



Gabinete da Direção

UNESCO REPORT

SUBJECT: UNESCO - Report on the implementation in Portugal of the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of Cultural Property (1970 Convention)

I. Information on the Implementation of the UNESCO Convention of 1970 (With reference to its provisions)

1. Ratification of the Convention

- a) Government Decree no. 26/85 of 26 July 1985 which ratifies UNESCO's Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.
- b) Cultural Heritage Act (Law no. 107/2001 of 8 September 2001), which establishes the basis for the policy and the regime of protection and enhancement of Portuguese Cultural Heritage.

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

The Portuguese overall legal framework for protecting cultural property from illicit trafficking is constituted by:

- a) i) 1985 - Government Decree no. 26/85 of 26 July 1985 which ratifies UNESCO's Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970;
- ii) 1993 - Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State;
- iii) 2001 - Law no. 107/2001, of 8 September 2001, which establishes the basis for the policy and the regime of protection and enhancement of Portuguese Cultural Heritage;
- iv) 2004 - Law no. 47/2004 of 19 August 2004, which establishes the Legal Framework for Portuguese Museums.
- v) 2009 - Regulation (EC) no. 116/2009 of the Council concerning the export of cultural goods.



- vi) 2012 – Commission Implementing Regulation (EU) no. 1081/2012 of 9 November 2012 in respect of Regulation (EC) No 116/2009 of the Council concerning the export of cultural goods.
- vii) 2014 - New Regulation of Archaeological Work - Decree-Law No. 164/2014, of 4 November.
- viii) During the year 2014, a Decree Law project was drawn up concerning the classification, cataloguing and circulation of movable cultural property.
- b) The Cultural Heritage Act no. 107/ 2001, of 8 September, establishes the following in its article 14 paragraph 1: –“ Any moveable or immoveable assets that represent material witness bearing a civilization or culture value in accordance with the provisions of paragraphs 1 and 5 of Article 2 shall be considered as cultural assets.”
- c) i) Currently, the competent authorities concerning the movement of moveable cultural property, such as the *Direção-Geral do Património Cultural* (DGPC - Secretary of State for Culture), have made available a set of forms to be filled up for the export of movable cultural assets. These forms should include a brief description / characterization of the asset, a current photo, a property statement and a proof of purchase. This procedure aims to prevent the illicit traffic of cultural property, being applied simultaneously with EU procedures and forms concerning the export of movable cultural property over 50 years old (Commission Implementing Regulation (EU) No. 1081/2012 of 9 November 2012 for the purposes of Council Regulation (EC) No. 116/2009 on the export of cultural goods).
ii) The Cultural Administration (Central, Regional or Local) plays a major role in safeguarding cultural property by taking protection measures. Nonetheless, the public is well aware of the need to protect cultural property, namely archaeological and heritage sites, as well as museum collections. The NGOs for cultural development, Centres for Research and Universities have a significant role in this area.
- d) Whenever necessary, the DGPC liaises with *Polícia Judiciária* (Criminal Investigation Police) and *Autoridade Tributária e Aduaneira* (Tax and Customs Authority). Even though meetings are held whenever necessary, the Internet facilitates exchanges of information.



3. Inventories and identification

- a) Portugal has specific databases, managed by the DGPC, for: i) protected movable heritage; ii) protected immovable (architectural and archaeological) heritage, including World Heritage monuments and sites; iii) archaeological sites. The DGPC is also responsible for the databases of 23 public museums and monuments, including National Museums, reporting to the Secretary of State for Culture. All databases are available on the internet, except the one concerning protected movable heritage, which will be available online from 2020 onwards.
- b) There are four major inventories in Portugal. First of all, the inventories of cultural property, directly managed by the Central Administration (DGPC), the National Library of Portugal (BNP), the General-Directorate for the Book, Libraries and Archives (DGLAB), and the National Film Archive (*Cinemateca Nacional*), which refer, respectively to: i) museum collections, and other movable or immovable protected heritage; ii) library collections, including protected heritage; iii) archive collections, including protected heritage; iv) audiovisual collections, including protected heritage.
- c) The Regional Cultural Administration has its own databases for both movable and immovable heritage.
- d) The Municipal Administration has its own databases, namely for museum collections (of municipal museums) and immovable heritage.
- e) Many private institutions have their own databases, such as private museums, religious institutions and foundations.
- f) Each type of administration and each private institution is responsible for managing its own databases.

4. Archaeological excavations

Unlike the ethnological heritage, the archaeological heritage has specific legislation in Portugal. Both archaeological and ethnological heritage museums have played a major role in raising public awareness towards the importance of its protection in the last three decades. We consider that looting archaeological and ethnological objects is a major threat in Portugal. This is particularly true for the artistic heritage, namely in churches. Special measures (project «*Igreja Segura*» - safe church) have been developed in the past years to deal with this issue.



The New Regulation of Archaeological Work - Decree-Law No. 164/2014, of 4 November was published in 2014. It sought to redefine and clarify management policies as regards finds from archaeological works, and the dissemination of results of such works for the purposes of publication in scientific journals, for raising public awareness and for educational purposes. Apart from being a responsibility of the archaeologist, such management policies should provide an opportunity to bring citizens closer to archaeology as a scientific discipline. As regards archaeological finds, this legislation makes it compulsory to inform the DGPC about temporary locations, and later about the definitive locations, of holdings from authorized archaeological works. Besides, a report has to be submitted to the cultural heritage authorities including an inventory and graphic documentation of such holdings.

The DGPC has a special information system for the archaeological heritage known as "Endovélico". It includes an information, georeferencing and management system for land and underwater archaeological heritage. It also comprises data on the archaeological activity in mainland Portugal. Information regarding the deposit and location of finds from archaeological works that were licensed by the DGPC is also registered in the «Endovélico», thereby preventing the illicit movement of archaeological property.

However, it should be mentioned that even though Portugal ratified the 2001 Convention on the Protection of Underwater Cultural Heritage in 2006, it has failed to combat the illicit traffic of property from Portuguese ships that have sunk in international waters of States that have not ratified the Convention. Application of the Convention has proved to be totally inefficient in such cases.

5. Monitoring of the export and import of cultural property

- a) The DGPC has no data available regarding the illicit traffic of moveable cultural property.
- b) In order to monitor illicit traffic occurrences, it would require a greater number of human and financial resources and a unit exclusively dedicated to the movement of cultural property. An information system, to be shared by different entities in Portugal with responsibilities in this area, would be crucial to make exchange of information more expeditious.



c) The DGPC, which was created in 2012 and reports to the Portuguese Secretary of State for Culture, is the department responsible for the protection of cultural property, as described in Article 5 of the Convention.

Its responsibilities include: drafting laws and legislation; drawing up the national inventory of both tangible (movable and immovable) and intangible cultural heritage; collaborating with scientific and technical institutions, as well as with customs, police and antique dealers; supervising archaeological sites; establishing rules for museums; preventing illicit traffic and the disappearance of cultural property, in close collaboration with customs and the police. The DGPC is also responsible for issuing export licences for movable cultural property destined both for non EU-Countries and for EU-Countries. This task is shared with the National Library of Portugal (BNP), the General-Directorate for the Book, Archives and Libraries (DGLAB), and the National Film Archive (*Cinemateca Nacional*), which are responsible for issuing export licences respectively for bibliographical, archival and audiovisual items.

d) There is good cooperation in this area among Portuguese entities, but contact with foreign entities is rather slow.

e) The Cultural Heritage Act, Law no. 107/ 2001 of 8 September, provides for the system of commerce and restitution in its article 69.

"1. Under reciprocity terms, any transactions carried out in the Portuguese territory over assets belonging to the cultural heritage of another State that are in the domestic territory as a result of the violation of their respective protection laws shall be null and void.

2. The assets mentioned in the foregoing paragraph may be returned pursuant to Community or international law binding on the Portuguese State.

3. The restitution of assets belonging to the cultural heritage of European Union member States may be limited to the categories of objects listed in the instruments of derived Community legislation.

4. Restitution cases shall be handled by the judicial courts, the State of origin of the illegal asset export solely to bear procedural legitimacy, provided always that such State is an European Union member State or a State under reciprocity terms pursuant to the Portuguese State internal order so as to be granted such right.

5. In restitution proceedings, discussion shall be restricted to the following:

a) whether the asset which is the subject matter of the request bears the quality of cultural asset pursuant to the applicable rules;



- b) whether the exit of the asset from the territory of the State of origin was unlawful in the light of the applicable rules;
- c) whether the possessor or holder acquired the asset in good faith;
- d) the amount of damages to be allocated to the possessor or holder in good faith;
- e) other aspects of the conflict of interest which may be debated in the course of the restitution proceedings pursuant to the applicable provisions of Community or international law."

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

- a) The Cultural Heritage Act, Law no. 107/ 2001 of 8 September, in its Chapter IV, provides for export and shipment (art. 64); export and shipment of assets classified as of national interest (art. 65); export and shipment of other classified assets (art. 66); paragraph 7 of Art. 69 establishes that "Statutory instruments shall regulate the purchase, sale and trade of antiques and other cultural moveable assets." Updating of this property is currently underway and so is the identification of their owner and location.
- b) The DGPC, through its database of classified and inventoried moveable property, has systematic information on cultural property that is legally protected. It also has a database on the collections of museums under its care, according to clause a) of point I.3 above.
- c) A database for the immovable cultural heritage also incorporates, whenever necessary, information on the movable and fixed heritage composing that property.

7. Bilateral agreements

Some of the bilateral agreements signed by Portugal contemplate cooperation as regards the illicit trafficking of cultural property, on land and underwater, pursuant to the provisions of national legislation and the international conventions of which Portugal is a State party. Examples of these are the "Cultural Exchange Programme between Portugal and Algeria for 2015-2017" or the "Cooperation Agreement between Portugal and Serbia on Education, Science and Technology, Culture, Sports and Youth", signed on 18 March 2015. Reference should also be made to point III.3 of this document as regards the export, shipment or restitution of illicit movable property.



II. Code of ethics, awareness raising and education

1. Ethical standards

All public and most private museums abide by the ICOM Code of Ethics.

Law no. 47/2004 of 19 August 2004, which establishes the Legal Framework for Portuguese Museums, and defines the mechanisms for accreditation of the Portuguese Network of Museums, plays a major role in enforcing the principles and issues addressed by the ICOM Code of Ethics in Portuguese museums.

2. Awareness raising and education

The DGPC provides on its web page – www.patrimoniocultural.pt information on the export and dispatch of movable cultural assets. By using a powerful tool such as the internet, the DGPC seeks to combat illicit trafficking of goods and to disseminate the best practices concerning the lawful movement of movable assets. Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods and Commission Implementing Regulation (EU) No. 1081/2012 of 9 November for the purposes of Council Regulation (EC) No 116/2009 on the export of cultural goods are also available online at this web page.

Also available on DGPC's web page is a *Guide to Procedures* for the movement of cultural property, which provides clear and user-friendly information about the export and dispatch of cultural movable property, its legal framework, and forms to be filled up.

III. Cooperation with other international and regional agencies

1. Police

The mission of *Polícia Judiciária* (PJ), under the terms of its organic law and the Organisation of Criminal Investigation Act (LOIC), is to assist the judicial and prosecuting authorities in investigations, to develop and foster preventive, detection and investigative actions, falling within their jurisdiction or the actions which the *Polícia Judiciária* is entrusted with by the competent judicial and prosecuting authorities. Its specialized Department (*Brigada de Obras de Arte*) on cultural property, which works in close collaboration with INTERPOL and EUROPOL,



is responsible for publicizing the disappearance of cultural property as well as for detection and investigative actions regarding illicit traffic of cultural property.

2. Customs

The Customs Agency (*Autoridade Tributária e Aduaneira*), which is responsible for procedures regarding the import and export of cultural property, has a Department (*Direção de Serviços Anti-Fraude*) specialized in detection actions regarding illicit traffic of cultural property.

A number of workshops, organized by the DGPC, the Police and Customs, have been promoted targeting mostly at museums, as well as heritage professionals from the municipalities.

3. European Union

Portugal is in the process of transposing into national law the Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State. This Directive amended Directive 93/7/EEC and Regulation (EU) No. 1024/2012 establishing cooperation between Member States, through the internal market, so as to create a Union system for the protection of Member States' cultural objects.

Transposition of Directive 2014/60/EU into national law will have to be completed before 18 December 2015. Simultaneously, a movable objects module is being developed for the IMI – Internal Market Information System, which will enable the return of cultural objects unlawfully removed from the territory of a Member State. This will have to be implemented before 19 December 2015.

IV. Emergency situations and heritage at risk

- a) The Cultural Heritage Act, Law no. 107/ 2001 of 8 September, provides for the system of commerce and restitution in its article 69. Conflict situations are applicable here.
- b) Decree-Law no. 220/2008 of 12 November establishes the legal system for fire safety in buildings. After its publication, museums, monuments, libraries and



archives are required to issue safety regulations, in a fire-preventive measure against, *inter alia*, natural disasters.

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

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

The Unidroit Convention on Stolen or Illegally Exported Cultural Objects, adopted in Rome on 24 June 1995, was approved by Resolution of the Assembly of the Republic No. 34/2000, and ratified by Decree of the President of the Republic No. 21/2000, of 4 April, published in the official journal I-A, no. 80 of 04.04. 2000.

2. **Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation / 3. UNESCO Database of National Cultural Heritage Laws**

All of UNESCO's tools are important resources for raising awareness among all stakeholders of cultural heritage as well as a means of preventing the illicit import, export and transfer of ownership of cultural property. Regarding the Model Export Certificate for Cultural Objects (UNESCO and WCO), its role is mostly that of a best-practice, considering that the EU Model Export Certificate for Cultural Objects is being adopted in Portugal, according to the Commission Implementing Regulation (EU) No 1081/2012 of 9 November 2012 for the purposes of Council Regulation (EC) No 116/2009 on the export of cultural goods.

Lisboa, 12 June 2015

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