



LEGAL PROTECTION OF MANUSCRIPT HERITAGE UNDER LAW No. 98-04 ON THE PROTECTION OF CULTURAL HERITAGE

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Abstract:

The protection of cultural heritage, manuscripts, and historical documents has long attracted the attention of scholars from diverse academic and disciplinary backgrounds. Manuscripts and historical documents, as integral components of cultural heritage, constitute the collective memory of nations and serve as a fundamental repository of knowledge and intellectual production. In recognition of their significance, manuscript heritage in particular has received considerable attention at the international level, as reflected in various international legal instruments, including the Second Hague Convention of 1899, the Fourth Hague Convention of 1907, and other conventions adopted in this field. At the domestic level, Algerian legislation has likewise demonstrated a growing commitment in the preservation of heritage, including real estate, manuscripts, and related cultural assets. Decree No. 67-281 on discoveries and the safeguarding of historical and natural sites represented the first legislative framework in this area. This decree was subsequently repealed and replaced by Law No. 98-04 which forms the focus of the present study. This article examines the legal mechanisms established under Law No. 98-04 for the preservation of manuscript heritage, assessing their scope and effectiveness within the Algerian legal system.

Keywords:Cultural Heritage Protection; Manuscript Heritage; Algerian Law No. 98-04; Legal Framework; Heritage Preservation.

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Introduction:

The subject of manuscripts is regarded as one of the domains of cultural heritage that has constituted, and continues to constitute, a major focus of scholarly study and considerable interest at both the international and national levels. This interest is reflected in the identification of various means for the protection of manuscript heritage, owing to its great importance. Indeed, manuscripts represent the memory of nations and their intellectual reservoir. At the international level, numerous efforts have emerged in the field of manuscript protection through the adoption of several international conventions, including, inter alia, the Second Hague Convention of 1899 and the Fourth Hague Convention of 1907, in addition to the Ninth Hague Convention, which contains certain provisions relating to the preservation of cultural assets during warfare ⁽¹⁾.

At the domestic (national) level, several legislative and regulatory texts have been enacted, providing for various means and mechanisms aimed at protecting and preserving manuscripts in Algeria, as well as limiting neglect and deterioration.

Law No. 98-04 (2) is considered the most significant legislative text in the field of safeguarding patrimony in Algeria. From this perspective, we have chosen the title of our paper as: Legal Framework for the Preservation of Manuscripts in Algeria. It should be noted that one of the main reasons that motivated us to examine the legal protection of manuscripts is the scarcity of legal studies addressing this subject in Algeria.

This research seeks to address the following problematic:

- What are the legal means for protecting manuscripts under Algerian law?
- And to what extent have these mechanisms succeeded in ensuring effective manuscript protection?

In order to answer this problem, our study is divided into two main sections.



THE CONCEPT OF CULTURAL HERITAGE

According to the Algerian legislator, cultural heritage includes all immovable cultural assets, and movable property located on and within the land of national public property, whether owned by natural or legal persons governed by private law. It also includes property located in the underground layers of inland and national territorial waters, inherited from previous generations from the prehistoric era to the present day⁽³⁾.

As for manuscript heritage, it refers to works written by hand and encompasses all scholarly works and compositions in the various fields of knowledge authored by scholars, whether produced during the authors' lifetimes or discovered after their death. This term emerged in modern usage following the spread of printing, whereby written works came to be divided into two categories: those identified as printed works and those identified as manuscripts. Thus, works written by hand and remaining in that form are considered manuscripts, whereas those that were printed and published are regarded as printed works⁽⁴⁾.

In this regard, manuscript heritage is considered the most precious and extensive heritage at the global level. It constitutes a fundamental part of our collective memory, standing between original scientific contributions from which we benefit in the present and from which we draw inspiration as we look toward the future⁽⁵⁾.

CLASSIFICATION OF CULTURAL PROPERTY IN ALGERIA

This is addressed through an examination of the legal classification of cultural property under Law No. 98-04, which may be summarized as follows⁽⁶⁾:

- a. Immovable cultural property
- b. Movable cultural property
- c. Intangible cultural property



IMMOVABLE CULTURAL PROPERTY

Immovable cultural property includes, in particular, the following categories
:(7)

- a. Historical monuments
- b. Archaeological sites
- c. Urban or rural ensembles

HISTORICAL MONUMENTS

Historical monuments are any architectural or engineering structure, or group of structures, serving as evidence of a particular civilization, a significant stage of progress, or an era in history. Monuments encompass large structures, paintings, engravings, ornamental art, Arabic calligraphy, and buildings or monumental complexes of a religious, military, civil, agricultural, or industrial nature. They also constitute prehistoric constructions, funeral monuments or burial sites, caves and caverns, rock paintings and engravings, memorials, and other historical pieces.(8)

ARCHAEOLOGICAL SITES

Archaeological sites are defined as built or unbuilt areas devoid of any active function that bear witness to human activity or to human interaction with nature , including the subsoil connected thereto, and which possess historical, archaeological, religious, artistic, scientific, ethnological, or anthropological value. This category includes, in particular, archaeological sites, including archaeological reserves and cultural parks.(9)



URBAN OR RURAL ENSEMBLES

These are established in the form of safeguarded sectors, whether urban or rural, such as kasbahs, towns, ksour, villages, and traditional residential complexes characterized by the predominance of their residential function. Their importance derives from their architectural and aesthetic coherence and unity, conferring upon them historical, architectural, artistic, or traditional values that justify their conservation, maintenance, rehabilitation, and enhancement.

As regards the manner of their establishment, these safeguarded sectors are created and their boundaries defined by decree, adopted based on a joint report submitted by the ministers responsible for culture, the interior, local authorities, the environment, urban planning, and architecture. They may be proposed by local authorities and civil society organizations to the minister responsible for culture and are established following consultation with the National Commission for Cultural Property.(10)

MOVABLE CULTURAL PROPERTY

Movable cultural property includes, in particular, the following categories(11)

- a.Products of archaeological excavations and research conducted on land and underwater
- b. Antiquities like tools, ceramic artifacts, inscriptions, coins, seals, jewelry, traditional clothing, arms, and burial remains
- c.Components derived from the dismantling of historical monuments
- d. Cultural artifacts pertaining to religion and the historical evolution of science, technology, social-economic, and political development

Cultural property of artistic value, including:



- Oil paintings and drawings entirely executed by hand on any medium and made of any substance
- Original drawings, posters, and photographs regarded as means of original creative expression
- Original artistic assemblages and installations made of all materials, such as sculptural works, engravings in all materials, and objects of applied art made of materials such as glass, ceramics, metal, wood, etc.
- Manuscripts, commercially produced items, books, papers, and publications of significant relevance
- Medals and coins, as well as postage stamps
- Archival documents, including text recordings, maps, and other cartographic materials, photographic images, cinematographic films, audio recordings, and machine-readable documents.

INTANGIBLE CULTURAL PROPERTY

Intangible cultural property is defined as a set of knowledge, social representations, know-how, skills, competencies, or techniques rooted in tradition across various fields of cultural heritage. These elements represent genuine indicators of attachment to cultural identity and are held by an individual or a group of individuals.

This category pertains specifically to the following domains: ancient musicology, traditional and popular songs, chants and melodies, theater, dance arts, rhythmic movement, religious celebrations, culinary arts, historical narratives, wisdom sayings, myths, riddles, proverbs, aphorisms, and sermons.(12)



LEGAL MEANS FOR THE PROTECTION OF MANUSCRIPTS

Law No. 98-04 relating to the conservation of cultural heritage provides a set of mechanisms aimed at safeguarding manuscripts and cultural heritage in general. These mechanisms include, first, classification and registration procedures, and second, sanctions as a deterrent measure for the protection of manuscripts.

CLASSIFICATION AND REGISTRATION PROCEDURES

In this regard, movable cultural property of significance from a historical, artistic, archaeological, scientific, religious, or technical perspective, constituting a cultural wealth of the nation, may be proposed for classification or registration in the supplementary inventory list by a decision of the minister responsible for culture, following consultation with the National Commission for Cultural Property. Such action may be launched by the minister or by any interested party. The *Wali* may also register moveable cultural property in the supplementary inventory list after consultation with the Cultural Property Commission of the province if it has historical, artistic, or cultural value.

The decision to register a movable cultural property in the supplementary inventory list shall be notified to the public or private owner in possession of the concerned cultural property, either by the minister of culture or by the *Wali*, depending on whether the value of the cultural property is national or local. Registration of any movable cultural property in the supplementary inventory list gives rise to all the effects of classification for a period of ten (10) years. These effects shall cease if the movable cultural property is not formally classified upon the expiry of this period.(13)

It should be noted that, pursuant to Article 53 of Law No. 98-04, movable cultural properties classified by decision of the minister responsible for culture are published in the Official Gazette. The classification decision must specify the nature of the protected movable cultural property, its state of conservation, its origin, its place of deposit, and the identity and address of its owner, acquirer, or holder, as well as any other information that may assist in identifying the



concerned cultural property. The minister responsible for culture shall notify the classification decision to the public or private owner.

The law further obliges the good-faith holder of a classified movable cultural property, as well as its owner, beneficiary, or trustee who retains the right of use, to ensure its protection, preservation, maintenance, and safeguarding. Any breach of the obligations associated with the use of a classified movable cultural property results, by operation of law, in the withdrawal of the right of use. In this regard, the minister responsible for culture may compel compliance by all available legal means.(14)

Pursuant to Article 57 of Law No. 98-04, the protection of manuscripts must be carried out by qualified professionals specialized in this field, including inspection measures aimed at ensuring their conservation and preservation.

Furthermore, the export of protected movable cultural property from the national territory is prohibited .

However, paragraph two of Article 62 of Law No. 98-04 provides an exception, whereby any protected cultural property, namely manuscripts, may be temporarily exported for the purposes of cultural or scientific exchange or participation in research within an international framework.

In this context, it is necessary to refer to the bodies entrusted with the protection of cultural heritage and manuscripts, which are divided into national bodies and local bodies. At the national level, a “National Commission for Cultural Property” is established under the authority of the minister responsible for culture. This commission is tasked with the following:(15)

- a. Providing opinions on all matters relating to the application of this law referred to by the minister responsible for culture‘
- b. Deliberating on proposals concerning the protection of movable and immovable cultural property, as well as on the establishment of safeguarded sectors for inhabited urban or rural property ensembles of historical or artistic significance.



At the local level, a cultural property commission is established in each wilaya, known as the “Wilaya Commission for Cultural Property.” This commission is responsible for examining requests for classification and the creation of safeguarded sectors, as well as for registering cultural property in the cultural inventory list and proposing such registration to the National Commission for Cultural Property. It also issues opinions on the registration of cultural property of significant local value in the supplementary inventory list for the concerned wilaya.(16)

SANCTIONS AS A DETERRENT MEASURE FOR THE PROTECTION OF MANUSCRIPTS

By reference to the provisions of Law No. 98-04, particularly Articles 91 to 105, it becomes clear that the legislator has provided for a set of sanctions against anyone who deliberately harms manuscript cultural heritage. These sanctions may be summarized as follows:(17)

a. Any person who violates the provisions relating to the sale or concealment of classified cultural property or cultural property registered in the supplementary inventory list, namely manuscripts, or cultural property resulting from their fragmentation or dismemberment, shall be punished by imprisonment for a term ranging from two (2) to five (5) years and by a fine ranging from 100,000 DZD to 200,000 DZD, or by one of these two penalties only, without prejudice to any compensation for damages and confiscation measures.

b. Any person who intentionally destroys or damages manuscript heritage, or any movable or immovable cultural property proposed for classification, classified, or registered in the supplementary inventory list, shall be punished, without prejudice to compensation for damages, by imprisonment for a term ranging from two (2) to five (5) years and by a fine ranging from 20,000 DZD to 200,000 DZD. This penalty also applies to any person who intentionally damages objects discovered during archaeological research.

c. Any act of disposal carried out without prior authorization in respect of classified immovable or movable cultural property, or cultural property



registered in the supplementary inventory list, shall result in the annulment of the disposal contract, without prejudice to compensation for damages.

d. Any person who illegally exports a movable cultural property, namely manuscripts, whether classified or unclassified, registered or unregistered in the supplementary inventory list, shall be subject to a fine ranging from 200,000 DZD to 500,000 DZD and imprisonment for a term ranging from three (3) to five (5) years. In the event of repeat offending, the penalty shall be doubled. The same penalty shall apply to any person who illegally imports movable cultural property recognized for its historical, artistic, or archaeological value in its country of origin.

e. Any person who publishes, within the national territory or abroad, works of a scientific nature dealing with unpublished documents preserved in Algeria and relating to cultural heritage, without authorization from the minister responsible for culture, shall be punished by a fine ranging from 50,000 DZD to 100,000 DZD. In addition, the judicial authority may order the confiscation of the published work.

CONCLUSION

From the foregoing, it can be concluded that the Algerian legislator has accorded special protection to manuscripts and to cultural heritage in general. This is clearly reflected in Law No. 98-04, as well as in the executive decrees issued in this field, such as Executive Decree No. 02-322 of 5 October 2003 concerning the exercise of technical activities related to protected immovable cultural property, and Executive Decree No. 03-323 of 5 October 2003 relating to the procedures for preparing protection plans for archaeological sites, archaeological zones, and their affiliated protected areas, as well as their development.

With regard to the legal classification of cultural property in Algeria under Law No. 98-04, it includes immovable cultural property, movable cultural property, and intangible cultural property. Manuscript heritage falls within the category of movable cultural property.

In order to protect manuscript heritage, the Algerian legislator, through Law No. 98-04 relating to the protection of cultural heritage, has provided for a range of measures, notably classification and registration procedures, as well as various sanctions of differing severity.



As recommendations on this subject, we propose the following:

- Efforts should be made to develop electronic platforms that facilitate the exchange of expertise and experiences between Arab and Western countries in the field of manuscript protection, given that manuscripts embody the collective memory of nations across various domains.

- Scientific conferences and various academic events should be organized in the field of manuscripts, along with the establishment of training programs for personnel responsible for manuscript protection, with the aim of safeguarding manuscript heritage from deterioration and loss.

Footnotes

(1) Dr. Jassim Zour, paper entitled Protection of Cultural Property under International Humanitarian Law, Fifth International Conference, The Algerian Liberation War and International Humanitarian Law, 9–10 October 2011, Hassiba Ben Bouali University, Chlef, Algeria.

(2) Law No. 98-04 of 15 June 1998 relating to the protection of cultural heritage, Official Gazette No. 44, dated 17 June 1998.

(3) See Article 2 of Law No. 98-04.

(4) Prof. Bougaada El Bachir, The Algerian Manuscript and Its Role in Historical Writing, *Rifouf Journal*, a peer-reviewed academic periodical devoted to manuscript studies and the humanities, published by the Laboratory of Algerian Manuscripts in West Africa, University of Adrar, Algeria, Special Issue of the First International Conference on Manuscripts, 3–4 December 2013, Issue No. 3, p. 218.

(5) Dr. Mohamed Fathi Abdelhadi, *Manuscript Heritage*, Center for Documentation of Cultural and Natural Heritage, Alexandria, 2009, p. 7.

(6) See Article 3 of Law No. 98-04.



- (7) See Article 8 of Law No. 98-04.
- (8) See Article 17 of Law No. 98-04.
- (9) See Article 28 of Law No. 98-04.
- (10) Articles 41 and 42 of Law No. 98-04.
- (11) Article 50 of Law No. 98-04.
- (12) Article 67 of Law No. 98-04.
- (13) Article 51 of Law No. 98-04.
- (14) Article 56 of Law No. 98-04.
- (15) Article 79 of Law No. 98-04.
- (16) Article 80 of Law No. 98-04.
- (17) Articles 95, 96, 97, 102, and 103 of Law No. 98-04.

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