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## **Guarantees for the protection of cultural heritage in Algeria**

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### **Abstract:**

Since its independence, Algeria has enacted laws on the cultural sector to manage the infrastructure inherited from France and to regulate a sector that has become strategically important from an ideological point of view for a newly independent state. Algeria was one of the first countries to sign the World Heritage Convention in 1972, a major milestone in the protection of cultural heritage. The Algerian legislator has established general rules and created bodies and institutions to protect and promote the nation's cultural heritage in general and its cultural properties in particular, as they are important indicators of the country's history - past, present and future - and a strategic factor for economic development. In view of its national and international importance, it has therefore established legal and institutional guarantees for its protection.

**Keywords:** Cultural heritage -protection –development -expropriation - right of first refusal -national property.

### **introduction:**

Since independence, Algeria has begun to legislate on the cultural sector in order to manage the infrastructure inherited from France and to regulate a sector that had become ideologically strategic for a newly independent state. Decree No. 12-63 on the organisation of the Algerian theatre is one of the first texts to symbolically record these

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beginnings. It allowed the state to nationalise the opera house in Algiers - an act with multiple implications. It facilitated the creation of the National Theatre of Algeria and paved the way for the establishment of a socialist cultural policy characterised by domination. Since then, the state has continued to regulate the cultural sector to varying degrees, depending on the specifics of each phase.

Algeria was one of the first countries to sign the World Heritage Convention in 1972, which was a major milestone in the protection of cultural heritage. This was followed by another equally important step: the enactment of Law No. 04/98, which mandated the protection of the national cultural heritage and repealed the provisions of Decree No. 281-67 on the study and conservation of historical and natural sites and monuments, which had been in force for 37 years, with the exception of natural sites, which remained subject to environmental protection laws.

The Algerian legislator has codified general rules for the protection and development of cultural heritage for the nation as a whole, and specifically for cultural heritage. This includes all cultural property, both movable and immovable, located on or within the national territory and belonging to natural or legal persons in the private sector, as well as those found in the subsoil of internal and territorial waters, inherited from various civilisations from prehistoric times to the present day.

A revision of the Cultural Heritage Law 98/04 is currently being prepared, with the main aim of introducing harsher penalties for violations of cultural heritage and the smuggling of antiquities. The central question of the study is therefore

**To what extent has the Algerian legislator contributed to establishing the necessary mechanisms to guarantee the legal protection and development of cultural heritage?**

### **Methodology of the study**

In order to analyse the problem of the study, we will adopt an analytical and inductive approach by studying and analysing the legislative and regulatory texts, as well as all the applicable regulations in the field of protection and development of cultural heritage. We will also use a descriptive method to present the heritage and history of Algeria,

describing its cultural heritage properties as they exist in archaeological and heritage sites. In addition, we will refer to some aspects of the historical method by outlining the chronological sequence of the emergence of protection measures and the various guarantees established by the legislator from independence to the present.

### **Objectives of the study**

The objectives of this study can be summarised as follows:

- To understand the legal and institutional means established by the Algerian legislator for the protection of cultural heritage.
- To identify the procedural guarantees established for the protection of private rights and the rights of the State with regard to cultural heritage through expropriation in the public interest or through the right of first refusal, governed by rules and conditions aimed at achieving common objectives (for both the State and private entities).

We will try to analyse the problem of the study through the following binary division:

**Section I: The legal and institutional framework for the protection and development of cultural heritage in Algeria.**

**Section II: The procedural framework for the protection and development of cultural heritage in Algeria.**

### **Section I: The legal and institutional framework for the protection and development of cultural heritage in Algeria**

The total destruction of cultural property as a result of the wars waged in the second half of the nineteenth century, coupled with the development of destructive weapons, necessitated serious consideration of the need to protect these properties, which constitute the material heritage of a people, both at the national and international level.

Archaeological properties are considered to be the historical memory of nations, which requires the creation of a legal arsenal to protect them by various legal means. In this context, the Algerian legislator has worked to protect the cultural sector at different levels from one phase to another, issuing Decree 67/281<sup>1</sup>, which was repealed by Law 98/04

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<sup>1</sup>- Decree No. 67/281 of 20 December 1976 on the study and conservation of historical and natural sites and monuments, which had been in force for 37 years, was

on the Cultural Heritage, as well as the various texts in force in this field.

### **A) Legislative and Regulatory Development for the Protection and Development of Cultural Heritage in Algeria**

The Algerian legislator has organised the protection of cultural heritage through Law 98/04 of 15 June 1998 on the protection of Algerian cultural heritage<sup>1</sup>.

According to this law, the cultural heritage includes all cultural objects, real estate by name and movable objects located on and within national property. This includes property owned by natural and legal persons in the private sector, as well as objects found in the underground layers of internal and regional waters, inherited from various civilisations from prehistoric times to the present day<sup>2</sup>.

Also considered as part of the nation's cultural heritage are intangible cultural properties resulting from social interactions and the creative expressions of individuals and groups throughout history, which continue to manifest themselves from ancient times to the present.

Based on this definition, cultural properties or heritage can be divided into three categories:

- Movable cultural property
- movable cultural property
- Intangible cultural property

This study focuses on cultural property, which consists of historical monuments, archaeological sites and urban or rural groups. These properties are subject to national and international protection systems, depending on their nature and the category to which they belong.

#### **1- Archaeological properties**

The term "archaeological properties" includes monuments, sites, reserves and archaeological collections. They represent tangible

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repealed by Law 98/04, with the exception of natural sites, which remain subject to environmental protection laws, as cited in: \*\*Legal texts relating to Algerian cultural heritage, p. 4.

<sup>1</sup>- Law 98/04 of 15 June 1998 on the protection of the Algerian cultural heritage, Official Journal No. 44 of 1998.

<sup>2</sup>- Article 2 of Law 98/04, cited above.

evidence of the pride and heritage of nations and serve as a link between their past and present<sup>1</sup>. They embody “all the discoveries of vanished civilisations”<sup>2</sup> that archaeology seeks to revive. In Algeria, these range from the rock art of Tassilin’Ajjer in the south to the ruins of Tipaza in the north, and from the archaeological remains of Timgad in the east to those of Mansoura in the west.

Archaeology, as a science, studies the ancient past of humanity through the study of its material remains using scientifically sound methods<sup>3</sup>. Archaeological studies also cover all aspects of life, including living conditions, means of production, beliefs, structures, trade and communication between urban groups, as well as various aspects of material and immaterial life.

Algeria is one of the richest countries in terms of archaeological sites and monuments, with prehistoric rock art and remains of the Greek, Phoenician, Canaanite, Roman, Byzantine, Arab and Islamic civilisations.

Archaeological properties include architectural works, sculptures, paintings on buildings, archaeological elements, engravings, caves and archaeological areas, as well as groups of monuments of exceptional universal value from a historical, artistic or scientific point of view. National archaeological assets can be catalogued according to Law 98/04, which serves as the primary source in the field of cultural heritage protection and development, covering archaeological sites, reserves and cultural parks.

### **1-1 Archaeological sites**

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<sup>1</sup>- KhawadjijaSamihahHanan, "Protection of Archaeological Properties under the Cultural Heritage Law", Journal of Law and Politics, University of Ouargla, No. 15, 2016, Algeria, 2016, p. 2.

<sup>2</sup>- Archaeology: The Arabic term for "archaeology", derived from a Greek word composed of two parts: "archē", meaning beginning or origin (in the sense of ancient), and "logia", meaning the study of something. Quoted from: Mohamed El-BachirCheniti, Archaeology: Its History, Methodologies and Vocabulary, Dar Al-Huda, Algeria, 2003, p. 2.

<sup>3</sup>- ZidanAbdelkafiKafafi, Introduction to Archaeology, Hamada Publishing and Distribution, no country mentioned, 2004, p. 20.

Archaeological sites are defined in Algerian legislation, in accordance with Article 28 of Law 98-04, as built and unbuilt areas that bear witness to human activity or interaction with nature, including the subsoil associated with these areas. These sites are of historical, archaeological, religious, artistic, scientific or anthropological value, in particular archaeological sites, including archaeological reserves and cultural parks.

### **1-2 Archaeological reserves**

Archaeological reserves consist of areas that have not previously been explored or excavated. They may include sites and monuments whose identity has not been determined and which have not been catalogued or inventoried. Such reserves may conceal artefacts and contain exposed archaeological structures<sup>1</sup>.

### **1-3 Cultural Parks or Urban/Rural Groups**

Cultural parks are classified as areas dominated by cultural properties or of significant importance that are inseparable from their natural surroundings<sup>2</sup>. These are often preserved urban or rural groups of properties such as kasbahs, towns, palaces, villages and traditional residential complexes characterised by their residential dominance. Their architectural and aesthetic unity and coherence give them historical, architectural or artistic importance, which highlights their protection and rehabilitation<sup>3</sup>.

Cultural parks are recognised as spaces that do not distinguish between the natural and the cultural. They are observed and perceived from an environmental and cultural perspective as cultural tools and collective achievements that continuously reshape the historical relationships between populations, their activities, their mental perceptions and the shared environment. They serve as places where administrative and historical regions coexist, preserving past cultural traditions<sup>4</sup>.

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<sup>1</sup>- Article 32 of Law 98/04 on the Protection of Cultural Heritage, the previous reference.

<sup>2</sup>- Article 38 of Law 98/04, the previous citation.

<sup>3</sup>- Article 41 of Law 98/04, cited above.

<sup>4</sup>- Article 2 of Decree 12-292 of 21 July 2012 establishing the statutes of the National Office of the Tassili Cultural Park.

In addition, the cultural heritage of real estate includes historical monuments, which are considered to be unique architectural creations or major architectural achievements. These may be large buildings or monumental complexes of religious, military, civil, agricultural or industrial character, as well as funerary monuments, tombs, caves, petroglyphs and memorials<sup>1</sup>.

## **2-Developing the legal framework for the protection of archaeological property**

Colonial invasions have targeted the cultural property of adversaries with the aim of eradicating their heritage and impeding their progress in order to facilitate control. The international community has sought to mitigate violations and threats to cultural property<sup>2</sup> during colonisation or armed conflict by imposing obligations of protection and respect on parties involved in armed disputes over cultural property, both internationally and domestically.

### **2-1 Protecting cultural heritage at the international level**

Algeria was one of the first countries to sign the 1972 Convention on the Protection of the World Cultural and Natural Heritage, marking an important milestone in the protection of cultural heritage<sup>3</sup>. The first two articles of the UNESCO Convention define the legal nature of cultural heritage, stating: “Natural monuments consisting of physical formations, biological formations or a combination of formations which have exceptional universal value from the aesthetic, scientific, geological or physiographic point of view, and precisely defined areas which are the habitat of threatened animal or plant species and which have exceptional universal value from the point of view of science or resource conservation, as well as precisely defined natural sites or areas for the conservation of resources or natural beauty”.

The concept of heritage as the common heritage of mankind has emerged in relation to the resources found in the seabed and oceans,

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<sup>1</sup>- Article 17 of Law 98/04 on the protection of cultural heritage, previous reference.

<sup>2</sup>- Mustafa Ahmed Fouad et al, International Humanitarian Law: Perspectives and Challenges - Part Two, Al-Halabi Legal Publications, Lebanon, 2005, p. 25.

<sup>3</sup>- UNESCO "Convention for the Protection of the World Cultural and Natural Heritage"; 16 November 1972, I.L.M.; vol. 2; no. 6; November 1972, p. 1358.

which transcend territorial jurisdiction. This is one of the key applications of the 1982 United Nations Convention on the Law of the Sea. While the Convention established the general principle that the area and its resources are a common heritage of mankind, it also recognised the principle of the absence of national sovereignty over the area, which prohibits the appropriation of any part of it<sup>1</sup>.

## **2-2the national framework for the protection of cultural heritage**

The French military leadership wanted to explore former Roman Africa, a mission that officers embodied in publications such as the book “Emirates of History in Algeria”, published in 1838<sup>2</sup>. However, this did not protect archaeological sites from looting and theft.

### **- Pre-independence framework for heritage protection**

The management of the national heritage was under the control of the French military, later transferred to the civilian authorities represented by the Directorate of the Interior and Fine Arts under the General Governor of Algeria<sup>3</sup>. The national heritage was subject to the provisions of the French colonial law of 30 March 1887 on the conservation of historical and artistic monuments and objects found in the occupied territories.

This law was followed by the decree of 14 September 1925 on the archaeological sites of Algeria, which allowed the application of the French law of 31 December 1913, which established a more precise and rigorous system for historical monuments. However, this law was criticised for focusing on the protection of French historical monuments, such as churches and palaces, which did not correspond to the existing monuments in Algeria. This was followed by the law of 27

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<sup>1</sup>- Ahmed Mohamed Rifaat, International Endowments in the New International Law of the Sea - The Legal Foundation of the Principle of the Common Heritage of Mankind in the United Nations Convention on the Law of the Sea of 1982 - Dar Al-Nahda Al-Arabiya Publishing and Distribution, Cairo, 1991, p. 43.

<sup>2</sup>- KhawadjiyaSamihahHanan, Previous Reference, p. 5.

<sup>3</sup>- MouradBetrouni, Cultural Heritage and the Construction of National Identity; Workshop on Inventory; Strengthening the Institutional and Legal Framework; UNESCO Headquarters; Paris; October 2008, p. 35.



September 1941 regulating archaeological excavations and sites, backed up by the decree of 9 February 1942<sup>1</sup>.

These laws and regulations remained in force until national independence in 1962. French laws continued to be applied unless they conflicted with national sovereignty, as stipulated by law 62-157 of 31 December 1962.

### **- The system for protecting cultural heritage after independence**

Cultural legislation and organisation in Algeria immediately after independence can be divided into three notable phases. Initially, the Algerian legislator's intervention was quite modest, as all the texts published during this period (1962-1988) were effectively in line with a socialist cultural policy characterised by state dominance over cultural institutions. The task of drafting the first legal text on the national cultural heritage was entrusted to the French archaeologist Albert Fivry<sup>2</sup>, who focused his archaeological research on the city of Timgad in Sétif. He drafted a new text of 138 articles, based on the laws of 1930 and 1941, which was enacted as ordinance 67-281 on excavations and the protection of historical monuments.

This ordinance was followed by regulations on the protection of cultural heritage, which prohibited the export of anything related to prehistory or archaeology under Decree 69-82 of 13 June 1969. This was followed by a decree of 17 May 1980 on the granting of research permits. However, decree 67-281, in the absence of implementing texts, led to a legal vacuum and to infringements on historical monuments<sup>3</sup>.

The second phase, from 1988 to 1997, was characterised by a virtual standstill in cultural legislation and organisation, largely due to the almost complete suspension of the activities of the Ministry of Culture. This period coincided with the suspension of the electoral process in

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<sup>1</sup>- KhawadjiyaSamihahHanan, Previous Reference, p. 6.

<sup>2</sup>- FilaliJaziah, Preventive Archaeology in Algeria, Faculty of Humanities and Social Sciences, Department of History - Archaeology, 2011, p. 25.

<sup>3</sup>- Decree No. 67/281 of 20 December 1967 concerning excavations and the protection of archaeological sites and historical places, Official Journal No. 5, published on 23 January 1967, p. 70.

1991, in the midst of an economic crisis followed by a major security crisis.

The third phase, from 1998 to the present day, was marked by the enactment of Law 98-04, which is still in force today. This law is accompanied by a series of regulations for the protection of cultural heritage. The purpose of the law is to define the nation's cultural heritage in general and to establish general rules for its protection, conservation and promotion, specifying the conditions for its application, as stated in Article 1.

Law 98-04 has given rise to a series of implementing texts relating to the protection of cultural heritage<sup>1</sup>, which can be summarised as follows:

Executive Decree No. 03-322: includes the practice of artistic works related to protected cultural property (Article 9).

Executive Decree No. 03-323: outlines the procedures for drawing up protection plans for archaeological sites and their protected areas, and for their rehabilitation (Article 30).

This decree has led to a series of ministerial decisions applying the system for the protection of cultural heritage, which can be summarised as follows:

- Decision of 31.5.2005 specifies the content of the tasks for artistic works involving the restoration of protected cultural heritage.
- The joint ministerial decision of 29.05.2005 defines the model specifications for the obligations related to the practice of artistic works concerning protected cultural goods.
- The decision of 13.4.2005 establishes special provisions for the execution of artistic works on protected cultural property.

Decree No. 03-324 defines the procedures for drawing up a permanent plan for the conservation and restoration of protected sectors (Article 45).

Executive Decree No. 03-311: establishes the procedures for drawing up a general inventory of protected cultural property (Art. 7).

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<sup>1</sup>- Legal texts related to Algerian cultural heritage, previous reference, pp. (21-25).

The third phase runs from 1998 to the present day and is marked by the adoption of Law 98-04, which is still in force. This law is accompanied by a series of regulations for the protection of cultural heritage. The purpose of the law is to define the nation's cultural heritage in general and to establish general rules for its protection, conservation and promotion, specifying the conditions for its application, as stated in Article 1.

Law 98-04 has given rise to a series of implementing texts relating to the protection of cultural heritage.

### **B) The National Committee for the Protection of Cultural Heritage in Algeria**

Law 98-04 established a National Committee for the Protection of Algerian Cultural Heritage within the Ministry of Culture. This committee is responsible for giving an opinion on all matters relating to the implementation of this law which are referred to it by the Minister of Culture. It deliberates on proposals for the protection of movable and immovable cultural property, as well as on the creation of protected sectors for urban or rural property groups of historical and artistic importance. The composition and organisation of the National Committee for Cultural Property shall be determined by decree<sup>1</sup>.

#### **1- The Algerian Provincial Committee for the Protection of Cultural Heritage**

Given the importance of the cultural heritage in each of Algeria's provinces, the Algerian legislature has set up provincial committees in each province. These committees are responsible for studying and proposing to the National Committee for Cultural Heritage applications for classification, the creation of protected sectors or the inclusion of cultural properties in the supplementary inventory. The Provincial Committees give their opinion on applications for the inclusion in the Supplementary Inventory of cultural properties of significant local value for the province concerned and make recommendations to the National Committee<sup>2</sup>.

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<sup>1</sup>- Article 79 of Law 98/04, previous reference.

<sup>2</sup>- Article 80 of Law 89/04, previous reference.

In addition to these committees, there are other specialised committees set up by the Minister of Culture under Article 81 of Law 98-04. One committee is responsible for the acquisition of cultural property to enrich the national collections, while another is responsible for the expropriation of cultural property.

## **2- The National Heritage Fund**

Article 87 of Law 98-04 establishes the National Fund for Cultural Heritage. This fund finances all activities aimed at preserving, maintaining, protecting, restoring, rehabilitating and restoring both immovable and movable cultural property, as well as preserving and protecting intangible cultural heritage. The Finance Act provides for various forms of funding and direct or indirect support for all types of cultural property, both movable and immovable.

### **Section II: The procedural framework for the protection and development of cultural heritage in Algeria**

Whatever their status, cultural goods are subject to one of the protection systems set out in Law 98-04 (either registration in the supplementary inventory, classification or establishment as a protected sector), depending on their nature and the category to which they belong. The Algerian State also maintains other mechanisms, outside the Cultural Heritage Protection Act, which are derived from general provisions to protect the rights of the State by exercising the right of pre-emption and the possibility of expropriation in the public interest, in addition to the mechanism of registration in the general inventory.

#### **A) Protection systems in the Algerian law 98-04 on the protection of cultural heritage**

The legal protection of cultural property is ensured by the classification and inventory provided for in the laws and regulations. According to article 106 of law 98-04, the cultural goods legally registered in the general inventory of cultural goods referred to in article 7 of this law include movable cultural goods, specifically designated immovable goods and goods proposed for classification, classified or registered in the supplementary inventory previously published in the official gazette.

Natural sites classified in accordance with environmental protection laws are excluded from the general inventory of cultural property. The Ministry of Culture, in accordance with article 7 of law 98-04, is responsible for drawing up a general inventory of classified properties and those registered in the supplementary inventory, as well as new properties in the form of protected sectors.

### **1- Inclusion in the supplementary inventory**

Cultural property may be registered in the supplementary inventory if, although it does not require immediate classification, it has historical, archaeological, scientific, ethnographic, anthropological, artistic or cultural significance that warrants its preservation.

Cultural property registered in the supplementary inventory that has not been definitively classified in the aforementioned inventory will be removed after ten (10) years<sup>1</sup>.

The criteria for registering cultural properties in the supplementary inventory in France are broader than those adopted by the Algerian legislator<sup>2</sup>, where properties are registered as soon as they have sufficient historical, artistic or archaeological importance. In Algeria, registration is decided by the Minister of Culture after consultation with the National Committee for Cultural Property and Property of National Importance, on the initiative of the Minister or any interested party.

Inclusion in the supplementary inventory for properties of local importance is decided by the wali (governor) after consultation with the provincial committee for cultural properties.

The decision to inscribe the property in the supplementary inventory includes information on the nature of the property, its description, geographical location, and historical and documentary sources. Regardless of whether the registration decision is taken by the Minister of Culture or the Wali, it is published in the Official Gazette and made publicly available in the municipality where the property is located for two consecutive months<sup>3</sup>. If the registration in the supplementary inventory is made by the Minister, it is communicated to the wali for

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<sup>1</sup>- Article 10 of Law 98/04, previous reference.

<sup>2</sup>- MouradBetrouni; op. cit., p. 38.

<sup>3</sup>- Article 12 of Law 98/04, previous reference.

publication in the real estate register, in accordance with article 13 of law 98-04 on the protection of the cultural heritage.

## **2- Classification of Protected Cultural Property**

Classification is considered one of the final protection measures. Classified cultural properties owned by private individuals are transferable, and these classified cultural properties retain the results of their classification regardless of the entity to which they are transferred. According to Article 16 of the Law on the Protection of Cultural Heritage, no easement may be established by agreement on classified cultural property without the permission of the Minister of Culture.

Classification is one of the final protection measures. The Minister's decision on classification may be taken amicably, on the initiative of the owner, or formally by the Minister after consulting the National Committee for Cultural Property.

The application for classification must specify the nature of the cultural property, its geographical location, the boundaries of the protected area, the scope of the classification, the legal nature of the cultural property, the identity of its owners, as well as documentary and historical sources, plans, images, easements and obligations. The effects of the classification apply by law to the cultural monument and to the built and unbuilt properties located within the protected area from the date on which the Minister of Culture officially notifies the public or private owners of the application for classification by administrative means.

## **3- Establishment as a Protected Sector**

Groups of urban or rural properties, such as kasbahs, towns, palaces, villages and traditional residential complexes, may be designated as protected sectors. These areas, characterised by their architectural and aesthetic coherence, have a historical, architectural, artistic or traditional significance that requires their protection, restoration, rehabilitation and enhancement, as described in Article 41 of Law 98-04.

## **B) General Procedural Mechanisms for the Protection of Cultural Heritage in Algeria**

In addition to the mechanisms established by the Cultural Heritage Protection Law, the Algerian legislator has adopted procedural

mechanisms in line with general rules such as expropriation in the public interest and the exercise of administrative preemption rights, particularly with regard to the imposition of administrative easements for the protection of cultural property.

The right to property is one of the rights guaranteed and enshrined in the Constitution, and is considered one of the most sacred rights established by the legislator for individuals<sup>1</sup>. The Algerian legislator has enshrined the right to property in the first chapter of the third book on original property rights, and has surrounded it with various rules and provisions that guarantee its protection and prevent its violation.

The right of pre-emption is also a means of acquiring property, granting the right to the person designated as having the primary interest in the purchase. Pre-emption provisions are found in Islamic law as well as in most positive laws, including Algerian legislation.

### **1- Expropriation for Public Benefit**

The right to property can be subject to restrictions, but only within the limits and conditions set by law. In this regard, Article 677 of the Civil Code states: “No one may be deprived of their property except in the cases and conditions provided for by law. However, the administration has the right to expropriate all or part of real property, or to expropriate real rights for public benefit, in exchange for fair and just compensation...”

This provision is consistent with the Algerian legislator’s stance in the Cultural Heritage Protection Law, which allows the state to expropriate private cultural properties for public benefit in order to safeguard them<sup>2</sup>.

Moreover, the administration has the authority to integrate private cultural properties into public state property through consensual acquisition, expropriation governed by general procedures, exercising the state’s pre-emption right, or through donations.

From this text, we can conclude that the administration can expropriate (cultural heritage property) if it pertains to public benefit. Therefore,

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<sup>1</sup>- Mustafa Kira, Theory of Material Assault in Administrative Law, Dar Al-Nahda Al-Arabiya, Cairo, 1964, p. 207.

<sup>2</sup>- Article 5 of Law 98-04, previous reference.

we will define the nature of expropriation for public benefit and its conditions.

### **1-1 Conditions for Expropriation for Public Benefit**

Legal scholars define expropriation in the public interest as “the forced deprivation of a property owner’s property for the public good, in return for compensation for the damage suffered”<sup>1</sup>. It is also defined as “a prerogative of the public authorities by which the state compels anyone to relinquish ownership of real property in order to obtain public benefits in exchange for just and prior compensation”<sup>2</sup>.

It is noteworthy that these definitions focus on real property, while the legislator has extended the scope to include real rights. The Algerian legislator, through Article 2 of Law No. 91-11 and Article 677 of the Civil Code, has defined that no one may be deprived of his or her property; however, the administration has the right to expropriate all or part of real property, or to expropriate real rights in the public interest, in return for just and fair compensation.

From these two texts we can conclude that expropriation applies to real property as well as to real rights, and it also applies to cultural heritage as a protective measure, since it is considered to be the cultural heritage of the entire nation, not just of the owner. In return, the state is obliged to provide adequate and fair compensation. Nevertheless, expropriation remains an exceptional measure, subject to a number of conditions laid down by the Algerian legislator, which will be discussed below.

Law No. 91-11 on Expropriation sets out a number of conditions and procedures to be followed in the expropriation process in the public interest, the main ones being

#### **- Availability of Public Benefit and Identification of Properties and Their Owners**

Before proceeding with expropriation for public benefit, the legislator requires an investigation to confirm the existence of this benefit, as the availability of public interest is a fundamental condition for

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<sup>1</sup>- Suleiman Muhammad Al-Tamawi, Principles of Administrative Law: A Comparative Study, Dar Al-Fikr Al-Arabi, Egypt, 2007, p. 394.

<sup>2</sup>- André De Laubadaire, Jean-Claude Venesia, Yves Gaudemet, Treatise on Administrative Law, Volume 1, 15th edition, LGDJ, Paris, 1999, p. 321.



expropriation<sup>1</sup>. In this context, the protection of cultural heritage properties is considered a public benefit<sup>2</sup>. Law No. 91-11 outlines the procedure for conducting this investigation and mandates the identification of the properties and real rights, along with the identities of the owners whose property is subject to expropriation<sup>3</sup>.

### **- Issuance of the Expropriation Decision and Prior Compensation**

Expropriation for public benefit is carried out based on an administrative decision<sup>4</sup>, which must be communicated to both the expropriated party and the beneficiary. Consequently, the concerned parties are required to vacate the premises or remain within them according to the schedule for registering properties in the list of classified cultural properties or in the additional inventory list, as per the Cultural Heritage Protection Law 98/04.

The legislator has established the necessity of compensation in cases of expropriation through the Expropriation Law and provisions of the Civil Code, clarifying that this compensation can be either in-kind or monetary<sup>5</sup>.

### **1-2 Provisions for the Application of Expropriation of Cultural Heritage Properties**

Article 81 of Law 98/04 establishes a special committee under the Ministry of Culture to deal with the expropriation of cultural property from private owners in exchange for compensation, since cultural property owned by individuals is considered transferable.

The State may expropriate classified cultural properties or those proposed for classification in the public interest in order to ensure their protection and maintenance. This includes properties located in protected areas that allow for the isolation, cleaning or improvement of

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<sup>1</sup>- Article 4 of Law No. 91-11, related to expropriation, amended and supplemented, dated April 27, 1991.

<sup>2</sup>- Articles 5 and subsequent of Law No. 91-11, previous reference.

<sup>3</sup>- Article 16 of Law No. 91-11, previous reference.

<sup>4</sup>- Article 29 of Law No. 91-11, previous reference.

<sup>5</sup>- Article 677 of the Penal Code, and Article 25 of Law No. 91-11, previous reference.

classified or proposed classified properties, as well as those located in protected sectors<sup>1</sup>.

In addition to the general legal procedures for expropriation, the Algerian legislator has established specific procedures for the expropriation of cultural heritage properties under Law 98/04, which requires that classification be applied regardless of ownership. Even classified cultural property owned by individuals is considered transferable under Articles 16, 17 and 18 of Law 98-04.

The effects of classification apply by law to the cultural monument and to the built and unbuilt properties located within the protected area, from the date on which the Minister of Culture officially notifies the public or private owners, by administrative means, of the initiation of the application for classification.

The decision to initiate the classification process is published in the Official Gazette and made public by posting it for two months in the municipality where the monument is located. The classification decision is issued by the Minister on the basis of the opinion of the National Committee for Cultural Property within a maximum period of two months. During this period, the owners may submit their written comments in a special register kept by the relevant centralised services under the Ministry of Culture.

Here's the academic translation of the provided text into English:

The silence of the owners at the end of this period shall be considered as acceptance and consent. In the event of an objection, the objection is submitted to the National Committee for Cultural Property for its opinion. Under French law, if the owners object to the classification, the Council of State issues a decision ordering the classification and expropriation in exchange for compensation. The State retains the right to establish easements in the public interest, such as the right of the authorities to inspect and investigate and the right of the potential public to visit, according to Article 5(3) of Law 98/04.

Expropriation in the public interest is carried out in accordance with the current legislation for the preservation of real estate in the following

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<sup>1</sup>- Article 46 of Law 98-04, previous reference.

cases, as described in Article 47 of the Law for the Protection of Cultural Heritage

When the owner refuses to comply with the instructions and easements imposed by the protection procedure.

If the owner is in a situation that makes it impossible for him to carry out the prescribed works, even if he receives financial assistance from the State.

When the use or occupation of the cultural property is contrary to the requirements of its conservation and the owner refuses to remedy the situation.

When the division of the property damages the integrity of the cultural property and leads to a change in the fragmented entity.

## **2-: Pre-emption**

The Algerian legislator derived the system of pre-emption from Islamic law. Sheikh al-Islam IbnTaymiyyah said of pre-emption: “It was introduced to complete the property for the pre-emptor because of the damage in the partnership”. Pre-emption results in the forced transfer of the sold property to the pre-emptor against the purchaser<sup>1</sup>. It is considered a restriction on the freedom of disposal, since the essence of sales is that they are consensual contracts. Pre-emption deviates from this principle, making it a permission rather than a right.

### **2-1 Legal Definition of Pre-emption**

Article 794 of the Algerian Civil Code states: “The right of pre-emption is a license that allows the holder to replace the buyer in the sale of real property under the circumstances and conditions specified in the following articles.”

The Egyptian legislator also defines pre-emption in Articles 930 to 944 of the Egyptian Civil Code as a complex material fact and an exceptional license, not a right. It is an option or discretion; the pre-emptor has the right to exercise or not exercise it. In other words, it is a legal license that allows the pre-emptor to replace the buyer in the sale of real property if its conditions and circumstances are met. The Egyptian Court of Cassation has considered pre-emption not as a

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<sup>1</sup>- Abd Al-WahabArafa, Pre-emption as a Basis for Acquiring Property in Light of the Rulings of the Court of Cassation, Dar Al-FikrWal-Qanun, Alexandria, 2006, p. 8.

personal or real right but as a financial right, and therefore it is inheritable. It serves as a basis for acquiring ownership of real property but not movable property<sup>1</sup>.

Some scholars consider it a personal real right, as it is a personal right for the pre-emptor and a real right concerning the property subject to pre-emption. Thus, it is an exceptional system that requires strict adherence to its conditions and procedures and limits its scope<sup>2</sup>.

The prevailing view is that pre-emption is neither a real right nor a personal right; rather, it is a natural legal fact and a source for acquiring ownership<sup>3</sup>. It is not a right itself but a source of a right, and the essence of the legal act involved is the declaration of the pre-emptor's intention to exercise the right of pre-emption<sup>4</sup>.

## **2-2 Provisions for the Application of Pre-emption to Cultural Heritage Properties**

General law has adopted the provisions of pre-emption to be applied in the administrative field, where it has come to be known as administrative pre-emption. The state exercises its right to pre-emption to acquire all privately owned cultural heritage properties, purchasing them from private owners and integrating them into the state's cultural heritage properties according to Article 5 of Law 98-04 concerning the protection of Algerian cultural heritage.

Any transaction involving compensation for a classified cultural property, a property proposed for classification, a property included in the supplementary inventory or a property included in a protected sector triggers the State's right of pre-emption.

Any transaction, with or without compensation, involving a classified cultural property, a property proposed for classification, a property listed in the supplementary inventory or a property included in a

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<sup>1</sup>- Abdul Razak Ahmed Al-Sanhouri, Summary of the General Theory of Obligations in Civil Law, Arab Islamic Publishing House, Beirut, no date, p. 542.

<sup>2</sup>- Ahmed Khalidi, Pre-emption between Islamic Law and Algerian Civil Law in Light of the Jurisprudence of the Supreme Court and the Council of State, Dar Houma, Algeria, 2008, p. 21.

<sup>3</sup>- Same reference, p. 22.

<sup>4</sup>- Article 48 of Law 98-04, previous reference.

protected sector, regardless of the ownership, requires prior authorisation from the Minister of Culture. Public officials must notify the Minister of any proposed transaction involving cultural property, and have a maximum of two months from the date of receipt of the notification to respond. If the deadline expires without a response, the authorisation is deemed to have been granted. Any transaction involving cultural property that does not comply with this procedure is considered null and void<sup>1</sup>.

Furthermore, no owner of a cultural property registered in the supplementary inventory may make any changes to the property that would eliminate or alter the factors that led to its registration or diminish its significance without the prior authorisation of the Minister of Culture<sup>2</sup>.

### **Conclusion:**

Cultural heritage properties are the historical memory of nations, necessitating their protection through various legal means. Algeria is one of the countries rich in archaeological sites and landmarks; however, it has witnessed the deterioration of these properties due to repeated attacks, whether out of ignorance or neglect. The colonial period significantly contributed to the degradation, looting, and distortion of the national identity.

After independence, the protection of cultural heritage was not a primary concern for the Algerian state, leading to neglect and plundering. The situation was exacerbated by the “black decade” that Algeria experienced, and the management policies regarding the protection and enhancement of archaeological heritage relied heavily on traditional methods.

In response to the issue at hand, we have found that starting in 1998, the Algerian state has placed significant emphasis on establishing legislative and institutional mechanisms to ensure the protection of cultural heritage properties, recognizing their immense importance nationally. This heritage serves as a source of employment and a crucial indicator of economic development. Although there are still

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<sup>1</sup>- Article 49 of Law 98-04, previous reference.

<sup>2</sup>- Articles 14 and 15 of Law 98-04, previous reference.

ambiguities and shortcomings, the political will is directed towards amending Law 98-04 to ensure adequate protection from all aspects for all cultural heritage landmarks.

Based on the analysis conducted in this brief study, we note the following key findings:

- Algeria is one of the richest countries in terms of archaeological sites and monuments, with prehistoric sculptures and remains from the Greek, Phoenician, Canaanite, Roman, Byzantine, Arab and Islamic periods.
- Archaeological properties include architectural works, sculptures, paintings on buildings, archaeological elements and components, inscriptions, caves and archaeological areas that constitute a collection of landmarks of exceptional global value in terms of history, art or science.
- According to Law 98-04, national archaeological properties can be classified as archaeological sites, protected archaeological areas and cultural parks.
- The State has established bodies for the protection of cultural heritage, including real estate heritage. These bodies are the National Committee, Provincial Committees, Special Committees and the National Fund for Cultural Heritage.
- The State has the power to expropriate classified cultural property or property proposed for classification in the public interest in order to ensure its protection and maintenance.
- The State exercises its right of first refusal to acquire all privately owned cultural heritage by purchasing it from private owners and incorporating it into the State's cultural heritage.
- The protection of cultural heritage requires the concerted efforts of all stakeholders, not only within the cultural sector, but also the training of professionals and the vigilance of citizens, who are the main beneficiaries of these resources. We therefore conclude this study with a number of proposals:

The activation of mechanisms for the protection of cultural heritage, in particular administrative and penal sanctions, with greater rigour.

Opening training courses for professionals to equip them with advanced methods of research and study of cultural heritage.

Training of local representatives.

Enact a preventive archaeology law that includes emergency measures allowing for rapid intervention to study archaeological remains that may be discovered during the execution of development projects.

Mandate the National Real Estate Management Office to cooperate with the Cultural Directorates when archaeological sites are discovered and development work is halted.

Continue scientific exploratory and archaeological research and excavations to study and better protect our national heritage.

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