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**Legal aspects of protecting the manuscripts heritage in light of national legislation and Algerian law: an analytical study**

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**Abstract :**

It is believed that the manuscript heritage is the origin and identity of a nation, because it preserves its culture and customs, and is the result of its achievements throughout the ages in acquiring knowledge, which contributes to knowledge and culture and thus to the world after the modern era. With the change, many people began to turn to the manuscript heritage, and many countries began to establish legal frameworks to protect the manuscript heritage, and to identify, discover, and preserve manuscripts according to scientific foundations and rules. This analysis discusses the legal aspects of protecting manuscripts under Algerian law and national legislation.

**Keywords :** heritage; legislation; protection; law; manuscript.

**Introduction :**

In accordance with the basic and well-known principle that the branches are linked to the origin and the obligation to protect the national memory, the tangible cultural heritage, especially manuscripts and other movable contents, are considered monuments whose extent can be inferred from the achievements of any country, and whose level of development can be improved, and any civilization can anticipate and witness its vision and level. . At the same time, the hadiths and words of the ancestors can also tell the caliph the level of her testimony, which links the interaction between the present and the past, which is extremely important, because the present is an extension of logic and a continuation of reality.

Based on all of this and more, the aim of this intervention is to address issues related to the protection of manuscripts, and based on the fact that, given the procedures required by legislation, they must have a place in the legal framework process and precisely identifying those responsible, taking into account the procedures required by legislation to prevent evasion. From responsibility and this is what led to this situation and the achievement of deterrence against any defamation in the field of manuscript protection.

The research reveals some practical procedures in legislation in some Arab countries such as the Kingdom of Saudi Arabia and Egypt. Then we move to the case of Algeria and the efforts of legislators, and compare legislation by addressing the definition of the manuscript, then how to register the manuscript with the competent authority. This is done in the country via

- Transferring ownership of the manuscript and methods of exporting it outside the country in accordance with legal provisions
- Imposing penalties and fines on manuscripts through deterrent measures to protect the manuscript.

In order to understand and study this phenomenon, we pose the following problem: **What are the most important legal aspects of protecting the manuscript heritage in Algerian legislation and comparative national legislation?**

## **First: Definition of manuscript in national legislation and the Algerian legislator:**

### **1. Legal protection of manuscript heritage:**

The manuscript is one of the most important pillars of cultural heritage in nations in general, and for the Arab and Islamic nation in particular, as it is the memory of the nation and the foundations of Arab and Islamic civilization, and this is what made the legislator throughout the Arab world pay great attention to it and to its protection, as we find the Algerian legislator recognizing it. A special law is designated for it, which is Law 98-04 dated 20 Safar 1419 corresponding to June 15, 1998 )Law 98/04(. As for the Saudi legislator, it established a protection system that was approved in Royal Decree No. 23 dated 05/24/1422 AH )Protection system protection(

As for the Egyptian legislator, we find him protecting the manuscript in Law No. 8 of 2009 )Official Gazette(. In the Sultanate of Oman, Royal Decree No. 6/80 of 1980 guaranteed the protection of the manuscript )Decree 80/06(

#### **- The terminological definition of the manuscript:**

Technically, manuscript refers to handwritten content, and the Encyclopedia Americana defines manuscript as handwritten content in any type of document, whether on paper or other materials (other than printed materials), while libraries and encyclopedias define manuscripts as handwritten content. Information science terms define a manuscript, which is a handwritten book. To distinguish it from handwritten letters, papers, or any other document, especially those written before the era of printing, the International Arabic Encyclopedia defines manuscript as the term given to any document written by hand or machine.

Therefore, it can be said that a manuscript is every scientific or artistic artifact written by hand, whether it is a letter or a book, or an image on paper, or the like of a stone, a clay tablet, or an animal skin, that has not been written further. A copy of once. A copy from before the printing era . )Moulay Mohamed p105(

#### **- Legal definition of manuscript:**

Manuscripts are not clearly defined in Arab legislation in all of these laws, as we find some laws that define manuscripts in and of themselves and others that consider them to be one of the components of cultural heritage, and it is sufficient to take them into account. Movable cultural property. However, most of the legislation is taken from the Model Law for the Protection of Manuscripts in Arab Countries, which was developed based on the recommendations of the first session of the Arab World Council of Ministers for Cultural Affairs.

It was stated in the second paragraph of Article 1 of it that: "Manuscripts protected under this law include: any handwritten work, regardless of language and type of writing, that is 50 years old or older, original documents, papyri, drawings, photographs, tables, maps, and original copies." For all contemporary intellectual, literary, artistic, or scientific works by Arab authors, whether published or unpublished )Samia Yatoudji p.202(

This is what we see in the legislation itself, as we find that some countries, such as Saudi Arabia and Egypt, have issued a special law to protect manuscripts, unlike Algeria, Oman, Lebanon, and Morocco; we find that they have established

a general law to protect the cultural and national heritage as a whole, including the manuscript.

We find the manuscript protection system in Royal Decree No. M/23 dated May 24, 1422 AH in the Kingdom of Saudi Arabia, which relates in Article 1 in its definition of the manuscript as: “The manuscript, whether handwritten or machine-printed, has passed fifty years or more since it was written, whether it was published later, whether it was in an official or private library, whether it was linked to a specific body or person.”

As for Algerian legislation, we find that it does not set a specific definition for the manuscript, but rather suffices with its classification according to the movable cultural property guaranteed for protection, as Article 50 stipulates, “Movable cultural property includes in particular... manuscripts, primary publications, books, documents, and publications of special importance.”

In the Sultanate of Oman, we also find that the legislator is content with specifying the types of manuscripts within movable cultural property, as we find it in Article Two of Royal Decree No. 6/80 of 1980, referring to them as follows: “Manuscripts, old books, rare documents, and publications of special value from a historical, artistic, or literary standpoint.” Or scientific.”

In Egyptian law, we find Law No. 8 of 2009 regarding the protection of manuscripts. The manuscript is defined in its first article as: “It is considered a manuscript in its embodiment of the provisions of the law.”

- Everything written by hand before the era of printing, whatever its form, if it constitutes any kind of intellectual or artistic creativity, or relates to matters of a military nature. )Law No. 183(

- An original copy of every book that has not yet been published, or a rare copy of a book that is out of print, if it is of intellectual or artistic value and the Authority believes that protecting it is in the national interest, and it has notified the relevant parties of its concerns.

We have focused on clarifying the definition of manuscript in Arab legislation, because the definition in itself is considered protection, because stating the details of the thing and specifying its characteristics clearly removes any confusion or negligence in protection, under the pretext of lack of knowledge or ignorance of it.

## **2: Protection through registration:**

### **2.1- Registration according to Algerian legislation:**

In Algerian legislation, in accordance with Article 51 of Law 98-04 of 20 Safar 1419 corresponding to June 15, 1998, the first process of protection, which is the registration or classification of the manuscript in the additional inventory list. This is a decision taken by the Minister in charge of Culture in consultation with the National Council for Cultural Properties on his initiative, or at the request of everyone interested. Registration may also be made at the discretion of the Governor after consultation with the Cultural Property Commission of the State concerned. When the manuscript is of local importance.

The Minister of Culture or the Governor General shall notify the owner of a public or private manuscript of the decision to register it in an additional inventory on the basis of the national or local value of the manuscript.

In the fourth paragraph of the same article )Article 51( , the legislator states that registering the manuscript in the additional inventory list results in all effects of classification for a period of 10 years, as its implementation ends if that manuscript is not classified by the expiry of the period.

Finally, the registration stage comes, which is publishing the classified manuscript in the Algerian Official Gazette, and this is what was stated in Article 53 of Law No. 98-04 in its first paragraph, while the second paragraph of the same article states that the classification decision must indicate the quality of the protected manuscript and the state of care for it. Its source and place of deposit, as well as the identity and address of its owner, acquirer or possessor

## **2.2- Registration in Egyptian legislation:**

Article Three of Law No. 8 of 2009 stipulates that: “The Authority must form a permanent committee composed of technical, legal, and administrative experts and representatives of Al-Azhar, the Ministry of Endowments, the Ministry of Justice, and other libraries concerned with preserving manuscripts. The Authority shall issue a decision to form the committee. The Minister Responsible for Culture shall undertake This committee sets detailed standards for manuscripts, classifies them, numbers them, evaluates them, and supervises them to ensure their preservation. Its decisions are published in the Egyptian Gazette and communicated to those concerned.

In Article Four of the same law, “Everyone who has a manuscript must notify the Authority of this within one year from the date of enforcement of this law so that it can be registered.”

As for anyone who finds manuscripts, Article Five stipulates that he must inform the Authority about him within 30 days from the date of finding them, in order to register them.

We find the Saudi legislator granting registration authority to the library )Law No. 23 (King Fahd National Library, the second paragraph of the text of Article One of Law No. M/23 dated 05/24/1422 AH( , in Article Three of Royal Decree No. M/23 dated May 24, 1422 AH, where the article stipulated in its second paragraph that manuscripts found in official and private libraries, as well as manuscripts found in Institutional and personal properties are in private registries, and in addition to copies of all original manuscripts in official and private libraries, manuscripts (also private libraries) are given a certificate of registration. He personally owns a private library and keeps a copy of it. It is included in its collection for use by researchers. After that, the manuscripts in the Kingdom were indexed, and a descriptive index was created for them, while continuing to publish successive indexes for each group and the index will be completed later.

After registering in the inventory, it is argued that all of the aforementioned legislation directly activates protection and obligates every holder or custodian of



a manuscript to maintain and guard the manuscript and prevent its destruction, distortion, and loss.

Article 55 of Algerian Law No. 98-04 stipulates that registration in the supplementary index places responsibility on the public or private owner to preserve and protect the registered manuscript, and private sector owners can benefit from the technical assistance provided by the cultural authorities in order to preserve its condition upon request.

As for Egyptian legislation, in Article 7 of Law No. 8 of 2009, everyone who obtains a manuscript after registering it with the Authority is responsible for preserving it in a way that ensures that it is not lost, damaged, or mutilated. Therefore, the Authority chose to take appropriate action to preserve the manuscript upon learning of its loss, damage, or mutilation.

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### **3: Protection through transfer of ownership of the manuscript:**

The legislator did not neglect to arrange the provisions for transferring ownership of manuscripts in the possession of private individuals, in order to prevent these manuscripts from leaving under the supervision and protection of the competent authorities.

The competent authorities have been granted an advantage, which is the right of pre-emption in the event that permission is not obtained from them to transfer ownership, and the right of possession is not presented to the competent authorities in the state.

And in the legislation of the Kingdom of Saudi Arabia, in the second paragraph of Article Five of Royal Decree No. M/23 dated 5/24/1422 AH. It stipulated the transfer of ownership of the manuscript as follows: "If the library or others within the Kingdom do not wish to purchase the manuscript at the mentioned price, the owner of the manuscript has the right, subject to the library's approval, to take it outside the Kingdom for restoration, display, or sale, and the library will notify the new owner."

Article 37 of Royal Decree No. 80/6 relating to the protection of the national heritage of the Sultanate of Oman stipulates that employees of the Ministry of Culture may not practice the profession of buying or selling cultural property (including manuscripts), nor may they accept this property as a guarantee or mortgage when conducting business. Lending money.

In the Algerian law, the Article 61 of Law No. 98-04 regulates the method of transferring ownership of a manuscript registered in the list of additional inventory or classified or proposed to be classified and which is owned by a natural or legal person under private law. The owner of the classified manuscript must inform the Minister in charge of Culture that it has been sold. The crisis of transferring ownership of the aforementioned manuscript. However, ownership can be transferred within the national territory.

Article 62 of the law stipulates that the legislator prohibits the export of protected manuscripts outside the country, provided that they may be published temporarily within the framework of cultural or scientific exchange or for the purpose of participating in research on a global scale.

While the export of registered manuscripts is prohibited, the Ministry may specifically authorize the temporary export of manuscripts, for a period not exceeding six months, on loan to the state, cultural institutions, or foreign museums for display. If the Ministry obtains a bond, it may provide the public and other matters that serve scientific research with sufficient guarantees for its return and insurance against all risks of damage and theft.

#### **4:Deterrent measures related to protecting the manuscript from damage or smuggling:**

In Saudi legislation, Article 6 of Royal Decree M/23 states that “violating the provisions of Article (5) (b) shall be punished by a fine not exceeding fifty thousand riyals in accordance with Article (4) of this law. A grievance may be submitted to the Grievances Committee.” Within sixty days from the date of notification )Law No. 23(

Given the importance of the manuscripts, the Algerian legislator decided to punish anyone who dared to tamper with this cultural heritage in the Penal Code, in accordance with the text of Article 350 bis1 thereof, which explicitly states: “He shall be punished by imprisonment from 2 years to 10 years and a fine of 200,000 DZD to 1,000,000 DZD.” “Anyone who plunders and steals protected or clear movable cultural property” )Article 95(

With the stability of the provisions of this article, we find that manuscripts are covered by legal protection from any attack that may be committed against them. The Algerian legislator has specified the cases in which the penalty is increased in accordance with the text of Article 350 of the Penal Code, and the matter relates to the following:

1. The punishment for the offender shall be increased in the event that the perpetrator’s job facilitated the commission of the newspaper. However, the crime of stealing cultural property, including manuscripts, or the crime of attempting to steal manuscripts is an easy crime and does not require the efforts of employees working in the National Public Library or in the safes designated for storing them. Manuscripts and their preservation are few.

2. If the crime was committed by more than one person

3. If the crime occurred while he was armed or threatened to use a weapon

4. If the crime was committed by an organized criminal group or was of a transnational nature. If the crime of stealing manuscripts is committed and one of the aforementioned aggravating circumstances is committed, the perpetrator shall be punished with imprisonment from 5 to 15 years and a fine of 500,000 DZD to 1,500,000 DZD.

He is also considered to have committed the crime of concealing stolen items mentioned in the texts of Articles 350 bis No. 01 and 350 bis No. 02. Anyone who conceals, in whole or in part, an item of embezzlement or waste, or an item

resulting from a felony or A misdemeanor with knowledge of this from 500 to 20,000 dinars )Article 387 ,Paragraph 01 of the Penal Code( , the fine may exceed 20,000 dinars to reach twice the value of the items that were hidden )Article 387(

The intentional destruction or destruction of a manuscript proposed to be classified, classified, or included in the supplementary list, without prejudice to damages, shall be punished by imprisonment for a period of 2 years to 5 years, and a fine of 20,000 DZD to 200,000 DZD )Article 96(

The same penalties apply to anyone who intentionally destroys, destroys or destroys objects discovered during archaeological research. Also, disposing of classified manuscripts or registered in the additional inventory means canceling the disposal contract without affecting the damages. )Article 97(

The penalties also extend to all custodians of cultural property included in the additional list. Each responsible person must report the disappearance of property within 24 hours and will be fined if they fail to do so. Obtaining the penalty, by imprisonment from 6 months to 2 years and a fine of 100,000 DZD to 200,000 DZD, or only one of the two penalties, and in the case of a number, this penalty is doubled.

Due to the seriousness of this crime in general, the Algerian authorities worked to impose many legal penalties for this crime, and even more than that, the Algerian legislator proceeded to enact many laws that address this issue, and through Law 98-04, we find it stipulating this crime within the framework of the provisions of Article 102. By saying that, anyone who illegally exports movable cultural property (manuscripts), classified or unclassified, registered or not registered in the supplementary list, shall be punished with a fine from 200,000 DZD to 500,000 DZD and imprisonment from 3 to 5 years. If the quantity is very large, the penalty will be doubled. )Article 102(

The same penalties shall apply to anyone who illegally imports movable cultural property whose historical, artistic or archaeological value is recognized by his country of origin. "Paragraph 03

Order No. 05-06 issued in Gazette No. 59 dated August 28, 2005, amended and supplemented in its tenth article, which is directly relevant to our topic, also stipulates that anyone who smuggles fuel, grains, fuel, foodstuffs, artistic artifacts, archaeological property, or explosives shall be punished by 01 One to 05 years and a fine equal to 05 times the value of the confiscated goods, and when the act of smuggling is committed by 03 or more people, the penalty is from 2 years to 10 years and a fine equal to 10 times the value of the confiscated good, and this procedure is expressed as criminal contribution )Saidi Karim p.150(

The penalty is increased if the perpetrator of smuggling practices a job or profession related to the transferred cultural property )Ghanem Islam Abdullah p.253(

If the crime is committed by 3 or more people, the fine is equal to 10 times the value of the goods confiscated according to the same article, so the prison sentence ranges from 2 years to 10 years. (Article 10) consists of confiscation. Whereas Article 16 of Order No. 05-06, which relates to combating smuggling, stipulates that:



In the cases stipulated in Articles (10) to (15) of this decision, the state shall confiscate smuggled goods and means of transportation used in hidden smuggling.

It can be concluded from the above that the Algerian legislator has tightened the penalty for the crime of smuggling cultural property, as it made the penalty for the crime of smuggling the most severe penalty stipulated by the legislator for crimes affecting cultural heritage mentioned in the law and Article 103 of Law 98-04. This tightening appears through the following aspects:

- Making imprisonment mandatory and raising its minimum to 3 years and the maximum to 10 years.

- Making the fine penalty obligatory in addition to the imprisonment penalty and not optional, and making it relative, equal to 5 or 10 times the value of the confiscated goods. This constitutes an appropriate deterrent to the perpetrators of this crime of smuggling cultural property, as they often aim to achieve large financial returns from committing this crime.

- Considering participation in or use of a means of transportation, Article 12, Paragraph 01 of Order 05-06 Combating Smuggling, or the use of a firearm, Article 12, Paragraph 02, Order 05-06 Combating Smuggling, as an aggravating circumstance of punishment, and this is commensurate with the seriousness of these crimes as they are organized transnational crimes.

The ruling must confiscate the cultural property that is the subject of the crime and the items used in committing the crime.

In Egyptian Law No. 8 of 2009, Article 12 stipulates that anyone who violates the provisions of the law shall be punished with the following penalties:

- A fine of not less than 5 thousand pounds and not more than 50 thousand pounds is imposed on anyone who possesses a manuscript and does not report it to the competent authority, anyone who finds manuscripts and does not notify the competent authorities about them within the specified deadlines, anyone who lends the manuscript due to loss, damage, or distortion.

Anyone who produces a manuscript from the Arab Republic of Egypt for any purpose shall be punished by imprisonment for a period of not less than six months and a fine of not less than twenty thousand pounds and not exceeding one hundred thousand pounds. One of the two penalties may be imposed, other than return, without obtaining written permission from the Commission. In this case, the court may order confiscation.

If the perpetrator is one of those entrusted with the manuscript, the prison sentence and fine will be doubled and he will be removed from his job. However, this law met with strong opposition from some Egyptian jurisprudential circles, as they see it as a clear violation of property rights guaranteed by the Constitution, and on the other hand, they see it as an interference within the scope of expropriation for the public interest. For this purpose, there are a set of conditions that must be taken into account in this regard.

- Compensation must be fair.

- The right holder must have the possibility to appeal the compensation decision before the Administrative Court.

- Unless this right is expressly waived, the original owners must be identified in the manuscript identification, in the original catalog, and in the scientific research. )Kachtı Nabila Abdel Fattah Qashti p.10(

## II. Conclusion:

Finally, it can be said that the issue of protecting manuscripts and the practices affecting them is among the most important issues that Arab countries are concerned with, and this is what was shown to us in our previous research by discussing in detail the most important stage to ensure manuscript protection under the law. Through this, we arrive at the following results:

- Registration is the first stage of protection, as protection is activated immediately after registration and puts it in a protected state. In the mission of protecting manuscript owners,

Legislators throughout the Arab world did not neglect to develop a text regulating the transfer of ownership of manuscripts and their confiscation at home and abroad.

- Announcing the authority responsible for issuing manuscript licenses and processing manuscripts.

- Finally, proposing deterrent measures prescribed by law to limit infringement of manuscripts

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