

# The role of schemes in the protection of real estate cultural property in Algerian legislation



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## Abstract

Real cultural properties serve as evidence to the Algerian state in particular, and to the Arab and Islamic nations in general. To prevent the disappearance of these landmarks, the Algerian legislator has given them particular attention by establishing legal mechanisms and preventive measures through various legal texts to provide effective protection for these properties. Additionally, there are specific legal mechanisms for protection detailed in particular regulations, including the protective role played by both central and local urban planning schemes, as well as special planning schemes dedicated to the preservation of cultural real estate. In this context, we raise a legal issue: Have these planning schemes, across successive laws, played an adequate role in extending legal protection to cultural real estate properties in Algeria? And if not, how can its protective role be activated?

## Keywords

Cultural properties;  
Real estate;  
Local schemes;  
Special schemes;  
Landmarks.

## الكلمات المفتاحية

ممتلكات ثقافية؛  
عقار؛  
مخططات محلية؛  
مخططات خاصة؛  
معالم.

## دور المخططات في حماية الممتلكات الثقافية العقارية في التشريع الجزائري

### ملخص

تعد الممتلكات الثقافية العقارية بمثابة شواهد للدولة الجزائرية خاصة، و الأمة العربية و الإسلامية عامة، وحتى لا تندثر هذه المعالم فقد أولى لها المشرع الجزائري عناية خاصة، عن طريق سن آليات قانونية و تدابير وقائية نظمتها مختلف النصوص القانونية من أجل توفير الحماية الفعالة لهذه الممتلكات، كما أنه هناك آليات قانونية للحماية جاءت بنصوص خاصة، من بينها الدور الحمائي الذي تلعبه مخططات التهيئة والتعمير المركزية و المحلية، وكذا المخططات ذات الطابع الخاص في المحافظة على الممتلكات الثقافية العقارية، و في هذا السياق ارتأينا إلى طرح هذه الإشكالية القانونية، هل كانت للمخططات على مر القوانين المتعاقبة دور كافي في بسط الحماية القانونية على الممتلكات الثقافية العقارية في الجزائر؟ وإن لم تكن كذلك، كيف يمكن تفعيل دورها الحمائي على أحسن وجه؟

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## Introduction:

The direct synonym of cultural property in the language of law is the word heritage, which is attracted by many sciences, especially heritage science and history, as heritage expresses the history and identity of societies, their heritage and roots in the past and the effects of this on their present and future, and represents a real value not only for countries but for all nations and peoples in their movement and building bridges of continuity<sup>(1)</sup>, The cultural heritage defines those forms and cultural elements material, intellectual and social that were prevalent at one time and then underwent changes in this society and moved from conditions to more modern situations, but still continuing in that society, circulating among its members.

Algeria abounds in diverse cultural properties, which consider as cultural heritage inherited from various successive civilizations since the prehistoric era and beyond, such as paleolithic , Roman and Islamic monuments, what was left by the Ottoman Empire and popular revolutions, including the Algerian revolution against the unjust colonizer.

Cultural property<sup>(2)</sup> Algeria encompasses movable, intangible, and real assets. Real cultural property includes immovable landmarks and sites, such as historical monuments, archaeological areas, and distinctive urban or rural settings.<sup>(3)</sup> These properties are inherently fixed and integral to their specific locations.

To safeguard these invaluable assets, which signify the historical and cultural essence of the Algerian state and broadly the Arab and Islamic civilizations, The law has been and still is reliable in the protection of this heritage, and in that its subject matter was taken care of by both international law and domestic laws.

including Algerian law. Algerian legislation has prioritized the protection of cultural real estate. Initial legal efforts began with Ordinance 67/281 issued on December 20, 1967, focusing on excavation and the preservation of historical sites and monuments. However, this ordinance was inadequate in covering all historical sites and did not keep pace with construction and development changes affecting these sites.

Consequently, a more comprehensive law, 98/04 dated June 15, 1998, was enacted. This law repealed the earlier ordinance and introduced updated legal frameworks to better protect cultural real estate properties.

There are also legal mechanisms for protection that came with special legat texts, including the protective role played by central and local urban planning and construction, as well as plans of a special nature in the preservation of real state cultural property.

The question posed in this research paper is **whether the plans throughout successive laws play a sufficient role in enforcing legal protection for cultural Real estate in Algeria? If not , how can its protective role be optimized?**

To answer this legal problem, we followed the **descriptive approach**, by presenting the concepts and definitions related to the subject , as well as the **analytical approach** by analyzing the studies and legal provisions that dealt with this study in depth.

### **1: The role of urban planning and construction schemes in the protection of real estate cultural property.**

The Algerian legislator considered that every property has a historical, religious or cultural value that requires preservation ;thus, it is referred as heritage and is granted legal protection, so these properties in their entirety are real estate cultural property . urban planning and construction schemes have paid attention to these properties , before addressing the protective role of these plans, it is necessary to address the components of cultural real estate.

#### **1.1: components of real estate cultural property .**

Under the Law on the Protection of Cultural Heritage, real estate cultural property comprises historical monuments and archaeological sites, along with preserved urban and rural sectors.

##### **1.1.1 : Historical land mark sand Archaeological Sites**

Article 17 of the law defines historical landmarks as individual structures or groups that are significant to a particular civilization, developmental milestone, or historical event. This includes grand architectural works, art such as paintings, carvings, decorative arts, and Arabic call.

Archaeological<sup>(4)</sup> sites have also been defined as spaces , whether they are bare or built land, including what has contacted its interior without an active job, and they have value from a historical , archaeological, religious , artistic , scientific , anthropological ,or entreological, and they mean in particular archaeological reserves and cultural parks. Algeria includes five classified cultural parks, such as Tassilipark<sup>(5)</sup>, Al-Ahqarpark<sup>(6)</sup>, Desert Atlas park<sup>(7)</sup> Tindoufipark<sup>(8)</sup>and Twat Quararapark<sup>(9)</sup>.

### **1.1.2: Urban and Rural Groups**

Urban or rural groups are reserved sectors that are established in the form of urban or rural real estate groups, such as ancient cities, kasbahs or palaces, villages and traditional residential complexes, which, with their homogeneity and architectural unity, and aesthetics , have historical, architectural, artistic or traditional importance, requiring their protection, repair and valorization. Article 42 stipulates that these reserved sectors are established and delimited by a decree taken on the basis of a joint report between the minister in charge of culture, interior, local communities, environment, construction and architecture, as can be proposed by local groups,or the associative movement to the minister in charge of culture.

The reserved sectors arise after consulting the National Committee for Cultural Property. Among these reserved sectors, which established the Kasbah district in Algiers in 2003 , the old city of Constantine and M'zab valley in 2004 , but in 2005, the formation of reserved sectors was initiated in both the old tennis and Kasbah Dilis .

## **1.2: Central and local plans and their role in protecting cultural real estate property**

Central and local urban planning play a crucial role in the preservation of cultural real estate property in Algeria. Central plans, like the national plan for urban planning, set general strategies for the development and preservation of cultural areas. Local plans, including land-use and master plans, serve as tools to manage and control the use of cultural real estate locally .

### **1.2.1 :The role of the national plan for the preparation of the territory in the protection of cultural real estate property**

The national plan for urban planning and sustainable development is pivotal for state policy implementation regarding the development and preparation of the national territory.<sup>(10)</sup>This plan outlines strategic directions and frameworks that public authorities use to tailor development efforts to the specific needs of each region.<sup>(11)</sup>It acts as a guiding document for regional planning, reflecting the state's commitment to spatial and urban management without providing a rigid definition.<sup>(12)</sup>Instead, it focuses on long-term goals and includes environmental considerations to ensure sustainable development for future generations<sup>(13)</sup>:

The national plan articulates the state's intent to manage its territory over a 20-year period, aiming for a balanced development that incorporates social equity, economic efficiency, and environmental stewardship. This plan represents a departure from previous central planning methods that lacked consultation, emphasizing extensive stakeholder engagement, including state authorities, local groups, experts, and citizens.

In summary, the national plan for urban planning aims to organize national space in a sustainable and competitive manner, addressing all challenges and obstacles. It sets forth principles for the management of natural spaces, protected areas, and cultural and historical heritage sites. Additionally, it outlines strategies for water resource management and land development programs, ensuring the alignment of development initiatives with the needs and peculiarities of different regions across Algeria.

- Determines the mechanisms for protecting the environment and housing .
- Ensures regional balance for all urban activities.
- Determines the principles and work of organizing major infrastructure related to transport and communication, energy distribution and fuel transportation, tourist and industrial areas.
- Upgrading cities in order to rebalance the urban structure, and this is stated in Law 06-06 dated 20/02/2006, which includes the guiding law for City<sup>1</sup>, which aims to.....
- The article discusses the establishment of specific regulations aimed at identifying urban components under regional policy development guidelines. These guidelines not only categorize cities but also delineate urban policies, as specified in Law 01-20<sup>(14)</sup>.

The long-term objectives of the national plan for the development of the territory are the protection, restoration and valorization of the cultural and historical heritage , as well as its protection and preservation<sup>(15)</sup>.

his law emphasizes the immediate goal of preserving and sustainably utilizing heritage, cultural, and natural resources for future generations, as outlined in Article 4/8. Additionally, it highlights long-term goals focused on the protection, restoration, and enhancement of cultural and historical heritage.

This approach prioritizes regional identity over merely spatial characteristics and introduces cultural hubs such as parks in protected areas and historical and archaeological sites. To effectively safeguard and promote cultural heritage, it is

crucial to consider the vulnerability of certain heritage types and the inadequacies in protecting and valuing diverse cultural real estate assets.

Within the framework of the development of cultural, historical and recreational tourism, which aims mainly at the valorization of cultural heritage, it is necessary to implement a protection strategy from inventory, classification and retrieval, to valorization to achieve the existing monuments.

### **1.2.2 :The role of local schemes in the protection of cultural real estate property**

The built environment is defined as the artificial environment that man has established within the framework of the natural environment in which he grew up. Man has worked to construct the earth and made it more aligned and harmonious with his needs<sup>(16)</sup>, to achieve his goals. The establishment of these facilities should not be in vain and in an unregulated manner. rather, this is done through scientific studies that define the competencies required to fulfill health conditions and social service requirements.

The Algerian legal framework has evolved to include comprehensive legislation for urban development and land management, particularly through Law 90/29 on preparation and reconstruction. This law introduces essential tools such as the master plan and the land-use plan for effective spatial planning. The master plan sets forth fundamental

urbanization guidelines for municipalities, integrating urban designs and development strategies, and it establishes the groundwork for the detailed land-use plan specified in Article 31 of Law 90/29<sup>(17)</sup>.

This plan takes all the planning and development plans, maintains the directions of the land occupation plan and adjusts its reference formula in the use of the property and the field present and future, as well as expresses the organization and framing of urban activity under penalty of penalties for violation.

The master plan is developed for a period of twenty years and is subject to opposition by others, as it is a means that determines the forms and results related to the expansion of residential blocks to future horizons, and here the technical aspect of this plan appears, which is mandatory for all municipalities.

Law 90/29 obligated consulting the department or administration of buildings and archaeological and natural sites at the state level, when developing the draft preparation of the master plan for preparation and reconstruction, which determines the areas of intervention in urban tissues and the areas to be protected<sup>(18)</sup>.

Decree 91/177 of 28/05/1991, which specifies the procedures for preparing the plan<sup>(19)</sup>, specifically states in Article 17 that among the contents of the plan is a regulation that specifies the rules applicable to each covered area as defined in Articles 20, 21, 22 and 23 of Law 90/29. Therefore, the areas that need to be protected must be precisely defined, along with a development plan that delineates the boundaries of land with significant natural and cultural characteristics. This plan meticulously outlines the designated uses of land, building rights, and the delineation of neighborhoods, streets, monuments, and areas that require protection, renovation, or repair.

It is a means of detailing and implementing the general and total directives contained in the master plan for urban planning and construction, specifying in detail the land-use rights, and specifying the minimum and maximum amount of permitted construction, expressed in square meters of the built-up land outside the construction, or in cubic meters of sizes, It sets the rules relating to the external appearance of buildings, determines the easements, neighborhoods, streets, monuments, sites and areas to be protected, renovated and repaired, determines the locations of agricultural land to be protected, and determines the green spaces and sites allocated to public establishments<sup>(20)</sup>.

This plan defines in detail the methods of organizing and implementing land use, methods of construction, building standards and distribution methods throughout the territory of the municipality or municipalities concerned.

Decree 91/178, dated May 18, 1991, further specifies the procedures for preparing and approving land-use plans, mandating consultation with the Department of Archaeological and Natural Buildings and Cultural Sites during the plan drafting process. This decree also ensures that the regulations within the plan address the specific characteristics of each homogeneous area, considering any special provisions related to regions with significant natural, cultural, or distinctive features.

## **2: The role of private schemes in the protection of real estate cultural property**

These plans are many and varied, some of which were before 2001, and some of which came after 2001.

### **2.1 :Special plans before 2001**

These included specific strategies for the protection and management of cultural areas and sites, such as the plan for archaeological site protection and restoration and the general strategy for establishing cultural parks, which took into account the unique characteristics of each region.

#### **2.1.1: Plan for the Protection and Restoration of Archaeological Sites**

Originating from Law 98/04 on cultural heritage, this plan, as outlined in Article 30, details the organizational, constructional, and architectural guidelines necessary for the conservation and possibly reconstruction of archaeological sites. It includes stipulations for land use and activities permissible within the classified or protected zones of the sites. The plan's preparation, review, approval, and implementation procedures are strictly regulated to ensure thorough protection and restoration efforts.

The process for preparing cultural heritage protection and restoration plans in Algeria involves several detailed steps:

1. The People's Assembly of the relevant wilaya deliberates upon the proposal by the wali, initiated by the culture minister's notification.
2. The wali then informs the President of the Municipal People's Assembly or the Presidents of the Municipal People's Councils to publicize the deliberation at the municipal headquarters for one month.
3. A copy of the approved deliberation is sent to the Minister of Culture.
4. A legally qualified studies office or architect is tasked to prepare the plan in line with regulations governing artistic works related to real estate cultural property.
5. The Director of Culture communicates the deliberation to various social partners, allowing them 15 days to express their interest.
6. Consultations involve multiple state directorates like Tourism, Culture, and Traditional Industries, with the Department of Cultural Property Protection and Valuation being particularly crucial.
7. Consultative sessions are organized with the involved bodies and departments.
8. The draft plan is then approved following similar procedures as the initial deliberation, but consulted bodies are given 30 days to submit their feedback.
9. A public inquiry phase follows, led by appointed investigating governors, lasting 60 days, with the culture minister being informed of its initiation.
10. Public feedback is documented in a numbered and indexed register. Fifteen days later, the investigating governor prepares a report to conclude the inquiry.
11. This report is reviewed by the wali, who provides feedback within 15 days.
12. The People's Provincial Assembly then grants final approval to the findings.
13. The plan is published in the Official Gazette and implemented by the Directorate of Culture of the concerned province, in collaboration with the local mayor(s)<sup>(21)</sup>.

The protection and restoration plan includes technical documents, an introductory report, regulatory lists, topographical and graphical documents, and appendices<sup>(22)</sup>.

#### **2.1.2 : The general plan for the cultural park development serves as a protection tool that takes into account the uniqueness of the region**

This plan acts as a protective measure, tailored to the unique characteristics of each region. Algeria's significant cultural parks, such as Tassili and Hagar in the Great South, are highlighted for their world heritage status. These parks showcase prehistoric life evidence through the Tassili drawings and Hagar inscriptions, underscoring the importance of their preservation under Law 98/04<sup>(23)</sup>, which stipulates that the master plan for the preparation of the park is a protective tool, it is included urban planning and developments plans and replace the land-use plan for the specific area.

From the legal text, it is understood that the legislator has established a specific master plan for each park, taking into account its uniqueness and the elements that comprise it.

### **2.2 : Special plans after 2001**

Post-2001, special plans were developed as part of the overarching strategy for urban planning in Algeria, including key components such as the master plan for the protection of archaeological and historical areas and the ongoing plan for the conservation and restoration of preserved sectors.

### **2.2.1: Guidelines for the protection of archaeological and historical areas ( ambiguity in meaning and role )**

Introduced by Law 10/02, which endorsed the national urban planning strategy, the guideline plan for archaeological area protection was established as a crucial tool. However, despite its importance, the national urban plan did not detail the specific functions or significance of this guideline plan, nor did it emphasize its role as strongly as other plans which were more clearly defined and structured.

Law 10/02 similarly utilized the master plan for archaeological and cultural areas primarily as an execution tool within the national urban strategy, focusing mainly on the goal of protecting and enhancing cultural heritage, without providing comprehensive procedural details.<sup>(24)</sup>

### **2.2.2 : The Permanent Plan for the Preservation and Restoration of the Preserved Sectors**

This plan, formalized by Law 98/04 regarding cultural heritage protection, aimed to replace older land use schemes in culturally protected areas. Article 46 of this law directed all regulatory aspects related to the plan's preparation and content, which remained pending until the issuance of Decree 03/324 in 2003<sup>(25)</sup>, This decree essentially mirrored the provisions of its predecessor, Decree 03/323, concerning the steps for crafting the permanent preservation and restoration plan<sup>(26)</sup>.

However, a significant amendment came with Executive Decree 11/01 in 2011, which shifted the implementation responsibility from the Directorate of Culture to a specifically created public institution, in consultation with municipal council presidents. The final approval of this plan is governed by<sup>(27)</sup>:

- An executive decree for reserved sectors with a population exceeding 50,000.
- A joint ministerial decision for sectors with a population under 50,000.

### **Conclusion:**

The deficiencies recorded on the ground with regard to the application of legal texts related to the protection and valorization of cultural property and cultural heritage have led to its deterioration, and the accelerated pace of this deterioration has forced us to re-plan and not be satisfied with situational treatments and limited intervention policies.

In addition, within the framework of the sustainable development program, each generation must have unremitting efforts, whether at the national or local level, to protect cultural real estate property and to be a fair benefit from this heritage, according to an integrated protection system based on legislative and regulatory texts and on programs and plans to ensure the continuation of this cultural heritage in existence.

Urban planning and construction plans, whether central and local, or special plans, play a protective role in preserving real estate cultural property, but this protective role of the plans does not provide sufficient protection for these real estate properties due to many considerations.

And from the results reached :

- Algeria is rich in cultural real estate properties that vary according to successive civilizations from the prehistoric period until the revolution against France.
- The real estate legislator's interest in protecting these properties through legal controls enacted by the law in force 98/04 or protection measures with special texts, especially urban plans.
- The National Plan for the Development of the Region is the reference for local plans, and its aim is to protect and valorize cultural resources and preserve them for future generations.
- Plans at the level of regional groups aim to organize the urban area, control the construction process and determine the places to be protected with great accuracy.
- There are also plans in various texts aimed at the qualitative management of cultural protected sites.

That the legislator must take into account , including :

- ✓ Design legal frameworks specifically tailored for the protection of cultural real estate properties, ensuring they are separate from broader land-use policies.
- ✓ Allocating an appropriate financial budget to cover the expenses spent on protecting real estate cultural heritage from damage and neglect, especially archaeological sites that are often in dire condition.

- ✓ Enhance the advisory role of departments or agencies responsible for archaeological and natural buildings and sites during the development of local urban planning projects, including master plans and land-use plans. This ensures that cultural considerations are integrated into urban development from the outset.
- ✓ Amend the existing Law on the Protection of Cultural Heritage to reflect international developments in heritage protection. Given the global recognition of numerous national sites as UNESCO world and human heritage sites, updating this law is crucial to align national standards with international best practices and ensure comprehensive protection for heritage properties.
- ✓ Imposing effective and serious control over construction work in archaeological areas to suppress violations and excesses before they occur by forming aware and specialized bodies and creating highly efficient technical structures dedicated to monitoring construction sites in these areas, as well as intensifying penalties for offenders .

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**Note :**

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