

A LEGAL APPROACH TO EXEMPTING THE REAL ESTATE REGISTRAR FROM CRIMINAL LIABILITY FOR SIGNING THE LAND REGISTER

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Abstract:

This article addresses the idea of exempting the real estate registrar from criminal liability arising from signing the land register, which was prepared by a subordinate official falsifying the truth in one of the stages involved. The criminal liability that could be pursued against the real estate registrar as a result of signing is based in law and is presumed in light of the authority vested in them over the acts of subordinates and their administrative oversight of the real estate registry service responsible for issuing the land register. However, this criminal liability conflicts with the principle of personal responsibility for punishment.

The study concludes by offering realistic justifications for exempting the real estate registrar from criminal liability. These are reflected in the registrar's lack of concentrated power, the adoption of the specificity of activity criterion, and the limitation of public prosecution procedures against him. It also includes the distribution of liability between the registrar and the other responsible parties. Additionally, the paper provides legal justifications within the limits of personal and objective criteria, based on conditions such as good faith and administrative oversight through verification and inquiry within the framework of hierarchical authority. Finally, it considers signing to be the performance of a duty rather than an exercise of authority, thus placing it within the scope of objective grounds for justification.

Keywords: exemption from criminal liability, real estate registrar, civil liability, land register.

Introduction

The real estate registry (land registry office) plays a key role in establishing legal security in real estate transactions. It is the essential facility and the starting point for stabilising various kinds of real estate transactions. Therefore, the Algerian legislator has established a comprehensive legislative framework to ensure the proper functioning of the real estate registry service. This enables it to carry out its duties and meet citizens' needs in the field of real estate. However, ensuring the honest performance of the registry places a 'burden' on its primary authority — the real estate registrar (the head of the office). In return, the registrar does not benefit from legal safeguards that would protect him from criminal prosecution resulting from validating operations involved in preparing and signing land registry documents, given that he is the person who grants them legitimacy.

In keeping with the principle that criminal intervention is a last resort and not the only means of protecting various interests and rights, recourse to criminal law is only made if it is established that other legal remedies are ineffective¹.

Given the sensitive nature of the real estate registrar's role, which involves preserving and safeguarding the trustworthiness of individuals' real property holdings, and considering his direct contribution to achieving legal security in real estate, it is crucial to prevent errors, particularly intentional ones, which often stem from administrative corruption among some employees within the hierarchical structure. These problems have shown alarming growth, leading some scholars to classify them as 'new offences' within the sphere of preserving and safeguarding real estate records.

Accordingly, the concept of exempting the real estate registrar from criminal liability arising from the administrative signing of various administrative acts, which may include one of the subordinate officials' acts of falsifying the truth (such as forgery, inserting non-compliant documents, concealing

¹- Abdelrahman Khelfi, A Contemporary View of Comparative Criminal Policy (Series of In-Depth Criminal Research), Al-Muassasa Al-Haditha lil-Kitab, Beirut, Lebanon, First Edition, 2018, p. 371.

documents, changing numbers, erasing names, and so on), while occupying a public office position, is worthy of research, study and analysis. This is especially true given its newly emerging practical importance, particularly in light of the increasing criminal prosecutions of real estate registrars in court, against the backdrop of legislators retreating from strictly pursuing managers of public economic institutions for management-related acts by making prosecution dependent on a prior complaint from the board of directors.

The Legal Discussion Framework

The legal discussion is confined to determining whether to hold the real estate registrar criminally liable for the intentional acts of others, or not. This issue does not arise in cases of unintentional administrative errors made during the preparation of the base file for the land register. Rather, it only arises when a subordinate intentionally commits an act that falls within the scope of criminalisation and implicates the real estate registrar in signing the land register.

Based on the foregoing, the study problem may be formulated as follows:

What are the boundaries between the real estate registrar's criminal and civil liability arising from signing a land register that involves a change to the truth as a result of an intentional act by subordinates? To answer this question, we have divided the study plan as follows:

Topic 1: The legal nature of the real estate registrar's liability

The real estate registrar's liability varies between tort (civil) liability in cases where errors relate to administrative violations that fall outside the scope of criminalisation. This liability can be personal (for errors committed by the registrar) or vicarious (for errors committed by subordinates). In both situations, liability is attributed to the real estate registry facility within the framework of its public-service liability. (First).

However, the degree of error may rise to the level of intent, in which case the act may be described as falling within the scope of criminalisation, thereby giving rise to criminal liability. This depends on the nature, type and legal characterisation of the act, as well as the degree of seriousness, distinguishing between acts involving general intent and those involving special intent. (Second).

First: Classification of liability according to the error committed within the scope of public-service acts

Errors affecting the preparation of the land register give rise to liability for compensation based on the provisions of Articles 124 and 136 of the Civil Code. This liability is classified according to the person who committed the public-service error, either:

- The error issued by the real estate registrar in his personal capacity (liability for a personal act); or
- Errors issued by subordinates (liability of the principal for the agent's act).

1. Public-service error (error of the public office/facility)

The Algerian legislator did not define public-service error. Instead, Order No. 06-03, the Statutory Ordinance on the General Status of Public Function, addressed the concept of public-service error. In this context, an employee's error is considered a public-service error if it is connected to their duties, whether it occurs during the performance of the job or in connection with it. Specifically, the Algerian legislator stated that an administrative public-service error exists when it is committed while performing the duties of public office or in connection with them².

In this sense, a public-service error is understood to be an error that constitutes a breach of legal obligations and duties through fault, negligence or carelessness attributable to, and imputable to, the public facility itself, thereby giving rise to administrative liability.

Examining the provisions of Article 23 of Order No. 75-74, which relate to the preparation of the general land survey and the establishment of the land register, makes it clear that the Algerian legislator

²- Fatima Wadih, Nadhira Nader bin Deddouche, an article entitled *The State's Responsibility for Property-Register Errors of the Real Estate Registrar , published in the journal Real Estate and Environment Law, University of Mostaganem, Volume 06, Issue 02, p. 77.

addressed the public-service liability of the real estate registrar for errors committed while performing their function. The text provides that:

‘The State shall be liable for errors that cause harm to others and are committed by the registrar while exercising his duties... and the State shall have the right of recourse against the registrar in case of a gross error attributable to him.’

It should be noted that this provision does not specify public-service errors, either by way of example or exhaustive enumeration. Nor does it clarify the cases in which the real estate registrar’s liability as an employee arises, or indicate the type or nature of error for which the State is liable. Instead, the legislator confined himself to mentioning errors that cause harm to others, to which are added certain obligations that the registrar must observe and ensure in his capacity as a public employee — obligations that are set out in Law No. 06-03 on the status of public servants.

2. Liability for the Personal Act

The real estate registrar³ is a key public employee involved in preparing the land register⁴ (also known as the land book). They perform several specific tasks under Article 3 of Decree No. 76-63, concerning the establishment of the land register, as well as under Article 16 of Executive Decree No. 21-393, which determines the organisation and powers of the external services of the Directorate General of National Property (dated 18/10/2021). These powers include verifying the legality of property documents, creating the land register and allocating property numbers based on land surveys.

His duties primarily involve ensuring the lawfulness of publicity/registration, ensuring that the land register conforms to the real property records and delivering the final document confirming ownership. After verifying the validity of the documents that constitute the core of the land register and confirming that all procedures have been carried out lawfully, he must also verify the lawfulness of the request to obtain the land register and ensure that all the required documents and supporting evidence for its issuance and delivery have been provided.

By performing these duties, which are aimed at achieving a specific result — namely the preparation of land registers — the real estate registrar may commit errors that result in direct harm to property owners. Such liability presupposes the existence of a causal link between the error and the damage, in accordance with the general principles of liability.

These errors may take the following forms:⁵

³- The real estate registrar is a public official appointed by a decision of the Minister of Finance. He is classified in the rank of “Senior Position” pursuant to Article 18 of Executive Decree No. 21-393. As Professor Majid Khalfouni defined him: “a public official who performs his duties under the supervision of the Minister of Finance, subject to the public service law; he is linked to the State by a regulatory/organizational and hierarchical relationship; he is tasked with managing a public institution of an administrative nature; and he mainly undertakes the establishment of the Land Registry and its keeping.” See: Talha Mohamed Ghliyasi, *The Legal Status of the Real Estate Registrar in Algerian Legislation*, Doctoral Thesis (Third Cycle) in Law, specializing in Constitutional and Administrative Institutions, University of Biskra, Academic Year 2019–2020, pp. 26–36. Also: Madjid Khalfouni, *The System of Land Registration (Real Estate Disclosure/Shahr) in Algerian Law*, Dar Houma, 3rd edition, 2011, p. 7.

⁴- The Algerian legislator did not provide a definition of the land register (property notebook), but considered it to constitute a title of ownership in which the data contained in the property cards are recorded. As for scholarship and doctrine, several definitions have been provided. One such definition is that given by Professor Dr Ammar Boudiaf: ‘an administrative document issued by an administrative body’. Professor Majid Khalfouni also defined it as: ‘the sole instrument for proving real estate ownership within the registration system (Shahr al-ayni); it is a natural reflection of the current legal status of real properties because owners only receive it after the general survey committees have conducted an on-site investigation.’ See: Talha Mohamed Ghliyasi, *op. cit.*, p. 265. Also: Al-Arabi Boumaaraf, ‘The Evidentiary Value of the Land Register between Securing Justice and Securing Stability in Ownership’, an article published in *Lecturer/Researcher: A Journal for Legal and Political Studies*, issued by the University of M’sila, Vol. 7, No. 2, December 2022, p. 774.

⁵- ‘Recourse Against the Real Estate Registrar in Disputes Related to Annulment of the Land Register’, by Taher Abassa. An article published in *Studies in Public Service*, University Centre of Beida, Volume 03, Issue 02, December 2018, p. 58. Also: Nasima Hachoud, ‘Lawsuits for the Liability of the Real Estate Registrar in Algerian

A. Error by negligence

Negligence is an infringement committed by the real estate registrar without intent to harm others due to a lack of caution, attention or failure to perform a legal duty. In this case, he is responsible as soon as it is established that he deviated from the conduct expected of a careful and prudent public employee and failed to exercise the necessary diligence when performing his duties.

For example, he may approve correspondence addressed to the Directorate of State Properties that accelerates the procedure in favour of applicants seeking the settlement of real property by including items in an 'unknown account', despite there being no legitimate requirement for him to carefully re-examine the request to verify its accuracy.

Negligence is divided into simple negligence and gross negligence. If it is simple negligence, it does not give rise to the registrar's personal liability. Rather, it is assessed according to stricter criteria depending on the severity of the error and the circumstances under which it was committed. If the negligence relates to the operation of the real estate registry, the public facility is responsible for providing compensation to protect the rights of the injured party within the framework of public-service liability, in accordance with Article 23 of Order No. 75-74 mentioned above.

However, if the negligence is so serious as to be incompatible with the requirements of the registrar's function, personal liability is established on both civil and disciplinary grounds. It may even extend to criminal liability, which will be detailed in the second section of this axis.

B. Gross Negligence (Serious Error)

Defining gross negligence is fundamental to this study because it lies at the boundary between classifying liability arising from this error as civil or criminal.

Despite expressly referring to the possibility of the State's recourse against the real estate registrar in the event of gross error in Paragraph 2 of Article 23 of Order No. 75-74, the Algerian legislator did not define gross negligence for him. In contrast, jurisprudence and legal scholarship have struggled to reach a uniform definition of gross negligence.

One scholar, Bottieu, considers gross negligence to be 'the error committed by the person who is least endowed with prudence, care, and foresight'⁶. Therefore, it is up to the courts to assess it and uncover the circumstances surrounding it in order to determine the appropriate liability.

Similarly, scholar 'Jez' regards an error as gross when an employee misinterprets the facts that justify their conduct or misunderstands the legal provisions that authorise them to act, to the extent that it can be said that they did not merely exceed the limits of their authority, but abused that authority⁷.

Examples include:

- the real estate registrar carrying out real estate publicity/registration for a private instrument issued after 01/01/1971;
- changing agricultural land from its original classification to urban land;
- increasing the surveyed area beyond the permissible limit (i.e. by more than 1/20 of what is allowed);
- intentionally failing to mention the burdens weighing on the property when moving from the personal card to the real card;
- granting the land register before the expiry of deadlines for properties that are the subject of disputes in the context of temporary registration.

Distinguishing Personal Gross Error from Public-Service Error

Legislation', an article published in the journal *Circles of Research and Legal and Political Studies*, Research Laboratory on Constitutional Institutions and Political Systems, University Centre of Tipaza, Issue 03, September 2017, pp. 18–19. See: Majid Khalfouni, *The Land Registration System in Algerian Law*, Dar Houma, Algeria, 3rd edition, 2011, p. 142.

⁶- Kafif Hassan, an article entitled: 'The Gradation of Administrative/Registrar Errors between Algerian and French Law', published in the journal *Al-Ma'alim for Legal and Political Studies*, University Centre of Tindouf, Issue One, June 2017, p. 116.

⁷- Hocine Feridja, 'The Administration's Liability for the Acts of Its Employees', published in the *Council of State Journal*, Issue 5, 2004, p. 35. 'The Administration's Liability for the Acts of Its Employees', published in the *Council of State Journal*, Issue 05, 2004, p. 35.

The question arises of how to distinguish between personal gross error committed by the real estate registrar in the course of performing his duties and public-service error.

Professor Ghoudani indicates that personal gross error in the context of public service implies an extreme degree of gravity; moreover, it relates to material acts of execution rather than legal acts.

In turn, Professor Rachid Khalloufi explains that, in French administrative jurisprudence, gross error is considered personal if it involves bad faith on the part of the person who committed it. In this regard, it relies on the standard of ‘intentional gross error’, which the Algerian criminal courts have adopted to a certain extent.

The apparent contradiction whereby the judge uses the term ‘gross’ to describe both public-service error and personal error results only from the absence of a precise description of what gross error actually means. Therefore, for a public-service error to be considered gross, it must not be so serious as to be classified as personal error. At the same time, it must be sufficiently serious, otherwise it will be treated as a simple error⁸.

Despite the various criteria developed by scholars to distinguish between the two, differentiation remains difficult⁹. Consequently, courts still encounter practical difficulties in classifying errors. This may require legislative intervention to establish precise standards that draw clear boundaries between:

- errors that are considered personal, for which the real estate registrar bears personal liability (civil and criminal); and
- errors attributed to the real estate registry facility, which are within the scope of facility liability.

C. Simple (minor) error

A simple or minor error is conduct involving a breach of a legal obligation that does not reach the threshold of gravity required for gross negligence. While it is considered an “excusable” error, it may still result in a request for compensation through the courts. It may also form the basis for disciplinary liability, for example in cases of neglecting to record property data such as location and area.

The Algerian legislator referred to harmful errors committed by the real estate registrar that trigger the State’s liability in Article 23 of Order No. 75-74, paragraph 1, and such errors may take the form of simple errors.

D. Positive and negative fault (error):

The positive fault is tangible conduct by the real estate conservator that involves breaching a legal obligation. The negative fault is when the conservator adopts a passive position by failing to perform a specific legal obligation, such as refusing to deposit documents in the deposit registry for the purpose of carrying out real estate publicity (registration/notification) without reason. This type of fault may only give rise to civil liability if it is not intentional. However, if accompanied by bad faith, it is characterised as a criminal offence of abuse of office, which is punishable under criminal law. It may also entail civil liability by vicarious responsibility. For example, if the real estate conservator carries out the real estate publicity procedure for a title document containing a disposition that contravenes public order and morals, such as registering the sale of a property that is a national public asset, despite an objection being issued by the director of state property.

3. The President’s Liability for the Act of the Subordinate (Responsibility of the Head for the Act of the Servant)

The real estate conservatorship is a public administrative body affiliated with the Ministry of Finance. Its original function is to safeguard contracts and various instruments subject to registration, relating to

⁸- Kafif Hassan, *op. cit.*, pp. 119–120.

⁹- Scholarship has adopted several criteria to distinguish between the two types of error, which can be summarised as follows: the intentional error criterion; the disjointed/separate error criterion; the gross/serious error criterion; the purpose/goal criterion; and the obligation breached by the employee criterion. For more detail, see: Hocine Feridja, *op. cit.*, pp. 37–38.

the transfer, creation or amendment of property rights and other real rights, whether principal or accessory, after they have been registered and recorded in the real estate card file (property records)¹⁰. The conservatorship comprises several departments, each of which is legally responsible for performing specific tasks required to prepare the land register (real estate ledger). Executive Decree No. 21-393, issued on 18/10/2021 and concerning the organisation of the external services of the General Directorates of State Property and their powers, addressed the structural organisation of the real estate conservatorship within departments¹¹. In contrast, the internal organisation of the conservatorship, its departments and the powers of each department were referred to in the joint ministerial decision issued on 11/07/2022.

Examining Article 8 of the latter reveals that the real estate conservatorship is divided into five departments under the authority of the real estate conservator¹².

1. Department of deposit and accounting operations
2. The department responsible for maintaining real estate records, conducting research, and providing information.
3. Department of Real Estate Numbering
4. Department responsible for land surveying
5. Department responsible for digitising the activities of the real estate conservatorship

As the preparation of the land register involves the participation of several departments and employees, it is possible that an employee may commit an error that causes harm to others. This raises the question of who is responsible for such an error.

Referring to the provisions of Article 23 of Order No. 75-74, we note that administrative (vicarious) liability for errors committed by the real estate conservator is limited to the conservator alone, with no reference to other conservatorship employees.

By virtue of the principle of a *contrario* (inference from express limitation), it can be argued that employees' errors fall into two categories: Intentional errors, which entail personal liability, whether criminal or administrative-disciplinary, and administrative (vicarious) errors, which remain under the responsibility of the conservator acting on behalf of the state, as he holds the legal authority to manage and supervise the public facility.

Under Article 129 of the Civil Code, an employee is not personally liable for harmful conduct towards others if the act is performed in execution of instructions issued by a superior, provided obedience to those orders is mandatory. This may occur, for example, when orders are issued to expedite procedures in order to give effect to the principle of the superior's responsibility for the acts of subordinates. Such orders may cause harm when they are issued in the course of performing the employee's duties, because of them, or on the occasion of them, in accordance with Article 136 of the Civil Code.

Second: Classifying Criminal Liability According to the Penal Error

Based on the provisions of Article 23 of Order No. 75-74, intentional acts aimed at creating land (real estate) registers that depart from the truth are beyond the scope of civil and administrative (vicarious) liability. They give rise to criminal liability for the real estate conservator, arising from acts classified as intentional offences, such as: the offence of abuse of office and the offence of forgery. Other acts are classified as non-intentional offences, such as: The offence of negligence and the misdemeanour of delivering documents to persons who are not entitled to them.

1) Criminal liability for intentional error

Article 1 of the Criminal Code enshrines the principle of criminal legality: there is no crime, no punishment and no security measure except by virtue of a legal text. Among the principles of criminal

¹⁰- Khalid Ramoul, 'Real Estate Conservation/Preservation as an Ownership-Holding/Real Estate Safeguarding Mechanism in Algerian Legislation', Master's thesis in Agricultural Real Estate Law, University of Blida, 1999–2000, p. 61.

¹¹- Article 17 of Executive Decree No. 21-393, dated 18/10/2021 and containing the organisation of the external services of the General Directorates of National Property and their respective powers.

¹²- The Joint Ministerial Decision dated 11/07/2022 determines the internal organisation of the Inspectorate of State Property and the Real Estate Registrar within sections, as well as the powers of each section.

liability is that the criminal act must be attributed to the person who committed it knowingly and intentionally, and not be covered by any grounds that would preclude liability or any of the defences of justification set out in Article 39 of the Criminal Code.

Similarly, the Algerian legislator did not precisely identify or define the legal provisions that establish the criminal liability of the real estate conservator and specify the penalties for each offence committed. Instead, it merely mentioned certain obligations imposed on public servants under Order No. 06/03 relating to public service.

As the real estate conservator is a public servant, he may be prosecuted for offences punishable under the Criminal Code, as well as other offences provided for in complementary legislation, such as Law No. 06-01 on the prevention and prosecution of corruption, and Law No. 24-02 on the prevention and prosecution of forgery and the use of forged documents. Thus, the real estate conservator may incur criminal liability and bear the consequences of their criminal acts.

This is the general rule. In practice, however, the real estate conservator is often exposed to criminal prosecution due to his legal authority and his signature on forged registers tainted by alterations and manipulations carried out by employees under his authority. He may then face accusations relating to abuse of office, as defined and penalised by Article 33 of Law No. 06-01, as well as forgery of documents issued by the public administration and delivering documents issued by the public administration to a person whom he knows has no entitlement, in accordance with Articles 22 and 23/03 of Law No. 24-02 on combating forgery and the use of forged documents.

A. Prosecution of the real estate conservator for abuse of office

Under Article 33 of Law No. 06-01 on the prevention of corruption and its prosecution (as amended and supplemented), the misdemeanour of abuse of office provides that:

‘Imprisonment for a period of two to ten years and a fine ranging from 200,000 to 1,000,000 Algerian dinars shall be imposed on any public servant who intentionally abuses their functions or position in order to perform or refrain from performing an act within the exercise of their duties in a manner that contravenes laws and regulations for the purpose of obtaining an improper benefit for themselves or another person or entity.’

Although this is one of the most serious criminal provisions enacted by the Algerian legislator to combat corruption, and the real estate conservator may be prosecuted under it if they personally commit an act that meets the legal description within its natural scope and in conformity with the principle of criminal legality, the source of danger arises when the real estate conservator is prosecuted under this provision as a result of the acts of their subordinates concerning intentional deviations that require criminal prosecution during the preparation of the land (real estate) register. This situation conflicts with the principle of criminal legality.

Therefore, the judicial authority hearing the public prosecution must establish the elements of the offence as required by law. For the material element of the offence to be satisfied, the following must be demonstrated:

- The material conduct, i.e. the act or omission by which the accused intentionally violates laws, regulations or internal instructions, and that this violation is connected to the exercise of their function or position.
- Specifying the result that the conservator sought to achieve through this violation or intentional breach of the law, consisting of obtaining an interest, advantage or improper benefit for themselves or another. As for the mental element of the offence, specific intent must be demonstrated in addition to general intent, with a particular focus on proving:
 - The element of knowledge;
 - The conservator’s intention to achieve the criminal outcome of unlawful enrichment of any kind, whether for themselves or another.

This is because discussion of the element of knowledge is essential. If the real estate conservator has signed the land register in his capacity as conservator, acting in good faith and in accordance with his assigned duties — which is indeed part and parcel of his job, being the final stage before the register is handed over — after the register has been presented to him ready for signature, like the other registers prepared by the employee responsible for execution (who is presumed to bear personal responsibility), then the requisite element of knowledge is not readily established.

In many cases brought before Algerian criminal courts against real estate conservators, prosecutions tend to rely on the principle of vicarious criminal liability — specifically, ‘liability for signature’ — rather than personal criminal liability. In other words, once a crime occurs within the real estate conservatorship, criminal prosecution is extended to all employees involved in preparing the registers based on a presumption of complicity. The real estate conservator is at the forefront of those prosecuted because he has authority over the facility, without the prosecution being limited to the specific perpetrators of the particular acts.

This provision is drafted in broad and expansive terms of ‘breach of the law’, enabling it to encompass vicarious breaches and treat them as criminal offences falling under this classification, even though they may not exceed the scope of vicarious civil liability.

From this standpoint, errors in the legal classification of the nature of the fault — treating it as a fault that gives rise to criminal liability and triggering public prosecution on that basis — have led, as a matter of principle, to errors in assessment. This occurs when the facts are presented to criminal adjudication bodies, which are then tasked with assessing the seriousness of the fault and the penalty. This is problematic because the court’s role should be confined to narrowly applying the criminal law, as required by fair trial guarantees, without assessing the legality of the underlying actions or distinguishing between criminal and civil (vicarious) responsibility, which is fundamentally the legislator’s role.

Accordingly, based on the foregoing, the real estate conservator bears no criminal responsibility for preparing and drafting the file or writing the register. Nor does the mere assumption of oversight authority or affixing a signature constitute the offence of abuse of office, provided his good faith in managing the matter is established. Therefore, he is not liable for the actions of employees in departments responsible for producing the registers.

Furthermore, the possibility of the legal text being applied incorrectly — potentially resulting in a conviction — has made most executives reluctant to apply for the role of real estate conservator.

B. Prosecution of the real estate conservator for misdemeanours involving forgery and the delivery of documents issued by the public administration to a person who knows they are not entitled to them, under Articles 22 and 23/03 of Law No. 24-02 on combatting forgery and the use of forged documents¹³. The land register is an official and authentic administrative document. Accordingly, any tampering, whether by deletion, addition or imitation/counterfeiting, whether in the supporting base file or in the data shown on the reverse side of the register, that is contrary to the truth constitutes the material element of the offence of forgery, as provided for and punished under Article 22 of Law No. 24-02, as amended. In such circumstances, the real estate conservator may face criminal prosecution because they sign the register in good faith. However, a distinction must be made between:

1. forgery acts concerning the conservator’s signature or personal seal, and
2. Forgery acts committed by subordinates that affect one of the documents comprising the land register.

If the forgery concerns the conservator’s signature or personal seal, the act would require a judicial investigation and the preparation of an expert report by the officer/lab responsible for analysing criminal evidence, specifically regarding the alleged forgery of the signature.

However, attributing the material acts to the person(s) who committed them is an evidentiary matter that depends on the various pieces of evidence submitted to, and discussed before, the competent judicial authority.

In the second case, the real estate registrar’s signature on a ledger that contains forged documents—while he was unaware of the changes introduced by a trusted employee—means that he does not bear criminal liability for the offense of participation in forgery, because the offense requires intent (the criminal intent based on knowledge). Criminal responsibility exists only if the elements of intentionally altering the truth are present, along with the will directed toward causing harm to others.

¹³- ... which provides that: ‘Anyone who falsifies, imitates, forges or alters licences, certificates, land registers, property cards, bulletins, receipts, service orders, deeds, travel documents, identity documents, transit permits, residence documents and other such documents shall be punished by imprisonment of between five and seven years and a fine of between 500,000 and 700,000 DZD.’

Also, forgery is committed through the personal act of the offender; it falls within the authority of the person who performs the act and does not fall within the scope of the supervision granted to the real estate registrar.

Furthermore, the real estate registrar remains exposed to criminal prosecution for the misdemeanor of delivering documents issued by a public administration to a person whom he knows has no right to them, pursuant to Article 23/03 of the Law on combating forgery and the use of forged documents. The essential question that arises is the extent to which the real estate registrar is responsible if his subordinates hand him a forged ledger as part of their professional duties¹⁴.

In order to discuss the act of intentional delivery as a constituent element of the crime's material element, it is necessary to identify who was responsible for the delivery. Was it carried out within a functional/administrative framework or a personal one? If the ledger was delivered by subordinates, the element of knowledge must be demonstrated in the second scenario.

Generally, criminal responsibility is personal and falls on the employee who intentionally hands over the forged real estate ledger. However, in theory, the real estate registrar may remain liable—conditional on the element of knowledge—at the discretion of the court deciding the case, because supervision over the issuance of real estate ledgers is within his remit.

2. Criminal liability for unintentional errors (negligent misdemeanours)

Negligent acts, particularly serious negligence, that result in the loss of real property rights, documents or deeds caused by the real estate registrar or one of their employees may result in the registrar being prosecuted for a negligent misdemeanour as defined and punished under Article 119 bis of the Penal Code¹⁵.

The registrar's criminal liability is based on the management and direct supervision powers legally granted to them. For the offence to be established, the law requires proof of clear negligence, which can manifest as either (1) an omission and disregard by the registrar despite their knowledge of the criminal error that occurred, or (2) substandard performance that violates the legal or technical standards that the employee must adhere to when carrying out their duties.

The legislator also required that the negligence be 'clear' — that is, obvious and easily established without effort or expertise.

In this case, the description must apply to the real estate registrar as being negligent or careless, or as performing poorly in managing the office's affairs — specifically for failing to carry out the duty of verifying and ensuring the soundness of the procedures for preparing the real estate ledger, in accordance with the authority imposed upon him by law.

The second axis: Approaching the exemption of real estate registrars from criminal liability arising from signing

In light of the increasing number of criminal prosecutions of real estate registrars for signing real estate ledgers that include intentional changes carried out by their subordinates in good faith, the question of exempting these registrars from criminal liability is a serious matter deserving discussion. This could be achieved by presenting practical and legal justifications in support of their exemption.

First: Practical justifications for exempting the real estate registrar from criminal liability

¹⁴- This Decision also provides that: 'An employee who hands over, or orders the handing over of, any of the documents stipulated in Article 22 to a person whom they know is not entitled to them shall be punished by imprisonment of between five and ten years, and a fine of between 500,000 and 1,000,000 DZD, unless the act constitutes one of the more serious crimes provided for by the law relating to the prevention and combating of corruption.'

¹⁵- It also provides that: 'Any public employee, as defined in Article 2 of Law No. 06-01 of 20 February 2006 relating to the prevention of corruption and its combating, who, through gross negligence, causes the theft, embezzlement, destruction or loss of public or private funds, or items in lieu thereof, or documents, instruments or movable assets placed under their authority, whether by virtue of their position or otherwise, shall be punished by imprisonment of between six months and three years and a fine of between 50,000 and 200,000 DZD.'

The idea of exempting real estate registrars from criminal liability is grounded in a set of justifications imposed by the nature of the job and inseparable from reality. These can be summarised as follows:

1. Not leaving all authority in the registrar's hands.

The registrar carries out central duties that include supervisory tasks before and after the work of the different departments. They supervise the departments' functioning, and each department performs its work under their direct authority. It is also important to consider the volume of work handled by the real estate registrar, especially in major governorates with high activity and population density. This raises the issue of margin for error in performance arising from the accumulation of administrative and supervisory responsibilities and the practical inability to oversee every detail of each department's and office's work¹⁶.

Furthermore, the sensitivity of the position demands the protection of individuals' real estate rights, ensuring their reliability and credibility. The registrar plays a direct role in achieving real estate security and avoiding performance errors, particularly intentional ones, resulting from administrative corruption among some employees within the framework of hierarchical career progression¹⁷.

This phenomenon has increased in a concerning way, leading some criminal law scholars to classify it as a 'newly emerging crime' within real estate asset preservation services. These developments have coincided with an increase in work volume and, consequently, the prosecution of numerous real estate registrars by judicial authorities¹⁸. Consequently, fewer employees are willing to seek appointment as a real estate registrar for two reasons: firstly, fear of judicial prosecution and, secondly, reluctance to take on the responsibility of accumulated workloads that have led to delays in implementation at the level of real estate offices for several years — delays that leave an administrative legacy containing actions that may involve criminal liability.

2. Legislative and organisational response to these realities

From this perspective, the legislator chose to reorganise real estate offices by establishing new departments after issuing Executive Decree No. 21-393 on 18 October 2021, which regulates the external departments of the General Directorates of National Property and defines their powers. While this decree addressed the structural organisation of the real estate office into departments, it referred the internal organisation of the real estate office, its departments, and the scope of each department's powers to the joint ministerial decision issued on 11/07/2022.

Examining Article 8 of the latter instrument reveals that it divides the real estate office into five departments, all of which are under the authority of the real estate registrar. Additionally, the position of Deputy Real Estate Registrar was introduced to strengthen the registrar's role, pursuant to Article 17/03, which states: 'The Deputy Real Estate Registrar shall assist the real estate registrar under his responsibility and authority...'

Thus, although the tasks are shared, the legislator deliberately kept responsibilities concentrated in the hands of the real estate registrar.

Based on this, it appears that the legislator's underlying philosophy is aimed at sharing the duties and burdens of managing the public service through these departments and the newly created deputy position. This suggests a possible shift from centralising authority in the hands of the registrar towards decentralising it through restructuring the office.

However, this direction was not translated into practice in the distribution of powers to include the heads of departments and the deputy registrar through explicit legal provisions. Similarly, the legislator did not grant the power to delegate (i.e. 'delegation of signature') in a way that would distribute responsibility according to administrative tasks.

¹⁶- Azis Budiarto, 'Land Certificate Forgery Methods and the Structure of Criminal Networks, as well as Legal Reform Efforts to Strengthen Rights Certainty and Law Enforcement', *Greenation Journal of Law and Social Sciences*, 3(3), pp. 1330–1339, November 2025.

¹⁷- Article 17 of Executive Decree No. 21-393, dated 18/10/2021 and containing the organisation of the external services of the General Directorates of National Property and their respective powers.

¹⁸- The Joint Ministerial Decision dated 11/07/2022 determines the internal organisation of the Inspectorate of State Property and the Real Estate Registrar within sections, as well as the powers of each section.

3. Relying on the criterion of the ‘specificity of the activity’.

The real estate registrar is a senior state official. His role combines several functions, including:

- Legal supervision, ensuring that the laws regulating the service and the laws, decrees and administrative instructions governing the real estate property base are respected.
- Financial and accounting supervision and management, by controlling the service’s revenues and expenditures in accordance with public accounting rules.
- Technical review of the various operations and technical tasks performed by the surveying services.

Consequently, the registrar may be deemed to bear assumed responsibility for errors committed by employees in these services, as well as for the activities of the real estate office under his supervision.

Accordingly, the difficulty of the activity and the extent of the powers granted to him must be taken into account at the outset of criminal proceedings. This is achieved by:

- attributing personal criminal responsibility to subordinates;
- not holding the real estate registrar criminally liable for deliberate errors made by others, and
- avoiding involving the registrar as an accused in the course of the public prosecution; and
- avoiding bringing the factual circumstances before the court that decides the case for the purpose of ruling on his acquittal.

4. Restricting criminal proceedings against the real estate registrar

As the real estate office is a public service and its management is comparable to that of economic public institutions, given the powers granted to their directors and the real estate registrar, the legislator introduced a procedural restriction on initiating public prosecution.

Pursuant to Article 8 of Criminal Procedure Law No. 25-14, public prosecution may not be initiated against the managers of economic public institutions owned entirely by the state or with mixed capital for acts relating to management involving theft, embezzlement, misappropriation, destruction or loss of public or private funds, except on the basis of a prior complaint from the institution’s social bodies.

Therefore, when deciding whether and how to prosecute the real estate registrar, the particular duties and powers of this position must be taken into account, as well as the seriousness of the post and the complex and interconnected nature of its management.

Therefore, it is legally urgent for the legislator to address this issue and include such a restriction in upcoming amendments, especially since many high-level officials are reluctant to apply for this position due to the perceived risk of prosecution for errors committed by subordinates. This directly affects the performance of the public service.

Distributing liability between the real estate registrar and other subordinates according to completed tasks

The nature of the real estate office, which is divided into different departments, requires the burdens to be shared within each department according to its assigned functions, as set out in Executive Decree No. 23-393.

This, in turn, necessitates fragmentation (individualisation) of criminal liability according to the specific mistake committed. Therefore, employees should be held responsible for their own personal errors, in accordance with the principle of personal liability.

Under this logic, such effects should not automatically extend to the real estate registrar. However, as the legal texts regulating the real estate registrar’s functions also hold him responsible as the authority figure overseeing the service, he is also held liable.

For this reason, it would be preferable to amend these texts to align them with the principle of dividing and distributing responsibilities according to the tasks actually performed. This should also include granting the real estate registrar the right to delegate (including delegation of signature) in a manner consistent with the nature of the position, thereby ensuring the smooth functioning of the public service.

Secondly, there are legal justifications for exempting the real estate registrar from criminal liability.

The idea of exempting the bona fide (innocent) signature on a real estate ledger subject to forgery from criminal liability is framed within both personal and objective limits. These two fundamental boundaries

define the scope of the exemption under the law and support the growing scholarly movement that calls for employees to be exempted from criminal liability for such signatures¹⁹.

1. Limits of exemption from criminal liability

A. The personal limit of the exemption

When discussing exemption, the grounds for justification must be addressed — meaning removing the act from the sphere of criminalisation and placing it within the sphere of lawful justification.

The personal limit lies in identifying who benefits from the justification. The idea is not to create a general ground of justification that benefits any ordinary person, but rather to create a special ground limited to the real estate registrar as a public employee performing sensitive public services. In that capacity, and because of the nature of the position, he requires legal protection to strengthen proper job performance and provide psychological stability when carrying out his duties.

Accordingly, making every department official involved in preparing the real estate ledger fully criminally responsible within the framework of dividing and distributing criminal liability would be achievable by:

- distributing liability among each subordinate according to the newly assigned competences of the Deputy Real Estate Registrar referenced earlier;
- holding department heads responsible through delegation of signature and broadening their powers.

This approach would prevent the real estate registrar from shouldering full liability alone.

B. The objective limit of the exemption

This objective limit concerns the determination of which acts the public employee — here, the real estate registrar — performs that remain within the sphere of lawfulness. In other words, these acts must be permitted by law.

Therefore, the key question is whether signing the ledger constitutes “performing a duty” or “exercising discretion”²⁰.

The real estate registrar is bound to perform duties imposed by law, such as signing the real estate ledgers. An employee tasked with performing a legal duty does not have the discretion to choose whether to perform that duty; they must fulfil it. Fear of possible future consequences cannot justify refusal to sign, as failing to perform a required signature out of fear would constitute misuse of office, which is a crime in itself.

Therefore, the distinction must be made between the terms and their meaning in terms of liability.

Although Algerian criminal law expressly provides grounds for justification in Article 39 of the Penal Code, which states that ‘there is no crime if the act is ordered or permitted by law’, refusing to perform a legal duty leads to liability. Conversely, performing the duty within the limits of the law must fall within the grounds for justification.

Accordingly, the registrar’s supervisory and oversight role is linked to the performance of the duty. The law grants him discretionary authority in matters of management and supervision, meaning he can decide whether to take administrative action, but not to stop lawful action already in progress.

By analogy:

An investigating judge performs a duty of investigation.

However, certain procedural measures (such as arrest warrants or witness hearings) depend on the discretion granted to him based on considerations in the case file.

¹⁹- Firas Ghanem Mohamed, 'Criminal Liability for the Acts of an Employee or Person Charged with a Public Service', an article published in the journal Bilad al-Rafidayn for Humanitarian and Social Sciences, Volume 3, Issue 1, Faculty of Bilad al-Rafidin, Department of Law, University of Iraq, 2022, pp. 119–120.

²⁰- Abdullah Salih Nasser Al-Mutlai, 'Illegal Work as a Case of Performance of Duty and Its Effect on Criminal Liability According to Yemeni Legislation', an article published in the University of Sana'a for Humanitarian Sciences, Department of Law, Faculty of Sharia and Law, University of Sana'a, Yemen, Volume 04, Issue 09, 2025, pp. 472–473.

Similarly, the real estate ledger passes through multiple stages under the supervision of department heads. Those stages are presumed to have been carried out properly and lawfully until the final stage, when the ledger is presented to the registrar for signing to complete the legal process of preparing it. Here, the registrar has performed a specific professional duty established by law, serving the public interest of the property owner. The law aims for the same outcome. If the registrar signs in good faith after verifying that the procedures were sound, the signature should not be considered criminal unless the registrar is aware of all the changes affecting the underlying documents of the ledger. This is because he cannot conduct verification of the underlying file for each property on the basis of field (physical) conformity, meaning he cannot go to the property to verify measurements and boundaries. Nor does he summon all heirs to confirm the correctness of the religious inheritance apportionment. Rather, responsibility for verification and confirmation of the information lies with the employee supervising the procedure.

2. Conditions for exemption from criminal liability

The conditions for exemption from criminal liability may be confined to two essential elements: good faith, and the exercise of supervisory authority through due verification and investigation²¹.

A. The requirement of good faith at the time of signing real-estate records

This means that the real estate registrar seeks to fulfil the purpose intended by law. At the same time, the registrar must be unaware of any defects affecting the real estate records or of any manipulation or violations that occurred in the offices responsible for preparing the underlying basic file. Furthermore, the registrar must be unaware of hidden defects affecting the components of the record.

The argument that the real-estate registrar cannot claim ignorance of the provisions of the Penal Code as an excuse — because issuing a record entails liability connected with real-estate security — is excluded. The intended ignorance here concerns the manipulation and violations in a manner that negates criminal intent rather than ignorance of a governing law. In criminal liability, the required criminal intent relates to the registrar's intention to issue a record that contradicts the factual situation. Accordingly, good faith based on reasonable grounds remains one of the key exemption factors, as it is an essential condition justifying the act of signing, particularly if the registrar believed the act to be lawful.

B. Exercise of administrative supervisory authority through due verification and investigation

Once the real-estate registrar has fulfilled their duty of prior and subsequent supervision, namely the required verification and investigation, this is sufficient to ensure the correctness of the approvals they sign. This can be achieved by reviewing files and administrative reports, as well as holding periodic meetings, demonstrating their diligence in completing the procedures for preparing the real-estate records. This is done within the framework of an ordinary person's conduct and relies on the totality of the powers granted to them by law²².

Given the considerable workload, pressure and completion of the aforementioned steps, criminal liability is negated, even if such liability could arise in connection with a non-intentional offence, such as the misdemeanour of negligence, which is primarily based on the element of fault.

According to most contemporary criminal theory, it is permissible to argue for an employee's exemption from punishment in cases of unlawful conduct, provided specific conditions are met. Accordingly, the lawful act — namely the proper performance of the legal duty of signing — falls squarely within the registrar's competence and does not move outside the limits of lawfulness. It also does not justify imposing liability on him for the acts of another.

This is because criminal liability is personal, and its effects do not extend to a third party acting in good faith, particularly where the elements of criminal participation are absent, whether as the original perpetrator or an accomplice. According to the principle that punishment is personal, the real-estate registrar remains outside the bounds of criminal liability.

²¹- Firas Ghanem Mohamed, op. cit., p. 123. Also: Abdullah Salih Nasser Al-Mutla'i, op. cit., p. 480.

²²- Same reference and page.

It should be noted that the Algerian legislator has adopted a principle in Criminal Procedure Code No. 25–14 aimed at providing greater autonomy and stronger safeguards in the management of public institutions. This is achieved by linking the initiation of public prosecutions against managers for acts arising from their management to a prior complaint submitted by the institution's social bodies. As previously explained in relation to Article 08 of the CPC, this constitutes a new constraint on the initiation of public prosecution.

By analogy, the legal status of the real-estate registrar should be reconsidered and procedural protection should be provided. Classifying the position as senior or creating an office of assistant real-estate registrar is not sufficient. Such measures would reflect the legislator's recognition of the difficulty of controlling and managing the position individually in order to meet all the requirements of the real-estate office. Instead, the registrar requires procedural safeguards similar to those granted to managers of public economic institutions, and the initiation of public prosecution should require the approval of the supervisory authority.

Based on the foregoing, it can be concluded that the legal characterisation of 'justification' takes the form of a legal exemption founded on provisions of law allowing exculpation through lawfulness, and that a specific provision concerning legal signing by the manager should be included. Therefore, it is not a substantive (merits-based) exemption that is relied upon during trial proceedings and results in acquittal on the merits in the event of a not guilty verdict.

Conclusion:

In conclusion, the present study has found that there are both realistic justifications and legal grounds that support the idea of exempting the real-estate registrar from criminal liability for signing defective real-estate records caused by the actions of others. This is based on the legal characterisation of justification as a legal exemption grounded in provisions of lawfulness (grounds of exculpation/justification), and not a substantive exemption that the court relies upon to issue an acquittal. The realistic grounds for exemption are: (1) not concentrating authority in the hands of the registrar, (2) adopting the criterion of specificity of activity, (3) restricting procedures for initiating public prosecution against the registrar, and (4) distributing responsibility between the registrar and other responsible parties. In addition, there are legal grounds within the limits of personal responsibility and substantive considerations based on the availability of conditions of: good faith and administrative supervision through due verification and investigation within the framework of hierarchical oversight. The exemption is also supported by distributing criminal responsibility among the heads of departments and the assistant real-estate registrar since responsibility is personal and each individual is accountable for tasks performed and supervised under their hierarchical authority.

As a culmination of the study, the researchers propose the following set of recommendations:

1. Distribute authority and signing responsibility to the heads of the real-estate directorate/office departments, so that they are held accountable for the actions carried out under their hierarchical authority within their department.
2. Assign supervisory responsibility for the works entrusted to the assistant real-estate registrar and remove the remaining oversight burden from the main real-estate registrar.
3. Reconsider the legal time limits granted to the real estate registrar to supervise the various operations carried out by the heads of offices, as the current timeframes are insufficient and may result in errors caused by haste and inadequate verification.
4. Propose amending Article 39 of the Penal Code by establishing that an employee's signature in good faith is a ground for justification (grounds of lawfulness).
5. Provide procedural protection for the real-estate registrar by ensuring that criminal prosecution for the offence of misuse of office in connection with the signing of defective records is subject to a prior complaint submitted by the relevant supervisory authority.
6. Create specialised administrative positions, such as an auditor for each department, e.g. an accounting auditor to supervise accounting activities, a legal auditor to oversee legal operations and a technical auditor to supervise technical operations.

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