



The Formation of Immovable Cultural Heritage within the Framework of Act N°.98-04 on the Protection of Cultural Heritage

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Abstract:

Immovable cultural properties are incorporated into the State's public domain through different legal routes, depending on each property's importance and nature. Some properties are brought into the domain by a ministerial decision, which entails defining and publishing the property's boundaries. Other properties come into being via a government decree.

At first a site's protection may be temporary if it is registered on an additional inventory list; it acquires permanent status only once it is formally classified or established as a protected sector. Today, administration and protection of these sites are handled by bodies under the Ministry of Culture – whereas in the past they were under the Ministry of Education and, before that, the Ministry of Agriculture.

Keywords: formation, establishment, incorporation, public cultural property...

Introduction:

Cultural legacy, in all its physical and intangible aspects, reflects the cumulative product of previous civilizations handed from ancestors to descendants, which makes it profoundly ingrained in the conscience and minds of peoples and communities. It is analogous to the branching roots of a tree: without them, a society becomes dependant, without deep and real roots and unable to survive the changes of time.

What interests us most among the different types of heritage is tangible heritage, which incorporates specific cultural substance maintained tangibly in the form of books, manuscripts, paintings, coins, archeological items, and traditional crafts. This extends to fixed material evidence such as wall paintings, archaeological remains, historic monuments, palaces, ksour (fortified villages), urban and rural building complexes, and cultural parks onto which the label "immovable cultural property" is conferred—works created by human genius and fashioned by human hands into material, artistic, or architectural forms that captivate observers by the precision of their design and engineering.

The interest in immovable cultural property originates from its fixed material character, which offers it a privileged position in reflecting the past, as concrete proof that serves to "fix" time. In silence, it recalls the mysteries of the tangible and stable material world in which human

people walked and with which they engaged in close and dialectical connections, whether spontaneous or ordered.

For this reason, it enjoys special legal safeguards, primarily through Act N°98-04 on cultural heritage protection. This legislation defines the legal framework for the nation's cultural heritage, establishes general principles for its safeguarding and promotion, and recognizes immovable cultural property as a vital and integral element of that heritage.

As cultural property forms an important historic asset, the law recognizes it as a kind of national public property that emerges and is developed in line with particular and well-defined legal laws and processes.

The formation, establishment, and integration of immovable cultural property into the state's public domain follow varied procedures based on the property's significance and type: some occur via ministerial decision, others by decree; their status may be provisional when listed on supplementary inventories, becoming permanent upon official classification or designation as protected areas.

The maintenance and conservation of these sites are given to administrations and organizations functioning under the supervision of the Ministry of Culture, after having previously been under the control of the Ministry of Education and subsequently the Ministry of Agriculture.

To examine and dissect this issue under relevant legal provisions, the study poses this core research question: ***In what ways has the Algerian legislator structured the procedures for establishing immovable cultural property, and what mechanisms and methods govern its integration into the national public domain?***

Given the nature of the subject, which calls for a descriptive and analytical approach, this paper is divided into two main sections:

First section: Methods of establishing immovable cultural property.

Second section: Classification of immovable cultural property within the public domain of the State.

First Section: Establishment of Immovable Cultural Property

First: Methods of Establishing Immovable Cultural Property

The Algerian legislator, through Act N°98-04 on the protection of cultural heritage, has provided a set of methods for establishing immovable cultural property, which operate as protective procedures that confer a special status on such property. These methods are:¹

1. Registration on the Additional Inventory List

a. Definition:

Registration on the supplementary inventory list is a transitory operation.² Immovable cultural items that, while they do not need urgent categorization, still have relevance from the aspect of history, archaeology, ethnography, anthropology, art, or culture and consequently demand for preservation, may be recorded on this extra inventory list. Any property recorded on this list that has not been conclusively categorized within ten years shall be removed from the list.³

b. Procedures

Registration is impacted by decision of the minister in charge of culture, following consultation with the National Committee for Cultural Property with relation to cultural property of national significance, upon his own initiative or that of any individual who perceives an interest in doing so.

1- Abdelhamid Morsli, *Algerian Cultural Heritage and the Legal Texts Related to It*, First Edition, Arab Book House for Publishing, 2009, pp.19 to 22.

2- Fahima Dahim, *Administrative Control of Construction Within Protected Areas and Sites in Algerian Legislation*, Master's thesis, University of Blida, 2011-2012, p.18.

3- Hassan Hamida, *the System of Protecting Areas and Sites in Algerian Legislation*, Master's thesis, University of Blida, 2000-2001, p.22.

Registration can also be enacted by decision of the Wali (governor), following consultation with the relevant wilaya's Cultural Property Committee, for immovable cultural properties of local importance. The initiative may originate from the Minister of Culture, local authorities, or any individual who perceives a benefit in such registration.

The decision to register property on the supplementary inventory list must specify: the nature and description of the cultural property; its geographical location; relevant documentary and historical sources; the significance justifying registration; the extent of registration (total or partial); the property's legal status; and the identity of owners, allocated parties, or other lawful occupants.

The registration decision, whether issued by the Minister of Culture or the Wali, must be published in the Official Gazette and displayed at the relevant municipality's headquarters for two consecutive months. Additionally, the Minister or Wali must directly notify the owner of the cultural property in question.

If enacted by the minister, the registration decision is forwarded to the Wali of the relevant wilaya for publication in the land registry—formal recordation—with no associated deduction or payment due to the Treasury.

Upon notification of the registration decision to public or private owners, they are legally required to inform the Minister of Culture of any proposed changes to the registered property that could eliminate, obscure, or modify the characteristics justifying its registration and protection.

The owner of the cultural property cannot proceed with such modifications without prior authorization from the minister, who has two months from the application date to respond; silence after this period constitutes implicit approval under Article 23 of the Act.

If the minister rejects the proposed works, classification proceedings may commence under Article 11 of the Act. For repairs or restorations, the owner must consult the relevant cultural authorities, and such interventions require ministerial authorization from the Minister of Culture.

2. Classification of Immovable Cultural Property

a. Definition of Classification

Classification represents a definitive protective measure that compels the safeguarding of the property and assigns protective responsibility to the authority initiating the classification process.¹ Classified immovable properties owned by private individuals may be transferred, yet they continue to carry the legal implications of classification irrespective of the transferee, and no servitudes may be established over them without authorization from the Minister of Culture.

b. Classification Procedures

Historic monuments are classified by decision of the Minister of Culture, following consultation with the National Committee for Cultural Property, either on the minister's own initiative or at the request of any individual who perceives a benefit in such classification.

The term “historic monuments” refers in particular to major architectural works that bear witness to a given civilization or historical event. The classification decision extends to both built and unbuilt immovable properties located within the protected zone, including visual relationships between the historic monument and its surroundings that are inseparable from it, by enlarging the visual field to not less than 200 meters, so as to avoid damaging existing monumental perspectives in that zone.²

The visual field's expansion remains at the Minister of Culture's discretion, upon recommendation from the National Committee. The minister may launch classification proceedings for historic monuments through a decision to initiate such action; these proceedings lapse if classification is not finalized within two years from owner notification.³

1- Abdelhamid Morsli, *Op.Cit.*, p.23.

2- Articles 15, 16 & 17 of Law N°.98-04, on the protection of cultural heritage.

3- Abdelhamid Morsli, *Op.Cit.*, p.25.

The decision to initiate classification proceedings is published in the Official Gazette and posted at the municipal headquarters where the monument is located for two months. During this time, owners may submit written comments in a dedicated register maintained at the ministry's decentralized cultural services, and their silence at the end of this period is considered acceptance and approval.

If owners object to classification, the issue is forwarded to the National Committee for Cultural Property for its opinion;¹ Classification can proceed only with a binding committee opinion rejecting the owners' objections, issued within a maximum of two months from the date the special register reaches the cultural administration.

Following the National Committee's issuance of an opinion rejecting the objection, the Minister of Culture declares the historic monument's classification by decision, after consulting the Committee, and specifies in the decision the classification conditions along with the resulting servitudes and obligations.

The classification decision is published in the Official Gazette and forwarded by the minister to the Wali of the relevant wilaya where the historic monument is located, for entry into the land registry, without any associated deduction or payment owed to the Treasury.

c. Effects of Classification

Classification imposes requirements such that any conservation, restoration, repair, addition, modification, or development work planned for historic monuments—whether proposed for classification or already classified—or for immovable property within protected zones requires prior authorization from the Ministry of Culture's services.

Prior authorization is also mandatory for infrastructure works within the protected zone of a classified or proposed historic monument, including overhead or underground electricity and telephone networks, gas pipelines, potable water systems, or drainage networks, as well as any activities that could compromise the monument's architectural integrity.

The following activities are also subject to prior authorization:

- Establishment of factories or execution of major public or private works.
- Cutting or planting trees where such activity may damage the external appearance of the monument.

It is similarly forbidden to place or attach signs and advertising billboards on historic monuments that are classified or proposed for classification without prior authorization from the Ministry of Culture's competent services.²

Building or land subdivision permits may only be granted after prior approval from the Ministry of Culture's services. This approval is considered granted if no response is received within a maximum of two months from the date the authority reviewing the building or subdivision permit application forwards it to the ministry.³

Cutting, dividing, or subdividing historic monuments that are classified or proposed for classification is prohibited, unless prior authorization is obtained from the Minister of Culture following consultation with the National Committee for Cultural Property.

Occupation or use of a cultural monument requires prior authorization from the Minister of Culture, who specifies compatible obligations aligned with conservation needs and consistent with the servitudes outlined in the classification decision (regarding occupation, use, or change of use).

1- Articles 18 to 21 of Law N°.98-04, on the protection of cultural heritage.

2- Article 22 of Law No.98-04, on the protection of cultural heritage.

3- Article 32 of Law N°.98-04, on the protection of cultural heritage.

All works of any kind on classified or proposed historic monuments fall under technical oversight by the ministry's services.

Organizing cultural activities in or on immovable cultural properties—whether classified, proposed for classification, or listed on the additional inventory—requires prior authorization from the Ministry of Culture's services. This requirement also extends to any photographic or cinematographic recordings.

Archaeological sites are subject to the classification regime by decision of the Minister of Culture after consultation with the National Committee for Cultural Property, following the procedures in Articles 16, 17, and 18 of the Act. These sites include, in particular, archaeological reserves and cultural parks.

These sites must follow a protection and development plan for archaeological sites and their protected zones. This plan sets general rules for planning, construction, architecture, urbanism, and land use or enjoyment—especially regarding allowable activities within the classified site or its protected zone.

Details of the procedures for preparing, studying, and approving the protection and development plan, and of its content, are set out in Executive Decree N°.03-323 of October 5th, 2003 on the modalities for preparing protection and development plans for archaeological sites and their protected zones.¹

From the date of publication of the classification proceedings decision for a site or its protected zone in the Official Gazette, any planned works within its boundaries require prior authorization from the Ministry of Culture's services.²

This applies particularly to projects for restoring and rehabilitating buildings within the site, adding new constructions, repair works, and the activities outlined in Articles 21, 22, and 27 of the Act, as well as projects for subdivision, cutting, or division of property.

Prior authorization must be obtained within one month for works not requiring building or subdivision permits, and within a maximum of two months from the file's receipt for granting such permits.

If the administration does not reply within this period, authorization is deemed granted. When authorization is issued, the Ministry of Culture's services must subject the intended works to technical supervision by competent services until publication of the protection and development plan, following consultation with the National Committee for Cultural Property.³

Archaeological reserves are established and delimited by decision of the minister after consultation with the National Committee for Cultural Property. These reserves encompass areas without prior excavation or exploration but potentially holding unidentified sites, monuments, buried remains, or exposed archaeological structures; they follow the same classification procedures. No construction or project may proceed in such a reserve from the opening of classification proceedings until actual classification, which cannot exceed six months.

The Minister of Culture may order suspension of any project started in the reserve or ongoing when classification proceedings open. Prior authorization from the minister is required for any construction or subdivision for building in a proposed or classified reserve; projects must align with pre-determined allowable activities set by the ministry's competent services and integrated into development, urban planning, or land-use plans.

Bodies responsible for preparing master plans for development, urban planning, and land-use plans at the municipal level must take into account reserves registered on the additional

1- Official Gazette of Algeria N°.60, 2003.

2- Articles 31 to 34 of Law No.98-04, on the protection of cultural heritage.

3- Abdelhamid Morsli, *Op.Cit.*, p.31.

inventory list or classified. The discovery of buried remains through archaeological research in a reserve results in the creation of an archaeological site.

Cultural parks are established as large areas featuring a concentration of cultural property or significant cultural value, inseparably linked to their natural environment. They are created and their boundaries defined by decree, based on a joint report from the ministers responsible for culture, local authorities, environment, urban planning, and forests, following consultation with the National Committee for Cultural Property.

Protection, conservation, and development of land within cultural park boundaries are entrusted to a public administrative institution under the supervision of the Minister of Culture.

This institution is responsible, in particular, for preparing the park's master development plan, which serves as a protection instrument incorporated into development and urban planning schemes and replaces the land-use plan for the area concerned.

The establishment of the public institution and the organizational rules applicable within the boundaries of the cultural park are governed by Decree N°83-458 of July 23th, 1983 laying down the model basic statute for national parks.

3. Establishment as Protected Sectors

a. Definition

The “protected sectors” regime is a protection mechanism under the Act. It applies to homogeneous urban or rural building complexes in form or construction type, such as the town of Beni Isguen in Ghardaïa. Beni Isguen exemplifies this regime as a historic ksar in the M’Zab Valley, featuring uniform adobe architecture and urban layout protected for cultural preservation.

b. Procedures for Establishing Protected Sectors

Protected sectors are established and their boundaries defined by decree. This decree is issued based on a joint report from the ministers responsible for culture, interior and local authorities, environment, urban development, and architecture, following consultation with the National Committee for Cultural Property.

Protected sectors may be proposed by local authorities or civil society organizations to the Minister of Culture. They must be equipped with a permanent protection and development plan that replaces the land-use plan.

This permanent plan is approved by executive decree based on a joint report from the ministers of culture, interior and local authorities, environment, urban development, and architecture—for protected sectors exceeding 50,000 inhabitants—,¹ and by joint ministerial decision from the same ministers for smaller sectors, after National Committee for Cultural Property consultation.

The procedures for preparing the permanent protection and development plan for protected sectors—as well as its content, study, implementation, interim protection measures prior to publication, and conditions for amendment and periodic review—are set out in Executive Decree N°03-324 of October 5th, 2003, on the modalities for preparing such plans.

Second: Bodies Responsible for Establishing Immovable Cultural Property

From the foregoing, the bodies responsible under Act 98-04 for establishing immovable cultural property are:

- The Ministry of Culture,
- Local authorities (the wilaya and the municipality),
- Committees (national, wilaya, and acquisition/expropriation committees).

- The Ministry of Culture

1- Articles 43 to 45 of Law N°98-04, on the protection of cultural heritage.

The Ministry of Culture is the supervisory authority and the primary decision-maker in classifying immovable cultural property, either by decree or by ministerial decision.

- Local Authorities: The Wilaya and the Municipality

The **Wali** undertakes establishment procedures by issuing decisions to register immovable cultural property of local value on the additional inventory list. The Directorate of Culture acts as a proposing body, submitting proposals to classify historic monuments and to register them on the additional inventory list.¹

Representatives of the wilaya people's assembly participate in an advisory capacity in the National Committee for Cultural Property's work on immovable cultural property within their wilaya's jurisdiction. Legislation on cultural parks allows municipal people's assemblies to express views on establishing a park when classification proposals affect their territory.²

Executive Decree N°.81-382 of 26 December 1981, defining the powers and competences of the municipality and wilaya in the cultural sector, assigns the municipality responsibility for collecting necessary elements for classifying historic and commemorative sites and promoting such classifications.³

3. Committees

a. National Committee for Cultural Property

A National Committee for Cultural Property is established with the minister in charge of culture and entrusted with the following tasks:

- Issuing opinions on all matters relating to the application of the Act that are referred to it by the minister in charge of culture.
- Deliberating on proposals to protect movable and immovable cultural property, as well as on the establishment of protected sectors for urban or rural building complexes of historical or artistic importance.⁴

b. Wilaya Committee for Cultural Property

A Cultural Property Committee is established at each wilaya level. It examines requests for classification, protected sector establishment, or additional inventory list registration of cultural property, then submits them to the National Committee for Cultural Property. It also issues opinions and deliberates on registering cultural property of significant local value for the wilaya on the additional inventory list.⁵

c. Committee for the Acquisition of Cultural Property and Committee for the Expropriation of Cultural Property

A committee is established with the minister in charge of culture to acquire cultural property intended to enrich national collections, and another committee is established to handle the expropriation of cultural property.⁶

Second Section: Classification of Immovable Cultural Property within the Public Domain of the State

1- Abderrahman Bouderbala & Ahmed Ghoribi, Op.Cit., p.35.

2- Hassan Hamida, Op.Cit., p.103.

3- See Article 03 of Executive Decree No. 81-382 dated December 26, 1981, defining the powers and jurisdiction of the municipality and the state in the cultural sector, Official Gazette No. 52, dated December 29th, 1981.

4- Articles 79 of Law N°.98-04, on the protection of cultural heritage.

5- Articles 80 of Law N°.98-04, on the protection of cultural heritage.

6- Abdelhamid Morsli, Op.Cit., p.54.

Immovable cultural property may belong to the State's public domain or be privately owned. In the private ownership case, specific procedures transfer it to the State's public domain, granting special status that ensures its protection and preservation.

First: The Conceptual Framework of Classification

Classification is an act by the competent authority that grants a movable or immovable property the status of national public property. The property must belong to the State or a territorial collectivity—either by prior right or through public-law acquisition (purchase, exchange, gift) or expropriation—and is assigned for use to the relevant collectivity or authority.

Classification of cultural property differs from the classification under Article 31 of Act No. 90-30 on national property. That provision explicitly excludes cultural property from the national property classification regime.

Classification constitutes a final protection measure that applies to all cultural property regardless of its legal nature. Classification decisions are issued by the Minister of Culture after consultation with the National Committee for Cultural Property.

Classification decisions apply by operation of law to the cultural monument and buildings within the protected zone. They take effect from the date the Minister of Culture notifies public and private owners of the classification proceedings opening via administrative means.

The decision to open classification proceedings is published in the Official Gazette and posted for two months at the headquarters of the municipality in whose territory the monument or archaeological or cultural property is located.

The classification decision issued by the minister in charge of culture may be made amicably, upon initiative of the owner, or officially, upon initiative of the minister.

The decision opening classification proceedings must specify the nature of the cultural property and its geographic location; define the boundaries of the protected zone; indicate the scope of classification; state the legal nature of the cultural property and the identity of its owners; and include documentary and historical sources, plans and photographs, and the servitudes and obligations attached to the property.

Second: Procedures followed for classifying cultural property

These procedures are:¹

1. Amicable Acquisition

Amicable acquisition is a procedure similar to consensual legal transactions such as sale, transfer, or gift.

2. Expropriation for Public Utility

The State may expropriate classified or proposed immovable cultural property for public utility² in order to ensure its protection and preservation. Properties located in the protected zone that make it possible to isolate, safeguard, or enhance the classified or proposed property, as well as properties included within protected sectors, may also be subject to expropriation.³

1- Articles 05 of Law N°.98-04, on the protection of cultural heritage.

2- Abdelhamid Morsli, Op.Cit., p.36.

3- Minutes of the fifteenth public sitting of the Algerian Council of the Nation (supra).

Expropriation is an exceptional procedure and applies only to immovable heritage, and only after all other methods have been exhausted and public authorities find that the cultural property is at risk of disappearance, distortion, or being traded for non-national purposes.

Expropriation for public utility is conducted in accordance with the legislation in force, for the purpose of preserving immovable property, particularly in the following cases:

- The owner's refusal to comply with the instructions and servitudes¹ imposed by the protection procedure.
- The owner's inability to carry out the works ordered, even where financial assistance from the State is granted.
- Where occupation or use of the cultural property is incompatible with conservation requirements and the owner refuses to remedy the situation.
- Where division of the property would damage the integrity of the cultural property and result in alteration of the subdivided parts.
- Expropriation is considered one of the restrictions that may lead to extinction of the right of ownership² and constitutes a compulsory measure.

3. Pre-emption (Right of First Refusal)

The State enjoys a right of pre-emption over any onerous transaction involving classified or proposed immovable cultural property, or property registered on the additional inventory list, or included in a protected sector.³

Any onerous or gratuitous transfer of ownership of classified or proposed immovable cultural property, or property registered on the additional inventory list or included in a protected sector, regardless of the identity of the owner, is subject to prior authorization from the minister in charge of culture.

Public officers (such as notaries) must notify the minister in charge of culture of any proposed transfer of ownership of immovable cultural property. The minister has a maximum period of two months from the date of receipt of the notification to state his position; if this period expires without a response, authorization is deemed granted, and any transaction carried out without complying with this requirement is considered null and void.

4. Gift

According to Dr. Mohamed Kamel Morsi Bassiouni, a gift is the transfer of ownership of property immediately and gratuitously; it has also been defined as the transfer of ownership of property without consideration during the lifetime of the owner.⁴

Conclusion

In conclusion, the formation of cultural property is a crucial process that protects cultural property from encroachment, usurpation, or diversion. Formation clarifies the nature of the

1- The Algerian legislator has provided for easement rights in Articles 876 to 881 of the Civil Code. Easement is defined as a restriction imposed on the use or enjoyment of an immovable property for the benefit of another immovable property owned by a different person. Moreover, under Law N°.98-04 on the protection of cultural heritage, easements also appear in the form of legal burdens restricting cultural heritage property. For further details, reference should be made to Article 05, paragraph 03 of the same law.

2- Belhout Khira, Restrictions Imposed on Immovable Cultural Heritage for the Sake of the Public Interest, Master's Thesis in Real Estate Law, Faculty of Law, Dr. Yahia Fares University, 2012–2013, p.73.

3- Mohammed Kamel Morsi Bas, Commentary on Civil Law: Named Contracts, Vol. II, 2nd ed., Arab Al-Bayan Committee Press, 1992, p. 17.

4- Abdelhamid Morsli, Op.Cit., p.37.

cultural property, and, in this paper, the methods and mechanisms for forming cultural property have been identified.

Some of these methods are governed by unified rules and regulations shared with national property, while others have a special character, such as classification, which is subject to specific rules different from those laid down in the National Property Act.

In practice, however, classification remains an under-applied procedure: despite the diversity and richness of national heritage, only 395 monuments have been classified to date, most of which were classified during the colonial period by the French authorities.

Moreover, classifications carried out at that time treated Roman monuments and remains as historic monuments, while villages and ksour featuring traditional architecture and popular customs were viewed merely as natural sites.

Accordingly, we propose the following:

- To review the existing classification through the drafting of legal provisions that confer on these monuments and sites their true archaeological and historical value.
- To reconsider the legal provisions on the formation of cultural property and adopt new drafting that provides stronger protection in this field.
- To enact specific rules on expropriation, pre-emption, and gift that differ from those set out in the Civil Code.

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