

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

POLAND

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

1. Ratification of the Convention

The Convention was ratified on the 31st of January, 1974.

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 Act on the Protection of Cultural Goods (15 February 1962) and the Act on the Protection of Monuments and the Guardianship of Monuments (23 July 2003) enabled the implementation of the Convention of 1970 due to their overlap on many issues.

As a Member State of the European Union, Poland prevents the illegal import, export and transfer ownership of cultural properties, pursuant to the provisions of Council Regulation (EEC) No. 3911/92 of 9 December 1992 on the export of cultural properties (superseded by Council Regulation (EEC) No. 116/2009 of 18 December 2008 on the export of cultural properties) and the provisions of Council Directive 93/7 of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

In order to implement the Convention of 1970, EU procedures, such as the European Legal Assistance in Criminal Matters were used.

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

The Polish legal system uses the definition of cultural properties [in the Constitution of the Republic of Poland](#) in accordance with the term’s use in European Union Law and International Law. Article 294 § 2 and Article 295 of the Polish Penal Code use the term: “properties of particular cultural importance”.

Legal protection has been awarded to the category of objects referred to as “monuments” in the Act on the Protection of Monuments and the Guardianship of Monuments, which defines monuments as “immovable or movable objects or parts or groups thereof, made by man or connected with his activity and constituting a testimony to a past era or event, the preservation of which is in the interest of society due to their historical, artistic, scientific or academic value.”

(c) Specialized units

The primary authorities responsible for the tasks listed above are the General Inspector of Monuments and voivodeship (regional) inspectors of monuments. Other units are:

- National Heritage Board of Poland
- Centre for Protection of Public Collections (CPPC)
- Since 2007, the National Team for Combating Criminal Activity Against National Heritage, which operates out of Central Police Headquarters. (NTCCAANH)

- Customs Service and the Border Guard – both employ persons responsible for coordinating actions to protect national heritage.

(d) Administrative coordination

The coordination of administrative activities is based on special arrangements, such as the arrangement of 3 November 2004 between the Minister of Finance, the Minister of Culture, the Head Chief of Police and the Head Chief of the Border Guard on cooperation in combating illegal export or import, improve cooperation in the scope regulated by conventions, as well as to improve the transfer of information between national institutions. The arrangement offers mutual help in terms of:

- Control actions
- Exchange of information
- Training courses and exchange of experience.

Implementation arrangements are then conferred to voivodeship inspectors of monuments; directors of Customs Chambers; Chiefs of the Border Guard and voivodeship Chiefs of Police. This arrangement benefits from the possibility to adapt to the specifics of the area. Furthermore there is an arrangement since March 2005 between the General Monuments Conservator and the Head Chief of Police. The arrangement contains numerous provisions aimed at the protection of monuments against crime:

- Information
- Coordination of actions aimed at recovering lost monuments
- Improvement of the methodology of the protection of monuments

The arrangement specifies the tasks of the institutions set up to implement its provisions. Furthermore, the arrangement led to the making of numerous other cooperation arrangements at the local level.

(e) Working meetings

Every year numerous working meetings are held, such as:

- The 'Principles of cooperation between institutions combating illegal export of valuable objects, monuments and works of art' Seminar held at the Customs Service Training Centre in February 2008.
- A symposium on the Object ID system, held in 2008 at the Police Training Centre.
- As well as numerous training courses for Police, Border Guards, Customs Service and the Conservation Service.

3. Inventories and identification

(b) Definition of "cultural property" and "national treasures"

Polish legal acts do not use the term "national treasures". The role of national may be ascribed to cultural properties defined in particular Acts as Monuments.

The definition of monuments as stated in the 2003 Act can be found above. This definition is further specified in the Act in Article 6 by indicating particular categories of monuments.

- Immovable:
 - Cultural landscapes, rural arrangements and complexes of buildings, architectural and construction works, defensive constructions, technical objects, (mines, steelworks etc.) cemeteries, parks, gardens, places commemorating historical events or the activity of outstanding personalities or institutions.
- Movable:

- Works of plastic arts, artistic handicraft and applied art, collections constituting sets of objects collected, numismatic objects and historical souvenirs, in particular militaria, banners seals, medals etc. technological objects, such as devices, means of transport, tools signifying material culture, characteristic of past and new forms of economy, documenting the level of science and civilization advancement, library materials created before 1 January 1949, musical instruments, objects of folk art and handicraft, together with other ethnographic objects and objects commemorating historical events or the activity of outstanding personalities and institutions, as well as archaeological artefacts.

Monuments are protected by the means of:

- Entering to the register of monuments
- Awarding the status of monument of history
- Establishing a cultural park
- Specifying the extent of protection in the local zoning plan

To enter in the register, a decision must be issued by the voivodeship inspector of monuments. The decision on the entry to the register may be issued *ex officio* in the event of a justified fear of destruction, damage or illegal export abroad. Monuments already in museum or library inventories are not entered into the register.

(c) Reference to the Object ID standard

Poland has implemented special programmes such as “Safe Sets – Safe Collections”. This project is a standard for the documentation of monuments and works of art, established in order to identify objects lost as a result of crime, natural disaster or loss. It is a standardised system of describing works of art and objects of material culture of aesthetic, historical or material value. The programme is carried out by the CPPC and the NTCCAANH in cooperation with museums and representatives of the art market. The programme is based on museum cards and the Object ID standard.

(d) Systems to combat theft and to train staff

For 23 years, Poland has had a specialised unit monitoring threats to museums and developing systems to combat theft and training museum personnel – the CPPC. Its mission is to implement state policy, in particular by contributing to constant improvement of the level of protection of public collections and exercising supervision over museums as regards the realisation of tasks connected with museum safety. The CPPC realises these tasks by means of:

- Inspecting protection systems, including the condition of technical safety measures and physical protection of monuments;
- Coordination of the protection of transportation of cultural properties
- Issues opinions, approvals and information for the safety of monuments.
- Conducts research and keep documentation in terms of protecting monuments against crime and fire
- Hold training courses for museum security services, library and archive employees and administrators of sacral buildings.

4. Archaeological excavations

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

All archaeological artefacts excavated in Poland belong to the State Treasury, regardless of the means of their extraction. Any excavation or expedition requires a permit from the competent voivodeship inspector of monuments, who retains the right to inspect the undertaken actions. The voivodeship inspector may order that the work carried to be stopped or the errors to be redressed. Separate provisions regulate the obtainment of a permit for archaeological research, including the qualifications of the person carrying out the action and the method of the researchers accounting for the results of his work, as well as documentation standards.

(b) Illegal excavations

The extent of these problems is unknown. The reason for this is low social awareness in terms of heritage protection and improper understanding of archaeology. Furthermore, there is a low understanding of these problems by employees of the judicial system. Institutions responsible for the protection of monuments are improperly able to control immovable monuments due to a lack of funds and human resources.

5. Monitoring of the export and import of cultural property

(a) Estimate of the scale of the illicit export or import of cultural property (statistics)

Statistics are compiled and published by Central Police Headquarters. The 2003 Act imposes on the Police, Border Guards and the customs administration a legal obligation to immediately report information on stolen or illegally exported monuments so that this information can be entered in the register.

In 2008, 48 seizures of objects took place on behalf of the Customs Service. In 2009, there were 51 such seizures.

In 2008, 71 preparatory proceedings were instigated as a result of Border Guard units. As a result a total of 27 persons were presented with charges, with indictments filed against 12 persons. In 2009, 61 preparatory proceedings were instigated, 26 persons were presented with charges under Article 109 of the 2003 Act, with indictments filed against 16 persons. It is difficult to estimate the actual scale of illegal export of monuments. Open borders with no control make it easier to illegally export monuments. On the other hand, the introduction of export regulations for monuments in 2010 surely decreased the scale of their illegal export.

(b) Problem of the illicit export of cultural property

With Poland's accession to the Schengen Agreement in 2007, the number of permits for permanent export of monuments abroad decreased substantially.

- 2006: 310 permits were issued for 437 objects;
- 2007: 88 permits were issued for 218 objects;
- 2008: 32 permits were issued for 50 objects and archaeological collections (2,297 objects);
- 2009: 20 permits were issued for 31 objects and 1 archaeological collection (4,088 objects).

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

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

On 5 June 2010, the amendment to the 2003 Act entered into force. The provisions of the amendment substantially modify the Polish system of controlling the export of cultural properties. The obligation to have a permit for the export of a monument is now limited to only those objects that meet the criteria of age and value for particular categories. The Polish regulation is based on Council Regulation (EEC) No. 116/2009 on the export of cultural

properties. In practice, the categories specified in Annex 1 have been adapted to Polish conditions (financial conditions are given in PLN and Polish conditions are much lower and several categories differ in scope). Under the amended provisions, these objects may not be exported abroad permanently and their export can take place purely on a temporal permit. The Act on the protection and guardianship of monuments includes a chapter on the legal principles of restitution.

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

The main problems in terms of restitution are connected with differences between the legal systems of particular countries. Some pay more attention to the protection of citizens' rights rather than the restitution of illegally exported monuments. Serious problems arise because of civil law provisions, which in particular countries protect the acquirer to a different extent, even if the object has been obtained through criminal activity.

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

(a) Description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

The National Heritage Board of Poland constantly monitors the largest Polish auction website, [Allegro](#), in respect of presence of archaeological artefacts coming from illegal sources. In 2007-2011, over 2,700 suspicious auctions started by over 400 users were recorded. The above data includes only exceptional cases of auctions of ancient and medieval coins. The actual value of Internet trading in this respect is impossible to evaluate, as in most cases purchase prices do not reflect the real value of a given historical artefact.

(b) Rules governing trade in cultural goods, measures in place for such trade (maintenance of a police register), in particular through the Internet (reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)

In Poland, there are no special legal acts regulating trading in cultural properties.

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

The CPPC keeps the national register of monuments that have been stolen or illegally exported from Poland. This catalogue is available online, with full access given to the Police, the Customs Services and the Border Guard and with limited access given to citizens and museums. In the event of another State providing information on a search for certain monuments suspected to have been illegally exported, data regarding such monuments is also entered into the register.

The Ministry of Culture and National Heritage keeps a catalogue of objects lost as a result of World War II. Museums can check the provenance of objects they wish to acquire in these databases.

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

In Polish private law (the Civil Code) there is no differentiation between monuments and works of art and other properties in trading. All commonly traded objects are subject to the same legal treatment. Under the Civil Code cultural properties are things, subjects of certain rights and carriers of pecuniary values. Civil law emphasises exclusively the commercial status of monuments and works of arts. An individual whose historical artefact has been entered into the

register of monuments may sell it, but is obligated to notify the voivodeship inspector, giving the data of the new owner and place of storage of the artefact.

Pursuant to Article 189 of the Civil Code, if an object with considerable pecuniary, scientific, academic or artistic value is found and the seeking of the owner is evidently without purpose, the finder shall be obligated to pass the object to the competent state authority, it shall then become the property of the State Treasury.

(e) Special rules on the transfer of title deeds in respect of cultural property

Unfortunately, civil law does not provide for separate rules of transfer of ownership as regards cultural properties. In case of moveable objects, the issue of usucaption (acquisitive prescription) is regulated in Article 174 of the Civil Code: “the possessor of a movable thing who is not its owner shall acquire the ownership if he possesses that thing uninterruptedly for three years as an autonomous possessor unless he possesses it in bad faith. The current provisions of usucaption are a significant threat if monuments listed in public collections and registers of monuments are lost.

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 Polish National ICOM Committee promotes the Curator’s Code of Ethics. A reference to this document is contained in the 2003 Act.

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?

There are specialist magazines devoted to the issues of stolen and lost cultural property such as the *Cenne, bezcenne, utracone* (Valuable, priceless, lost) quarterly, financed by the Ministry of Culture and National Heritage. The magazine is free and is sent to all antique shops and auction houses in Poland, as well as numerous museums, the police, Border Guard, and the Customs Service.

The CPPC popularises issues connected with the protection of national heritage on its website. Other important magazines on protection of national heritage are *Ochrona Zabytków* (Monuments Protection) and *Muzealnictwo* (Museology), published by the National Heritage Board of Poland.

Many publications take up the issues connected with the Convention and analysing various aspects of cultural heritage protection in the world, such as *Spotkania z zabytkami* (Getting to know monuments), are published in print and online.

Conferences on the issues of the protection of cultural properties are held by the Ministry of Culture and National Heritage in cooperation with the Police, the Customs Service and the Border Guard. Awareness-raising classes, aimed at presenting the scale of threats to students, are held at universities (for example the *Dziedzictwo na Uniwersytecie* [Heritage at University] programme).

The National Heritage Board publishes educational materials and specialist articles on the protection of archaeological heritage. It offers training programmes for uniformed services,

employees of State Forests, owners of monuments, local self-government authorities, archaeologists, and students of civil engineering. There are also co-organised postgraduate studies in archaeological protection and management.

The atlas of endangered archaeological excavation sites, an electronic application, is being prepared for the police.

Cooperation has been established with the Prevention Bureau of the Central Police Headquarters, whose officers are responsible for preventing crime amongst juveniles, will be carrying out educational activities under the supervision of the National heritage Board. The National Heritage Board also participates in the educational initiative of the CPPC addressed to university students. The Board also offers consultation via e-mail and telephone to officers of uniformed services conducting particular criminal cases.

The NHB consults press articles on crime against archaeological heritage and participates in radio programmes on the protection of archaeological artefacts.

The NHB is a co-organiser of a 2-year polish-Norwegian education and training project financed under the Cultural Exchange Fund of the Norwegian Financial Mechanism. The project covers an exchange between experts on heritage protection, combating illegal trading in works of art, and other crimes against national heritage. The objective of the project is to increase the competences of Polish and Norwegian specialists by means of exchanging experiences as regards central and regional actions and analysing and implementing legal frameworks.

Awareness in society and more widespread ethical conduct among specialists and in sectors connected with cultural heritage are important objectives of the project.

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 Criminal Bureau of the Central Police Headquarters cooperates closely with INTERPOL. Actions in terms of crime targeting cultural properties are coordinated at the central level by the National Team for Combating Criminal Activity against National Heritage operating at the Criminal Offences Department of the Criminal Bureau of the Central Police Headquarters. The National Team also offers subject-matter support to field units.

(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

The National Team regularly checks INTERPOL's Stolen Works of Art database. At the same time, it enters information on the most valuable objects stolen in Poland (in 2008 – 155 entries, in 2009 – 103 entries, in 2010 – 29 entries). Information on persons suspected are transferred to INTERPOL to a limited extent.

(c) Specific training program for members of police services

Voivodeship coordinators for monuments undergo proper training at least once a year. In 2007 to 2010, the National Heritage Board prepared and carried out a series of training courses on the protection of archaeological heritage for officers of the Police, the Customs Service and the Border Guard. Approximately 150 Policemen and 160 officers of the Customs Service and the Border Guard have been trained.

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

The provisions of the Penal Code of 6 June 1997 penalise fraud (Article 286 § 1), theft (Article 278 § 1) and burglary (Article 279 § 1) where the object of the crime is a cultural good on the same principles as in the case of the crime against property in the form of seizure of various types of objects. However the Penal Code increases the criminal liability (Article 294 § 2) of perpetrators of fraud and theft in cases where the object of the crime is a good of particular importance for culture. In this case, the custodial sentence may be between 1 and 10 years.

(e) Cooperation with the United Nations Office on Drugs and Crime (UNODC)

INTERPOL cooperates with the UN Office on Drugs and Crime.

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

Polish customs administration cooperates with the Regional Intelligence Liaison Office for Eastern and Central Europe (RILO ECE), which runs the OBELIKS – SAVOU OUR CULTURAL HERITAGE programme. The objective of the project is to improve cooperation at the national and international levels between the customs services and other organisations therefore increasing the effectiveness of combating crime in this respect in Eastern and Central Europe.

The exchange of information takes place within the online Customs Enforcement Network which makes communications and seizures of valuable objects made in the region available. Furthermore, reports on stolen works of art with photographic documentation, are regularly published on the website of the World Customs Organisation.

Actions resulting from cooperation with RILO ECE regard primarily the provision of data on attempts at illegal export and smuggling monuments by the Polish Customs Service. This data is then entered in to the online database on customs crime.

(g) Specific training program for members of the customs administration

Training courses for the Customs Service occur on a regular basis. The training courses cover both the basic and the specialist level in terms of EU and national regulations on the export of cultural properties and identification and valuation of cultural properties, and are organised in cooperation with the ministry of Culture and National Heritage, the CPPC, Voivodeship Inspectors and museums. Additionally each Customs Chamber has a person acting as the coordinator for the protection of monuments.

Their tasks are as follows:

- Coordinating actions taken by customs officers in terms of combating crime against cultural properties;
- Participating in training courses on the protection of cultural properties;
- Running training courses for officers of Customs Chambers;
- Issuing preliminary opinions on cultural properties seized by officers;
- Cooperating with Voivodeship Inspectors of Monument, the Border Guard and the Police by means of informing these services about irregularities connected with trading in monuments.

Furthermore, in 2007-2008, under twinning contract No. PL06/IB/FI/03 (Further Strengthening of Polish Customs Service) subproject No.1 (combating illegal export of valuable objects, monuments and works of art) was realised. The subproject comprised two components:

1. Working out an effective system of combating illegal export of valuable objects, monuments and works of art.
2. working out an effective training module for combating illegal export of valuable objects, monuments and works of art.

Twinning experts from UNESCO, Austria and Slovenia and 18 experts from the Polish Customs Service participated in the project. The twinning project also included didactic training courses for coaches on the subject of cultural properties, attended by coordinators from the Customs chambers, who were trained in the methodology of running training sessions. Training modules, presentation, educational materials and a manual on the protection of monuments have also been prepared. The end effect of the abovementioned works was the carrying out of three-day training courses for 54 customs officers.

(h) Reference to the UNESCO-WCO Model Export Certificate for Cultural Objects

Poland does not use the UNESCO-WCO Model Export Certificate for Cultural Objects.

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

Instead of the UNESCO-WCO Model Export Certificate, the European Union certificate is used: [Council Directive No. 93/7/CEE](#).

The following monuments are also subject to the proceedings referred to in paragraph 1:

- Monuments entered into the register;
- Monuments constituting elements of public collections owned by the State Treasury, units of local self-governments and other organisational units belonging to the public finance sector;
- Monuments listed in inventories of museums or in the national library inventory;
- Monuments listed in church inventories.

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

Poland is not a party to the 1995 UNIDROIT Convention. Works on a standpoint in this case are currently underway. Poland is considering its accession to the UNIDROIT Convention.

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

Poland has the status of an observer at the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. Representatives of both the Ministry of Culture and National Heritage and the Ministry of Foreign Affairs participate in the meetings of the Committee.

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

The UNESCO Database is updated on an ongoing basis.