

Journal of legal and social studies

Issn: 2507-7333

Eissn: 2676-1742

**Issuance of a Basic Law for Artists: Towards Enshrining Real Protection for Artists in Algeria**

**Dr. Flih Kamal<sup>1\*</sup>, Dr. Baouche Dalila<sup>2</sup>**

<sup>1</sup>Constantine1- Freres Mentouri University (Algeria), kamal.flih@umc.edu.dz

<sup>2</sup>Mila Univrsity Center(Algeria), d.baouche@centre-univ-mila.dz

|                              |                                   |                                 |
|------------------------------|-----------------------------------|---------------------------------|
| Date of send: 01 / 03 / 2024 | date of acceptance: 01 / 05 /2024 | Date of Publication: 01/06/2024 |
|------------------------------|-----------------------------------|---------------------------------|

**\*Corresponding author**

**Abstract:**

The promulgation of Presidential Decree No. 23-376 marks a pivotal advancement in the Algerian legislative framework, significantly elevating the cultural, social, and economic stature of artists. This legislative action has established a robust mechanism to ensure artists are accorded the respect and status they rightfully deserve, thereby fostering the proliferation of artistic creativity throughout society, with a notable emphasis on the youth demographic.

Embedded within this decree, which outlines the basic law for artists, is a comprehensive acknowledgment by the Algerian legislator of a spectrum of rights and obligations designed to bolster artistic endeavors and secure a social safety net for artists. This legislative milestone is heralded as a cultural triumph and a landmark event in the chronicles of the Algerian cultural milieu post-independence.

**Keywords:** Basic Law; Artist; Artistic Professions; Artistic Contract.

**Introduction:**

Art, an endeavor as timeless as humanity itself, traces its origins back to the dawn of human existence on this planet. Our ancestors initiated the legacy of artistry, adorning cave walls with paintings and carvings long before the dawn of written communication. The genesis of art, its early development, and the concurrent emergence of language remain subjects shrouded in mystery, eluding definitive understanding by historians and scientists alike.

In contemporary societies, art and artists are esteemed as hallmarks of civilization and human sophistication. Nations across the globe have instituted a variety of legislative measures to regulate the realm of artistic professions. These laws span a wide array of considerations, including but not limited to intellectual property rights, social welfare frameworks, and a detailed codification of the rights and responsibilities incumbent upon artists.

In a stride consistent with international counterparts, the Algerian legislative authority, via the enactment of the Basic Law for Artists in 2023, has introduced an array of strategic measures and protocols aimed at nurturing artistic activities and safeguarding artists from multifaceted vulnerabilities. This legislative initiative represents a significant contribution to the enrichment of Algeria's cultural landscape and stands out as a pivotal occurrence in the domain of artistic expression.

This prompts the inquiry: Has the Algerian legislator achieved its intended objective through the enactment of the Basic Law for Artists? In pursuit of an answer, this study employs both analytical and descriptive methodologies to scrutinize the decree's text and provisions related to the Basic Law for Artists. This examination aims to delineate the various artistic professions encapsulated within the law's scope, identifying any potential gaps or deficiencies, proposing remedial solutions, and accentuating the law's strengths through an exploration of its positive attributes.

The significance of this study lies in its exploration of the Algerian legislator's valuation of the artist by enacting a law specifically tailored to their context, thereby establishing a precedent in Algerian legislative history. This act reflects the legislator's commitment—and, by extension, that of the Algerian state—to the comprehensive welfare of artists, recognizing their role as cultural emissaries of any nation to the world.

Accordingly, this discourse will navigate through the following thematic divisions:

## **THE FIRST TOPIC: THE CONCEPTUAL FRAMEWORK FOR LEGISLATION PROTECTING ARTISTS' RIGHTS**

The advancement of technology, accompanied by a massive digital revolution, has had significant impacts on artists across various genres and the type of art they present to the public. At times, this progress has contributed to enhancing the image and status of artists among the audience, especially with the proliferation of the internet and various electronic media.

On the other hand, the same technological advancement has sometimes resulted in the erosion of artists' moral and material rights, due to the widespread phenomena of theft, piracy<sup>1</sup>, and other illicit practices. These practices have, on occasion, led to significant losses for individuals working in the artistic domain.

### **First Section: The Concept of the Artist and Related Professions:**

To shed proper light on the topic of protecting artists' rights, it is essential to understand some concepts related to the artist, such as who is considered an artist according to Presidential Decree No. 23-376, and what professions are associated with this designation.

#### **First Subsection: The Concept of the Artist:**

According to Article 3 of Presidential Decree No. 23-376<sup>2</sup>, an artist is defined as any natural person engaging in artistic activity, whether this activity is creative or involves participation in artistic, literary, technical, or administrative works in the creation or recreation of art, or through participation in its performance or execution, regardless of the form of this creativity and the medium through which it is broadcast or published.

It is noteworthy that the designation of an artist is limited to natural persons, a decision wisely made by the Algerian legislator, excluding the possibility of granting this status to legal entities or robots, even if they produce some form of artistic works using artificial intelligence technologies. Ultimately, such creations are considered technological innovations made by humans.

Furthermore, Article 3 of the same decree does not limit the term "artist" to those involved in original artistic or literary works but also extends this status to individuals who recreate an artistic work and distribute it through modern media, provided that they contribute to the development of the cultural or artistic field.

Additionally, Article 3 of the same decree requires anyone who acquires the status of an artist to possess a contract to practice their artistic activity. This contract must take one of the following forms:

- The artist practices their artistic activity under an indefinite-term artistic contract, naturally linking them to a specific entity or institution. They are obligated to perform specific artistic works as per this contract, such as a painter contracted by a gallery to create paintings for the gallery in exchange for a financial income from displaying those paintings. In this case, the financial compensation is considered the artist's primary income for their artistic activity.

- The artist engages in artistic activity under an artistic contract with a specific entity or institution on an intermittent basis, even if this activity is their primary source of livelihood.

- The artist carries out artistic activity on an intermittent basis for a specified duration, under an artistic contract, where this activity is a secondary job alongside their main activity, hence not the primary source of their livelihood.

### **Second Subsection: Professions Supporting the Artist's Profession:**

Article 3 of Decree No. 23-376 specifies some professions that fall under the Basic Law for Artists, not because they are artistic professions per se, but because they are closely associated and integral to the artist's profession, making it impossible for the artist to perform their artistic activity without their support. Article 3 outlines these professions as follows:

- **Technical workers in artistic works:** Defined in Article 3 as individuals who assist the artist in performing their artistic activity technically, whether directly or indirectly.

- **Administrative workers in artistic works:** In the context of Article 3 of the mentioned decree, these individuals assist the artist in performing their artistic activity administratively, whether directly or indirectly.

### **Third Subsection: Some Terminologies Related to Artistic Professions:**

Article 3 of the decree concerning the Basic Law for Artists introduces some commonly used terms in the artistic community, defining them to prevent confusion with similar terms. These terminologies include:

❖ **Artistic activity:** As defined in Article 3 of the decree, it encompasses any work involving artistic creativity or the presentation of a literary work in any literary or artistic field, accessible to the public regardless of the presentation method and the media of dissemination, whether through television, radio, the internet, or any other means that achieve the intended purpose.

❖ **Artistic creativity:** According to Article 3 of the decree, this refers to any creative endeavor by a natural person across various fields of arts and literature. It's important to note that the article limits artistic creativity to new creations, meaning that presenting a work previously presented in the same manner does not constitute artistic creativity as understood in Article 3.

❖ **Artistic institution:** Refers to anyone engaging in artistic activity under an artistic contract for remuneration, whether a natural or legal person subject to Algerian law.

❖ **Self-employed entrepreneur<sup>3</sup>:** As defined in Article 3 of the decree, it involves any profit-making activity conducted individually by a natural person, related to cultural services according to the regulations and legislation in force in Algeria.

### **Second Section: Legislative Development of Laws Protecting the Artist:**

The evolution of legislations regulating the rights of artists, authors, and inventors has paralleled human progress throughout history, necessitated by the spread of artistic and literary works and the need for legislations to protect the rights of these works' owners. This has been reflected in several conventions that have strengthened the protection granted to them over their artistic works.

#### **First Subsection: The Statute of Anne <sup>4</sup>**

The Statute of Anne, enacted in Britain in 1710, is considered the first copyright law, laying the foundation for legislations protecting artists' rights through copyright. This law introduced, for the first time in history, the concept of the author as the owner of the right to publish their work and allowed the author to set specific conditions to protect their works.

The Statute of Anne established a copyright term of 14 years, which could be extended for a similar period. This law remained in effect until it was replaced by the Copyright Act of 1842.

## **Second Subsection: The Berne Convention for the Protection of Literary and Artistic Works, 1886**

The Berne Convention<sup>5</sup>, adopted in 1886 and ratified by about 175 countries, including Algeria, addresses the protection of literary and artistic works. The signatory states are committed to incorporating the provisions of this convention into their national legislations, allowing artists to control how their works are used and under what conditions. The convention is based on three fundamental principles:

- **First:** Works originating in one of the contracting states must be given the same protection granted to the nationals of that state.
- **Second:** The protection granted to artistic works should not be contingent upon any formalities.
- **Third:** The protection does not depend on the protection available in the country of origin of the work, also known as the principle of the independence of protection.

## **THE SECOND TOPIC: THE LEGAL SYSTEM FOR ARTISTS ACCORDING TO DECREE 23-376:**

The issuance of a basic law specifically for artists represents a significant qualitative leap in the legislative landscape of Algeria. This step contributes to enhancing the role of artists in society and is a precious gain for the Algerian cultural and artistic family. It aims to enshrine and regulate the profession in accordance with its specificities, contributing to its elevation and ensuring a respectable social, economic, and cultural status for artists.

### **First Section: The Rights and Duties Stipulated in Decree 23-376:**

Undoubtedly, when the Algerian legislator enacted the decree containing the basic law for artists, it aimed to enshrine a distinguished status for artists, considering them as mirrors and fronts of the cultural scene in the country. This objective can only be achieved through recognizing a set of rights that elevate and enhance their status both materially and morally, in addition to establishing some duties imposed by their professional and ethical obligations, which we will discuss as follows:

### **First Subsection: The Rights of the Artist According to Decree 23-376:**

The decree related to the basic law for artists includes a set of rights enshrined in its Article 4, aimed at providing legal protection to artists. This enables them to perform their artistic mission under the best conditions, and to fully engage in their activity without concerns or fears for their future and that of their family and children.

Article 4 of the decree lists about 11 rights that artists can enjoy without prejudice to the material and moral rights recognized by the legislation or regulatory system in force. We will try to highlight the most prominent rights that Presidential Decree No. 23-376 enshrines for artists in this paper.

### **Firstly- The Right to Obtain an Artist Card:**

This privilege is the first right stipulated in Article 4 of the decree mentioned above. Issuing a professional card for artists, similar to the professional journalist card or other professional cards, will enhance the artist's social and cultural status.

Especially if this card includes certain privileges for its holder - as stipulated in Article 17 of the decree - whether at the national level, benefiting from training courses at specialized institutions (Article 29), or through obtaining artistic contracts according to the ratios set in Articles 30 and 31 of the decree.

Or at the international level, where this card can help artists easily obtain visas, for example, or secure work contracts abroad among other privileges that can be gained through this card.

Article 17 also stipulates the issuance of the artist card to foreigners who meet the same conditions and are in a legal residency status and possess a legal contract according to the legislation and regulations in force.

Finally, Article 18 of the decree mentioned above states that the issuance of the artist card falls under the jurisdiction of the National Council for Arts, according to specified conditions and procedures.

### **Secondly- The Right to Social Protection and Retirement:**

Social protection is one of the most crucial needs for any person, let alone a worker or employee, as it guarantees social security and acts as a safety net for artists against life's difficulties. Therefore, the Algerian legislator recognized in Decree 23-376 the artist's right to social protection by stating it in Article 4, dedicating a specific section to it in the fourth part of the second chapter under the title "Social Protection for the Artist."

Thus, Articles 14 and 15 of the decree stipulate the necessity for artists to be covered by the social security system and benefit from all the payments and compensations it offers, such as medical compensations, sick leaves, the possibility of treatment abroad, and other benefits provided by membership in this system, according to the legislation in force in this area.

In the same context, Article 16 of the same decree introduces a mechanism to compensate artists in case they involuntarily stop practicing their artistic activity. This mechanism is to be implemented by the Ministry of Culture, where this article refers to the regulation expected to be issued soon for the application of this measure.

Regarding the artist's right to retirement, it is stipulated in Article 4 of the decree, allowing artists to access retirement benefits according to the prevailing legislation like other members of the social security body.

Article 4 of the mentioned decree also provides for artists to benefit from a supplementary insurance contract to cover the exceptional risks they may face while practicing their artistic activity.

### **Second Subsection: The Duties Stipulated in Decree 23-376:**

In exchange for the rights granted to the artist, as outlined in the basic law for artists, the same law specifies a set of obligations that the artist must adhere to. These obligations generally fall within the scope of professional and ethical duties. Article 6 of Decree No. 23-376 stipulates that the artist must commit to the following:

#### **Firstly- The Obligation of the Artist to Respect the Duties Specified in Their Artistic Contract:**

This duty is one of the primary obligations that the artist must adhere to. Upon signing their artistic contract, in exchange for their legally guaranteed rights, most importantly the right to receive appropriate compensation for the agreed work, the artist must fulfill the duties imposed on them by this contract. Any breach of these duties could expose the artist to legal proceedings or claims for compensation for potential damages caused by their failure to fulfill the obligations imposed by the contract.

In this context, the artist also has the obligation to inform the contracting party in advance about providing all favorable conditions for performing their artistic activity under the best circumstances. This includes the need for material and technical resources, such as equipment and specialized technicians, among other means, to perform their work to the fullest.

#### **Secondly- The Obligation to Pay Taxes and to Enroll in Social Security:**

In return for receiving financial compensation for their services, adhering to the tax system is one of the most important duties that the artist must fulfill, just like all taxpayers. Undoubtedly, declaring the true income earned from their artistic activity to the tax authorities is a sign of the artist's refined sense of citizenship, which enhances the public treasury's revenues and contributes to ensuring a decent life for the country's citizens as a whole.

Furthermore, according to Article 6 of the aforementioned decree, the artist has the duty to declare and enroll in the social security services by regularly paying contributions to the services of the fund. This entitles them to the compensations and payments due in case of illness or disability, according to the legislation in force in this area.

**Thirdly- The Obligation to Respect Public Order and Morals:**

The duty of the artist to respect public order and general morals is a moral and ethical obligation that the artist must carefully uphold<sup>6</sup>, as they carry out a noble artistic mission. Given the artist's influential role in society, especially among children and youth who are more influenced by what is broadcast through social media and other modern means of publication, it is imperative for the artist to exercise the utmost caution and care when presenting their artistic activity, adhering to public order and good manners under all circumstances and conditions.

**Second Section: Specific Provisions Stipulated in Decree 23-376:**

In its endeavor to cover all aspects related to the artist, the basic law includes some special provisions that apply to certain categories described as artists, which we will present as follows:

**First Subsection: Provisions Related to Minors and Individuals with Special Needs:**

The Algerian legislator, within a comprehensive vision for everything related to the artist, has dedicated a section specifically for children and individuals with special needs who may engage in activities related to artistic professions. Article 7 of Decree 23-376 requires prior written consent from the child's guardian for children under the age of 16 engaging in artistic activities for a specified period, in addition to a written permit granted by the head of the educational or training institution where the child is studying or receiving training.

This is part of the Algerian legislator's effort to create opportunities for talented children to hone their skills in literary and artistic fields. They are considered an inexhaustible resource in this regard, provided that they engage in their artistic activities under the supervision of their guardians and are not assigned roles or activities that could cause them physical or emotional harm.

The legislator has set a maximum of 6 hours per week for any artistic activity performed by a child, with no more than two hours per day, and activities should be confined to daylight hours only, excluding nighttime.

Additionally, contracting entities with individuals with special needs engaged in artistic activities must adapt their working conditions to their disabilities, ensuring they are not exposed to any physical or psychological harm.

In case of any breach of the provisions specified in this section, Article 10 of the aforementioned decree allows the licensing authority to suspend the licensed activity upon notification of such breach by any of the entities mentioned in this article.

## **Second Subsection: Provisions Related to Foreign Artists**

Articles 11, 12, and 13 of Decree 23-376 allow foreign artists who meet the residency and employment procedures to engage in artistic activities on Algerian territory, benefiting from the same rights and subject to the same duties imposed on their Algerian counterparts.

In the same vein, Article 13 of the aforementioned decree allows foreigners who have fixed-term contracts for their artistic activities to practice without the requirement of legal residency, provided they fulfill the procedures specified in the legislation and regulations in force, particularly obtaining the necessary licenses from the competent authorities.

### **Conclusion:**

In the realm of this scholarly exploration, we have ventured into a pivotal discourse straddling both the legislative and cultural landscapes of Algeria. Our focal point has been the inaugural formulation and enactment of a foundational legal framework specifically tailored for artists by the Algerian legislative body. This landmark legislation encapsulates the multifaceted dimensions that envelop the artist's profession, manifesting the legislator's intent to meticulously orchestrate the artist's endeavors within a structured legal milieu. This ambitiously crafted framework is designed with the express purpose of fostering an environment that nurtures the artist's noble pursuit of their artistic mission, facilitating their endeavors to unfold under the most auspicious of conditions.

From all the aforementioned discussions, we have derived a set of findings, of which we highlight the following:

1. The Algerian legislator's recognition of the artist's esteemed status, through the first-time enactment of a presidential decree that includes the basic law for artists. This represents a significant milestone in the Algerian artist's journey, enhancing their cultural and artistic presence within society, securing their rights from all aspects, and outlining the obligations incumbent upon them in the course of their artistic activity.
2. The legislator's acknowledgment of the artist's right to obtain an artist card, enabling them to enjoy all the benefits guaranteed by legislation and regulations in this regard.
3. The inclusion of special provisions for children under the age of 16 and individuals with special needs who engage in artistic activities, underscoring the Algerian legislator's commitment to protecting these community segments from all potential risks they may face while engaging in any artistic activity.
4. The Algerian legislator's recognition of the artist's right to join the social security system and their entitlement to all the benefits provided by this

fund, in addition to the right to retirement upon reaching the legal age as per the legislation and regulations in force in this area.

As for the most important recommendations we have arrived at, they are as follows:

1. The artist law should specify the inclusion and enhancement of artistic professions' education within the school and university environment, to polish young talents and enhance awareness of the importance of art in promoting cultural action within the educational community.

2. It is necessary to establish a fund to support creative artists, young talents, and emerging ones, in order to create a comprehensive artistic movement within society, ensuring that culture and art are not exclusive to a certain segment over others.

3. There should be an expedited process for implementing the regulatory texts mentioned in this law, especially those related to the creation of a mechanism for compensating artists in the event they are forced to stop their artistic activity.

### **Bibliography List**

<sup>1</sup> In its 2005 report titled "The Persistence of Piracy and Its Effects on Creativity, Culture, and Sustainable Development," UNESCO stated that the piracy of goods related to intellectual property is a huge global problem that cannot be denied, and it has broad and negative impacts on cultural and artistic creativity. Available on the website: <https://unesdoc.unesco.org> , reviewed on January 27, 2024, at 22:48.

<sup>2</sup> Presidential Decree No. 23-376 dated 7 Rabi' al-Thani 1445, corresponding to October 22, 2023, containing the basic law for the artist, Official Gazette No. 70 dated November 5, 2023, p. 21.

<sup>3</sup> Regarding this matter, Law No. 22-23 dated 24 Jumada al-Ula 1444, corresponding to December 18, 2022, contains the basic law for the self-employed entrepreneur, Official Gazette No. 85 dated December 19, 2022, p. 5.

<sup>4</sup> H. Tomàs Gomez-Arostegui, "The Untold Story of The First Copyright Suit Under the Statute of Anne In 1710," Berkeley Technology Journal, Vol.25, No.3, University of California, Berkeley, School of Law, 2010, pp. 1247-1350.

<sup>5</sup> Berne Convention for the Protection of Literary and Artistic Works, Paris Act dated July 24, 1971, and amended on September 28, 1979, see the website: <https://www.wipo.int/treaties/en/ip/berne>, reviewed on February 7, 2024, at 11:16.

<sup>6</sup> Ait Chaalal Lyes, "Limits of Public Order and General Morals in the Field of Intellectual Property," PhD in Law Thesis, Faculty of Law, Tizi Ouzou University, Algeria, 2023, p. 67.