

Decree-law n° 2011-43 dated 25 May 2011, Amending and Completing the Archeological, Historical Heritage and Traditional Arts code.

The President of the Republic by interim,
On a proposal from the Minister of Culture,

Having regard to the archaeological, historical heritage and traditional arts code, promulgated by law n° 94-35 dated 24 February 1994,

Having regard to decree-law n° 2011-14 dated 23 March 2011, relating to the temporary organization of public authorities,

Having regard to the deliberation of the Council of Ministers.

Enacts the following decree-law:

Article 1 - Are repealed, the provisions of the first paragraph of article 5, article 57, the second paragraph of article 80, article 81, article 82 and the first paragraph of article 83 of the archaeological, historical heritage and traditional arts code, and are replaced by the following provisions:

Article 5 (first paragraph new): Are considered movable properties within the meaning of the code herein, the movable cultural property whose national or international value as for the historical or scientific or aesthetic or technical or traditional aspect is proven.

Article 57 (new) - The export of the movable property cited in article 5 of the code herein whether they are protected or not is prohibited. The temporary export of these movable properties is subject to the authorization of the Minister in charge of heritage.

Notwithstanding the judicial proceedings, any movable properties among those cited in the previous paragraph, which was the subject of an export attempt outside the national borders without authorization of the Minister in charge of heritage, is confiscated and allocated to the State.

Article 80 (second paragraph new) – Is punished with a fine of three thousand dinars whoever does not inform the Minister in charge of heritage of the alienation of the classified or protected immovable properties or of the protected movable property.

Article 81 (new) - Is punished with one year imprisonment and a fine of ten thousand dinars, whoever prevents or blocks the works of the relevant departments cited in articles 12, 21, 33, 36, and 86 of the code herein.

The attempt is punishable.

In the event of recidivism, the punishment will be doubled.

Articles 82 (new) - Is punished with six month imprisonment and of a fine of five thousand dinars, whoever falsifies or imitates for commercial purposes the protected movable property without obtaining the prior authorization from the Minister in charge of heritage.

In the event of repetition, the punishment will be doubled.

Articles 83 (first paragraph new) - Is punished with a one year imprisonment and a fine of twenty thousand dinars, whoever carries out the works cited in articles 9, 10, 11, 18, 19, 20, 23, 28, 30, 31, 43 and 46 of the code herein without respecting the procedures provided for by the above mentioned articles.

In the event of recidivism, the punishment will be doubled.

Article 2 - Are added to the archaeological, historical heritage and traditional arts code the articles 81 bis, 81ter, 82 bis, 82 ter, 82 quater, 83 bis, 83 ter, 83 quater, 83 quinquies, 83 sexies, 83 septies, and 83 octies, and this, as follows:

Article 81 (bis) - Subject to the provisions of article 56 of the code herein, is punished with five year imprisonment and a fine of fifty thousand dinars whoever, exercises without obtaining the authorization of the Minister in charge of heritage, the trade of the movable properties cited in article 5 of the code herein whether they are protected or not or other movable properties whose national value, historical or scientific or aesthetic or technical or traditional in its country of origin , is proved.

The attempt is punishable.

In the event of recidivism, the punishment will be doubled.

Article 81 (ter) - Is punished with two year imprisonment and a fine of twenty thousand dinars any trader authorized in accordance with the provisions of article 58 of the code herein, exercises the trade in a place other than that indicated in the authorization.

The punishment will be one year imprisonment and a fine of ten thousand dinars in the event of non-respect of the obligations cited in article 59 of the code herein.

The attempt is punishable.

In the event of recidivism, the punishment will be doubled.

If the authorization mentioned in article 58 of the code herein is attributed to a legal entity, the punishment of imprisonment cited in the previous paragraphs of the article herein, applies personally to the head of the enterprise, its manager, its director or any other person having the quality to represent the enterprise and whose personal responsibility is proven as for the committed acts.

In the event of violation of the regulations provided for by the two articles 58 and 59 of the code herein and in addition to the punishment provided for by the previous paragraphs of the article herein, the authorization relating to the movable property trade may be immediately withdrawn on a purely provisional or final basis, and this, after the hearing of the interested party.

Article 82 (bis) - Is punished with a five year imprisonment and a fifty thousand dinar fine, whoever proceeds to the drilling, excavations or other research acts with the aim of seeking movable or immovable vestiges on his property or that of others without obtaining previous authorization of the Minister in charge of heritage.

The attempt is punishable.

In the event of recidivism, the punishment will be doubled.

Article 82 (ter) - Is punished with a three year imprisonment and a thirty thousand dinar fine, whoever discovers in a fortuitous way immovable or movable vestiges and does not inform of it immediately the relevant departments of the Ministry in charge of heritage or the nearest

authority in the region.

Article 82 (quater) - Is punished with a three year imprisonment and a thirty thousand dinar fine whoever discovers a maritime archaeological property and does not declare immediately the existence to the relevant departments of the Ministry in charge of heritage or the nearest authority in the region, the move, causes to him any damage or brings to it alteration.

Incurs the same punishments, to whoever takes from the sea, in a fortuitous way, an archaeological property without immediately informing of them the nearest port authorities or put it back to them.

Article 83 (bis) - Is punished with a one year imprisonment and a ten thousand dinar fine whoever carries out repair, restoration, consolidation or transfer of the place of deposit of the protected movable property without obtaining the prior authorization from the Minister in charge of heritage.

The attempt is punishable.

In the event of recidivism, the punishment will be doubled.

Article 83 (ter) - Is punished with a three year imprisonment and a thirty thousand dinar fine whoever destroys, cuts down, degrades, mutilates or soils in an indelible way the historical monuments, the cultural sites or cultural property cited in article 5 of the code herein.

In the event of recidivism, the punishment will be doubled.

Article 83 (quater) - Is punished with a ten year imprisonment and a one hundred thousand dinar fine whoever subtracts one of the cultural property cited in article 5 of the code herein or parceled parts of the historical monuments or coming from their breaking or decomposition, existing in the museums, deposits, cultural sites or in any other public building.

In the event of recidivism, the punishment will be redoubled.

Article 83 (quinquies) - Is punished with a three year imprisonment and a thirty thousand dinar fine whoever hides, holds, owns or disposes:

- One of the movable properties cited in article 5 of the code herein coming from the operations of excavations or drilling or other research work, or was discovered in a fortuitous way or in the course of authorized excavations,
- archaeological or historical elements or other objects coming from submarine research,
- parceled parts of historical monuments or coming from their breaking or decomposition. The attempt is punishable.

And in the event of recidivism, the punishment will be redoubled.

Article 83 (sexies) - Is punished with a ten year imprisonment and a one hundred thousand dinar fine, whoever makes the smuggling of the movable properties cited in article 5 of the code herein or all other movable properties having a national historical or scientific or aesthetic or artistic or traditional value in its country of origin.

And in the event of recidivism, the punishment will be doubled.

Article 83 (septies) – The punishment will be of a twenty year imprisonment and a two hundred thousand dinar fine if the offenses cited in articles 81 bis, 82 bis, 83 quater, 83 quinquies and 83 sexies are made:

- By an organized gang made up of three people or more formed whatever its duration, with the aim of preparing or committing these offenses,
- If the offense is transnational,

- In the event of use of one or more children in these offenses.

Article 83 (octies) – The persons having made the offenses cited in article 83 (septies) of the code herein are exempted from the due punishment if they inform, before any prosecution, the relevant authority of the agreement or the existence of the band.

Article 3 - The Minister of Culture, the Minister of Justice, the Minister of the Interior, the Minister of Finance, the Minister of Education and the Minister of State Properties and Land Affairs, each in his respective capacity, shall implement the decree-law herein which shall be published in the Official Gazette of the Republic of Tunisia.

Tunis, 25 May 2011.

The President of the Republic by interim
Fouad Mebazaâ