

# Protection of the monuments under Algerian law

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**Abstract:** THIS RESEARCH AIMS TO STUDY ARCHAEOLOGICAL PROPERTY, WHICH REQUIRES ITS PROTECTION BY ALL LEGAL MEANS. DURING THE COLONIAL ERA, THE FOCUS WAS ON ROMAN RUINS ONLY. AFTER INDEPENDENCE, THIS SECTOR DID NOT WITNESS ANY INTEREST, AS ANTIQUITIES WERE SMUGGLED AND VANDALIZED, DESPITE THE EXISTENCE OF LEGAL TEXTS STARTING FROM ORDINANCE 67-281, RELATED TO CULTURAL HERITAGE, WITHOUT NEGLECTING THE VARIOUS APPLIED TEXTS.

**KEY WORDS:** ANTIQUITIES; HISTORIC MONUMENTS; LEGAL TEXTS

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## 1-Introduction:

The term archaeological property includes monuments, sites, reserves, and archaeological collectibles, which represent material evidence, the pride and pride of nations, the appearance of their nobility and authenticity, and a link between their past and present, in short, archaeological properties are the structure of the discoveries of hidden civilizations, where archeology revives them.

And archeology: the composed word "archeology" is derived from a Greek compound of two words "archea" meaning beginning, meaning ancient, and the word "logos" meaning knowledge of something,<sup>(1)</sup> in a more accurate sense, it is a science that researches the past of ancient man. Through the study of archaeological remains in sound scientific ways, archaeological studies also include ways of living, means of production, beliefs, buildings, trade, methods of communication between urban groups, and various physical and moral aspects.<sup>(2)</sup>

Archaeology also spelled archeology, is the scientific study of the material remains of past human life and activities. These include human artifacts from the very earliest stone tools to the man-made objects that are buried or thrown away in the present day: everything made by human beings—from simple tools to complex machines, from the earliest houses and temples and tombs to palaces, cathedrals, and pyramids. And Algeria is one of the most critical countries rich in archaeological sites and monuments, as it embraces prehistoric drawings and relics of the Greeks, Phoenicians, Canaanites, Romans, Byzantines, Arabs, and Islamists.

Regardless of its importance, as it is material evidence that helps study the development of civilizations, it is the raw material for the tourism industry, and this is called heritage tourism because it brings visitors to archaeological sites in order to identify the most important monuments that tell in silence the tales and secrets of civilizations.<sup>(3)</sup>

Despite its importance as a tourist attraction, it recorded the deterioration of archaeological properties in Algeria through repeated attacks, either out of ignorance or neglect, as the colonial period contributed to the deterioration, looting, and distortion to obliterate the national identity.

But it is unnatural that the antiquities still suffer despite the departure of colonialism, and a legal arsenal is available in the form of Order 67-281, which was repealed by Law 98-04 related to the protection of cultural heritage.<sup>(4)</sup>

From this point of view, the following problem can be raised: Are the mechanisms of protecting archaeological property under the heritage law sufficient to preserve and value it? Moreover, is Law 04/98 related to cultural heritage sufficient to confer this protection? To answer this problem, the topic should be divided as follows:

- The nature and components of the archaeological property.
- The development of the legal system governing archaeological properties.

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<sup>(1)</sup> Muhammad al-Bashir al-Sheniti, *Archeology, its history, methods, vocabulary*, Dar al-Huda, Algeria, 2003, p. 2.

<sup>(2)</sup> Zidan Abdel Kafi Kafafi, *Introduction to Archeology*, Hamada Publishing and Distribution Foundation, Jordan, 2004, p. 20.

<sup>(3)</sup> Khawadjia Samiha Hanan, *Protecting Archaeological Properties in Light of Cultural Heritage*, Journal of Politics and Law, Issue 15, Algeria, June 2016, p 74.

<sup>(4)</sup> Law 98-04, of June 15, 1998, relating to the protection of cultural heritage, o.j No. 44.

- Legal mechanisms for the protection of archaeological property under the cultural heritage law.

## **2- The nature and components of archaeological properties:**

Going into the strategy of protecting and valuing archaeological properties requires us, in the first stage, to determine its legal nature, and to define its components in the second stage.

### **2.1- The legal nature of archaeological properties:**

Cultural heritage in the international agreements for the protection of the world cultural and natural heritage issued by UNESCO on November 23, 1972, meaning:

Antiquities: These include architectural works, works of sculpture and photography on buildings, elements and archaeological components, inscriptions, caves, and groups of landmarks that have an exceptional universal value from the point of view of history, art, or science.

Complexes: A group of isolated or connected buildings that, due to their architecture, symmetry, or integration into a landscape, have an exceptional universal value from the point of view of history, art, or science.

Sites: works of man, or joint works between nature and man, as well as areas, including archaeological sites, that have an exceptional global value from a historical, aesthetic, ethnological, or ethnological point of view.<sup>(5)</sup>

The charter for the management of archaeological heritage issued by the organization of the International Council on Historic Monuments and Archaeological Sites in 1990, states in Article 4 the following:<sup>(6)</sup>

Archaeological heritage is a part of the tangible heritage in which the historical methodology is applied until the basic knowledge is reached. It includes every trace of human existence and the various places in which human activities took place represented in structures and collectibles of all kinds found on earth and the various equipment associated with them.

The definition of the Charter for the management of archaeological heritage is distinguished from the definition of international agreements to protect the world's cultural and natural heritage, by classifying archaeological properties according to their location on land. It should be noted that there has been a development in terminology at the level of international legislation in force in the field of protection and evaluation of archaeological properties. In the 1960s, it was the looting of antiquities, and archaeological wealth, that prompted specialized international organizations, to make an effort to preserve the archaeological heritage.<sup>(7)</sup>

We find the impression valid for some that the concept of heritage emerged since the French Revolution, and for others, the concept of heritage has a history, a history that emerged since the emergence of nation-states in Europe. Heritage, whether architectural or

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<sup>(5)</sup> The Convention on the World Cultural and Natural Heritage in Paris on November 23, 1972, ratified by Ordinance 73-83 of July 25, 1973, O.j n. 69.

<sup>(6)</sup> Filali Jazia, Preventive Archeology in Algeria, Faculty of Humanities and Social Sciences, Department of History and Archeology, 2010/2011, p. 25.

<sup>(7)</sup> Alexander-C. Kiss, "The notion of common heritage of humanity", RCADI, vol. 175, 1982, p. 116.

artistic, here is the Arab traveler Abdul Latif Al-Baghdadi from the twelfth century talking about the interest of the Arab Islamic authorities in cultural relics in his view of the antiquities of Egypt. <sup>(8)</sup> And if they are enemies of their masters, and they do that for their interests, it will remain a history to be aware of over the ages. Because the term heritage is broad and can extend to or beyond the limits of the legal scope, it includes the totality of material and immaterial components, including the habits and creations of individuals.

The Algerian law classifies archaeological property within the real estate and material cultural property, which is considered according to Article 02 of Law 98-04 of June 15, 1998, <sup>(9)</sup> relating to the protection of cultural heritage as the cultural heritage of the nation, inherited from various successive civilizations from the prehistoric era to the present day.

The Algerian legislator considered public antiquities, including archaeological sheds, especially antiquities in museums, as national public property according to the meaning of Article 16 of Law 90-30 of December 01, 1990, <sup>(10)</sup> containing the amended and supplemented national property law. Article 64 of Law 98-04, <sup>(11)</sup> adds that the movable archaeological cultural property resulting from programmed excavations or accidental discoveries, recent or old, in the national territory are considered national property, and cannot be the subject of commercial deals.

What can be deduced, archaeological properties are all the discoveries of the disappeared civilizations, which archeology revives 12, and they are considered among the components of the cultural heritage of the nation and are classified within the scope of material cultural property and they are included in the public national property.

## 2.2- Elements of archaeological property:

National archaeological properties can be counted in the light of what is stated in Law 98-04, as the main reference in the field of cultural heritage protection and valorization.

### A - Archaeological sites:

The discovery of buried antiquities through an archaeological research process leads to the establishment of an archaeological site, and therefore it is an area that contains physical evidence of previous human works, and in another definition is an archaeological site is a place where remnants are found indicating activities carried out by man during ancient times. Buried in the ground or submerged in water, and in this sense, archaeological sites are classified into two categories: land and marine archaeological sites. <sup>(12)</sup>

Land archaeological sites are classified into sites located in urban or rural areas or industrial archaeological sites that include material or intangible traces of past industrial activity. As for marine archaeological sites, they are known internationally as archaeological heritage located in an underwater environment, or separated from it, and include Structures, underwater sites, and archaeological and natural debris. Defined by UNESCO 2001 Convention

<sup>(8)</sup> Mourad Yallis, Putting an End to Heritage and the Production of Identity and Inter marriage in the Algerian Cultural Field, Humanities Bulletin, online, published on July 10, 2012, <http://insaniyat.revues.org/7890>.

<sup>(9)</sup> Article 12 of Law 98-04, op. cit.

<sup>(10)</sup> Benseddik Souki Habiba, the enhancement of Historical Monuments in Algeria, the case of the Agha Palace in Ferdjioua, thesis for obtaining the Master's degree, Faculty of Earth Sciences, Geography and Spatial Planning, Department of Architecture and Urban Planning, University Mentouri Constantine, p 190.

<sup>(11)</sup> Article 12 of Law 98-04, op. cit.

<sup>(12)</sup> Zidan Abdel Kafi Kafafi, op. cit. p. 21.

for the Protection of Water Heritage, as traces of human existence of a cultural, historical, or archaeological nature that have been partially, or completely submerged, periodically or continuously, for at least 100 years.

Archaeological sites are defined in Algerian legislation<sup>18</sup> as built and unbuilt areas without an active function, witnessing human actions or interaction with nature, including the subsoil of the lands connected to them, and they have a value from the historical, archaeological, religious, artistic, scientific, ethnological or anthropological point of view, including archaeological reserves and barns cultural.

#### **B- Archaeological reserves:**

Archaeological reserves consist of areas that have not previously been explored and excavated on sites, and landmarks, that have not been identified, that have not been subject to census or inventory, that may store antiquities inside them, and that contain exposed archaeological structures.

Algeria is rich in the Saharan Atlas, which represents a living testimony to the various stages of history with monuments, engravings, and wall paintings of historical, artistic, and cultural value. It did not undergo a search and archaeological excavations to find the rest of the relics that are still forgotten.<sup>(13)</sup>

According to this proposition, Algeria includes all the historical eras of mankind. For example, the oldest archaeological site in the United States is 15 thousand years old, but the history of Algeria is calculated in millions of years, and according to experts, there are not many countries around the world that have the ability to tell the history of mankind in this way.<sup>(14)</sup>

#### **C - Cultural sheds:**

According to Article 38 of Law, 98-04 related to the protection of cultural heritage,<sup>(15)</sup> spaces that are characterized by the predominance or importance of cultural property on them and which are not separated from their natural surroundings are classified in the form of cultural sheds.

The cultural barn, in the sense of Article 02 of the executive decree 12/292 of July 21, 2012,<sup>(16)</sup> specifying the basic law of the National Office of the Tassili cultural barn, is a space that does not distinguish, between the natural and the cultural. That is observed and realized from an environmental, and cultural perspective, as a cultural tool and a collective achievement in the continuous reshaping, of a historical product of the common relations, between the population and their activities, mental perceptions, and the environment they share. Is a place in which they overlap and confront the administrative, and historical regions, that perpetuate the previous cultural traditions.

#### **D - Antiquities:**

<sup>(13)</sup> Hafsi Fatma Zohra, for integrated conservation of archaeological sites in the National Policy for Spatial Planning, an example of a study of the wilaya of souk Ahras, memory for obtaining the diploma of Magisterium, faculty of earth sciences of geography and regional planning, Department of Architecture and Urbanism, Mentouri Constantine University, P16.

<sup>(14)</sup> <https://www.skynewsarabia.com/> on January 13, 2023, at 16:00.

<sup>(15)</sup> Article 17 of Law 98-04, op. cit.

<sup>(16)</sup> Article 38 of Executive Decree No. 12-427 of December 16, 2012 specifying the conditions and modalities for the management and management of public and private properties of the State.

In addition to fixed real estate components, there are movable components represented in various archaeological remains preserved in archaeological and historical museums across the national territory, or are still in the possession of private individuals or associations, as the legislator sets them up in Article 50 of Law 98-04 without separating them.<sup>(17)</sup> For other similar groups: The movable cultural property includes in particular the following:

- A product of archaeological explorations and research on land and underwater.
- Antique items such as tools and ceramics...
- Elements resulting from the fragmentation of historical monuments, and anthropological and ethnological equipment.
- Cultural property related to religion, the history of science and technology, the history of social, economic, and political development, and property of technical interest.

Consider the Algerian legislator according to what is stated in Article 64 of Law 98/04,<sup>(18)</sup> considered archaeological cultural property transferred from the national property. And adds Article 54 of Executive Decree 12/427 of December 16, 2012,<sup>(19)</sup> specifying the conditions and modalities for managing and managing the public and private property of the state, subject to the submission of every work of art or movable cultural property of definite national importance within the national collection. However, these measures represent an empty container for the lack of procedures to organize how to store and preserve these properties, which are no less important than archaeological sites.

Whatever the components of archaeological properties, they are subject to special protection measures in the Cultural Heritage Law, and before addressing the special protection measures, the development of the legal system governing this non-renewable real estate wealth must be discussed.

### **2.3- The development of the legal system governing archaeological property:**

To justify the existence of French colonialism, many historians. Archaeologists in the late eighteenth century contributed, through their works, to presenting France as the heir of Rome in North Africa.

Colonial France had an inventory of Roman antiquities in Africa, and Algeria, but this did not protect the monuments from theft, as Some of the carved stones were used in construction by the military institutions to set up camps in or near some archaeological sites.<sup>(20)</sup> As for the transferred antiquities and statues, to which the hands were extended, individuals collected them as much as possible, and many of them arrived in France by order of the occupation authorities. Even French law came to protect French historical monuments such as churches and palaces, and it is not in line with the monuments in Algeria.<sup>(21)</sup>

The work of these legal and regulatory texts continued until the achievement of national independence in 1962, and in the face of the Algerian government's preoccupation with re-arranging the Algerian house, and erasing the effects of misery and deprivation. The

<sup>(17)</sup> Article 50 of Law 98-04, op. cit.

<sup>(18)</sup> Article 64 of Law 98-04, op. cit.

<sup>(19)</sup> Decree No. 12-427, op. cit.

<sup>(20)</sup> Bouanane Kentouche Nadia, heritage and its place in Algeria's urban policy, dissertation for obtaining the Master's degree, Faculty of Earth Sciences, Geography and Spatial Planning, Department of Architecture and town planning university mentouri Constantine, P21.

<sup>(21)</sup> Muhammad Al-Bashir Sheniti, op. cit. p. 50.

government found itself in front of many preoccupations that took precedence over the cultural heritage, as the legislator contented himself with extending the work of the French law, except for what contradicts With the provisions of national sovereignty, under Law 62/157 of December 31, 1962.

In 1967, Algeria entrusted the task of drafting the first legal text of the national cultural heritage to a specialized committee, which conducted important research in the city of Setif and its suburbs. And thus a new legal text was issued order 67/281, of includes 138 articles, of December 20, 1967, relating to excavations and the protection of monuments and historical places.<sup>(22)</sup>

Issued after order 67-281, Decree 69-82 of June 13, 1969, was issued regarding the export of objects of national interest from the historical, artistic, and archaeological point of view, which forbids the export of anything of prehistoric or archeology, except under the permission of the Minister in charge of Arts.<sup>(23)</sup> Followed by the decision dated May 17, 1980, related to the granting of an archaeological research license and includes provisions, procedures, and methods for carrying out archaeological research and the departments in charge of granting licenses.

Despite these measures, the absence of the implementing texts of Ordinance 67/281 resulted in a legal void, encroachment on historical monuments, and theft of archaeological and historical artifacts. These legal texts continued to be enforced until the issuance of Law 98/04 of June 15, 1998, which is still in force today and came in line with political trends, and an attempt to modernize and give an open modern look. Despite the shortcomings that can be directed.<sup>(24)</sup>

The modern open view is represented by:

- Establishing a system for classifying cultural heritage without neglecting the intangible cultural heritage.
- Defining, classifying, and auditing cultural heritage, in line with international conventions.
- Special provisions for private assistance to protect cultural heritage.

Moreover, that it is useful to expose the legal mechanisms for the protection of archaeological heritage, in the cultural heritage law to determine the extent of their effectiveness in protecting this heritage.

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<sup>(22)</sup> Ordinance 67/281, dated 20/12/1967, related to archaeological excavations and the protection of historical and natural places and monuments, repealed, O.J No. 5.

<sup>(23)</sup> Article 01 of Decree 69-82 of June 13, 1969, regarding the export of objects of national interest from the historical, artistic, and archaeological point of view, O.J No. 53.

<sup>(24)</sup> Law 98-04, op. cit.

### 3- Legal mechanisms for the protection of archaeological property:

In the cultural heritage law, article 08 Paragraph 02 of Law 98-04 relating to cultural heritage stipulates the following: **"Real estate cultural property, whatever its legal status, may be subject to one of the protection regimes mentioned below, depending on its nature and the category to which it belongs:**

- **Registration in the additional inventory list.**
- **Category.**
- **Creation in the form of reserved sectors".** <sup>(25)</sup>

In addition, the state maintains other mechanisms such as registration in the general inventory list, the possibility of expropriation for the public benefit, and the exercise of the right of administrative pre-emption, especially the imposition of administrative easements to protect cultural property.

The mechanisms mentioned in Article 08 of Law 98-04 related to cultural heritage represented in registration in the additional inventory list, classification, especially the general inventory, and the penalties prescribed in case of assault on these properties, for example, of palaces and kasbahs.

#### 3.1- Registration in the additional inventory:

Article 10 of Law 98-04 stipulates: **"Real estate cultural properties that are of importance from the point of view of history, art, archeology, ethnography, anthropology or culture and which do not require immediate classification may be registered in the supplementary inventory".** <sup>(26)</sup>

In Algeria, registration takes place by a decision of the Minister in charge of Culture, after consulting the National Committee for Cultural Properties, concerning properties and monuments of national importance.

The decision to register in the additional inventory includes the following information:

- The nature and description of the cultural property, its geographical location, and historical and documentary sources.
- The importance that justifies its registration, the legal nature of the property, the easements, and obligations.

Whether the decision to register is taken by the Minister in charge of Culture or the Wali, the decision to register in the additional inventory is published in the Official Gazette of the People's Democratic Republic of Algeria. <sup>(27)</sup>

And the real estate governor is also informed to register it in the real estate registry.

One of the effects of the decision to register in the inventory list is to oblige the owners of public or private properties to inform the Minister in charge of Culture when making any fundamental amendment that would lead to the removal of the factors that allowed its registration, erasure or deletion, and prejudice to the importance that necessitated protection. This raises an important note regarding the concept of fundamental modification,

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<sup>(25)</sup> Article 08 of Law 98-04, op. cit.

<sup>(26)</sup> Article 10 of Law 98-04, op. cit.

<sup>(27)</sup> Issawi Bouakaz, Methods of Preserving the Building Materials of the Archaeological Site, Gamila Cuicul, The Case of Limestone, Master's Degree Graduation Note, Institute of Archeology, University of Algiers, 2008-2009, p. 21.



as in the sense of violation, if the works on the real estate or archaeological property registered in the additional inventory and not classified or proposed to be classified are not essential, it is not necessary to inform the Minister in charge of Culture. <sup>(28)</sup>

What supports our view is the case of the city of **Cuicul**, <sup>(29)</sup> the most prominent North African city in the Romanian continent, located about 45 km east of the state of Setif, which is an ancient Roman city that was classified by UNESCO as a world heritage in 2017.

Where many restorations have been carried out, resulting in historical fallacies by which it is difficult to trace the chronological history of buildings, such as removing the original parts and changing their place..., and in this context, random restoration or restoration carried out by inexperienced, leading to weakens the original material and accelerates the mechanisms of damage.

The same is true for the **Caracalla** Arch located in the city of Tebessa, where it was restored with materials far from the original materials. <sup>(30)</sup>

The second observation that can be made regarding the registration in the additional inventory list is that it is a temporary, and accidental procedure, which makes the registration mechanism in the additional inventory list fragile because this mechanism lasts for 10 years. Which was confirmed by Article 10, paragraph 02 of Law 98/04, as it stated: **"Cultural real estate property registered in the additional inventory that was not definitively classified in the aforementioned additional inventory within a 10-year period shall be written off"**. <sup>(31)</sup> In addition to the additional inventory mechanism, a classification mechanism was found to protect archaeological properties.

### 3.2- Classification:

The classification of cultural property does not fall within the framework of the category provided for in Article 31, of the National Property Law 90-30, because it is not closely related. Which was confirmed by Article 32, of the same law when it states: **"The public property shall be subject to the consequences within the framework of the special administrative, rules stipulated in the field of care, protection, preservation, and reclamation of these properties, subject to their legal subordination to the national public property system"**. <sup>(32)</sup>

And included in this type of work that is outside the content of the provisions of Article 31 of this law, administrative classification decisions issued, especially in the following:

**Movable and immovable property or objects, places of excavations, excavations, monuments, historical and natural sites of national importance in the field of history, art, and archeology in accordance with the legislation in force,..."**

Classification is one of the final measures of protection, <sup>(33)</sup> and classification decisions cover all cultural property, regardless of its legal nature. The classification decision may be issued by the Minister in charge of Culture in a friendly manner, that is, on the initiative of the

<sup>(28)</sup> Law 98-04, op. cit.

<sup>(29)</sup> Khawadjia Samiha Hanan, previous reference, p. 81.

<sup>(30)</sup> Issawi Bouakaz, op. cit. p. 22.

<sup>(31)</sup> Article 10 of Law 98-04, op. cit.

<sup>(32)</sup> Hafsi Fatma Zohra, op. cit. p. 17.

<sup>(33)</sup> Bouanane Kentouche Nadia, op. cit. p. 22.

owner, or formally by the Minister of Culture after consulting the National Committee for Cultural Properties.<sup>(34)</sup>

The decision to open the classification case must mention the nature of the cultural property and its geographical location, the demarcation of the boundaries of the protected area, the scope of the classification, the legal nature of the cultural property, the identity of its owners, documentary and historical sources, as well as plans and photos, easements and obligations.<sup>(35)</sup>

The effects of classification by force of law applicable to the cultural monument and to the built or unbuilt real estate located in the protected area, starting from the day on which the Minister responsible for culture is notified of the administrative means to file a lawsuit. The decision to open a classification case is published in the Official Gazette of the People's Democratic Republic of Algeria, and it is announced by its suspension for a period of months, at the headquarters of the municipality on whose soil the historical landmark is located.<sup>(36)</sup> It does not exceed a maximum of two months after the administration in charge of culture receives the special ledger, which is maintained by the non-centralized interests of the Minister in charge of Culture, in which the owners submit written observations.<sup>(37)</sup>

Concerning Algerian law, the classification decision is published in the Official Gazette and the Minister in charge of Culture informs the Wali in whose jurisdiction the historical landmark is located, in order to be declared in the real estate province.<sup>(38)</sup>

In the context of archaeological reserves, in the application of Article 34 of Law 98-04,<sup>(39)</sup> it is not permissible to establish any building or project in the archaeological reserve, during the period between the decision to open the classification lawsuit and the actual classification, where it does not exceed six months. And the Minister in charge of Culture can order the suspension of any project in the reserve even when the classification case is opened.

The inaccuracy of these provisions opens the way for the establishment of a building or project in the protected area, surrounding the archaeological reserve or after the actual classification of the archaeological reserve, which contradicts the principle of protection enshrined in the law because reserves are areas that have not been explored. In this regard, an archaeological reserve was discovered in Bakira, located 4 km from the city of Constantine, on December 14, 1991, where much archaeological equipment, monuments, and buildings were discovered two meters from the surface of the earth.<sup>(40)</sup>

It was proved that the archaeological structures discovered in Bakira indicate that the latter is an extension of the city of Cirta, where various industrial and agricultural activities were practiced and in which stones were carved to be transported to Cirta. Some owners of the preparatory work contributed to the deterioration of the site, so the National Gendarmerie forces intervened to stop the work. Despite the archaeological research, efforts

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<sup>(34)</sup> Law 98-04, op. cit.

<sup>(35)</sup> Law 98-04, op. cit.

<sup>(36)</sup> Law 98-04, op. cit.

<sup>(37)</sup> Bouanane Kentouche Nadia, op. cit. p. 22.

<sup>(38)</sup> Law 98-04, op. cit.

<sup>(39)</sup> Law 98-04, op. cit.

<sup>(40)</sup> Bouanane Kentouche Nadia, op. cit. p. 22.

made, and repeated requests, the latest of which was issued by the National Antiquities Agency on 07/21/1994, however, the authority was not aware of in-depth excavations and restorations to assess and preserve the archaeological. <sup>(41)</sup>

In a related context, there is a visual relationship between the historical landmark and the indivisible territory, which is not less than two hundred meters. And the field of view can be expanded, avoiding destroying the features that have been specifically addressed in this field. Expansion of this area is left to the discretion of the Minister responsible for culture, on the proposal of the National Committee for Cultural Property.

Thus, the extension of the classification decision is based on two factors, a spatial factor, and an engineering factor. Still, the legislator did not specify the place he likes to stand at in order to determine the visual relationship between the historical landmark and its territories.

The inaccuracy in concepts is also manifested through the use of the legislator in Article 17, the last paragraph of Law 98-04 The phrase "field of vision" is not less than 200 meters. If this distance between the historical or archaeological landmark is calculated, this allows the establishment of a field of vision covering an area of several hectares, But if the distance of 200 meters is enough between the historical monument and its territory, then the area covered is limited compared to the first. <sup>(42)</sup>

However, these spaces were sometimes not respected, for example, Agha Palace in Ferjiwa, classified since 1982, was surrounded by a medium without considering the specified distance, which affects the relationship of vision between the historical landmark and its territories. <sup>(43)</sup>

According to some, the limitation of 200 meters in the current law is due to the urban chaos that surrounds historical and cultural monuments, and according to this, this distance confirms the legislator's desire to give priority to development and rehabilitation projects. At the expense of cultural and archaeological heritage. <sup>(44)</sup>

Returning to the classification, this measure remains in the current situation below the required level despite the diversity and richness of the national heritage, as 395 landmarks were classified until 1998, and most of them were classified during the 132 years of the French occupation. Roman ruins were considered historical monuments, while villages and palaces containing architecture and folk traditions were considered mere natural sites. <sup>(45)</sup>

In addition, there are shortcomings in the classification procedures, because the classification criteria are unclear and imprecise at the legal, theoretical and methodological levels, as they are arbitrarily determined by the national or local committee for cultural property. <sup>(46)</sup> One of the controversial legal provisions is that the process of photographing historical, or archaeological monuments classified, or recorded in the additional inventory is subject to prior authorization from the interests of the Ministry responsible for culture, which is not in line with the development of tourism. In addition to classification and registration in

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<sup>(41)</sup> Bouanane Kentouche Nadia, op. cit. p. 22.

<sup>(42)</sup> Bouanane Kentouche Nadia, op. cit. p. 23.

<sup>(43)</sup> Benseddik Souki Habiba, op. cit. p. 190.

<sup>(44)</sup> Benseddik Souki Habiba, op. cit. p. 190.

<sup>(45)</sup> Khawadjia Samiha Hanan, op. cit. p. 82.

<sup>(46)</sup> The opinion of the National Economic and Social Council, the regular session held on December 29, 1999, O.J 40.

the additional inventory list, there is another mechanism represented in the general inventory.<sup>(47)</sup>

### 3.3- General Inventory:

The inventory of archaeological property is relatively old. Experts in antiquities were demanding to find young talents in drawing to get to know the historical monuments and draw their structures and the surrounding area, and they also demanded that small pieces of paper should be affixed to each piece of pottery or coin so that people could know its history accurately.

Previous experiences prove the progress made in the inventory procedures, which are carried out in Algeria according to the law, and the general inventory means the information and element registration document, which allows the identification and enumeration of movable cultural property and protected real estate.

The general inventory concerns cultural property classified or registered in the supplementary inventory or created in the form of preserved sectors, which are kept in a special register of the general inventory whose form and content are determined by a decision of the Minister in charge of Culture.<sup>(48)</sup>

The general inventory of cultural property is recorded in Chinese ink in a large-sized horizontally bound register signed and marked with clear letters without cross-out, distortion, deficiency, or repetition.

The general inventory record consists of two books. The first book, which includes the diagnostic elements arranged in columns, belongs to the protected cultural real estate and is divided in turn into three parts:<sup>(49)</sup>

The first book, includes an inventory classified protected real estate cultural property.

- Protected cultural property is registered in the additional inventory.
- Protected real estate cultural property established in reserved sectors.

The second book, which includes the diagnostic elements arranged in the form of numbered columns related to movable cultural property, is divided into two parts:

- Classified movable cultural property, movable cultural property is registered in the additional inventory.
- Protected cultural property is registered based on lists that control its form and content by the Ministry in charge of culture, and is published in the Official Gazette of the Algerian Republic, and the list is subject to review every 10 years.<sup>(50)</sup>

Taking into account the cultural property that has been the subject of the protection measures provided for in the law during the past decade, the cultural property that has been massively destroyed, and the cultural property that has been damaged due to natural

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<sup>(47)</sup> Yves Jegouzo, the protection of cultural heritage through soil management procedures for urban planning and architecture, the Administrative Review, No. 227, Paris, September 1985, page 454.

<sup>(48)</sup> Article 02 of the decision dated May 29, 2005, specifies the form and content of the general inventory register of protected cultural property, O.J No. 63.

<sup>(49)</sup> Article 02 of the decision dated May 29, 2005, op. cit.

<sup>(50)</sup> Article 02 of the decision dated May 29, 2005, op. cit.

disasters or war. Especially taking into account the real and movable cultural property recorded in the additional inventory.<sup>(51)</sup>

It should be noted that after independence, Algeria witnessed a state of alienation that forced it to reconsider its historical and archaeological monuments, and it was not helped by the absence of documents related to archaeological and historical properties prepared by the colonial administration in the French archives. Therefore, many archaeological properties are "unregistered", and in order to establish a national program for the preservation of the national heritage, it is necessary to prepare a national inventory of all movable and real cultural property to give the Algerian state the right to claim these pieces outside the country.<sup>(52)</sup>

In this regard, an international conference was held in Algeria, with the aim of exchanging experiences in the Mediterranean countries, and interest in establishing a database of archaeological properties. Participants and academics in this conference emphasized categorically that Algeria did not discover all the unique archaeological sites due to the lack of experts in archaeology, which calls for the intervention of university professors and students to count and classify monuments.<sup>(53)</sup>

It should be noted that the inventory project requires political will, and the absence of that hinders the evaluation of antiquities and archaeological sites, which causes their deterioration and loss, which requires the development of deterrent laws in the event of an attack on archaeological properties.

### **3.4- Penalties in the event of an attack on archaeological property:**

As stipulated in Article 91 of the Cultural Heritage Protection Law No. 98/04: An association whose statute provides for the protection of cultural property can present itself as a plaintiff, and take up the case as a civil plaintiff.<sup>(54)</sup>

In addition to the judicial police officers and their assistants, he can carry out the task of searching, editing, and inspecting all violations of the provisions of Law 98-04, specially qualified men of art according to the conditions specified in the applicable regulation. Inspectors in charge of protecting cultural heritage. Conservation, valuation, and monitoring agents.

Anyone who obstructs the work of the agents charged with the protection of cultural property or makes them unable to carry out their duties in accordance with the provisions of the Penal Code shall be punished.<sup>(55)</sup>

The Algerian legislator has qualified all acts of violation of the legal protection of cultural property, including antiquities, as a misdemeanor. For example, Article 94 of Law 98-04 provides a prison sentence of one (1) to three (3) years for anyone who commits violations related to conducting archaeological research without a license from the Minister responsible for culture. Or when surprising discoveries, or those discovered during approved

<sup>(51)</sup> Law 98-04, op. cit.

<sup>(52)</sup> Article 07 of Executive Decree 03-311 of September 14, 2003, setting the modalities for the general inventory of protected cultural property.

<sup>(53)</sup> Benseddik Souki Habiba, op. cit. p. 190.

<sup>(54)</sup> Law 98-04, op. cit.

<sup>(55)</sup> Article 144 of Ordinance No. 66/156, of June 8, 1966, related to amended and supplemented Penal Code.

archaeological research, are not declared. In addition, the Minister of Culture can order the offender to return the state of antiquities to what it was.<sup>(56)</sup>

A penalty of imprisonment from two (2) to five (5) years shall be imposed on every sale or concealment of objects obtained from excavations or excavations discovered by chance or while carrying out licensed archaeological research. Or selling or concealing objects obtained by chance from research conducted under seawater. Or concealment of cultural property classified or registered in the additional inventory. This raises the problem of selling or hiding cultural or archaeological property that has not been classified or is in the process of classification, as well as cultural property resulting from its dismemberment or fragmentation, especially the sale or concealment of architectural elements derived from cutting.<sup>(57)</sup>

It is noted that the amount of penalties prescribed is inappropriate to the extent of the assault, violation, demolition, and distortion because the components of tangible heritage cannot be compensated and are not subject to renewal.

#### **4-Conclusion:**

Cultural heritage requires good management, as there is a political will to value and preserve it, as it is a source of employment and economic development. The totality of tangible and intangible heritage, movable and immovable, has the same provisions without discrimination, by virtue of its participation in law with other elements of cultural heritage. The protection mechanisms related to the lands of the vision stipulated in Law 98-04 are considered to contribute to the preservation of cultural heritage so that the landmark is integrated and protected.

In addition, protection mechanisms are either relative or time-consuming, for example, an additional inventory mechanism expires at ten 10 years if the archaeological landmark is not classified. As for the classification, it does not reflect the real number of sites and monuments that represent different historical eras, due to the absence of archives and documents related to cultural and archaeological heritage. As it was prepared during the colonial period and distributed through the French archives departments, in addition to the length of this procedure and the lack of clarity of classification criteria. And the absence of an accurate definition by the legislator of some acts of intervention on the archaeological or historical heritage such as restoration, re-evaluation, and maintenance, opens the way for several violations.

Protecting the archaeological and cultural heritage was not a priority after independence, which led to its neglect, as things were more complicated due to the opening of workshops throughout the national territory, which open the way for the destruction of this non-renewable real estate wealth. so it is necessary to enact the Preventive Law, including includes measures to save antiquities buried under the surface of the earth after they were accidentally discovered during the development project, and all other sectors that have a direct or indirect relationship with antiquities by accepting the priority of archaeological work and stopping development work.<sup>(58)</sup>

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<sup>(56)</sup> Law 98-04, op. cit.

<sup>(57)</sup> Law 98-04, op. cit.

<sup>(58)</sup> Farida Belfarak, Legal Procedures for the Protection of Antiquities in Algeria, Journal of Studies in Human and Social Sciences, Issue 5, 2003, p. 33.

In addition to the foregoing, the lack of experience in the local representatives, and the absence of in-depth thinking about the role of reconstruction tools in protecting this heritage, as they are prepared without knowing the accuracy of the existing archaeological wealth, these factors have led to the neglect of this non-renewable historical real estate wealth.

Among the suggested **results** are the following:

Algerian legislation related to antiquities classifies the archaeological properties, which are the cultural heritage of the nation, and are those inherited through the various successive civilizations, from prehistoric times to the present day.

What we conclude from these legal texts is that they punish anyone who steals or smuggles cultural property, and the penalties are deterrent and severe.

Among the suggested **recommendations** are the following:

The need to search for strategies and mechanisms to ensure the continuity of the archaeological heritage in its best historical and aesthetic form.

Involve the states and municipalities in the field of protection and give them more freedom in archaeological heritage in its territory.

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