

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

PORTUGAL

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

1. Ratification of the Convention

Portugal ratified the 1970 Convention in 1985.

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 1970 Convention was implemented by law n°56/85, 26th July 1985.

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

The national cultural heritage law (law 107/2001, 8th September 2001) defines cultural heritage in its article 2(1).

(c) Specialized units

There are specialized units within the Ministry of Culture besides the police and customs.

(d) Administrative coordination
(e) Working meetings

Police officers, customs officials and ministerial representatives contact each other whenever there is need for cooperation and/or coordination.

3. Inventories and identification

(a) Inventories

The dispositions about inventories can be founded in articles 61 and 62 of law 107/2001, 8th September 2001.

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

The article 2(5) of law 107/2001, 8th September 2001 remains the goods that are included in the category ‘cultural goods’.

National Treasures belong to national museums and are exhaustively listed in Law n°19/2006, 18th July 2006 (rectified by the Declaration n°62/2006, 15th September 2006) and Law n°2/2008, 24th January 2008.

(d) Systems to combat theft and to train staff

The Portuguese museums framework law (Law n°47/2004, 19th August 2004) states that museums must have the necessary safety conditions to ensure the protection and integrity of their pieces (article 32). Also for security reasons, namely to prevent the theft of their pieces, museums must:

- have a safety plan (article 33),
- have entry restrictions (article 34),
- have surveillance (article 36),
- cooperate with the police (article 37).

4. Archaeological excavations

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

Archaeological excavations can only be run by archaeologists which are authorized, case by case, by the Instituto de Gestão de Património Arquitectónico e Arqueológico (IGESPAR, I.P.), the Institute of the Ministry of Culture that has competence over archaeological heritage.

The IGESPAR's decision is based on the adequacy of the professional curriculum of the archaeologist considering the type and planning of the excavations and the adequacy of the working team.

The director of the excavations is personally responsible for:

- the monitoring the plan and timetable ,
- the presentation of intermediate and final reports,
- the registry, study and proper deposit of the exhumed materials.

IGESPAR can visit the excavation sites and inspect the technical quality of the work although it is not possible to carry out systematic inspections.

Nevertheless, this inspection is carried out through the evaluation of the reports. If a report is not presented, the director of the excavation is prevented, according to the applicable law, from undertaking further excavations until the process is completed.

(b) Illegal excavations

In Portugal, illegal excavations are practically residual thanks to the general implementation of the applicable laws (Law n°107/2001, 8th September 2001; Law n°270/99, 15th July 1999, altered by Law n°287/2000, 10th November 2000) and to efficacy of the existing inspection mechanism.

However, there is the problem of the illegal use of metal detectors in archaeological sites. Considering that it is restricted and prohibited by law, police inspection has resulted, at least, in the apprehension of the metal detectors, easily acquired in the market. The use of metal detectors in places known to archaeological remains and in the maritime public domain is prohibited by Law n°121/99, 20th August 1999. The problem has gotten worse because the users of metal detectors, who seem to be well informed about the location and the nature of the archaeological sites, search for goods of commercial value and destroy the archaeological context of cultural goods. As the territory is vast, IGESPAR can not inspect all known archaeological sites. Sometimes, ongoing excavations on isolated sites are burgled during the night. When IGESPAR learns about these incursions, it notifies the local police (Guarda Nacional Republicana) to keep watch over the most vulnerable spots, and whenever adequate, it files a complaint of theft or archaeological goods to the Polícia Judiciária which has a specialized unit. Indeed, there is a cooperation agreement between IGESPAR and Polícia Judiciária to expedite the denunciation and investigation of actions against the archaeological heritage.

5. Monitoring of the export and import of cultural property

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

The Law n°107/2001, 8th September 2001, requires that the export and import, whether temporary or definitive, of cultural goods should be communicated to the proper cultural authorities 30 days in advance. This information is published on the website of the Institute of Museums and Conservation.

As Portugal is a member State of the European Union, exports of the categories of goods listed in Annex I of Council Regulation n°116/2009, 18th December 2008, are subject an export licence issued through

the form established by Commission Regulation (EEC) n°752/93, 30th March 1993 (altered by Commission Regulation n°656/2004).

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

Both national and European legislation deal with the restitution of illegally imported cultural goods. Such is the case of article 69 of Law 107/2001, 8th September 2001 and the Council Directive 93/7/CEE, 15th March 1993.

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

(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)

A future committee for monitoring the commerce of movable cultural goods shall be coordinated by the Institute of Museums and Conservation.

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

According to articles 8 and 9 of Law n°47/2004, 19th August 2004, Portuguese Museums have the duty to study and investigate future acquisitions of cultural goods.

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

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

Cultural goods of national collections belong to the State's cultural domain and as such they can not be alienated. Cultural goods can be removed from the State's cultural domains by decision of the Minister of Culture (articles 64 and 65 of Law n°47/2004, 19th August 2004).

In the particular case of archaeological goods, their property regime is determined by Law n°107/2001, 8th September 2001. Archaeological goods that belong to the collections of national museums and that came from excavations are national goods which can not be freely traded. According to the article 74 of the Law n°107/2001, it is incumbent on the State and the Autonomous Regions to store, conserve, manage, valorize and publicize archaeological goods. These goods are subject to the principle of inalienability.

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

- Archaeological goods still unfound
They are also considered as national goods and are protected as such.
- Archaeological objects founded during legally authorized archaeological excavations
The authorities have to decide their place of deposit (museums) in accordance with the law.
- Objects fortuitously founded
Whoever finds an archaeological good, in public or private land or underwater has 48 hours to report the finding to the authorities. The objects are placed under the care of the police or of the cultural authority and the finder has the right to receive a reward corresponding to half of the amount the good's appraisal.
- Archaeological objects from illegal excavations
Archaeological goods from illegal excavations are considered illegally obtained and the act is considered a crime of destruction of archaeological remains which is punished with a prison sentence of up to 3 years or a fine of up to 360 days according to article 103 of Law n°107/2001, 8th September 2001.

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

According to the Law n°107/2001, 8th September 2001, the owners of cultural goods classified as goods of national, public or municipal interest must communicate to the heritage authorities any change in their ownership such as the sale or inheritance of the cultural goods.

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

Museum professionals are familiar with the ICOM Code of Ethics. The Portuguese Association of Antique Dealers (created in 1990) has its own Code of Ethics that binds its 57 members.

2. Awareness raising and education

(b) Dissemination of the “One hundred missing objects” series and the ICOM Red Lists

ICOM 100 Missing objects and Red Lists are released by INTERPOL’s national office.

(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?

National museums have regular educational aimed at the cultural education of children.

Museums which depend on the Institute of Museums and Conservation have a family program with various activities that take place on the weekends.

The Ministry of Culture, through the Institute of Museums and Conservation and the Institute for the Management of Archaeological and Architectonical Heritage, and the Ministry of Education have developed the contest “My school adopts a museum, a Palace, a Monument...” aimed at raising awareness amongst school children about the preservation and valorization of cultural heritage.

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

There is a close relationship of cooperation with international agencies, namely with INTERPOL. So, whenever, in the course of an investigation of a crime related to works of art, there is the possibility that they were interchanged outside the national territory, this is communicated to INTERPOL. Whenever the works of art are listed or classified, this information is always communicated.

Likewise, whenever INTERPOL sends information related to the theft of works of art from other countries, this information is entered into the adequate database for purposes of detection and apprehension of the works of art.

The Polícia Judiciária is the entity of the criminal police with the power for the prevention and the investigation of art related criminality.

(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

Effectively, whenever there is the theft of works of art and there is suspicion of an international activity, the information is communicated to INTERPOL. The same applies to probable suspects involved in the crime under investigation.

(c) Specific training program for members of police services

The basic training of the inspectors of the Polícia Judiciária includes a module related to this crime. Throughout their career, the members of the Police that investigate this area receive specific training at the school of the Polícia Judiciária or abroad. They also take part in seminars, workshops, conferences and other events both nationally and internationally.

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

Crimes related to works of art are duly protected by the national penal law. In bigger city centers, court of law have sections specialized in this type of crime.

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

Portugal is an active collaborator with the UNODC, taking part, through the proper channels, in the exchange of information relevant to different criminal areas.

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

The Direcção geral das Alfândegas e dos Impostos Especiais sobre o Consumo (DGAIEC) has always collaborated with WCO and has given all the information that has been requested. DGAIEC produces instructions concerning the Application of the European Regulations and sends these instructions to the customs so that they know which procedures to follow in order to avoid the illicit export of cultural goods.

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

The member of staff responsible for the training program has accompanied this matter since 1989 and, due to her large experience, has trained her colleagues.

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

This model is not used as Portugal is a Member State of the EU and uses the EU-Cultural Goods form, according to Council Regulation (EC) n°116/2009, 18th December 2008 and Commission Regulation (EEC) n°752/93, 30th March 1993.

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

Portugal was represented by the Institute of Museums and Conservation at the European Commission's "Return of Cultural Goods" working group which was created under the Committee on the Export and Return of Cultural Goods.

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

Portugal ratified the UNIDROIT Convention in 2002.