


RESEARCH ARTICLE			The judge's power to resolve property disputes pending investments
Aicha Abdelhamid		Doctor	Department of Law, Faculty of Law and Political Science, Chadli Bendjedid University, El Tarf
		Algeria	Email : abdelhamid-aicha@univ-eltarf.dz ; Orcid : 0009-0007-3506-1646
		https://doi.org/10.56334/sci/8.8.38	
Doi Serial		https://doi.org/10.56334/sci/8.8.38	
Keywords		Suspension; Investment; The judiciary; disputes.	
Abstract The Algerian legislature has recognized the importance of endowment investment by deciding, under Act No. 07-01, to amend and supplement the Waqf Act No. 10-91, to ensure that there is no mere exploitation, protection and exploitation of waqf property. However, the reality imposes a factual logic on the fact that the endowment investment in Algeria appears to fall short of its development role. It is not far from the general rules imposing legal and judicial protection of the stay, and the referral of any dispute concerning the suspension before the court.			
Citation. Abdelhamid A. (2025). The judge's power to resolve property disputes pending investments. <i>Science, Education and Innovations in the Context of Modern Problems</i> , 8(8), 416-423. https://doi.org/10.56352/sci/8.8.38			
Issue: https://imcra-az.org/archive/375-science-education-and-innovations-in-the-context-of-modern-problems-issue-8-vol-8-2025.html			
Licensed © 2025 The Author(s). Published by Science, Education and Innovations in the context of modern problems (SEI) by IMCRA - International Meetings and Journals Research Association (Azerbaijan). This is an open access article under the CC BY license (http://creativecommons.org/licenses/by/4.0/).			
Received: 11.12.2024		Accepted: 16.05.2025	Published: 17.06.2025 (available online)

Introduction:

Investment has been considered one of the pillars of success for any country, as it reflects the development of its economy. It reveals the extent to which the state can activate and manage its wealth, and how it can utilize it to build a strong and successful economy at all levels, as well as to stimulate its commercial activity both nationally and internationally. This can only be achieved through proper investment and the effective use of revenues generated from waqf (endowment), by channeling them into successful and pioneering investment projects – especially for the Algerian state, which is in urgent need of such future-oriented plans.

In the field of endowments, it is considered a fertile ground for investment through granting concessions to implement projects and economic activities that produce goods and services using waqf assets. This can be achieved by creating new activities and utilizing monetary or in-kind contributions as capital in a given enterprise to expand production capacity.

Investment in waqf can take place through the establishment of a waqf, additions to it, maintaining its productive capacity by restoring what has been damaged (renewal), or replacing it with another waqf (substitution).

The investment of waqf involves the use of endowed funds to obtain benefits or returns that are spent on the charitable purposes for which the waqf was created. To achieve this, waqf investment must comply with the formal and substantive legal requirements; otherwise, it leads to a waqf-related legal dispute.

Based on the above, we raise the following research problem:

- What is the authority of the judge in waqf property disputes?

This presentation will address:

- **First:** The legal requirements for investing the funds of the waqf institution.
- **Second:** Waqf disputes and the judge's authority in resolving them.

FIRST – LEGAL REQUIREMENTS FOR INVESTING THE FUNDS OF THE WAQF INSTITUTION:

There is a strong relationship between investment and waqf, which is clearly manifested through the employment of waqf funds in the investment sector to achieve both religious and worldly benefits and to improve the economic return for the state. For this reason, the Algerian legislator has established an organized and precise legal framework to define the necessary conditions required for waqf investment.

1. Formality (Official Documentation):

Writing is considered a formal element of the contract, without which the contract is not concluded¹. Therefore, it cannot be proven, even by confession or oath.

Official documents are those drawn up by a public official, a public officer, or a person assigned to a public service who has the required authority².

Although Islamic jurisprudence does not mandate formality in waqf contracts, the Algerian legislator has required that certain official contracts—such as waqf, which is a Sharī'a-based contract—be formalized. Article 41 of Law No. 10-91, as amended and supplemented, states:

“The endower must record the waqf contract with a notary...”³

Referring to Article 324 of the Algerian Civil Code, it defines the conditions under which a contract is considered official:

a. The document must be issued by a public official, a public officer, or a person assigned to a public service:

- **Public official:** Defined by Article 04 of Ordinance No. 03-06 (General Statute of the Civil Service), as: “Any agent holding a permanent public office and appointed to a rank in the administrative hierarchy.”⁴
- **Public officer:** A person who possesses legal qualifications based on a professional certificate and is authorized to manage a public office on their own account and under their responsibility, such as a translator, judicial officer, or notary.
The notary, in particular, plays a key role in preparing documents that transfer real estate ownership.⁵
- **Person assigned to a public service:** Such as court-appointed experts or elected heads of municipal councils.⁶

b. The Authority and Competence of the Public Official or Officer in Issuing the Official Contract:

This refers to the jurisdiction and legal capacity of the official to draft the official contract.⁷

c. Observance of the Legal Formalities in Drafting the Contract:

When the notary drafts the official contract, the legal formalities prescribed by law must be observed. Referring to Article 26 of Law No. 02-06 regulating the notarial profession, the article specifies certain mandatory elements that the notary must adhere to when drafting contracts. It states:

“Notarial contracts shall be drafted, under penalty of nullity, in Arabic, in a single clear and readable text, without abbreviations, blank spaces, or omissions.”⁸

2. Notarization (Authentication):

It refers to a set of legal procedures carried out by a notary at the request of the contracting parties, in order for the contract to acquire the status of an official document, making it valid as evidence and enforceable.

The notary is defined in Article 05 of Law No. 02-06 as follows:

“The notary is a public officer, authorized by the public authority, responsible for drafting contracts that require an official form by law, as well as contracts that individuals wish to give such form.”⁹

This is manifested through:

- Completing an essential element of the contract and formalizing it in an official format.
- Providing the contracting party with an enforceable instrument.
- The content of the notarial contract serves as conclusive evidence for all and is enforceable throughout the national territory.¹⁰
- Warning the contracting parties about the seriousness of their legal action.
- The provisions of the sales contract become effective immediately upon notarization.

3. Real Estate Registration (Land Registry):

Real estate registration is defined as the technical or procedural operation aimed at recording various transactions related to real estate with the land registration office, in order to inform the public and make the existence of such transactions known to all.¹¹

Its importance is demonstrated through:

- Facilitating the transfer of real estate ownership.
- Establishing the real effect of ownership transfer.
- Promoting real estate credit.
- Stimulating economic activity.¹²

The Algerian legislator has adopted the system of real property registration under Ordinance No. 74-75 dated November 12, 1975, concerning the general land survey and the establishment of the land registry.

Second – Waqf Disputes and the Judge’s Authority Over Them:

Since waqf is a legal entity, it acquires the right to litigate and have legal actions brought against it as a legal person. From this standpoint, waqf disputes are often brought before the judiciary, which in turn provides legal protection for waqf.

1. Legal Protection of Waqf:

The Algerian legislator defined waqf in Article 213 of the Family Code¹³, which states: “Waqf is the detention of property from private ownership for any individual, in perpetuity, as an act of charity.”

1- Constitutional Protection of the Right:

The Algerian legislator has enshrined the protection of waqf properties in the Algerian Constitution. Almost all Algerian constitutions have included provisions for the protection of waqf.

2- Civil Protection:

The Algerian legislator has established civil protection for waqf properties, starting with the Civil Code as the general legal framework, particularly through Articles 674 to 689, which provide civil protection for real estate ownership in general¹⁴. This was followed by the Land Orientation Law No. 25-90, which reaffirmed the value of real estate ownership in general, and waqf real estate in particular¹⁵.

Article 29 of this law classified real estate properties into the following legal categories:

- National property
- Private and personal property
- Waqf property¹⁶

The civil protection of waqf property can be summarized through the following principles:

- Waqf cannot be acquired by prescription (no acquisition through adverse possession)
- Waqf is not subject to pre-emption
- Waqf cannot be seized
- Waqf cannot be mortgaged
- It is not permissible to dispose of waqf property

3- Criminal Protection:

In order to safeguard waqf property and protect it from violations by others, the legislator has prescribed criminal penalties for perpetrators of acts defined as criminal offenses. The Algerian legislator established this criminal protection in Article 36 of Law No. 10-91 related to waqf, which states: “Any person who exploits waqf property in a concealed or fraudulent manner, or hides waqf deeds, documents, or records, or falsifies them, shall be subject to the penalties stipulated in the Penal Code.”

By referring to the 2010 Penal Code,¹⁷ it is evident that the law categorically addresses actions that harm real estate in general. Several provisions are applicable to waqf properties, such as Article 386, which sets the general framework for the offense of infringing upon real estate ownership, and Articles 406 and 407, which address the offense of willful destruction of real estate. These articles are applicable to waqf properties since they criminalize acts of aggression against real estate regardless of its nature be it public, private, or waqf. Thus, the crime is deemed complete upon the commission of the assault on the property.

Examples from the Penal Code:

Article 406 states: “Anyone who willfully destroys or demolishes buildings, bridges, dams, reservoirs, roads, port installations, or industrial facilities knowing they are owned by others or who causes an explosion or damage to engines within industrial installations, either totally or partially, by any means, shall be punished by temporary imprisonment of five to ten years.”

Article 406 bis adds: “Anyone who willfully damages parts of a real estate property owned by others shall be punished with imprisonment from two months to two years or a fine between 20,000 DZD and 100,000 DZD.”

Article 407 states: “Anyone who willfully damages or destroys others’ property, as mentioned in Article 396, using any means, in whole or in part, shall be punished with imprisonment from two to five years and a fine between 20,000 DZD and 100,000 DZD.”¹⁸

Article 408 stipulates: “Anyone who places any object on a public road or passage that obstructs vehicle movement, or uses any method to hinder traffic with the intention of causing an accident or disruption, shall be punished with imprisonment from five to ten years and a fine between 500,000 and 1,000,000 DZD.

If these actions result in the death of a person, the offender shall be sentenced to imprisonment from ten to twenty years and fined between 1,000,000 and 2,000,000 DZD. In the case of injury or permanent disability, the same punishment applies.”¹⁹

Legislative Intention and Judicial Support:

By reviewing the provisions above, it is clear that the legislator has surrounded all property including waqf with strict and severe punishments for criminal acts, including in some cases the death penalty. This reflects the legislator’s intent to establish justice, deter criminals, and protect the spiritual and religious value of waqf.

Moreover, the legislator has significantly increased the amount of financial penalties for crimes involving real estate in an effort to match the material value of such properties. However, the sacred and spiritual significance of waqf properties goes far beyond mere financial compensation.

It is worth noting that the Algerian Supreme Court has upheld criminal protection for waqf properties, particularly in cases where their function is altered or violated especially when it concerns places of worship, given their sacred and spiritual importance. An example of this can be found in a ruling dated January 16, 1994, which held that: “It is well established in Islamic law that if an official certificate proves that a building was constructed by a Muslim community for the performance of prayers, then it belongs to them. Anyone who seizes it is considered a usurper and aggressor against Muslim endowments and should be treated as one who infringes on the property of others. He must be evicted from the premises and it must be returned to its original religious function. Any ruling to the contrary is a violation of the law.”

4- Administrative Protection:

The legislator has granted waqf another form of protection—administrative protection, which falls under the authority of the administration. This protection is exercised through the privileges and powers granted to administrative bodies, enabling them to prevent violations and abuses that may harm waqf property or obstruct its intended function, whether the waqf consists of urban real estate (such as buildings or buildable land) or agricultural land.

2. Jurisdiction of the Judge in Waqf Disputes:

1- Jurisdiction of the Ordinary Courts:

Ordinary waqf disputes are those that arise between private parties. At the first level, jurisdiction lies with:

- The civil division, as it holds general jurisdiction,
- The family affairs division, since waqf is addressed in the Family Code,
- Or the real estate division, when the subject of the dispute is real estate (waqf property).

With the issuance of the Finance Law of 2003, lawsuits began to be rejected by these divisions for failure to pay fees. However, disputes related to public waqf are exempt from fees, according to Article 44 of the Waqf Law No. 10-91.

These court divisions issue first-instance rulings, which are appealable before the corresponding chamber in the Court of Appeal, as a second degree of jurisdiction.²⁰

Furthermore, judgments can be appealed to the Supreme Court, where they are examined by the civil chamber, the real estate chamber, or the family affairs chamber, depending on the nature of the dispute.

2- Jurisdiction of the Administrative Courts:

Administrative disputes are those where one party is a legal person governed by public law, such as:

- The State,
- Wilayas (provinces),
- Municipalities,
- Or public institutions of an administrative nature.

These are governed by the organic criterion, as defined in Article 200 of the Code of Civil and Administrative Procedure, unless otherwise provided by Article 802.

Accordingly, administrative waqf disputes are brought before competent administrative courts in accordance with the law. Their rulings are appealable before the Council of State.

An exceptional case where administrative courts have jurisdiction is when a claim concerns the cancellation, termination, amendment, or annulment of a registered real estate waqf contract—particularly if it is a public waqf and the waqf authority benefits from it. This falls under the organic criterion as stipulated in Article 802 of the same code.

As for appeals against decisions issued by governors (walis) or mayors, or disputes involving the legality of such decisions, as well as those involving public administrative institutions, or civil liability claims against the state, provinces, municipalities, or administrative public institutions—the administrative courts are competent.

If the Minister of Religious Affairs and Endowments is a party to the dispute, jurisdiction is determined as follows: ²¹

- If the minister appears in a sovereign capacity, i.e., acting in the name and on behalf of the State, he is considered a public law person, and the dispute must be brought before the Council of State, as a central authority, pursuant to Article 901 of the Code of Civil and Administrative Procedure.
- However, if the minister appears as a representative of the waqf, then disputes involving waqf properties fall under the jurisdiction of the ordinary courts. ²²

3- Local (Territorial) Jurisdiction:

Article 48 of Law No. 10-91 related to waqf states: "The competent courts within whose territorial jurisdiction the waqf property is located shall handle disputes related to waqf properties."

This article, however, does not specify the nature of the waqf property—whether it is immovable or movable—which leads us to refer to the Code of Civil and Administrative Procedure ²³.

According to Article 40, paragraph 1 of the Code of Civil and Administrative Procedure, in cases involving real estate, construction works on real property, rental disputes (including commercial ones), and public works-related lawsuits, jurisdiction is assigned to the court where the property is located, or to the court where the work is to be carried out.

If the waqf property is movable, then jurisdiction lies with the court in the area where the movable property is located ²⁴, in accordance with Article 48 of Law No. 91-10, as well as Article 37 of the Code of Civil and Administrative Procedure. This article establishes jurisdiction based on the residence of the defendant. In the case of multiple defendants, the plaintiff may choose to file the lawsuit before the court in the jurisdiction of any of the defendants.

If the subject of the waqf is tied to labor relations, as per Law No. 90-11 concerning labor relations, jurisdiction is assigned to the court in the area where the institution is located, provided it has a fixed establishment.

If the dispute concerns a contract for services—such as the supply of goods to a specific zawiya (religious school or lodge)—jurisdiction lies with the court in the location where the contract was concluded and executed, as long as one of the parties resides there. In the case of debt-related disputes, jurisdiction lies with the court where the debt is based, among other scenarios.

For urgent matters related to waqf property, jurisdiction is assigned to the court where the issue occurred or where the requested measure is to be taken, in accordance with Article 40 of Law No. 08-09 on civil and administrative procedures. ²⁵

In line with this legal framework, a decision was issued by the Administrative Chamber on February 12, 2008, at the Council of Justice of Médéa, in a case between the Waqf Authority (plaintiff) and the Municipality of Médéa (defendant), represented by its mayor. The dispute was deemed administrative in nature since the municipality is a legal person governed by public law.²⁶

Similarly, a decision dated March 19, 2002, was issued by the Administrative Chamber of the Council of Justice of Sétif, regarding a dispute between the municipality and the Religious Affairs Directorate. The dispute was considered administrative, as both parties are governed by public law.²⁷

CONCLUSION:

From the above, we conclude the following:

- 1- The Algerian legislator did not provide detailed provisions regarding judicial protection of waqf (endowment) properties, but it has addressed the matter in various dispersed legal texts that can be referred to when necessary.
- 2- The legislator focused on procedures for proving waqf ownership as a form of protection and control over waqf properties.
- 3- The judiciary has attempted to extend its protection over waqf properties by confronting attempts to dispose of them, seize them, or alter their intended purpose, as such actions contradict the noble objectives of waqf.
- 4- The recovery of waqf properties, especially real estate, is difficult due to the lack of documentation however, any party with a legitimate interest has the right to file a legal claim to recover their rights, whether they are the endower, the beneficiary, or the administrator.

REFERENCES

First – Legal Texts:

- 1- Article 05 of the Notarial Law.
- 2- Article 689 of the Algerian Civil Code.
- 3- Ordinance No. 156-66 containing the Penal Code, dated July 8, 1966, as amended and supplemented by Law No. 14-11 dated August 2, 2011, Official Gazette No. 44 dated August 10, 2011.
- 4- Ordinance No. 58-75 dated September 26, 1975, containing the Algerian Civil Code, as amended and supplemented.
- 5- Ordinance No. 03-06, containing the General Statute of the Civil Service.
- 6- Law No. 11-84 dated June 9, 1984, as amended and supplemented by Law No. 02-05, containing the Family Code.
- 7- Law No. 10-91 dated April 27, 1991, concerning endowments (waqf), as amended and supplemented.
- 8- Law No. 02-06 dated February 20, 2006, regulating the notarial profession.
- 9- Article 48 of the aforementioned Endowments Law No. 10-91.
- 10- Article 40 of Law No. 09-08 dated February 25, 2008, relating to the Code of Civil and Administrative Procedure, Official Gazette No. 22.
- 11- Law No. 23-06 dated December 20, 2006, amending and supplementing the Penal Code.
- 12- Decision No. 010652 dated March 19, 2002, issued by the Setif Court of Justice.
- 13- Decision No. 0702305 dated February 12, 2012, issued by the Medea Court of Justice.

Second – Legal Books:

- 1- Ahmed Khalifa Sharkawi, The Executive Power of Notarized Documents, New University House, Alexandria, Egypt, 2007.
- 2- Hamdi Basha Omar, Protection of Private Property Ownership, Houma Publishing, 2012.
- 3- Hamdi Basha Omar, Donation Contracts: Gift, Will, Waqf, Houma Publishing, Algeria.
- 4- Hamdi Basha Omar, Transfer of Real Property Ownership, Houma Publishing, Algeria, 2009.
- 5- Abdel Razzaq Ahmed Al-Sanhouri, The Intermediate in Explaining the Civil Law, Vol. 1, 2006 edition, Cairo.
- 6- Abdallah Massoudi, A Brief Explanation of the Code of Civil and Administrative Procedure No. 09-08, Houma Publishing, 2nd ed., Algeria, 2010.

- 7- Ammar Aouabdi, The General Theory of Administrative Disputes in the Algerian Judicial System, University Publications Office, n.ed., Algeria, 1995.
- 8- Leila Zeroui, Real Estate Techniques, National Office for Educational Works, 2000.
- 9- Majid Halfawi, The System of Real Estate Registration in Algerian Law, Houma Publishing, Algeria, 2008.
- 10- Wassila Ouzzani, The Function of Notarization in the Algerian System, n.ed., Houma Publishing, Algeria, 2009.

Third – Scientific Articles:

- 1- Issaoui Tarek, Judicial Jurisdiction over Waqf Lawsuits, Journal of the Legal and Political Sciences Researcher, Issue No. 03, 2020.

Fourth – Theses and Dissertations:

- 1- Ammar Nekkah, Transfer of Real Property Ownership in Algerian Family Law, Master's Thesis, University of Constantine, 2007-2008.

FOOTNOTE

¹ Abdel Razzaq Ahmed Al-Sanhouri, The Intermediate in Explaining the Civil Law, Vol. 1, 2006 edition, Cairo, p. 365.

² Ordinance No. 58-75 dated September 26, 1975, containing the Algerian Civil Code, as amended and supplemented.

³ Law No. 10-91 dated April 27, 1991, concerning endowments (waqf), as amended and supplemented.

⁴ Ordinance No. 03-06, containing the General Statute of the Civil Service.

⁵ Ahmed Khalifa Sharkawi, The Executive Power of Notarized Documents, New University House, Alexandria, Egypt, 2007, p. 186.

⁶ Hamdi Basha Omar, Transfer of Real Property Ownership, Houma Publishing, Algeria, 2009, p. 107.

⁷ Wassila Ouzzani, The Function of Notarization in the Algerian System, n.ed., Houma Publishing, Algeria, 2009, p. 94.

⁸ Law No. 02-06 dated February 20, 2006, regulating the notarial profession.

⁹ See: Article 05 of the Notarial Law.

¹⁰ Hamdi Basha Omar, previously cited, p. 112.

¹¹ Majid Halfawi, The System of Real Estate Registration in Algerian Law, Houma Publishing, Algeria, 2008, p. 13.

¹² Ammar Nekkah, Transfer of Real Property Ownership in Algerian Family Law, Master's thesis, University of Constantine, 2007-2008, p. 06.

¹³ Law No. 11-84 dated June 9, 1984, as amended and supplemented by Law No. 02-05, containing the Family Code.

¹⁴ Article 689 of the Algerian Civil Code.

¹⁵ Hamdi Basha Omar, Protection of Private Property Ownership, Houma Publishing, 2012, p. 40.

¹⁶ Leila Zeroui, Real Estate Techniques, National Office for Educational Works, 2000, p. 18.

¹⁷ Ordinance No. 156-66 containing the Penal Code, dated July 8, 1966, as amended and supplemented by Law No. 14-11 dated August 2, 2011, Official Gazette No. 44 dated August 10, 2011.

¹⁸ Law No. 23-06 dated December 20, 2006, amending and supplementing the Penal Code.

¹⁹ Hamdi Basha Omar, Donation Contracts: Gift, Will, Waqf, Houma Publishing, p. 96.

²⁰ Issaoui Tarek, Judicial Jurisdiction over Waqf Lawsuits, Journal of the Legal and Political Sciences Researcher, Issue No. 03, 2020, pp. 43-44.

²¹ Ammar Aouabdi, The General Theory of Administrative Disputes in the Algerian Judicial System, University Publications Office, n.ed., Algeria, 1995, p. 81.

²² Ibid., pp. 81-82.

²³ See: Article 48 of the aforementioned Endowments Law No. 10-91.

²⁴ Abdallah Massoudi, A Brief Explanation of the Code of Civil and Administrative Procedure No. 09-08, Houma Publishing, 2nd ed., Algeria, 2010, p. 45.

²⁵ Article 40 of Law No. 09-08 dated February 25, 2008, relating to the Code of Civil and Administrative Procedure, Official Gazette No. 22.

²⁶ Decision No. 0702305 dated February 12, 2012, issued by the Medea Court of Justice.

²⁷ Decision No. 010652 dated March 19, 2002, issued by the Setif Court of Justice.