

# LAW OF CULTURAL PATRIMONY CODIFICATION

Codification 27, Official Registry, Supplement 465 of November 19th 2004.

**HONOURABLE NATIONAL CONGRESS**

**THE COMMISSION OF LEGISLATION AND CODIFICATION**

Resolves:

TO ISSUE THE FOLLOWING

**CODIFICATION ON THE**

**LAW OF CULTURAL PATRIMONY**

**Art. 1.** - With Decree No. 2600 of June 9th 1978, published in Official Registry No. 618 of the 29th day of same month and year, the Institute of Cultural Patrimony was created with legal capacity, adscript to the "*Casa de la Cultura Ecuatoriana*" (House of the Ecuadorian Culture); the Institute takes the place of the Direction of Artistic Patrimony and will be financed with funds coming from the annual Budget of the National Government, by means of the Chapter corresponding to the Ministry of Education and Culture.

**Art. 2.** - The Directory, the National Direction, the Sub-Directions and the other technical and administrative units that will be stated in the corresponding Bylaws will form The National Institute of Cultural Patrimony. Is a duty of the Directory to issue and approve the Organic Functional Bylaws.

The following members will conform the Directory:

The Minister of Education and Culture or his Representative, who will be the President;

The Minister of National Defense or his Representative;

The Minister of Government, Worships, Police and Municipalities or his Representative;

The President of the Ecuadorian Episcopal Conference or his Representative;

The President of the House of Ecuadorian Culture or his Representative;

The Director of Cultural Patrimony; and,

The President of the National Counsel of Superior Education, CONESUP, or his Representative.

The Secretary ex officio of this Organ is the Secretary of the National Institute of Cultural Patrimony.

**Art. 3.** - The National Director of the Institute will be appointed by the Directory, and will be the Legal Representative of the Organization. The

delegation and representation of the Country at each international meeting related with his area of competence will correspond to him.

**Art. 4.** - The Institute of Cultural Patrimony will have the following responsibilities and attributions:

a) To investigate, conserve, preserve, restore, exhibit and promote the Cultural Patrimony in Ecuador, as well as to regulate all activities of this nature that were performed in the country, pursuant with the Law;

b) To elaborate the inventory of all goods conforming this patrimony, either of private or of public property;

c) To perform anthropological researches and regulate these activities within the country, pursuant with the Law;

d) To be vigilant of the fulfillment of the current Law; and,

e) All others arising from the current Law and from the Bylaws.

**Art. 5.** - For the fulfillment of all ends expressed in prior article, the Institute will enjoy of exoneration of all customhouse duties, pursuant to the Law.

**Art. 6.** - Natural and juridical persons, police force and Custom Service of Surveillance, are forced to give their cooperation to defend and safeguard the Ecuadorian Cultural Patrimony.

**Art. 7.** – Bellow mentioned goods under the following categories are declared to be relevant to the State Cultural Patrimony:

a) Furniture and real estate archeological monuments, such as: objects made of ceramic, metal, stone or any other material pertaining to the pre-Hispanic and colonial epochs; ruins of fortifications, buildings, cemeteries and archeological beds in general; as well as mortal remains, or flora and fauna, related with the same epochs;

b) Churches, monasteries, chapels and other buildings that have been built during the Colony; paintings, sculptures, carvings, objects of gold work, ceramic, etc., pertaining to the same epoch;

c) Antique handwritings and incunabula printings, editions of rare books, maps and other important documents;

d) Objects and documents that had pertained or were related to precursors and procerous of the National Independence or that were owned by personages of singular relevance for the Ecuadorian History;

e) Coins, bank bills, signs, medals and all other objects, made in the country or abroad in any epoch of its History, which could be of national numismatic interest;

f) Seals, postage stamps and all other objects of national philatelic interest that could be produced in the Country or abroad and in any epoch;

g) Ethnographic objects having scientific, historic or artistic value, pertaining to the Ethnographic Patrimony;

h) Objects or cultural goods produced by laureate contemporary artists will be considered goods pertaining to the State Cultural Patrimony upon their passing away and, in life, those which have been subjected to national reward, as well as those that had been performed within thirty or more years;

l) Works of the nature, whose characteristics or values had been remarked by the intervention of human beings or having scientific interests for the study of flora, fauna and paleontology; and,

j) In general, all goods and production that is not contained in former literals and that were products of the Cultural State Patrimony in the past and in present times and that due to their artistic, scientific or historic merit have been declared by the Institute as goods pertaining to Cultural Patrimony that were under State care, the care of religious institutions or pertaining to juridical or natural persons.

In the case of real estate, the good itself, its environment and landscape necessary to furnish it with adequate visibility, will be considered as part of the State Cultural Patrimony; and this shall keep its environmental and integrity conditions under which it was built. Delimitation of this area of influence will be responsibility of the Institute of Cultural Patrimony.

**Art. 8.** - The owners, administrators and holders of objects contained in the former article, are obliged to inform the Institute of Cultural Patrimony of the existence of said goods within the term determined by the Institute and to furnish a detailed list of goods; they shall also allow the performance of an inventory when the Institute determines so.

**Art. 9.** - Upon enforcing of present Law, part of the State Patrimony will be the archeological goods that were on hearth or in subsoil and at sea bottom of the Ecuadorian territory, be these objects of ceramic, metal, stone or any other material pertaining to pre Hispanic and colonial epochs, including human remains or flora and fauna related with the same epochs, despite of the domain held by public or private institutions, including societies of all kind or particular ones, that were on hearth or that have been deliberately or casually found.

This exclusive domain exercised by the State is enhanced to the goods mentioned in prior paragraph, that would have been in hands of public or private institutions or of natural people, prior to the enforcement of present Law, which existence had not been informed to the Institute of Cultural Patrimony pursuant former article, or that will not happen to be done, without fault of their actual holders, within the terms determined with this aim by the mentioned Institute and published by means of newspaper ads.

Seeking to avoid confusions, current copies of archeological objects should bear a carved stamp that identifies them as such.

In the case of ceramic objects, the stamp shall be engraved before cooking.

The property right of the State will be exercised through the National Institute of Cultural Patrimony, which could retain the above-mentioned archeological goods for cultural uses, or give them in custody to other important public museums of the country.

**Art. 10.** - Contents of this Law do not derogate the obligations of the ordinary priests of the Dioceses, according to the statements of Art. 8<sup>th</sup> of the *Modus Vivendi*, executed between The Vatican and the Government of Ecuador on July 24<sup>th</sup> 1937.

For the fulfillment of said article of the *Modus Vivendi*, the Director of the Institute of Cultural Patrimony will act in representation of the Government.

**Art. 11.** - The declaration conferring the status of good belonging to the State Cultural Patrimony, contained in Art. 7 of this Law or issued by the Institute of Cultural Patrimony, will not deprive its owner of exercising his rights of domain over said good, subjected to the limitation established by the current Law.

**Art. 12.** - Any transfer of domain of objects pertaining to the State Cultural Patrimony, be gratuitous or onerous, will be performed previous authorization granted by the Institute of Cultural Patrimony; such objects cannot be changed of place without prior authorization from the Institute. In either case, looking after the necessity of preserving the Patrimony, the requested authorization could be denied.

The Institute will regulate the trade of goods pertaining to the Cultural Patrimony within the country. If its dispositions are not fulfilled, the Institute will impose penalties and will demand before the competent Judges the nullity of the transfers executed without this authorization.

**Art. 13.** - No reparations, restorations, nor modification of goods belonging to the Cultural Patrimony could be made without previous authorization granted by the Institute.

Violations to the statements of this article will derive in pecuniary penalties or prison up to one year. If as results of these interventions the characteristics of a cultural good have been lowered, the owner will be obliged to restore it to its prior conditions, and the Institute shall impose an annual fine until this restoration is completed. Fines will be extensive to contractors and administrators of the works, material perpetrators of the violation, and could include even seizure.

**Art. 14.** - Municipalities and the other organisms of the public sector are not able to neither order nor authorize demolitions, restorations or reparations of real estate belonging to the State Cultural Patrimony without previous consent from the Institute. The Officer who had ordered or had granted the authorization will be responsible for the violation and he will be penalized with the fine established in the Law.

**Art. 15.** - The municipalities of those cities having Historical Centers or Urban Groups or isolated buildings whose architectonic characteristics deserve to be safeguarded, shall issue ordinances or regulations to protect them, and these ordinances shall count with the approval given by the Institute of Cultural Patrimony. If the regulating plans approved by said municipalities attempt against these characteristics, the Institute will demand their reformulation and will look after the fulfillment of this article.

**Art. 16.** - Any attempt to adulterate the goods belonging to the State Cultural Patrimony is prohibited, and their conservation and consolidation will be pursue through all technical means, but limited to their restoration, to the absolute indispensable extend and leaving always evident the additions made, and previous the authorization given by the Institute of Cultural Patrimony

**Art. 17.** - The organisms from the public sector, religious institutions, juridical or natural people owning goods belonging to the State cultural Patrimony, upon request from the Institute, have the ineludible obligation, to

allow it to visit them in the days and hours previously stated, for the observation, the study and photographic or drawn reproduction of the goods subjected to this Law, which are of their own or under their possession.

It is a faculty of the Institute, by means of its delegates and previous presentation of their respective credentials, to visit the places where it happens to be cultural goods.

**Art. 18.** – Laches on the conservation of goods belonging to the State Cultural Patrimony will be punished with the seizure of the work if there might exist danger of destruction; in such a case, the owner of the good will be indemnified with 25% of the value of the good appraised by experts.

**Art. 19.** - Any person might denounce before the Institute of Cultural Patrimony of the violations of the present Law, and, in the event that its veracity is proved, the denouncer will have the right to a gratification up to 25% of the value of the fine imposed. This denounce will have character of reserved.

**Art. 20.** - No tax will be imposed over furniture estate goods contained in the inventory of the State Cultural Patrimony, being these goods exonerated from the payment of taxes such as revenue tax, that are in force and that could affect them; in resume, they enjoy complete and automatic exemption and exoneration of all kind of state, provincial or municipal taxes.

**Art. 21.** - The buildings and constructions that have been declared as goods belonging to the State Cultural Patrimony and that have been correctly maintained and that are within the inventory will be exonerated with 50% of land taxes and their annexes.

When these buildings had been restored under the corresponding permits given by the Institute of Cultural Patrimony and by the municipalities, and given that the value of the restoration works achieve up to 30% of the assessed valuation of the real estate, exoneration of taxes will be total for a term of five years counted from the termination of the work. If it is proven that the correct maintenance of the good has been neglected, these exonerations will be terminated.

**Art. 22.** - Goods belonging to the Cultural Patrimony that were under any risk, could be withdrawn from their usual site, temporarily, by means of resolution of the Institute while the risk subsists.

**Art. 23.** - No good belonging to the State Cultural Patrimony may be taken out of the country, except in the case of exhibitions or other ends of popularization, temporarily, and always counting with the permit given by the Directory and previous technical report from the Institute.

Any act showing the attempt of taking cultural goods out of the country will be penalized pursuant to the Law.

In the event that said goods had been in fact taken out of the country, such goods will be confiscated; the responsible ones will be penalized with prison of up to two years and with all other penalties established in the Law.

Denounces of violations contemplated in this article are declared of popular action and whoever presents them will receive a bonus of 25% of the value of the fine imposed in each case.

**Art. 24.** - Whoever take into the country cultural goods, which the Institute of Cultural Patrimony deems to be considered as such, will enjoy exemption of taxes.

**Art. 25.** - The Bylaws will fix the terms and requirements to take out of the country those cultural goods that have been entered with or without said exoneration.

**Art. 26.** - The State will make its best effort to sign international agreements impeding the illicit trade of cultural goods and facilitating the return of those goods that would have illegally been taken out of Ecuador.

**Art. 27.** - Any monument to be located on streets, plazas, promenades or parks, such as sculptural groups, commemorative statues, etc, which are rising in Ecuador, shall count with the previous permission of the Institute of Cultural Patrimony to which projects, layouts, model designs, etc. will be sent for the obtainment of authorization for their rising.

**Art. 28.** - No person, or public or private entity may perform works of archeological or paleontology excavations without previous written authorization from the Institute of Cultural Patrimony. Police and custom authorities shall enforce the orders given in connection with these types of works.

No fulfillment of this article will be penalized with prison of up to two years, seizure of the objects extracted, of the vehicles and tools used for that aim, and with the legal fines.

**Art. 29.** - The Institute of Cultural Patrimony will only be able to grant permission to which refers the prior article to persons or institutions it deems presenting the necessary conditions to do the work technically and in due form, and when the Institute thinks it convenient it shall look after the course of the excavations, through the persons designated and according with the regulations issued on this matter.

**Art. 30.** - In any type of mining explorations; land movements prior to constructing buildings, roads or of any other nature, as well as in the event of demolition of buildings, the rights of the State will not be diminished over historical monuments, objects of archeological and paleontology interest that while performing the works could be found on hearth or subsoil. In such cases, the contractor, administrator or the immediate responsible, shall give notice of this event to the Institute of Cultural Patrimony and will suspend the work on the site where the finding had been verified.

In the event that notice of the finding is given to any of the Presidents of the Provincial branches of the House of Culture, he will immediately give notice of it to the Institute and this last one will order the corresponding technical revision seeking to decide over the importance or merit of the discovery and to issue the corresponding providences.

**Art. 31.** - As far as permanency and continuity in Ecuador of some ethnic groups pertaining to indigenous, Negro and afro Ecuadorian cultures, represent a living testimony of the plurality of vernacular cultures, the Institute of Cultural Patrimony by itself or through other organisms, will adopt measures towards conservation of their habits, languages, cultural, artisan, technical, artistic, musical, religious, rituals or community manifestations that the indigenous, Negro or afro Ecuadorian people themselves have recognized as recurrent and valid for their cultural identification and expression.

This conservation shall not work against the cultural evolution, improvement and social and economical integration of these ethnics.

**Art. 32.** - For the performance of anthropological researches or for the National Government to sign any agreement with persons or national or foreign institutions which perform research studies in the country regarding those matters contained in former article, it shall always exist a favorable resolution from the Institute; and a copy of the results of such researches shall be delivered to the Institute.

Non-fulfillment of this rule will be penalized pursuant to the Law.

**Art. 33.** - The Institute of Cultural Patrimony, by itself or by means of competent authorities will issue measures towards protecting and conserving the folkloric, musical, choreographic, religious, literary or linguistic expressions that correspond to culturally homogeneous ethnic groups. It is the responsibility of the Institute to preserve the purity of these manifestations through photographs, films, sound recordings and by other means.

Compilation of these testimonies with commercial ends, should count with the previous authorization from the Institute.

**Art. 34.** - The Institute of Cultural Patrimony shall take measures by means of supervision and control of performances or exhibitions that have relationship with those enunciated of the State Cultural Patrimony in order to avoid distortion of the cultural reality of the country, which is expressed through all manifestations of its cultural plurality.

**Art. 35.** - To achieve the goals stated in the current Law, the Institute of Cultural Patrimony can request from the organisms of the public sector and from the municipalities the declaration of public utility seeking the expropriation of real estate directly or accessorially forming part of the State Cultural Patrimony.

**Art. 36.** - Every person departing from the country, even those showing the quality of diplomats, shall present the Sworn Declaration before Migration or Customs authorities of the departing port, stating that they are not taking in their baggage any good belonging to the State Cultural Patrimony, according with pertinent ruling dispositions.

**Art. 37.** - Goods belonging to the State Cultural Patrimony that had been gathered under a coherent criteria by a governmental entity or by a natural or private juridical person, could be declared as collection. For juridical effects, the collection constitutes a sole good, with indivisible character; hence, furniture goods forming the collection could only be adjudicated to different people, conserved or exhibited in various places under authorization from the Institute of Cultural Patrimony.

**Art. 38.** - It might be declared that an object has lost its character of good belonging to the Cultural Patrimony when deterioration had totally eliminated its interest as such, and its restoration could not be feasible.

**Art. 39.** - Subject to Resolution of the Directory, national museums could, by exception, be authorized to interchange national or foreign goods from the State Cultural Patrimony, that have similar characteristics, with other furniture estate goods, national or foreign, that were abroad.

**Art. 40.** - The Institute of Cultural Patrimony has faculty to impose precautionary measures to the owners or responsible of goods belonging to the State Cultural Patrimony, seeking the protection of such goods. Non-fulfillment of said dispositions will be penalized pursuant to the Law. The Institute would also expropriate or seizure such goods by means of paying up to 25% of the estimated value in the case of expropriations.

**Art. 41.** - The Institute of Cultural Patrimony may delegate its attributions to control the fulfillment of this Law, in a determined place, to entities and public authorities that deems convenient.

### **GENERAL DISPOSITIONS**

**FIRST.** - Corresponds to the Directory of the Institute the approval of its estimate annual budget, which will be submitted to the consideration of the Ministry of Economy and Finances for its final approval, pursuant to the Law of Budgets of the Public Sector, the Organic Law of the State General Comptroller, the Organic Law of Financial Administration and Control, and the Organic Law of Civil Service and Administrative Career and of Unification and Homologation of Salaries of the Public Sector.

**SECOND.** - The results of the penalties established in this Law will constitute Patrimony of the Institute, without prejudice of the penal responsibilities that could have place.

**DEROGATORIES.** - The following are derogated: Law of Artistic Patrimony issued by the Constituent Assembly on February 22<sup>nd</sup> 1945 and published in the Supplement of the Official Registry No. 1202 of August 20<sup>th</sup> 1960; Decree No. 1008 of June 8<sup>th</sup> 1971 and published in the Official Registry No. 266 of July 14<sup>th</sup> 1971.

**FINAL DISPOSITION.** - This Law and its reformulations are in force as from their corresponding publications in the Official Registry.