

Criminal Protection of Real Estate Cultural Heritage Under Law

98-04 Related to the Protection of Cultural Heritage

الحماية الجزائية للتراث الثقافي العقاري في ظل قانون 98-04 المتعلق بحماية التراث الثقافي

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Abstract :

Heritage plays a significant role in shaping the memory of nations. Additionally, cultural heritage, in all its types and forms, is a source of pride for nations. It has also become to be regarded as a fundamental pillar in the economy of many countries and the crucial resource for society in the development process. For this reason, many nations strive to maximize the contribution of cultural heritage to social and economic development.

In this context, cultural real estate ownership is considered a vital pillar in peoples' lives, as it connects the past with the present of peoples. Accordingly, the protection that the legislator has dedicated to real estate cultural heritage is primarily reflected through legislative measures, ranging from constitutional protection to the protection enshrined in the penal code. This protection is further reinforced, by a series of laws, the most significant of which is the law N° 98-04 concerning the protection of cultural heritage, which aims to introduce the nation's cultural heritage and enact general rules for its protection and preservation.

Keywords : Cultural properties; Buildings; National identity; Generations National achievements; Crimes.

ملخص:

يلعب التراث دورا هاما في صياغة ذاكرة الأمم، فضلا عن ذلك يعدّ التراث الثقافي على اختلاف أنواعه وأشكاله مبعث فخر للأمم واعتزازها. كما أصبح ينظر إليه كركيزة أساسية في اقتصاد العديد من الدول، وأهم مورد من موارد المجتمع من خلال عملية التنمية. ولهذا أضحت كثير من الدول تسعى سعيا لتعظيم العائد من التراث الثقافي في عملية التنمية الاجتماعية والاقتصادية.

وفي هذا الإطار تعتبر الملكية العقارية الثقافية ركيزة هامة في حياة الشعوب، ذلك أنّها تربط الماضي بحاضر الشعوب. وبناء على ذلك فإنّ الحماية التي كرّسها المشرع للتراث الثقافي العقاري؛ تجلّت أهم مظاهرها في الوسائل التشريعية؛ بداية من الحماية الدستورية إلى الحماية المكرسة في قانون العقوبات، وفي مجموعة من القوانين أهمها القانون المتعلق بحماية التراث الثقافي؛ وهو القانون 98-04 الذي يهدف إلى التعريف بالتراث الثقافي للأمة، وسن القواعد العامة لحمايته والمحافظة عليه. الكلمات المفتاحية: الممتلكات الثقافية؛ المباني؛ الهوية الوطنية؛ مكتسبات الأمة؛ الجرائم.

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Introduction:

Cultural heritage is regarded as one of the nation's key achievements, reflecting the level of civilizational sophistication attained by its ancestors, while also profoundly shaping the cultural identity of present generations. Tangible cultural heritage, in particular, embodies the identity of both individuals and societies. Given its shared nature among many nations, there is both competition to claim it and the potential for its commercial exploitation. As a result, cultural heritage has been at the center of various conflicts. In Algeria, as elsewhere, cultural properties face numerous natural and human threats that jeopardize their integrity, leaving them vulnerable to destruction and mutilation.

This urgency led both national and international legislators to accelerate the implementation of legal protection to safeguard cultural heritage, particularly in the face of globalization and its influence on societies. In response, Algeria sought to ensure the protection of its cultural heritage — both tangible and intangible—by recognizing it as a part of its sovereignty, a core aspect of its identity, and an extension of national memory. This effort is reflected in the actions of the Algerian legislator who enacted laws aimed at preserving and protecting the Algerian cultural heritage.

Algeria's real estate cultural heritage faces numerous threats and various forms of crimes. Given the rapid evolution in the mechanisms used to commit crimes against real estate cultural heritage, as well as the emergence of new types of offences, the Algerian legislator has implemented a criminal policy aimed at providing effective protection for this heritage. As a part of this policy, a comprehensive legal framework has been introduced to foster the protection mechanisms while ensuring adherence to the principle of legality.

In this context, it is evident that the repeated attacks and crimes targeting the national cultural heritage, such as theft and illegal trafficking and smuggling of cultural properties, have become a significant threat. In response, the state has sought to protect these assets through various measures, whether administrative, technical, or artistic. However, these efforts remain insufficient unless the Algerian legislator enacts a comprehensive legislative policy that not only protects but also ensures the security of cultural heritage. This would address the criminal phenomenon and help reduce its occurrence, especially considering that Algerian legislation mirrors international standards. Like other global frameworks, Algerian law prioritizes and highlights the criminal protection of cultural heritage, recognizing its vital significance. This heightened protection reflects a growing awareness of the cultural, economic, social, and even political value of this heritage.

Hence, we pose the following problem statement: **What is the mechanism for penal protection of real estate cultural heritage? What is its role in reducing or suppressing crimes affecting it?** In other words: **To what extent has penal protection contributed to establishing effective protection of real estate cultural heritage?**

Accordingly, to comprehensively address the study's subject and answer the raised questions, the study has been divided into two main sections. The first section explores the conceptual framework of cultural heritage, while the second section presents the provisions for penal protection of real estate cultural heritage as stipulated by Law N° 98-04.

First Section: Conceptual Framework of Cultural Heritage

It should be noted that heritage is the individual asset and stock, characterized by both stability and continuity, while embodying spiritual and aesthetic value. Moreover, it represents a tangible reality that is universally accepted and respected as a sincere record of the society's culture, reflecting the unity of its human and intellectual aspects across ages. Heritage serves as an

expression of the style and approach used to interact with the environment, as well as the distinct embodiment of the group's culture in a specific eras. Additionally, it is a genuine representation of the achievements of local and national cultures, which cannot be canceled or neglected.

It is regarded the collective memory of peoples and serves as an interpreter of national identity and cultural diversity. Heritage acts as a record that preserves historical data and commemorates human development for different eras and periods.

The concept of cultural heritage has evolved; whereas in the past decades, it was primarily associated with significant works that held artistic and historical values, it is now a broader term that encompasses anything of importance and value to people.

Therefore, we will confine the scope of our research in this section to the following areas: first, the definition of real estate cultural heritage; second, its significance; and third, the classification of real estate cultural properties.

First/ Definition of Real Estate cultural heritage:

Real estate cultural heritage is one of the most significant aspects of cultural identity. The term "heritage" refers to all the products of past civilizations that humanity inherited from predecessors. Thus, it embodies the outcomes of human experiences across all material and moral domains. Consequently, we will explore the linguistic, terminological, and legal definitions of cultural heritage.

1-Linguistically: Cultural Heritage Definition:

Cultural heritage, in linguistic terms, is derived from the verb "waratha" which means to inherit. It encompasses various forms of inheritance such as "wirth," "wirthan," "warithan," "warithah," referring to what the deceased leaves behind to his heirs. Furthermore, the Holy Allah said: And you consume inheritance, devouring [it] altogether ¹". This refers to the wealth left by the deceased, which is inherited by his heirs. (Ibn Manzur) explains that "al-irth" (inheritance) is derived from "al-mirath" (legacy) and is its origin. Heritage is defined as "everything that has passed fifty years or more²." It is monetary, in-kind, or intangible money such as copyrights and patents, just as culturally inherited money such as antiquities and manuscripts, and money may also be natural, such as elements of natural heritage³. This type of money is considered a natural inheritance, and each expresses a value passed down through generations. It enjoys its cultural and aesthetic character throughout the ages.⁴

2-Jurisprudential Definition of Cultural Heritage:

An aspect of jurisprudence defined cultural heritage as: "what the ancestors, including grandfathers, parents, children and grandchildren, have left for others in various aspects of life across different fields, such as culture, history, literature, civilization and art, systems and industries, agriculture and urbanism, as well as traditions, customs⁵...".

Emile Alexandrov, in his book: "The Protection of Cultural Property in International Law" defines cultural heritage as: "All human actions attributed to his creative activity in the present and the past, artistically, practically, and educationally, and which are important for interpreting the culture of the past, and for developing it in the present and future⁶".

Based on the above, we conclude that cultural heritage is defined as: "the totality of cultural property of great importance to society and the social and cultural life of peoples. It encompasses both movable and immovable property such as architectural and artistic, historical, religious monuments, archaeological sites and the totality of artistic data, manuscripts and books, and other

objects of historical or archaeological artistic significance. This also includes professional collections of books and archives⁷”.

3- Legal Definition of Cultural Heritage:

We will first examine the definition of cultural heritage in light of international agreements, followed by and exploration of its definition in Algerian legislation.

A- Definition of Cultural Heritage Internationally:

International legal instruments prior to the 1954⁸ Hague Convention did not provide a clear definition of cultural property. Their provisions were mainly limited to examples of what constitutes cultural property and prohibited parties to an armed conflict from taking certain actions against it. For instance, Article 56 of the Hague regulation concerning the Laws and Customs of War on Land of 1907; called for the preservation of specific types of cultural property, such as works of art, historical monuments, sacred historical places, or buildings dedicated to charitable works, science, arts, and education, which may belong to the state or various institution⁹.

According to Article 1 of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, the term “cultural property” is defined as follows: “For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

(a) Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or reproductions of the property defined above;

(b) Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);”.

For reference, the definition of cultural property according to the Hague Convention is similar but not identical to the definition stipulated in Article 53 of the First Protocol to the Convention for the protection of cultural property in the event of armed conflict. This Protocol aims to protect historical monuments, works of art, or places of worship that constitute the cultural or spiritual heritage of peoples, thus providing a narrower definition by safeguarding specific cultural property.

The 1999 Second Protocol to the Hague Convention maintained the same definition of cultural property as contained in the Convention; as stated in paragraph B of Article 1 of the Protocol.¹⁰

From another angle, the Rome Convention, in Article 9, defines cultural based on its status, which encompasses its historical or artistic importance. Such properties gain economic appreciation of nations and are subject to the protection of national legislation. They are also of interest to countries within the context of freedom of trade and the movement of goods across borders¹¹.

Convention Concerning the Protection of the World Cultural and Natural Heritage concluded in 1972 and considered the most important Convention in the field of protecting cultural property also adopted a definition. Article 1 of the agreement stated: “For the purposes of this Convention, the following shall be considered as “cultural heritage”:

Monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the perspective of history, art or science;

Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

Sites: works created by humans or the combined works of nature and humans, including areas with archaeological significance that possess outstanding universal value from the historical, aesthetic, ethnological or anthropological perspectives¹²”.

The Unified Antiquities Law, issued after the third session of the Conference of Arab Ministers of Culture in Baghdad in December 1981 defines heritage as follows: “Anything created by civilizations or left by previous generations, which is revealed or found, whether it is real estate or movable property related to the arts, sciences, literature, morals, beliefs, daily life, public events, or anything else dating back a hundred years, whenever it possesses artistic or historical value¹³”.

B- Definition of Real Cultural Heritage in Algerian Legislation:

Algeria is recognized as one of the first countries to sign the World Cultural and Natural Heritage Convention in 1972 marking a significant breakthrough in the field of heritage protection. This was followed by another equally important step, which embodies the implementation of this agreement: the enactment a law N° 98-04¹⁴, requiring the protection of the national cultural heritage. As a result, the provisions of order N° 67-281¹⁵ related to excavations and the protection of historical and natural places and monuments were annulled, except for the natural sites that remain under environmental protection.

It is noteworthy that the law N° 98-04 concerning the protection of cultural heritage defines cultural property as follows: “For the purposes of this law, all real cultural property, as well as specific and movable property, located on and within the land of national property properties, owned by natural or legal persons subject to the law, are considered cultural heritage of the nation of the private sector, and also present in the aquifers of national internal and regional waters inherited from various successive civilizations from the prehistoric era to the present day¹⁶”.

In this context, the same law addressed the definition of real cultural property and its types, in its second Article. It also expanded the concept of cultural heritage by incorporating intangible cultural heritage, influenced by developments occurring at the international level, which included the following: “Part of the nation’s cultural heritage is also the intangible cultural property resulting from social interactions and the creativity of individuals and groups throughout the ages and which continues to express itself from ancient times to the present day¹⁷”.

Second: Importance of Real Estate Cultural Heritage:

The importance of cultural heritage lies in its increasing value in strengthening and preserving the identity that unites individuals within a people or nation. It encompasses a deep history, past, glories and culture expressed in its heritage, including symbols that represent the nation's history. While every nation possesses its share of cultural heritage in time and place, it is fair to assert that previous generations have left the current generation with nothing more beautiful or magnificent than cultural heritage. This heritage is considered the nation's most precious asset, a symbol of its survival, a source of pride, and an indicator of its ability to continue and communicate, especially if it can engage in dialogue and interaction through broad-mindedness and the ability to give and accept diverse perspectives¹⁸.

Furthermore, real cultural property constitutes one of the basic elements of civilization and national culture, and its true value cannot be estimated except with the availability of the minimum possible amount of information about its origin, history and traditional environment¹⁹.

The significance of cultural real estate extends beyond moral value, it possesses substantial economic importance as well, as it is one of the most vital tourist attractions. It has a great economic benefit leading to infrastructure development such as roads and services.

Algeria is among the countries that, in addition to its effective participation in international efforts to protect real estate cultural heritage, has ratified all related agreements and taken internal measures to ensure their legal protection. This country has established numerous numerous institutions and agencies, both at the central or local level, dedicated to heritage protection and preservation.

Third: Division of Cultural Real Estate Properties:

This refers to properties related to cultural heritage, whether above or below the ground, or under internal or territorial waters. These properties are fixed in a specific space and cannot be moved without damage. Fixed property is represented as follows:

1-Historical Monuments²⁰:

Historical monuments, also known as as monuments, or historical structures, encompass architectural works visible above the ground, such as: houses, temples, markets, and churches, which have reached a certain period, typically not less than a hundred years. They may also be characterized by their association with significant events or notable individuals, which imbues them with historical merit and designates them as heritage resource.

More specifically, *Historical monuments* can be defined as any architectural construction, or a group that witness an important development or historical event.

This category include not only buildings but also the built environment and natural features that provide evidence of a civilization, or the meaningful development of a historical event²¹. The Minister in charge of Culture may, at any time, issue a decision for the classification of historical monuments²².

It is noteworthy that the most common form of property recognized as a monument is any work of art, sculpture or drawing, including engravings on stones, caves and other materials, that holds particular importance from a historical and artistic perspectives. Numerous worldwide are deemed significant monuments, including the Egyptian pyramids, the Eiffel Tower, and the Taj Mahal.²³

2-Archaeological Site²⁴: An archaeological site is a built or unbuilt space that lacks an active function but bears witness to human interactions with nature, including the subsoil of the lands. These sites contain material remains of past human activities, especially those related to human settlement, such as the remnants of cities, buildings, caves, castles, walls, and religious structures. The archaeological site may encompass, artifacts, plant and animal remain, structural remains, and unique soil characteristics. It can also include a large ancient city buried entirely or partly beneath the surface, other deposits or ephemeral surface remains, a temporary residence for nomadic people, or other short-term human activity²⁵.

It is essential to note that these sites are classified by a decision of the Minister of Culture, following consultations with the National Committee for Cultural Properties.²⁶

3-Urban and Rural Groups:

Urban or rural real estate groups are organized²⁷ as reserved sectors, encompassing kasbahs, cities, palaces, villages, and traditional residential complexes. These areas are distinguished by the predominance of residential properties, marked by their homogeneity and architectural and aesthetic unity. They possess historical, architectural, artistic or traditional significance that justifies their protection, repair, rehabilitation and valorization.²⁸

Second Section: Provisions for penal protection of real estate cultural heritage under Law 98-04

It is worth noting that Algeria is one of the countries that, in addition to its accession to all international conventions aimed at protecting cultural heritage, and its involvement in international efforts to protect it, has established many protection mechanisms, including legislative measures through Law N° 98-04 concerning the protection of cultural heritage. This includes various related legal texts, such as Law N° 03-01 concerning sustainable tourism development²⁹, as well as the penal protection mechanism that safeguards cultural heritage from any infringement or distortion that could lead to the loss of its historical and artistic value.

The necessity of enshrining criminal protection for real estate cultural heritage is apparent in the need to criminalize attacks on heritage. This is fulfilled either by criminalizing specific actions or by imposing duties to act or refrain from actions that constitute crimes punishable by law.

Regarding the protection approved by the Algerian legislator for these properties, it is important to note that the construction rules for real estate cultural properties are consistent, aiming to protect these properties and integrate them into the public domain of the State, thereby creating public national properties. These measures play a crucial role in establishing effective protection for real cultural property.

To clarify this, we divide this section into two axes: In the first, we will discuss the individuals eligible to examine crimes affecting real cultural heritage under Law N° 98-04, and in the second we will address crimes affecting real cultural heritage mentioned in Law N° 98-04.

First: Persons qualified to inspect crimes affecting real estate cultural heritage under Law 98-04:

The Algerian legislator grants real cultural property special protection. To ensure effective protection of these properties, a set of legal texts has been approved that aimed at restricting various uses of real cultural property. This is reflected in the administrative control powers over these properties, which seeks to limit individuals freedoms and regulate their practices and activities within real cultural property that may harm it. Additionally, there is administrative oversight related to development and reconstruction within these properties.

Complete protection can not be achieved without deterrent legal texts through judicial control, which aims to control crimes after they occur, identify their perpetrators in preparation for arrest, collect the necessary evidence to investigate, and impose punishment on them. This system is distinguished by its punitive deterrent method.

In this context, Law N° 98-04 - in addition to empowering judicial police officers and agents - authorizes some individuals to search for and inspect works that violate its provisions. According to reports they prepare at the request of the Minister in charge of Culture, in accordance with Articles 92 and 105 thereof, these individuals are divided into three categories:

1-Technical personnel who are particularly qualified according to the conditions specified in the applicable regulations: They are experienced specialists who rely on completing their tasks on technical and artistic opinion, rather than merely general information.

2-Inspectors charged with protecting cultural heritage: this category includes inspectors of archaeological, historical, and museum heritage in libraries, documents, and archives; registrars and interns.³⁰

3-Conservation, evaluation and monitoring agents: These individuals are practically responsible for inspecting and announcing various violations related cultural and natural heritage protection; They hold the rank of technical assistants for conservation.³¹

In this context, the violations mentioned in articles 92 to 104 of Law N° 98-04 will be investigated and examined based on reports prepared by qualified personnel at the request of the Minister in charge of Culture.³²

Law N° 98-04 also stipulates the punishment of anyone who obstructs the work of agents charged with protecting cultural property, or places them in a situation where they cannot perform their duties. In accordance with the provisions of the Penal Code.³³

Furthermore, Law N° 98-04 grants every legally established association that stipulates in its basic law the pursuit of protecting cultural property the right to act as a litigant claiming civil rights, regarding violations of the provisions of this law.³⁴

Second: Crimes Affecting Real Estate Cultural Heritage Mentioned in Law 98-04:

There are numerous crimes that affect real estate cultural heritage, which can be categorized as either positive and negative. Given that real estate cultural heritage is an integral part of national property and culture, any damage to it leads to losses that are difficult to compensate. The Algerian legislator has sought to criminalize acts that harm cultural heritage, and these crimes were defined within Law N° 98-04 relating to the protection of cultural heritage.

Criminalizing attacks on real estate cultural heritage necessitates imposing deterrent penalties for such offences. the Algerian legislator has addressed this through Law N° 98-04 , particularly in Chapter Eight entitled “Surveillance and Punishments³⁵”, as well as in some provisions of the Algerian Penal Code. Accordingly, the Cultural Heritage Protection Law stipulates many acts that it deems criminal behaviours affecting cultural property. It is noteworthy that the legislator employs the term “violation”s instead of “crimes”.

Crimes committed against cultural property are divided into misdemeanors and violations. The Algerian legislator also designated penalties for offences against cultural heritage within the provisions of Law N° 98-04 relating to the protection of cultural heritage, which will be discussed as follows:

1-Misdemeanors against real estate cultural heritage:

Real estate cultural heritage is a genuine wealth and one of the most important elements of national culture. Therefore, any crime committed against it is considered a great loss that is difficult to compensate. Consequently, the Algerian legislator has criminalized various crimes against heritage through the law related to its protection. These crimes have been divided into: positive and negative crimes.

A-Conducting archaeological research without a license:

The crime does not exist as stipulated by the law. It does not entail punishment unless three elements: the legal element, which is the criminal text of the act, and the material element, which represents the physical action of the offender; and the moral element which involves the intellectual

aspect of the act. It is important to note that the law does not punish intentions and obsessions, it only considers apparent actions that produce their effects. Therefore, we will address the elements of this crime as follows:

Crime Material Element:

The material element consists of three basic components that typically form the structure of a crime: criminal behavior, result, and causal link³⁶. In this context, the material element is the crime of conducting archaeological research without a license, as stated in Article 70 of Law N° 98-04 refers to the scientific investigation conducted in the field using modern technologies to obtain archaeological remains. These research activities can also involve the following:

- Continuous excavation and research work in a specific area or designated region, whether on land or underwater.
- Onshore or underwater excavations or investigations;
- Antiques and museum collections.

The crime of unauthorized archaeological research is a formal crime. The result does not need to occur for the crime to be complete. Merely engaging in the act of searching is enough to constitute a criminal offence..³⁷

Crime Moral Element: The moral element represents the moral aspect of the crime. It attributes responsibility for to the actor, and it is fulfilled when the perpetrator intentionally commits an act that the law criminalizes. In the case of unauthorized archaeological research, the moral element takes the form of criminal intent. The offender must deliberately intend to perform the criminal act and its potential consequences..³⁸.

For the crime of conducting archaeological research without a license, the offender must be aware that the act is prohibited, even if they do not achieve the desired outcome, such as finding archaeological remains. The intent is reflected in the deliberate will to discover artifacts through the research process. However, if a person is digging land for construction or agricultural purposes and accidentally discovers traces of archaeological significance, they are not responsible for committing the crime of unauthorized research. In such a case, they are required to report the discovery to avoid being accused of committing a different offense..³⁹

Based on this, Law N° 98-04 punishes anyone who carries out these actions without obtaining prior authorization from the Minister in charge of culture, with a fine ranging from 10,000 DZD to 100,000 DZD, without prejudice to any compensation for damages, and with imprisonment from one to three years, in addition to a fine obligating the violator, at his expense, to return the places to their original condition. The penalty is doubled in the case of recidivism..⁴⁰

B- The Crime of Failing to Declare Sudden Discoveries

Law N° 98-04 requires that cultural property discovered during authorized works, or found by chance, must be declared to the competent authorities⁴¹. According to Article 94 of the same law, failing to declare sudden archaeological discoveries, whether found during research or by accident, is considered a crime. Additionally, keeping such licenced antiquities and not handing them over to the state is also criminalized. The elements of this crime are:

Material Element: represented by the perpetrator's sudden finding of archaeological finds while carrying out licensed work or by chance, followed by their intentional failure to report these finds to the local authorities..⁴²

Crime Moral Element:

There is an obligation to declare discoveries, and any breach of this obligation is considered a crime, whether done intentionally with the intention of seizing the finds, or due to negligence and indifference⁴³. Therefore, the crime does not occur unless the perpetrator deliberately fails to declare the discovery, as a result of negligence or indifference. Nevertheless, the judiciary must prove that the failure to declare was intentional.⁴⁴

The penalty from committing this crime is imprisonment for one (1) to three (3) years, and a fine ranging in amount from 10,000 DZD to 100,000 DZD, without prejudice to any compensation for damages.⁴⁵

C-The Crime of Selling and Concealment:

Article 95 stipulates that the following violations shall be punished:

- Selling or concealing objects resulting from digging or excavation operations, discovered by chance or during authorized archaeological research;
- Selling or hiding items resulting from research conducted under seawater;
- Selling or concealing cultural property classified or registered in the additional inventory, as well as cultural property resulting from its cutting or fragmentation;
- Selling or hiding architectural elements resulting from the dismemberment or fragmentation of a real estate or cultural property by allocation⁴⁶.

Accordingly, these actions primarily occur against movable cultural property, or real cultural property resulting from the dismemberment of real property, and objects discovered during excavations or research conducted under the sea. Therefore, we will explore the dimensions of this crime as follows:

First dimension: Illegal sale or trade:

According to civil law, a sale is a contract according to which the seller agrees to transfer to the buyer the ownership of a thing or another financial right in exchange for a cash price⁴⁷.

Article 61 stipulates that ownership of movable cultural property registered in the additional inventory, classified or proposed to be classified and owned by natural or legal persons under private law may be transferred on the national territory. The owner of any classified movable cultural property shall inform the Minister in charge of culture of his intention to transfer ownership of the said property.

He shall also inform the buyer of the decision to classify or register in the additional inventory list.⁴⁸

Moreover, archaeological cultural property may not be the subject of commercial transactions if these properties result from planned or unplanned excavations, or old or recent accidental discoveries on the national territory or in the national internal or territorial waters, they are considered to belong to national property⁴⁹. This property is considered public property owned by the State. Any sale of this property constitutes a crime against the State, as the transfer of ownership is illegal.

Second Dimension: Hiding objects:

The crime of stealing cultural property and the results of archaeological research differ from ordinary crimes because it involves a blatant assault on the human heritage, which every society values. What makes this crime even more serious is its international dimension, as it often involves the same methods utilized in ordinary theft. The gravity of this crime lies in the fact that it targets priceless works of art and antiquities, which cannot be replaced..⁵⁰

As a result, the crime of selling and concealing cultural heritage property under Law N° 98-04 is punishable by imprisonment from two (2) to five (5) years, and a fine of 100,000 DZD to 200,000 DZD, or one of the two penalties only, without prejudice to any compensation for damages and confiscations.⁵¹

D-The Crime of Intentional Destruction or Defacement of Cultural Property:

The Cultural Heritage Protection Law criminalizes⁵² the intentional destruction, defacement or destruction of movable or immovable cultural property proposed for classification, classified or registered in the additional inventory, as well as objects discovered during archaeological research.

*** Crime Material Element:**

The material element of this crime is the perpetrator's active engagement in one of the forms mentioned in the crime: i.e destruction, mutilation, and damage. These actions can be distinguished by the behaviors carried out by the perpetrator to cause damage to cultural property, whether completely or partially, this damage can take two forms: positive, such as a breakage; or negative such as failure to perform maintenance. This exposes the property to damage, mutilation or destruction⁵³.

B- Crime Moral Element:

The moral element in the crime of destroying and defacing real cultural property is based on the presence of criminal intent on the part of the perpetrator. This arises from their intention to damage, distort or destroy cultural property while knowing that the law prohibits these acts and punishes their perpetrators. The motive behind the perpetrator's action whether revenge or otherwise, is not taken into account⁵⁴.

Anyone who intentionally destroys or mutilates, without prejudice to any compensation for damaged objects discovered during archaeological research, shall be punished by imprisonment for a period of two (2) to five (5) years and a fine of 20,000 to 200,000 DZD⁵⁵.

2-Violations Against Real Estate Cultural Eeritage:

These violations are:

A-Disposal of archaeological sites and monuments without a license: This refers to the disposal of land on which the archaeological site or monument is located without obtaining authorization from the competent authority, represented by the Ministry of Culture and Arts. The Cultural Heritage Protection Law stipulates that the disposal of real cultural property, or movable property classified or registered in the additional inventory, without prior authorization stipulates the cancellation of the disposal contract without prejudice to compensation for damages.⁵⁶

B-Illegal occupation or use of cultural property: occupation or use of a cultural property requires compliance with a prior license issued by the Minister in charge of culture, which outlines the duties that align with the requirements of maintaining the property⁵⁷. The individual must also comply with the easements mentioned in the classification decision regarding the occupancy, use, or return of the property to its original state. Violating this provision is considered a crime under Cultural Heritage Protection Law N° 98-04."⁵⁸

The subject of the crime in this article is real cultural property. Consequently, anyone who occupies a classified real estate cultural property, or uses it in a way that does not comply with the specific easements outlined in the prior license issued by the Minister in charge of Culture, shall be fined 2,000 DZD to 10,000 DZD, without prejudice to compensation for damages.⁵⁹

C-Works related to the site and archaeological monuments without a license: Some individuals make some modifications to archaeological sites and monuments, either intentionally or

unintentionally, unaware of the impact of these changes have on the historical value of the sites .archaeological monuments. Thus, these actions fall within the framework of assault on these sites. Such actions are considered as assault on the site or monument. Accordingly, all works, regardless of type, carried out on classified or proposed historical monuments are subject to technical control by the Ministry of Culture.⁶⁰ Furthermore, a building or retail license associated with archaeological monuments is subject to special procedures outlined in the Cultural Heritage Protection Law.⁶¹

The Cultural Heritage Protection Law also prohibits the cutting, division, or fragmentation of classified or proposed historical monuments without prior authorization from the Minister in charge of culture, following consultation with the National Committee for Cultural Property.⁶²

Accordingly, anyone who undertakes repairs to proposed or classified cultural real estate properties, or to real estate within a protected area, whether it be rehabilitation, restoration, addition, reclamation, reshaping, or demolishing, without following the procedures stipulated in this law shall be punished with a fine of 2,000 DZD to 10,000 DZD without compromising compensation for damage⁶³.

D-Violations related to cultural activities: The cultural heritage protection law regulates activities that exploit sites and monuments for purposes such as publicizing, organizing events, taking photographs, or filming. Furthermore, it covers the construction of major public or private works, base facilities, afforestation, or tree cutting, which change the site. Such activities necessitate special licenses granted by the Ministry of Culture through the Directorate of Legal Protection of Cultural Property and the Valorization of Cultural Heritage and Arts. These licenses ensure that photography and filming at protected cultural sites are conducted in an organized framework, preserving the archaeological sites.⁶⁴

It is worth noting that any such activity conducted without a license from the relevant authorities exposes the perpetrators to legal accountability. Violations of the provisions of this law related to advertising, organizing events, taking photographs, filming, or base facility works, such as the establishment of public or private factories, or tree cutting, shall result in a fine ranging from 2,000 DZD to 10,000 DZD.⁶⁵

E- Objection to Visits by Artists Qualified to Access Classified Cultural Property or Properties Registered in the Additional Inventory:

Algerian legislator criminalizes any objection by the owner, the tenant, or any other party to visits by qualified artists to classified cultural property or properties registered in the additional inventory list. This also applies to real estate located within the protection zones of classified cultural properties and those in the vicinity of protected sectors.⁶⁶

The material element of this crime is the obstruction by the owner, tenant, or any other party of visits by qualified artists to such classified or registered cultural properties. This also extends to real estate within the protection zone of classified cultural properties and real estate in the vicinity of protected sectors. The moral element lies in the perpetrator's intent to impede the activities of these visitors,⁶⁷ fully aware that such an objection is punishable by law.

Notably, qualified technicians face a considerable legal obstacle that complicates their work. They lack judicial police status, which forces them to obtain special authorization from the competent departments of the Ministry of Culture before beginning their tasks.⁶⁸

It is noted that Law 98-04⁶⁹ referred to the Penal Code regarding the insulting and assaulting employees and state institutions. Under the Algerian Penal Code, assaulting State agents constitutes

a misdemeanor, punishable by imprisonment from two months to two years and a fine ranging from 1,000 DZD to 500,000 DZD, or by one of these penalties alone.⁷⁰

As for obstructing the work of technicians whose duties are related to the protection of archaeological monuments, the Algerian legislator stipulates: “The owner, lessee or any other bona fide occupant of a cultural real estate property classified or registered in the list of additional inventory, who objects to the visit of specially qualified art personnel to the property shall be punished with a fine between 1,000 DZD to 2,000 DZD. In the case of recidivism, the penalty is doubled. It is also applied to:

- Properties included in the classified cultural property protection zone;
- Properties included in the vicinity of the Preserved bottom⁷¹.

Based on the above, it is evident that the legislator was not successful in determining the appropriate penalties for certain criminal acts under the Cultural Heritage Protection Law. Despite the irreparable damage caused to the national heritage, the punishment for those involved in the restoration, addition, reconstruction, or even demolition of a cultural property proposed for classification or already classified is limited to a fine ranging from 2,000 DZD to 10,000 DZD⁷².

From another perspective, Article 98 of the same law punishes the occupant or user of classified cultural real estate property who disregards the easements specified in accordance with the prior license issued by the Minister in charge of Culture with a fine ranging from 2,000 DZD to 10,000 DZD. This is despite the fact that such occupation or use could negatively affect the safety of the cultural property. Moreover, the benefit derived from such unauthorized use often far exceeds the imposed fine, rendering the penalty insufficient⁷³.

Conclusion:

Cultural heritage represents, for countries and peoples, a permanent stock of experiences, expertise and positions which equip humanity to face present challenges and envision the future. It is also considered a key element of natural and human capacity, rooted deeply in history. The heritage of any nation is not just an accumulation of knowledge and experiences, but a reflection of the nation's identity across its past, present, and future. It embodies a nation's cultural, material, and moral attributes, providing the strength and momentum needed to build a positive present and shape the future. It also serves to preserve what remains of what was looted during occupations and confront organized crimes targeting cultural real estate.

Therefore, criminal protection of our real estate cultural heritage must be enforced by criminalizing acts of infringement that could cause harm. This protection is of great importance. In this regard, the Algerian legislator granted legal protection to real estate cultural heritage by specifying the various crimes affecting this heritage by defining specific offenses and prescribing proportionate penalties through Law N° 98-04, which addresses the protection of cultural heritage.

In this study, we reached a set of results and recommendations, which are presented as follows:

First: Results

- There is a lack of state funding for restoration and maintenance projects related to cultural real estate properties, and alternative sources of funding have not been explored.
- Algerian legislation on real estate cultural property is outdated and fails to meet contemporary needs.
- The organizational structure overseeing the real estate heritage sector is administrative and lacks the technological innovation required for the sector's advancement.

- Acts affecting real estate cultural heritage should be criminalized, with penalties established in accordance with the Algerian penal code, the cultural heritage protection law, and other relevant laws.
- The penalties under Law 98-04 for crimes against real estate cultural heritage are weak, as the Algerian legislator has not strengthened them, which inadvertently encourages the commission and escalation of such crimes.
- There is a disconnect between the severity of crimes affecting real estate cultural heritage and the penalties prescribed for them.
- Algerian law on cultural heritage has not been updated in 26 years, making it insufficient to ensure comprehensive protection of cultural heritage.

Second: Recommendations

- Encourage the community to embrace the protection and preservation of real cultural heritage, while enhancing its social and humanitarian value.
- Modernize the legal framework governing real estate cultural heritage crimes to align with current local and international developments. This includes amending Law 98-04, increasing penalties for such crimes, and raising the financial penalties to reflect the severity of the offenses.
- Develop a charter or law dedicated to the preservation of architectural heritage.
- Value scientific and technical studies and research related to real estate cultural heritage.
- Provide training and qualification programs for personnel involved in the protection of cultural property.
- Appoint qualified technicians as judicial police officers to inspect real estate cultural property and related crimes, enabling them to perform their duties more effectively.
- Involve all stakeholders—including institutions, associations, and civil society—in promoting the culture of preserving and protecting national real estate cultural heritage.
- Strengthen cooperation efforts, both domestically and internationally, by incorporating collaboration into cultural heritage protection laws, facilitating the exchange of information, techniques, and research, and drawing on the expertise of specialists.
- Establish security teams specialized in the protection of cultural heritage.
- Promote scientific cooperation in the field of real estate cultural heritage protection by organizing regular forums focused on this subject.

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3- Theses:

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- Saïdi Karim, "Legal Protection of Algerian Cultural Heritage," Master's thesis in Public Law, Faculty of Law and Political Science, Mohamed Lamine Debaghine University, Setif, Algeria, 2015-2016.

4- Legal Texts:

*** International Conventions:**

- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed on 14/05/1954.
- Convention on the Protection of Cultural and Natural Heritage adopted by the General Conference of UNESCO during its seventeenth session in Paris, November 1972.

*** National Legislation:**

- Law 98-04, dated 15 June 1998, regarding the protection of cultural heritage, Official Gazette number 44, issued on 17 June 1998.
- Law 03-01, dated 17 February 2003, concerning the sustainable development of tourism, Official Gazette number 11, issued on 19 February 2003.
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- Order 67-281, dated 20 December 1967, relating to excavations and the protection of historical and natural sites and monuments, Official Gazette number 07, issued on 23 January 1968.
- Order 75-58, dated 26 September 1975, containing the Civil Law, Official Gazette number 78, issued on 30 September 1975, amended and supplemented.
- Executive Decree 07-222, dated 14 July 2007, specifying the procedures for art professionals to inspect and investigate classified movable cultural properties, Official Gazette number 46, issued on 15 July 2007.
- Executive Decree 08-383, dated 26 November 2008, includes the special basic law for employees belonging to the cultural sector, Official Gazette number 68, issued on 03 December 2008.

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¹ Surah Al-Fajr, verse 19

² Ibn Manzur, Abu al-Fadl Jamal al-Din Mohammed ibn Mukarram, Lisan al-Arab, Volume 2, 6th edition, Dar Sader, Lebanon, 1997, page 200.

³ Osama Hassanein Obeid, Criminal Protection of Archaeological Cultural Heritage, 1st Edition, Dar Al-Nahda Al-Arabiya, Egypt, 2008, p. 10.

⁴ Walid Mohamed Rashad Ibrahim, Protection of Antiquities and Elements of Cultural Heritage in Private International Law, Dar Al-Nahda Al-Arabiya, Egypt, 2005, p. 6.

⁵ Moussa Boudhane, The Legal System for the Protection of National Cultural Heritage, Dar Al-Huda, Algeria, 2013, p. 18.

⁶ Ahmed Si Ali, Protection of Civilian Objects in International Humanitarian Law, 1st edition, Dar Al-Academy, Algeria, 2011, p. 86.

⁷ Moussa Boudhane, Ibid, p. 19.

⁸ The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed on 14/05/1954.

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¹⁰ Nawel Ahmed Besj, "International Humanitarian Law and the Protection of Civilians and Civilian Objects in Times of Armed Conflicts," 1st ed., Al-Halabi Legal Publications, Lebanon, 2010, p. 143.

¹¹ Walid Mohamed Rashad Ibrahim, ibid., p. 27.

¹² Convention on the Protection of Cultural and Natural Heritage adopted by the General Conference of UNESCO at its seventeenth session in Paris, November 1972.

¹³ Ali Khalil Ismail Al-Hadithi, *Protection of Cultural Properties in International Law*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 1999, p. 244.

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¹⁶ See paragraph A of Article 2 of Law 98-04.

¹⁷ See paragraph B of Article 2 of Law 98-04 mentioned above.

¹⁸ Mustafa Ahmed Fouad, Ibrahim Mohamed El-Anani, Narimane Abdelkader, "International Humanitarian Law and the Protection of Civilians, Heritage, and the Environment," Vol. 2, 1st edition, Aleppo Legal Publications, Lebanon, 2010, p. 64.

¹⁹ Ali Khalil Ismail Al-Hadithi, cited reference, p. 17.

²⁰ Article 17 of Law 98-04, as mentioned earlier, defines historical monuments

²¹ Hafida Mestaoui, in her master's thesis titled "International Protection of Cultural Properties in Armed Conflict," in the field of Public International Law, from the Faculty of Law and Political Science at Mohammed Khider University, Biskra, Algeria, in 2011, discussed the topic in detail on page 28.

²² Consult Article 18 of Law 98-04, as mentioned earlier.

²³ Hafida Mestaoui, Ibid, page 28.

²⁴ The archaeological sites are defined by Article 28 of the same law

²⁵ Hafida Mestaoui, the previous reference, page 29.

²⁶ Refer to Article 29 of the same law.

²⁷ Article 41 of the same law

²⁸ Douar Djamila, "Administrative Protection of Cultural Heritage in Algerian Legislation," Ma'arif Journal, Volume 09, Issue 17, Akli Mohand Oulhadj University, Bouira, Algeria, 2014, p. 249.

²⁹ Law 03-01, dated February 17, 2003, concerning sustainable tourism development, Official Gazette No. 11, issued on February 19, 2003.

³⁰ See Articles 14, 17, 18, and 19 of Executive Decree 08-383, dated November 26, 2008, containing the basic law for employees belonging to the cultural sector, Official Gazette No. 68, issued on December 3, 2008.

³¹ See Article 45 of the same executive decree.

³² See Article 105 of Law 98-04.

³³ See Article 93 of the same law.

³⁴ See Article 91 of the same law.

³⁵ This is in accordance with Articles 94 to 105 of the aforementioned law.

³⁶ Mansour Rahmani, "Concise of Public Criminal Law," Dar Al-Alam for Publishing, Annaba, Algeria, 2006, p. 93.

³⁷ Khaled Mohammed Al-Harkane, "Systematic Protection of Antiquities in the Kingdom of Saudi Arabia and the Arab Republic of Egypt - A Comparative Foundational Study," Master's Thesis, College of Graduate Studies, Department of Criminal Justice, Naif Arab University for Security Sciences, Riyadh, 2010, pp. 87-88.

³⁸ Mansour Rahmani, previous reference, p. 107.

³⁹ Khaled Muhammad Al-Harkan, previous reference, p. 89.

⁴⁰ Article 94 of Law 98-04, mentioned above.

⁴¹ See Article 77 of the same law.

⁴² Karim Saidi, "Legal Protection of Algerian Cultural Heritage," Master's Thesis in Public Law, Faculty of Law and Political Science, Mohammed Lamine Debaghine University, Setif, Algeria, 2015-2016, p. 167.

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- ⁴⁴ Ahsan Bouskia, "Concise Criminal Law," Volume 1, Dar Huma, Algeria, 2008, p. 142.
- ⁴⁵ See Article 94 of the Cultural Heritage Protection Law.
- ⁴⁶ See Article 50 of the same law.
- ⁴⁷ Article 351 of Decree 75-58 dated September 26, 1975, which includes the Civil Code, Official Gazette No. 78, issued on September 30, 1975, amended and supplemented.
- ⁴⁸ Article 61 of the Cultural Heritage Protection Law.
- ⁴⁹ Article 64 of the same law.
- ⁵⁰ Ismat Adli, *Tourist and Antiquities Security under Tourism Laws*, Dar Al-Jamiiyah Al-Jadidah, Egypt, 2008, p. 235.
- ⁵¹ See the text of Article 95 of Law 98-04, mentioned above.
- ⁵² According to Article 96 thereof.
- ⁵³ Guellal Faiza, "Forms of Crimes against Cultural Heritage," *Journal of Social and Human Sciences*, Volume 21, Number 2, Batna 1 University, Algeria, 2020, p. 326.
- ⁵⁴ Fekiri Amal, "Criminalizing Encroachments on Cultural Real Estate between the Cultural Heritage Protection Law and the Penal Code," *Journal of Humanities*, Volume 21, Number 1, Faculty of Law, University of Blida 02, Algeria, 2021, p. 986.
- ⁵⁵ See Article 96 of the Cultural Heritage Protection Law.
- ⁵⁶ See Article 97 of the same law.
- ⁵⁷ Article 25 of the same law. It is worth noting in this regard that the text of this article refers to the occupation or use of the monument, without mentioning archaeological sites, especially since most of them are located in agricultural or pastoral lands.
- ⁵⁸ Article 98 stipulates that: "Shall be punished... for violations consisting of occupying a classified cultural real estate or using it in a manner that does not conform to the specific agreements mentioned in the prior authorization issued by the Minister of Culture."
- ⁵⁹ See the same article mentioned above.
- ⁶⁰ Article 26 of Law 98-04, mentioned above.
- ⁶¹ See Article 23 of the same law
- ⁶² See Article 24 of Law 98-04, mentioned above.
- ⁶³ See Article 99 of the same law.
- ⁶⁴ See Article 27.
- ⁶⁵ Article 100.
- ⁶⁶ See Article 104.
- ⁶⁷ Article 104 mentioned above.
- ⁶⁸ See Article 4 of Executive Decree No. 07-222, dated July 14, 2007, specifying the methods for arts professionals to exercise the right to inspect and investigate classified movable cultural property, Article No. 46, issued on July 15, 2007.
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