

Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

BOSNIA AND HERZEGOVINA

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

The UNESCO Convention of 1970 was ratified through the notification of succession of 12 July 1993.

2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

The institutional framework of Bosnia and Herzegovina has multiple tiers and particularly in the field of culture, is highly decentralized:

- **State Level**
 - *Ministry of Civil Affairs of Bosnia and Herzegovina*: this body is responsible for carrying out tasks related to defining basic principles of coordinating activities and harmonizing plans of the Entity authorities and defining a strategy at the international level.
 - *The Commission to Preserve National Monuments (CPNM)*: according to Annex 8 of the Dayton Peace Agreement it is stated that the “CPNM shall receive and decide on petitions for the designation of property having cultural, historic, religious or ethnic importance as National Monuments” . The Law on the protection of properties designated as national monuments of Bosnia and Herzegovina by decision of the CPNM is identical for all entities, that is; the Federation of Bosnia and Herzegovina, the Republic of Sprska, and Brcko District.
 - *The Ministry for Trade and Economic Relations*: is responsible for foreign trade policy and customs policy.
 - *Bureau of Cooperation with INTERPOL within the Ministry of Security*: performs operative, police and legislative tasks regarding cooperation.
- **Entity Level**
 - Entity-level dealing with culture concerns two ministries: The Ministry of Culture and Sport of the Federation of Bosnia and Herzegovina (hereinafter FBiH MCS) and the Ministry of Education and Culture of the Republic of Sprska (hereinafter RS MEC), and in the Brcko District it is the Department for Economic Development, Sport and Culture.
 - The Federation is further divided into cantons that have their own responsibilities in the field of culture.

Entity Federation of Bosnia and Herzegovina (hereinafter FBiH):

In the FBiH, the Ministry of Culture and Sports is responsible for the administrative, professional and other tasks in the areas of heritage protection, museums, archives, libraries.

The cultural section of the ministry has the responsibility over the non-departmental body, the Institute for the Protection of Monuments. The Institute is responsible for ensuring and providing the legal, scientific, technical, administrative, and financial measures necessary to protect, conserve, display National Monuments.

At a cantonal level, each has its own ministry responsible for culture (10 cantons). The cantons bear the core responsibility for culture in the FBiH.

Entity Republic of Srpska (RS):

According to the Dayton Agreement and the European principle of subsidiarity, the Ministry of Education and Culture is responsible for culture in the RS. Within the ministry there is a Department for Culture which has two Republic Administrative Organisations: the Institute for the Protection and Preservation of Cultural, Historical and Natural Heritage and the Archive of the Republic of Srpska.

The general mandate of the Department for Culture of RS is the preparation of the laws and by-laws on culture. Special attention is paid to the revision and harmonization of the RS legislation in respect to the international legal instruments and legislation of the European Union.

The RS Department of Culture also carries out activities in the field of heritage through its museums, libraries, archives, supporting events and conferences, research and scientific projects.

The Brcko District:

The statute of the District is a single administrative unit of local self-government under the sovereignty of Bosnia and Herzegovina. The District itself has virtually the same competences as entities in the field of culture. The institution responsible is the Department for Economic Development, Sport and Culture.

There is no applicable legal act at the State level that regulates the cultural heritage protection in a comprehensive manner. There are existing bylaws however governing the work of the Commission to Preserve National Monuments.

In RS there is the Law on Cultural Property, adopted in 1995. The Federation of Bosnia and Herzegovina uses the Law on Protection and Utilisation of Cultural-Historical and Natural Heritage of Bosnia and Herzegovina from 1985.

The Criteria to Designate the Properties as National Monuments adopted by the Commission to Preserve National Monuments in 2002 (hereinafter "The Criteria") enumerates the cultural objects that are eligible to be proclaimed to national monuments in case they meet the artistic and/or historic value thresholds and other conditions set forth in the Criteria. The Criteria divides cultural property in moveable and immovable property. The immovable property includes historic buildings and monuments, groups of buildings and sites.

The RS has three main pieces of legislation guiding cultural property protection:

- The Law on Cultural Property of the Republic of Srpska;
- The Law on Museum Activity of the Republic of Srpska;
- The Law on Archival Activity of Republic of Srpska.

The RS's Institute for Protection of Cultural, Historical and Natural Heritage only partly addresses the issue of moveable cultural heritage.

In the Federation of Bosnia and Herzegovina, the Federal Government is responsible for cultural property that has the status of national monument and is located in the territory of the Federation of Bosnia and Herzegovina. The Commission to Preserve National Monuments provides protection measures and conditions under which a cultural property may be removed from the country by the Decision on declaring a cultural property a national monument.

The cultural property which has not been proclaimed a national monument is protected by cantonal laws. The Law on the Protection and Use of Cultural, Historical and Natural Heritage 1985 applies to property which has not been proclaimed a national monument and is located in the canton that has not adopted the relevant law.

(b) Definition of "cultural property" used by the national laws

The Law on Cultural Property of RS in Chapter I, states a definition of cultural property:

- Article 2 – “Cultural property shall be an item and creation of material and spiritual culture of interest to RS which enjoys special protection under this Law.”
- Article 3 – “Cultural property can be moveable and immoveable, According to to the physical, artistic, cultural, scientific, and historical properties, immoveable cultural property shall be: 1. Monuments, 2. spatial cultural-historical entities, 3. archaeological sites, 4. landmark places.”
- “Moveable cultural property is: 1. Works of art and historical objects, 2. archive materials, 3. film materials, 4. old and rare books. A collection or fund may be determined as moveable cultural property if they are represented as a whole.”

The definition of “cultural property” is further amended pursuant to the Law on Archives of the RS including also documentary material that will be considered emerging archive material.

(d) Administrative coordination

Coordination is present between the competent authorities.

3. Inventories and identification

(a) Inventories

The Law on Cultural Property of RS lays down the provisions governing the determination of cultural property and its registration in the Register of Cultural Property. According to the Law, the Register of Cultural Property shall be managed by the Institute, the Archives of the RES and protection institutions. The cultural property listed in the Registry will be labelled to be under special protection. Central registries of protected moveable property shall be managed by the Archives and the central museums institutions.

The Minister of Education and Culture, on the proposal of the Museum Council of the Republic Srpska shall adopt the regulations on establishing the condition and method of executing inspections of museum materials and documentation.

Museum institution in RS shall be required to make an inventory of museum materials every five years.

In the Federation of Bosnia and Herzegovina, the list of protected property, protection measures and the removal from the country shall be published in the Decisions of the Commission to Preserve National Monuments. The Government of the Federation is the responsible authority for implementing the established protection measures. Moveable property that has not been declared a national monument is protected through the 1985 Law and cantonal laws.

(b) Definition of “cultural property” and “national treasures”

“National Treasures” are identified through the Individual decisions of the Commission to Preserve National Monument in a detailed list. The information on cultural property is kept in the Institute for Protection of Monuments, Archives of the Federation, museums, libraries etc.

(d) Systems to combat theft and to train staff

The Museum of the Republic of Srpska has the responsibility of completely protecting cultural property. The system of protection of moveable cultural property of the Museum’s fund includes physical protection through protections services. This protection does not benefit from the

appropriate modern technology such as video cameras, instead operates on the basis of organised watches within the responsibility of curators. Curators have the responsibility for the preservation of moveable cultural property. A specific anti-theft system is not established, nor is the training of the staff personnel specifically organised for it. Adequate video surveillance is not available due to a lack of funds. Nonetheless, museums make property and timely documentation of their collections to ensure their protection through the production of documentation, photography, video, publications and giving exposure to the collections.

The protection of material in repository collections is under the responsibility of the respective curators, conservators, restorers and security services, including the management of the humidity of the rooms in which the repository collections are kept. Daily controls are executed by the curators and the security staff. Part of the museum archives are kept at the Documentation Centre, which has yet to be digitalised and staffed and another part is in the collective repository. The RS Museum has a collection of old and rare books which, due to lack of adequate financial resources, are not sufficiently protected from damage.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

The RS Law on Cultural Property, Articles 97 through 92 regulate the legal aspects of archaeological research:

- Excavation and research of archaeological sites shall be carried out by scientific institution or protection institution. The department, or regional units of the Institute, shall approve archaeological excavations and research of archaeological sites. Approval may be granted if the requesting institution has a drafter a project on research of the site, appropriate professional staff, equipment, and provided funds for research and implementation of protective measures of sites and findings;
- Approval for excavation identifies the area, type and volume and time frame in which the work will be carried out;
- The institution that performs the excavations shall be responsible for implementing protection measures and security of archaeological sites;
- Daily work logs must be kept by the institution performing the research;
- The institution that carries out the research must provide a report on the conducted excavations and submit it to the authorities within 3 months of completion of the works. The report must contain an inventory on found objects, and photographic images as well as what funds have been spent, and the measures taken for protection of the site;
- The institution conducting the research may retain any found objects for no longer than a year unless otherwise agreed with scientific institution entrusted. These must then be passed to the Institute or competent regional unit.

If any cultural objects are found during construction works “the contractor shall immediately...suspend the works and notify the Institute or the regional unit...and take measures so that a finding is not destroyed and damaged and that it is preserved in the place and position in which it is discovered.”

Considering the frequency of archaeological localities in the area of the Republic of Srpska, it can be assumed that almost all earthworks may lead to new discoveries. The problem is the lack of education of construction workers in terms of recognition of cultural artefacts, as well as the insufficient number of archaeologists in the protection services. Laws regulating urban planning have not sufficiently emphasised the obligations of investors to take account of archaeological findings.

In the Federation of Bosnia and Herzegovina (FBiH), the provisions of cantonal legislation and the Law of 1985 are in force in cantons that have not adopted their own legislation.

In FBiH, archaeological research may be conducted only with the appropriate approval. The leader of the archaeological research is responsible, within the prescribed time limit to submit a report to the competent institution. The research leader is also responsible for the handing over of found artefacts after the expiration of a prescribed time limit.

(b) Illegal excavations

In Republic Srpska (RS) there are some cases in which archaeological localities are robbed. A more notable problem is that of destruction of sites through construction works due to noncompliance to the appropriate legislation and non-involvement of archaeologists in the urban planning commission. The law provided conditions to obtain the construction authorisation to carry out the works at the locations that represent a potential archaeological site are not consistently applied in practice. Furthermore when archaeological material is found by chance, the Law states that work should be suspended, however this tends not to happen for economic reasons. Accidental discoveries not in the context of planned urban works are often not reported as there are no legal specifications and its reporting is left to the discretion of the finder. The legal excavation of archaeological sites occurs due to imprecise provisions of the Law, the non-application of provided sanctions, uncoordinated work of protection institutions. The impoverishment of museum collections is directly related to the enrichment of private collections and the increase in number of collectors due to the increase in unauthorised individuals in conducting excavations supplied with contemporary equipment. Although these issues have been taken into account when drafting the Law on Cultural Property, though taking appropriate measures to prevent and sanction often does not succeed in practice.

5. Monitoring of the export and import of cultural property

(b) Problem of the illicit export of cultural property

The description of illicit activities above entails a recurring problem in the illicit export of cultural property. Registering this form of crime is the biggest problem in Bosnia and Herzegovina given that there is no specialised institution for the detection and prevention of illegal trade of art and archaeological items, there is furthermore very little available data on the extent of this type of crime. Cooperation between customs and police services with those involved in cultural heritage would have to be improved.

(c) Main rules for monitoring the export and import of cultural property

The rules are set by the Decision on Classification of Goods for Export and Import Regimes. Approval for their import and export is issued by the competent entity ministries. The Instruction on Issuing Certificates for Import and Export of Art Works and Antiquities provides for the method and procedure for submission of requests to obtain the certificates. This Instruction determines the State-level Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina (hereinafter MoFTER) as the body competent to issue the export and import certificates and regulates the certificates for both permanent and temporary export of the designated cultural goods.

At the entity level the Republic Institute for the republic for the Protection of Cultural, Historic and Natural Heritage of RS issues authorisations for the temporary export of cultural property. However it never receives the feedback of services responsible for control of border crossings. Approval for the temporary removal is issued by the Ministry of Culture and Sports in FBiH in accordance with the established rules. The rules for the national monuments of Bosnia and Herzegovina are established through the individual decisions of the Commission to Preserve National Monuments.

(d) Rules provided for the restitution of illicitly imported cultural property

Article 3 of the Law on Museum Activity of the Republic of Srpska addresses the restitution-related issues, by making reference to the relevant provisions of ICOM's Code of Ethics.

(e) Obstacles encountered in securing the restitution of illicitly exported cultural property

The Act on Museum Activity applicable in the FBiH and the Law on Museum Activity of Sarajevo Canton only stipulate that the museums are *inter alia* mandated to participate in the international cooperation in the field of museum activity. This leads therefore to some obstacles present in legal loopholes.

6. System for trade-in, acquisition, ownership and transfer of cultural property

(c) Existing Measures to control the acquisition of cultural property

The Law on Cultural Property of the RS, Chapter IX entitled "Guarantees for Foreign Exhibitions" may be applied. It states that the RS can give guarantees for certain foreign exhibitions on its territory which have special cultural and artistic value. The RS government defines which exhibitions receive guarantees.

(d) Existing legal system concerning ownership of cultural property:

Applicability of the principle of inalienability applied to cultural items in national collections

The principle of inalienability tends not to be applied despite the thefts carried out in various museums collections due to the lack of proper coordination with the competent national authorities.

Status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations

RS: As mentioned above, there is a particular problem with accidental discoveries whose reporting is mostly absent due to a lack of legal provisions.

FBiH: Cultural items and archaeological artefacts found by chance are social property.

7. Bilateral agreements

(a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

There are bilateral agreements on cultural cooperation between Bosnia and Herzegovina and other countries. Signed international agreements are in general form and are considered the ground for international cooperation in the field of culture. Complete fruition of these agreements however, is expected over a longer-term period.

(b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

These conditions are included in the above mentioned Guarantees for Foreign Exhibitions in the Law on Cultural Property.

II. Code of ethics, awareness raising and education

1. Ethical standards

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

The majority of professionals employed in museums are members of the National Commission of ICOM of Bosnia and Herzegovina and are familiar with the Code of Ethics, and are signatories of the Code, which is renewed every five or six years.

2. Awareness raising and education

(c) Description of activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export.
How far can UNESCO contribute to these activities?

Activities of this kind were not registered in Bosnia and Herzegovina over the past year. UNESCO could contribute with expertise or financially in order to organise educational activities or distribute materials with this purpose.

III. Cooperation with other international and regional agencies

Police

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

The Bureau for Cooperation with INTERPOL, within the Ministry of Security performs operative, police, legislative and other expert tasks regarding the establishment of cooperation with criminal police, the judiciary and other bodies aimed at combating all forms of international crime. The Department for Regional Cooperation within the Bureau secures help with exchanges of data and information with all regional organisations such as EUROPOL, SECI, Schengen and establishes cooperation with the Bosnia and Herzegovina liaison officer in the SECI Centre in Bucharest and other regional organisation. Furthermore it coordinates regional cooperation and collaborates with other regional security and judicial bodies, secures the implementation of regional agreements within its competencies, participates in preparing propositions for regional agreements, memorandums, protocols and notes on its competencies. There are no specialised police forces in this field, however, but the police jurisdiction is governed by the applicable criminal laws (see below).

The jurisdiction of the Ministry of Internal Affairs of RS regarding the prevention of import, export and transfer of ownership of cultural property is regulated by the Criminal Code of RS in which, under crimes against property, provides for the punishment for the crime of "removal of items abroad which are of particular cultural or historical significance or of natural curiosities."

(b) Check on the INTERPOL database on stolen objects when a cultural object is stolen. Transmission of information on the persons implicated in the theft of cultural property

Cooperation between the Ministry of Internal Affairs of the RS with INTERPOL is present and takes place in order to exchange data and information, as well as with the announcement of information on stolen objects. In the case of cultural property, INTERPOL's database is checked on a regular basis.

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

Bosnia and Herzegovina: The Criminal Law of Bosnia and Herzegovina prescribes penalties applicable to infringements of rules related to export of cultural goods. Under the Criminal Law, one can be sentenced for smuggling banned or restricted goods to a prison term not exceeding five years as well as the confiscation of the goods in question. Article 214 specifies that smuggling *inter alia* occurs if one evades customs controls of goods that are subject to a special authorisation licence of the state authorities. Article 215 provides for imprisonment for a minimum of three years for the organisers of the smuggling operations.

The Federation of Bosnia and Herzegovina: finds that an individual who illegally, without holding the appropriate certificate, exports cultural monuments or a protected natural heritage from the country shall be sentenced to imprisonment for a term not exceeding three years. The same penalty is prescribed for a person who obtained a temporary export licence but did not respect the time limits for returning the object. Article 368 specifies that a person shall be sentenced for illegal export of archival material to imprisonment for a term from three months to three years. Confiscation is to be applied at the discretion of the competent authorities.

RS: Protection is afforded through the Criminal Code of the Republic of Sprska, which contains within crimes against property, prescribed punishments for the crime of “removal of objects abroad which are of special cultural or historical significance or of natural curiosities”, these crimes are punishable for up to three years imprisonment. Furthermore, aggravated penalties are applied when an item subject to illegal export is of great cultural, historical or natural importance. This aggravated penalty amounts to imprisonment ranging from six months to five years. Confiscation is to be applied at the discretion of the competent authorities.

Brcko District: The Criminal Law of DB finds that an individual who illegally, without holding the appropriate certificates, exports cultural monuments or protected natural heritage from BiH shall be sentenced to a fine or imprisonment for up to three years. It also provides for a term of six months to five years if the crime is aggravated through the illegal export when a cultural monument or the natural heritage are protected and are of significant value, or if considerable injury was incurred. The Criminal Law of DB foresees identical rules on confiscation as set forth in the Criminal Law of FBiH and RS. BD furthermore establishes, besides regular crimes, aggravated crimes of illegal export.

Customs

(f) Status of cooperation with the World Customs Organization. Specialized customs services which could assist heritage officials in preventing the illicit export of cultural property

On December 29, 2003 the Parliament of Bosnia and Herzegovina adopted the Law on Indirect Taxation and thus ensured the legal basis for establishing the Indirect Taxation Authority (ITA). The ITA is an autonomous administrative organisation and functions as an integral entity over the entire territory of Bosnia and Herzegovina. The Customs Sector of the ITA provides the customs service of Bosnia and Herzegovina. This sector is responsible for the implementation of provisions related to customs, foreign trade, currency and other provisions referring to the customs policy of the state. Since July 2008 the ITA is a member of the WCO.

The Law Enforcement Sector of the ITA is responsible for the detection, investigation, and documentation and processing of all types of smuggling, customs and tax frauds. This sector plans, organises and coordinates the activities on collection, classification, assessment, analysis and provision of all data and information relevant to detection and prevention of

smuggling. This sector closely cooperates with the police and judicial bodies of Bosnia and Herzegovina.

European Union - Application of the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

The Directive is not directly transposed into the legislation of RS. However the Ministry of Civil Affairs of Bosnia and Herzegovina requested the translation of the Directive and sent it to the entity ministries responsible for culture. Alignment with the European Standards in all fields is a long-term process and is expected to be finished in the future, with the process of European integration.

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Bosnia and Herzegovina have not acceded to the 1995 UNIDROIT Convention. The Ministry of Civil Affairs of Bosnia and Herzegovina plans to initiate entering into this international convention in 2011, in accordance with state law on procedures for the conclusion and implementation of international agreements.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Bosnia and Herzegovina is currently an observer at the Intergovernmental Committee.

3. UNESCO Database of National Cultural Heritage Laws – contribution and update

Basic legislation of Bosnia and Herzegovina in the field of cultural heritage is available in the UNESCO database.