

THE LEGAL NATURE OF CRAFTSMANSHIP IN ALGERIAN LEGISLATION

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Abstract:

In this presentation, we will attempt to shed light on a topic of utmost importance in practical application, namely the legal nature of craft industry in Algerian legislation, as its definition has important consequences, the most significant of which are: determining jurisdiction and identifying the rules of evidence that may be relied upon and the regulations to which the craft industry is subject.

What prompts us to ask this question are the provisions of Decree 96-01, which defines the rules governing traditional industries and crafts. This decree distinguishes between two types of legal status to which traditional industry and craft owners are subject. In some cases, they do not enjoy the status of merchant, which requires them to register only in the register of traditional industries and crafts. In the event of a dispute, the matter is referred to the civil law. At other times, their legal status changes to that of a merchant, which entitles them to several advantages, including freedom of proof, and imposes certain obligations on them, such as keeping commercial books and registering in the commercial register, without exempting them from registration in the traditional industries and crafts register. In the event of a dispute, they are subject to commercial law.

Keywords: craftsman, merchant, contractor, craft industry, traditional industry, craft

Introduction

The traditional industry and crafts sector is one of the important economic sectors in most countries of the world, as it represents a fundamental axis of economic development for many developed countries, and its importance is even greater in developing countries, where it occupies an important position due to its effective role at various cultural, social and economic levels. In addition to being one of the fundamental components of national identity for all peoples, the traditional industry and crafts sector has a great capacity to drive economic and social development through its effective contribution to employment, production and investment, and thus to economic capacity and competitiveness, which help to promote exports and bring in hard currency. The sector is also an important provider of the daily necessities of citizens, especially in rural areas, due to its geographical flexibility, which leads to a balance between urban and rural areas⁽ⁱ⁾.

Given the importance of the craft industry, we have decided in this paper to highlight its legal nature by defining its legal status, which is characterised by instability, as it is sometimes subject to commercial law and sometimes not.

Based on the above, we find that the legislator has regulated the craft industry pursuant to Decree 96-01 of 10 January 1996, which sets out the rules governing traditional industry and crafts⁽ⁱⁱ⁾. Upon reviewing the provisions of this decree, we find that in some cases, craftsmen are not subject to commercial law because they do not acquire the status of merchants, even if they engage in commercial activities on a secondary basis. However, their legal status does not change, and their activities are subject to civil law by analogy with the theory of commercial activities by analogy set forth in Article 04 Q T.

However, the craftsman may change his legal status and acquire the status of a merchant if he repeats the commercial activity. This occurs when the craftsman purchases the raw materials he uses in his work and sells them in large quantities, offering them for sale in their original state or after improving them. In this case, his work is considered commercial activity, as it has become an industrial activity aimed at making a profit, which is the main activity in this field, and the craft is only a secondary activity to his main work⁽ⁱⁱⁱ⁾. On this basis, the craft industry acquires the status of a trader, which makes it subject to the provisions of commercial law and obliged to register in the commercial register and keep commercial books.

In light of the above, we will attempt to answer the question of how to determine the legal status of craft industry. We will answer this question by following an analytical approach, dividing the study into two sections. In the first section, we will address the conceptual framework of craft industry, and in the second section, we will discuss the legal status of craft industry.

First section: The conceptual framework of the craft industry

The history of traditional industry is intrinsically linked to the early days of human history. It is part of human nature that when people needed to defend themselves or when they were trying to find food to satisfy their hunger, discovered the greatness of the blessing of his hands, which enabled him to create the means to satisfy his desires. This leads us to believe that the first humans were craftsmen who combined their intelligence with the blessing of their hands to provide the necessary conditions for their lives^(iv).

Section One: Definition of Craftsmanship

Ibn Manzur defined "craft" as industry on the one hand and livelihood on the other, and a craftsman as a man skilled in his craft who wanted Muslims to look into their affairs and make the most of their earnings and livelihoods. A professional is one who has grown his wealth and increased it beyond its original amount^(v).

As for industry, Ibn Manzur defined it as follows: It is the act of manufacturing something, which is then manufactured, and manufacturing is mastery, as Allah says "The work of God, who has perfected everything"^(vi). Industry is the craft of the craftsman and his work, and industry is what he is capable of doing, and a man of craft and a craftsman is a skilled maker^(vii). In technical terms, it is "any activity in which a person interacts with the surrounding environment to adapt it to his needs and create a world of objects from it. For example, a person takes milk from camels and uses it to make various types of cheese and butter. He takes their wool and makes various types of clothing from it. He takes their skins and makes whatever he wants from them, such as clothing, tents, and shoes. He takes their meat and makes whatever he wants from it, such as dried and processed meat, which is a delicacy for those who eat it"^(viii).

It is noticeable that Arabic dictionaries do not distinguish between industry and craftsmanship, but consider them to be one and the same, even though they are linked to the mastery of physical action and the accumulation of wealth^(ix).

A trend in jurisprudence has defined industry as the conversion of raw materials into goods that can satisfy human needs, which is any conversion of things that increases their value or makes them meet a new need^(x).

For its part, UNESCO and the World Centre for Traditional Crafts and Trade defined traditional crafts as follows at a seminar on crafts and the global market held on 8 October 1997 in Manila, Philippines: Craft products are defined as products made by craftsmen either exclusively by hand or with the aid of hand or mechanical tools, provided that the craftsman's manual contribution constitutes the major part of the final product. These products are produced without quantity restrictions and using raw materials taken from sustainable natural resources. They derive their specific nature from their distinctive characteristics, which may be utilitarian, aesthetic, artistic, creative, cultural, decorative, symbolic and important, reflecting a belief or social orientation, which is why they play a social, cultural and economic role^(xi).

As for the Algerian legislator, pursuant to Decree 96-01 of 10 January 1996 laying down the rules governing traditional industry and crafts, Article 05 stipulates that "For the purposes of this decree, traditional industry and crafts shall mean any activity involving production, creation, transformation, artistic restoration, maintenance, repair or service provision in which manual work predominates, practised either as a main and permanent activity, or in a stable, mobile or exhibition form, and taking one of the following forms: either individually, or within a traditional industry and crafts cooperative, or within a traditional industry and crafts enterprise."

Section II: Fields of practice of craft industry

Pursuant to the provisions of Article 05 of the aforementioned Decree 96- 01, craft industry may be practised in one of the following activities or fields:

1/ Traditional industry and traditional artistic industry:

These are all crafts that are predominantly manual in nature and in which the craftsman sometimes uses machines to make functional and/or decorative objects of a traditional nature, which are artistic in character and allow for the transmission of ancestral skills^(xii).

The primary function of traditional artistic craft products is mainly decorative, as they reflect the traditions, cultures and rituals of a country. They therefore require a high level of artistic talent, a long production period and high-quality raw materials, which explains their high prices. They do not require a division of labour, This distinguishes them from traditional utilitarian crafts, which do not require high artistic expertise from the craftsman, as the artistic

designs of their products are usually simple and repetitive in nature, with sequential work and distribution of tasks at all stages of production. The primary function of their products is to meet the needs of daily life^(xiii).

Traditional industry is considered a traditional craft industry when it is characterised by its originality, uniqueness and creativity^(xiv).

2/ Traditional craft industry for the production of materials

Traditional craft industry for the production of materials, or modern utilitarian traditional craft industry, is the manufacture of ordinary consumer goods that do not have a special artistic character and are intended for families, industry and agriculture^(xv). This industry is characterised by a greater degree of specialisation and does not reflect the culture or identity of a particular people. It is widespread throughout the world and is known as small-scale industry^(xvi).

3/ Traditional craft industry for services

This refers to all activities carried out by craftsmen that provide services related to maintenance, repair, and technical restoration, with the exception of those subject to special legislative provisions^(xvii).

Second requirement: Legal status of the craft industry

The legal status of the craft industry is determined by whether or not it is subject to commercial law, as follows:

Section 1: Crafts not subject to commercial law

The non-subjection of the craft industry to the provisions of commercial law means that its work is not considered commercial and does not acquire the status of a merchant, which makes it subject to the provisions of civil law in terms of determining jurisdiction and the means of evidence relied upon by the litigant.

By extrapolating from the provisions of the aforementioned Decree 96-01, it is clear that the craft industry is not subject to the provisions of commercial law if it is practised by an individual craftsman or in the form of a traditional industry and crafts cooperative (first), and when the craft industry takes one of these forms, it requires certain conditions to be met (second).

First: Craft industry practised by an individual craftsman or within the framework of a traditional industry and crafts cooperative

We will discuss the practice of craftsmanship by an individual craftsman and then its practice in the form of a traditional industry and crafts cooperative. 1/ Individual craftsmen

Based on our reading of Article 10 of Decree 96-01, we note that the legislator distinguishes between three categories, namely:

- a. Craftsman: any natural person registered in the traditional industry and crafts register who practises a traditional activity as defined in Article 05 of Decree 96-01, has proven qualifications, and personally and directly carries out the work, manages and runs the activity, and assumes responsibility for it.
- b. Master craftsman: any craftsman registered in the traditional industry and crafts register who has special skills and high qualifications in his craft and professional culture.
- c. Manufacturer: Any employee with proven professional qualifications.

The Algerian legislator has defined the professional qualifications in the traditional industry and crafts sector in Executive Decree^(xviii) No. 97-145 of 30 April 1997, which was amended by Executive Decree No. 04-74 of 4 March 2004^(xix).

Furthermore, Under Article 9 of Order 96-01, persons engaged in craft and traditional industry activities at home are considered artisans and enjoy the privileges associated with this status.

The question that comes to mind is whether the legal status of an individual artisan changes if he employs other people to assist him in his activity.

The answer to this question is no. An individual craftsman does not lose his status as a craftsman, nor does his status change if he employs other people. The proof of this is found in Article 11 of Decree 96-01, which allows individual artisans to seek assistance from family members (spouse, parents and children) who benefit from social assistance when necessary, and also allows them to seek assistance from one to three other artisans under an apprenticeship contract.

2/ Traditional industry and craft cooperatives

A cooperative is a civil company formed by individuals with variable capital, based on the free membership of its members, all of whom are artisans as defined by Decree 96-01^(xx). All members enjoy equal rights regardless of the value of their share in the initial capital, and no distinction may be made between them on the basis of the date of their joining the cooperative^(xxi). The establishment of a traditional industry and crafts cooperative shall be evidenced by a notarised contract^(xxii). Pursuant to Article 14 of Decree 96-01, the traditional industry and crafts cooperative aims to carry out all operations and perform all services that contribute directly or indirectly to the development of traditional activities and crafts, the advancement of its members, and the collective practice of these activities.

Second: Conditions for acquiring the status of craftsman

Craft industry, whether carried out by an individual craftsman or in the form of a traditional industry and crafts cooperative, acquires the status of craftsman if the following conditions are met:

1/ Practice of a manual craft

In order to acquire this status, the artisan must directly engage in one of the activities listed in Article 05 of the aforementioned Decree 96-01, namely traditional industry and traditional artistic industry, traditional craft industry for the production of materials, traditional craft industry for services. The artisan must carry out these activities relying on his personal effort, which is considered the basic element in achieving profit.

Therefore, artisans rely primarily on their craftsmanship and do not speculate on the goods or merchandise they use in their business; rather, their profits are the result of their manual labour.

2/ Availability of the required professional qualifications

An examination of the provisions of Decree 96-01 shows that the legislator requires that, in order to acquire the status of craftsman, the latter must prove that he has a certain qualification, based on a certificate of qualification issued by a technical or vocational centre, to carry out the work. Decree No. 97-145, as amended, specifies the professional qualifications in the traditional industry and crafts sector.

3/ Independent practice of the craft

This means that the artisan manages his own business, works for himself and bears full responsibility, although this does not prevent him from employing young people to assist him in his work. This is confirmed by the legislator in Article 10, paragraph 1, of Decree 96-01, which states: "...He shall be directly responsible for carrying out the work, managing his activities and assuming responsibility for them."

4/ Registration in the register of traditional industries and crafts

Pursuant to the provisions of Article 26 of Decree 96-01, any natural or legal person wishing to practise a craft activity individually, within a cooperative or even within a traditional industry and crafts enterprise must submit a registration file to the municipal council of the place where the activity is practised. The latter shall forward the application to the regionally competent Chamber of Traditional Industries and Crafts within 10 days of the date of submission.

Upon receipt of the file, the Chamber of Traditional Industry and Crafts shall issue the artisan with a receipt that serves as a licence to practise the activity for a period not exceeding 60 days. During this period, the Chamber shall respond to the application for registration. If the deadline expires without a response, the registration shall be deemed to have been granted.

Upon acceptance of the application and in the absence of a response from the chamber after the deadline has expired, the craftsman shall be registered in the register of traditional industries and crafts kept by the chamber (Article 29 of Decree 96-01) and shall be issued with a professional card bearing the word "craftsman" in return for payment of the registration fee^(xxiii). As for the cooperative, it shall be issued with an extract from the register of traditional industries and crafts after it has paid the registration fee^(xxiv).

The issuance of the professional card to the craftsman and the extract from the register of traditional industries and crafts to the cooperative gives them full capacity to carry out, on a secondary basis, all commercial activities related to their main activity^(xxv). However, the performance of these commercial activities does not confer on them the status of merchant, as they are carried out on a secondary basis and can therefore be considered as ancillary civil activities, by analogy with the ancillary commercial activities mentioned in Article 04 Q.

Although craftsmen and traditional industry and craft cooperatives are required to register in the traditional industries and crafts register, they are not subject to registration in the commercial register because they are not traders^(xxvi).

Section II: Subjection of the craft industry to the provisions of commercial law

The acquisition by a person, whether natural or legal, of the status of merchant places them in a legal position that differs from that of other persons, and this only occurs when the individual merchant takes up commercial activities as a profession. As for commercial companies, this status is established based on their form or subject matter, in accordance with the provisions of Article 544 of the Commercial Code. This status imposes several obligations on merchants when it is achieved, such as registration in the commercial register and bookkeeping. Furthermore, under this status, traders are subject to special regulations that do not apply to other persons, such as bankruptcy and protective composition regulations.

Through our analysis of the provisions of Decree 96-01, particularly Article 5, it is noted that the status of merchant is granted to craftsmen when they engage in traditional industry and crafts as contractors. This is consistent with the position of the Algerian legislator, which is enshrined in the provisions of commercial law, where Article 02 lists commercial activities according to the

enterprise, for example, showing that the legislator has adopted the economic definition of an enterprise "as an economic plan or organised, programmed activity based on the repetition of activities on a regular or professional basis with a view to making a profit, based on human design, organisation and management, equipment, capital, labour and other financial, moral and legal means necessary to achieve a specific industrial, commercial, craft or service objective^(xxvii).

Thus, the craft industry acquires the status of a merchant if it is carried out on a contractual basis, because in this case the craftsman does not rely solely on his craft, but speculates on a set of material and human resources in order to make a profit, relying on the elements of repetition and organisation. In this context, we will attempt to examine the conditions for acquiring the status of merchant for traditional industry and crafts (first), define its divisions (second), and then its scope (third).

First: Conditions for acquiring the status of merchant in traditional industry and crafts

In order to acquire the status of merchant in traditional industry and crafts, specific conditions must be met as a craft industry, as well as general conditions that apply to all businesses subject to commercial law.

1/ Conditions specific to traditional industry and craft enterprises in accordance with the provisions of Decree 96-01

These special conditions are the same as those mentioned above in relation to the conditions for acquiring the status of artisan in the craft industry. Pursuant to the provisions of Article 22 of Decree 96-01, the fact that a traditional industry enterprise is subject to the provisions of commercial law does not exempt it from:

- a. Legal incorporation with a notary.
- b. Registration in the traditional industry and crafts register in accordance with the procedures specified in Article 29 of the aforementioned Decree 96-01, within 60 days of its establishment. This registration shall result in the issuance of an extract from the register of traditional industries and crafts to the enterprise in exchange for the payment of a registration fee, whereby it shall have full capacity to carry out, on a secondary basis, all commercial activities related to its main activity^(xxviii).
- c. Traditional industry and craft enterprises must be registered in the commercial register^(xxix), which explains why it is subject to the provisions of commercial law, as it acquires the status of a merchant pursuant to the provisions of Article 21 Q, which states that "any natural or legal person registered in the commercial register shall be deemed to have acquired the status of a merchant under the applicable laws and shall be subject to all the consequences arising from this status."

2/ General conditions required for a traditional craft enterprise to acquire the status of a merchant in accordance with the provisions of commercial law

If a traditional industry or craft enterprise carries out the activities specified in Articles 05 and 06 of Decree 96-01, and the general conditions for these activities are met, it acquires the status of a trader and is therefore required to register in the commercial register and keep commercial books. In this regard, Article 01 Q T states "Any natural or legal person who carries out a commercial activity and makes it their regular occupation shall be considered a trader, unless otherwise provided by law."

Based on the text of the article, the conditions for acquiring the status of a trader are: professionalism in commercial activities, independence in the practice of commercial activities, and the necessity of commercial eligibility. We will attempt to apply these conditions to traditional industry and craft enterprises to study the extent to which they are met.

A. Professionalism in business: Professionalism means that a person engages in business on a frequent, continuous and regular basis, such that it can be considered their main occupation from which they earn their livelihood. It appears from an analysis of the provisions of Decree 96-01 that the Algerian legislator has required traditional industry and craft enterprises to engage in one of the traditional industry activities specified in Articles 05 and 06 of Decree 96- 01, and that they engage in these activities on the basis of the elements of repetition and organisation.

The element of repetition means that the commercial activity within the framework of the enterprise is characterised by repetition and professionalism, i.e. it is carried out on a regular and continuous basis. As for the element of organisation, the enterprise must have the human and material resources, such as machinery, equipment and labour, which the project owner coordinates within an organised framework with the aim of making a profit.

We believe that these two elements are present in traditional industry and crafts, as the legislator has stipulated the need to employ a number of workers, in addition to requiring the technical management of the enterprise^(xxx).

b. Independence in the practice of business: The practice of business requires independence, i.e. the trader must conduct his business in his own name and on his own account, not on behalf of others, because trade is based on credit, and credit is personal in nature and requires responsibility^(xxxi). The condition of independence in conducting business requires the trader to bear the consequences, whether in terms of profits or losses.

We also see this condition in traditional industry and crafts, as Articles 20 and 21 of Decree 96-01 require the management or operation of the enterprise by a craftsman or master craftsman, as specified in Article 10 of the same decree. Referring back to the text of Article 10, we find that it states that "he shall personally and directly carry out the work, manage and run his business, and bear responsibility for it."

C. Commercial capacity: Capacity refers to ability, competence or efficiency, and there are two types: mandatory capacity, which means a person's ability to acquire rights and assume obligations, This makes it equivalent to legal personality, as it exists and ceases to exist with life, because it is established for every human being upon birth and accompanies them throughout their life. The second type is capacity to perform, which is the authority of a person to perform legal acts themselves. Capacity to perform presupposes capacity to be obligated, but the reverse is not true.

Returning to the provisions of Decree 96-01, we find that the legislator did not stipulate capacity, which requires reference to the general rules, as Article 40 of the Civil Code stipulates that the capacity of a natural person is 19 years of age, while commercial capacity is stipulated by the commercial legislator under Article 05, which states that "A minor, male or female, who has reached the age of eighteen and who wishes to engage in trade may not commence commercial operations, nor may he or she be considered an adult with regard to the commitments he or she enters into for commercial activities if he or she has not obtained the prior permission of his or her father or mother or a decision of the family council certified by the court if his or her father is deceased or absent, or if his parental authority has been revoked or is impossible to exercise, or in the absence of a father or mother. This permission must be submitted in support of the application for registration in the commercial register. The legal capacity of a legal person shall be within the limits specified in the contract establishing it or determined by law (Article 50 QM).

In this context, Article 38 of Decree 96-01 stipulates that "artisans, cooperatives and traditional industry and craft enterprises are required to carry out the activity for which they are registered in accordance with these provisions and the legislation in force." On this basis, traditional industry and craft enterprises shall have full autonomy within the limits of their activity as registered in the traditional industries and crafts register.

Second: Divisions of traditional industry and craft enterprises

It appears from the text of Articles 20 and 21 of Decree 96-01 that traditional industry and craft enterprises are divided into two categories, namely: 1/ Traditional industry enterprises

A traditional industry enterprise is any enterprise established in accordance with the provisions of commercial law and possessing the following characteristics:

- a. It engages in one of the traditional industry activities specified in Articles 5 and 6 of Decree 96-01.
- b. It employs an unspecified number of workers.

c. Management supervised by a craftsman or master craftsman, or with the participation or employment of at least one other craftsman who is responsible for the technical management of the enterprise when its head is not a craftsman. 2/ Craft enterprise for the production of goods and services

A craft enterprise for the production of goods and services is any enterprise established in accordance with one of the forms provided for in commercial law and having the following characteristics:

a. Engaging in production, conversion, maintenance, repair or service activities in the field of crafts for the production of materials or services as defined in Articles 05 and 06 of Decree 96-01.

b. Employing no more than 10 permanent workers or craftsmen, not including the head of the enterprise and persons with whom he has family ties, such as his spouse, ascendants or descendants, nor including apprentices, who shall not exceed three in number and who are bound to the enterprise by an apprenticeship contract.

c. Management by a craftsman or master craftsman, or with the participation or employment of at least one other craftsman who performs the technical management of the enterprise when its head is not a craftsman.

Third: Scope of traditional industry and craft enterprises

The Algerian legislator has excluded certain enterprises from the scope of traditional industry and crafts, even if they meet the conditions specified in Articles 20-22 of Decree 96-01. This means that they are not subject to the provisions of this decree, but may be subject to the provisions of commercial law if they meet the conditions for commercial activities as defined by the legislator in Article 02 Q T, and if the person running them meets the conditions for acquiring the status of trader. According to Article 25 of Decree 96-01, enterprises that fall outside the scope of traditional industry and crafts are:

1/ Agricultural and fishing enterprises. 2/ Commission, agency and business offices.

3/ Businesses whose activity is limited to the sale or rental of traditional industrial products purchased as is.

4/ Contractors whose services are of a special intellectual nature. 5/ Contractors whose craft activities are incidental or secondary.

6/ Contractors that mainly use automated machinery for mass production.

Conclusion

In this study, we addressed the legal nature of craftsmanship in Algerian legislation, where it is clear from the provisions of Decree 96-01 that traditional craftspeople do not acquire the status of merchants when they practise their craft as individuals or within a traditional craft cooperative. In this case, they are not subject to the provisions of commercial law but are only required to register in the register of traditional crafts and industries. As a result, they enter into relationships with third parties, which sometimes leads to conflicts of interest and, consequently, disputes between them and third parties. In such cases, the craftsman is either the plaintiff or the defendant. Since he is not a merchant, the rules of civil law may be applied, both in terms of determining jurisdiction and in terms of relying on the means of proof required by civil law to be in writing, as long as the evidence exceeds the share of proof in accordance with the provisions of Article 333 of the Civil Code.

However, if the craftsman practises his activity in the form of a traditional industry and craft enterprise, in this case the enterprise acquires the status of a merchant, as the Algerian legislator has subjected the craftsman, if his activity is carried out as an enterprise, to the rules of commercial law, considering that acquiring the status of a merchant places the person who acquires it in a legal position different from that of other persons. and is therefore obliged to keep commercial books and register in the commercial register, as well as in the register of traditional industries and crafts. In the event of a dispute, commercial law rules apply, and the craftsman is subject to bankruptcy proceedings if he ceases to pay his debts.

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