

Protecting real estate cultural property to ensure its sustainability in Algerian legislation

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Abstract---Algeria possesses a rich cultural heritage, the result of the succession of many civilizations. This heritage is embodied in its material aspect in real cultural property, but the latter is exposed to several dangers that threaten its existence and being. Therefore, the Algerian legislator sought to establish appropriate legal frameworks to protect it in accordance with what is stated in Law 98/44 related to the protection of cultural heritage, by devoting institutional and administrative protection to preserve it, value it and achieve its sustainability for the benefit of future generations. It was embodied in the installation of central and local institutions to undertake this and the enactment of qualitative measures and procedures represented in registering these properties in the additional inventory list, classifying them or creating them in the form of preserved sectors, in addition to developing plans to protect them and imposing the condition of prior authorization as a preventive administrative measure. However, this protection remains relative in view of the difficulties that afflict the application of the law on the ground.

Keywords---real estate cultural property, legal protection, classification, valuation.

Introduction

Cultural property constitutes a set of cultural, historical and civilizational values constituting the memory and identity of various peoples, including real cultural property, of which Algeria has an enormous and ancient part, manifested in monuments, sites and historical monuments, of which are protected and classified internationally and are living evidence of the establishment of ancient civilizations and their succession on its land, and evidence of the cultural In the depths of history.

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However, during the colonial period, these properties were looted and mutilated, the features of the national identity were obliterated, and they are still being neglected and destroyed, whether intentionally or unintentionally, as a result of ignorance, neglect and indifference to this non-renewable wealth, in addition to the magnitude of the dangers that have become lurking in them; some of them are natural and man-made, such as accelerated The management, management, maintenance and rehabilitation of such property by the competent authorities.

The study of the subject of real cultural property is of great importance from a legal point of view, because most states have taken care of protecting, valuing and preserving such property, both at the international level by concluding agreements and providing the necessary protection in time of war and peace, and at the domestic level through the enactment of various national legislation related to this field.

As for the objective of this research, it is to ensure the necessary protection of real cultural property, which has many forms and means in the light of the provisions of the Algerian legislation in order to reach the sustainable development of this ancient cultural and Real Estate Heritage.

The Algerian Legislature has enshrined the protection of real cultural property from various risks, such as encroachment and depletion, through the enactment of Law No. 98/04 on the protection of cultural heritage, which repealed the provisions of order 67-281 dated 20/12/1967 on excavations and the protection of historical and natural sites and monuments, after a long legal vacuum.

Based on the foregoing, the following problem can be posed:**how effective is the legal protection of real cultural property intended for preservation, valuation and sustainability under the provisions of law 98/04 ?**

The first part deals with the legal framework of real cultural property and the second part deals with the forms of legal protection of real cultural property .

The descriptive approach was also adopted by describing the subject variables and the analytical approach was adopted by analyzing the Law No. 98/04 on the protection of cultural heritage.

I. The legal framework of real cultural property

By Law No. 98/04, the legislator defined the concept of cultural heritage, which is called the term cultural property, which includes both intangible cultural property and tangible cultural property, which in turn includes both Movable Cultural Property and real cultural property that is the subject of this research, and therefore, first of all, it was necessary to define the concept of real cultural property (requirement 1), and (Requirer2).

1) The concept of real cultural property

States have sought to enact international conventions and issue national laws on the protection of real cultural property, and many doctrinal opinions, especially international ones, have emerged in this regard, and therefore the definition of such property has been addressed from the doctrinal point of view (Section 1)and from the legal point of view (Section 2).

a - Definition of real cultural property jurisprudence

Real cultural property is a part of the cultural heritage by which in the XVIII century in France church property and throne property of national value were meant .It includes the real estate built heritage represented by Ancient Cities, Historical Antique neighborhoods, palaces, mosques, corners, movable heritage and archaeological sites such as :tasili, Timgad, and Jamila . Also by them are meant tangible and intangible objects of artistic and historical significance belonging to a private body (person, company, Association) or to a public body (municipality, administration, Region, Country)

There are those who see that they are those objects, landmarks or sites that are stable in a certain spatial space and do not accept moving by their nature, they are fixed and glued to the ground, unless this attribute is removed from them, which is everything that a person perceives with his senses, such as

ancient palaces, palaces, mosques, temples, castles, ancient military installations, stone inscriptions and natural barns¹

It can be said that real cultural property falls within the framework of material cultural property, which is all that previous civilizations have achieved, with regard to architecture, buildings, sites, historical monuments and all fixed real estate components in the land, which constitute the cultural and urban architectural heritage of the nation.

b- Definition of real cultural property by law

There are many definitions related to defining the concept of cultural property in general, but real cultural property should be defined in the framework of international legislation (first) and under national legislation in the light of the law 98/04 on the protection of cultural heritage (second) .

- Real cultural property under international legislation:

There is an arsenal of international texts and charters, defining the concept of cultural property in general, only the first article of The Hague Convention for the protection of property in the event of armed conflict of 1954, defines cultural property into three categories:²

- Immovable movable property of great importance to the cultural heritage of peoples, such as architectural, artistic, religious and secular historical buildings ,archaeological places, collections of buildings that acquire historical or artistic value, artifacts, manuscripts, books and other objects of artistic, historical or archaeological value, as well as scientific collections, collections of important books, archives and copies of the above-mentioned property

- Buildings intended mainly and effectively for the protection and display of Movable Cultural Property, such as museums, major bookstores, archival stores, as well as caches intended for the protection of former Movable Cultural Property, in the event of an armed conflict,'

- Centers that contain a large collection of cultural properties described in paragraphs A and B, which are called Memorial Building centers).

It should be noted that this definition introduced two types of cultural property :Movable Cultural Property and immovable cultural property, but it did not mention the time period necessary to consider a movable or an archaeological property .The convention also did not mention any criterion, which makes this property culturally significant and worthy of protection.

The Second Additional Protocol to The Hague Convention signed on March 26, 1999 maintained the same definition and articles 16 and 53 of the protocols additional to the Geneva Conventions dated June 08, 1977 dealt with the definition of cultural property, as historical monuments, works of art and places of worship . The rules on the observance of the laws and customs of land warfare annexed to The Hague Convention No. 4 of October 18, 1907, also contain a definition of cultural property to be protected in situations of armed conflict, referring to Article 56 thereof to various groups of such property as works of art, archaeological and historical sites or buildings dedicated to charitable works, regardless of their ownership.According to the first article of the Roerich charter of 1935, historical monuments, museums, cultural, educational, artistic and scientific institutions are considered neutral places and the parties to the conflict should respect and protect them as such .³

Whereas it is stated in the first article of the International Convention for the protection of the world cultural and Natural Heritage issued by UNESCO dated November 23, 1972 that cultural heritage means:⁴

- Antiquities: includes architectural works, sculptural works, photography on buildings, archaeological elements and components, inscriptions, caves and collections of monuments that have exceptional world 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:human works, or joint works between nature and man, as well as areas including archaeological sites that have exceptional universal value from a historical, aesthetic, or ethnological point of view .

The unified Arab Antiquities Law issued in Baghdad in 1981 also states in the first part that: 'anything left by civilizations or left by previous generations, which is revealed or found, whether it is real estate or movable, is considered a trace related to the arts, sciences, literature, beliefs, daily life or

public events and others, dating back to A hundred years ago when it had artistic or historical value'. And the time limit here is not by way of pieces ,each country can determine it according to its circumstances, interests and historical reality to consider the thing an impact ⁵ .

- Real cultural property under national legislation:

The national legislations of the states do not contradict the doctrinal trend in their definition of cultural property and in view of the importance of these properties, their protection has been enshrined in Algeria at the level of the Supreme and fundamental text, namely the Constitution, according to Article 76 of the last constitutional amendment of the year 2000 ⁶ which states: 'the state undertakes the protection of the National tangible and intangible Material cultural heritage, but the matter went beyond protection to include its preservation, valuation, maintenance, restoration and rehabilitation as well .

The Algerian legislator defined the cultural heritage through the second article of Law No. 98-04 as follows: (in the concept of this law, it is considered a cultural heritage of the nation, all real cultural property and real estate by allotment, movable, located on the land of the national property and within it owned by natural and legal persons subject to private law, as well as in the aquifers of internal and regional waters of the National Inherited from various successive civilizations from prehistoric times to the present day).

It should be noted that the Algerian legislator has not established a legal definition of real cultural property under law 98/04, but it can be defined based on the definition of real estate in accordance with the general rules, as Article 683 of the Algerian Civil Code states that:(everything is stable in its space and fixed in it and cannot be moved from it without damage, it is real estate....).

Whereas the previous repealed text, i.e. order 76-281 of 20/12/1967 on excavations and protection of historical and natural places and monuments, was defined in Article 20, paragraph 2 (Historical Monument on the basis that it is an isolated built or unbuilt property and considered in whole or in part, as well as its subsoil or an allotment property in whole or in part of involves the national interest specified in Article 19 above).

Article 4 of Law No. 90/30 of December 21, 1990, which contains the amended and supplemented national property law, stipulates that:'artificial public national property includes public monuments, museums and archaeological sites'.

According to what was mentioned earlier, the legal nature of real cultural property is public property belonging to the state, it is thus: inalienable, not acquired by statute of limitations and cannot be seized, and such cultural property may belong to private.

2) Components and types of real estate cultural property:

Cultural property includes, according to Article III (3) of law98/04, Movable Cultural ⁷ Property real cultural property and intangible ⁸ cultural property the legislator defined the real cultural property under the text of Article (08) of law 98/04 as follows: historical monuments, archaeological sites and urban or rural groups .

a- Historical monuments:

A historical landmark is a building or a real estate entity, which has its own legal regime in order to protect it, not only for its historical, artistic, engineering, but also for its technical and scientific significance .Historical monuments are also meant, that is, an individual or aggregate architectural creation, based on a witness of a particular civilization, an important development or a historical incident⁹

The Algerian legislator referred to the definition of historical monuments under the text of Article 17 of law 98/04, defining it as: (any single or total architectural construction based on a particular civilization or on an important development or historical incident,and the monuments concerned in particular are major architectural achievements, painting, engraving, decorative art, Arabic calligraphy, buildings or grandiose landmark complexes with Religious, military, civil, agricultural or industrial character, prehistoric structures, funerary monuments, burials, caves, paintings, rock paintings, monuments, isolated structures or elements related to major events in national history).

It can be said that historical monuments are evidence of what previous civilizations have achieved in the field of architecture, architectural art and human creativity in the organization and management of ancient cities .

b- Archaeological sites:

The discovery of buried traces by an archaeological search leads to the creation of an archaeological site¹⁰ An archaeological site is a place where remnants of human activities during ancient times are found; these sites are buried underground or submerged in water, and in this sense archaeological sites are classified into two categories :land and sea archaeological sites .Land-based archaeological sites are classified into sites located in the urban or rural area ,or industrial archaeological sites that include physical or non-physical traces of an industrial activity of the archaeological past located in an underwater environment or separated from it¹¹ ‘As for the Algerian legislator, according to the text of Article (28) of law98/04, archaeological sites are those spaces built or not built without an active function and testify to the actions of man or his interaction with the natural, including the subsoil related to it, and have value from a historical, archaeological, religious, artistic, scientific, ethnological or anthropological point of view. In particular, it refers to archaeological sites, including archaeological reserves and cultural enclosures.

Archaeological sites include archaeological reserves and cultural enclosures.

1. Archaeological reserves: archaeological reserves consist of areas that have not previously been explored and excavated, and may include sites and landmarks that have not been identified, have not been subjected to a census or inventory, and may store traces and contain exposed archaeological structures .The boundaries of the archaeological reserve shall be established and defined by a decision issued by the minister in charge of culture, following consultation with the National Commission for cultural property .¹²

2. Cultural enclosures: cultural enclosures means all the remnants of ancient prehistoric man, as they are classified in the form of cultural enclosures, the spaces characterized by the predominance of cultural properties located on them or their importance, which are inseparable from their natural surroundings .¹³ They are vast areas, containing the remnants of ancient prehistoric man, which express his social, cultural and industrial level, and they are also the largest museums open to nature in the world, classified in the form of cultural hangars, spaces characterized by the predominance of cultural properties located on them or their importance, which are not separated from their natural surroundings¹⁴ .

As for the Algerian legislator, he stressed that cultural enclosures are formed from those spaces that are characterized by the predominance of cultural properties located on them or by their importance that is inseparable from their natural surroundings.

The cultural park shall be established and its boundaries defined by a decree adopted on the basis of a joint report of the ministers in charge of culture, local communities, environment and Urban Development, and forests, following consultation with the National Commission for cultural property .¹⁵

In the concept of Article 02 of the executive decree 12-291 of the Basic Law of the National Bureau for the cultural enclosure, the cultural enclosure is a space that does not distinguish between natural and cultural, observed and realized from an environmental and cultural perspective as a cultural tool and a collective achievement in the continuous restructuring and historical product of the common relations between The population, their activities, their mental perceptions and the environment they share.

c- Urban or rural real estate groups:

Urban or rural real estate groups, such as kasbahs, cities, palaces, villages and traditional residential complexes, distinguished by the predominance of the residential area in them, which, by their uniformity and architectural and aesthetic unity, have historical, architectural, artistic or traditional significance that would justify their protection, repair, rehabilitation and valuation, are held in the form of preserved sectors .The reserved sectors shall be established and their boundaries defined by a decree adopted on the basis of a joint report of the minister of culture, the minister of local communities, the

minister of the environment and the minister of construction and architecture .It can be proposed by a local group or collective movement to the minister of culture after consulting the National Commission for cultural property, and also provide the preserved sectors with a permanent protection and reclamation scheme that replaces the Land Occupancy scheme.

These properties are based in their composition and composition on various mosaic inclusions of enormous cultural, historical and architectural value (such as archaeological sites, historical monuments, preserved sectors, archaeological reserves and cultural enclosures), which necessitates providing their protection in various forms and by various means, and this is what we address in the following discussion in the light of the law 98/04.

II. Established forms of legal protection of real cultural property

Similar to the international protection enjoyed by real cultural property, it enjoys internal protection at the level of national legislation through Law No. 98/04 on the protection of cultural heritage, the forms of this protection varied between institutional protection of these properties (requirement 1) and administrative protection (requirement 2) .

1) Institutional protection

In order to embody the institutional protection of real cultural property, the Algerian Legislature has allowed the establishment of structures and institutions that take care of the real cultural heritage and work to preserve and maintain it and ensure its sustainability, represented by the Ministry of guardianship at the central level(Branch 1) and in local groups at the regional level(branch 2) and various local and national committees (Branch 3).

A- The Guardian Ministry.

The task of protecting cultural heritage in general was entrusted to the Ministry of culture, in accordance with the provisions of executive decree 05-80 of February 26, 2005, which included the organization of the central department in the Ministry of culture, within the structure of the latter there is a stand-alone Directorate, concerned with the legal protection of cultural property and the valuation of cultural heritage, this Directorate initiates, proposes and evaluates It also ensures the application of the administrative procedures required for the implementation of the deliberations of the national committees in charge of cultural property, the preparation of plans for the valuation of cultural heritage and its programs and ensure their completion¹⁶

The Directorate for the legal protection of Cultural Property consists of three sub-directorates:the sub-directorate for legal control, the sub-directorate for the security of cultural property and the sub-directorate for research and valuation of cultural heritage.

The Ministry of Culture also includes the sub-directorate for the conservation and restoration of real cultural property, which falls within the Directorate for the conservation and restoration of cultural heritage and is tasked with proposing projects programs and schemes for the protection and valuation of archaeological sites and reserves, general schemes for the preparation of cultural enclosures and schemes for the preservation of preserved sectors, monitoring how to implement them, studying and adjudicating each intervention on real cultural property, participating in the work of sectoral committees and organs The various departments responsible for the study, management and operation of real estate properties in which the ministry is represented, organizing the committee for the qualification of architects and restorers, ensuring their proper functioning, and controlling the card of technicians in the field of restoration and work supervisors.

b- Local communities

The laws governing the functioning of regional communities are devoted to the protection of real cultural property, as the bodies closest to them, and because the latter are an important part of the history, culture and identity of the inhabitants of local territories .

- The competence of the municipality in the protection of real cultural property:

The Algerian Legislature has already defined the powers of the municipality in the cultural sector, by executive decree 81-382, which defines the powers of the municipality and the state and its competence in the cultural sector¹⁷. The current municipal law is 11/10¹⁸ It includes many of the powers vested in the chairman of the municipal People's Council in the field of preserving the real estate and urban

cultural heritage of each municipality, the territory of whose territory includes archaeological sites with a national or international cultural dimension, as the chairman of the municipal People's Council, under the supervision of the municipal People's Council on behalf of Real and movable property owned by you, including real cultural property in accordance with Article 82 of the municipal law 11/10. The chairman of the municipal People's Council, as a representative of the state, has the authority to ensure the protection of historical and cultural heritage, to ensure respect for Standards and instructions in the field of real estate, housing, reconstruction and protection of architectural cultural heritage, within the framework of protecting and respecting the rights and freedoms of citizens¹⁹. Article 95 of the same law also obliges the chairman of the municipal People's Council to ensure respect for the legislation and organization in force in the field of protection of architectural cultural heritage on the entire territory of the municipality. While Article 116 of the same law stipulates the following: (within the framework of the protection of architectural heritage and in accordance with the applicable legislation and regulation related to housing, construction, preservation and protection of cultural heritage, the municipality, with the contribution of qualified technical interests, ensures the preservation and protection of cultural real estate and the protection and preservation of the geometric harmony of residential communities). In the same context, it orders, within the same forms, the demolition of walls, buildings and falling buildings, respecting the applicable legislation and regulation, especially related to the protection of cultural heritage.²⁰ However, when the fallen building is subject to the legislation in force in the field of protection of monuments and historical sites, the chairman of the municipal People's council can order its restoration or demolition only within the limits of the conditions stipulated by the legislation and the regulation applicable to this²¹.

In addition, the law on cultural enclosures granted the right to municipal People's councils to submit their opinion on the principle of establishing a cultural enclosure, if the draft classification includes.²² The chairman of the municipal People's council was also given the authority to order the adoption of temporary measures in order to ensure the safety of persons occupying real estate located within the protected area'.

Despite the powers vested in the municipality in the field of protecting real cultural property, the latter is often subjected to depletion, exploitation, degradation and pollution, due to the fact that the municipality does not carry out the aforementioned powers and is entitled to the full text of the law, which necessitates the protection of these properties at a higher level.

- Jurisdiction of the state in the protection of real cultural property:

The state carries out its natural role in the preservation of real cultural property, if it is included in the boundaries of its territory, it included Article 77 of the law 12/07²³ Article 97 of the same law stipulates the contribution of the state people's Council to the establishment of cultural infrastructure and the protection and preservation of historical heritage after consultation with municipalities and all bodies responsible for the promotion of these activities and associations active in the field of cultural heritage preservation.

As for Article 98, it emphasized the contribution of the state people's Council to the protection and preservation of cultural, artistic and historical heritage through the contribution of technical interests and in coordination with the municipalities of the state and every body or association concerned with the protection of cultural heritage, the state people's council also contributes to the development of every work aimed at the promotion of cultural, artistic and historical heritage and proposes the necessary appropriate measures for its valuation and preservation, by contacting With the relevant institutions and associations. In the same context, the governor carries out the creation procedure, which consists in issuing a decision to register in the additional inventory of real cultural property of local value in accordance with the text of Article 11 of the law 98/04. The governor is also informed by the minister in charge of culture of the decision to classify the historical landmark located in his jurisdiction in order to publish it in the real estate governorate²⁴.

c- Committees for the protection of real cultural property.

In order to ensure greater protection of real cultural property, the Algerian legislature, by law 98/04, provided for the establishment of committees specialized in the protection of this cultural property,

namely the National Committee for Cultural Property (first), the state committee for Cultural Property (second) and special committees (third).

- National Commission for cultural property:

A special National Committee for the protection of cultural property has been established in accordance with Article 79 of law 98/04. This committee is competent to express its views on all matters related to the application of this law, which is referred to it by the minister in charge of culture, and to deliberate on proposals for the protection of movable and immovable cultural property as well as on the establishment of preserved sectors for urban or rural inhabited real estate collections of historical or artistic significance. This committee shall send the minutes of its deliberations regarding the cultural properties registered in the additional inventory to the minister in charge of culture within fifteen (15) days following the meeting of the committee in accordance with Article 12 of executive decree 01-104²⁵.

- State commissions for cultural property:

State commissions for cultural property have been established at the level of each state under Article 80 of law 98/04, tasked with studying any classification requests, establishing preserved sectors or registering cultural property in the additional inventory and proposing them to the National Commission for cultural property. It also expresses its opinion and deliberates on applications for registration of cultural property of extreme local value for the relevant state in the list of additional inventory. The minutes of the deliberations of the state committee for cultural property, regarding the cultural property registered in the additional inventory shall be sent to the minister in charge of culture within 15 days following the meeting of the.²⁶

- Special commissions:

According to the text of Article 81 of law 98/04, the legislator has established a committee with the minister in charge of culture, which is charged with the acquisition of cultural property intended for the enrichment of national collections, and another committee to ensure the expropriation of cultural property. Other bodies that contribute directly or indirectly to the protection of real cultural property are the National Fund for cultural heritage and the directorates of culture.

2) Administrative protection

The real cultural property received administrative protection, which was embodied in a number of qualitative measures and measures taken to preserve its integrity and value, and in the planning and pre-licensing system before undertaking development and sectoral projects that would harm this ancient cultural heritage.

a- Qualitative measures for the protection of real cultural property

The Algerian legislator has singled out real cultural property through law 98/04 in a set of ways that are tantamount to protective measures that give the real cultural property a special character. According to Article 08 of law 98/04, these properties are subject to one of the following protection systems depending on their nature: registration in the additional inventory list, classification and development in the form of reserved sectors.

- Registration in the list of additional inventory:

Registration in the additional inventory list is considered one of the qualitative and proactive measures carried out by the administration in order to ensure the protection of real cultural property before classifying it, however, it is permissible depending on the will of the competent administrative authorities or on the initiative of any person who deems it necessary to protect cultural property. If it is not classified permanently, it is removed from the inventory list within a period of 10 years, in accordance with It is stated in Article 10 of law 98/04.

The legislator adopted the registration of real cultural property on the basis of the principle of significance, whether national or local significance (ocal nationale et L'intérêt l'intérêt). The national significance can be understood on the basis of the emergence of a first-class artistic and historical value of the real estate cultural property and in this sense what is National goes beyond what is regional and local, because it cares about the culture of a particular nation by itself. Proceeding from this basis, the

legislator has distributed the authority to issue a decision to register in the additional inventory list to the competent administrative authorities, it may be by a decision issued by the minister in charge of culture for real cultural property of national importance, on his own initiative or the initiative of any person who sees an interest in this, but after consulting the National For real cultural property that has an important value at the local level, on the initiative of the minister in charge of culture, local collectives or any person who sees an interest in it after consulting the state committee for cultural property²⁷

The registration decision includes information about the nature and description of the Cultural Property, its geographical location, documentary and historical sources, the significance justifying its registration, the scope of the planned registration in whole or in part, the legal nature of the property, the identity of the owners or owners of allotment or any other legitimate concern, agreements and obligations in accordance with Article 12 of law 98/04.

The decision to register in the additional inventory list is subject to two important procedures : publication and notification .this decision, whether taken by the minister in charge of culture or the regionally competent governor, is published in the official gazette of the Algerian Republic and is published at the headquarters of the municipality where the property is located for two consecutive months. The decision is also communicated to the owner of the cultural property concerned, and in the event that the registration is by a decision of the minister, he informs the Wali who has the property within the territory of his jurisdiction for the purpose of publication in the real estate conservation.²⁸

Based on what is stated in this article, it can be said that registration in the additional inventory list is only a temporary measure because it lasts for 10 years according to what was announced by the above article, and therefore it is a weak measure to provide full protection for archaeological sites and historical monuments that are at risk.

- Classification:

The classification of cultural property is based on principles and values represented by the historical, artistic and archaeological value of the cultural heritage being classified, and the classification of cultural property entails highlighting its cultural and intellectual value, saving archaeological sites from vandalism, demolition, smuggling and urban expansion, and opening new horizons for tourism, classification is one of the final protection measures for real cultural property according to Article 16 From law 98/04, it is by a decision of the minister of culture after consulting the National Commission for cultural property, on his initiative or from any person who sees an interest in its classification, and submits the application to the minister in charge of culture. Classified real property owned by private persons is considered assignable, and classified property retains the results of classification no matter to whom it is transferred .

The decision to open the classification case is subject to publication in the Official Gazette and is made public by suspending it within two(2) months at the headquarters of the municipality in whose territory the historical landmark is located, to allow the owners during this period, any two months, to submit their written comments, and upon the expiration of the time limit without objection, their silence is considered as consent to open the classification case. In the event of an objection to the classification decision by the owners, the objection shall be referred to the National Committee for cultural property to express its opinion on it. the classification shall be carried out only according to a corresponding opinion issued by this committee within a maximum period of two(2) months.

The nature of the cultural property and its geographical location, the designation 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 photographs, agreements and obligations, the classification decision extends to the built or non-built properties located in the protected area, and all The law on them and the cultural teacher, starting from the notification of public or private owners, the opening of the classification case by the minister in charge of culture, and its application ends if the classification is not made within two (2) years following this notification.

The classification decision shall be published in the Official Gazette and communicated by the minister in charge of culture to the governor whose jurisdiction the historical monument falls within (in his

jurisdiction), in order to be published in the real estate conservation in accordance with Article 20 of law 98-04.

The legislator stressed that the National Commission for cultural property should be consulted by the minister in charge of culture before issuing a decision on the classification of historical monuments. The latter, who determines the conditions of the classification and indicates the agreements and obligations arising from it, but is not bound by the opinion expressed by the committee, has the right to take it or take part of it or exclude it altogether, contrary to the opinion expressed by the committee regarding grievances.²⁹

- **Creation in the form of reserved sectors:**

This procedure is considered as one of the protection systems provided by the legislator in Law No. 98/04, and includes urban or rural real estate groups previously defined in the first section of this research, which are characterized by their homogeneity and architectural unity. The aesthetic, historical, architectural, artistic or traditional significance of the building should justify its protection, restoration, rehabilitation and appreciation.

The reserved sectors are established in accordance with Article 42 of law 98-04 and their boundaries are determined by a decree, which is taken on the basis of a joint report of the ministers in charge of culture, interior, local groups, environment, reconstruction and architecture or a proposal from local groups or civil society to the minister of culture after consulting the National Commission for cultural property.

b- Planning as a mechanism for the preservation of real cultural property

Planning in general has protective dimensions for the fragile areas and spaces of the territory, either for their natural features or their cultural and historical features, where we find a clear interest in real cultural property within the plans of the development of the territory and urban development, however, according to law 98/04, the planning of archaeological areas depends on the plan of protection of archaeological sites and preserved and planned cultural enclosures .

- **Scheme of protection and restoration of archaeological sites and their protected areas.**³⁰

In accordance with the provisions of Article 30 of Law No. 98-04 on the protection of cultural heritage, this scheme defines the general rules of organization, construction, architecture and reconstruction when needed, as well as the consequences of land use and utilization, especially related to determining the activities that can be carried out on it within the boundaries of the classified site or its protected area. When the protected area of the archaeological site is included in the Land Occupancy plan, the latter shall respect the instructions dictated by this plan in accordance with Articles 2 and 3 of executive decree 03-323. This scheme defines the agreements applicable to the archaeological site and its protected area in the framework of respecting the provisions of the directive on rehabilitation and reconstruction.

The preparation of the plan for the protection of archaeological sites goes through several stages, starting from its preparation with a deliberation from the state people's Council, at the request of the governor after being notified by the minister in charge of culture, where the governor informs the chairman of the municipal People's Council or the heads of the concerned municipal People's councils and in accordance with Articles 5 and 5 of executive decree 03-323 of the.

The plan is approved by deliberation by the state people's council, so that the governor informs the draft plan to the various departments and public interests concerned, which have 30 days starting from the date of its notification to express an opinion. Also, this scheme, published in the official gazette by decision of the minister of culture, must indicate the date of its placement at the disposal of the public, the place or places where this scheme can be viewed, the list of written and data documents constituting the file, the date of commencement of implementation that makes the measures of this scheme applicable. The Directorate of Culture also implements and conducts the scheme in consultation with the chairman or chairmen of the municipal People's councils.

- **Permanent plan for the conservation and restoration of preserved sectors:**³¹

The plan is approved by deliberation by the state people's council, so that the governor informs the draft plan to the various departments and public interests concerned, which have 30 days starting from the date of its notification to express an opinion. Also, this scheme, published in the official gazette by decision of the minister of culture, must indicate the date of its placement at the disposal of the public,

the place or places where this scheme can be viewed, the list of written and data documents constituting the file, the date of commencement of implementation that makes the measures of this scheme applicable. The Directorate of Culture also implements and conducts the scheme in consultation with the chairman or chairmen of the municipal People's councils.³²

The permanent plan for the conservation and restoration of the preserved sectors has been established, which replaces the land occupation plan in accordance with the text of Article 45 of law 98-04 on the protection of cultural heritage. It specifies, for urban or rural real estate groups established in the form of reserved sectors, the general rules and land use agreements that must include a reference to real estate that is not subject to demolition or modification or that has been imposed demolition or modification. It also defines the architectural conditions on the basis of which real estate and the Urban Framework are maintained. This scheme also provides for special protection procedures, especially for real cultural property registered in the supplementary inventory, pending classification or classified and located within the preserved sector in compliance with the provisions related to the directive scheme of rehabilitation and reconstruction.

This scheme is approved based on the text of Article 44 of law 98-04 by an executive decree adopted on the basis of a joint report by the ministers in charge of culture, interior and local communities, environment, reconstruction and architecture for the preserved sectors with a population density exceeding fifty thousand 50,000 inhabitants or by a joint ministerial decision of the ministers in charge of culture, interior Local communities, environment, reconstruction and architecture for the preserved sectors with a population of less than fifty thousand 50,000 following the need to consult the National Commission for cultural property.

- The scheme of preparation of cultural enclosures:

The task of protecting, preserving, and restoring the barn within the boundaries of the barn shall be assigned to a public institution of an administrative nature placed under the guardianship of the minister in charge of culture, which shall be tasked with preparing the general plan for the establishment of the barn as a protective tool, provided that this plan is included in the development and reconstruction plans, and replaces the Land Occupancy plan for the area concerned. The establishment of a public institution and the organization applied within the boundaries of the cultural enclosure shall be the subject of a regulatory text, as stated in Article 40 of law 98/04. But it is not specified whether it is a presidential decree or an executive decree. However, with reference to the establishment of cultural parks, we find that they were established by an executive decree.¹

c- Licensing system

The obligation to protect real cultural property rests with the public authorities, as these properties constitute national wealth, it is natural that these authorities are responsible for their safety, preservation and valuation before the national community. In this context, the pre-licensing system is one of the most important measures taken by the relevant administrative authorities to preserve areas of outstanding cultural and historical significance, so law 98/04 subjected some works on real cultural property to prior licensing, including the following :

- All conservation, restoration, repair, addition, alteration and configuration works to be carried out on the historical monuments proposed for classification, classified or on the real estate located in the protected area.

- Works of basic installations such as installation of electrical, telephone, air or underground networks, gas pipes, drinking water or disinfection channels

- Works that constitute a visual assault that damages the architectural aspect of the landmark in question as they are considered as visual pollution aggression visuelle)

Executive Decree No. 12-291 of July 21, 2012 defining the Basic Law of the National Board of cultural enclosure of the ahqars and Executive Decree No. 12-292 of July 21, 2012 defining the Basic Law of the National Board of cultural enclosure of the Tassili Nagar, official gazette No. 44.

- Establishment of factories or carrying out major public or private works and logging or planting works if it would damage the external appearance of the landmark in question . (Article 21 of law 98/04).

- Any draft substantial amendment of the property that would lead to the removal of the factors that allowed its registration, erasure or deletion, or prejudice the importance that necessitated its protection(Article 14 of law 98/04).
- Establishment of any easement by agreement on any classified cultural property (Article 16 of law98/04)
- Placing signs and billboards or pasting them on historical monuments (Article 22 of law 98/04
- Dismemberment, division and fragmentation of historical monuments classified or proposed for classification(Article 24 of law98/04)
- Organization of cultural activities on real cultural property proposed for classification, classified or registered in the list of additional inventory(Article 27 of the law98/04).
- Direct works completed or planned to be carried out within the boundaries of the site or its protected area, and the matter concerns projects for the restoration and rehabilitation of properties included in the site, adding new construction to them, repairing them, real estate fragmentation projects, cutting or dividing them as soon as the decision containing the opening of the classification claim is published in the Official Gazette. This license shall be delivered within a period not exceeding one month for works that do not require obtaining a building permit or land fragmentation for construction and a maximum of two months starting from the date of receipt of the file sent by the authorities in charge of granting a building permit or land fragmentation license for construction. (Article 31 of law98/04)
- To start any construction or fragmentation project in order to build on a classified archaeological reserve or its proposed classification, it is required to obtain a building permit or a fragmentation license for the land (Article 34 of law98/04).

The legislator also subjected the works to be carried out on a classified or proposed classified historical landmark or on a property based on a classified historical landmark or sites in its protected area to the need to obtain a building permit or a division of the land for construction to be handed over only after prior approval from the interests of the ministry As a consent according to Article 23 of law98/04 .

As for the provisions of the amended and supplemented law 90/29, the building permit was prohibited if it would affect the historical and cultural heritage only after consultation and approval of the competent interests in this field in accordance with the laws and regulations in force under Article 69 of the law 90/29 . The building permit can also be refused or granted restricted by special provisions, if the buildings and facilities to be built, affect their location, size or external appearance in nature or the importance of neighboring places, landmarks, landscapes or urban, as well as the preservation of the horizons of monuments.

The granting of a building permit for projects located within the expansion zones and tourist sites is subject to the prior opinion of the department in charge of Tourism, and when these areas have cultural sites, the prior opinion of the department in charge of culture is required .The aim of this consultation is to preserve the tourist character as well as the preservation, maintenance and protection of protected cultural properties`

Conclusion

The obligation to protect real cultural property rests with the public authorities, as these properties constitute national wealth, it is natural that these authorities are responsible for their safety, preservation and valuation before the national community. In this context, the pre-licensing system is one of the most important measures taken by the relevant administrative authorities to preserve areas of outstanding cultural and historical significance, so law 98/04 subjected some works on real cultural property to prior licensing, including the following :

- All conservation, restoration, repair, addition, alteration and configuration works to be carried out on the historical monuments proposed for classification, classified or on the real estate located in the protected area.

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The granting of a building permit for projects located within the expansion zones and tourist sites is subject to the prior opinion of the department in charge of Tourism, and when these areas have cultural sites, the prior opinion of the department in charge of culture is required .The aim of this consultation is to preserve the tourist character as well as the preservation, maintenance and protection of protected cultural properties.

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