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The expulsion procedure of persons in exile

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I – Legal grounds of the expulsion procedure

It is first necessary to precise that the status of « **asylum seeker** » or « **exile** » is **not taken into account in the case of an expulsion.**

The illegal occupation of a part of the state property is ruled by an administrative police procedure. Article L. 2122-1 of the French State Property Code states that:

“No one can occupy or use in an abnormal way a part of the state property¹ within the meaning of article L. 1 without possessing a warrant for it.”² – On this article : [C. dom. État, article L. 28, 1st paragraph.] • Cour de cassation, 1^{ère} chambre civile, 21 janvier 1992 : Bull. civ. I no 19; D. 1992. IR 61. And • CAA Paris, 3 avr. 1990, Min. Transports c/ Andrezs: Lebon 434; AJDA 1990. 647, note Prétot. »

The expulsion procedure is legally justified by an illegal occupation of a state property by people. It does not matter that these people are illegal on the French territory.

Furthermore, **the mayor of a town can order any measure to « protect the state property in its town »**; so far as he doesn't combine this measure with a criminal sanction (Conseil d'État (CE), 14 juin 1929 : Rec. CE 1929, p. 581).

The mayor must end any illegal occupation of the state property in its own town; he also has to abrogate or revoke any illegal warrant for this type of occupation (CE, 29 juin 1979, n° 01474, Cadet : Rec. CE 1979, p. 290).

II – Are the expulsions in the morning or in the end of the afternoon, legal or not ?

The article L. 141-1 of the Civil Execution Procedure Code states that:

*“No execution measure can be carried out on a **Sunday or on a public holiday** without a **warrant from a judge**. No execution measure can be executed **before six am or past 9 pm** without a **warrant from a judge**, and only in case of necessity and only in places that are not used to live in [Law n°91-650 of the 9th of July 1991, art. 28.]”*

According to the comments of the above-mentioned article, these hours are also applied in the case of an expulsion whatever its legality:

“Even if the lawmakers did not decide to organise the different writs of execution into a hierarchy, their enforcement can only take place in the circumstances of each implementing measure” (article L. 111-2). In the case of an expulsion, only creditors

¹ The state property here concerns any land owned by the state, by any emanation of the state or by other local authorities such as municipal authority.

² Please note that translations of French legal texts in this document have no legal force and are proposed for informational purposes only. It is strongly advised to use the original French version for any other purpose.

possessing a ruling from the court or a record from an “mediation of execution” and who have notified to the occupiers an order indicating them to leave the place³, can engage such a measure. The expulsion can’t be done if a judiciary procedure against the occupier hasn’t been initially started (See Ph. Hoonakker, Procédures civiles d’exécution, 3e éd., Paradigme 2014, no 253)”.

In addition, **the presence of a court bailiff**, who must prior receive a writ of execution is compulsory.

There are many different writs of execution, but in the case of an expulsion, the writ must consist on **a judgement expressly ordering or authorising it** (Civ. 2e, 7 mars 2002: cité note 4 ss. art. L. 411-1).

Moreover, an expulsion can only be implemented if **an order to the occupiers to leave the place has been prior notified to them**.

*As the article R. 411-1 of the same Code rules, the order must contain **the four following mentions. If not, it might be considered as null:***

- *The indication of the writ of execution allowing the expulsion*
- *The designation of the competent jurisdiction that will judge any disagreement about period or any contestation related to the expulsion.*
- *The day on which the occupiers will have to liberate the place*
- *The fact that any person occupying the place after this day may face an expulsion.*

The nature of the occupied premises is not taken into account as the legal text applies to many different kinds of premises, as the Civil Execution Procedure Code reads:

“-This principle applies to any premise- the wording of the legal text is very general about the concerned premises. It does not distinguish a writ of occupation from another, nor the use that has been made of the premise. For example, the requirement of a judgement or of a mediation of execution applies to any kind of premise concerned by an expulsion, like seasonal rentals, principal and secondary residences, commercial, professional and other premises, rural lands, to expulse Travellers from a land, or the ex-husband/spouse or ex-partner from the family housing”.

Thus, in order to know if an expulsion is legal, it is necessary to verify the following items:

- *If the notification of the order as the order itself doesn’t have any formal defects.*
- *If a court bailiff was here during the expulsion*
- *If the time when the police began the operation of expulsion is in accordance with legal requirements. If it started before 6 am or after 21 pm, the operation is illegal (on the other hand, a an expulsion procedure can begin before 9 pm and finish afterwards).*

³ « Commandement d’avoir à libérer les locaux ».

*When it has been resorted to force in an expulsion, it might be possible⁴ to highlight the lack of proportion between the police measures and the threat posed by the exiles. You need to know that **every mention on the police report is considered to be true until the contrary is proven**. Therefore, it is mandatory to prove that the information written in the report is untrue.*

III- Is the destruction of personal belongings and papers, is legal or not?

The restitution of the belonging of the expelled person is a right.

On the 11th April of 2013, a judgement delivered by the 2nd Civilian chamber of the French Supreme Court (Cour de cassation) affirms that **any expelled person has to be able to get its personal belongings back in a month after the notification of the expulsion report**. The court bailiff -who is the only person responsible for the execution of the measure- is bound to return the goods.

For example, if a tent is destroyed, the French administration makes the restitution of the good impossible and legal proceedings can be considered.

However, a **request for the restitution of the goods must be done and rejected** before pretending to sue the administration.

In the particular case of the withholding of papers, the article L. 611-2 of the Foreigner's Entry and Stay and Asylum Right Code states:

“The competent administrative authority, the police and the military forces are allowed to keep the Passeport or any other documents belonging to a foreigner in an illegal situation. Then, the authority will give an official paper proving the identity of the person where the date of withholding and the procedure to follow to get the documents back are mentioned” [Ruling no 45-2658 of the 2nd of November 1945, art. 8-1.]

For the other expelled persons, only those who are in an illegal situation can have their documents kept by the public authority.

However, **the withholding of papers is still condemnable**:

- If the authority **did not give an official paper** to prove the identity of the person and/or
- If the person concerned **formed a regular** claim to obtain asylum and doesn't fill the conditions of an illegal situation.

In any case, **destroying a personal belonging or the papers of a person constitutes a violation to the law within the meaning of the article 322-1 of the Penal Code**:

⁴ (Depending on the circumstances)

“Destroying, defacing or damaging property belonging to other persons is punished by two years’ imprisonment and a fine of €30 000, except where only minor damage has ensued”

IV – Can NGO’s protecting refugees file a complaint against those facts?

It depends on the NGO itself and on **the content of its statute**.

As already mentioned, **the status of “exile” is not taken into account during an expulsion. The key criteria is the illegal occupation of a part of the state property.**

Thus, the most relevant associations may not be those specialised in the migrants issues. These NGOs **could only act in a way called “way of intervention”**, which means that the NGO would “join” a pre-existent complain.

Regarding the complex and fragile problem of the expulsions, many questions have been asked and answered:

The European Court of Human Rights (ECHR) delivered a judgement on the 17th of October 2013 called “WINTERSTEIN c/ FRANCE”. In its conclusion, the Court explains that an expulsion violates the article 8 of the European Convention on Human Rights, about the right to respect private and family life, home and correspondence.

In fact, the claimants had settled on a land owned by the town. This was considered as a forbidden occupation of the state property. The court reminds in a first time that the legal definition of “home” made by the article 8 of the Convention depends on factual circumstances. In this judgement, home was not related to property.

The Court **balances two fundamental rights, “the right to property” and “the right to the respect of private and family life, home and correspondence”**. The Court explains that these two rights must be taken into account and protected in each expulsion decision.

In a ruling given on the 24th of November 2014, the French “defender of rights” also agreed.

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