction and development in coastal and environmentally significant areas.

Requirement 2: Conditions for construction and development in agricultural and forested areas.

Requirement 1: Conditions for construction and development in coastal and environmentally significant areas:

As mentioned earlier, we discussed the classification of protected areas, including coastal and tourist expansion areas, as well as environmentally significant areas. In this section, we will present the conditions for construction and development in these areas through the following points:

Section 1: Conditions for coastal areas

Section 2: Conditions for environmentally, culturally, and historically significant areas.

Section 1: Conditions for coastal areas:

The coastline, due to its significance, serves two functions. The first lies in being a zone for tourist expansion, while the second serves an economic purpose, as it represents an area of economic activity. The construction of any facility within these areas is subject to a set of

¹³ - Regarding the concept of "authorization," it refers to the permission issued by the relevant administration for a specific activity. Thus, engaging in any activity is subject to obtaining authorization, necessitating prior permission from the relevant authorities, who serve as the regulating authority. For more details, you can refer to Abdel Ghani Bassiouni's work "Administrative Law: A Comparative Study of the Foundations and Principles of Administrative Law and their Applications in Egypt," Manashat Al-Ma'arif, Alexandria, 1991, page 385.

conditions and procedures, as dictated by the governing laws. Among the most important laws governing coastal areas are Law 03/03 related to tourist expansion areas and tourist sites, Law 02/02 concerning the protection and valorization of the coast, as well as Law 99/01 that outlines hotel regulations¹⁴. Additionally, Law 90/29 aimed at maintaining environmental balance has imposed specific restrictions on activities permitted in these areas, guidelines for construction within them, and limitations on land use in these regions¹⁵.

Article 45 of Law 90/29, as amended and supplemented, outlines certain conditions that must be taken into consideration for urban expansion along the coast. Among these conditions are:

- Preserving the spaces.
- Highlighting the value of sites and distinctive landscapes of the natural, cultural, and historical national heritage of the coast.
- Emphasizing the necessary environments for ecological balance.
- Ensuring that urban expansion along the coast is in line with land use regulations.

Additionally, among the conditions for constructions and land use activities directly related to the functions of economically licensed activities under development and planning tools within the coastal strip covering an area of 3 kilometers starting from the highest point reached by the sea waters, is the requirement that these constructions adhere to specified conditions and land occupancy ratios, following the regulations stipulated in Article 14 of Law 02/02.

Moreover, areas suitable for development and construction along the coast, as determined by the tourism development plan¹⁶, are subject to the condition of obtaining prior approval from the ministry responsible for tourism. In coordination with the administration responsible for culture, when these areas contain classified cultural landmarks, as stipulated in Article 24 of Law 03/03 mentioned earlier. The approval of the ministry responsible for tourism is considered a crucial step for applying for permits from the authorities specified in Executive Decree 91/176.

As for restricting urban expansion in these areas, Article 12 and 30 of Law 02/02 stipulate that longitudinal expansion of the urban environment of residential complexes located on the coastal strip is prohibited beyond a distance of 3 kilometers from the coastal strip. This distance includes the existing urban fabric and new constructions. Additionally, expansion is also prohibited between two residential complexes located on the coastal strip unless the

¹⁴ - Law 99-01 dated January 6, 1999, which defines the regulations related to the hotel industry, Official Gazette number 02 of the year 1999.

¹⁵ - Hussein Gouas, "Legal Mechanisms for Urban Management," Master's thesis in Public Law, Department of Public Administration, Law and Regional Management, Faculty of Law, University of Constantine, 2011/2012, pp. 92-93.

¹⁶ - Article 12 of Law 03-03 stipulates that a tourism development plan is based on the premise that the development and management of the expansion area and tourist sites are carried out according to the specifications of this plan, which is prepared by the responsible tourism authority in a consultative and approved manner. Additionally, Article 15 of the same law outlines the objectives of the tourism development plan, including the identification of areas suitable for construction and development.

distance between them is at least 5 kilometers from the coastal strip¹⁷.

This doesn't mean that construction on the coast is completely and permanently prohibited. Article 10, paragraph 3 of Law 02/02 states the following: "However, it is possible to establish necessary facilities or real constructions for the management, operation, and utilization of the mentioned spaces."

In the context of urban planning and construction on coastal areas, Executive Decree 07-206¹⁸ was issued. The purpose of this decree, as stated in Article 1, is to outline:

- The conditions and procedures for construction and land use directly associated with economic activities permitted within a coastal strip extending over a distance of 3 kilometers.
- The conditions for land use of natural areas adjacent to the shores.
- The conditions and procedures for extending the restricted construction zone to a distance of 300 meters, as well as the conditions under which activities and services requiring proximity to the sea are allowed.

Branch Two: Conditions for Areas with Prominent Natural, Cultural, and Historical Characteristics:

Article 47 of Law 90/29 in this context states the following: "Legislative and regulatory texts shall define the specific obligations applicable to the areas referred to in the above article, in the field of land use and management, particularly concerning construction, site management, services, building establishment, engineering, urban fabric, and the development, protection, enhancement, and conservation of natural, cultural, and historical heritage."

In the same context, Article 31 of Law 98/04 stipulates that works to be directly undertaken or planned within the boundaries of a protected site or area are subject to prior authorization from the competent authorities responsible for culture. This authorization is granted upon the publication of the decision to initiate the classification process in the official gazette. These works include restoration projects for properties within the site, their rehabilitation, addition of new constructions, repairs, as well as land division projects.

According to Article 31, paragraph 03 of the aforementioned law, this authorization is issued within a period not exceeding one month for works that do not require obtaining a building permit or land division for construction purposes, and a maximum of two months starting from the date of receiving the file sent by the authorities responsible for granting building permits or land division. Furthermore, the administration's lack of response within these periods is considered as an approval¹⁹.

The Minister responsible for culture can order the suspension of any ongoing project upon

¹⁷- Please refer to Article 12, paragraphs 1 and 2 of Law 02-02.

¹⁸- Also, Executive Decree 07-206 dated June 30, 2007, defines the conditions and procedures for construction and land use within the coastal strip, occupation of natural areas adjacent to the shores, and the expansion of the area subject to construction prohibition. This decree is published in Official Gazette number 43 of the year 2007.

¹⁹- "Afaf Habba, The Role of Building Permits in Environmental and Urban Protection," an article published in the "Al-Mufakkir" magazine issued by the University of Biskra, Issue No. 6, December 2010, page 326.

the initiation of a classification process. Furthermore, the completion of any construction project aiming to obtain a building permit or land division for construction requires prior approval from the Minister responsible for culture²⁰.

As for areas with historical significance, Article 21 of Law 98/04 stipulates that: "All works of conservation, restoration, repair, addition, alteration, and development intended to be carried out on proposed or classified historical monuments or properties located within the protected area are subject to prior authorization from the competent authorities responsible for culture."

Furthermore, if the nature of the proposed works involves a classified historical monument or a monument that is proposed for classification, or if it concerns a property based on a classified historical monument or located within a protected area, obtaining a building permit or a land partitioning permit for construction requires prior approval from the relevant cultural authorities. If there is no response within a maximum period of two months after submitting the request for a building permit or land partitioning by the reviewing authority, then the approval is considered granted²¹.

The Second Requirement: Building and Development Conditions in Agricultural and Forest Areas:

First Branch: Conditions for Agricultural Areas:

Article 14 of Law 08-16²² stipulates that any non-agricultural use of land classified as agricultural land or having an agricultural purpose is prohibited under the provisions of this law. Additionally, the conditions and methods for utilizing agricultural land belonging to state-owned private properties are determined by specific legislative provisions²³.

In the same context, Article 36 of Law 90/25 states that the law is the authority that permits the conversion of highly fertile or fertile agricultural land into lands suitable for development. The law also specifies the technical and financial restrictions that must accompany the conversion process. The wording of the preceding article begins with the phrase "the law is the authority that permits," which means that the legislative authority is responsible for authorizing the conversion of fertile agricultural lands into lands suitable for development. However, in the same article, it refers us to the text of Article 21²⁴.

This reference in allocating lands suitable for development is attributed to the tools of planning and development, known as the "Master Plan for Planning and Development" and the "Land Use Plan." The latter falls under the authority of municipalities, which collaborate with relevant technical offices in their preparation, assisted by specific technical bodies and

²⁰ - Refer to Article 34 of Law 98-04 for further information.

²¹ - Refer to Article 23 of Law 98-04.

²² - Law 08-16 dated 03/08/2008 concerning agricultural orientation, Official Gazette number 46 of the year 2008.

²³ - Refer to Article 17, paragraph 02 of Law 08-16.

²⁴ - Article 21 states the following: "Land suitable for development, within the context of this law, refers to all parcels of land designated for development within specific timeframes through planning and development tools."

offices. This is also stipulated by Article 36 of the Real Estate Planning Law²⁵.

As per Article 48 of Law 90-29, it states: "The right to construct is limited to lands with high or good agricultural yield, as defined by the prevailing legislation, for necessary vital constructions, agricultural utilization, and public interest constructions. In all cases, they must be included in the land occupancy plan."

From this last passage, we deduce that constructions on these lands remain subject to explicit permits delivered according to the forms and conditions specified by legislative provisions related to development and construction rights. Such permits are only granted to owners, holders, or occupants who initiate this process in cases of self-needs. Additionally, no essential facility or building within agricultural investments located on fertile lands can be constructed without obtaining explicit permits, which are delivered according to the legal forms of development, construction rights, and land occupancy²⁶.

Regarding construction rights on this type of land, Article 49 of Law 90-29 stipulates: **"In the absence of an approved land occupancy plan, and after consulting the Ministry responsible for agriculture, the following may be permitted:**

- Buildings and structures necessary for irrigation and agricultural use.
- Buildings and structures of national interest or necessary for communal facilities.
- Modifications to existing buildings."

Therefore, the regulation of land use and its preservation, especially arable lands, involves halting the encroachment of cement on them, specifying constructions above them, and safeguarding the agricultural land base. These remain priorities within legislation related to protected areas. Clear and explicit conditions are set to prevent construction on such lands, and various means and entities are utilized to ensure their protection and revaluation²⁷.

The second section: Conditions for forest areas:

Article 08 of Law 84-12²⁸ defines forests as follows: "Forests refer to all lands covered with forest types in the form of forest clusters under normal conditions."

As defined by Law 90-25, forest land is described as follows: "Forest land, within the context of this law, refers to all land covered by a forest in the form of vegetation with a density of over 300 trees per hectare in humid and semi-humid areas, and 100 trees per hectare in arid and semi-arid areas, provided that the total area exceeds 10 hectares and is contiguous."

Regarding activities conducted within forest areas or areas designated as forest land, whether related to construction or burning, a permit must be obtained, as detailed below.

²⁵ - Mohamed Jabri, Legal Framework for Development in the Algerian Province, Master's Thesis in Law, Department of Administration and Finance, Faculty of Law, University of Algeria, 2005, page 49.

²⁶ - Refer to Article 34 and 35 of Law 90-25 related to real estate regulation.

²⁷ - "Ajja El-Jilali, The Crisis of Agricultural Real Estate and Proposed Settlements from Private Ownership Nationalization to Public Ownership Privatization," Dar El-Khaldounia Publishing and Distribution, Algeria, 2005, p. 187.

Also: "Asia Jarour, Buildings Erected on Others' Land in Algerian Law," Master's Thesis in Law, Contracts and Liability Branch, Faculty of Law, University of Algiers, 2003/2004, p. 64.

²⁸ - Law 84/12 dated June 23, 1984, regarding the general system for forests, Official Gazette No. 26, 1984.

Furthermore, obtaining a construction permit within forest areas is subject to a number of restrictions, some of which can even reach the level of prohibition or absolute prevention. Thus, any constructions erected on such lands should serve the specific needs of forest resources. Urban construction is not intended in this context; otherwise, the concept of a forest would be negated.

In the context of construction on such lands, Article 31 of Law 84/12 states: "Construction and work on national forest properties are carried out after obtaining a permit from the Ministry responsible for forests, in accordance with the current regulations."

It's worth noting that the issuance of permits by the Ministry responsible for forests is centralized, and thus, it might be more effective and efficient if these permits were issued by the governor to ensure greater speed and effectiveness.

Chapter Three: Penalties Resulting from Violation of Urban Development Regulations in Protected Areas

Due to the increasing demand in the construction sector, the protected areas in the country have experienced significant pressure and have not been immune to unauthorized construction and changes in their designated purposes.

The process of urban development must be based on specific principles to ensure that urbanization remains coherent and maintains a balance between housing, agriculture, and industry, while also preserving the environment, natural landmarks, cultural and historical heritage. This is in line with the principles and objectives of the national policy for environmental preservation and safeguarding protected areas from encroachments²⁹.

For the purpose of preserving the landmarks of protected areas due to their sensitivity, the legislator has established a system of penalties and monitoring for these areas, particularly regarding the alteration of their designated purposes. This includes disputes arising from construction activities within them. This section will address the disputes resulting from the lack of respect for the specificity of these areas and the penalties that ensue from it, divided into two sections:

Section One: Penalties resulting from violations of urban development regulations in coastal and natural feature areas.

Section Two: Penalties resulting from violations of urban development regulations in agricultural and forest areas.

The First Request: Penalties for Violating Building Regulations in Coastal and Natural Heritage Areas:

Despite the legislative attention given to protected areas, including coastal and natural heritage areas, it hasn't been sufficient to prevent encroachments and violations of their

²⁹ - Amara Abbas, "Distortion of Urban Fabric: Causes and Solutions," article published in the "Urbanism" magazine, issued by the Research Laboratory in Law, Urbanism, and Environment, Faculty of Law, University of Annaba. This article is part of a special issue related to the National Forum on Urbanism, held on June 4-5, 2000. (Pages 64-65).

regulations. Therefore, it has become necessary to reinforce these regulations with penalties as a deterrent. We will address this aspect within the following two points:

First Branch: Penalties for Coastal Areas

Second Branch: Penalties for Natural and Cultural Heritage Areas

First Branch: Penalties for Coastal Areas:

After the relevant officers inspect and document the violations, they are subsequently referred to the competent Public Prosecutor, who initiates public legal proceedings. According to Law 02/02, anyone establishing a new industrial activity on the coast is subject to imprisonment for a period ranging from three (3) months to one (1) year, along with a fine ranging from one hundred thousand Algerian Dinars (100,000 DZD) to three hundred thousand Algerian Dinars (300,000 DZD), or one of these two penalties. This excludes industrial and port activities of national importance. In cases of recurrence, the mentioned penalties double, resulting in imprisonment for two (2) years and a fine of six hundred thousand Algerian Dinars (600,000 DZD).

The criminal judge can also issue a verdict to confiscate the machinery, devices, and equipment used in committing the violation³⁰, as stipulated by Article 44 of Law 03/03, considering it as an aggravated offense. This applies to anyone who violates the provisions of Article 06 of the aforementioned law, which concerns engaging in development activities or using expansion areas and tourist sites in contravention of the established plans.

Furthermore, this type of penalty, categorized as an aggravated offense, targets anyone involved in executing works or exploiting tourist expansion areas and sites contrary to the provisions defined by law³¹. Additionally, it encompasses those who construct, alter, or demolish hotel establishments without prior approval from the relevant tourism administration³².

It's worth noting that in addition to the punitive penalties, the judge in charge retains the authority to implement necessary measures alongside the criminal sanctions when violations occur in these designated areas. The judge can order measures to ensure compliance with the regulations of urban planning and development. These measures may include restoring the places to their original state, carrying out necessary development work at the expense of the convicted individual, and even confiscating the machinery, devices, and equipment used in committing these violations, according to the provisions of these laws³³.

Indeed, the intervention of the criminal judge to implement these measures in such areas can only occur upon request from the competent administrative authority. This is stipulated by Article 44 of Law 02/02.

Considering the significance of these areas, the penalties outlined are not merely deterrent

³⁰ - Article 15 and 39 of Law 02-02.

³¹ - Article 47 of Law 02-02.

³² - Article 79 of Law 99-01.

³³ - Nawal Reima Ben Najai, Intervention titled "Ordinary Disputes in the Field of Urban Planning before the Criminal Judge (Urban Development Violations)" in the context of the National Forum on Urban Real Estate Issues and Their Impact on Development in Algeria, Faculty of Law, University of Biskra, on February 17 and 18, 2013, p. 06.

measures; they also ensure specific protection for tourist regions.

Branch Two: Penalties for Natural and Cultural Areas:

In accordance with Article 102 of Law 03/10³⁴, anyone who exploits a facility without obtaining the required authorization as specified in Article 19 of this law is subject to one year of imprisonment and a fine of five hundred thousand dinars (500,000 DZD). It should be noted that the court is empowered to order the prohibition of using the facility until obtaining the necessary authorization under the conditions stipulated in Articles 19 and 20 of the same law. The court may also issue a temporary enforcement order for the prohibition. Additionally, the court has the authority to restore the premises to their original state within a defined timeframe³⁵. In the event of a violation of this prohibition, the offender could face a penalty of two years' imprisonment and a fine of one million dinars (1,000,000 DZD)³⁶.

The Second Section: Penalties for Violation of Urban Planning Regulations in Agricultural and Forested Areas:

Through our classification of protected areas, the legislator has shown significant concern for agricultural areas or areas designated for agricultural purposes, given their connection to agricultural productivity. Special protection has been granted to these areas, along with the imposition of deterrent penalties to prevent any alteration of their designated purpose. Similarly, forested green spaces have received the same attention through established penalties for violations of urban planning regulations applied to them. We will discuss this further below:

The First Section: Penalties for Violation in Agricultural Areas:

The aim of preserving this type of land, due to its social and economic role as agricultural property, is highlighted by Article 36 of Law No. 90/25, which encompasses real estate regulations. It asserts that the law alone permits the conversion of fertile or highly fertile agricultural land into land suitable for development, as specified by the law. The law also defines the technical and financial constraints that must accompany the conversion process, as well as the compensation required to be paid for any loss in value. Given the significant importance of this type of land, Article 48 of the real estate regulatory law stipulates that failing to utilize it constitutes an abuse of rights³⁷.

Furthermore, the legislator has established the construction of buildings that serve the land and facilitate its utilization, aiming to improve its service and not for purposes unrelated to land use and exploitation. This essentially creates a positive limitation that works in favor of the legal protection of agricultural land³⁸, preventing its intended purpose for farming from

³⁴ - Law 03-10 dated July 19, 2003, related to environmental protection within the framework of sustainable development, Official Gazette number 43 of the year 2003.

³⁵ - See Article 102, paragraphs 2 and 3, of Law 03-10.

³⁶ - See Article 103 of Law 03-10.

³⁷ - "Omar Hamdi Pasha, Protection of Private Property Ownership, Dar Homeh, Algeria, 7th Edition, 2009, pp. 106-107.

Also: Asia Juror, Previous Memoir, p. 113.

³⁸ - Mohammed Jabri, Legal Framework for Urban Planning in the Province of Algiers, Master's Thesis in Law, Department of Management and Finance, Faculty of Law, University of Algiers, 2003/2004, p. 50.

being changed³⁹.

It's worth noting that the violation of the privacy of these lands has taken on a more serious form, characterized by the local groups (municipalities) taking possession of vast areas of agricultural lands belonging to national property, dividing them, and then selling them to private individuals for construction purposes, outside urban planning regulations or in their absence. This is done without the ownership being transferred to them through decisions from the relevant administrative authority, effectively transferring ownership of these lands to them⁴⁰.

Despite the significance assigned to these lands in preserving their designated use, they are rarely respected due to the lack of effective deterrent penalties for violations. Even if penalties are imposed, they are often insufficient and lack the power to discourage such violations. An example of a civil penalty can be found in Article 55 of the Real Estate Directive Law. This article stipulates that any transaction involving agricultural land that could cause harm to its investment potential, lead to a change in its agricultural purpose without adhering to the prescribed conditions, or result in the creation of parcels of land that do not align with the established standards under Executive Decree 97/409 may incur a civil penalty⁴¹.

Article 56 of the Real Estate Directive Law also stipulates that any transaction involving agricultural land that violates the provisions of Article 55 is considered null and void. Furthermore, concerning agricultural lands under state ownership that are distributed within the framework of the law related to agricultural investments, beneficiaries are obligated to maintain the agricultural purpose of the land and refrain from changing it. Failure to adhere to this requirement could result in the forfeiture of usage rights following the legal procedures specified in the law⁴².

One of the cases regarding the preservation of agricultural purpose is Decision No. 202362 dated 08/05/2000 issued by the Council of State, Chamber I: "Contrary to what was stated in the reasoning of the appealed decision, after the issuance of urban planning tools, especially the guiding master plan of the Algiers Province, the disputed land was not designated for construction. Instead, it retained its agricultural nature, as evidenced by documents from relevant authorities, notably the Ministry of Agriculture and the Directorate of Planning and

³⁹ - Preserving the designated agricultural purpose for these lands is considered a priority by the legislator, who has made it a condition for several claims, including claims for the recovery of property under the agricultural investment system. It was stipulated that to return the lands to their original owners, these lands should not have lost their agricultural nature, whether through their use for construction purposes or through urban planning tools approved by law. For more details, see: - Reda Bouafia, Systems for the Utilization of Agricultural Property in Algeria, Master's Thesis in Law, specializing in property law, Faculty of Law, University of Batna, 2008-2009, p. 135. Also: - Amar Arishi, Judicial Disputes in Agricultural Investments, Article published in the Journal of the Council of State issued by the Council of State, Algeria, Issue 07, 2005, p. 45."

⁴⁰ - Omar Hamdi Pasha, Private Property Protection, the same reference, p. 109.

⁴¹ - Refer to Article 05 of Executive Decree No. 97/51 dated 06/02/1997, which specifies the conditions for dividing agricultural land, Official Gazette No. 84 of 1997.

⁴² - Refer to Article 04 of Executive Decree No. 90/51 dated 06/02/1990, which specifies the procedures for implementing Article 28 of Law No. 87/19 concerning agricultural investments, Official Gazette No. 06 of 1990, which states: "Loss of rights can be ruled for any group of users or any individual user if they engage in the following:

- Diverting land from its agricultural purpose.
- Allocating farm-use buildings for activities unrelated to agriculture..."

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In this context, it is not permissible to change the agricultural purpose of the land for construction purposes, even if the municipality claims ownership of it, as is the case in the current situation⁴³."

The second section: Penalties for Forest Areas:

These penalties are divided between the Penal Code, which does not explicitly provide for punishment for construction without obtaining prior permission from the forestry administration under the Ministry of Agriculture. It only includes penalties related to other violations, such as causing forest fires, unauthorized tree cutting, or irregular grazing. However, this violation can be covered under Article 386 of the Penal Code, which deals with encroachment on property rights.

Other penalties are stipulated by Law No. 84/12 mentioned earlier, which states in Article 77: "Without restoring the places to their original condition, violations of Articles 27-30 of this law shall be punished with a fine of 1000 DA to 50,000 DA. In case of recurrence, imprisonment of one to six (06) months may be imposed."

It's worth noting that these penalties are inadequate given the seriousness of the committed offenses and the significant damage they cause to the forest, despite the relatively mild penalties imposed.

Conclusion:

Despite the collection of legal provisions related to urbanization and construction in protected areas and the expansion of their application, there are still flaws in these texts due to severe violations. Additionally, the delayed issuance of some of these provisions has led to their irrational consumption, particularly concerning violations related to permits and certificates in these protected areas. These violations continue to emerge, highlighting the shortcomings in balancing individual rights to urban expansion and housing with society's right to protect these areas as cultural, agricultural, tourist, animal, and plant heritage.

Practical implementation reveals numerous violations and shortcomings, along with clear violations of the required architectural principles for such areas due to their uniqueness. The rampant phenomenon of unplanned construction in these areas persists, leading to a proliferation of disputes related to urbanization and construction, adding to their complexity.

The findings of this study are as follows:

- The legislator overlooked cases of encroachment on protected areas, especially agricultural ones, resulting in deficiencies in the protection field.
- The legislator did not allocate sufficient seriousness to the value of fines for violations related to urbanization contracts and encroachments on protected areas.

⁴³ - Hamdi Pasha, Omar, Real Estate Judiciary, Dar Homeh, Algeria, 12th edition, 2008, pp. 138-139.

Also:

Kamel Tekouasht, Legal Mechanisms to Combat Unplanned Construction Phenomenon in Algeria, Master's Thesis in Law, Specialization in Real Estate Law, Faculty of Law, University of Batna, 2008-2009, p. 79.

Based on the above results, the recommendations are as follows:

- Strengthen penalties and enforcement of laws against unauthorized constructions within protected areas, except as defined by the rules governing construction within them and outlined in planning and development instruments.
- Emphasize the value of fines for violations of urbanization contracts and protected areas to serve as a serious deterrent against violations.