RESEARCH ARTICLE

Organization of Real Estate Seizure in Algerian Procedural Law

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Abstract

This article aims to outline how the Algerian legislator regulated seizure in general and real estate seizure in particular, following the issuance of the Civil and Administrative Procedures Code in 2008. Previously, the Civil Procedures Law, now repealed, was characterized by procedural ambiguity and the dispersion of relevant provisions across multiple articles. Through the analysis and interpretation of the provisions of both laws, this study concludes that, although the legislator succeeded in consolidating, clarifying, and simplifying the provisions related to seizure and alleviating certain ambiguities within the Civil and Administrative Procedures Code, some shortcomings remain. Consequently, a review of the Civil and Administrative Procedures Code is necessary to address the identified deficiencies.

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Introduction

Forced execution can take several forms. It may involve specific performance, allowing the creditor to obtain his right directly from the debtor, provided such execution is feasible. Alternatively, execution can occur through seizure, a measure taken by the creditor when the debtor fails or refuses to fulfill obligations. In such cases, the obligation is typically a monetary sum, either as a primary obligation

or as compensation when specific performance is impossible.

Thus, a creditor seeking to recover a monetary sum can do so by seizing the debtor's assets and recovering the value of the debt either directly from the seized property or from the proceeds of its sale through public auction. Accordingly, seizure is a coercive measure employed by creditors to recover debts from debtors, following the abolition of physical coercion in civil enforcement under the legal procedures prescribed in the Civil and Administrative Procedures Code.

The general rule stipulated in Article 188 of the Algerian Civil Code asserts that all assets of the debtor serve as collateral for the repayment of debts. Since the subject matter of execution is of significant importance, especially when it concerns the debtor's financial assets, creditors often direct enforcement actions against all of the debtor's assets, except those expressly exempted by law, as per Article 636 of the Civil and Administrative Procedures Code.

In establishing this principle, the legislator did not link the value of the debt to the collateral and did not prohibit creditors from executing against one asset over another. This is because seizure does not grant the seizing creditor the right of priority or the right to follow, except where the creditor holds a secured interest. Furthermore, other creditors of the debtor may also intervene in the execution and seize the same asset alongside the first seizing creditor.

Therefore, considering the various types and procedures of seizure provided by the Algerian legislator in the Civil and Administrative Procedures Code, which encompass all forms of seizure, this study will focus solely on real estate seizure. Hence, we pose the following questions: How did the Algerian legislator regulate real estate seizure within the Civil and

Administrative Procedures Code? What exceptions are provided in this regard?

To address these questions, the study is divided into two sections:

1. The Concept of Seizure.

2. The Conditions and Exceptions of Real Estate Seizure.

The analytical and deductive methods will be employed in conducting this study

Section One: The Concept of Seizure

In this section, we will address the general concept of seizure by discussing the definition of seizure and its types in the first subsection, then the rules regulating seizure in the second subsection.

Subsection One: Definition of Seizure and Its Types

The Algerian legislator regulated seizure in Title Five of Book Three of the Civil and Administrative Procedures Code, under the heading "On Seizures," specifically in Articles 636 to 799. Seizure is resorted to when the debtor delays or refuses to fulfill his obligations upon their due date. In this subsection, I will discuss the definition of seizure in the first part, the types of seizure in the second part, and in the third part, the nature of seizure.

Part One: Definition of Seizure

The legislator has not defined seizure explicitly in any legislative text currently in force in Algeria, and this is appropriate because definitions fall within the scope of doctrine rather than legislation.

Most scholars agree to define seizure as:

"A coercive execution procedure aimed at placing a specific asset belonging to the debtor under judicial control to prevent the debtor from disposing of it in a manner detrimental to the interests of the creditors, in preparation for its sale by public auction in order to satisfy the creditors' rights from the proceeds."

Thus, seizure constitutes an indispensable preliminary stage to enforcement litigation. If the creditor (the seizing party) takes the legally prescribed measures in this regard, the seized asset, although often remaining in the possession of the debtor (the seized party), is considered under the control of the judiciary. This means that the seized party cannot dispose of it in any way that may harm the seizing creditor. If the debtor disposes of the seized asset, such disposal will not affect the rights of the seizing creditor and is therefore considered null and void vis-à-vis him, as long as it is likely to cause him harm.

Part Two: Types of Seizure

Since seizure is considered one of the most effective methods of execution that guarantees the creditor's recovery of his debt from the proceeds of the debtor's seized assets after their public auction sale-especially if the debtor is obstinate or refuses to fulfill his obligations towards the creditor-seizure is divided into two types: precautionary seizure and executive seizure.

The legislator defined precautionary seizure in Article 646 of the Civil and Administrative Procedures Code as:

"The placement of the debtor's movable and immovable property under judicial control, preventing the debtor from disposing of it. The seizure is executed at the creditor's responsibility."

It is also defined in maritime law as follows:

"Precautionary seizure means stopping or restricting a ship's navigation by order on petition issued by a judicial authority to secure a maritime debt."

Doctrine defines it as:

"Preventing the debtor from disposing of the seized asset in a way that harms creditors' rights by placing it under judicial control to pressure the debtor into fulfilling his obligations. Its purpose is not to sell the debtor's assets at auction to satisfy the creditor's rights from the price but rather to

take precautionary measures that protect the creditor and preserve the debtor's assets. Therefore, the legislator did not impose strict conditions for initiating it and did not require the creditor to have an enforceable title at the start of the seizure procedures."

This contrasts with executive seizure, which, in addition to placing the debtor's seized assets under judicial control, aims to sell them by public auction to obtain the creditor's rights from the proceeds. Therefore, the legislator established a set of procedural and substantive conditions to be fulfilled when the creditor initiates the executive seizure procedures against the debtor's assets.

According to the Civil and Administrative Procedures Code, there are three types of executive seizures, differing according to the nature of the assets to be seized and depending on the person holding them, whether the original debtor or a third party. These are:

Seizure of assets held by third parties on behalf of the debtor,

Executive seizure of movable property,

Executive seizure of immovable property.

It should be noted that the creditor is not free to choose any of the above-mentioned seizure methods on the debtor's assets but must choose the method appropriate to the type of asset to be executed upon. If an inappropriate method is used, the procedures taken will be absolutely null and void, as ruled by the French Court of Cassation in its 1876 decision.

Differences Between Precautionary and Executive Seizure

Precautionary seizure differs from executive seizure in many respects, including:

1. The legislator does not require an enforceable title to be held by the creditor for precautionary seizure, since its purpose is only to preserve a specific asset of the debtor. Conversely, executive seizure requires the creditor to hold an enforceable title at the time of seizure.

2. Precautionary seizure does not require prior execution proceedings since its purpose is to surprise and prevent the debtor from disposing of his assets before seizure. On the other hand, executive seizure must be preceded by execution procedures; otherwise, it is null for violating the applicable general rules.

3. The legislator does not require all substantive conditions for the creditor's right to be fulfilled to initiate precautionary seizure; it suffices that the right be existing and due. In contrast, executive seizure cannot be initiated unless the right to be enforced meets all substantive conditions; otherwise, the seizure is invalid.

Part Three: The Nature of Seizure

The determination of the legal nature of seizure has generated considerable debate in legal doctrine, leading to divergent opinions among scholars. These differing views gave rise to several theories attempting, each from its perspective, to provide a legal characterization of seizure. These theories are divided into two main categories: substantive theories and procedural theories. Among these, we mention:

First: Substantive Theories

a) Proponents of this theory argue that seizure of a specific asset of the debtor leads to considering the debtor (the seized party) as legally incapacitated with respect to the seized asset, thereby losing the authority to dispose of or manage it, with the judiciary replacing him in this function.

This theory has faced several criticisms, including:

1.There is no relationship between seizure of the asset and the legal capacity of the debtor

2.There is no consistency between the effects of seizure and those of legal incapacity, as

legal capacity relates to discernment, whereas seizure does not affect the person's ability; rather, any act performed by the debtor is valid but ineffective against the seizing creditor. Furthermore, the effect of seizure is limited only to the seized asset and does not extend to the debtor's other assets.

3. Acts performed by an incapacitated person over his assets are absolutely null because they were executed by a person lacking legal capacity; thus, the discrepancy between seizure. and legal capacity indicates no connection between them.

Islamic jurisprudence scholars have also confirmed this fact, although they use the term "Hajr" (guardianship) to denote seizure. The seized debtor retains full legal capacity, and seizure does not affect it because debt is not considered an incapacity condition.

b) Another group of scholars consider seizure as the creation of a legal possession for the seizing creditor over the seized asset, granting the creditor priority in recovering his right, especially concerning movable property, according to the jurisprudential principle: "Possession of movables is proof of ownership."

Thus, seizure prevents the debtor from disposing of the seized asset in any way that would harm the creditor's rights. The debtor is prohibited from any act detrimental to the legal seizing creditor who has acquired priority over that asset by virtue of possession.

This theory is criticized on the grounds that the rule "possession of movables is proof of ownership" does not apply to immovable property but is limited only to movables.

Second: The Procedural Theory

This is the most favored theory, whose proponents assert that seizure is a procedural characterization attributed to the seized asset, making it subject to execution. Thus, seizure fulfills two roles: a material role, which is to designate the asset as the subject of execution, and a legal role, which is to create a new legal status for that asset, rendering it executable.

Once seizure procedures are initiated against a specific asset of the debtor, the asset becomes the subject of execution, meaning seizure is a procedural attribute ascribed to the asset, making it an integral element of execution to preserve it for the purpose of enforcement. By seizure, the asset becomes earmarked for a specific purpose-namely, to be the object of execution to satisfy the creditor's right.

This means that the seized asset's fate is linked to execution procedures, which affects the legal positions of the execution parties and third parties with respect to that asset. For the Seized Party: Seizure restricts his authority over the asset within the limits.

required by the execution procedures to satisfy the enforcing creditor's rights. Thus, acts performed by the debtor over the seized asset are ineffective against the enforcing creditor once seizure is executed. Moreover, the debtor is prevented from physically disposing of the asset in a manner harmful to the seizing creditor's rights.

For the Seizing Creditor: Seizure grants new procedural powers, including the right to initiate expropriation procedures concerning the seized asset and the authority to invoke the non-enforceability of acts performed on the seized asset without observing the necessary procedural formalities (i.e., the opposition action).

Regarding Third Parties Receiving Rights on the Seized Asset: The asset transfers to them with its seizure status intact because the seized party cannot transfer more rights than he owns. By virtue of this characterization, execution procedures continue against the asset even after transfer to the third party, and the creditor disregards such transfer completely.

Section Two: Rules Governing Seizure

Seizure can only be imposed on property owned by the debtor or on a personal right that the debtor holds against a third party. The property subject to seizure may be movable or immovable

and it may be held by the original debtor at the time of seizure or by another person on his behalf. Furthermore, as previously mentioned, seizure may be either executive, leading directly to the sale of the seized property by public auction to satisfy the creditor's claim from the proceeds, or it may begin as a protective seizure that later converts into an executive seizure. Thus, seizure is governed by a set of rules which essentially constitute safeguards. Failure to respect these rules renders the measures taken null and void due to their violation of the applicable general principles in this domain. The key rules are as follows:

1. Ownership and Possession: Seizure does not transfer ownership of the seized property from the debtor; ownership remains with the debtor until the property is sold at public auction. The property remains in the debtor's possession until judgment is rendered. The debtor may enjoy the property as a prudent family head and may acquire its fruits while preserving it. One consequence of seizure is that the debtor is prohibited from disposing of the seized property in any manner that conflicts with or harms the rights of the seizing creditor. Moreover, any disposition by the debtor concerning the seized property is null and ineffective because the property remains under the general guarantee for all creditors (the "opposition action"). Should the seizing creditor's rights be harmed by the debtor's acts over the seized property, the debtor is subject to penalties related to offenses concerning seized property as stipulated in the Penal Code.

However, the debtor may lease the seized property with permission from the president of the court that ordered the seizure, based on a petition order pursuant to Articles 660 and 661 of Law No. 08/09 on Civil and Administrative Procedures.

2. Permissible Acts by the Debtor: The debtor may undertake acts or procedures that do not harm the seizing creditor, such as filing possessory actions or demanding performance from third parties, provided these acts benefit the seizing creditor.

3. Relative Effect of Seizure: The effect of seizure is relative, benefiting only the seizing creditor and any preferential rights holders. Its effect does not extend to any property not included in the seizure. Therefore, the seizure regime differs from the bankruptcy system under commercial law, which produces collective effects impacting all creditors and all present and future assets of the bankrupt debtor.

4. Scope of Seizure: The seizure covers all the seized property even if its value exceeds the amount of the creditor's claim. The entire property is frozen, even if divisible, which constitutes a heavy burden on the debtor, as high-value property may be seized to satisfy a smaller debt. However, when initiating a public auction sale, the sale price may not exceed what is necessary to satisfy the creditor's right and cover expenses.

5. Public Order Nature: Seizure rules are considered mandatory public order rules. The parties to the execution proceedings may not agree to derogate from them.

It is worth noting that the creditor and debtor may agree before seizure that the creditor shall own the property if the debtor fails to fulfill his obligations, but such an agree-

ment is not permissible after seizure procedures commence, as affirmed by Algerian jurisprudence.

6. Interruption of Prescription: Seizure interrupts the statute of limitations as provided in Article 317 of the Civil Code, a principle confirmed by the Supreme Court.

7. Duration and Completion of Seizure: If seizure procedures are not completed within one day, they may be completed the following day. The judicial officer must take measures to safeguard the seized and intended-to-be-seized property until an inventory and seizure report is drawn up. If continuation beyond official working hours or on a public holiday is necessary, the judicial officer may complete the seizure without prior authorization from the court president, provided the seizure report notes the exact date and time of commencement and completion, under penalty of nullity.

8. Prohibited Participants in Auction: The debtor, judges involved in the case, judicial officers, execution sale registrars, bailiffs involved in the procedures, lawyers representing parties, and agents acting on behalf of the debtor or others may not participate in the public auction; otherwise, the sale is voidable. In contrast, the creditor may participate in the auction based on the rights granted by the Code of Civil and Administrative Procedures.

9. Jurisdiction: Jurisdiction over seizure matters, including the issuance of seizure orders and subsequent procedures, lies with the court in whose territorial jurisdiction the seizure occurs. Execution dispute matters fall within the jurisdiction of the court where the execution dispute or required measures arise.

Second Section: Conditions for Real Estate Seizure and Its Exceptions

First Requirement: Conditions for Real Estate Seizure

Real estate seizure is a method of compulsory execution and the last resort for the creditor to recover his debt from the debtor. It involves placing the debtor's real estate and/or real property rights, or those of another person, under judicial control for the purpose of public auction sale.

Given that real estate seizure is an exceptional measure, the legislator regulated it in Articles 721 to 765 of the Code of Civil and Administrative Procedures. These provisions require adherence to a set of procedures, in addition to fulfilling various formal and substantive conditions for its implementation.

It is important to note that under the old Code of Civil Procedures, real estate seizure procedures were characterized by complexity and lengthy timelines, sometimes rendering them impracticable due to prevailing factors at the time, such as the economic and social importance of real estate. However, under the new Code of Civil and Administrative Procedures, the legislator revised these procedures, simplifying and easing them, aligning with modern legislation that no longer treats real estate as the predominant asset in the debtor's estate, especially given the presence of movables with values surpassing real estate many times over, such as ships and aircraft.

Accordingly, since the legislator has set a series of necessary conditions for real estate seizure, these conditions can be divided into two categories: formal conditions and substantive conditions.

Branch One: Formal Conditions

From a practical standpoint, a set of conditions must be met to initiate the procedures for real estate seizure, which the judicial officer considers essential formal prerequisites for ordering such seizure. These include:

a. Existence of a Complete Enforcement File:

To issue the seizure order, the request must be accompanied by a complete enforcement file containing all the procedures carried out by the judicial officer and the results obtained, pursuant to Article 721 of the Code of Civil and Administrative Procedures.

b. Absence of Alternative Means to Collect the Debt Instead of Seizure:

If another means exists, it must be pursued even after the seizure, such as the debtor fulfilling his obligations to the creditor, or taking the procedural step of offering and depositing the money or item at the office of the judicial officer or at the clerk's office of the court within whose jurisdiction the property to be seized is located or where enforcement is conducted.

It is important to note that the creditor must first proceed to seize the debtor's movable property. Only if such movables are insufficient to satisfy the principal debt and costs, or if they do not exist at all, may the creditor resort to seizing the debtor's immovable property, as stipulated by the legislator in the Code of Civil and Administrative Procedures.

c. The Property Must Be Specifically and Precisely Identified:

The property must be defined by its area, boundaries, plot address, and specifications, with precision excluding any ambiguity.

However, in practice, the properties subject to seizure are often not precisely identified, which raises significant problems during their auction sale, even with an expert's report aimed at identification. In such cases, it appears necessary to postpone the auction sale to reinitiate procedures, particularly expert assessment, to precisely specify the seized properties in order to avoid such issues during the enforcement of the auction award, thereby preventing the need to return to the court president for resolution.

Branch Two: Substantive Conditions

The legislator has set a number of substantive conditions that must be fulfilled when initiating seizure procedures on a debtor's real estate to collect the creditor's due amount from its sale.

These conditions vary and relate to the property subject to seizure, the creditor seeking seizure, and the debtor whose assets are to be seized, based on Article 721 of the Code of Civil and Administrative Procedures. These include:

1. The Property Must Be Real Estate:

The property subject to seizure must be real estate, regardless of whether it is real estate by nature, by designation, or even a real right on real estate subject to seizure, such as usufruct or ownership of the "surface right." The treatment of these rights is similar to that of real estate in ownership transfer transactions. Seizure may apply to real estate whether segregated or co-owned, based on the principle: "Everything that can be sold can be seized.

2. The Creditor Must Hold an Executory Title:

The creditor seeking to seize real estate must possess an executory title from among those provided for in Article 600 of the Code of Civil and Administrative Procedures or in special provisions, if he is an ordinary creditor of the debtor.

Article 721 requires the creditor to have an executory title registered to initiate seizure procedures against the debtor's assets, as the absence of such title renders the measures taken void.

3. Proof of Insufficiency or Absence of Movable Assets:

Seizure of the debtor's real estate is an exceptional measure resorted to only after seizing the debtor's movable property, as a general rule pursuant to the first paragraph of Article 620 of the Code. If the movable assets are insufficient to cover the debt and costs or only sufficient to cover the costs, or if the debtor has no movables according to Article 622 of the same code, the judicial officer prepares a report of insufficiency or absence of movable assets, allowing the creditor to proceed to seize the debtor's real estate to recover his dues through public auction.

The creditor must conduct asset searches as authorized by Article 628 of the Code.

Thus, the report of insufficiency or absence of movable assets is a vital prerequisite before seizing real estate, as seizure cannot proceed if movables suffice to cover the debt and costs. If movables are insufficient at valuation, the legislator permits the creditor to initiate real estate seizure to achieve the purpose of compulsory execution, i.e., selling the properties by auction to satisfy the creditor's claims and execution expenses. Algerian courts have ruled that "Real estate ownership may only be deprived if the seized movables are insufficient to satisfy the debt."

Moreover, the legislator wisely excluded the previous exception in Article 355 of the old Code of Civil Procedures, which exempted real estate from seizure, limiting seizure to due amounts or movables held by third parties without affecting real estate possessed by the latter as part of a seizure against the debtor.

4. The Value of the Property Must Be Sufficient at Least to Cover Part of the Debt and

Costs:

This is an essential condition for seizure of the debtor's real estate. If the property's value is insufficient to cover the costs and part (even a small part) of the debt, it cannot be seized. If the debtor owns no real estate, seizure is made on his movable assets regardless of their value, subject to the provisions of Articles 622 and 636 of the Code concerning non-seizable property. Practically, judicial officers sometimes face difficulties due to the lack of registered real estate. Some debtors may have many properties but lack registered titles with the land registry, leading the judicial officer to report absence of real estate even if the properties exist physically but not

administratively.

5. The Seizing Creditor Must Meet the Same Conditions Required of the Execution Applicant:

This includes the creditor's legal status from the beginning of enforcement proceedings and his administrative capacity, since enforcement is considered a purely beneficial act for him. 6. If the Seized Person Is Not the Original Debtor:

For instance, a guarantor or holder of the property or a holder of a real right on the seized property, although not indebted to the creditor, is legally bound to pay the debt of another due to his legal position regarding the property targeted for seizure, as provided in Articles 884, 901, and 911 of the Civil Code.

Second Requirement: Exceptions to Real Estate Seizure

The legislator, in the second paragraph of Article 721 of the Code of Civil and Administrative Procedures, has established an exception to the general rule regarding seizure of the debtor's registered real estate, which normally requires the insufficiency of the debtor's movable assets. The law permits certain persons who hold real security interests granting them priority and the right to follow the property in whomever's possession it may be, to seize the debtor's registered real estate directly-even if its ownership has transferred to a third party-regardless of the sufficiency, insufficiency, or absence of the debtor's movable assets, provided they hold one of the executory titles referred to in Article 600 of the Code of Civil and Administrative Procedures.

The creditor faces multiple risks when the due date for collecting the debt from the debtor arrives, especially if the debtor becomes insolvent or has multiple creditors competing to satisfy their claims, which may result in the creditor receiving only partial or no payment. Therefore, the necessity to secure the debt compels the creditor to demand a guarantee from the debtor. The general guarantee that all the debtor's assets serve to satisfy his debts and that all creditors rank equally-is insufficient when multiple creditors exist.

Hence, special securities emerged out of the creditor's concern for his right against competition from other creditors, in addition to the ineffectiveness of other legal remedies (such as indirect action, the police action, the fictitious action, the right of retention, and the debtor's insolvency announcement). Special securities are distinct rights that grant the creditor enhanced protection against these risks.

Thus, the securities for which the legislator permits seizure of the debtor's real estate directly are real securities (security interests).

Real securities, or rather accessory real rights, are rights that do not exist independently but rely on a personal right they guarantee and secure. A particular asset owned by the debtor or a third party is specifically allocated as collateral, which shields the creditor from competition with other creditors, making such real securities a true and specific guarantee.

By this allocation, the creditor obtains an accessory real right over a specified asset of the debtor, enabling him, in case of non-performance, to satisfy his claim from the proceeds of its enforcement. This also grants him priority over ordinary creditors ranking after him. Moreover, the debtor's disposition of the asset does not preclude enforcement, as the creditor enjoys the right to pursue the asset wherever it is, known as the rights of priority and pursuit granted by real securities.

Therefore, real securities provide the creditor an additional guarantee alongside the general guarantee over all the debtor's assets. If the dedicated asset is insufficient to satisfy the debt, the creditor may proceed to enforce against the debtor's other assets not subject to this guarantee, to recover the remainder of his claim. This allocation does not exclude the creditor from the general guarantee but respects the priority element granted by such securities, as affirmed by the Supreme Court.

I will briefly address the holders of real securities who, according to the legislator, are permitted to seize the debtor's registered real estate directly without the requirement of insufficiency or absence of movables. These are the creditors with official mortgages (régistre mortgages) or possession mortgages, the holder of a dedication right (right of appropriation), and the holder of a special privilege (preferential right) on the property. Additionally, paragraph one of Article 124 of Order No. 03/11 dated 26 August 2003 related to currency and credit grants banks and financial institutions the right to seize the debtor's real estate directly without resorting to the procedures stipulated for real estate seizure in the Code of Civil and Administrative Procedures.

First: The Right of Official Mortgage (Régistre Mortgage)

The official mortgage is a contract whereby the creditor acquires a real right over a property to secure payment of his debt. This right allows him to have priority over creditors ranked after him to satisfy his claim from the sale proceeds of that property, regardless of who holds possession. This definition is provided by the legislator in Articles 882 and 883 of the Civil Code.

From this definition, it is clear that the legislator identified the source of the mortgage, which is the contract creating the real right over the property, aimed at compelling the debtor to fulfill his debts toward his creditors. Article 883 of the Civil Code enumerates the sources of the mortgage: agreement (official contract), judiciary (court judgment), and law (legal provision).

Unlike this, some comparative legislations define official mortgage as a real right over properties designated to secure the debtor's obligation without detailing its sources, such as Article 157 of the Moroccan Dahir dated 7 January 1936, Article 1071 of the Syrian Civil Code, Article 34 of Order 76/80 on Maritime Law (amended by Law 98/05 dated 25 June 1998), and Article 25 of Law 98/06 regulating general civil aviation rules.

Since the official contract is the most common source of the official mortgage, its parties are: the mortgage creditor and the debtor-mortgagor. The former holds the personal right guaranteed by the mortgage, while the latter is not necessarily the original debtor; it can be another person who mortgages his property as collateral for another's debt, called the real guarantor (cautionnement réel).

The subject of the mortgage is the property and its appurtenances, with an exception for some movables that can be easily distinguished, such as ships and aircraft registered in special registers that include all relevant information and encumbrances. However, the mortgage is only enforceable against third parties if registered at the land registry.

The official mortgage does not transfer possession of the mortgaged property from the debtor to the mortgage creditor; the debtor retains possession and may dispose of the mortgaged property, provided such disposition does not harm or affect the mortgage creditor's rights. The debtor also retains the right to manage and collect the fruits of the property until they are attached to the mortgaged property, a principle affirmed by the Supreme Court.

Second: The Right of Possessory Mortgage (Pledge with Possession)

The possessory mortgage is a contract whereby a person undertakes to deliver an asset either to the creditor or to a third party appointed by the contracting parties, whom jurisprudence calls a "custodian." This arrangement grants the creditor a real right that entitles him to retain possession of the asset until the debt is satisfied, as security for a debt owed by the debtor or by another person. This right confers on the creditor priority over ordinary creditors ranked after him to recover his claim from the proceeds of that asset, regardless of who holds possession-that is, the right to follow the asset wherever it may be.

From this definition, it is clear that the possessory mortgage is an accessory real right established to secure the creditor's claim. It aligns with the official mortgage in that both originate from a contract. However, the transfer of possession from the mortgagor to the mortgagee or the third party designated by them is not a constitutive element of the mortgage's validity, but rather an obligation of the mortgagor. Its role is limited to effectiveness against third parties, granting the mortgage creditor the right to enforce the mortgage against the mortgaged asset while it remains in the mortgagor's possession, to satisfy his claim under the possessory mortgage right. Nevertheless, the creditor can only assert the privileges of priority and pursuit starting from the date possession of the mortgaged asset transfers to him.

Moreover, the possessory mortgage grants the creditor the right to retain possession of the mortgaged asset until full satisfaction of the debt, a principle affirmed by Algerian case law.

This definition distinguishes the possessory mortgage from the official mortgage by possession, which is considered an obligation in the possessory mortgage, alongside the right of retention until the creditor's debt is fully satisfied. The possessory mortgage applies to both real estate and movables. In other respects, the legal treatment of the possessory mortgage is the same as that of the official mortgage.

Third: The Right of Appropriation (Droit de Spécialisation)

This right is called in some Arab laws the right of exclusivity, while others, like the Algerian legislator, call it the right of appropriation (right of specialization). Dr. Ali Ali Suleiman states regarding this right:

"It is noteworthy that the Algerian Civil Code differs from other Arab laws in naming this right. It calls it (right of appropriation) in the title and most of the articles where it is stipulated. However, it follows other Arab laws by calling it (right of exclusivity) in Articles 942 and 943, then it reverts to (right of appropriation) in subsequent articles. Thus, the name of this right varies within the Algerian Civil Code. Perhaps the term used by other Arab laws-'right of exclusivity'-more accurately reflects its purpose, as the creditor seeks to exclusively appropriate one or more of the debtor's properties, not merely to 'allocate' them. The technical translation of the French term 'Affectation' is exclusivity, not appropriation, which in French is 'Spécialisation.' This terminology should be corrected upon revision of the Civil Code to align with other Arab laws and unify the designation across all relevant articles in the Algerian Civil Code,"

Some Arab laws do not recognize this right at all, including the Moroccan, Lebanese, Iraqi, and Jordanian laws, among others. Islamic Sharia does not address this right either.

The Algerian legislator defines the right of appropriation in the Civil Code appropriately, allowing jurisprudence to define it as:

"An accessory real right granted to the creditor over one or more of the debtor's properties, pursuant to an enforceable judgment ordering the debtor to pay the debt, entitling the creditor to priority over all creditors, whether ordinary or privileged, to satisfy his claim from the proceeds of that property regardless of who holds possession."

From this definition, we infer that the right of appropriation resembles the official mortgage in its effects but differs in its source: it arises from an enforceable judicial ruling issued by the court president, unlike the official mortgage, which originates from a contract. Therefore, the right of appropriation is considered a precautionary measure that the creditor typically uses to secure enforcement of the judgment in his favor.

The right of appropriation differs from both the official and possessory mortgages by serving primarily as a guarantee for the enforcement of judicial rulings in favor of the creditor, providing greater protection than the police action. It grants the creditor priority and pursuit rights and exempts him from proving debtor fraud, which makes the creditor confident in the right of appropriation and allows postponement of enforcement procedures.

The most significant impact of the right of appropriation is that it results in preferential treatment of some creditors over others. It is imposed on the debtor without his consent, who is forced to accept it because it is granted swiftly through an enforceable court judgment. This can disadvantage the debtor because his properties become encumbered by a mortgage he might have refused if it had been established through conventional mortgage methods-official or possessory. Moreover, the speed with which such judgments are obtained may cause creditors to compete for the right of appropriation on one of the debtor's properties, increasing his financial burdens.

Articles 937 to 939 of the Civil Code infer that the creditor must hold one of the following to obtain the right of appropriation:

A judicial judgment, a judgment issued by a foreign court, or an arbitral award;

- Or a judgment ratifying a settlement or agreement between the parties;
- The judgment must be enforceable and issued on the merits;
- It must bind the debtor to a specific obligation;
- Lastly, the creditor cannot obtain the right of appropriation after the debtor's death.

Fourth: Preferential Rights (Privileges)

Preferential rights constitute another type of real security that grants priority over all other rights. These rights are established by legal provision rather than by contract-as is the case with mortgages-or by judicial ruling-as is the case with the right of appropriation. The legislator selects a set of rights deemed worthy of special protection and ensures that their holders are paid before other creditors, based on the nature of the right itself. Thus, preferential rights are prioritized according to the characteristic of the right, not the identity of the creditor. In other words, preference is an attribute of the right, not of the creditor.

Since preference is a priority established by law, the law alone determines its rank. Therefore, parties cannot create a preferential right by mutual agreement, nor can a judge grant it unless the law explicitly designates that right as preferential. This principle has been affirmed by Algerian jurisprudence.

There are several types of preferential rights, classified by the legislator according to the type of assets to which the preferential right applies. This classification yields three distinct categories, each with different characteristics:

- General preferential rights,
- Special preferential rights on movables,
- Special preferential rights on immovables (real estate).

The focus of this research is on special preferential rights on immovable property, i.e., privileges attached to a specific property owned by the debtor. Examples include:

- The vendor's privilege on the price of the sold property,
- Privileges for amounts due to engineers and contractors for construction and renovation work,
- Partners' privilege in the event of property partition.

Holders of such preferential rights must register them to determine their priority according to the registration date.

The rules applicable to real estate preferential rights generally follow those governing official mortgages, insofar as they do not conflict with the nature of these rights. This includes provisions concerning purification (extinguishment of prior burdens) and registration. Regarding the destruction or damage of the encumbered property, the legislator refers to the same rules applicable to official mortgages, as laid out in Articles 986 to 1001 of the amended and supplemented Algerian Civil Code

Conclusion

From the foregoing, it is clear that the Algerian legislator has comprehensively reorganized attachment procedures in general and real estate attachment procedures in particular. This marks a departure from the previous Civil Procedure Code repealed in 2008, which suffered from procedural ambiguities, complexity, lengthy durations, and scattered provisions, making it difficult for researchers, legal professionals, and judges to apply consistently and effectively.

This deficiency was addressed by the enactment of the 2008 Code of Civil and Administrative Procedures. Nevertheless, some ambiguity persists in attachment provisions compared to comparative legislation, especially regarding exceptions to real estate attachment. For instance, the terminology for the right of appropriation differs between the Arabic term adopted by the Algerian legislator and the equivalent Arabic terms used in other Arab legislations, as well as its more precise French counterpart. Consequently, it is necessary for the Algerian legislator to reconsider this issue and decide on the most appropriate terminology to eliminate ambiguity and confusion.

References

1. Ahmed Ibrahim hacen, The origins of the history of law from lessons in the principles of Roman law, University Publications House, Alexandria, year 2003.
2. Ali ali selaiman, The necessity of re-evaluating the Algerian Civil Code, University Publications Office, Algeria, 1992.
3. Ali hadi ehabidi, Forced sale of real estate in the Omani Civil and Commercial Procedure Law, a comparative study with Egyptian, Emirati, and Kuwaiti law, Dar Al-Thaqafa, Oman, year 2006.

4. Ali mohamed ali kacem, The actions of justice in the mortgaged property, and the implications of these actions in Islamic jurisprudence and positive law, a comparative study, Al-Jamia Al-Jadida Publishing House, Alexandria, 2002.
5. Bedaoui abdelaziz, Real estate registration in Algerian law, a thesis for obtaining a master's degree, specializing in management and finance, Faculty of Law, Ben Youssef Ben Khadda University, Algeria, year 2007/2008.
6. Bedaoui ali, The executive seizure of property and real estate rights, a lecture delivered during a training course at the Higher School of Judiciary, Algeria, on 26/05/2009.
7. Bedaoui ali, The provisional seizure in Algerian legislation, an article published in the Judicial Magazine of the Supreme Court, issue number one, 1996.
8. Belhadj elarbi, The general theory of obligation in Algerian civil law, legal acts, contracts, and unilateral will, part one, fifth edition, Office of University Publications, Algeria, year 2007.
9. Belkacemi noureddine, Obstacles to Notification and Execution in the Real Estate Field, an article published in the Lawyers Magazine, issued by the Lawyers Organization of the Tizi Ouzou region, Issue 4, June 2006.
10. Benafia benameur, The executive seizure of movable property in the law of civil and administrative procedures, an article published in the Judicial Officer Magazine, National Chamber Activity, Issue 2, January 2010.
11. Elsaadi mohamed sabri, The explanation of the Algerian Civil Code is clear, regarding real guarantees, part seven, Dar Houma, Algeria, year 2009.
12. Elsanhouri abderezak, The intermediary in explaining the new civil law - on personal and real guarantees - part ten, third edition, Halabi Legal Publications, Beirut, 2005.
13. Manaa abdellal, Enforcement seizures, a lecture presented at the Council of Justice in Bordj Bou Arreridj on 23/06/2006 as part of the ongoing local training for judicial officers, judicial year 2005/2006.
14. Si bachir abed, The executive seizure of movable assets in light of the Civil and Administrative Procedure Law, a presentation delivered at the study day organized by the Lawyers' Organization of Oran, on 'Methods of Execution in Procedural Law', on November 22, 2012, at the Phoenix Hotel, El-Hamiz.
15. Zerrouki leila, Real estate reservation procedures, an article published in the Supreme Court Journal, issue number two, for the year 1997.