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Manuscript heritage between legal texts and the risks of infringement: a criminal study in light of Algerian criminal policy

التراث المخطوط بين النصوص القانونية ومخاطر التعدي: دراسة جزائية في ضوء السياسة الجنائية الجزائرية

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Abstract:

Written heritage is one of the basic intellectual and cognitive aspects of every nation in building its cultural identity. Interest in this heritage has increased recently, especially in its social, cultural, and even economic aspects. This has led to the spread of the crime of misusing this heritage throughout the world, especially in Algeria, where it has become a threat on two levels. It has become necessary to protect it through various means authorized by the state and relevant bodies. This is achieved by establishing controls for anyone who violates the legal provisions related to the protection of written heritage under Law 98-04 on the Protection of Cultural Heritage. Therefore, this study aims to clarify the crimes committed against manuscripts in accordance with the provisions of the Law on the Protection of Cultural Heritage and the Penal Code related to crimes, determine the penalties stipulated in accordance with the applicable texts, and provide recommendations in accordance with the imposed reality.

Keywords: manuscript heritage, Algerian legislation, smuggling, crimes of aggression.

الملخص :

التراث المكتوب هو أحد الجوانب الفكرية والمعرفية الأساسية لكل أمة في بناء هويتها الثقافية ازداد الاهتمام بهذا التراث مؤخرا ، لا سيما في جوانبه الاجتماعية والثقافية وحتى الاقتصادية. وقد أدى ذلك إلى انتشار جريمة إساءة استخدام هذا التراث في جميع أنحاء العالم ، وخاصة في الجزائر ، حيث أصبح تهديدا على مستويين. أصبح من الضروري حمايته بوسائل مختلفة مرخصة من قبل الدولة والهيئات ذات الصلة. ويتحقق ذلك من خلال وضع ضوابط لأي شخص ينتهك الأحكام القانونية المتعلقة بحماية التراث المكتوب بموجب القانون 98-04 بشأن حماية التراث الثقافي. لذلك ، تهدف هذه الدراسة إلى توضيح الجرائم المرتكبة ضد المخطوطات وفقا لأحكام قانون حماية التراث الثقافي وقانون العقوبات المتعلقة بالجرائم ، وتحديد العقوبات المنصوص عليها وفقا للنصوص المعمول بها ، وتقديم التوصيات وفقا للواقع المفروض

الكلمات المفتاحية: التراث المخطوط . التشريع جزائري .. التهريب. جرائم الاعتداء

1. INTRODUCTION

Cultural heritage is the tangible and intangible cultural assets of profound significance to the social and cultural life of peoples. These assets include both movable and immovable property.

Movable cultural heritage includes cultural relics, historical materials, works of art, books, manuscripts, traditional objects, and other human products of great value to each nation. Every nation also has cultural heritage, whether movable or works of art resulting from archaeological excavations and research on land or underwater, as well as archaeological documents, coins, seals, jewelry, traditional costumes, weapons, and archival documents.

The latter has tremendous historical and economic significance, as it helps preserve the cultural identity of the communities that produced these works and artifacts. It also represents a source of wealth for development and investment in the tourism sector, which benefits the economy. Algeria is considered the cradle of many civilizations, leaving behind a rich and diverse cultural heritage.

However, this rich and diverse cultural heritage faces a tragic reality: theft, distortion, neglect, misappropriation, illicit trafficking, and other problems that exhaust the collective human memory. This raises awareness of the seriousness and severity of this phenomenon, particularly the illicit trafficking of movable cultural assets, at both the international and local levels.

Especially since this necessarily compels us to adopt a cautious and vigilant stance to prevent all attempts to harm our cultural heritage and put an end to the professional networks that target the illegal trafficking of movable cultural property, specifically at the international and national levels.

Therefore, the Algerian legislator is trying to criminalize these acts in accordance with the applicable Law 98-04 for the Protection of Cultural Heritage and intends to enact a special penal code for crimes that affect society and the interests and culture of the nation .

This leads us to pose the following problem*:*

-To what extent has Algerian legislation succeeded in achieving legal protection for written heritage from violations and transgressions*?*

Research objectives*:*

This study seeks to achieve a number of scientific objectives, including*:*

Identify subject terms that are interrelated to each other.

Identifying crimes of encroachment on manuscript heritage, especially from the Algerian perspective

And to identify the most important penal provisions for the crime of infringement on manuscript heritage.

Methodology*:*

I initially followed the descriptive approach, then the analytical approach based on reviewing the legal texts cited by the legislator in this regard, and analyzing them primarily to answer the problem that I raised.

Research plan*:*

To answer this question, the research plan is divided into two parts*:*

The first part examines the forms of infringement on manuscript heritage.

The second part discusses the penal provisions for the crime of infringement on manuscript heritage.

2. The concept of manuscript heritage:

1.2: The meaning of heritage:

Heritage is a language What is inherited and what a man leaves behind for his heirs (Omar bin Araj, 2017, p. 45)

The contemporary meaning of the term heritage: the intellectual and written heritage that represents the genetic effects from which history was extracted in its entirety and cut off, and reached individuals. Its divisions include: material heritage, intellectual heritage, artistic heritage, and manuscript heritage. (Nabil Darbikh, 2017, p. 184)

2.2: Definition of manuscript in language and terminology:

Definition in the language:

Knowing the linguistic meaning of a word makes it easier for the researcher to understand the intended term and the intent behind its inclusion in this chapter and subchapter. The word "manuscripts" has multiple linguistic uses, both literal and figurative, as follows:(Khaled Daw, 2020, p. 614)

-The technical definition of manuscript:

A manuscript is a handwritten book, due to the scarcity of printing at the time of its creation. Manuscripts are primary sources of information, documented and intended for the study of various disciplines. Many researchers rely on the information contained in manuscripts, in whole or in part. (Mohammed Al-Shuwaikhat and Ahmed Mahdi, 1999)

-Manuscript heritage:

Arabic Islamic manuscripts are among the greatest repositories of human memory. They are the fruit of written documentation, embodied in the writing of the Holy Qur'an at a luminous moment in human memory.

Manuscript heritage includes everything that was tampered with by previous generations, including intellectual monuments written on tablets or papyrus or written in books written by hand before the development of printing. (Abdul Sattar Al-Halouji, 2001)

3. Images of the violation of cultural heritage manuscripts that can be removed:

Article 50 of Law No. 04/98 defines. Including in particular the results of excavations and archaeological research, both terrestrial and submerged, tools, ceramics, texts, coins, seals and other artifacts, traditional clothing, weapons, burial remains and resulting objects.

Parts of historical monuments and cultural property related to the history of religion, science and technology; paintings and drawings made entirely by hand on any material, original paintings, posters and photographs as an original creative medium, such as statues in all materials of art and sculpture products, as well as masterpieces of applied arts made of glass, porcelain, metal, wood and other materials .Manuscripts, prints, books, documents and publications of special interest; coins (medals and coins) or postage stamps; archival documents, including text recordings, maps and other cartographic equipment; photographs, films, sound recordings and machine-readable documents; (Law No. 98/04)

However, the legislator did not limit all crimes against these funds to the provisions of this law, but rather subjected some acts to the general principles stipulated in the Penal Code, and even to the principles of private law, especially the smuggling law.

In light of this, this section will address the types and forms of crimes against movable cultural heritage in their legally defined forms, as follows:

1.3: The crime of stealing and forgery of manuscript heritage

Theft is generally defined as the taking or misappropriation of another person's property or possessions without the other person's consent. This act can be committed against any movable property, but its seriousness increases when it is committed against movable property of historical, artistic, or scientific value for the purpose of trade and smuggling.

The crime of theft is a very serious problem because it represents a violation of the law, a disturbance of public order, a threat to others' property, and even a danger to people's lives.

Regarding the crime of counterfeiting movable cultural property, with the advancement of science, the process of

counterfeiting and imitating cultural property has become a practice carried out by those who own the cultural property, and the rules vary from person to person. Therefore, this issue will be addressed according to two sections:

1.1.3: The crime of stealing manuscript heritage

In particular, Law 98-04, which prompted us to study this crime within the general framework of the Penal Code, addressed the crime of theft in Regulation 66/156, which included the amended and supplemented Penal Code in 2009, in Chapter 3 on property crimes and misdemeanors ,Article 350 bis 1 relates to the theft of cultural property, punishing anyone who steals or attempts to steal protected or recognized cultural property or movables.(Order 66/156, page 3)

Through these articles relating to the crime of theft, the legislature imposes harsher penalties for acts committed by perpetrators that constitute the crime of theft. Given that the crime of theft of cultural property, like ordinary theft, can only be established if three elements are present: The material element, the moral element, and the literary element, which is the place where the crime was committed, and its subject was the movable property and money owned by others.. (Nasr El-Din Ashour, 2008, p. 226)

-The legal element of the crime:

What distinguishes criminal law from other branches of law is the existence of texts that criminalize and punish acts, as stipulated in Article 1 of the Penal Code: "There is no crime, no punishment, and no security measure except by law."..Therefore, the Algerian legislator criminalized the crime of stealing cultural property in Article 350 bis 1 of the Penal Code: "Whoever steals or attempts to steal movable cultural property shall be punished by imprisonment."

-The material element of the crime:

Embezzlement is considered a fundamental element in the crime of theft of movable cultural property, as anyone who seizes something that does not belong to him is considered a thief, and anyone who seizes something that does not belong to him is punished...(Article 350)

Jurisprudence and the judiciary agree that unlawful appropriation is an occupation without the consent of the owner or possessor. Several conditions must be met for the stolen item, the most important of which are that it be property, tangible, owned by another, movable, and in the possession of another.(Ahsen Bousguia, 2014, p. 291)

The material element of the crime of theft of cultural property is the seizure of this property from the possession of the state without its knowledge or against its will, or from the possession of its legal owner, and disposing of it as if it were its own property.. (Islam Abdullah Abdel-Ghani Ghanem, 2018, p. 248)

The moral element of the crime:

The crime of stealing cultural property is considered an intentional crime, requiring a specific intent to constitute its moral element. It should be noted that knowledge, under Algerian penal law, means the perpetrator's certainty that his or her behavior will result in a legally punishable effect, while being aware of all the legal elements of the crime.(Islam Abdullah Abdul Ghani Ghanem)An example of this was the arrest of a gang specializing in the theft of Roman antiquities in the city of El Eulma, in the Setif district. The gang was found in possession of 332 artifacts dating back to the Roman era in Algeria. (Source, 2023)

4. The crime of smuggling, exporting or illicit trafficking in movable cultural heritage

Smuggling is a serious phenomenon in Algeria. To address this phenomenon, the Algerian legislature has adopted a repressive policy and drafted a special text for smuggling crimes, namely Order No. 05/06 on Combating Smuggling, which features harsher penalties and taxes. (Ahsen Bousguia, 2017, p. 260)

The phenomenon of illicit trafficking in cultural property is also increasing internationally, with the looting, illegal possession, and export of cultural property becoming a common phenomenon affecting archaeological sites, religious buildings, cultural institutions, and museums.

INTERPOL is one of the largest organizations combating all criminal activities related to the smuggling and illicit trafficking of cultural property.

1.4: The crime of smuggling manuscript heritage

Smuggling means transferring heritage from the customs territory of the country in which it is located to a country where another crime is committed without a license, and the crime is committed after crossing the customs zone.

Smuggling is defined legally, according to Algerian cultural heritage and customs legislation, as follows:

- Importing or exporting goods outside customs in an illegal or fraudulent manner, such as smuggling works of art and antiquities.

While the crime of smuggling cultural property is included in the Anti-Smuggling Law, Article 10 stipulates punishment for anyone who smuggles fuel, grain, flour, works of art, archaeological monuments, explosives, or other goods. (Order 05/06)

The legal element of the crime of smuggling:

It should be noted that the Algerian legislator intended smuggling to be carried out without a license, as defined in the Anti-Smuggling Law. To prove the crime of smuggling movable cultural heritage, a legal element must be present in the crime of smuggling. This element is represented in the crime of smuggling monuments by criminalizing the act under the legal text discussed by the legislator in Article 10 of Regulation 05/06 on combating smuggling.

- As for the material element of smuggling:

The material element of the crime is the methods and conduct of the criminal in illegally exporting antiquities outside the country, which is prohibited by law, and is usually accompanied by forgery or fraudulent export of antiquities..

-The moral element of property smuggling:

From a legal perspective, the moral element or criminal intent is a fundamental element in the crime of smuggling antiquities. However, the Algerian legislature has differed and distinguished itself with regard to some laws that have increased the penalty for smuggling and abolished the principle of good faith in the crime of smuggling. Article 281 of the Customs Code stipulates that "the judge may not acquit the perpetrators" "based on their intent." That is, the crime is committed only through a physical act that violates the law, without the need to investigate and prove the existence of intent.(Karmash Hajar, 2016, p. 29)

An example of this is what happened in the city of El Jemlia in the state of Setif, on June 20, 2009, when a gendarmerie unit arrested a gang specializing in smuggling antiquities, including the

largest statue of the Roman gods, known as "Saturn." (See website, 2023)

2.4: The crime of exporting and illicit trafficking in manuscript heritage

What is meant by trade is the buying or selling of artistic masterpieces, so that trade becomes a profession to which they are accustomed, even if it is traded only once, but it should not be like that.

The work is limited to it exclusively or is carried out alongside another activity or other activities.

Article 62 of Law 98/04 on the Protection of Algerian Cultural Heritage refers to this type of crime and states the following:

"The export of protected movable cultural property from the territory of the State is prohibited. All temporarily protected cultural property may be exported within the framework of cultural or scientific exchanges or for the purpose of participating in international research. Such export may only be authorized by the Minister responsible for cultural affairs."

As a result, the phenomenon of illicit trafficking in cultural property is increasing internationally, and its looting and illegal import and export are common practices .It primarily affects archaeological sites, religious buildings, cultural institutions, museums, and public and private collections worldwide. (Tamim Tahir Ahmed, 2007, p. 262)

The illicit trafficking of cultural property threatens to diminish societies' cultural heritage and poses a serious problem for developing countries, particularly those that lack adequate laws and policies to combat this trade, which has become a major global business due to its high prices and growing demand.

To combat this type of global and cross-border crime, international agreements have been concluded to combat import and export, on the one hand, and transnational organized crime, on the other. The international definition of the elements of these crimes in general, and their impact at the national level in particular, is considered (Presidential Decree No. 251/14)

- The legal corner:

Under Article 63 of Law No. 98/04, the Algerian Legislative Council regulates the trade in cultural property, which stipulates the following:

"The trade in movable, unsecured and unidentified cultural property is a regulated profession, and the conditions and methods of its practice are determined in the regulatory text.

Article 64 of Law No. 98/04:

Archaeological or non-programmed properties or cultural properties that are the subject of commercial transactions if they result from excavations or accidental discoveries, whether ancient or recent, on state or national territory are not programmed. These cultural properties are considered national property.

Law 98/04 states that movable archaeological or historical property is legally protected in the context of trafficking in antiquities if the legislation of the countries in which such cultural property is authorized

It is understood that violations mean that all trade in antiquities that falls outside the license stipulated by law or that conflicts with Article 65 of Law 98/04 is illegal.

The material element of the crime:

The material element of the crime of illicit trafficking in movable cultural property is any illegal act that violates national laws and international agreements, and results from the criminal intent and specific punishment imposed by the perpetrator of the crime, i.e. his failure to engage in legal and organized behavior for trafficking in

cultural property, or his failure to comply with the legal conditions and controls for illicit trafficking. The crime is the smuggling of property or its sale or purchase in an illegal manner.(Article 65)

- The moral corner:

The moral element of the crime of illicit trafficking in movable cultural property is the perpetrator's criminal intent, to which general criminal intent applies. This intent must be specific for all crimes and be based on knowledge of the law and the criminalization of the activity committed by the perpetrator, as well as on the conscious and deliberate will that distinguishes intentional crimes from other crimes..

The perpetrator's knowledge that the act violates the law and his free will in committing it constitute the mental element of the crime.

5. Penalties for crimes of encroachment on movable cultural heritage

Algerian legislation has granted protection to movable cultural property, strengthening it criminally through the Penal Code, the Criminal Code, and special laws, particularly Law No. 04/98 on the Protection of Cultural Heritage and Law No. 06/05 on Combating Smuggling. This law, based on the conviction of the importance of cultural property to the country, guarantees the safety of movable cultural property from all potential harm, such as theft and smuggling.

This section can be divided into:

5.1:Punishment for the crime of stealing movable cultural heritage

Theft is a crime punishable by imprisonment if it is accompanied by climbing or breaking and is committed at night or by two or more persons. Anyone who seizes something that does not belong to him is considered a thief and is punishable by imprisonment from one to5 years and a fine of 100,000 to 500,000 DZD(Article 350 of the Algerian Penal Code)

As for the crime of theft of cultural property, as defined in Article 350 bis 1, the legislator has made it a misdemeanor, which is the most common description of this crime. It should be noted that the penalty has been increased from two (2) to ten (10) years and a fine of 200,000 DZD to 1,000,000 DZD. If one of these conditions is present:

- If the crime was committed by more than one person
- If committed with threats and the use of weapons
- If the crime is committed by a group or organization

On the other hand, the article imposes the same penalty on a person who attempts to steal movable cultural property.(Articles 197 to 231)

It should be noted that the attempt to commit the crime mentioned in the previous paragraph is punishable by law with the penalties prescribed for the completed crime.

5.2:The penalty for the crime of smuggling manuscript heritage

The Algerian legislator included in Law 98/04 on the Protection of Algerian Cultural Heritage a ban on the export of movable cultural goods. It also prohibited all smuggling and trade operations and imposed deterrent penalties on perpetrators of these crimes against movable cultural goods. These penalties are not stipulated in the Penal Code, but are included in Regulation 05/06 on Combating Smuggling and Law 98/04 on the Protection of Cultural Heritage.

In this regard, it should be noted that the Algerian legislator prohibited the export of protected cultural property from the country’s territory, but did not explicitly

stipulate punishment for the perpetrator of the crime of smuggling. Rather, it left its regulation to private law, in accordance with Article 10 of Regulation 05/06 on combating smuggling, which states:

Smuggling fuel... or artifacts or archaeological property... shall be punishable by imprisonment from one (1) to five years and a fine equal to (5) times the value of the confiscated goods.

When three (3) or more persons commit the crime of smuggling, the penalty shall be imprisonment from two (2) to ten (10) years and a fine equivalent to ten times the value of the confiscated goods; and when the smuggled goods are discovered in hideouts, points of sale or other places specially prepared for smuggling, the penalty shall be imprisonment from two (2) to ten (10) years and a fine equivalent to ten times the value of the confiscated goods..

Article 10 of Regulation 05/06 clearly states that the legislature has designated all smuggling acts as misdemeanors. If they are associated with certain circumstances, the offense is aggravated. Therefore, the prison sentence stipulated therein is imprisonment, which is the original penalty for the crime of smuggling, in addition to a fine and confiscation.

It also defines the crime of smuggling movable cultural property as other crimes of lesser seriousness and importance, and punishes them with the same penalty.

5.3: Penalties for the crime of trafficking and illegal confiscation of manuscript heritage

The Algerian Cultural Heritage Protection Law criminalizes the sale of materials derived from excavations that are discovered by chance or during authorized archaeological research or investigation.

Conducted within the framework of sea waters, or for designated cultural property or included in the additional inventory

Also cultural property derived from the cutting or architectural elements of stones

The process of cutting or fragmenting an individual's cultural property or real estate.

With regard to the above-mentioned trafficking crimes, the Algerian legislator has sentenced a prison term of two years from 3 to 5 years and a fine of 100,000 to 200,000, or one of these two penalties.(Article 95)

It is noted that when the judge was empowered, the Algerian legislator dropped the prison sentence.

A prison sentence or a fine is sufficient. The maximum penalty prescribed should not be excessive; it should be proportionate to the seriousness of the crime.

3. CONCLUSION

Algerian cultural heritage, and manuscripts in particular, can be exposed to various means and different types of attacks and crimes, given the tremendous development in criminal mechanisms against these properties.

This has led to an increase in crimes against these properties, in addition to the emergence of new crimes that have the ability to attack them and smuggle them abroad, which requires specialized legal protection mechanisms to ensure this protection.

Through this study, we seek to shed light on the increasing number of attacks and crimes against movable cultural property (manuscripts) that arise from man-made and natural risks and threats resulting from failure to respect and comply with the regulations and laws governing cultural property.

Provisions requiring the protection of cultural property are considered illegal and constitute existing crimes. This consists of three elements: legal, material, and moral. This is consistent with the meaning of the Penal

Code and Law No. 04/98 on the Protection of Cultural Property.

This is shown by the following results:

Cultural heritage must be protected and preserved, but recently it has been poorly managed due to the lack of legislative will to value it.

- The necessity of establishing clear procedural rules within the penal laws to be consistent with the type and nature of crimes committed against the manuscript heritage and to increase penalties because most of the penalties included are violations that should have been subject to severe penalties.
- The ineffectiveness and unsuitability of legal legislation to address the development of types of crimes affecting movable cultural property, particularly scheduled heritage, which leads to an increase in related crimes.
- In addition to the absence of legal provisions by the Algerian legislative authority as stipulated in Law No. 98/04 and the Penal Code, which explicitly stipulate the crime of imitating, destroying and counterfeiting movable cultural property, the current penalties are not commensurate with the magnitude of the crime committed against cultural property, especially at the national level.
- No amendments have been made to Law No. 98-04 on the Protection of Cultural Heritage, in line with recent developments in technology (digitization), which has been in force for more than 21 years.

In light of the above, we can make some suggestions, including:

The need to review the legal provisions related to the protection of cultural heritage, especially those related to the protection of planned heritage, and to review their various provisions, particularly with regard to the regulation of terminology.

- Tightening penalties imposed on movable cultural property, particularly at the national level, depending on the type, scale and seriousness of the crime committed against it.

The role of the media in raising awareness of the importance of cultural identity, preparing a series of reports on coding and the behaviors that influence it, raising awareness of the importance of manuscripts, and developing programs to promote them. In addition, specialists at academic conferences should be encouraged to identify crimes occurring in a given year.

- Establishing special associations and bodies to protect the manuscript heritage and enhance cooperation with concerned Arab countries in the same field with the aim of achieving sustainable development.
- Holding international and national seminars and conferences to exchange experiences that would contribute to the protection of manuscript heritage in particular.

International experience in the field of training insurance should only be referred to for the purposes of archaeological maintenance operations.

- Closing the legal gaps in domestic legislation regarding recovery and criminalization and working to develop comprehensive innovations to address crimes that affect them.[i]

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