

Criminal Protection of Cultural Heritage in Algerian Legislation

Soula NACER

Continuous Formation University of Setif

soulanacer@yahoo.fr

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Badraddine LAIFAOU

University of M'sila

badrlaifaoui@gmail.com

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Abstract

This paper examines the criminal protection of Algeria's cultural heritage, focusing on the adequacy of legal provisions. Algeria's cultural heritage, protected by the 2020 constitutional amendment (Article 76/3), is a non-renewable resource vital to its identity. The study reviews Law No. 98/04 and related laws, highlighting weak penalties and frequent violations, with impunity prevailing. Although crimes against cultural heritage are criminalized, the law lacks provisions on theft and smuggling, limiting its effectiveness. The paper concludes that stronger legal protection and harsher penalties are needed to address these challenges.

Keywords: Cultural heritage; Algerian legislation; Criminal protection; Algeria

Protection pénale du patrimoine culturel dans la législation algérienne

Résumé

Cet article examine la protection pénale du patrimoine culturel algérien, en se concentrant sur l'adéquation des dispositions légales. Le patrimoine culturel de l'Algérie, protégé par l'amendement constitutionnel de 2020 (Article 76/3), est une ressource non renouvelable essentielle à son identité. L'étude passe en revue la Loi n° 98/04 et les lois connexes, mettant en évidence des sanctions faibles et des violations fréquentes, avec une impunité prédominante. Bien que les crimes contre le patrimoine culturel soient pénalisés, la loi manque de dispositions sur le vol et la contrebande, limitant ainsi son efficacité. L'article conclut qu'une protection juridique renforcée et des sanctions plus sévères sont nécessaires pour relever ces défis.

Mots-clés : Patrimoine culturel ; Législation algérienne ; Protection pénale ; Algérie

Introduction

The aim of the Act in general and the Penal Code in particular is human behavior, which is at the center of criminalization and punishment, and infringement of cultural heritage; Depriving citizens of their cultural wealth and cultural treasure, losing a cycle of history and damaging part of society's memory.

More generally, the legal and institutional mechanisms for the protection of cultural heritage are insufficient to protect and prevent abuse, so criminal protection has to be intervened by outlawing and criminalizing the abuse of heritage and by establishing certain duties that constitute an offence punishable by law.

It is understood that criminal protection has two elements: procedural criminal protection (procedural aspect) and substantive criminal protection (substantive aspect). Criminal protection in the Code of Procedure differs from criminal protection in the Penal Code. The first derives its elements from the rules of the Code of Procedure, which examine the organization and competence of the judiciary, the detection of a crime, the methods of establishing it, and the investigation, trial and other procedural rules. It also establishes the State's right to punishment and the enforceability of procedural rules of criminal law to fulfil this right (Abou, A. & Mohamed, Z., 1985; McDonald, G.K. & Swaak-Goldman, O., 2023). The second focuses on the subject of the offence and its penalties and derives its rules from the Penal Code.

this paper, focuses on substantive criminal protection - without procedural protection - that is, criminalization and punishment for violating the rules for the protection of cultural heritage, as the most important tool for measuring the effectiveness of the protection it has given to national cultural heritage. I will therefore be exposed to some images of cultural heritage crimes and the penalties prescribed for them in Algerian law in order to demonstrate the adequacy of those sanctions' protection of the national cultural heritage. Because the study does not allow all crimes to be exposed in detail by indicating and explaining the elements of each offence, it has opted to be subjected to the offences -as a whole without detailing them - and the penalties prescribed for them.

The importance of research is that cultural heritage is a non-renewable resource and that it loses a cycle of this people's history, as well as a financial resource for the State by exploiting cultural tourism to achieve sustainable development. The approach to research is the descriptive approach that describes the situation as it is.

Since the provisions for the protection of cultural heritage are also reproduced in other laws and not only in the Main Law on the Protection of Cultural Heritage (Journal officiel, 1998). In this research, therefore addresses the substantive criminal protection of cultural heritage in Law No. 98/04 in the firstly, while in the second request I shall review the substantive criminal protection of cultural heritage in some other relevant laws.

1- Méthodes

The **descriptive approach** used in this research is a method focused on describing, analyzing, and interpreting the current situation regarding the legal framework for protecting cultural heritage in Algeria. This approach involves examining the laws, regulations, and penalties related to cultural heritage crimes as they are implemented. It does not seek to introduce new theories or create experiments but rather to systematically outline and analyze existing laws and their effectiveness.

In this context, the researcher analyzes legal texts such as Law No. 98/04 on the Protection of Cultural Heritage, as well as other relevant laws, to see how well they protect cultural heritage from crimes like destruction, smuggling, and unauthorized archaeological excavation. By describing these laws and examining cases where cultural heritage crimes are prosecuted, the researcher aims to understand the strengths and weaknesses of current legal protections.

The descriptive approach also allows the researcher to identify gaps in the legal framework, such as insufficient penalties or lack of provisions for specific offenses, and to make recommendations for improvement. This approach is suitable for legal research, where the goal is often to provide a clear overview of legal mechanisms and suggest enhancements based on observed deficiencies.

2- Résultats

2. 1. Objective Criminal Protection of Cultural Heritage in Law n° 98/04

Administrative protections (such as registration and classification), material (such as restoration and repair) and qualified institutions are often insufficient to protect cultural heritage and prevent abuse, so criminal protection has to be intervened through the prohibition and criminalization of abuse of heritage and related actions.

The substantive criminal protection of cultural heritage is based on the subject of the crime (Saujot-Besnier, C. & Chronique, j., 1999.). which is the cultural property itself, as stated by the Algerian legislature in Act No. 98/04 on the Protection of Cultural Heritage, as follows:

2.1.1 Crime of obstruction of the work of agents charged with the protection of cultural heritage:

Anyone who, in accordance with article 93 of Act n° 98/04 on the protection of cultural heritage, obstructs the work of agents responsible for the protection of cultural property or places them in a position where they cannot perform their functions.

With reference to the Penal Code, specifically article 148 of Law No. 88/26 it states: "Anyone who, by violence or force, exceeds a judge, an official, a pimp, a public official or a public officer in the performance of their functions or in connection with the performance of their functions, shall be liable to two to five years' imprisonment... " (Official journal, n., 1966).

2.1.2 Offence of conducting archaeological research without authorization and not authorizing archaeological discoveries :

According to Article 94 of Law No. 98/04, individuals who commit certain offenses related to cultural heritage face fines ranging from 10,000 to 100,000 Algerian Dinars. These offenses include conducting archaeological research without the necessary authorization from the Minister of Culture, failing to declare sudden discoveries, and not reporting objects found during authorized archaeological research or failing to deliver these objects to the State. Furthermore, the Minister for Culture could demand that the premises be returned to their first state at the perpetrator's expense alone. The penalty is doubled in the case of recidivism.

In particular, the legislator has adapted the offence based on an misdemeanor, and I believe that the fine is not proportional to the offence committed and that it does not have a deterrent effect on the public, so I believe it should be lifted to the maximum.

2.1.3 Offence of sale and concealment of cultural property (cultural heritage):

Article 95 stipulates that individuals found guilty of certain offenses related to cultural heritage may face imprisonment for a term of 2 to 5 years and/or fines ranging from 100,000 to 200,000 Algerian Dinars, in addition to any damages or confiscations that may apply. These offenses include the sale or concealment of objects obtained from excavations, accidental discoveries, or authorized archaeological research, as well as the sale or concealment of items

derived from underwater research. Furthermore, the law also penalizes the sale or concealment of architectural elements resulting from the dismemberment or fragmentation of a property.

Notably, the legislator criminalized the sale or concealment of cultural property classified or recorded in the additional inventory, thus raising the question of the sale or concealment of cultural property not classified or awaiting classification or not registered in the additional inventory? The penalty may also be optional, as evidenced by the word "or", which is for choice; in the legislature's text, which, in my view, does not give effective protection to the national cultural heritage, and I call upon the legislator to amend the above article without prejudice to the choice of punishment and to sentence them jointly, as concealment itself is an aggravating circumstance of punishment, as well as in conjunction with the intention of smuggling. I also propose to raise the threshold and maximum amount of the financial penalty to match the incriminating offence and to achieve deterrence and protect our cultural heritage.

2.1.4 Crime of destroying and distorting cultural heritage and infringing on cultural property:

For the offence of intentional damage or mutilation of cultural or real property proposed for classification, classification or recorded in the additional inventory, in addition to the absence of prejudice to compensation for damage; Under article 96 of Law No. 98/04, two (02) to five (05) years' imprisonment and a fine of 20.000 D to 200.000 D. The same penalty applies to anyone who deliberately damages, destroys or distorts objects discovered during archaeological research.

Article 98 of Law No. 98/04 also punishes a fine of 2,000 DZD to 10,000 DZD; Without prejudice to damages, for infractions involving the occupation or use of a classified cultural property that does not correspond to the specific attachments mentioned in the Minister of Culture's prior authorization. The same penalty, provided for in article 99 of the same Act, is for anyone who repairs proposed or classified cultural real estate and real estate in the protected area. and for classified or unclassified properties located in the vicinity of reserved sectors, rehabilitation, restoration, addition, restoration, restructuring or demolition, contrary to the procedures provided for in this Act.

The same penalty is stipulated in article 100 of the same Act, in the event of a violation of articles 21, 22 and 27, relating to publicity and the organization of concerts, the taking of photographs and cinematographic scenes, or relating to the work of premises, the establishment of public or private factories or major works, or the afforestation or logging of trees. This has come to be known as "archaeological exploitation", as stated by the Director of Mujahedeen of

Mila State during the visit of the former Minister of Culture to the Red Prison Headquarters in the municipality of Virgiwa, that the prison is classified as a monument and used to embrace cultural events and exhibitions. The Director did not realize at the time that he had implicated himself with the Minister, replying: "Who gave you the right to exploit it?" It added: "The law on the protection of monuments was ratified by people's deputies in Parliament, and the exploitation of monuments classified is carried out only with the authorization of the Ministry, and you should have respected the law and not kept it in the archives." (Bouzar, H., 2008)

Indeed, the penalty prescribed is not commensurate with the wrongful act, nor does it achieve special deterrence as well as public deterrence. In addition, there is a general lack of awareness among citizens of the value and importance of cultural heritage, as evidenced by the exploitation and destruction of archaeological sites as a result of the construction of tourist buildings above a rare archaeological landmark, the case known as the "Andalusian Case" in Oran, where the accused in this case built a tourist boat on this site with rare artifacts. Without neglecting statistical studies on pieces stolen from Algerian museums during the black decade and other attacks on cultural heritage (Khalfoune, T., 2004).

2.1.5 Crime of not reporting disappearance of cultural property to the guardian of cultural heritage:

Article 101 of the above Law stipulates that every guardian of a transferred cultural property classified or registered in the additional inventory shall be required to report within 24 Hours of disappearance of this property and if he fails to do so shall be punished by imprisonment of six (06) months to two years (02) and a fine of 100,000 DZD to 200,000 DZD or only one of the two penalties, and the penalty shall be doubled in case of recidivism.

2.1.6 Crime of illegal export of movable cultural heritage:

Article 102 of Law No. 98/04 punishes a fine of 200,000 DZD to 500,000 DZD, and three (03) to five (05) years' imprisonment against anyone who illegally exports a movable cultural property classified or not, registered or not on the additional inventory. The penalty is doubled in the case of recidivism. The same penalty is imposed on anyone who illegally imports a movable cultural property whose historical, artistic or archaeological value is recognized in his or her country of origin.

The legislator had done well, having served both sentences without choosing between them, yet it was necessary to maximize the financial penalty but not less than the value of the exporter's cultural property. It also implements the provisions of the International Convention

(UNESCO Convention); concerning measures to be taken to prohibit and prevent the import, export and illegal transfer of cultural property concluded in Paris in 1970, as well as the Convention on the Unification of the Special Law on Stolen or Illicitly Exported Cultural Property concluded in Rome in 1995 and ratified by Algeria.

2.1.7 The offence of publishing archaeological research without authorization and intercepting the visit of qualified art men to cultural heritage:

A fine of 50,000 DZ to 100,000 DZ shall be imposed on anyone who publishes on or outside the national territory works of a scientific character, the subject of which shall be documents not in print in Algeria and relating to cultural heritage without the authorization of the Minister of Culture, as well as the confiscation of the work published by order of the judicial authority (art. 103).

Article 104 of Law No. 98/04 is also punishable; the landlord, tenant or any other good faith occupant of a cultural property classified or registered in the additional inventory, objects to the visit of qualified art men specially entitled to the property with a fine of 1,000 DZD to 2,000 DZD. The penalty is doubled in the case of recidivism. Properties covered by the Classified Cultural Property Protection Area and properties covered by the preserved sector are also concerned.

In fact, this financial penalty does not adequately protect cultural property as well as effective criminal protection.

It is noted through the articles on penalties provided for in Law No. 98/04 against crimes of abuse and prejudice to cultural heritage that the legislature has adapted most crimes on the basis of a misdemeanour, despite the seriousness of some of them as infringing upon the history, culture and identity of the people, because cultural property is the product of ancient civilizations that at one time illuminated the world's darkness. Nor has the Algerian legislature explicitly provided for the crime of theft of cultural property for the purpose of smuggling or inadvertently smuggling in this presidential law. (No. 98/04), despite its seriousness and serious effects on our cultural heritage, demonstrates that it is sufficient to comply with the general provisions of the Penal Code on the crime of theft legislator ", which I call upon the legislator to remedy by stipulating offence ", since the provision for the offence in the Special Act was safer and more protective than in the General Penal Code. The theft of a cultural property chronicles a period of the people's history or symbolizes its civilization; Not as a theft of any other property, since the first was a robbery of the civilization of a people and lost a ring of its history.

It should also be noted that Law No. 98/04, in its articles on the criminalization and punishment of real and real cultural property transferred only without intangible cultural property, is often replaced by Ordinance No. 03/05 on author's rights, neighbouring rights, so-called literary or intellectual property rights and some other relevant laws, which we will see later.

2.2. Objective criminal protection of cultural heritage in some other relevant laws

Under this title, I shall set out the offences and penalties for infringing upon cultural heritage; Provided for in certain articles of laws relevant to the protection of cultural heritage, such as the Penal Code, the Mujahid and Shahid Law, etc., and described as follows:

2.2.1 Objective criminal protection of cultural heritage through the Penal Code:

Article 160 (4 bis) of the Penal Code prescribes penalties ranging from two months to five years of imprisonment and fines between 500 to 2,000 Algerian Dinars for individuals who deliberately damage, destroy, mutilate, or undermine public monuments and objects intended for public benefit or decoration, as well as statues, paintings, or any art objects displayed in museums or public buildings. To enhance the deterrent effect of this law, it is crucial that the financial penalties be increased, ensuring that they effectively discourage criminal behavior against cultural heritage.

If the symbols of the liberation revolution are prolonged, article 160 (5bis) is punishable from 1 to 10 years' imprisonment and a fine of 5000 to 20000 AD, Anyone who deliberately desecrates, vandalizes or damages monuments, memorial slabs, raids and shelters used during the liberation revolution, detention centres, torture and all other places designated as symbols of the revolution. Anyone who deliberately vandalizes, amputates or damages historical documents or objects related to the Revolution, kept in museums or any institution open to the public, shall be punished by the same penalty.

Article 160 (6 bis) punishes persons who deliberately desecrate, vandalize, maim, damage or burn the graves of martyrs or their remains with a fine of 5 to 10 years' imprisonment and a fine of 10000 to 50000 AD. Article 160 (bis 7) imposes a penalty of six months' to two years' imprisonment and a fine of 1000 to 2000 DJ or one of these penalties only for anyone who deliberately and publicly damages or subverts the distinctive marks or marks established by law and associated with the liberation revolution.

Through the above, I propose that the maximum and minimum penalty for fines in articles 160 bis (4) to 160 bis (7) be lifted, commensurate with the gravity of the prohibited act

committed, as they represent a small amount in return for the destruction and destruction of the nation's cultural, civilizational and historical heritage and living memory, and do not achieve public deterrence for criminals.

Article 160 (8) concluded by stating that the court could order the deprivation of the national rights provided for in article 9 (1) of the Penal Code in cases provided for in articles 160 (5), 160 (6) and 160 (7) from Algerian Penal Code.

In addition to the foregoing, article 160 bis punishes anyone who deliberately and publicly tears, mutilates or desecrates the national flag with five (05) to 10 (10) years' imprisonment. The latter is a symbol of the National Liberation Revolution and of the Republic in accordance with article 6 of the Constitutional Amendment of 2020 and article 52 of Act No. 99/07 on martyrs and martyrs (Official journal, n., 1999).

Article 350 bis 1 of the Penal Code provides for the offence of theft of cultural heritage: "Anyone who steals or attempts to steal a protected or recognized cultural property shall be liable to a penalty of 2 to 10 years' imprisonment and a fine of 200.000 to 1000.000 A D."

Notably, the offence of theft of cultural heritage has been adapted by the legislator as a misdemeanour by the term "jail" rather than "imprisonment". In my view, the fine is commensurate with the offence committed and creates public deterrence and provides effective criminal protection for the effects, and the legislator is also punishable for the attempt of the offence, to his credit.

The legislator also increased corporal and financial punishment under article 350 bis 2, if the perpetrator's function is facilitated, or committed by more than one person, or committed with the bearing or threat of use of a weapon, committed by an organized criminal group or the crime was transnational in nature imprisonment ", serving a sentence of 5 to 15 years' imprisonment and a fine of 500.000 to 1500.000 AD.

However, I disadvantage the text with the phrase "protected or defined", i.e. the notion of offence where the property is unprotected or undefined and does not constitute the crime of theft, which is a lack of legislation to be remedied.

2.2.2. Objective Criminal Protection of Cultural Heritage through Law No. 99/07 related to El Moudjahid and martyr:

Article 66 stipulates that any infringement of the symbols of the national liberation revolution provided for in article 52 of this Code shall be punished in accordance with the Penal Code.

Article 67 of the same Law also penalizes any assault or attack on the mujahid or the widow of the martyr when they take over the epaulets, the honors or the emblems or when they

invoke the cards indicating their status, in accordance with the provisions of the applicable legislation.

2.2.3. Objective criminal protection of cultural heritage through anti-smuggling law:

Article 10 of Ordinance No. 05/06 on combating smuggling (article 10 of Ordinance No. 05/06 of 23 August 2005) stipulates:(Official journal, n., 2006) "The smuggling of burrows or fuel shall be punishable... artefacts or archaeological property... shall be imprisoned from one year (01) to five (05) years and a fine equal to five (05) times the value of the confiscated goods.

When smuggling acts are committed by three (03) persons and more, the penalty shall be two (02) to ten (10) years' imprisonment and a fine equal to ten (10) times the value of the goods confiscated.

When smuggled goods are discovered in caches, cavities or other places specially equipped for the purpose of smuggling, the penalty shall be 2 to 10 years' imprisonment and a fine equal to 10 times the value of the goods confiscated. "

In my view, the legislature has done well by prescribing both financial and physical punishment, as well as five times the value of the financial penalty as the confiscated cultural property, and in this investigation of public deterrence as well as special deterrence. We also note that the penalty is doubled if combined with an aggravating circumstance, but that the legislator equates the smuggling of combustion, fuel and other goods with the smuggling of antiques, i.e., making antiques merely a commodity sold and purchased; like fuel, incinerators, etc., but it is a history, civilization, people's identity and an invaluable and invaluable resource. I therefore call upon the legislator to provide for the smuggling of antiques and archaeological property in Act No. 98/04 on the protection of cultural heritage while maintaining or lifting the penalty itself.

2.2.4 Objective criminal protection of cultural heritage through Ordinance No. 03/05 on authors' rights and neighbouring rights:

The perpetrator of the Imitating Misdemeanor is defined by several unlawful acts (M, 2003), which include the unlawful detection of a workbook or infringement of its safety or performance by an artist, performer, or player. This also encompasses cloning a workbook or replicating performances in any form, as well as the import or export of counterfeit copies of a workbook or performance. Additionally, it includes the sale of counterfeit copies and the leasing or distribution of such copies related to the work of an artist or performer.

It is punishable by six (06) months' to three (03) years' imprisonment and a fine of five

hundred thousand dinars (500.000 D) to one million dinars (1000.000 D), whether the publication took place in Algeria or abroad in accordance with article 15.

The same penalty shall apply to anyone who participates in his or her work or by means of which he or she may infringe the author's rights or any owner of neighbouring rights, in the operative part of article 154 of the same Law.

As stipulated in article 157 of Ordinance No. 03/05 above, the competent judicial authority decides: - confiscation of amounts equal to the amount of revenues or premiums resulting from the illegal exploitation of a protected classification or performance, - confiscation and destruction of all materiel specially created for the commencement of illegal activity and all copycats.

In all cases provided for in articles 151 and 152 of the Ordinance, the competent judicial authority shall also order the delivery of counterfeit materiel or copies or the value thereof, as well as the revenues or premiums of the confiscated income of the author or any other rights owner or rights holders, where necessary as compensation for the damage suffered.

Lastly, the penalties set forth in Ordinance No. 03/05 for abuse or infringement of authors' rights and neighbouring rights are sufficient to ensure effective criminal protection of intellectual property rights (rights to intangible objects (intangible cultural property)), in the event that those responsible for their application are not lax.

2.2.5 Objective criminal protection of cultural heritage through Law No. 88/09 on the National Archives:

Article 25 of this law stipulates: "Anyone who destroys vandalizes or misappropriates public or private documents kept in the archives or public deposits handed over to the Public Depository in this capacity shall be punished by the penalty provided for in article 158 of the Penal Code.

Under articles 215 and 216 of the Penal Code, anyone who commits forgery or falsification in archival documents is punished. "The offence in this case in the Penal Code is a crime rather than a misdemeanour, as evidenced by the term 'imprisonment' rather than a "jail", which is usually a misdemeanour.

If damage, sabotage or embezzlement is facilitated by the depositary's negligence, the penalty payable is that provided for in article 159 of the Penal Code (official journal, n., 1988).

Under article 27 of the above Law, anyone who deliberately or attempted to sabotage or destroy private documents of archival significance shall be punished by two months' to one year 'imprisonment (01) and a fine of 2.000 AD to 20.000 AD. Confiscation of documents may be

ordered.

Under article 28 of the same Law, anyone who violates or attempts to violate the provisions of article 15 of this Law shall be liable to two months' to one year's imprisonment and a fine of 2.000 to 20,000 AD. This is the opening of the private archive to inform others without the owner's or holder's authorization.

Review the last two articles and ensure effective criminal protection of archival documents; As the nation's memory, I propose to lift the financial penalty provided for in articles 27 and 28 of Law No. 88/09 on the National Archives.

2.2.6. Objective criminal protection of cultural heritage through Law No. 11/03 on cinema:

Article 37 of this Law punishes by a fine of five hundred thousand (500,000) to one million (1,000,000) AD anyone who produces films relating to the National Liberation Revolution and its symbols without the prior approval of the Government.

He is also a perpetrator of imitating Misdemeanour and is subjected to one or both of the penalties provided for in article 153 of Ordinance No. 03/05 on author's rights and neighbouring rights, whoever has registered on the pillars, a film, during its screening in a cinema gallery (official journal, n., 2011).

In fact, only two cases were found in the "Judicial Journal" from 1991 to 2014, which includes the Supreme Court's jurisprudence on cultural heritage crimes: the first involving the imitation of a literary work, and the second involving the forgery of a work. Additionally, no reference was found to Law No. 98/04 on the Protection of Cultural Heritage. This suggests that cases related to cultural heritage crimes rarely reach the courts, possibly due to the failure to apprehend criminals, cases being filed against unknown individuals, lack of follow-up, stalled proceedings, or the failure to give sufficient importance to such crimes. Moreover, courts may opt to apply the Penal Code instead of referring to the Cultural Heritage Act. It is unreasonable that a person who steals a contemporary pottery piece from a store and another who steals or conceals an archaeological pottery piece of historical value should receive the same punishment, even if the stolen objects may appear similar in one sense.

3- Discussion

The results of this study illustrate the complexity and challenges associated with protecting cultural heritage in Algeria through criminal law. Law No. 98/04 on the Protection of Cultural Heritage serves as the primary legal framework for addressing crimes related to cultural assets, yet the study highlights significant gaps in its effectiveness.

The **objective criminal protection** provided by this law is designed to safeguard tangible cultural assets—such as artifacts, historical sites, and objects of archaeological significance—through the criminalization of actions like unauthorized excavation, sale, concealment, damage, and destruction of heritage properties. However, while the law sets penalties for various offenses, these sanctions are often insufficient in deterring cultural crimes. For instance, fines for conducting unauthorized archaeological research or failing to declare discoveries range from 10,000 to 100,000 Algerian Dinars, which are minimal amounts given the potential value of cultural heritage artifacts. This lack of proportionality in penalties undermines the deterrence and effectiveness of the law.

Moreover, **inconsistencies in enforcement** further complicate the protection of cultural heritage. For example, while Article 95 criminalizes the sale and concealment of cultural property, it only applies to assets listed in the additional inventory. This raises concerns about the protection of unlisted heritage properties, which may still hold significant historical and cultural value. The optional nature of certain penalties (imprisonment or fine) also suggests a level of flexibility that could dilute the law's impact.

Another significant concern is the **disparity between criminal sanctions and the societal value of cultural heritage**. For crimes such as the intentional destruction or distortion of cultural properties, the prescribed penalties in Articles 96 and 98 may not adequately reflect the damage done to Algeria's history and identity. The penalties fail to address the irreversible loss of cultural memory and historical continuity caused by such actions. Additionally, public awareness of the importance of cultural heritage appears limited, as evidenced by the unauthorized exploitation of archaeological sites for commercial purposes, such as in the “Andalusian Case” in Oran.

The study also observes that **theft and smuggling of cultural property** are not explicitly addressed in Law No. 98/04, relying instead on the general provisions of the Penal Code. Given the unique nature of cultural property, theft of such items should ideally be treated as a distinct offense with more severe repercussions to discourage illegal trade and smuggling. Without specific provisions in the cultural heritage law, there is a risk that cultural crimes may not be adequately prosecuted or penalized, especially if they are treated under general theft laws.

In addition to the main law, the study reviews **supplementary legal frameworks** that contribute to protecting cultural heritage, such as the Penal Code, anti-smuggling law, and laws related to intellectual property. While these laws provide broader support, their fragmented nature may limit the coherence and efficiency of protection measures. Each law serves a

specific purpose, yet cultural heritage crimes often overlap categories, leading to inconsistent applications and enforcement. Furthermore, some laws, such as the anti-smuggling ordinance, treat artifacts and antiquities similarly to commodities like fuel, disregarding their intrinsic historical and cultural value.

Lastly, the study points to a **general lack of awareness and specialized expertise** among judicial and enforcement authorities regarding cultural heritage crimes. Judges and law enforcement officials may lack the necessary training to handle cases involving cultural properties, which could contribute to lower prosecution rates and limited legal action against offenders. Public awareness initiatives, alongside educational efforts for those in judicial and enforcement roles, could play a critical role in ensuring more effective protection.

In summary, while Law No. 98/04 and other supporting laws provide a foundation for protecting cultural heritage, significant improvements are needed. **Increasing penalties** to match the severity of offenses, **ensuring comprehensive coverage** of all cultural assets, and **raising awareness** are crucial steps for bolstering Algeria's criminal protection of cultural heritage. A more integrated legal framework that specifically addresses the unique nature of cultural crimes would better serve the preservation of Algeria's cultural and historical identity for future generations.

Conclusion

After completing this research, several conclusions and recommendations have been reached. The most important findings indicate that Algerian law prohibits and criminalizes the infringement of cultural heritage through archaeological excavation, destruction, smuggling, and violations of intellectual property rights, authors' rights, and other cultural heritage offenses. However, Law No. 98/04 on the Protection of Cultural Heritage does not explicitly address the crimes of theft and smuggling of cultural property, despite the heinous nature of these acts; it refers instead to the General Penal Code and the Anti-Smuggling Law, indicating that protection against archaeological crimes is only guaranteed under public law. Furthermore, most financial penalties for cultural heritage offenses outlined in this law do not provide effective criminal protection, as they fail to align with the severity of the offenses committed.

Regarding the recommendations, the legislator is urged to add new articles under the eighth chapter of this law criminalizing the theft and smuggling of movable cultural property. This article also proposes amending the financial penalties established for cultural heritage offenses in Law No. 98/04 by raising their value to correspond with the severity of the offense.

Additionally, I suggest increasing the maximum and minimum penalties in articles 160 bis 4 to 160 bis 7 of the Penal Code to reflect the seriousness of the prohibited acts, as the current penalties are inadequate compared to the destruction of the nation's cultural, civilizational, and historical heritage. To ensure effective protection of archival documents, I recommend lifting the financial penalties outlined in articles 27 and 28 of Law No. 88/09 related to the National Archives. Moreover, I believe it is essential to train judges in "cultural heritage" and "archaeological principles" to enable them to handle archaeological seizures and cultural heritage crimes with the necessary expertise, and it may be beneficial to establish a "cultural heritage judge" as a specialization. Finally, legal legislation alone cannot succeed in protecting cultural heritage, regardless of deterrent penalties. There must be an increase in public awareness of the harm caused by these crimes, and educational, cultural, and media institutions, along with the Ministry of Culture, should play a pivotal role in developing awareness of cultural heritage and the need to protect and preserve it.

Bibliographic references

- Abou, Amer, & Mohamed, Zaki. (1985). *Procedural Protection of the Public employee in Egyptian Legislation*. .
- Bouzar, Habiba. (2008). *Reality and Prospects for the Legal Protection of the Real Estate Material Heritage in Algeria, State of Tlemcen Model, Master's thesis in Folklore* , University of Tlemcen].
- Journal officiel, 98/04. (1998). *Related On the protection of cultural heritage*.
- Khalfoune, Tahar. (2004). *Le domaine public en droit algérien : réalité et fiction*, without a print,. In. Paris: L'Harmattan.
- McDonald, Gabrielle Kirk, & Swaak-Goldman, Olivia. (2023). *Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts. Commentary (Volume I)*. Brill.
- official journal, n°4. (1988). *Law No. 88/09, related on the National Archives*.
- Law No. 11/03, relates to cinema. (28 February 2011). (2011).
- Official journal, n°59. (2006). *Ordinance No. 05/06 of 23 August 2005, on combating smuggling*.
- Official journal, n° 25. (1999). *Law 99/07 relating to El Moudjahid and martyr* (Official journal n° 25, Issue.
- Official journal, n° 49. (1966). *Algeria's Penal Code, promulgated by Order*.
- Saujot-Besnier, Colette, & Chronique, juridique. (1999.). *La protection pénale des vestiges archéologiques terrestres, Revue archéologique de l'ouest, . Persée, publications scientifiques par le ministère de l'Éducation, 16.*

Soula NACER, a doctor in Sciences, specializing in Sharia and Law from Batna 1 University. He currently works as a professor at the Faculty of Law, Continuous Formation University, Setif Center. Dr. Soula contributes to the advancement of legal education and Islamic jurisprudence through his lectures and specialized research.

Soula NACER
Continuous Formation University of Setif
soulanacer@yahoo.fr

Badraddine LAIFAOU, a Doctor in Political Science and International Relations at the University of Algiers 03, specializes in analyzing political and international affairs. His academic work contributes to a deeper understanding of political dynamics, diplomacy, and global relationships, positioning him as a significant figure in the field within Algeria's academic landscape.

Badraddine LAIFAOU
University of M'sila
badrlaifaoui@gmail.com