

GLOBAL ART AND HERITAGE LAW SERIES

ITALY & THE EU



Prepared for

COMMITTEE FOR
CULTURAL POLICY

Prepared by

Legance
AVVOCATI ASSOCIATI

In Collaboration with


THOMSON REUTERS
FOUNDATION

ACKNOWLEDGEMENTS

This report has been prepared in collaboration with TrustLaw, the Thomson Reuters Foundation's global, legal pro bono service that connects law firms and legal teams to non-governmental organisations and social enterprises that are working to create social and environmental change.

The Thomson Reuters Foundation acts to promote socio-economic progress and the rule of law worldwide. The Foundation offers services that inform, connect and ultimately empower people around the world: access to free legal assistance, media development and training, editorial coverage of the world's under-reported stories and the Trust Conference.

TrustLaw is the Thomson Reuters Foundation's global pro bono legal service, connecting the best law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change. We produce groundbreaking legal research and offer innovative training courses worldwide. Through TrustLaw, over 120,000 lawyers offer their time and knowledge to help organisations achieve their social mission for free. This means NGOs and social enterprises can focus on their impact instead of spending vital resources on legal support. TrustLaw's success is built on the generosity and commitment of the legal teams who volunteer their skills to support the NGOs and social enterprises at the frontlines of social change. By facilitating free legal assistance and fostering connections between the legal and development communities we have made a huge impact globally.

We have supported grassroots organisations to employ their first staff members, helped vulnerable women access loans to start their first businesses and brought renewable energy lighting to slums. Free legal assistance on these small projects has had a big impact on local communities working to overcome poverty and discrimination. At a global scale, we have supported legal reform activities to protect the rights of millions of domestic workers, changed legislation to support victims of violence, produced guides to protect people who experience street harassment, and crafted tools to support the prosecution of trafficking offenders.

Legal research reports and other TrustLaw publications are legal resources that take an in-depth look at a legal issue in a number of countries. This may be in the form of a comparative analysis of laws in different countries, or a legal landscape analysis. These resources aim to help TrustLaw members advocate for legal reform, inform policy activities or propose legal amendments.

Our resource library can be found on the TrustLaw homepage at www.trust.org.

The Committee for Cultural Policy Inc. (CCP) is a 501(c)(3) U.S. non-profit organization established to strengthen the public dialogue on arts policy and to support museum and cultural development around the world.

CCP supports public appreciation for the art of ancient and indigenous cultures. It provides resources to educational institutions, press and policy-makers. It encourages policies that preserve artifacts and archaeological sites, adequate funding for site protection, safe harbor in international museums for at-risk objects, uncensored academic research, and the development of regulatory structures that foster the lawful collection, exhibition, and global circulation of artworks.

The Global Art and Heritage Law Series is an initiative of the Committee for Cultural Policy, Inc. In addition to the Global Art and Heritage Law Series, CCP publishes in-depth legal and policy analysis and the online journal, Cultural Property News. The websites of the Committee for Cultural Policy are www.culturalpropertynews.org and www.culturalpropertylaw.org.

The Committee for Cultural Policy wishes to express its heartfelt thanks to Olivia Franklin and Hazel Levent of White & Case, who brought consummate organizational skills, patience, and dedication as well as legal expertise to this project. Without their generous contributions, the Global Art and Heritage Law Series could not have been completed.

Acknowledgements: Cecilia Carrara, Marialuisa Garavelli, Sara Colombera

Editor of Global Art and Heritage Law Series: Kate Fitz Gibbon

Reports Series Design: Walberg Design

Cover photo: Marble statue of an athlete. Le Foro Italica, called in the 1930s Foro Mussolini, a massive ensemble of sixty sculptures depicting heroes engaged in various sports and games, erected during the fascist era under the direction of the architect Enrico Del Dubbio, and inaugurated in 1932. Photo by Jean-Pierre Dalbéra from Paris, France, 11 June 2011, Creative Commons Attribution 2.0 Generic license. Image has been cropped.

DISCLAIMER: This Report and the information it contains is provided for general information purposes only. It has been prepared as a work of legal research only and does not represent legal advice in respect of the laws of the relevant countries described herein. It does not purport to be complete or to apply to any particular factual or legal circumstances. It does not constitute and must not be relied on or acted upon as legal advice or create an attorney-client relationship with any person or entity. Neither the Thomson Reuters Foundation, Legance Avvocati Associati, the Committee for Cultural Policy nor any other contributor to this Report, accepts responsibility for losses that may arise from reliance upon the information contained in this Report or any inaccuracies herein, including changes in the law since the research was finalized in 2019. Legal advice should be obtained from legal counsel qualified in the relevant jurisdiction(s) when dealing with specific circumstances. Neither the Thomson Reuters Foundation, Legance Avvocati Associati, the Committee for Cultural Policy nor any other contributor to this Report is holding itself, himself or herself out as being qualified to provide legal advice in respect of any jurisdiction as a result of his or her participation in or contribution to this Report.



*Archaeological site with ancient Greek temple of Segesta in Sicily,
Photo by Rabel, 29 March 2015, Creative Commons Attribution-Share Alike 4.0 International license.*

TABLE OF CONTENTS

I. INTRODUCTION	6
1. Italy, land of art and history	6
2. Brief abstract of the content of this report	7
II. BRIEF GLIMPSE OF THE HISTORICAL EVOLUTION OF ITALIAN LAWS FOR THE PROTECTION OF CULTURAL HERITAGE	9
1. Pre-Unification protection measures	9
2. The Edict of Cardinal Pacca	9
3. Post-Unification protection measures	10
III. THE MAIN LEGISLATIVE TEXTS CURRENTLY APPLICABLE IN ITALY	11
1. The Constitution	11
2. The Code of Cultural and Landscape Heritage	12
3. Other legislative instruments adopted by the Italian legislature to regulate more limited and specific matters	13
4. Regional legislation	14
5. The EU legislation	16
6. Other international treaties, conventions and agreements	16
IV. CULTURAL PROPERTY: DETERMINING THE OBJECTS UNDER PROTECTION AND IDENTIFYING THE COMPETENT AUTHORITIES	19
1. What can be considered “cultural property”	19
2. Public ownership: cultural property as part of the public domain	21
3. The process of verification or declaration of existence of cultural interest	21
4. Particular categories of cultural property	23
5. Cataloguing, supervision and inspection of cultural property	28
6. Protection and enjoyment of cultural property	29
(i) Forbidden activities	31
(ii) Conservation measures	32
(iii) Financial Contribution by the Ministry for the conservation of cultural property	33
(iv) Mandatory custody of cultural property	34
(v) Gratuitous loan and deposit of cultural property	34
(vi) Authorizations for exhibits and expositions	34
7. Sanctions	35
(i) Administrative sanctions	35
(ii) Criminal sanctions	35
V. THE CIRCULATION OF CULTURAL PROPERTY	36
1. Circulation within national borders	36
(i) Cultural property forming part of the public domain	36
(ii) Prohibition on selling cultural property	36

(iii) Buildings that are part of the public domain and that can be sold upon ministerial authorization	37
(iv) Other cultural property that can be sold upon ministerial authorization	37
(v) Sale of cultural property to the State	38
(vi) Notice of transfer	38
(vii) Preemptive right of the State	39
(viii) Obligation to report commercial activities and keep a register	40
2. International circulation of cultural property	41
(i) Definitive exit from Italian territory (Art. 65 of the Code)	42
(ii) Certificate of Free Circulation (Art. 68 of the Code)	43
(iii) Compulsory Purchase by the Ministry (Art. 70 of the Code)	43
(iv) Temporary exit for exhibition purposes (Art. 66 of the Code)	45
(v) Other hypothesis of temporary exit (Art. 67 of the Code)	44
(vi) Certificate of temporary circulation (Art. 71 of the Code)	45
3. Exportation of cultural property outside of the EU and process for restitution	46
4. Importation of cultural property	47
5. Unlawful circulation of cultural property	47
(i) Administrative sanctions	47
(ii) Criminal sanctions	48
V. THE EU LEGISLATION	49
1. The EU Regulation on the export of cultural goods	49
(i) Export License	50
(ii) Competent Authority	50
(iii) Exception	51
2. The EU Directive on the return of cultural goods unlawfully removed from the territory of a Member State	51
3. The works in progress within the European Union to integrate the current legal framework	51
VI. INTERNATIONAL TREATIES AND CONVENTIONS	53

I. INTRODUCTION

1. Italy, land of art and history

The artistic tradition is deeply rooted in Italy, as Italian art has developed in the Italian peninsula since prehistoric times. Art in Italy was strengthened and refined during Roman times when Italy was at the center of the artistic culture in the European and Mediterranean world.

The Romans developed a unique artistic culture right after the Punic Wars. As a result of the conquest of cities located in Magna Graecia and Greece, Roman art during this period was deeply influenced by Hellenism and perpetuated Hellenistic classicism, albeit with considerable developments and variances. The Romans developed construction techniques that allowed the construction of grandiose monumental complexes, as well as new artistic forms not performed by Greeks, such as historical reliefs and portraits, which were also used by the emperors to display the fame and glory of their reign.

After the fall of the Western Roman Empire in the fifth century AD, its Eastern part survived another thousand years and Byzantine art deeply influenced the artistic culture in the Italian peninsula until the end of the thirteenth century.

For example, the city of Ravenna – which was the capital of the Western Roman Empire during the age of Galla Placidia (402-476), of the Reign of the Ostrogoth and the Age of Teodorico (493-553) and of the Byzantine Exarchate during the Age of Giustiniano (568-751) – is dotted with extraordinary monuments influenced by Byzantine art and which are covered with priceless mosaics, such as the Basilica of Sant'Apollinare in Classe or the Basilica of San Vitale.

Significant architectural works from the Byzantine era can also be found in Rome (Santa Prassede and Santa Maria Antiqua), in Venice (Basilica di San Marco) and in Reggio Calabria (Cattolica di Stilo).

In the early Middle Ages, Benedictine monasticism arose and developed in Montecassino. Due to their destruction and subsequent reconstruction, very few traces of the great abbeys remain today. However, substantial remains of frescoes can be found in the churches of San Benedetto in Malles and San Procolo in Naturno.

The Cistercians brought Gothic art to Italy, which spread to architecture. In contrast to northern Europe, the Roman tradition was deeply rooted in the Italian peninsula. As such, the epitome of Gothic architecture in Italy is not characterized by large windows and vertical development, but rather by an intermediate form, the masterpieces of which are Cathedral of Siena and the Basilica of San Francesco in Assisi.

In painting, the mendicant orders of Franciscans and Dominicans had considerable influence in leading to a more popular and more intelligible artistic style than the abstract detachment of the Byzantine figures. Such painting revolution began with Pisan and Florentine masters and culminated with Giotto, who marked the breaking point of Italian art from the Byzantine style towards the Renaissance: one of his most famous masterpieces is the Crucifix of Santa Maria Novella in Florence, as well as the cycle of frescoes in the Scrovegni Chapel in Padua.

The Renaissance began in Italy in the fourteenth century, starting with the humanistic awakening of the literature of Petrarch and Boccaccio and the rediscovery of Roman art, perspective, body proportions and use of light.

This artistic revolution – whose greatest exponents were Filippo Brunelleschi and Leon Battista Alberti in architecture; Masaccio, Filippo Lippi and Sandro Botticelli in painting; and Donatello and Lorenzo Ghiberti in sculpture – started in Florence, followed by the other Italian cities, including Rome.

On the eve of the sixteenth century, Leonardo da Vinci, Michelangelo Buonarroti and Raffaello Sanzio came into the limelight and created some of the most famous masterpieces of art in the world.

Unlike the Renaissance's masters of art, artists of the mid-sixteenth century declined to observe nature, light, colors and naturalistic perspective in favor of a more subjective perception and introduced in their artworks distortion, exaltation and expressive whims.

Among those masters, the most representative artists of Italian mannerism were Tintoretto and Paolo Veronese.

At the beginning of the seventeenth century, a new ideological and cultural era arose in Rome which, ever since, has been improperly named Italian Baroque.

Indeed, Baroque is used to highlight the bizarre extroversion, fantasy and exaggeration of a few artistic manifestations, despite the fact that in Italy this artistic period is marked by strong references to classicism, with the classical language remaining the common point of reference for artists.

When referring to Italian Baroque, the legacy of two great artists immediately come to mind: Gianlorenzo Bernini and Francesco Borromini to whom Rome owes its present appearance.

On to the nineteenth century, the Macchiaioli movement was the most committed and constructive artistic movement in Italy.

Formed in Florence in 1855, it was born as a reaction to the formal inertia of the Academies and also in relation to the ideological ferment of the national Risorgimento.

The Macchiaioli movement affirms the theory of the “spot”, claiming that the vision of forms is created by light as stains of color, distinct, combined or superimposed on other stains.

The primacy of Italian sculptors, painters, architects and artists, which dominated the art scene in Europe for centuries, ended abruptly with the rise of nationalism and the unification of Italy.

At the end of the nineteenth century towards the beginning of the twentieth century, Italian artists once more caused a stir with Futurism. From a stylistic point of view, Futurism naturally shares Cubist principles of decomposing form into visual planes and representing them on canvas. However, as opposed to Cubism, which used decomposition to make the vision of the relevant subject stationary, along with a spatial fourth dimension, Futurism uses decomposition to express both the temporal dimension and movement.

2. Brief abstract of the content of this report

In Italy, unlike the artistic tradition, the definition of cultural heritage is quite recent and represents the point of arrival of a long and laborious legislative journey.

As illustrated in the following paragraphs, the adoption of the very first legislative texts aimed at protecting cultural property dates back to the Renaissance, while the first organic and comprehensive legislative measure on cultural property was adopted only in 2004, when the Code of Cultural and Landscape Heritage was ratified by the Italian Parliament.

The Code starts by setting out fundamental principles and notions, which are central to and underlie the entire legislation. The very use of the term ‘Code’ is representative of the legislators’ intentions to go beyond the mere consolidation of a plurality of special provisions in a single text, and to build an autonomous and innovative regulatory statute.

Art. 1 of the Code sets out the principle that the implementation of art. 9 of the Constitution passes not only through the protection, but also the enhancement, of cultural heritage. Indeed, the entire legislation revolves around the relationship between these two principles, as well as the distribution of responsibility for the protection and enhancement of cultural heritage between the State and local authorities.

Indeed, while the Code represents the main regulation governing cultural heritage issues in Italy, the safeguarding, enhancement and enjoyment of cultural property is also regulated by Regional laws and legislative orders, enacted by each and every one of the twenty Regions in Italy within the limits granted to the Regional legislative bodies by the Constitution.

In addition to legislative interventions at regional level, over the past years there have been several interventions in specific and restricted sectors related to cultural property matters by the competent Ministry for Cultural Heritage and Activities, as well as by the President of the Republic of Italy.

In this report, we will not only deal specifically with the Italian legislative landscape of the protection of cultural property, but also with the European and international regulations on the subject, as the latter take on the same value as a rule of constitutional rank by virtue of a specific provision of the Italian Constitution.

The supremacy of international treaties and conventions lies in Article 11 of the Constitution, which provides that *“Italy allows (...) the limitations of sovereignty necessary for a system that ensures peace and justice between nations, promotes and favors international organizations for this purpose”*.

Detail of the apse, ceiling mosaic of Lamb of God and angels in the Basilica of San Vitale, built A.D. 547, Ravenna, Italy. A World Heritage site. Photo by Vvlasenko, 8 June 2016, Creative Commons Attribution-Share Alike 3.0 Unported license.



II. BRIEF GLIMPSE OF THE HISTORICAL EVOLUTION OF ITALIAN LAWS FOR THE PROTECTION OF CULTURAL HERITAGE

1. Pre-Unification protection measures

The protection of cultural heritage is rooted in the Renaissance era.

In the fifteenth and sixteenth centuries, the pillaging of archeological treasures and works of art by merchants, owners and foreign collectors became a widespread phenomenon in Latium and in Tuscany. As a result, the first protection measures were enacted in the Papal State and in the Grand Duchy of Tuscany, where the Medici family were particularly sensitive to the issue of safeguarding the heritage of fine arts.

The oldest measure, adopted with the aim of reducing the looting of remains of the Roman era, was ruled on 28 April 1462 by Pope Pius II, who – through the bull *Cum alman nostram urbem* – prohibited the collection of samples of ancient buildings and remains within the municipality of Rome without the express permission of the Supreme Pontiff. The infringement of said prohibition was punished by excommunication, imprisonment and assets seizure.

Specific powers for the protection of ancient vestiges were then delegated to the Antiquities Committee, established by Pope Paul II in 1534.

Protective measures were also enacted in the Grand Duchy of Tuscany: in 1571 a law came into force prohibiting the removal of emblems and inscriptions from historical buildings. Afterwards, in 1602, a legislative text was adopted providing a formal ban on the export of paintings of eighteen deceased artists listed therein, such as Giotto, Michelangelo, Botticelli and Benvenuto Cellini, also appointing a special board (formed by twelve members of the Drawing Academy) in charge of the evaluation and the possible granting of exceptional export permits within the legal framework set forth thereunder.

From then on, throughout the sixteenth and seventeenth centuries, the prohibitions and restrictions on exports continued apace in other Pre-unification States, confirming their awareness of the great importance of Italian cultural heritage.

In 1754, during the era of Maria Theresa of Austria, an official prohibition on the export of works of art was adopted in Lombardy.

On 26 December 1754, in the Grand Duchy of Tuscany, a *Motu Proprio* was promulgated whereby the protection measures adopted in 1602 were extended to sculptures, sacred ornaments, vestments, manuscripts, books, ancient paintings and in general to works of art which fall into the category of artefacts of the utmost artistic value.

In the Kingdom of Naples and the Two Sicilies, in 1755, Charles III (also known as the “enlightened monarch”) promulgated the *Prammatica LVII* with the aim of protecting the excavations of Pompeii, Stabia and Herculaneum against pillaging.

In 1773, protection measures were adopted in Venice by establishing the first catalogue of public paintings and by creating the office of the General Inspectorate, which aimed to safeguard such works of art.

Although the measures enacted between the fifteenth and eighteenth centuries failed to achieve the purpose underlying their relevant adoption (as a considerable number of artefacts were in fact exported abroad),¹ nonetheless, those early measures were the basis of future Italian laws for the protection of cultural heritage.

2. The Edict of Cardinal Pacca

In the context of the early measures adopted in the Pre-Unification States, the Edict of Cardinal Pacca deserves a special mention.

Indeed, the Edict of Cardinal Pacca – adopted on 7 April 1820 during the papacy of Pius VII – represents the first organic legislative text dedicated to the protection of cultural heritage, which inspired the promulgation of new regulations in other Pre-Unification States as well.

This Edict was formed of 61 articles, addressing all the issues related to the safeguarding of cultural heritage within

¹ In this regard, we need only point out the plunder of works of art undertaken by Napoleon throughout the years 1796 and 1815.



Still life with glass bowl of fruit and vases from the House of Julia Felix in Pompeii, 63-79 AD, Naples National Archaeological Museum, Accession number 8611. The Yorck Project (2002) 10.000 Meisterwerke der Malerei (DVD-ROM), compilation copyright Zenodot Verlagsgesellschaft mbH, licensed under the GNU Free Documentation License.

the Papal States, the fundamental principles of which can be summarized as follows:

- restrictions and strict surveillance on archeological excavations within of the territory of the Papal States;
- general ban on the export of works of art without a license granted by Cardinal Pacca himself;
- imposition of conservation and restoration obligations on the owners of cultural property;
- implementation of a comprehensive catalogue of cultural property within the territory of the Papal States.

As mentioned above, the Edict of Cardinal Pacca was an example for new regulations adopted in other Pre-unification States.

For example, right after the promulgation of the Edict of Cardinal Pacca, from 1822 to 1827, Federico I adopted comprehensive legislation on cultural property, also providing (for the first time in the history of the protection of cultural heritage) a pre-emptive right in favor of the State in relation to any and all transfers of artefacts pertaining to cultural heritage.

3. Post-Unification protection measures

After the unification of Italy in 1861, it was not until the first decade of the twentieth century that an organic body of rules of law was adopted on the protection and enhancement of cultural property.

Indeed, the first comprehensive legislative text on cultural property enacted in Italy post-unification dates back to June 20, 1909, when Law no. 364/1909 came into force.

Law no. 364/1909 was formed of 42 articles and set out specific provisions covering:

- the definition of cultural property, which was extended to include any movable and immovable assets marked by historical, archaeological, paleontological or artistic interest, including manuscripts,

- incunabula, prints, inscriptions and numismatic goods;
- a general ban on transferring public cultural property belonging to the State and to any other public entities;
- the pre-emption right in favor of the State in relation to any transfer of cultural property;
- a compulsory purchase order of cultural property to be issued by the State (at its own discretion) in case of failure by the relevant owner to comply with the restoration obligation of cultural property set forth under Law no. 364/1909.

Law no. 364/1909 was then replaced after 30 years by Law no. 1089/1939 on 1 June 1939 entitled “*Protection of goods of artistic and historical interest*”, which remained in force for the subsequent 60 years.

Law no. 1089/1939 was made up of 73 articles and – even though it failed to provide a clear definition of “*goods of artistic and historical interest*” and did not provide for the establishment of a central body dedicated to the protections of cultural property – it deserves to be appreciated even to date as it pursued the purpose of balancing the public interest in safeguarding cultural property and the private interest of their relevant owner.

In addition, Law no. 1089/1939 has to be considered the key legislative text which has served as a groundwork for the Italian Laws for the protection of the cultural heritage in force to date.²

The structure of Law no. 1089/1939

Part I: General Provisions (Arts. 1 - 10)

Part II: Protection, Conservation and Enhancement of Cultural Goods (Arts. 11 – 22)

Part III: Circulation of Cultural Goods (Arts. 23-34)

Chapter 1: Cultural Goods owned by the State and by other non-profit organizations (Arts. 23-29)

Chapter 2: Cultural Goods owned by private entities and individuals (Arts. 30-34)

Part IV: Import and Export of Cultural Goods (Arts. 35 - 42)

Chapter 1: Import of Cultural Goods (Arts. 35 - 41)

Chapter 2: Temporary Export of Cultural Goods (Art. 42)

Part V: Findings and Discoveries (Arts. 43 - 50)

Part VI: Enjoyment of the Cultural Heritage (Arts. 51 - 53)

Part VII: Compulsory Purchase Order (Arts. 54 - 57)

Part VIII Sanctions (Arts. 58 - 73)

III. THE MAIN LEGISLATIVE TEXTS CURRENTLY APPLICABLE IN ITALY

1. The Constitution

The legislation concerning the protection of cultural heritage currently in force in the Italian Republic is quite extensive. This should not come as a great surprise considering the vast artistic and cultural heritage of Italy.

The relevance that this particular area of law has in the overall national legal framework is confirmed and underlined by the fact that the protection and development of culture in Italy is one of the twelve fundamental principles outlined in the Italian Constitution, the primary legislative text of the Republic, which was endorsed in 1947 after the end of World War II, of fascism and of the monarchy.

Art. 9 of the Italian Constitution sets forth that “*The Republic promotes the development of culture and of scientific and technical research. It safeguards natural landscape and the historical and artistic heritage of the Nation.*”

² Indeed, the Legislative Decree no. 490/1999 on 29 October 1999, entitled “Consolidate Text on Cultural Property and Landscape”, was enacted with the sole purpose of combining and coordinating the provisions set forth under Law no. 1089/1939 with the provisions set out in Law no. 1497/1939 on 29 June 1939 (which was entitled “Protection of Natural Beauties”).



*Pompeii, Italy, photo by L-BBE, 18 July 2011
<https://web.archive.org/web/20161028014226/http://www.panoramio.com/photo/92581095>,
Creative Commons Attribution 3.0 Unported license.*

This provision holds great importance within the general context of legislation concerning the protection of cultural property in Italy as it necessarily influences the activity of the legislatures who must abide by the principle laid down therein.

In this respect, it should be noted that the Constitution provides under Art. 117 that it is Parliament - the main legislative body of the Republic - that holds exclusive competence to enact laws in cultural heritage protection matters. However, it is specified that Regional Councils - the legislative bodies of the twenty Regions into which the Italian territory is split - can concur with Parliament in the issuance of laws for the valorization of cultural heritage and for the organization of cultural activities and events. It is therefore possible for Regions to promulgate laws on cultural matters, although, in doing so, Regions must follow the principles set out at a national level by Parliament in accordance with the aforementioned constitutional provisions.

Regions have frequently taken advantage of this faculty. We will further analyze this below under section 4.

2. The Code of Cultural and Landscape Heritage

For many years the Italian legal framework on cultural matters was complex, fragmented and uncoordinated. It was an endless tangle of acts issued over the decades.

Finally, in 2004, the Italian legislature decided it was time to reorganize and rationalize the situation through the issuance of only one code which would encapsulate all legislation on cultural matters.

With Legislative Decree no. 42 of 22 January 2004, the so-called Code of Cultural and Landscape Heritage finally saw the light and, at the same time, all previous legislative acts were repealed and replaced.

This Code - which has been subject to some amendments and insertions since its ratification - is formed of 184 articles. It still represents the regulation of reference in Italy for all issues concerning the safeguarding, enhancement and enjoyment of cultural heritage.

The structure of the Code of the Cultural and Landscape Heritage

Part I: General Provisions (Arts. 1 - 9)

Part II: Cultural Property (Arts. 10 - 130)

Title I: Protection

Chapter 1: Object Protection (Arts. 10-17)

Chapter 2: Supervision and Inspection (Arts. 18-19)

Chapter 3: Protection and Conservation (Arts. 20 - 52)

Chapter 4: Circulation within the National Territory (Arts. 53 - 64)

Chapter 5: Circulation within International Territory (Arts. 65 - 87)

Chapter 6: Findings and Discoveries (Arts. 88 - 94)

Chapter 7: Expropriation (Arts. 95 - 100)

Title II: Enjoyment and Enhancement

Chapter 1: Enjoyment of the Cultural Heritage (Arts. 101 - 110)

Chapter 2: Principles of Enhancement of Cultural Property (Arts. 111 - 121)

Chapter 3: Consultation of Archive Documents and Safeguarding of Confidentiality (Arts. 122 - 127)

Title III: Transitional and Final Provisions (Arts. 128 - 130)

Part III: Landscape Assets (Arts. 131 - 159)

Title I: Protection and Enhancement

Chapter 1: General Provisions (Arts. 131 - 135)

Chapter 2: Identification of Landscape Assets (Arts. 136 - 142)

Chapter 3: Landscape Planning (Arts. 143 - 145)

Chapter 4: Supervision and Management of Property subject to Protection (Arts. 146 - 155)

Chapter 5: First application and transitional provisions (Arts. 156 - 159)

Part IV: Sanctions (Arts. 160 - 181)

Title I: Administrative Sanctions

Chapter 1: Sanctions relative to the Part II (Arts. 160 - 168)

Title II: Criminal Sanctions

Chapter 1: Sanctions relative to the Part II (Arts. 169 - 180)

Chapter 2: Sanctions relative to the Part III (Art. 181)

Part V: Transitional Provisions, Abrogation and Coming into effect of Laws (Arts. 182 - 184)

3. Other legislative instruments adopted by the Italian legislature to regulate more limited and specific matters

Even though - as said above - the Code is the place where most answers to any query that may concern cultural heritage matters may be found, the Italian legislature has continued to be active in the development and refinement of the legal framework at hand.

Besides some amendments applied over the years to certain provisions of the Code, several legislative instruments have been continuously used by the Italian legislature to implement and integrate the regulations provided by the Code itself.

Generally speaking, by means of ministerial decrees adopted by the competent Ministry for Cultural Heritage and Activities, decrees from the President of the Republic of Italy, governmental decrees and Parliament's legislative decrees, there have been several interventions in specific and restricted sectors related to cultural property matters (e.g. rural

architecture, functioning of public registers, facilitation of access to places of public interest, etc.). Sometimes, these interventions spring from necessities arising from specific contingencies and urgent issues. For this reason, it is not unusual for law decrees, which are rapid legislative acts by the government, to focus on and apply to only a small geographical area of Italy or even to a single city. This was the case, for example, for the decrees issued following the 2012 earthquakes in Abruzzo for the restoration of the damages caused to the cultural and artistic heritage of the Region, and also in the case of the World Exposition in Milan in 2015.

Some numbers...

Since 2004 (i.e. the date of issuance of the Code of the Cultural and Landscape Heritage) we can count - at a national level - at least 17 legislative acts ratified by either the Parliament, the Government, the President of the Italian Republic or the Ministry for Cultural Heritage and Activities.

In particular, between 2009 and 2013, the main area of intervention was in restoration activities and the profession of restorer.

Lately, the legislature appears to be concerned with museums' issues. Most recently, on February 2018, the Ministry for Cultural Heritage and Activities issued a new decree that regulates the minimum quality levels that national museums should possess, and activated the National Museum System.

Aside from the most common legislative instruments mentioned above, whose enforcement is mandatory, the Ministry for Cultural Heritage and Activities is also used to issue directives and circulars aimed at addressing issues concerning technicalities and practices related to the implementation of the main legal provisions in force.

4. Regional legislation

It should be noted that each and every one of the twenty Regions in Italy has issued different laws and legislative orders to regulate the matters at stake, within the limits granted to the Regional legislative bodies by the Constitution (see above, section).

As mentioned above, as a general rule, Regions are entitled to regulate matters concerning the valorization of cultural heritage and the organization of cultural activities and events by following the principles laid down by the national legislature. However, in Italy there are five Regions³ that according to the Constitution (Art. 116) benefit from special and broader administrative and legislative powers than those pertaining to ordinary Regions (the so-called Regions with special statutes).

In relation to cultural and artistic matters, there are two Regions that took full advantage of this constitutional faculty:

- The statute of Sicily sets forth that the Region holds legislative powers over matters concerning the preservation of antiques and artistic works;
- The statute of Trentino-Alto Adige sets forth that each of the autonomous Provinces of Trento and Bolzano hold legislative powers over matters concerning the protection and preservation of their historic, artistic and folk heritage.

In other words, both Regions decided that cultural matters shall be governed by regional or provincial laws, meaning that national laws serve only as supplementary provisions. That being said, the national Code of Cultural and Landscape Heritage also applies nonetheless in the Provinces and Regions at issue.

It should be noted that:

- Since 1949, Sicily issued has almost fifty Regional Laws (the complete list can be found at the following link: <http://www.regione.sicilia.it/beniculturali/dirbenicult/normativa/leggiregionali/leggiregionali.htm>);
- The Province of Trento issued a provincial law in 2003 which was recently amended in 2017 by provincial law dated 13 October 2017, no. 13;

³ Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige and Valle d'Aosta.



Giotto di Bondone, cycle of frescoes in the Scrovegni Chapel Padua, Province of Padua, Region of Veneto, Italy, completed about 1305, Photo by Zairon, 30 September 2017, Creative Commons Attribution-Share Alike 4.0 International license.

- The Province of Bolzano has not issued any wide-ranging laws on cultural heritage matters as Sicily and Trento have done; however, a law was enacted in 1985 concerning the establishment and management of archives.

Contrary to Sicily and Trentino-Alto Adige, the remaining three Regions with special statutes (*i.e.* Friuli-Venezia Giulia, Sardinia and Valle d'Aosta) decided to leave to the national legislature the power to rule over cultural heritage matters, while reserving for themselves the right to integrate the national legislation on antiques and fine arts.

5. The EU legislation

The European Union is paying more and more attention to issues concerning the protection of the cultural heritage of its member states and the fair and lawful circulation of cultural goods outside the Union.

Currently, these are the essential European laws in place:

- i. Council Regulation no. 116/2009 of 18 December 2008 on the export of cultural goods;
- ii. 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;
- iii. 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, and amending Regulation (EU) no. 1024/2012.

EU laws are considered a primary source of law in Italy, but their prescriptive force can vary. Indeed, while EU Regulations are immediately enforceable and binding in all Member States of the Union, EU Directives must be ratified by national legislative bodies in order to be enforced.

The provisions contained in the Regulations were transposed in the Italian Code of Cultural and Landscape Heritage under Arts. 73 seq. and the Directive was ratified by means of Legislative Decree 7 January 2016, no. 2.

Furthermore, it should be noted that a new EU Regulation is in the works. In July 2017, the EU Commission drafted a proposal for the regulation of the import of cultural goods. The issuance of the new EU Regulation is expected in the second semester of 2018.

Lastly, Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty should be mentioned. This regulation, albeit not strictly related to cultural heritage matters, perfectly fits into the general European policy of encouraging member states' direct intervention in the preservation of historical and artistic goods.

Indeed, this regulation affirms that in the culture and heritage conservation sector, a number of measures taken by member states may not constitute aid prohibited by law.

For further considerations on the EU legislation please refer below to Section V of this memorandum.

6. Other international treaties, conventions and agreements

Besides the European Union, over the years Italy has adhered to and ratified several international regulations concerning cultural goods, both multilateral and bilateral.

The following list represents the main multilateral agreements to which Italy is a party:

- i. General Agreement on Tariffs and Trade executed in Geneva on 30 October 1947
- ii. Hague Convention of 14 May 1954 for the protection of cultural goods during war times
- iii. UNESCO Paris Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
- iv. UNESCO Paris Convention of 23 November 1972 for the protection of the world cultural and natural heritage



Gold coin, Tiberius, 23-24 CE, "Международный нумизматический клуб" (International Numismatic Club), Wikimedia Commons

- v. UNIDROIT Rome Convention of 24 June 1995 on stolen or illegally exported cultural objects

But Italy has also become party to bilateral agreements, not only to multilateral ones. These agreements were concluded with both public and private entities. Often, these are ad hoc arrangements executed for specific reasons such as the restitution of an artistic work (for example, in February 2018 Italy entered into an agreement with the Speed Art Museum of Louisville for the restitution of a ceramic vase from the third century CE).

Other times, these agreements aim at regulating in a broader and more lasting sense the relationship between Italy and another country and/or a foreign cultural institution, either public or private.

Please find below some of the most recent and relevant agreements that meet the above description:

- i. In 2017 Italy and Greece signed an agreement in Corfu to combat the illicit trafficking of cultural heritage;
- ii. In 2015 Italy and Iran concluded an agreement promoting cultural collaboration between the two countries;
- iii. In 2014 Italy and Japan updated their 2007 protocol of shared intents concerning the preservation and restoration of cultural heritage (Italian and Japanese) and the prevention of risks, especially those connected to earthquakes;
- iv. In 2013 Italy and the Dallas Museum of Art executed an agreement to govern their continuing collaboration and to facilitate the restitution and lending of artistic works;
- v. In 2012 Italy signed a collaboration agreement with the Chinese Province of Yunnan;
- vi. In 2011 Italy and the United States of America updated their memorandum of understanding concerning the circulation of Italian archeological materials;
- vii. In 2010 Italy and China concluded a memorandum of understanding, signaling the beginning of a partnership between the two countries in the following areas: handling and managing of cultural heritage, organization of joint expositions, continuing exchange of collections and works deposited in museums by means of long-term leases, combating the illicit trafficking of cultural goods, and technological cooperation for the protection of heritage;
- viii. In 2006 Italy and the Swiss Federal Council reached an agreement in relation to the importation and repatriation of cultural goods.

For an updated list of bilateral agreements that the Republic of Italy has entered into - either with other States or with private entities - please visit the website of the Ministry for Cultural Heritage and Activities at the following link: <http://www.beniculturali.it/mibac/export/MiBAC/sito-MiBAC/MenuPrincipale/Ministero/Accordi/index.html>.

The first G7 ministerial meeting on culture held in Florence and other joint international declarations subscribed to by the Republic of Italy

In Florence in 2017, Italy hosted the first ever G7 ministerial meeting on culture entitled "*Culture as an instrument for dialogue among peoples.*" At the end of the meeting all the ministers of culture in attendance, including the Italian minister, and the European Commissioner responsible for culture, released a joint declaration recognizing the distinctive role of culture as an instrument for dialogue among peoples as well as the importance of a common and coordinated action to strengthen the safeguarding of cultural heritage (the declaration can be read in full at the following link: www.beniculturali.it/G7culture).

In particular, in light of ever-increasing concerns about the destruction of cultural heritage sites as a result of terrorist attacks, armed conflicts and natural disasters, as well as other less dramatic dangers, the G7 ministers:

- (i) affirmed the need to promote effective implementation of existing international legal instruments for the protection of the world's cultural heritage;
- (ii) called upon all states to take steps to improve their safeguarding and preservation of cultural heritage, including the heritage of religious and ethnic minorities, as well as to identify and share best practices for fighting every form of illegal activity in this field;
- (iii) prompted the United Nations to include, where appropriate and on a case-by-case basis, when authorized by the UN Security Council, a cultural heritage protection component in security and peacekeeping missions;
- (iv) called upon all states to take strong and effective measures to combat looting and trafficking in cultural property from their places of origin, particularly from countries experiencing conflict and internal strife, and to identify and prohibit the trade in looted cultural property that has been trafficked across borders and, where appropriate, to reinforce the monitoring of free ports and free trade zones;
- (v) encouraged all States to prioritize the safeguarding and enjoyment of cultural heritage, including through the promotion of public awareness and education, in order to preserve the memory of the past for future generations, to foster cultural development, and to encourage cultural dialogue and peace among nations.

Previously, Italy had already attended other international meetings and subscribed to common declarations of intent, such as the Milan Declaration adopted on 31 July 2015, during the meeting of the Ministers of Culture of the countries participating in Expo 2015, and the Abu Dhabi Declaration made during the Conference on Safeguarding Endangered Cultural Heritage in December 2016.

Even though all the abovementioned declarations and meetings do not have prescriptive force, they are nonetheless significant because they serve as clear indications of the road that national legislatures will likely take in the near future.

IV. CULTURAL PROPERTY: DETERMINING THE OBJECTS UNDER PROTECTION AND IDENTIFYING THE COMPETENT AUTHORITIES

1. What can be considered “cultural property”

The Code of Cultural and Landscape Heritage (which - to be brief - we will hereafter refer to as simply the Code) offers us a detailed definition of what shall be considered and treated as “cultural property”.

Art. 2 sets forth that “***cultural property consists of immovable and movable goods which, pursuant to articles 10 and 11, present artistic, historical, archaeological, ethno-anthropological, archival and bibliographical interest, and of any other good identified by law or in accordance with the law as testifying to the values of civilization***”.

Yet this is just a general definition. The actual identification of what falls into the category of goods protected by the Code is more complex.

Under the abovementioned Art. 10(1) it is first of all clarified that cultural property can belong to the State, the Regions, other territorial government bodies, as well as any other public body and institution, and to private non-profit associations. The following illustrative list of examples of cultural property is also provided:

- a. the collections of museums, picture galleries, art galleries and other exhibition venues of the State, the Regions, other territorial government bodies, as well as any other government body and institute;
- b. the archives and single documents of the State, the Regions, other territorial government bodies, as well as of any other government body and institute;
- c. the book collections of libraries of the State, Regions, other territorial government bodies, as well as any other government body and institute.

However, in some cases, a specific object can be labeled as “cultural property” even though it does not belong to one of the above-indicated public subjects but to a private individual. However, in such cases in order to gain this recognition the Code provides that a special declaration of cultural interest shall be issued by the competent authorities (please make reference to Sections 3(i)(ii)] below on the process of verification and declaration of cultural interest).

In relation to this clause, Art. 10(3) offers an illustrative list of examples of cultural property, as follows:

- a. immovable and movable things of particularly important artistic, historical, archaeological or ethno-anthropological interest, which belong to subjects other than the public bodies indicated above;
- b. archives and single documents, belonging to private individuals, which are of particularly important historical interest;
- c. book collections, belonging to private individuals, of exceptional cultural interest;
- d. immovable and movable things, to whomsoever they may belong, which are of particularly important interest because of their reference to political or military history, to the history of literature, art and culture in general, or which testify to the identity and history of public, collective or religious institutions;
- e. objects, to whomsoever they may belong, that present an exceptional artistic, historical, archaeological and ethno-anthropological interest contributing to the integrity and completeness of national cultural heritage;
- f. collections or series of objects, to whomsoever they may belong, which through tradition, renown or particular environmental characteristics are as a whole of exceptional artistic or historical interest.

Finally, it is specified that cultural property includes the following items belonging either to public bodies or to private individuals, provided in this last case that a declaration of cultural interest is issued:

- a. the things which pertain to paleontology, prehistory and primitive civilizations;
- b. things of numismatic interest;

- c. manuscripts, autographs, papers, incunabula, as well as books, prints and engravings with their relative matrixes, of a rare or precious nature;
- d. geographical maps and musical scores of a rare and precious nature;
- e. photographs, with their relative negatives and matrixes, cinematographic films and audio-visual supports in general, of a rare and precious nature;
- f. villas, parks and gardens possessing artistic or historical interest;
- g. public squares, streets, roads and other outdoor urban spaces of artistic or historical interest;
- h. mineral sites of historical or ethno-anthropological interest;
- i. ships and floating objects possessing artistic, historical or ethno-anthropological interest;
- j. types of rural architecture possessing historical or ethno-anthropological interest as testimony to the rural economic tradition.

That being said, another important restriction shall be taken into consideration when it comes to determining whether a good can fall into the “cultural property” category or not. This restriction is connected with the age of the goods that aspire to be considered as cultural property.

Indeed, the Code provides that - with few exceptions⁴ - its provisions shall **not** apply, irrespective to whom these goods belong to, in the following cases:

- in case of immovable and movable goods which possess artistic, historical, archaeological and ethno-anthropological interest which are the work of living authors or which were not produced more than 70 years ago; and
- in case of objects that present an exceptional artistic, historical, archaeological and ethno-anthropological interest for the integrity and completeness of national cultural heritage which are the work of living authors or which were not produced more than 50 years ago.

Finally, Art. 11 of the Code lists a series of properties that are subject to specific protection provisions of the Code. Please find below the list of these specially protected materials:

- a. frescoes, escutcheons, graffiti, plaques, inscriptions, tabernacles and other building ornaments, whether or not they are exhibited to public view;
- b. artists' studios;
- c. public areas identified by the Municipality in which they are located as having archaeological, historical, artistic and environmental value and therefore in which commercial activity is forbidden or subject to particular conditions;
- d. works of painting, sculpture, graphic art or any art created by a living author or which was not produced more than 70 years ago with a certificate of authenticity and provenance and of which the definitive exit from the Country is forbidden;
- e. works of contemporary architecture of particular artistic value to the completion of which the State contributed financially;
- f. photographs, with their related negatives and matrixes, samples of cinematographic works, audio-visual material or sequences of images in movement, the documentation of events, oral or verbal, produced by any means, more than 25 years ago;
- g. means of transport which are more than 75 years old;
- h. property and instruments of interest for the history of science and technology which are more than 50 years old;
- i. vestiges identified by the laws in force pertaining to the protection of the historical heritage of World War I.

⁴ The regulation concerning the issuance of certificates of authenticity and provenance (Art. 64) and forgery (Art. 178) shall nonetheless be applied.

2. Public ownership: cultural property as part of the public domain

The Code has identified public bodies or private bodies with public functions as the primary legitimate owners of cultural property (*i.e.* the State, the Regions, other territorial government bodies, any other public body and institution, and private non-profit associations). Private individuals may still own cultural property, but a declaration of cultural interest by the competent ministerial authorities is needed.

This is in line with provisions in the Italian Civil Code (Arts. 822 seq.).

In particular, it is therein established that cultural property such as buildings of recognized historic, archaeological and artistic interest by measures having the force of law, and museum collections, picture galleries, archives, and libraries are part of the public domain (*demanio pubblico*).

This is of particular relevance because according to Art. 823 of the Italian Civil Code property that is part of the public domain is **inalienable** and **cannot be the object of rights in favor of third parties** except in the way and within the limits allowed by law.

It is furthermore clarified that the duties concerning the protection of the public domain lie with the administrative authorities.

3. The process of verification or declaration of existence of cultural interest

As said above, in some cases, the label of “cultural property” can be applied only after the completion of a process of verification or declaration of the existence of a cultural interest in a specific good.

These processes are governed by Arts. 12-16 of the Code.

(i) Verification of cultural interest

Immovable and movable goods belonging to one of the subjects under Art. 10(1)⁵ which possess artistic, historical, archaeological and ethno-anthropological interest and which are the work of deceased authors or which were not produced more than 70 years ago, shall undergo a verification process that must be concluded within a time period no longer than 120 days.

The competent organs of the Ministry shall, upon their own initiative (*ex officio*) or upon request by the owner of the good,⁶ verify the presence of artistic, historical, archaeological or ethno-anthropological interest on the basis of guidelines established by the Ministry itself.

When the interest at stake is ascertained, the related information shall be recorded in specific registers⁷ in order to be made public knowledge. The property shall henceforward remain subject to the provisions of the Code concerning cultural property.

But what happens when cultural interest is found to be ungrounded?

The first consequence is that the goods shall be excluded from the application of the provisions of the Code concerning cultural property.

Furthermore, if these goods belong to the State, a Region or another territorial government body, the file containing the relative information shall be forwarded to the competent offices so that they may order the release of the property from State ownership should no other reasons persist to the contrary for the public interest.

In other words, the goods at issue cease to be part of the public domain and may be freely marketed from this moment onward.

⁵ The State, the Regions, other territorial government bodies, any other public body and institution, and private non-profit associations.

⁶ For immovable property belonging to the State, the request referred to in paragraph 2 shall include lists of the properties and the relevant descriptive documents. Criteria for the preparation of the lists, and instructions for drawing up the descriptive documents and the transmission of lists and information sheets shall be established by means of a ministerial decree adopted in accord with the State Property Agency and, for buildings granted in use to the Defence administration, also in agreement with the competent directorates general for works and State property. The Ministry shall, with its own decrees, fix the criteria and the procedures for the preparation and submission of the request for verification and of the relevant identifying documentation, on the part of the other parties referred to in paragraph 1.

⁷ The descriptive information sheets for immovable property belonging to the State which have been assessed positively shall be stored in a computerized archive accessible to the Ministry and the State Property Agency, for the purposes of monitoring immovable property assets and planning work according to their respective institutional competences.



*The Ecstasy of Saint Theresa by Giancarlo Bernini, 1651. Church of Santa Maria della Vittoria, Rome.
Photo by Alvesgaspar, 11 September 2015, Creative Commons Attribution-Share Alike 4.0 International license.*

(ii) Declaration of cultural interest

The declaration of cultural interest concerns property belonging to private individuals or other subjects different than those indicated under Art. 10(1) of the Code.

This declaration shall be adopted by the Ministry for Cultural Heritage and Activities at the end of a procedure started by the superintendents, who are the territorial administrative bodies through which the administration of cultural heritage is managed by the Ministry (please make reference to section IV.6. below for further clarification of this authority).

The procedure at issue may also be prompted by a request from a Region or any other interested territorial government body.

The owner, possessor or holder, by whatever legal right, of the good that is subject to this procedure is notified of the initiation of the declaration process and is granted no less than 30 days to send any observations. If the procedure concerns building complexes, the notification shall also be forwarded to the relevant Municipality or Metropolitan Area.

If the declaration is issued, the owner/possessor/holder of the cultural property shall be notified, and the goods shall be registered in specific systems. The consultation of the information in these records shall be regulated so as to guarantee the safety of the property and the safeguarding of confidentiality.

In addition, the Ministry keeps a list of all property that has been declared to possess cultural interest.

(iii) Appeal

Interested parties are entitled to appeal the decision issued at the end of the verification process or the declaration of cultural interest.

The appeal is answered by the Ministry for Cultural Heritage and Activities.

4. Particular categories of cultural property***(i) Cultural property of religious interest***

Since the early years of the legislation for the protection of cultural heritage, goods belonging to ecclesiastical or other religious bodies have been considered as part of the national heritage.

Therefore - save for some exceptions - these goods are subject to the national legislation concerning cultural property. Of course, considering that these goods may be used to celebrate liturgical functions, the legislature has set forth specific provisions to ensure that these functions can be regularly fulfilled.

With regard to goods belonging to the **Catholic Church**, the specific regulation is mainly provided by:

- Law no. 364/1909 and
- the Lateran Pacts of 1929 regulating relations between the Catholic Church and the Italian State.

Law no. 354/1909 sets forth that property belonging to ecclesiastical bodies shall be reported to the competent administrative authority for cataloguing purposes and that they shall be - at all times - displayed to the public.

Thereafter, the Lateran Concordat of 1929 excluded the possibility of the Italian State's intervening in the management of property belonging to ecclesiastical institutes or religious associations.

At the same time, by means of the Lateran Treaty, Italy recognized the full ownership by the Holy See of a series of buildings located within Italian territory and therefore transferred (or committed itself to transfer) to the Holy See the management and administration of said buildings.

- the patriarchal Basilicas of St. John Lateran, Saint Mary Major and St. Paul, with their annexed buildings; San Callisto, adjoining Santa Maria in Trastevere (Art. 13);
- the Papal Palace of Castel Gandolfo and Villa Barberini, together with all endowments, appurtenances, and dependencies thereof; all real estate belonging to the State or to third parties situated on the northern side

of the Janiculum Hill belonging to the Sacred Congregation of Propaganda Fide and other ecclesiastical institutions facing the Vatican Palaces; the former conventual buildings in Rome attached to the Basilica of the Twelve Holy Apostles and to the churches of San Andrea della Valle and San Carlo ai Catinari, with all annexes and dependencies thereof (Art. 14).

Furthermore, it was agreed that the abovementioned buildings, as well as those used as headquarters of Pontifical institutions such as the Gregorian University, the Biblical, Oriental, and Archaeological Institutes, the Russian Seminary, the Lombard College, the two Palaces of St. Apollinaris, and the Clergy Retreat House of Sts. John and Paul, will never be subject to liens or to expropriation for reasons of public utility, save by previous agreement with the Holy See, and will be exempt from taxes, whether ordinary or extraordinary, whether payable to the State or to any other body whatsoever (Art. 16).

In 1984, the Italian Republic and the Holy See executed a new agreement amending the Lateran Concordat providing that:

- **the Holy See and the Italian Republic, each in its proper order, shall collaborate for the protection of historical and artistic heritage**; to achieve this, the two parties agreed to jointly decide upon appropriate provisions for the protection, appraisal, and enjoyment of cultural property of religious interest that belongs to ecclesiastical bodies or institutions;
- the preservation and consultation of archives of historical interest and of libraries of the same bodies and institutions shall be favored and facilitated on the basis of understandings between the competent authorities of the Italian Republic and the Holy See;
- the Holy See shall retain the power to dispose of the Christian catacombs that exist underground at Rome and other parts of the Italian territory, bearing the consequent responsibility for their custody, maintenance and preservation, but it shall waive the power to dispose of the other catacombs;
- subject to the laws of the Italian State and to any rights of third parties, the Holy See shall be at liberty to proceed with any necessary excavation and removal of sacred relics.

Similar regulations and agreements have been reached by the Italian Republic with other religious organizations as well.

(i) Archeological goods

Italian legislation for the protection of archeological heritage is quite strict. Generally speaking, the legislature is very intrusive and prone to limit to the maximum extent the proprietary rights of parties that own areas where archeological findings are likely to be found.

It is possible to declare an area of cultural interest even though no archeological findings have been found yet. This is to overcome possible objections raised by the area's owners to the carrying out of archeological excavations.

It goes without saying that if no archeological goods are found, the area loses its qualification as an area possessing cultural interest and the owner regains the full exercise of their proprietary rights over the premises.

The reason for such a legislative construction is easily understandable considering Italy's history. The historic heritage of the country is one of its most important resources and it is essential to protect it at all costs, even though this means restricting the fundamental rights of its citizens, such as proprietary rights.

Validation of the importance bestowed upon archeological matters can be found in the Code of the Cultural and Landscape Heritage where an entire chapter, "*Findings and Discoveries*," is reserved for the regulation of these issues (Arts. 88-94 and 97).

Below there is the brief recap of the main provisions contained therein:

- archaeological searches and, in general, activities for finding cultural property in any part of the national territory shall be **reserved to the Ministry for Cultural Heritage and Activities, who may grant concessions to public or private subjects** to carry out such search activities and works, and may set specific guidelines and directives for the concessionaries to follow;
- the Ministry may order, also on behalf of public or private concessionaries, the temporary occupation of the

buildings where the searches and activities are to be carried out against the payment of a compensation to the owner of the building⁸;

- the Ministry may even proceed with the expropriation of buildings for the purpose of carrying out work of archaeological interest or search activities for the discovery of cultural property;
- the Ministry can revoke the concession if the concessionaire fails to comply with the ministerial directive or if the Ministry is willing to take over the performance of the activities; in this last case, the Ministry shall reimburse the costs sustained up until that moment by the concessionaire, who can challenge the quantification of the reimbursement made by the Ministry;
- the Ministry may, upon request, consent that the findings remain, in whole or in part, within the Region or other territorial government body for exhibition purposes, on condition that the body should possess a suitable venue and can ensure the conservation and custody of the aforesaid objects.

It should be noted that carrying out archaeological researches in violation of the legal provisions set out by the Code is punishable by imprisonment of up to a year and a fine ranging from € 310 to € 3,099.⁹

Likewise, whosoever takes possession of cultural property belonging to the State that were unintentionally discovered or brought to light by planned searches can be punished by up to three years imprisonment and a fine ranging from € 31 to € 516.50. The punishment is even more severe when the offence is committed by an authorized concessionaire. In such a case, the Code provides imprisonment for a period of one to six years and a fine ranging from € 103 to € 1,033.

Ministerial concession for the performance of archaeological works

The Code only provides, under Art. 89, that the Ministry may grant concessions to public or private subjects to carry out archaeological works. The Code specifies no further requirements to obtain the concession at issue, nor does it specify the authorization process that should be followed.

To remedy this regulatory vacuum, the Ministry issued a series of circulars and operational clarifications (circular no. 24 of 4 December 2012; circular no. 3 of 9 February 2015 and its operational clarifications; circular no. 6 of 15 February 2016; circular no. 21 of 25 October 2016).

The procedure starts at the request of the applicant to the competent Superintendents of Archeology, Fine Arts and Landscape or to the Archaeological Parks, which then sends the request to the General Directorate for it to be issued with a motivated opinion.

Usually, the applicants are Italian or foreign research institutes (universities or study centers), but may also be Municipalities and other local authorities. Irrespective of who is the applicant, it is essential that the research direction be entrusted to a university lecturer in archaeological disciplines or to an archaeologist with adequate experience.

The applicant can request an annual or multi-year excavation license (generally, 3 years at most).

The above are the main provisions concerning voluntary discoveries' works, but the legislature has also regulated cases when a subject **fortuitously discovers immovable or movable objects that can be qualified as cultural property** because of their archeological interest. In such cases, the Code provides as follows:

- whosoever fortuitously discovers archeological goods shall report the discovery to the competent superintendent or mayor or to the public security authorities within 24 hours and shall provide for the temporary conservation of the goods, leaving them in the condition and place in which they were found;

⁸ The compensation shall be determined in accordance with the modalities established by the general provisions for expropriation for public use; the compensation may be paid in money, or, upon request of the proprietor, by releasing the things found or part of them when these are not of interest to the collections of the State [Art. 88(3) of the Code].

⁹ In particular, reference is made, under Art. 175 of the Code, to the following violations:

- carrying out archaeological searches or, in general, works for the discovery of cultural property without concession;
- failure to comply with the prescriptions established by the administration when granting the concession;
- failure to declare within 24 hours cultural property found fortuitously or failure to provide for their temporary conservation.

- if the above is not feasible, the discoverer shall have the power to remove the found objects in order to better ensure their safety and conservation until the visit of the competent authorities occurs and, if need be, the discoverer may ask for the assistance of public authorities;
- costs incurred for custody and removal shall be reimbursed by the Ministry;
- cultural property found underground or in sea beds by whomsoever and howsoever, shall belong to the State and shall become part of government property or of its inalienable assets;
- if cultural property is found as a result of a demolition of a building carried out on behalf of the State, the Regions, other territorial government bodies or other public bodies or institutions, they should not be given to the demolition company together with the by-product of the demolition.

Recent discoveries occurred during excavation works for the construction of new underground lines in Rome and Milan

It is common to read in the news of archaeological discoveries fortuitously made during large-scale works, especially when these works take place underground. Despite the fact that before starting excavating the ground, archaeological studies are commissioned and made to prevent damages, it is hard to avoid this kind of surprise.

That is what happened, for example, in 2018 both in Milan and in Rome, during the construction works for the new lines of the underground railway.

In Rome contractors brought to light the remains of a military building dating back to 100 A.D. which is believed to be the home of the commander in chief of the army of emperor Hadrian. The archaeological team reporting to the superintendent of Rome was immediately called on site to supervise the findings.

On this occasion, the works for the completion of the underground railway were not interrupted. However, the experts rapidly removed the findings (pavements, walls, every-day-life objects, etc.) and placed them in a safe place for their restoration and custody.

Considering that this was not the first time that archaeological remains were found during the underground railway's construction works, the competent authorities thought of realizing an archaeological underground station-museum to put all the findings on display.

Similar solutions were planned also in Milan, where the M4 line of the underground railway is under construction and several remains have been surfacing. However, with regard to the most recent finding, which is the imperial mausoleum of Maximilian dating back to 300 A.D., a solution has yet to be established. In the meantime the superintendent has stopped the excavation works to evaluate the most appropriate solution that can ensure, on the one hand, preservation of the mausoleum and, on the other, the continuation of the works.

The Code also sets the parameters for the rewarding of archaeological discoveries.

In particular, it is provided that the Ministry shall offer a reward:

- not exceeding 1/4 of the value of the findings to (i) the owner of the building in which the finding occurred; (ii) the concessionaire of the search activities; or (iii) the accidental discoverer;
- not exceeding 1/2 of the value of the findings to the owner of the building who, at the same time, is also the concessionaire of the search activities or the accidental discoverer.

On the contrary, no reward is granted to a discoverer who has entered and searched - without authorization - the property of another person.

The Ministry shall assess the value of the findings and subsequently provide the due reward that may be paid either in cash or with the release of a part of the things found. In addition, in lieu of the reward, the discoverer can request a tax credit for the same amount.

During the assessment process, the discoverer shall receive an advance payment of part of the reward equal to maximum 1/5 of the value temporarily credited to the findings.

Lastly, the final assessment of the reward made by the Ministry can be challenged by the interested parties and devolved to the decision of a third independent party.¹⁰

(iii) Collections

As mentioned above under section IV.1, collections are considered as cultural property without the need of any prior verification of cultural interest when they consist of the collections of museums, picture galleries, art galleries and other exhibition venues of the State, the Regions, or other territorial government bodies, as well as any other government body and institute [Art. 10(2) of the Code].

Contrarily, a declaration of cultural interest pursuant to Art. 13 of the Code is required in the case of other collections or series of objects possessing exceptional artistic or historical interest.

Having clarified that, the main concern of the Italian legislature has been to ensure that these collections are not dismantled (Art. 21 of the Code and Art. 727 of the Italian Civil Code). To achieve this, the authorization of the Ministry is required.

For sake of completeness, it should be noted that the Code makes also reference to special laws when it comes to the regulation of collections that are handed down by means of trust agreements (Art. 129).

(i) Contemporary works of art

According to the definition of cultural property given by the Code, no artistic work of a living author can be considered as such (Art. 10).

Even if the author is no-longer living, there are some restrictions. Generally speaking, the work must be at least 70 years old to be considered as cultural property.

It should, moreover, be mentioned that up until 2017 this threshold was set at 50 years.¹¹

The above categorization boundaries serve to provide a clear distinction between what can be considered as cultural property, hence falling within the scope of the Code, and what can be conversely considered as an artistic work protected by the laws on copyrights and patents.

Such laws differ from those concerning cultural heritage mainly because, while the latter are aimed at protecting the artistic work itself as part of the cultural heritage of the Country, the first aim at safeguarding the (economic and moral) rights and interests of the artist.

Furthermore, while the Code imposes specific constraints on the use and enjoyment of cultural property by its legitimate owners, actually laying duties and obligations upon them, the same cannot be found in the laws protecting copyrights and patents.

That being said, the Code does not completely disregard these contemporary works of art when it comes to regulating the circulation of art and its commercialization.

As a matter of fact, the Code sets forth that *“whosoever conducts activities of sale to the public, of exposition for commercial purposes or of mediation for the purpose of selling works of painting, sculpture, graphic art or of antique objects or objects of historical or archaeological interest, or whosoever in any case habitually sells the aforesaid works or objects, must provide the buyer with documentation certifying authenticity, or at least probable attribution, and provenance; or, lacking such, declaration must be provided containing all the information available with regard to the authenticity of the work or object or to its probable attribution and provenance, according to the procedures provided for by the legislative and regulatory provisions pertaining to administrative documentation. Such a declaration, where the nature of the work or the object permits, shall be affixed upon a photographic copy of the same”* (Art. 64).

In other words, it is mandatory to provide artistic works with a certification of authenticity and of provenance in order to expose or sell them to the public, irrespective of their qualification as cultural

¹⁰ Pursuant to Art. 93(3)(4) of the Code, *“if the persons or parties entitled do not accept the definitive assessment of the Ministry, the value of the things found shall be determined by a third party, appointed by agreement of the parties concerned. If they do not reach agreement for the appointment of a third party or for its replacement, whenever the third party appointed does not wish to or cannot accept the appointment, the appointment shall be made, upon request of one of the parties, by the president of the court having jurisdiction over the area in which the things were found. The costs of the assessment shall be advanced by the person or party entitled to the reward. The assessment of the third party may be contested in case of error or manifest inequity.”*

¹¹ This time limit is yet the same for works of exceptional interest for the integrity and completeness of national cultural heritage [Art. 10(5)].



Sandro Botticelli (1445-1510), *Primavera*, 1482, Uffizi Gallery, <http://www.googleartproject.com/collection/uffizi-gallery/artwork/la-primavera-spring-botticelli-filipepi/331460/>

property or not. This means that even works of living authors or works dated less than 70 years old - hence covered by the laws on copyrights and patents - are nonetheless subject to the provision above.

Likewise, the Code provides that those who regularly deal in the abovementioned objects of art shall report their activity to the competent superintendent and to the Region [more on this at following section IV.1.(viii)].

That is not all. The Code also ensures that contemporary works of art and not only cultural property are protected from forgery (Art. 178).

Indeed, the provisions on forgery apply to paintings, sculptures, graphic arts, antique objects and to objects of historical or archaeological interest with no mention of their necessary qualification as cultural property.

5. Cataloguing, supervision and inspection of cultural property

The task of cataloguing, supervising and inspecting cultural property is assigned to the Ministry for Cultural Heritage and Activities, with the collaboration of Regions and of other territorial government bodies who operate under the Ministry's supervision and coordination (Arts. 17-19 of the Code).

The data is gathered into the national catalogue of cultural property. The information concerning cultural property owned by private individuals is kept confidential.

Some numbers...

Illustrated below is a table recapping, as of 2017, the number of information sheets on cultural property catalogued for each Italian Region (one information sheet is drafted for every single cultural property).

Regions	Sheets
Piemonte	127,519
Valle d'Aosta	1,169
Lombardia	180,064
Trentino Alto Adige	16,179
Veneto	281,285
Friuli Venezia Giulia	14,315
Liguria	131,067
Emilia Romagna	234,195
Toscana	458,848
Umbria	49,859
Marche	196,372
Lazio	266,367
Abruzzo	103,091
Molise	56,324
Campania	287,919
Puglia	137,110
Basilicata	32,348
Calabria	58,988
Sicily	20,161
Sardinia	63,074
Total amount	2,716,254

Online catalogue of cultural property

The Ministry for Cultural Heritage and Activities, in collaboration with the Central Institute for Cataloging and Documentation have created a specific website where it is possible to consult the general catalogue of the cultural property in Italy.

The catalogue can be consulted at the following link: http://www.catalogo.beniculturali.it/sigecSSU_FE/Home.action?timestamp=1537976348736

Currently, this general catalogue - which is being constantly updated - counts 831,078 information sheets against the over 2,700,000 sheets collected by SIGECweb, which is the official web-operator handling the whole catalogue.

The online catalogue is divided into different sections on the basis of the type of cultural property.

The superintendents may at any time carry out inspections for the purpose of ascertaining the existence and the state of conservation and conditions of custody of cultural property, with prior notification of no less than 5 days, with the exception of cases of extreme urgency.

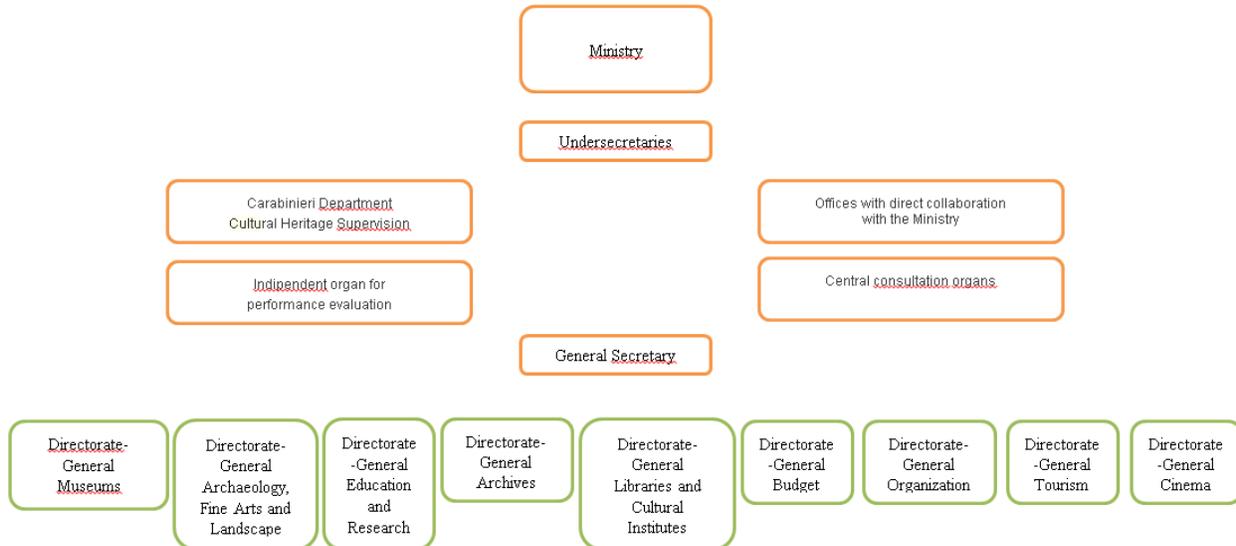
6. Protection and enjoyment of cultural property

Responsibility for the protection of cultural property lies with the Ministry for Cultural Heritage and Activities with the

help of its territorial and other law enforcement authorities.

The structure and functioning of the Ministry is quite complex. Currently, the Ministry employs almost 20,000 people.

Organization Chart of the Ministry for Cultural Heritage and Activities



As illustrated above, among the law enforcement forces that report to the Ministry there is the *Carabinieri* Command for the Protection of Cultural Heritage (*Carabinieri* PCH). This is a special unit established since 1969 focused on the protection of national cultural property through the prevention and repression of criminal conduct, the recovery of looted cultural property and the cooperation with other police forces and international organizations.

In particular, this special unit is dedicated to the direct surveillance of locations where cultural property can be found (e.g. archaeological sites, galleries, museums, etc.) or to check with the legitimate owners of cultural property whether the surveillance system they implemented is sufficient. Moreover, this particular branch of the *Carabinieri* force monitors the on-line traffic of cultural property and cooperates with INTERPOL.

Some numbers...

The *Carabinieri* Command for the Protection of Cultural Heritage created a web database collecting all available information, also photographic, on stolen artworks. This database, named “Art Held Hostage” is publicly available at the following link: <http://tpcweb.carabinieri.it/SitoPubblico/search>

For several years now, the *Carabinieri* has published a bulletin of stolen works of arts. According to their experience, such a catalogue has proved to be an effective aid in the fight against national and international illegal art trade.

According to a study of Eurispes dated 2003, in the previous 20 years, 39,000 robberies were registered (20,000 from private individuals and 15,000 from churches, whereas museums are far less affected). Overall, 673,624 items of cultural property were stolen and less than 1/3 of them were actually recovered.

The *Carabinieri* exhibit the art recovered or confiscated in their vault in Rome, through which € 8,7 billion worth of art has passed in the last 50 years. The table below reproduces the most recent statistics on the total number of theft of cultural properties registered in the last years.

No. Theft

For the regular and efficient functioning of the Ministry, the work carried out by its peripheral extensions is essential. Each Region has a commission for cultural heritage protection.

But, above all others, the Ministry avails itself of the collaboration of **superintendence offices (*soprintendenze*)**, which are directorial offices specializing in cultural matters.

Currently, there are thirty-nine of them distributed throughout the Italian territory. Some of them are competent for an entire Region, others for one or more Provinces.

Superintendents supervise the main administrative process required for the enjoyment and the circulation of cultural property.

Among their tasks, superintendents used to overview and handle collections and property meant for public use, such as monuments and museums.

Yet recently things have changed.

Nowadays **museums** are handled by peripheral offices of the central Directorate-General of Museums which in turn directly responds to the Ministry. In its own words, the mission of the Directorate-General is to favor research and the dissemination of knowledge of the Italian cultural heritage kept in museums and presented in cultural places, in order to share their value and originality with the rest of the world. It works to ensure complete access to and use of cultural heritage, monitoring the efficiency and quality of the services available to the public. It promotes innovative management systems, including interactive elements, for museums and cultural places. It plans for the future through the conservation of heritage and promotion of creativity, quality of life, and cultural diversity in their territory.

According to the most recent reform introduced by the legislature in 2014, *“museums are non-profit, permanent institutions in the service of society and its development. They are open to the public and perform research, with tangible and intangible evidence of mankind and man’s environment; they acquire it, conserve it, communicate it and display it for study, entertainment and educational purposes, promoting awareness of it among the public and the scientific community”*.

State museums are technically and scientifically autonomous, and work to protect and develop their collections, insuring them and promoting their use by the public.

Every museum has its own charter, drawn up in compliance with the *“Act of address on technical-scientific criteria and development standards for museums”* (Ministerial Decree 10 May 2001), and its own financial statements, created in compliance with principles of publicity and transparency, which highlight the planning and results of its financial and accounting management.

The Directorate-General of Museums prepares operating and development standards for museums and checks their observance by state museums. It also assesses individual managements in terms of expense, efficiency and effectiveness, as well as the quality of services provided for collection use and development.

The *“Act of address on technical-scientific criteria and operating and development standards for museums”* establishes minimum requisites.

The new organization of state museums consists of thirty museums of considerable national importance, with special autonomy, and more than five hundred institutions including museums, archaeological areas and parks and monuments distributed throughout Italy. These are managed by seventeen Regional museum complexes.

(i) Forbidden activities

When regulating the protection of cultural property, the Code provides different levels of safeguards: certain activities concerning cultural property are absolutely and always forbidden, others are allowed but only upon the prior authorization of the Ministry.

Among the first category of **forbidden activities**, there is the destruction and damaging of cultural property as well as the use of such property in a way that is not compatible with the historic or artistic value of the property or that may hinder their conservation (Art. 20).

On the other hand, the following actions are allowed but are subject to the **prior authorization of the Ministry**:

- a. the demolition and the removal of cultural property, even when their subsequent reconstitution is provided for;
- b. the moving of cultural property, even when temporary;¹²
- c. the dissolution of collections and series;
- d. the discarding of documents in either public archives or in private archives declared as possessing cultural interest;
- e. the handover to other corporate entities of organized sets of documentation belonging to public archives, as well as of archives belonging to private persons.

In cases other than those set out in the above paragraphs, the execution of work of any kind on cultural property is subject to prior authorization by the superintendent. The authorization shall be granted on the basis of the project plan or, when sufficient, on the basis of the technical description of the work presented by the applicant. The authorization may also contain prescriptions.

If the authorization request comes from a public entity, the Ministry may enter into an agreement with the requesting party.

(ii) Conservation measures

Conservation of cultural heritage is ensured by means of the continuous implementation of the following three types of actions which are the responsibility of each owner of cultural property:

- prevention activities to limit any possible situation of risk;
- maintenance activities and work to be carried out for the purpose of controlling the conditions of cultural property and maintaining their integrity, functionality and identity; and
- restoration interventions on property.

The Ministry sets out the main guidelines, technical regulations, criteria and models for the conservation of cultural property, it being understood that maintenance and restoration works concerning movable cultural property and the decorated surfaces of architectural property shall be carried out exclusively by qualified restorers.¹³

Restoration and conservation works can either be voluntarily carried out by the owner and/or possessor of cultural property or they can be ordered by the competent authorities.

In the first case, works shall be authorized beforehand by the Ministry which shall, at the request of the interested party, give its opinion as to the eligibility of the works for State funding¹⁴ and may certify the essential nature of aforesaid works for the purpose of eligibility for the tax deductions provided for by law (Art. 31 of the Code).

As said above, restoration and conservation works can also be ordered by the Ministry. In such cases:

- the competent superintendent shall compile a technical report and declare the necessity of the measures to be carried out on cultural property;
- the technical report is sent to the owner, possessor or holder of the property, who may submit observations within 30 days;

¹² If the owner of cultural property moves their place of residence, the competent superintendent shall be notified of this move. The superintendent may reply to the applicant within 30 days by giving specific instructions for the logistics of the move to ensure that the cultural property will not be damaged during the move.

¹³ The job descriptions of restorers and other workers who carry out activities which are complementary to restoration or to other activities for the conservation of movable cultural property and of decorated surfaces of architectural property are defined by the Minister's decree adopted under article 17, paragraph 3, of law no. 400 of 23 August 1988, in agreement with the State-Regions Conference. The criteria and quality control levels to be met by the teaching of restoration are defined by the Minister's decree pursuant to article 17, paragraph 3, of law no. 400 of 1988 in accord with the Minister of Education, Universities and Research, and with prior consultation of the State-Regions Conference.

¹⁴ Each year the Ministry for Finance establishes the amount of financial resources available to fund conservation and restoration work on cultural property.



The Colosseum or Flavian Amphitheatre in Rome, Italy. Construction began under the emperor Vespasian in 72 AD, and was completed in 80 AD under the emperor Titus. Photo by Sam Valadi, 10 September 2012, Creative Commons Attribution 2.0 Generic license.

-if there is a situation of urgency, the superintendent may immediately adopt the necessary conservation measures.

The legislature also regulated the support of costs arising from the imposed performance of conservation and restoration works (Art. 34 of the Code). In particular, it is provided as follows:

- the expenses incurred for activities and works carried out on cultural property, even when directly executed by the Ministry, shall be borne by the owner, possessor or holder of the interested property;
- however, if the conservation and restoration measures are significant or if they are carried out on property granted in use to, or for enjoyment by, the public, the Ministry may financially contribute in whole or in part;
- if the owner, possessor or holder of the cultural property at stake has already advanced the payment of the conservation interventions, the Ministry can proceed to their reimbursement;
- with regard to expenses incurred in direct action measures, the Ministry shall determine the amount to be charged to the owner, possessor or holder of the interested cultural property and shall pursue recovery of the expenses according to the relevant laws for the compulsory collection of government property revenues.

(iii) Financial Contribution by the Ministry for the conservation of cultural property

The Ministry may contribute to the expenses borne by the owner, possessor or holder of the cultural property for the execution of conservation measures for a sum not exceeding half of the total amount of expenses unless the measures at stake are of particular significance or concern property used or enjoyed by the public. In this last case, the Ministry may contribute to the expenses even for the full amount (Art. 35 of the Code).

In 2012, the implementation of this provision was put on hold. Indeed, the lending of new finance was suspended by law by stating that the lending mechanism provided under Art. 35 of the Code would start to work again only when the contributions issued up until 2012 were fully paid.

Thereafter, in 2017, another law was issued which set forth that, starting from 1 January 2019, the contributions at issue can be granted in the maximum amount of € 10 million in 2019 and of € 20 million in 2020 and in the following years.

That being said, the Code clarifies that funding shall be granted by the Ministry only after the works have been completed and the costs verified. Advance partial payments may be disbursed on the basis of certification attesting the regular progress of works (Art. 36 of the Code). If this is the case, the beneficiary of the works shall return to the Ministry any amount paid in excess.

As an alternative to the above mechanism of contribution, the Ministry may grant interest subsidies for mortgages granted by banks to owners, possessors or holders by whatever legal right of real estate cultural property undergoing conservation works.

It shall finally be noted that buildings that were subject to conservation or restoration measures with a State financial contribution shall be made accessible to the public according to special arrangements or agreements to be stipulated between the Ministry and the owner, possessor or holder of the cultural property at issue (Art. 38 of the Code).

(iv) Mandatory custody of cultural property

The Ministry is entitled to have movable cultural property transferred and temporarily conserved in public institutions, in order to guarantee its safety and ensure its conservation (Art. 43 of the Code).

(v) Gratuitous loan and deposit of cultural property

The directors of archives and of institutions which handle or have on deposit artistic, archaeological, bibliographical or scientific collections may, with the prior ministerial consent, receive movable cultural property from private owners on voluntary loan for the purpose of permitting its enjoyment by the public, on condition that the conservation of said property does not reveal itself as being excessively burdensome.

The term of the voluntary loan cannot last less than five years and shall be deemed to be silently and automatically extended for a period equal to the agreed term whenever one of the contracting partners has not communicated a notification of cancellation to the other at least two months prior to the expiry of the term (Art. 44 of the Code).

The conservation expenses shall be borne by the Ministry who shall also ensure that the property is protected by suitable insurance coverage.

(vi) Authorizations for exhibits and expositions

The loan of certain types of cultural property for exhibits and expositions is subject to authorization (Art. 48 of the Code):

- when the authorization concerns property belonging to the State or which has been placed under State protection, the request shall be presented to the Ministry at least four months prior to the start of the event and shall indicate the party responsible for the safekeeping of the works on loan;
- the authorization shall be issued taking into consideration the conservation needs of the property and also, for those belonging to the State, the needs of public enjoyment;
- the issuance of the authorization is subject to the adoption of all the necessary measures for the integrity of the property and to the provision of adequate insurance.¹⁵

The Ministry shall, at the request of the interested party, have the power to declare the cultural or scientific importance of exhibits or expositions for purposes of the application of tax relief measures provided for under tax law.

¹⁵ For exhibits and events within the national territory promoted by the Ministry, or with the participation of the State, or government bodies or institutions, the insurance may be substituted by the assumption of the relative risks on the part of the State.

7. Sanctions

(i) Administrative sanctions

The Code sets forth under Art. 160 the administrative sanctions that are a direct consequence of the breach of the conservation and protection obligations recapped above.

If cultural property is damaged as a result of such violations, the Ministry shall order the damaging party to carry out - at its expense - all the necessary works for the restoration of the property to its original status.

If the damaging party fails to comply with the abovementioned ministerial order, then the Ministry shall carry out the necessary works of restoration at the expense of the damaging party.

In the unfortunate event that the restoration of the cultural property to its original condition is not possible, the damaging party must pay to the State an amount equal to the value of the lost property or to the reduction in value that the property suffered.

If the assessment of the due amount, which is made by the Ministry, is not accepted by the damaging party, the decision is delegated to a panel of three members (one appointed by the Ministry, one by the party obliged to pay and the last one by the president of the competent territorial court).

Non-compliance with the administrative order is punished pursuant to Art. 650 of the Italian Criminal Code, namely with imprisonment up to three months and a fine up to € 206.00.

(ii) Criminal sanctions

Proving once again the great importance that cultural heritage has in Italy, the legislature also provided a series of criminal sanctions in case of violations of their provisions concerning the ownership, custody, conservation and protection of cultural property.

Under Art. 169 of the Code it is provided that the following conduct shall be punishable by imprisonment for a period of six months to one year and by a fine ranging from € 775.00 to € 38,734.50:

- a. unauthorized demolition, removal, modification, restoration or carrying out of works of any kind on cultural property;
- b. unauthorized detachment of frescoes, escutcheons, graffiti, inscriptions, tabernacles or other ornaments decorating buildings, whether or not they are displayed to public view, even when no declaration of cultural interest has been made;
- c. omission of notification of the superintendent/omitted submission of authorization concerning the performance of urgent works that are vital to avoid considerable damages to cultural property.

It is moreover specified that the same punishment shall apply in cases of non-compliance with an order to suspend works issued by the superintendent.

The same sanctions are provided in the following circumstances:

- when cultural property is allocated for a use that is incompatible with its historical or artistic value or which endangers its conservation or integrity (Art. 170 of the Code);
- when cultural property belonging to the State, the Regions, other territorial government bodies, as well as any other public body and institution, and to private non-profit associations, is not kept in its designated place and in the manner indicated by the superintendent [Art. 171(1) of the Code];
- when holders of cultural property fail to notify the competent superintendent of the removal of cultural property to another locality, due to a change of residence, or to comply with the prescriptions issued by the superintendent in order to avoid damages during the moving of the property at stake [Art. 171(2) of the Code].

As anticipated above, the Code sets out the sanctions in case of forgery. Art. 178 provides that it shall be punishable by imprisonment for a period of three months to four years and with a fine ranging from € 103.00 to € 3,099.00:

- a. whoever, for purposes of gain, counterfeits, alters or reproduces a work of painting, sculpture or graphic art, or an antique object or an object of historical or archaeological interest;
- b. whoever, even if he/she did not actively participate in the counterfeiting, alteration or reproduction, puts on sale, or holds for purposes of sale, or introduces into the territory of the State for such purpose, or in any case puts into circulation, as authentic, counterfeited, altered or reproduced samples of works of painting, sculpture, graphic art or antique objects, or objects of historical or archaeological interest;
- c. whosoever, knowing them to be false, authenticates works or objects, indicated in letters a) and b) which have been counterfeited, altered or reproduced;
- d. whosoever, through other declarations, evaluations, publications, affixation of stamps or labels or by any other means, certifies as authentic or contributes to the certification as such of works or objects indicated in letters a) and b) which have been counterfeited, altered or reproduced, knowing them to be false.

If the offences above are committed in the exercise of a commercial activity, the punishment shall be increased and conviction shall be followed by the prohibition established under article 30 of the Italian Penal Code, namely the disqualification from the exercise of the profession for a period of time that may last from one to five years. The convictions for the offences at issue shall be published in three national newspapers.

Nevertheless, Art. 179 of the Code provides some cases in which an exemption from the above provisions on forgery applies. Such is the case of reproduction, holding, sale or distribution of copies of works of painting, sculpture or graphic art, or copies or imitations of antique objects or objects of historical or archaeological interest which are expressly declared to be inauthentic when exhibited or sold, by means of a written annotation on the work or on the object or, when this is not possible because of the nature or size of the copy or imitation, by means of a declaration issued upon exhibition or sale.

V. THE CIRCULATION OF CULTURAL PROPERTY

1. Circulation within national borders

The circulation of cultural property is regulated by the Code in different ways, depending on the specific typology of the goods and on who is their owner.

(i) Cultural property forming part of the public domain

As a general rule, cultural property that is part of the public domain of the State (*demanio pubblico*) cannot be sold, nor can it be covered by property rights in favor of third parties, unless otherwise provided in the Code (Art. 53). For the definition of “*demanio pubblico*” please refer to section IV.2. above.

(ii) Prohibition on selling cultural property

Art. 54(1) of the Code sets forth that the following categories of cultural property, which belong to the State cannot be alienated:

- a. buildings and areas of archaeological interest;
- b. buildings recognized as national monuments by acts having the force of law;
- c. the collections of museums, picture galleries, art galleries and libraries;
- d. archives;
- e. buildings declared as possessing significant cultural interest;
- f. movable goods that are the work of living authors or that are less than seventy years old, if they are part of collections belonging to the State, Regions or other territorial governmental bodies.

In addition to the above list, Art. 54(2) of the Code provides that the following property also cannot be alienated:

- a. goods belonging to the subjects indicated in Art. 10(1) of the Code¹⁶ which are the work of non-living artists and whose production goes back more than seventy years, when the verification of cultural interest process under Art. 12 of the Code is successful (if not, the goods can be freely commercialized)¹⁷;
- b. documents belonging to the State, Regions and other territorial government bodies, as well as archives and documents belonging to public bodies and institutions other than those indicated above.

However, it should be noted that the above **inalienable goods can be transferred between the State, the Regions and other territorial government bodies.**

(iii) Buildings that are part of the public domain and that can be sold upon ministerial authorization

Buildings that are part of the public domain - other than those indicated under Art. 54(1) of the Code above - can be sold only upon authorization of the Ministry for Cultural Heritage and Activities after having obtained the opinion of the superintendent and having heard from the Region and the other interested territorial governmental bodies, if any.

The issuance of the authorization results in the building, which is the subject of the authorization, ceasing to be part of the public domain.

The relevant petition for the authorization at issue shall contain the following information:

- indication of the current intended use of the building;
- the measures programmed for the conservation of the building;
- the objectives that the petitioner wants to pursue with the sale of the building in terms of valorization of the building itself;
- indication of the future intended use of the building;
- the ways in which the public may use the building.

Whereas the authorization shall:

- take a stance in relation to the measures of conservation of the building planned by the petitioner;
- provide the conditions according to which the public may access the building and use it;
- point out whether the ways and timing of the valorization project imagined by the petitioner are suitable.

Some further details are necessary to describe the issuance process.

First of all, the authorization cannot be issued when the intended use of the building may hinder the conservation of the estate or encumber the use of the same by the public. Likewise, the authorization is rejected when the intended use of the building is not compatible with the historical and artistic features of the real estate. In these cases, the Ministry may indicate an alternative and suitable use of the building.

(iv) Other cultural property that can be sold upon ministerial authorization

The following are also subject to authorization by the Ministry according to Art. 56 of the Code:

- a. the sale of cultural property belonging to the State, the Regions and other territorial government bodies, other than those examined above under (ii) and (iii), provided that such property is not relevant for public collections and that its alienation does not hinder its conservation and use by the public;
- b. the sale of cultural property belonging to government bodies other than those indicated in letter (a) or to private non-profit associations, including ecclesiastical bodies that have been recognized as legal entities.

¹⁶ That is: the State, the Regions, other territorial government bodies, as well as any other public body or institution, and private non-profit associations.

¹⁷ Please see section IV.3.(j) for further comments on this process.



Etruscan artwork, 540–520 BC. Two riders and a fallen man; a sphinx and two lions, one attacking a boar. Silver panels with repoussé reliefs overlaid with electrum foil, Found in 1812 in a tomb at Castel San Marino, near Perugia. Photo by Marie-Lan Nguyen, 2011, British Museum, Source: Wikimedia Commons, public domain.

Authorization is also required in cases of sale by private non-profit associations, including ecclesiastical bodies that have been recognized as legal entities, of:

- a. collections or series of objects and of book collections;
- b. archives and single documents.

(v) Sale of cultural property to the State

The deeds which entail the transfer of cultural property to the State, including transfers in payment of taxes owed, shall not be subject to prior authorization by the Ministry (Art. 57 of the Code).

(vi) Notice of transfer

The Code provides that any and all deeds which transfer, in whole or in part, by whatever legal right, the property or - with sole reference to movable goods - the possession of cultural property shall be reported to the Ministry (Art. 59).

The relevant notice shall be made within 30 days:

- a. by the vendor or by the transferrer in the case of sale or transfer of possession;
- b. by the purchaser if the transfer is the result of an enforcement proceeding or of a bankruptcy proceeding;
- c. by the heir or the legatee in the case of succession because of death.

The declaration shall be filed with the competent superintendent of the place where the property is located.

The notice shall contain:

- the identification of the parties and the signature of the same or of their legal representatives;
- the identification of the property;
- the indication of the place where the property is located;
- the representation of the contents of the deed of transfer;
- the indication of the usual residence in Italy of the parties concerned for the purposes of any communications.

This notice is essential to allow the State to exercise its preemptive right, which will be further discussed in the section below.

(vii) Preemptive right of the State

In some cases, when a transfer is reported according to the legal provisions above, the Ministry can exercise a preemptive right which is a preferential right of purchase by the State (Arts. 60-62 of the Code).

Indeed, the Ministry or, upon delegation from the Ministry itself, the Region or other interested territorial government bodies,¹⁸ shall have the right to purchase by pre-emption cultural property that is the subject of a purchase agreement or of a contribution in kind to a company. The same rule applies when the cultural property is used as a means of payment.

The right at issue can be enforced by the State within 60 days from receipt of the notice of transfer examined in the previous section. This deadline can be extended up to 180 days if the notice of transfer was omitted or incomplete (the time starts running from the date of receipt of the notice or from the date on which it was possible for the Ministry to gather all the information that should have been mentioned in the notice of transfer).

While the deadline above is pending, the cultural property cannot be transferred. Any deed pursuing a transfer should contain a condition allowing for the expiration of the term granted to the Ministry for the enforcement of the preemptive right at issue.

If this right is enforced, the Ministry is entitled to buy the property for the same purchase price agreed by the parties in the deed of transfer or for the same value indicated in the contribution deed. On the other hand, the Ministry is not bound by the other terms and conditions set out in the relevant deed.

That being said, it may happen that cultural property is sold with other goods without specification of the considerations applicable to the cultural property. Even cases in which no consideration is agreed by the parties or the cultural property is traded with other goods (*permuta*) are not exempt from the state's pre-emptive right.

In such cases, the purchase price that the Ministry shall pay is determined *ex officio* by the same body that is buying the property (e.g. the Ministry, the Region or other governmental bodies). The determination of the price is challengeable by the interested parties and hence can be devolved to a third independent party, whose decision can be appealed, but only in the case of error or of its manifest inequity.

Finally, the Ministry (or whoever is acting on its behalf) shall notify the seller and the purchaser of the cultural property of the enforcement of the preemptive right. The transfer of the cultural property in favor of the Ministry is completed at

¹⁸ According to Art. 62(3) of the Code "When the Ministry does not wish to exercise its right of pre-emption, it shall notify the interested body within forty days of receipt of declaration. The aforesaid body shall take on the relative expenses, adopt the pre-emption provision and notify the vendor and the purchaser within and not beyond seventy days of the aforesaid declaration. Ownership of the property shall be transferred to the body which has exercised right of pre-emption, from the last notification date".



Umberto Boccioni (1882–1916), Elasticity (Elasticità), 1912, Museo del Novecento, Milan, Italy, Photo by artblart.

the time of the last of the notifications above.

(viii) Obligation to report commercial activities and keep a register

Whoever trades one of the properties listed under letter A, Annex A of the Code (see the table below) shall report the sale to the local authority for public safety, who, in turn, forwards it to the superintendent and to the Region (Art. 63 of the Code).

Those who deal in cultural property shall make daily registrations of the operations carried out and shall describe the features of the property. The register at issue shall be electronic in order to allow the superintendent to fulfill its supervision duties. Moreover, the register shall be split in two different parts, one of which shall be exclusively dedicated to the entering of operations concerning property for the selling of which notice shall be given to the competent Export Offices.

The Ministry for Cultural Heritage and Activities in agreement with the Ministry for Internal Affairs, established by decree the value threshold above which a full and detailed description of cultural property shall be provided in the register.

List of cultural property under letter A, Annex A of the Code

1. Archaeological finds that are more than 100 years old and found in:
 - (a) terrestrial and marine excavations and discoveries;
 - (b) archaeological sites;
 - (c) archaeological collections.
2. Elements that are an integral part of artistic, historical or religious monuments and are the result of dismemberment of monuments which are more than 100 years old.
3. Paintings and pictures other than those belonging to categories 4 and 5, entirely created by hand on any base and with any material [1].
4. Watercolors, gouaches and pastels, entirely painted by hand on any base.
5. Mosaics, other than those of categories 1 and 2, entirely made by hand with any material and drawings made entirely by hand on any base.
6. Original engravings, prints, serigraphs and original lithographs and their relative matrices, as well as original posters [1].
7. Original works of statuary art or sculpture and copies obtained with the same procedures as the original [1], other than those in category 1.
8. Photographs, films and relative negatives [1].
9. Incunabula and manuscripts, including geographical maps and musical scores, individually or in collections [1].
10. Books over 100 years old, individually or in collections.
11. Printed geographical maps dating back more than 200 years.
12. Archives and supports, including elements of any nature dating back more than 50 years.
13.
 - a) Collections and samples from zoological, botanical, mineralogical and anatomical collections;
 - b) Collections of historical, paleontological, ethnographical or numismatic interest.
14. Means of transport dating back more than 75 years.
15. Other antique objects not contemplated by categories 1 to 14, dating back more than 70 years.

[1] Provided that they are more than 70 years old or that they do not belong to the author.

2. International circulation of cultural property

Recently, in 2017, the provisions concerning the circulation of cultural property outside of Italian borders were reformed by means of Law no. 124/2017 regulating competition issues.

The aim of the reform was a simplification of international circulation of cultural property.

The reason for this is that, compared to other European countries, the mechanism provided by Italian law to allow the exit of cultural property from the Country proved to be a lot more complicated and cumbersome, thus discouraging the commercialization of cultural property or, at least, having negative effects on the fair competition between Italy and other Countries in the market at issue.

The reform was the result of an attempt to find a more flexible balance between the above commercial needs, on the one hand, and the need to safeguard the Italian cultural heritage as a whole, on the other hand.

Initially, the aim of the legislature was to consent to subjects willing to export cultural property of minor value or falling into certain categories to issue a self-declaration when exporting the property instead of obtaining the prior authorization from the ministerial export offices as required by the Code. Although this proposed amendment of the Code did not pass the parliamentary test, the bureaucratic controls have nonetheless loosened.

Moreover, the reform introduced the possibility of obtaining a five year free circulation certificate for the exportation of cultural property [see below under section (ii)], which was modelled on the basis of the French “passport” for cultural property. This is seen as an important step towards a wider liberalization of the market.

(i) Definitive exit from Italian territory (Art. 65 of the Code)

The definitive exit from the territory of the Republic of movable cultural property as defined under Art. 10(1)(2)(3) of the Code is forbidden.

The exit of the following property is also forbidden:

- a. movable property belonging to the subjects indicated in Art. 10(1)¹⁹, which is the work of no-longer living artists and is more than 70 years old when the verification of cultural interest is pending;
- b. property, to whomsoever it may belong, which is mentioned in Art. 10(3) and whose exit was excluded by the Ministry for certain periods of time.

Apart from the cases provided above, the definitive exit from the territory of the Italian Republic is subject to authorization when it comes to one of the following categories of property:

- a. property, to whomsoever it may belong, which:
 - possesses cultural interest;
 - is the work of no-longer living artists;
 - is more than 70 years old;
 - is valued at less than € 13,500.00, unless the cultural property constitutes an archaeological find, a monument, an incunabula or a manuscript;
- b. archives and single documents, belonging to private individuals which present cultural interest;
- c. photographs, with their related negatives and matrixes, samples of cinematographic works, audio-visual material or sequences of images in movement, documentation of events, oral or verbal, produced by any means, more than 25 years ago;
- d. means of transport which are more than 75 years old;
- e. property and instruments of interest for the history of science and technology which are more than 50 years old.

Contrarily, the export of the following types of property is not subject to authorization:

- a. paintings and works of art that are attributable to living authors or that are less than 70 years old;
- b. property possessing cultural interest that is the product of no-longer living authors and that are more seventy years old if their value amounts to less than € 13,500.00.

¹⁹ That is: the State, the Regions, other territorial government bodies, as well as any other public body and institution, and private non-profit associations.

(ii) Certificate of Free Circulation (Art. 68 of the Code)

Whosoever wishes to definitively export from the territory of the Italian Republic a property falling into the category of cultural property provided under Art. 65(3) of the Code²⁰ must appear before the competent Export Office announcing the above intentions and presenting the relevant property, also specifying the market value of each item. The above announcement is essential to obtain the certificate of free circulation, which lasts five years.

Thereafter:

- within three days, the Export Office shall notify the competent offices of the Ministry;
- within the next ten days such offices shall provide to the Ministry any and all useful information regarding the property;
- once the congruity of the market value declared by the applicant is verified by the Export Offices, the latter issues or rejects the free circulation certificate;²¹
- the decision of the Export Office shall be communicated to the applicant within forty days from the date on which the property was presented to the office itself.

If the request is denied, then the process for the declaration of cultural interest pursuant to Art. 14 of the Code is started.

It should be noted that, like any other administrative decision, the one concerning the free circulation of cultural property can be contested by the interested party who can appeal before the Ministry within thirty days from the denial.

The appeal must be decided by the Ministry within ninety days. In the meantime the authorization process is suspended. In addition to the certificate of free circulation, the export license set out in Regulation EC no. 116/2009 is required for the exportation of cultural goods to a non-EU Member State (Art. 74 of the Code).

(iii) Compulsory Purchase by the Ministry (Art. 70 of the Code)

As an alternative to the issuance of the free circulation certificate, the Export Office may propose that the Ministry buy the property presented to be removed from Italy for a purchase price that is equal to the value of the property indicated in the petition for the certificate.

In such a situation, the recommendation of the Export Office is announced to the Region and to all the interested parties.

While the decision is pending, the property remains in the custody of the Export Office.

Thereafter:

- should the Ministry opt to buy the property, the applicant shall be notified of the decision within ninety days from the date of the initial announcement; until then, the interested party may decide against the exit of the property and therefore withdraw the application for the free circulation certificate;
- should the Ministry not wish to proceed with the purchase, the related decision shall be announced to the Region where the Export Office is located within sixty days from the date of the initial announcement; following this notification, the Region may decide to purchase the property and, if so, it shall inform the

²⁰ That is:

- (a) property, to whomsoever it may belong, which:
 - possesses cultural interest;
 - is the work of no-longer living artists;
 - is more than seventy years old;
 - is valued at less than € 13,500.00, unless the cultural property constitutes an archaeological find, a monument, an incunabula or a manuscript;
- (b) archives and single documents, belonging to private individuals which present cultural interest;
- (c) photographs, with their related negatives and matrixes, samples of cinematographic works, audio-visual material or sequences of images in movement, documentation of events, oral or verbal, produced by any means, more than twenty-five years ago;
- (d) means of transport which are more than seventy-five years old;
- (e) property and instruments of interest for the history of science and technology which are more than fifty years old.

²¹ For the objects or property belonging to bodies subject to Regional supervision, the Export Office shall consult the Region, whose opinion shall be delivered within the peremptory term of thirty days from the date of receipt of the request and, when the aforesaid opinion is negative, it shall be binding.



Artemisia Gentileschi (1593-), *Judith and her maidservant with the head of Holofernes*, between 1618-1619, Collection Palazzo Pitti, Florence, Italy, Wikimedia Commons.

interested party within ninety days from the announcement.

(iv) Temporary exit for exhibition purposes (Art. 66 of the Code)

The temporary exit of some cultural property from Italy is allowed, upon authorization from the Ministry, for events, exhibitions or expositions of great cultural interest, provided that the safety and integrity of the property is ensured. The properties that can benefit from this temporary exit permission are the following:

- a. movable cultural property as defined under Art. 10(1)(2)(3) of the Code;
- b. movable property belonging to the subjects indicated in Art. 10(1),²² which is the work of no-longer living artists and that is more than seventy years old when the verification of cultural interest is pending;
- c. property, to whomsoever it may belong, which:
 - possesses cultural interest;
 - is the work of no-longer living artists;
 - is more than seventy years old;
 - is valued at less than € 13,500.00, unless the cultural property constitutes an archaeological find, a monument, an incunabula or a manuscript;
- d. archives and single documents, belonging to private individuals which present cultural interest;
- e. photographs, with their related negatives and matrixes, samples of cinematographic works, audio-visual material or sequences of images in movement, documentation of events, oral or verbal, produced by any means, more than twenty-five years ago;
- f. means of transport which are more than seventy-five years old;
- g. property and instruments of interest for the history of science and technology which are more than fifty years old.

On the other hand, some cultural property cannot exit the Italian territory, even for a predetermined and brief period of time. For example, property that may suffer damage from its transportation or by being exposed for a prolonged period of time to unfavorable environmental conditions.

The same restrictions also apply to property that constitutes the main collection of a museum or of a section thereof, of a picture gallery, of an art gallery, of an archive or library, or of an artistic or bibliographical collection.

(v) Other hypothesis of temporary exit (Art. 67 of the Code)

The cultural properties indicated above under (ii) may also be authorized to temporarily exit from Italy when:

- a. they constitute the private furniture of Italian citizens who fill diplomatic and consular seats abroad;
- b. they constitute the interior décor of diplomatic and consular seats abroad;
- c. they must undergo analysis, investigations or conservation works which must necessarily be carried out abroad;
- d. their exit is requested for the implementation of cultural and mutual agreements with foreign museums for a maximum of four years.

(vi) Certificate of temporary circulation (Art. 71 of the Code)

In order to temporarily remove property from Italy, the interested party must obtain a certificate of temporary circulation.

To do so a similar proceeding to that provided for the obtainment of the free circulation certificate is established by the Code. In brief:

²² That is: the State, the Regions, other territorial government bodies, as well as any other public body and institution, and private non-profit associations.

- An announcement shall be filed with the competent Export Office, where the goods shall also be presented with an indication of their market value and identifying the subject who will be held liable for their custody abroad;
- the property shall be covered by an adequate insurance policy for the value indicated in the application and at the expense of the applicant;²³
- having ascertained the fairness of the market value indicated by the applicant, the Export Office shall, with a motivated decision, issue or deny the certificate of temporary circulation and subsequently notify the interested party within forty days from the presentation of the property.

Administrative appeal against a denial of temporary circulation is admissible and shall follow the same procedure provided in the case of denial of the free circulation certificate [see section V.2.(ii) above].

The certificate shall indicate the date of return of the property, which may be extended, provided that it does not overall exceed the eighteen month limit.

Some numbers...				
Petition	2013	2014	2015	Beginning 2016
Petition for free circulation certificates within EU	11,726	13,116	12,588	9,728
Number of certificates issued by EU	11,559	12,666	12,300	9,627
Licenses of definitive exportation (outside EU)	80	242	458	228
Licenses of temporary exportation (outside EU)	49	329	406	178
Renewals of five year certificate import/export into/from Italy	-	483	583	370
Denial of free circulation certificates	87	75	50	75
Denial of declaration of cultural interest following the denial above	87	75	50	23
Declaration of cultural interest upon the superintendent's initiative	88	108	65	24
Compulsory purchases	6	3	9	11
Total amount in Euros	266,000	37,200	1,910,000	1,978,900
Donations to public museums' collections	71	85	29	7
* Il Sole 24 Ore - 4 April 2017				

3. Exportation of cultural property outside of the EU and process for restitution

In the Code reference is made under Arts. 75-86 to the EU Directive no. 2014/60 (please see following section V.2).

²³ For exhibits and events promoted abroad by the Ministry or, with State participation, by government bodies, by Italian Cultural Institutes abroad or by supra-national organizations, the insurance may be substituted by the assumption of the relative risks by the State. For cultural property indicated in Art. 65(1) a security bond shall be issued by a banking institution or an insurance company for a sum exceeding 10% of the value of the property as assessed in the certificate. This particular kind of guarantee is not required for property belonging to the State or to public administrations. The Ministry may also waive this obligation for institutions of particular cultural importance.

4. Importation of cultural property

Certification from the Export Office is required also in the case of importation of cultural property, not only in the case of exportation.

Shipment to Italy by a Member State of the European Union or the importation from a third country of the objects or property indicated in article 65, paragraph 3, shall, upon application, be certified by the Export Office.

Certificates declaring that shipment and importation have occurred shall be issued on the basis of documentation identifying the object or the property and proving provenance from the territory of the Member State or third Country from which the object or property has been shipped or imported.

The certificates declaring that shipment and importation have occurred shall be valid for five years and may be extended upon request by the party concerned.

Conditions, modalities and procedures for granting and extending certificates may be established by ministerial decree, with particular regard for the ascertainment of the provenance of the object or property shipped or imported.

5. Unlawful circulation of cultural property

(i) Administrative sanctions

Code	Unlawful conduct	Sanction
Art. 163	Loss and misplacement of property or, if this is tracked abroad, violation of the provisions concerning the circulation of cultural property within the national territory (Arts. 53 - 64) and abroad (Arts. 65 - 87).	Payment of an amount equal to the value of the lost property.
Art. 164	Violation of provisions concerning the protection of cultural property (Arts. 10-100) when performing transfers, agreements and other legal transactions in general.	The transactions are null and void. The Ministry maintains its preemptive right.
Art. 165	Violation of the provisions regulating the international circulation of cultural property, unless the unlawful conduct constitutes a crime according to Art. 174(1)	Administrative sanction consisting of the payment of a sum ranging from € 77.50 to € 465.00
Art. 166	Failure to submit exportation documents according to the explanatory provisions of implementation of EU Regulation no. 1081/2012	Administrative sanction consisting of the payment of a sum ranging from € 103,50 to € 620.00

Panoramic picture taken from the St. Peter's Basilica dome. Photo by Wolfgang Wehl, 5 June 2009.
GNU Free Documentation License, Version 1.2 or any later version, Wikimedia Commons.



(ii) Criminal sanctions

Code	Unlawful conduct	Sanction
Art. 173	Whosoever, without the prescribed authorizations, transfers cultural property indicated in Art. 55 (buildings that are part of the public domain) and Art. 56 [see section V.1.(iv) of this memorandum]	Imprisonment for a period of up to one year and fine ranging from € 1,549.50 to € 77,469.00
	Whosoever, being under the obligation to file a notice of transfer of the property or - in case of movables - of the possession of cultural property, within the term of thirty days indicated in Art. 59, fails to fulfil the aforesaid obligation.	
	Transfer and delivery of a cultural property when the term for the enforcement of the preemptive right belonging to the Ministry is still pending.	
Art. 174	Whosoever transfers abroad property of artistic, historical, archaeological, ethno-anthropological, bibliographical, documentary or archival interest, as well as the property indicated in Art. 11(1), letters f), g), and h), without a certificate of free circulation or export license.	Imprisonment for a period of one to four years or a fine ranging from € 258.00 to € 5,165.00 The judge shall order confiscation of the objects, except when these belong to a person extraneous to the crime (the laws on contraband shall be followed) If the offence is committed by a person who carries out activities of sale to the public or of exhibition for the purposes of sale of objects of cultural interest, the sentence is followed by disqualification from the profession (one month - five years).
	Whosoever, upon expiry of the term, fails to return to national territory cultural property for which temporary exit or exportation was authorized.	

V. THE EU LEGISLATION

1. The EU Regulation on the export of cultural goods

As mentioned above under section III.5., EU laws focus on protecting the cultural heritage of its Member States through the implementation of a system to control the export of cultural property outside the customs territory of the Union.

Namely, Council Regulation no. 116/2009 of 18 December 2008 (“**Regulation EC no. 116/2009**”) – as implemented by the Commission Implementing Regulation (EU) no. 1081/2012 of 9 November 2012 (“**Regulation EU no. 1081/2012**”) provides in Annex 1 a list of cultural goods which are subject to the Regulation itself only in so far as their relevant value exceeds the financial thresholds specified thereunder.

The categories of cultural goods covered by Regulation EC no. 116/2009 are listed in the table below:

Categories	Relevant financial threshold
1. Archaeological objects more than 100 years old which are the products of: <ul style="list-style-type: none"> - excavations and finds on land or under water; - archaeological sites; - archaeological collections 	Whatever the value
2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding one hundred years	Whatever the value
3. Pictures and paintings, other than those included in categories 4 or 5, executed entirely by hand in any medium and on any material	Euro 150,000.00
4. Watercolors, gouaches and pastels executed entirely by hand on any material	Euro 30,000.00
5. Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material	Euro 15,000.00
6. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters	Euro 15,000.00
7. Original sculptures or statuary and copies produced by the same process as the original (1), other than those in category 1	Euro 50,000.00
8. Photographs, films and negatives thereof	Euro 15,000.00
9. Incunabula and manuscripts, including maps and musical scores, singly or in collections	Whatever the value
10. Books more than one hundred years old, singly or in collections	Euro 50,000.00
11. Printed maps more than two hundred years old	Euro 15,000.00
12. Archives, and any elements thereof, of any kind or any medium which are more than 50 years old	Whatever the value

13. (A) Collections (2) and specimens from zoological, botanical, mineralogical or anatomical collections; (B) Collections (2) of historical, paleontological, ethnographic or numismatic interest	Euro 50,000.00
14. Means of transport more than 75 years old	Euro 50,000.00
15. Any other antique items not included in categories 1 to 14 (A) between fifty and one hundred years old (toys, games, glassware, goldsmiths' or silversmiths' wares, furniture, optical, photographic or cinematographic apparatus, musical instruments, clocks and watches and parts thereof, articles of wood, pottery, tapestries, carpets, wallpaper, arms) (B) more than one hundred years old	

The control system set out in Regulation EC no. 116/2009, as implemented by Regulation EU no. 1081/2012, provides as follows:

(i) Export License

In order to export cultural goods outside the customs territory of the Union, an export license has to be presented, in support of the export declaration, at the customs office which is competent to accept that declaration (Art. 2 Regulation EC no. 116/2009).

Regulation EU no. 1081/2012 sets out three types of licenses for the export of cultural goods:

- a. the **standard license**: to be issued for each export of cultural goods, with a validity period not exceeding twelve months from the date of issue (Arts 3 - 9 Regulation EC no. 116/2009);
- b. the **specific open license**: to be issued for a specific cultural good to be temporarily exported from the Union on a regular basis for use and/or exhibition in a third country, it being specified that
 - the cultural good must be owned by, or be in the legitimate possession of, the particular person or organization that uses and/or exhibits the good;
 - the person or organization of interest shall provide all the guarantees necessary for the good to be returned in good condition to the Union;
 - the validity period of the specific open license shall not exceed five years from the date of issue (Arts 10 - 12 and 16 Regulation EC no. 116/2009)
- c. the **general open license**: to be issued to museums or other institutions to cover the temporary export of any of the goods that belong to their permanent collection and that may be temporarily exported from the Union on a regular basis for exhibition in a third country, it being specified that:
 - the general open license may be used to cover any combination of goods in the permanent collection at any one occasion of temporary export as well as to cover a series of different combinations of goods either consecutively or concurrently;
 - the institution offers all the guarantees necessary for the goods to be returned in good condition to the Union;
 - the validity period of the specific open license shall not exceed five years from the from the date of issue (Arts 13 - 16 Regulation EC no. 116/2009).

(ii) Competent Authority

The export license is issued, upon submission of a request by the person of interest, by (a) the competent authority of

the Member State²⁴ where the cultural property to be exported was lawfully and definitively located on 1 January 1993 (date of creation of the internal market within the customs territory of the Union.); or (b) after 1 January 1993 thereafter, by the competent authority of the Member State in whose territory said good is located at the time the request for the license is filed (Art. 2 Regulation EC no. 116/2009).

(iii) Exception

The export license may be refused by the competent authority to the extent that the cultural goods to be exported are covered by a legislation of the relevant State Member protecting national treasures of artistic, historical or archaeological value (Art. 2 Regulation EC no. 116/2009).

2. The EU Directive on the return of cultural goods unlawfully removed from the territory of a Member State

The Directive of the European Union no. 2014/60 of 15 May 2014 and amending Regulation (EU) no. 1024/2012 (“**Directive no. 2014/60**”) – which was transposed into the Code of the Cultural and Landscape Heritage under Arts. 73 seq. – regulates the return of cultural objects classified or defined by a Member State as national treasures, which have been:

- removed from the territory of that Member State in breach of its legislation on the protection of cultural goods or in breach of Regulation EC No 116/2009; and
- not returned at the end of a period of a lawful temporary exit or in breach of any other conditions governing such temporary exit.

Directive no. 2014/60 sets forth the procedure to be carried out for the return of cultural goods, which is based on cooperation and consultation between the Member States’ competent authorities (Art. 5). Indeed:

- the Member State, requesting the return of a specific cultural object which has been unlawfully removed from its territory, shall file an application providing any information useful for facilitating the search, and identify the possessor and/or holder;
- upon receipt of the relevant application, the competent national authorities
 - i. shall notify the Member State in whose territory the cultural good is found, also providing reasonable grounds to support the allegation that it has been unlawfully removed from the territory of another Member State;
 - ii. take any necessary measures for the physical preservation of the cultural object and for preventing any action to evade the return procedure;
 - iii. act as intermediary between the possessor and/or holder and the Member State requesting the restitution.

A Member State which has failed the application may also initiate judicial proceedings before the Competent Court of the Member State where the cultural good is located against the possessor and/or the holder, in order to secure the return of a cultural object unlawfully removed from its territory.

Restitution claims are time-barred if they are initiated three years or more after of the day the requesting State had knowledge of the location of the illicitly exported good and the identity of the possessor. Restitution claims are subject to a Statute of Limitation of thirty years from date of the illicit exportation.

3. The works in progress within the European Union to integrate the current legal framework

On 13 July 2017, the EU Commission adopted a legislative proposal, providing common rules for the import of cultural goods into the customs territory of the EU from third countries.

To date, there is no EU legislation on import of cultural property except for the rules set out in Council Regulations (EC) No 1210/2003 and (EU) No 36/2012, which prohibit trade in cultural goods with Iraq and Syria.

²⁴ The Ministry for Cultural Heritage and Activities granted authority to issue the export license to the Export Offices established in the following cities: Ancona, Bari, Bologna, Cagliari, Florence, Genova, Milan, Naples, Perugia, Pisa, Rome, Sassari, Siena, Turin, Trieste Udine, Venice, and Verona.



Lorenzo Ghiberti (1378-1455), detail from bronze doors, Battistero di San Giovanni, in Florence. A panel of Adam and Eve in the doors known as the Gates of Paradise, 1403-1424, Photo by Thermos, 17 June 2006. Creative Commons Attribution-Share Alike 2.5 Generic license.

The proposed common rules for the permanent²⁵ import of cultural goods (listed in Annex 1 to the proposal) reflect the provisions set forth under Regulation EC no. 116/2009, as they establish a similar control system.

The holder of the goods shall file an application for the import license before the competent authority of the Member State of entry.

The competent authority of the Member State of entry shall:

- examine the application and decide to issue the import license within 90 days of the relevant submission.
- reject the application if it is not demonstrated that the cultural goods were exported from the exit country in accordance with its laws and regulations and/or there are reasonable grounds to believe that the applicant did not lawfully acquire the goods to be imported.

With reference to certain cultural goods, an import license is not required. Instead the holder of the goods is required to submit an importer statement to the customs authorities of the Member State of entry.

Both the import license and importer statement shall then be submitted to the competent customs office to be released for free circulation.

²⁵ Where permanently means "means for a period of time of at least one month and for purposes other than temporary use, transit, export or dispatch".

For updates on the status of the legislative process, please visit the website for the European Parliament at the following link: <http://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-import-of-cultural-goods>.

VI. INTERNATIONAL TREATIES AND CONVENTIONS

As mentioned under section III.6, over the years Italy has adhered to and ratified several international regulations concerning cultural property, whose main features are outlined below.

(i) General Agreement on Tariffs and Trade

In 1951 Italy ratified the General Agreement on Tariffs and Trade executed in Geneva on 30 October 1947 (“**GATT 1947**”), whose main purpose was to promote international trade by reducing or eliminating trade barriers such as tariffs or quotas.

GATT 1947, as it is known, following the negotiations conducted by its contracting parties from 1986 to 1994 (the so called “Uruguay Round”) which led to the establishment of the World Trade Organization (“**WTO**”), is still in force as an integral part of the WTO agreement executed in Marrakesh on 15 April 1994.

With specific reference to cultural goods, GATT 1947 provides a general exception as to the applicability of its relevant provisions, expressly setting out that “*nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures [...] imposed for the protection of national treasures of artistic, historic or archaeological value*” (Art. XX).

It is worth mentioning that, during the negotiations mentioned above, some contracting parties (especially France) raised concerns as to the implementation of the GATT principles on cultural goods and services, stating that the latter should not be treated as regular goods to prevent the risk of undermining their different and unique status in favor of their commercial aspects.

(ii) Hague Convention

In 1958, Italy ratified the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 (“**Aja Convention**”), which was promoted by UNESCO and was adopted in the wake of the massive destruction of cultural heritage during World War II.

The Aja Convention (together with its Protocols) provides a comprehensive legal framework for the protection of cultural heritage during both international and civil conflicts, including times of occupation.

The definition of cultural property under the Aja Convention covers both movable and immovable assets.

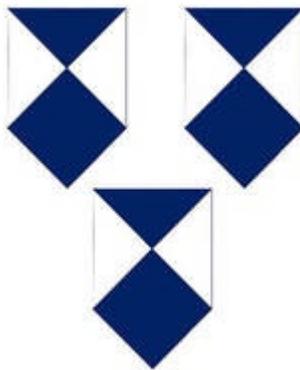
Definition of Cultural Property (Art. 1)

“For the purposes of the present Convention, the term ‘cultural property’ shall cover, irrespective of origin or ownership:

- (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;*
- (b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);*
- (c) centers containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as “centers containing monuments”*

From an Italian perspective, it is worth outlining that, through the Hague Convention, the expression “*cultural property*” became part of the Italian legal vocabulary, as the Italian Law on protection of cultural goods in force at that time (Law no. 1089/1939, see section II.3 above) used the expression “*goods of artistic and historical interest*”.

The Hague Convention provides for a “general” and a “special protection” of cultural property to be marked by the contracting parties with the distinctive blue and white emblem below (Arts. 6, 16 - 17):



With reference to general protections, the Hague Convention requires each contracting party to:

- i. refrain from any use of the cultural property and its immediate surroundings for its own protection and from any act of hostility directed against such property (Art. 4);
- ii. introduce in peacetime military regulations or instructions to ensure its observance (Art. 7).

The obligation under point (i) above is automatically waived only in case of “*imperative military necessity*” (Art. 6).

Special protection during wartime may be granted upon the submission to the Director General of UNESCO of a request by the State on whose territory the cultural property is found for:

- i. a limited number of refuges intended to shelter movable cultural property in the event of armed conflict; and
- ii. a limited number of centers containing monuments and other immovable cultural property of very great importance,

if they are situated at an adequate distance from any large industrial centers, or from any important military objective, and they are not used for military purposes (Art. 8).

The special protection is granted by the entry of the cultural property in the '*International Register of Cultural Property under Special Protection*,' provided that no other State Party files an objection to the request (Art. 8).

The rules concerning the protection of cultural property during times of occupation are provided for under the First Hague Protocol of the Hague Convention, which entered into force on August, 7 1956 ("**Protocol I**"). The protocol declares that an occupying state is obliged to (i) prevent the export of cultural property from the occupied territory, (ii) seize all cultural property imported into its territory from an occupied territory and (iii) return seized property at the end of hostilities.

The special protection regime was enhanced through the Second Hague Protocol of the Hague Convention, which entered into force on 9 March 2004 ("**Protocol II**").²⁶

The adoption of Protocol II was urged in light of the criminal acts committed against cultural property in the course of conflicts in the 1980s and 1990s, which revealed the deficiencies in the Hague Convention, since outlined in the 1993 Boylan Report, on the UNESCO website: <https://www.unesdoc.unesco.org/images/0010/001001/100159eo.pdf>.

The enhanced protection may be granted – upon the submission of a specific request – if the cultural property:

- i. is of the greatest importance for humanity;
- ii. is protected by national legislation;
- iii. is not used for military purpose and a declaration thereto is submitted by the contracting party requesting the enhanced protection.

Protocol II also imposed upon each contracting party the adoption of legislative measures to establish as criminal offences under its national law attack on, theft, pillage or misappropriation of, and acts of vandalism against cultural property protected under the Hague Convention.

In Italy, criminal offences against cultural property placed under protection, in accordance with the Hague Convention, were introduced by Law no. 45/2009 on 16 April 2009.

Code	Unlawful conduct	Sanction
Art. 7	Attack and destruction of cultural property.	<p>Imprisonment for a period of</p> <ol style="list-style-type: none"> (a) four to twelve years if the attack is perpetrated against cultural property placed under general protection. (b) five to fifteen years if the attack is perpetrated against cultural property placed under enhanced protection. <p>The sanctions above may be increased if - as a result of the attack – the cultural property is damaged, deteriorated or destroyed.</p>

²⁶ Protocol II elaborates upon the matter of "imperative military necessity" by specifying that "a waiver on the basis of imperative military necessity pursuant to Article 4 paragraph 2 of the Convention may only be invoked to use cultural property for purposes which are likely to expose it to destruction or damage when and for as long as no choice is possible between such use of the cultural property and another feasible method for obtaining a similar military advantage".

Art. 8	Use of cultural property in the course of a military action	<p>Imprisonment for a period of</p> <ul style="list-style-type: none"> (a) one to five years if the criminal offense is perpetrated against cultural property placed under general protection; (b) two to seven years if the criminal offense is perpetrated against cultural property placed under enhanced protection. <p>The sanctions above may be increased if - as a result of the attack – the cultural property is damaged, deteriorated or destroyed.</p>
Art. 9	Devastation and pillaging of cultural property.	Imprisonment for a period of eight to fifteen years.
Art. 10	Unlawful export or disposal of cultural property	<p>Imprisonment for a period of</p> <ul style="list-style-type: none"> (a) two to eight years if the criminal offense is perpetrated against cultural property placed under general protection; (b) two to seven years if the criminal offense is perpetrated against cultural property placed under enhanced protection. <p>The sanction under letter (a) above may be increased if - as a result of criminal offense – the cultural property is damaged, deteriorated or destroyed.</p>
Art 11	Impairment or misuse of cultural property	<p>Imprisonment for a period of</p> <ul style="list-style-type: none"> (a) one to three years if the criminal offense is perpetrated against cultural property placed under general protection; (b) two to seven years if the criminal offense is perpetrated against cultural property placed under enhanced protection. <p>The sanctions above may be increased if - as a result of criminal offense – the cultural property is damaged, deteriorated or destroyed.</p>

For a general overview of the periodical reports on the implementation of the Hague Convention, submitted by the contracting parties, please visit UNESCO website at following link <http://www.unesco.org/new/index.php?id=135621>.

(iii) UNESCO Convention of 1970

The UNESCO 1970 Convention of November 11 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property (“**UNESCO Convention of 1970**”) was executed with the purpose of addressing the theft of cultural objects from museums and archaeological sites, which became a widespread phenomenon in the 1960s.



Model of part of the Campus Martius in Rome, Italy. Theatrum Pompei Project, 2006, image declared to be in the public domain. Wikimedia Commons.

Italy ratified the UNESCO Convention of 1970 in 1978.

Under the UNESCO Convention of 1970, the definition of cultural property includes property of scientific, historical, artistic, and religious significance.

Definition of Cultural Property (Art. 1)

“For the purposes of this Convention, the term ‘cultural property’ means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) *are collections or specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;*
- (b) *property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;*
- (c) *products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;*
- (d) *elements of artistic or historical monuments or archaeological sites which have been dismembered;*
- (e) *antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;*
- (f) *objects of ethnological interest;*
- (g) *property of artistic interest, such as:*
 - (i) *pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);*
 - (ii) *original works of statuary art and sculpture in any material;*
 - (iii) *original engravings, prints and lithographs;*
 - (iv) *original artistic assemblages and montages in any material;*
 - (h) *rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;*
 - (i) *postage, revenue and similar stamps, singly or in collections;*
 - (j) *archives, including sound, photographic and cinematographic archives;*
 - (k) *articles of furniture more than one hundred years old and old musical instruments”.*

It is worth also mentioning that, in addition to providing a comprehensive definition of cultural property, the UNESCO Convention of 1970 also introduced the notion of “*cultural heritage*” (which was subsequently incorporated in UNESCO Convention of 1972), acknowledging its legal relevance by imposing on the contracting parties the obligation to recognize that certain cultural property forms part of the cultural heritage of each contracting party (Art. 4).

Under the UNESCO Convention of 1970, the enforcement of the protection of cultural property is implemented by preventive measures (such as inventory activities, implementation of a control system on import/export, imposition of criminal sanctions etc.) and restitution provisions.

The last report filed by Italy in connection with the preventive measures set forth under the UNESCO Convention of 1970 (as also implemented in the Code of the Cultural and Landscape Heritage) dates back to 2011 and is available at UNESCO website at the following link <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/periodic-reporting/2011-national-reports/27>.

²⁷ The periodical reports of the contracting parties on the application of the UNESCO Convention of 1972 are available at UNESCO website at following link <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/periodic-reporting/>.

Some numbers...

With specific reference to activities carried out by Italy with the aim of monitoring the scale of the illicit export or import of cultural property, the 2011 Italian Report estimates that in 2010:

- 817 thefts were registered for a total amount of 11,020 of cultural property stolen;
- 50 people were arrested and referred to judicial authorities.

As to the effectiveness of the restitution provisions (as implemented in the national law of the contracting parties), it is important to mention that in 1978 the General Conference of UNESCO established the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (also known as “**ICPRCP**”).

The main role of ICPRCP is to facilitate negotiations between States, in the event of a dispute over the restitution of cultural property.

To date, ICPRCP has intervened to facilitate the return of cultural property in at least in six cases.

Restitution cases with intervention of ICPRCP		
Year	Contracting Parties	Cultural Property
1983	Italy - Ecuador	Restitution to Ecuador of 12,000 pre-Columbian objects following the resolution of a seven-year litigation process.
1987	Former German Democratic Republic - Turkey	Restitution to Turkey of 7,000 Boğazköy cuneiform tablets
1988	USA - Thailand	Restitution to Thailand of the Phra Narai lintel
2010	Switzerland –Tanzania	Restitution to Tanzania of the Makondé Mark
2011	Germany - Turkey	Restitution to Turkey of Boğazköy Sphinx

Outside of ICPRCP's intervention, since 2011 we can count - at an international level - seventeen restitution cases.

Restitution cases with intervention of ICPRCP		
Month/ Year	Contracting Parties	Cultural Property
June 2011	Canada - Bulgaria	Restitution to Bulgaria of 21,000 coins, pieces of jewelry and other objects illegally imported to Canada and seized by the Royal Canadian Mounted Police.
September 2011	Australia - Peru and Jordan	Restitution to Peru and Jordan of precious cultural antiquities.
March 2013	Germany – Turkey	Restitution to Turkey of a golden brooch “seahorse with wings,” stolen from a museum in Usak in 2005 and seized by German authorities in 2012

Restitution cases with intervention of ICPRCP		
May 2013	Germany - Bulgaria	Restitution to Bulgaria of a votive offering from the 2nd/3rd century BCE in the form of a Danubian Horseman silver plaque.
July 2013	Germany - Cyprus	Restitution to Cyprus of 170 frescoes, mosaics and icons, stolen from churches in Cyprus and seized by the German authorities in 1997.
April 2014	Tunisia - Algeria	Restitution to Algeria of a rare archaeological object made of 320 kilograms of marble which was stolen from the site of Hippo Regius, Annaba (Algeria)
April 2014	Germany - Egypt	Restitution to Egypt of three antique Egyptian objects – a stela, an obelisk and a shrine, confiscated by German custom investigators at the Swiss border.
July 2015	U.S.A. - Iraq	Restitution to Iraq of hundreds of archaeological and historical objects and fragments, which U.S. Special Operations Forces had recovered during a raid in May 2015.
July 2015	Canada - Lebanon	Restitution to Lebanon of a Phoenician artifact - a pendant dating back to approximately 600 BCE.
January 2016	Canada - Bulgaria	Restitution to Bulgaria of a 19th-century curved yatagan with unusual markings (a sword) and a Cretan-style dagger.
October 2017	France - Egypt	Restitution to Egypt of archaeological pieces seized by French customs in January 2010.
January 2018	Venezuela – Costa Rica	Restitution to Costa Rica of 196 recovered pre-Columbian artifacts.
April 2018	U.S.A. - Nepal	Restitution of images of Uma Maheshwor and Buddha, stolen thirty years ago and found in the collection of the Metropolitan Museum of Art in New York.

(iv) UNESCO Convention of 1972

The UNESCO Convention of 23 November 1972, concerning the Protection of the World's Cultural and Natural Heritage (“**UNESCO Convention of 1972**”) is well known as the most comprehensive and widely ratified UNESCO treaty for the protection of cultural property.

The UNESCO Convention of 1972 came into force in 1975 and was ratified by Italy in 1977.

The main features of said convention can be summarized as follows.

a) Purpose

The aim pursued by the UNESCO Convention of 1972 is to promote cooperation among nations in order to protect cultural (and natural) heritage around the world.

Definition of Cultural Heritage (Art. 1)

“For the purposes of this Convention, the following shall be considered as “cultural heritage”:

monuments: *architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;*

groups of buildings: *groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;*

sites: *works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view”.*

In connection with the definition of cultural heritage, the contracting parties agreed to submit to the World Heritage Committee (established by the Convention itself) an inventory of property forming part of their cultural heritage, situated in their own territory, and suitable for inclusion in the list to be created by the Committee (Art. 11).

b) Commitments of the contracting parties

By executing the Convention, the contracting parties undertook:

- *“to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs”;*
- *“to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions”;*
- *“to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage”;*
- *“to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage”;* and
- *“to foster the establishment or development of national or regional centers for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field” (Art. 5).*

Parties to the Convention also acknowledged that the identification and safeguarding of cultural heritage located in their national territories is primarily their responsibility (Art. 4).

c) Role of World Heritage Committee

The World Heritage Committee, established under the UNESCO Convention of 1972, meets annually and consists of representatives from twenty-one of the States party to the Convention elected by their General Assembly. The Committee is basically responsible for the application of the Convention, as its relevant tasks are:

- the inscription of property on the World Heritage List and on the List of World Heritage in Danger;
- discussion of all matters relating to the implementation of the Convention;
- consideration of requests for international assistance;
- advising the parties to the Convention in order to ensure that they comply with their relevant responsibilities to protect cultural heritage;
- administering the World Heritage Fund (Arts. 8-14).



Etruscan jewelry, 530–480 BC. Ear-stud decorated with a rosette surrounded by concentric bands. Gold with vitreous glass paste insets, Photo by Marie-Lan Nguyen, 2006. British Museum, Source: Wikimedia Commons, public domain.

d) *The World Heritage List*

The UNESCO Convention of 1972 established the World Heritage List, which is a list of property forming part of cultural heritage and natural heritage, to be published and kept up to date by the Committee, it being specified that the inclusion of a property in the list requires the consent of the State in whose territory said property is located.

Up to July 2018, the World Heritage List included 845 cultural sites of which forty-nine are located in Italy (for a complete overview of the Italian cultural sites, please visit the UNESCO website at the following link: <http://whc.unesco.org/en/list/?&type=cultural>).

e) *The List of World Heritage in Danger*

The World Heritage Committee is also in charge of preparing and publishing the List of World Heritage in Danger (also established by the UNESCO Convention of 1972; Art. 11), which includes sites threatened by serious and specific dangers “such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods and tidal waves.”

Up to July 2018, the List of World Heritage in Danger includes 54 sites (none of which are located in Italy).

For a complete overview of the endangered cultural sites, please visit the UNESCO website at the following link <http://whc.unesco.org/en/danger/>.

f) *The World Heritage Fund*

The World Heritage Fund for the Protection of World Cultural and Natural Heritage of Outstanding Universal Value (the World Heritage Fund) is a trust fund, established under the Convention, which is financed by State parties, private organizations and individuals.

Funds are used to protect the World Heritage-listed sites and to meet the urgent conservation needs of property on the List of World Heritage in Danger.

(v) **UNIDROIT Convention of 1995**

The UNIDROIT Convention of 24 June 1995 on Stolen or Illegally Exported Cultural Objects (“**UNIDROIT Convention of 1995**”) entered into force on 1 July 1998, and was ratified by Italy in 1999.

Definition of Cultural Property (Art. 1)

“For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.”

Categories (Annex)

- (a) rare collections or specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - original works of statuary art and sculpture in any material;
 - original engravings, prints and lithographs;
 - original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

The provisions set forth under the UNIDROIT Convention of 1995 – which expressly do not affect any legally binding international instrument for the contracting states (such as the UNESCO Convention of 1972; Art. 13) – can be divided into two parts: the first part provides rules governing the restitution of stolen cultural objects (Arts. 3 - 4), while the second part deals with the return of illegally exported cultural objects (Arts. 5 - 7).

a) *Part one*

The UNIDROIT Convention of 1995 provides that the possessor of stolen cultural property must return it, specifying that a stolen cultural object is an “*object which has been unlawfully excavated or lawfully excavated but unlawfully retained*” according to “*the law of the State where the excavation took place*” (Art. 3).

Restitution claims are time-barred if they are initiated

- more than three years from the time when the claimant had knowledge of the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft;
- in the event that the restitution claim concerns a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, more than three years from the time when the claimant knew the location of the cultural object and the identity of its possessor (Art. 3).

A good faith purchaser of a stolen cultural object may ask for a “*fair and reasonable compensation*”, provided that the burden of proof of the due diligence lies with the purchaser. However, no protection is granted to the purchaser if the latter did not consult any reasonably accessible register of stolen cultural objects, such as, for instance, the Interpol Stolen Works of Art Database (Art. 4).

An Italian Case ...

An ancient bronze helmet (about 8th/7th century BCE) was part of a German art collection.

According to Italian authorities and the Italian Ministry, the helmet was illegally excavated in July/August 1993 in Southern Italy (Puglia Region), looted to Germany and sold to a German collector.

In 2003 Italy asked Germany for international assistance in criminal matters. The helmet was deposited with the Prussian Cultural Heritage Foundation in Berlin and, in 2008, Italy initiated a law suit against the latter, the state of Berlin and the heirs of the deceased collector asking for the recovery of the helmet according to the German law implementing the European Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (Italy could not base its claim on the Unidroit Convention of 1995 as Germany is not a contracting party to it).

The claim failed because the plaintiff did not meet the intricate requirements of the German statute with respect to registration of cultural objects and to time limitations.

b) Part two

Part two of the UNIDROIT Convention of 1995 set out rules as to the export of cultural property in violation of national export restrictions.

Each State party can request the competent Court of another contracting party to order the return of a cultural object illegally exported from its territory, provided that an illegally exported object is “*a cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported*” (Art. 5).

However, not every violation of an export prohibition obliges the possessor to return the object, as the requesting State must establish that the removal of the object impaired or impairs one or more of the interests listed under the Convention and, namely, (i) the physical preservation of the object or of its context, (ii) the integrity of a complex object, (iii) the preservation of information of, for example, a scientific or historical character, (iv) the traditional or ritual use of the object by a tribal or indigenous community, or (v) its significant cultural importance (Art. 5).

Restitution claims are time-barred if they are initiated more than three years from the time when the requesting State knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the date of the export or from the date on which the object should have been returned.

A good faith purchaser of an illegally exported cultural object may ask for “*fair and reasonable compensation*”, provided that the burden of proof of good faith lies with the purchaser (Art. 6).