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Süleymaniye Mosque, Süleymaniye District, Istanbul, Turkey, photo by Adam Jones from Kelowna, BC, Canada, 16 May 2011, Creative Commons Attribution-Share Alike 2.0 Generic license.

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I. EXECUTIVE SUMMARY

The codification of cultural property law in the Republic of Turkey dates back to the Ottoman Empire period. As the ownership and use of cultural property was unregulated until the end of the 19th century, the waves of codification served the purpose of preventing the illicit exportation of cultural objects, which was common during those times. A transformation of property rights over antiquities began in 1869 with the First Antiquities Code, the first legislation appearing on the issue. Following the Third Antiquities Code in 1884, privately-owned antiquities were also made subject to state ownership and restrictions on exportation.

Today, the modern legislation is based on Article 63 of the Constitution of the Republic of Turkey. This introduced a dual structure for the ownership of cultural property by distinguishing between properties subject to state ownership and those subject to private ownership. The principal legislation currently in force on cultural property is the Law No. 2863. The supervising authority for the implementation of this legislation is the Ministry of Culture and Tourism. The executive authority is the General Directorate, established under the Ministry of Culture and Tourism. There are several other regulations acting as secondary legislation for the Law No. 2863.

Along with regulating private law aspects of cultural property (i.e., ownership), the Law No. 2863 also imposes penalties for crimes listed under the law. Different restrictions and penalties apply for violations of laws on cultural property that has been put under protection, submitted to museums, or is subject to private ownership. In addition to this national legislation, Turkey is also a party to various multilateral conventions including the 1970 UNESCO Convention and several other bilateral treaties with States.

Trading of cultural property that is not under protection or that is under protection but not yet preserved in a museum is possible through a permit that can be obtained from the Ministry of Culture and Tourism. Different rules apply to movable and immovable cultural property. Some categories of cultural property, for instance, objects related to religious heritage, are under protection and cannot be traded. In addition, special permits exist for excavations. A representative from the Ministry of Culture and Tourism is responsible for accompanying excavators and monitoring.

A nationwide registry for movable cultural property does not exist. Museums' own registries serve this purpose. An online nationwide registry is being developed as of 2014 and is expected to launch within several years. A database already exists for immovable cultural property such as monuments, buildings, and archaeological sites.

In recent years, the Republic of Turkey has become more cautious about preserving its cultural property. Notably, the Ministry of Culture and Tourism has been working to recover cultural property exported during the 19th century when the process was unrestricted.

Recent years have also been marked by the government's bilateral correspondence with States and museums abroad in an effort to procure the return of cultural property that had been smuggled out of Turkey in the past. While some of these efforts have resulted in success, some have resulted in political crises. The Turkish government has been criticized for not being transparent about the cultural property within the borders of Turkey as well as not having a uniform state-sponsored database to identify the provenance of seized pieces. Some concerns were also expressed regarding the projects the government has been sponsoring, deemed controversial because of the damage they are causing to cultural property. A notable example is Turkey's Ilisu Dam project which is expected to leave around 300 archeological sites in the Hasankeyf area under water.

This report will first outline the existing national laws and international agreements applicable to cultural property in the Republic of Turkey. It will then discuss related subjects, including the national cultural inventory systems, status and title of cultural property, government agencies in charge of protection of cultural property, law enforcement systems and results of procedures followed for recovery of cultural property. Finally, it will evaluate the future status and protection of cultural property in the Republic of Turkey.

II. NATIONAL LAWS AND INTERNATIONAL AGREEMENTS ON CULTURAL PROPERTY

A. Pre-Republican Legislation

1. Antiquities Codes

The antiquities code dated 13 February 1869 (*Asar-i Atika Nizamnamesi*) (the “**First Antiquities Code**”) is considered as the first legislation on the conservation of cultural property in the Ottoman Empire. The First Antiquities Code regulated antiquities found solely during excavations. At the time, antiquities were considered to be under private ownership and could be sold within the Ottoman territory with the State exercising a pre-emption right over such property. Except for coins, the exportation of antiquities was prohibited.



Deesis mosaic, 13th-century, in Hagia Sophia, Istanbul, Turkey, photo by Till Niermann, 4 May 2014, GNU Free Documentation License.

The First Antiquities Code was amended by a second antiquities code dated 7 April 1874 (*Asar-i Atika Nizamnamesi*) (the “**Second Antiquities Code**”), which defined antiquities broadly as all kinds of handmade objects dating from ancient times. It classified antiquities into two groups: movable and immovable cultural property (with a special emphasis on coins). This Second Antiquities Code was characterized by the principle that excavation finds shall be shared between the excavation team, the owner of the land on which they were found, and the State. Therefore, the exportation of antiquities was made possible through the process of partage, the sharing of excavated finds between the State and foreign excavation teams.

On 21 February 1884, a third antiquities code (*Asar-i Atika Nizamnamesi*) (the “**Third Antiquities Code**”) amending the Second Antiquities Code introduced a ‘state property’ principle for all antiquities discovered during an excavation within the Ottoman territory. An exception was made for antiquities found accidentally on the property of an individual during construction, in which case the antiquities were to be shared between the owner of the land and the State. This ensured some control over exportation of antiquities and enabled their return to the country, if illegally exported.

The Third Antiquities Code was slightly amended on 23 April 1906 by a fourth antiquities code (*Asar-i Atika Nizamnamesi*) (the “**Fourth Antiquities Code**”) which remained in force for a century and constituted the basis for the current Law No. 2863 on the Protection of the Cultural and Natural Assets (*Kültür ve Tabiyat Varlıklarını Koruma Kanunu*) (the “**Law No. 2863**”).

2. Immovable Property Preservation Code

A code on the preservation of immovable property entered into force in 1912 (*Muhafaza-i Abidat Nizamnamesi*) (the “**Immovable Property Preservation Code**”). The property to be preserved included fortresses, fortifications, and bastions in the country. The Immovable Property Preservation Code aimed to clarify what was addressed in the Fourth Antiquities Code in order to avoid the destruction of such immovable property, especially in the East. A commission composed of museum officers was formed to implement the Immovable Property Preservation Code and prevent alterations and damage to the specified immovable property. In this respect, all sorts of changes or alterations that were to be made to such immovable property became subject to the authorization of the commission, and could only be made after the commission confirmed the request, and produced drawings, plans, and photographs of the buildings.

3. Criminal laws and penalties

Under the Ottoman Empire, breaking into sacred monuments constituted a punishable offense. Until the First Antiquities Code, this was the only infraction regarding cultural property protection.



Sophia Schliemann (née Engastromenos), the wife of excavator Heinrich Schliemann wearing treasures recovered at Hisarlık in Turkey. Photo circa 1873. Schliemann's excavations at what he believed to be Troy took place between 1873-1890. His work is strongly criticized today for making exaggerated claims and failing to follow the protocols of the field of archaeology then developing. Public domain. Wikimedia Commons.

B. Republican Period Laws

1. Constitution

The Constitution of the Republic of Turkey dated 7 November 1982¹ ensures the protection of historical, cultural, and natural assets.

Article 63 of the Constitution reads as follows:

“The State shall ensure the protection of the historical, cultural and natural assets and wealth, and shall take supportive and promoting measures towards that end. Any limitations to be imposed on privately owned assets and wealth and the compensation and exemptions to be granted to the owners of such, because of these limitations, shall be regulated by law.”

2. Law No. 4721

According to the Law No. 4721 approving the Turkish Civil Code dated 2001 (the “**Law No. 4721**”)², ownership restrictions on cultural property shall be implemented by a special law. Moreover, in case a cultural property item is found, special law provisions should apply.

3. Law No. 5805

Under the Law No. 5805 on the Constitution and Tasks of the High Board of Immovable Antiquities and Monuments dated 1951 (the “**Law No. 5805**”)³, a High Board of Immovable Antiquities and Monuments (the “**Board**”) was constituted to establish the principles applicable for the protection, maintenance, reparation, and restoration of domestic architectural and historical monuments. The Law No. 5805 was abrogated by the Law No. 2863.

4. Law No. 1710

The Turkish Civil Code was adopted in 1926, after the declaration of the Republic of Turkey in 1923. However, the Fourth Antiquities Code was maintained in full force and effect until the adoption of the Law No. 1710 for Ancient Properties dated 1973 (the “**Law No. 1710**”)⁴. With this new Law, the jurisdiction, responsibility and duties of the Board were expanded, and the concept of “site” was introduced. A need for a new organization was evident with the gradual increase in the number of recognized sites, monuments, and other cultural and natural property. However, the Law No. 1710 preserved the same principle of state ownership as in the Fourth Antiquities Code, by declaring that all antiquities discovered in or on private or public lands in Turkey were the property of the State. Detailed definitions of subcategories such as ‘monument’ (*Anıt*), ‘ottoman social complex’ (*Küllüye*), ‘historical site’ (*Tarihi Sit*), and ‘archaeological site’ (*Arkeolojik Sit*) were also provided. The Law No. 1710 was abrogated by the Law No. 2863.

5. Law No. 2863

The Law No. 1710 and the Law No. 5805 were both replaced by the Law No. 2863 on the Protection of the Cultural and Natural Assets (*Kültür ve Tabiyat Varlıklarını Koruma Kanunu*) (the “**Law No. 2863**”) in 1983.⁵ The Law No. 2863 provides definitions of movable or immovable cultural and natural assets requiring protection. For the first time, the phrase “cultural and natural property that require protection” is used instead of “antiquities.” The Law No. 2863 regulates the transactions and actions that must be taken for the protection of areas and assets, and determines the duty of the Superior Counsel and Regional Counsels for the Protection of Cultural and Natural Assets (which in turn determine the principles applicable to this matter).

The Law No. 2863 preserves the principle of state ownership of newly found antiquities contained in the Fourth Antiquities Code and the Law No. 1710.

Under the Law No. 2863, protected natural or cultural immovable property is to be determined in accordance with the opinion of specific related bodies or institutions under the coordination of the Ministry of Culture and Tourism (the “**Ministry**”). Construction on or physical interference with, use or repurposing of cultural assets is not allowed, unless specifically allowed. Persons who discover movable and immovable natural or cultural assets on the lands they own

¹ Constitution of the Republic of Turkey, Nov. 7, 1982, https://global.tbmm.gov.tr/docs/constitution_en.pdf.

² Law No. 4721 (2001) <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf>.

³ Law No. 5805 (1951), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5805&MevzuatTur=1&MevzuatTertip=3>.

⁴ Law No. 1710 (1973), <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=1710&MevzuatTur=1&MevzuatTertip=5>.

⁵ Law No. 2863 (1983), <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2863.pdf>.



Yedikule Panorama, Yedikule in Istanbul, Turkey, photo by Adam Jones from Kelowna, BC, Canada, May 2011, Creative Commons Attribution-Share Alike 2.0 Generic license.

or use must inform the director of the nearest museum (or the highest ranking authority within the museum) within 3 days so that the Ministry can be notified and necessary precautions for the protection of such assets can be taken.

C. Regulations

- i. Regulation on survey, sounding and excavation of cultural and natural property (“**Regulation on Excavation**”) published in the Official Gazette No. 18485 dated 10 August 1984;⁶
- ii. Regulation on treasure hunting (“**Regulation on Treasure Hunting**”) published in the Official Gazette No. 18294 dated 27 January 1984;⁷
- iii. Regulation on leasing of immovable property with historical and aesthetic value published on Official Gazette No. 18607 dated 16 December 1984;⁸
- iv. Regulation on inspection of trade of movable cultural property, offices for such trade and warehouses (“**Regulation on Trade**”) published in the Official Gazette No. 18278 dated 11 January 1984;⁹
- v. Regulation on the reward to be given to those who find or notify the existence of movable cultural and natural property and to public officials capturing such property, published in the Official Gazette No. 18486 dated 11 August 1984;¹⁰
- vi. Regulation relating to private museums and their inspection (“**Regulation on Private Museums**”) published on Official Gazette No. 18289 dated 22 January 1984;¹¹
- vii. Regulation on ethnographic qualified movable cultural property (“**Regulation on Ethnographic**”)

⁶ KÜLTÜR VE TABİAT VARLIKLARIYLA İLGİLİ OLARAK YAPILACAK ARAŞTIRMA, SONDAJ VE KAZILAR HAKKINDA YÖNETMELİK [*Regulation on survey, sounding and excavation of cultural and natural property*], Oct. 10, 1984, (Turk.), <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5318&MevzuatIlski=0&sourceXmlSearch=kaz%C4%B1>.

⁷ DEFİNE ARAMA YÖNETMELİĞİ [*Regulation on treasure hunting*], Jan. 27, 1984, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.17238&MevzuatIlski=0&sourceXmlSearch=define>.

⁸ TARİHİ VE BEDİİ DEĞERİ OLAN TAŞINMAZ MALLARIN KİRAYA VERİLMESİ HAKKINDA YÖNETMELİK [*Regulation on leasing of immovable property with historical and aesthetic value*], Dec. 16, 1984, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5759&MevzuatIlski=0&sourceXmlSearch=tarihi%20ve%20bedii>.

⁹ TAŞINIR KÜLTÜR VARLIĞI TİCARETİ VE BU TİCARETE AİT İŞYERLERİ İLE DEPOLARIN DENETİMİ HAKKINDA YÖNETMELİK [*Regulation on inspection of trade of movable cultural property, offices for such trade and warehouses*], Jan. 11, 1984, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5330&MevzuatIlski=0&sourceXmlSearch=ta%C5%9F%C4%B1n%C4%B1r%20k%C3%BClt%C3%BCr%20varl%C4%B1%C4%9F%C4%B1%20ticareti>.

¹⁰ AŞINIR KÜLTÜR VE TABİAT VARLIKLARINI BULANLARA, HABER VERENLERE VE YAKALAYAN KAMU GÖREVLİLERİNE VERİLECEK İKRAMİYE İLE İLGİLİ YÖNETMELİK [*Regulation on the reward to be given to those who find or notify the existence of movable cultural and natural property and to public officials capturing such property*], Aug. 11, 1984, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5331&MevzuatIlski=0&sourceXmlSearch=bulanlara,%20haber%20verenlere>.

¹¹ ÖZEL MÜZELER VE DENETİMLERİ HAKKINDA YÖNETMELİK [*Regulation relating to private museums and their inspection*], Jan. 22, 1984, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.15817&MevzuatIlski=0&sourceXmlSearch=%C3%B6zel%20m%C3%BCzeler>.



Cultural Property”) published in the Official Gazette No. 19803 dated 3 May 1988;¹²

- viii. Regulation regarding categorization, registration, and acceptance of movable cultural and natural assets requiring protection to museums (“**Registration Regulation for Movable Property**”) published in the Official Gazette No. 27206 dated 20 April 2009;¹³
- ix. Regulation on collecting cultural and natural movable property requiring protection and its governance (“**Collectors Regulation**”) published in the Official Gazette No. 27530 dated 23 March 2010;¹⁴
- x. Regulation on identification and registration of immovable cultural and natural property requiring protection (“**Registration Regulation for Immovable Property**”) published in the Official Gazette No. 28232 dated 13 March 2012.¹⁵

D. Procedure for the recovery of cultural property

The movable and immovable natural or cultural assets which are found within privately-owned immovable property are considered to be state property. The purpose of this principle is to keep the cultural immovable assets and their pieces where they were actually discovered unless it is deemed necessary to transport them to another place due to the nature of such assets with the help of regional protection committees (*koruma bölge kurulları*). The immovable cultural assets found within the protected areas may be expropriated according to a program determined by the Ministry.

Turkey is a State party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 (the “**1970 UNESCO Convention**”), which regulates the procedures for the recovery of cultural property that has been lost to foreign nations. This Convention relies on state-to-state diplomatic relations for the settlement of disputes by reporting to UNESCO. UNESCO Member States may also call on the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (“**ICPRCP**”).¹⁶ Created in 1978, this permanent body is entrusted with the task of assisting UNESCO Member States in dealing with cases falling outside the scope of existing conventions.

Turkey has relied upon this Convention and resorted to the ICPRCP several times for the recovery of its cultural property. For instance, in 1986, Turkey filed a restitution request with the ICPRCP for the return of several cultural property items

¹² ETNOGRAFIK NİTELİKTEKİ TAŞINIR KÜLTÜR VARLIKLARI HAKKINDA YÖNETMELİK [Regulation on ethnographic qualified movable cultural property], May 3, 1988, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.5320&MevzuatIlski=0&sourceXmiSearch=etnografik%20nitelikteki>.

¹³ KORUNMASI GEREKLİ TAŞINIR KÜLTÜR VE TABİAT VARLIKLARININ TASNİFİ, TESCİLİ VE MÜZELERE ALINMALARI HAKKINDA YÖNETMELİK [Regulation regarding categorization, registration, and acceptance of movable cultural and natural assets requiring protection to museums], Apr. 20, 2009, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.12995&MevzuatIlski=0&sourceXmiSearch=korunmas%C4%B1%20gerekli%20ta%C5%9F%C4%B1n%C4%B1r>.

¹⁴ KORUNMASI GEREKLİ TAŞINIR KÜLTÜR VE TABİAT VARLIKLAR KOLEKSİYONCULUĞU VE DENETİMİ HAKKINDA YÖNETMELİK [Regulation on collecting cultural and natural movable property requiring protection and its governance], Mar. 23, 2010, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.13876&MevzuatIlski=0&sourceXmiSearch=tabiat%20varl%C4%B1klar%C4%B1%20koleksiyon>.

¹⁵ KORUNMASI GEREKLİ TAŞINMAZ KÜLTÜR VARLIKLARININ VE SİTLERİN TESPİT VE TESCİLİ HAKKINDA YÖNETMELİK [Regulation on identification and registration of immovable cultural and natural property requiring protection], Mar. 13, 2012, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7.5.15958&MevzuatIlski=0&sourceXmiSearch=sitlerin%20tespit%20ve%20tescili>.

¹⁶ Intergovernmental Committee (ICPRCP), UNESCO, <http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/intergovernmental-committee/>.



*Hasankeyf/Batman panoramic, Turkey, Author Ben Bender, 27 October 2013
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(i.e., cuneiforms tablets and two Hittite statues of stone sphinxes discovered at the Turkish archaeological site of Boğazköy) temporarily sent to Germany in 1917 to be cleaned, restored, and catalogued. Although many items were sent back to Turkey, several others remained in Germany, including one of the two stone sphinxes, called the Boğazköy Sphinx. Negotiations between Germany and Turkey, with the guidance and recommendations of the ICPRCP¹⁷ lasted until 2011, when the parties finally reached an agreement on the recovery of the Boğazköy Sphinx.¹⁸ On 27 July 2011, the Sphinx was handed over to Turkey “as a voluntary gesture of friendship”, after more than 70 years of display in Berlin’s Pergamon Museum.¹⁹ More recently, in September 2019, the Turkish government has made a request to the United States under Article 9 of the 1970 UNESCO Convention, seeking import restrictions from the United States on archaeological and ethnological material belonging to Turkey to protect its cultural patrimony.²⁰

E. Criminal laws and penalties

Articles 73 and 74 of the Law No. 2863 impose penalties for non-compliance with its provisions.

According to Article 73, entitled “Contradiction with provisions relating to private museums and collectors”, persons who violate Articles 26 or 30 of this Law shall be punished with a prison sentence of three months to one year and a judicial fine or with a heavier penalty if the crime requires so.

Articles 26 to 30 regulate (i) museum, private museum and the making of collections; (ii) trade of cultural property; (iii) inspection of offices and storage areas; (iv) the obligation to inform authorities about the collection; and prohibit (v) declaring a residence as office.

¹⁷ Recommendations: Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation (16th Sess.) (2010), <https://unesdoc.unesco.org/ark:/48223/pf0000189639>.

¹⁸ Press Release, Turkey to Receive Hittite Sphinx, Press Release No. 171, Press & Info. Office of the Fed. Gov’t. (May 13, 2011) (Ger.), <https://archiv.bundesregierung.de/resource/blob/656916/748558/600ed3dc9cbf21a151327aa4e7e5d233/2011-05-13-pm-sphinx-translation-data.pdf>.

¹⁹ Alessandro Chechi, et al., Case Boğazköy Sphinx – Turkey and Germany, ARTHEMIS, (2011) <https://plone.unige.ch/art-adr/cases-affaires/bogazkoy-sphinx-2013-turkey-and-germany/case-note-2013-bogazkoy-sphinx-2013-turkey-and-germany>. See also, Susanne Güsten, Turkey Presses harder for Return of Antiquities, N.Y. TIMES, May 25, 2011, <https://www.nytimes.com/2011/05/26/world/europe/26iht-M26C-TURKEY-RETURN.html?mtref=www.google.com&gwh=F493CAF4085F34A41628F464A75232E9&gwt=pay&assetType=REGIWALL>.

²⁰ Dep’t of State, Notice of Receipt of Request From the Government of the Republic of Turkey Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 84 Fed. Reg. 52550 (Oct. 2, 2019), <https://www.federalregister.gov/documents/2019/10/02/2019-21359/notice-of-receipt-of-request-from-the-government-of-the-republic-of-turkey-under-article-9-of-the>.

Article 74 entitled “Unlicensed survey, excavation and sounding” provides that:

“Persons who sound or excavate to find cultural property without a license shall be punished with a prison sentence of two to five years. However, if the excavation or sounding location is not a preservation site or any other area protected according to this Law, the penalty will be reduced by one third.

Persons who hunt for treasures without permission shall be punished with a prison sentence of three months to two years. However, if these acts are committed with the aim of smuggling cultural property out of the country or by the persons who have the duty to protect the cultural property, the penalty will be increased up to twofold.

In case the person delivers the cultural property found by committing the crimes defined in this article to the local civil authority before the investigation starts, the court might reduce the penalty to two-thirds.

In case the person who hunts for treasures without a license gives the names of the individuals who induced him to commit such a crime by providing the necessary equipment and hands them into the authorities before the prosecution starts, the court might not only reduce the penalty, but also decide not to give any penalty.”

As mentioned above, heavy penalties apply to crimes relating to illegal possession or exportation of cultural property. Relevant entities at the police department (detailed below) may raid and seize such cultural property and can arrest the suspects with valid search and arrest warrants obtained from the public prosecutor.

F. Conventions and International Treaties with the United States and Europe.

Turkey has ratified:

- i. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, on 21 April 1981;
- ii. The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, on 16 March 1983 (the “**1972 UNESCO Convention**”);
- iii. The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, on 27 March 2006 (the “**2003 UNESCO Convention**”).

The international conventions, properly ratified by the Council of Ministers, have the same force as national laws and thus do not require an implementing legislation. They are therefore self-executing and Turkey’s obligations under these treaties are mostly dealt with under the Law No. 2863.

Turkey is not a party to UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995.

(a) Treaties with the United States

According to data provided on the websites of the Bureau of Educational and Cultural Affairs of the United States and Ministry of Foreign Affairs of Turkey, currently, there is no agreement concerning cultural property between these two States.

(b) Treaties with the European Union

According to data provided on the website of the Ministry of Foreign Affairs of Turkey, there are no bilateral agreements explicitly regulating cultural property between Turkey and the European Union, or any European Union countries. However, Turkey is a signatory to the following conventions:

- i. European Cultural Convention of 1954;²¹
- ii. European Convention on the Protection of the Archaeological Heritage of 1969, and as revised in 1992;²²
- iii. Convention for the Protection of the Architectural Heritage of Europe of 1985.²³

²¹ European Cultural Convention, July 19, 1954, <https://rm.coe.int/168006457e>.

²² European Convention on the Protection of the Archaeological Heritage, Jan. 16, 1992 (revised), <https://rm.coe.int/168007bd25>.

²³ Convention for the Protection of the Architectural Heritage of Europe, Oct. 3, 1985, <https://rm.coe.int/168007a087>.

Turkey participates in the Council of Europe Steering Committee for Culture, Heritage and Landscape (“CDCPP”), responsible for coordinating EU programs and activities related to Culture, Heritage and Landscape and that oversees their implementation, monitoring and evaluation.²⁴ CDCPP was established by the Committee of Ministers of the Council of Europe in 2001. Turkey also participates in the Committee of Culture, Science and Education.

(c) Significant agreements with other foreign nations regarding cultural property

The following bilateral agreements and protocols have been signed with the objective of preventing the illegal circulation of cultural property and enhancing transnational cooperation:

- i. Agreement Between the Republic of Turkey and the Republic of Uzbekistan on Mutual Assistance in Preventing the Smuggling of Cultural Values and Securing Their Return, published in the Official Gazette No. 23410 and dated 22 July 1998;²⁵
- ii. Customs Cooperation Agreement between the Republic of Turkey and the Republic of Turkmenistan for Capturing and Returning Cultural Property Taken In or Out of the Country Illicitly, published in the Official Gazette No. 23751 and dated 10 July 1999;²⁶
- iii. Agreement between the Government of the Republic of Turkey and the Government of the People’s Republic of China on Preventing the Theft, Clandestine Excavation, and Illicit Import and Export of Cultural Property, published in the Official Gazette No. 27344 and dated 9 September 2009;²⁷
- iv. Agreement for the Protection, Preservation, Recovery and Restitution of Cultural, Archaeological, Artistic and Historical Cultural Property Traded, Exported or Transferred Illicitly Between the Republic of Turkey and Republic of Peru, published in the Official Gazette No. 27481 and dated 2 February 2010;²⁸
- v. Agreement between the Government of the Republic of Turkey and the Government of the Republic of Bulgaria on the Prohibition and Prevention of the Illicit Import, Export, and Transfer of Ownership of Cultural Property published in the Official Gazette No. 28593 and dated 20 March 2013;²⁹
- vi. Protocol between the Government of the Republic of Turkey and the Government of the Hellenic Republic on the Prohibition and Prevention of the Illicit Import, Export, Transit, and Transfer of Ownership of Cultural Property published in the Official Gazette No. 28690 and dated 27 June 2013;³⁰
- vii. Protocol between the Republic of Turkey and the Republic of Romania for Prohibiting and Preventing Illicit Import, Export, Transit, and Transfer of Ownership of Cultural Property dated 19 September 2013;³¹
- viii. Georgia and Turkey signed an agreement on 23 May 2017, according to which they will be working together in restoring and safeguarding monuments of cultural heritage found in the territory of either State. This agreement specifically covers the medieval monuments of the Ottoman Empire in the Georgian territory and Georgian historical sites found in Turkey today.

G. National laws on cultural property of other nations

Turkey cooperates with the International Criminal Police Organization (“INTERPOL”) to identify and recover stolen and illegally exported cultural property belonging to other nations. Since the illicit exportation of cultural property (regardless of its origin) often takes place in more than one country, it is important to provide adequate border checks and take other precautions from an international perspective.

²⁴ <https://www.coe.int/en/web/cdcp-committee>.

²⁵ <https://www.resmigazete.gov.tr/arsiv/23410.pdf>.

²⁶ <https://www.resmigazete.gov.tr/arsiv/23751.pdf>.

²⁷ <https://www.resmigazete.gov.tr/eskiler/2009/09/20090909-3.htm>.

²⁸ <https://www.resmigazete.gov.tr/eskiler/2010/02/20100202-3.htm>.

²⁹ <https://www.resmigazete.gov.tr/eskiler/2013/03/20130320-2.htm>.

³⁰ <https://www.resmigazete.gov.tr/eskiler/2013/06/20130627M1-5-1.pdf>.

³¹ <https://www2.tbmm.gov.tr/d26/1/1-0396.pdf>.

Temple Pendant and Stick, ca. 1080–1150, Constantinople, Byzantine, Cloisonné enamel, gold, Metropolitan Museum of Art, New York, Rogers Fund, 1990



INTERPOL's national branch in Turkey, the National Central Bureau for Turkey, operates under the Directorate-General of the Turkish National Police. Its missions include cooperating with other police forces and informing INTERPOL in case of stolen cultural property, even when pertaining to other nations.

H. Exemptions for scientific and educational use

According to Article 34 of the Law No. 2863, making replicas of cultural property for educational use or scientific research is not entirely prohibited but is subject to the authorization of the Ministry. The definition of "replica" includes taking photos, recording videos or creating *moulage* (replicas out of wax) of cultural property.

III. NATIONAL CULTURAL INVENTORY – DISTRIBUTION, STATUS, AND TITLE

A. What constitutes "cultural property" in Turkey?

Article 3 of the Law No. 2863 defines both cultural and natural property in the following terms:

"1. **Cultural property:** all movable and immovable property existing on or under the ground or under the water, concerning science, culture, religion and fine arts of before or after recorded history or property that has a unique value for social life before and after recorded history.

Natural property: property existing on or under the ground or under the water and belonging to geological, prehistoric and historical eras that are of a unique kind or require protections because of their characteristics and beauty."

The Law No. 2863 also lists the immovable cultural and natural assets requiring protection as follows:

- i. The natural assets requiring protection and immovable assets built before the end of 19th century;
- ii. Immovable assets found necessary to be protected because of their importance and qualifications by the Ministry, although they were built after the determined time;
- iii. Immovable cultural assets in protected areas;
- iv. Regardless of the time and registration requirements, due to their importance in our national history, buildings and designated areas where great historical events took place during the Turkish War of Independence and the establishment of the Republic of Turkey, and houses where Mustafa Kemal Atatürk lived.

B. Have there been significant changes over time in what types of objects are considered cultural property under the law?

The definition of cultural property is very broad under the Law No. 2863, as it was the case under the prior Law No. 1710. The Law No. 2863 preserves the use of sites and gives discretion to commissions under the Ministry for the categorization of cultural property. Because of the very broad definition of cultural property under these Laws, any object with antique value may be classified as cultural property by the relevant commission.

According to Article 6 of the Law No. 2863, all immovable assets built until the 19th century are considered as immovable assets requiring protection.

Article 23 of the Law No. 2863, which gives the definition of cultural property requiring protection, reads as follows:

"The movable cultural and natural property requiring protection shall refer to the following:

- a) All kinds of cultural and natural property from geological periods, prehistory and recorded history, having documentary value in terms of geology, anthropology, prehistory, archaeology and art history, reflecting the social, cultural, technical and scientific characteristics and level of the period they belong to.

All kinds of animal and plant fossils, human skeletons, firestones (*sleks*), volcanic glass (*obsidian*), all kind of tools made of bones or metal, tiles, ceramics, similar pots and pans, statues, figurines, tablets, weapons for defence and assault, icons, glassware, ornaments (*hülliyyat*), ring stones, earrings, needles, pegs, stamps, bracelets etc., masks, crowns (*diadems*), leather, cloth, papyrus, parchment or documents inscribed or described on metal, balances, coins, stamped or inscribed tablets, handwritten manuscripts or books with gilding (*tezhip*), miniatures, embossing of artistic value, oil or water colour paintings, relics (*muhallefat*), arms



Casket with Warriors and Dancers, 11th century, Byzantine, Constantinople, ivory and bone, gilded copper mounts, Metropolitan Museum of Art, New York, Gift of J. Pierpont Morgan, 1917

(*nişan*), medals, portable goods and their parts made of tiles, soil, glass, wood, textiles etc.

Cultural property of ethnographic quality relating to science, religion and mechanical (*mihaniki*) arts including artefacts, tools, and equipment reflecting the social development of people.

Coins pertaining to the period of the Ottoman Sultans Abdülmecit, Abdülaziz, V. Murat, II. Abdülhamit, V. Mehmet Reşat and Vahdettin can be purchased and sold domestically without being registered. Coins that do not fall under the scope of this article shall be subject to the general provisions of the Law.”

C. Have there been significant changes over time in what types of objects are considered state-owned or an inalienable part of the national heritage?

As noted above, the idea of preserving cultural property was endorsed in the Ottoman Empire only in the late 19th Century. Prior to the First Antiquities Code, cultural property was not under state protection and as a result many cultural items have been exported. The first legislation on this issue, the First Antiquities Code, allowed private ownership of cultural property found on private property. This dual categorization between private and public ownership has also led to the exportation of some cultural property that was not state-owned.

Turkey adopted the principle of state ownership of all archaeological objects found within its territory in 1884 with

Gilded silver cup with two handles, ca. 2300–2000 B.C., Anatolian, Silver, gold foil, Metropolitan Museum of Art, New York, Gift of Norbert Schimmel Trust, 1989



the Third Antiquities Code. Since the enactment of the Law No. 1710 and the Law No. 2863, this principle of state ownership covers all national heritage.

D. Does the law clearly prohibit export of cultural property?

The export of all cultural and natural property is prohibited with the exception of temporary exhibitions abroad, allowed only if the officials of the host state provide the necessary guarantees and insurances against the risk of damage, loss or other threats.

E. Is there a permitting system, or other mechanism, for the export of cultural property, and for what purposes (sale, exhibition, exchange)?

Trade of cultural property that is not required to be submitted to the museums is possible with the permission of the Ministry. It is further stated that the dealers should obtain a license from the Ministry, valid for a period of three years. Does the law recognize religious or other cultural institutional ownership of cultural property?

F. Does the law recognize religious or other cultural institutional ownership of cultural property?

While the Directorate of Religious Affairs (*Diyanet*) maintains control over the practice of Islam in Turkey, the General Directors of Foundations (*Vakıflar Genel Müdürlüğü*) manages and audits religious foundations for other religions.³² In fact, under the 1935 Law on Foundations (the “**Foundations Law**”), religious foundations lost autonomy they had originally been granted and came under the governance of the General Directorate of Foundations.

³² U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, TURKEY CHAPTER- 2019 ANNUAL REPORT, <https://www.uscirf.gov/reports-briefs/annual-report-chapters-and-summaries/turkey-chapter-2019-annual-report>.

Registered and annexed foundation property, such as *waqf* property, is subject to a separate status and is not considered as state property. Immovable cultural and natural property owned by registered and annexed foundations are administered and controlled by the General Directorate for Foundations. Such property, including mosques, tombs (*türbe*), caravanserais, madrasahs, khans, public baths, masjids, zaviyahs, sebils, mevlevihanes (lodge of Mevlevi dervishes), fountains, and similar immovable cultural and natural property requiring protection and owned by natural and legal persons, shall be identified and inventoried by the General Directorate for Foundations. Foundations can create collections of all kinds of cultural property and can establish museums provided that they obtain a permit from the Ministry.

Faith communities suffer from the absence of a regulatory framework that would provide them legal personality and hence the ability to acquire, own or rent property, as such they are required to establish various legal entities to be able to acquire property, including foundations, associations or even private companies under the Civil code or “minority community foundations” (*vakıflar*), registered by the Directorate General Foundations.³³ According to one commentator, “[n]umerous property grievances of faith communities – including the precarious nature of their ownership of, and access to, these properties – have proven that none of these alternatives can guarantee the property rights of faith communities in the absence of full and independent legal status.”³⁴

The community foundations are the only organs with a legal standing of non-Muslim minorities protected by the Lausanne Peace Treaty of 1923, yet the system is not ideal as it results in a very fragmented management structure.³⁵ Every community institution needs to have a separate foundation, controlled by individual boards that own and manage the property of their respective churches, cemeteries, community schools, hospitals etc. Moreover, the religious heads of these communities lack the legal status not only to manage all the institutions but also to own, transfer and manage the community assets.³⁶ The right of minority foundations to own and manage property is further crippled by the enactment of various legislations (such as the Law on Foundations) and court decisions.³⁷ This resulted in various convictions of Turkey by the European Court of Human Rights for the violation of Article 1 of Protocol No. 1 of the European Convention on Human Rights.³⁸

Although, in theory, this lack of legal personality applies to all religious communities in Turkey (including Muslim and non-Muslim communities), in practice, Muslim communities benefit from the administration of the Directorate of Religious Affairs, handling all the issues related to legal personality and property rights.³⁹ In 2010, the Venice Commission (European Commission for Democracy through Law) therefore recommended Turkey to implement some legislation to recognize the legal status of faith communities as well as their property rights.⁴⁰

A Decree was published in October 2011 (the “**Restitution Decree**”), allowing non-Muslim community foundations to apply to regain or receive compensation for property that has been confiscated by the State, paving the way for restitution and compensation claims.⁴¹ For instance, in May 2018, the Turkish government returned the deeds to 50 properties to the Syriac Orthodox Church in Mardin, including the Mor Gabriel Monastery, the oldest surviving Syriac Orthodox monastery in the world, after a long dispute with the Turkish Government. The Council of Foundations has rendered a decision in September 2014 to transfer the title for 11 properties on Bozcaada Island to the Greek Orthodox Foundation, which the latter has yet to receive.⁴² Similarly, the Armenian Patriarchate has been seeking the return of the Sanasaryan Han in Istanbul, which has been seized by the government in 1936. Recently, the Turkish Court of Cassation ruled that the title deed will remain with the Turkish state, albeit a decision to the contrary a year before.⁴³

³³ Aykan Erdemir, *Religious Freedom in Turkey*, U.S. COMM’N ON INTERNATIONAL RELIGIOUS FREEDOM, 27 June 2019, <https://www.fdd.org/analysis/2019/06/27/religious-freedom-in-turkey/>.

³⁴ *Id.*

³⁵ The Lausanne Peace Treaty was ratified by Turkey on 23 August 1923 and is considered to be a key treaty establishing the minority protection regime for Turkey’s non-Muslim communities. The failure of the Lausanne Treaty to explicitly identify the non-Muslim minorities to which it applies has led Turkey to adopt a very restrictive approach: the Turkish government extended the protection of the treaty only to the Armenian, Greek Orthodox and Jewish communities, thereby excluding other non-Muslim groups, such as the Syriac Orthodox Church (certain communities therefore suffer from the lack of formal recognition as religious faith groups). See Ceren Ozgul, *Beyond Legal Victory or Reform: The Legal Mobilisation of Religious Groups in the European Court of Human Rights*, 45 RELIGION, STATE & SOCIETY (2017), <https://www.tandfonline.com/doi/pdf/10.1080/09637494.2017.1398931>.

³⁶ Ceren Ozgul, *Beyond Legal Victory or Reform: The Legal Mobilisation of Religious Groups in the European Court of Human Rights*, 45 RELIGION, STATE & SOCIETY 317 (2017), <https://www.tandfonline.com/doi/pdf/10.1080/09637494.2017.1398931>.

³⁷ *Id.*

³⁸ See, e.g., Fener Greek Patriarchate (Ecumenical Patriarchate) v. Turkey, No. 14340 Euro. Ct. H.R. 05 (2008).

³⁹ Opinion No. 535/2009 of the Venice Commission on the Legal Status of Non-Muslim Religious Communities in Turkey and the Right of the Orthodox Patriarchate of Istanbul to Use the Adjective “Ecumenical”, Feb. 23, 2010, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2010\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2010)012-e).

⁴⁰ *Id.*

⁴¹ Mine Yıldırım, *What does Turkey’s Restitution Decree Mean?*, FORUM 18 NEWS SERVICE, Oct. 6, 2011, http://www.forum18.org/archive.php?article_id=1621.

⁴² U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, TURKEY CHAPTER- 2019 ANNUAL REPORT, *supra* n. 32.

⁴³ Christopher Sheklian, *The Armenian Patriarchate and the Sanasaryan Han*, PUBLIC ORTHODOXY, Mar. 28, 2019, <https://publicorthodoxy.org/2019/03/28/armenian-property-in-turkey/>.



Ortahisar, Cappadocia, Turkey, from the 4th to 13th century AD, occupants of the area dug tunnels into the exposed rock face to build residences, stores, and churches which are home to irreplaceable Byzantine art. Author Brocken Inaglory, 26 March 2006, Creative Commons Attribution-Share Alike 3.0 Unported license.

G. In January 2019, local authorities in Istanbul also granted land and permit for the construction of a Syriac Christian Church in Istanbul, the first-ever church to be built in the history of the Republic of Turkey.⁴⁴ Finally, the Directorate General of Foundations has

⁴⁴ U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, TURKEY CHAPTER- 2019 ANNUAL REPORT, *supra* n. 32; Anadolu Agency, *Construction of New Church in Istanbul to Begin in February*, HÜRRIYET DAILY NEWS, Jan. 9, 2019, <http://www.hurriyetdailynews.com/construction-of-new-church-in-istanbul-to-begin-in-february-140372>.

allocated funds for the restoration of a number of churches and synagogues since 2003.⁴⁵ Does the law recognize private ownership of cultural property?

According to the Law No. 2863, all movable and immovable cultural property which requires or will require protection is considered as state property. However, private ownership of cultural property for natural and legal persons is permitted under the following circumstances:

- i. Cultural property which was held as private property before the entry into force of the Fourth Antiquities Code;
- ii. Cultural property that was not placed in museums in accordance with Article 25 of the Law No. 2863;
- iii. Cultural property which was brought to Turkey after private ownership was acquired abroad;
- iv. Cultural property that falls within the category of the ‘ethnographic cultural property’ under Article 23(a) of the Law No. 2863, defined as “all kinds of cultural and natural property from geological periods, prehistory and recorded history, having documentary value in terms of geology, anthropology, prehistory, archaeology and art history reflecting the social, cultural, technical and scientific characteristics and level of the period they belong to.”

All aspects of private collections of cultural property and private collectors are governed respectively by the Regulation on Private Museums and the Collectors Regulation (e.g. inheritance of such collections etc.). Both private collections and private collectors must be registered and the location of the collection must be declared. Privately owned cultural property may be purchased by the Ministry.

H. Is cultural property that is not state-owned subject to export restrictions?

Article 24 of the Law No. 2863 sets the framework for export restrictions in relation to ethnographic cultural property. In particular, the Law provides that museums affiliated to the Ministry or specialist custom services the exit gates can monitor the transport of ethnographic cultural property and antiquities out of the country. Article 5 of the Regulation on Ethnographic Cultural Property specifies that the working conditions of specialist custom services will be regulated by a Protocol signed between the Ministry and the Ministry of Customs and Trade. Antiquities that are not allowed to be taken out of the country as a result of this monitoring shall be identified and returned to the owner on the condition that they be evaluated in the country. Therefore, cultural property covered by the Law No. 2863 under private ownership should be examined by museum officials who can grant the right to transport such property out of the country.

I. Does the law clearly vest title to cultural property in the state from a certain date?

Cultural property owned privately before the entry into force of the Fourth Antiquities Code in 1906 was not considered as state property. However, this date cannot be accepted as an exact date from which the law vested title to cultural property, as prior to this date, cultural property which was not subject to any private ownership was considered to be state property.

J. Does the state allow domestic trade (shop or gallery or auction sales, private sales or other transfers) in the same kinds of cultural property that it restricts export in?

Trade of cultural property that is not required to be submitted to museums for approval is possible with the permission of the Ministry. It is further stated that dealers should obtain a license from the Ministry, valid for a period of three years.⁴⁶

K. Does the state maintain an inventory of cultural property so that it is possible to establish the date of illicit removal or of export?

Since 1989, the documentation and inventories of archaeological sites and monuments have been carried out by the Department of Registration of the General Directorate, in connection with the Ministry.

The website of the Ministry provides an inventory of Turkish cultural property with the precise date of the recovery and

⁴⁵ *Turkey has Restored 14 churches, One Synagogue Since 2003*, HÜRRİYET DAILY NEWS, Dec. 23, 2017, <http://www.hurriyetdailynews.com/turkey-has-restored-14-churches-one-synagogue-since-2003-124639>.

⁴⁶ Korunması Gerekli Taşınır Kültür Ve Tabiat Varlıklarının Tasnifi, Tescili ve Müzelerle Alınmaları Hakkında Yönetmelik, Reg. 27206, art. 10/3 (2009) (Turk.), <https://teftis.ktb.gov.tr/TR-14606/korunmasi-gerekli-tasinir-kultur-ve-tabiat-varliklarini-.html>.



Panorama of Terraced Houses, Efes, Izmir, Turkey, photo by Adam Jones from Kelowna, BC, Canada, 24 May 2011, Creative Commons Attribution-Share Alike 2.0 Generic license.

approximate dates for the loss or illicit trading of such cultural property.⁴⁷

L. Does the state make its domestic laws available domestically or internationally so that an exporter (or a subsequent owner or holder) could reasonably know whether at the time of export (or later come to know) that the object was exported in violation of the law?

All domestic laws are available on www.mevzuat.gov.tr and the English version of the Law No. 2863 can be found on WIPO's or the General Directorate's websites.⁴⁸

IV. ADMINISTRATION AND ENFORCEMENT SYSTEMS AND RESULTS

A. What in-country systems exist specifically for cultural property management and administration, and public education?

Public education: public education on the importance of the cultural heritage was initiated in the 1930s.

Government agencies in charge of cultural property: the Ministry is responsible for documenting and tracking cultural property.

Other public authorities also responsible for the protection of cultural property: the High Council for Conservation (*Kültür ve Tabiyat Varlıklarını Koruma Yüksek Kurulu*, formerly *Anıtlar Yüksek Kurulu*), Regional Conservation Boards (*Kültür ve Tabiyat Varlıklarını Koruma Kurulları*) and the General Directorate.

The General Directorate organizes meetings, joint workshops and training sessions with the General Directorate of Customs Enforcement within the Ministry of Customs and Trade, the Department of Anti-Smuggling and Organized Crime within the Turkish National Police, and the Gendarmerie General Command in order to share information and develop preventative techniques.

The General Directorate also organizes symposiums to train its own staff on effective security and risk management measures for the protection of cultural property using expertise from around the world. For instance, the General

⁴⁷ Anıtlar ve Sitler [*Monuments and Sites*], TÜRKİYE KÜLTÜR PORTALI, <https://www.kulturportali.gov.tr/portal/sitler-ve-anitlar-1>.

⁴⁸ KÜLTÜR VARLIKLARI VE MUZELER GENEL MÜDÜRLÜĞÜ [*General Directorate of Cultural Assets and Museums*], <https://kvmgm.ktb.gov.tr/TR-43249/law-on-the-conservation-of-cultural-and-natural-propert-.html>.



Directorate plans to host its 41st one-day symposium in June 2019, on the promotion of cultural property protection both domestically and abroad, which is open to both its own staff and other interested individuals.⁴⁹ The General Directorate also provides similar training sessions to its incoming staff.

The ‘Conservation of Cultural and Natural Property’ project supported by the General Directorate of Cultural Heritage and Museums and implemented in the Province of Burdur can also be given as an example.⁵⁰ This project aims to improve awareness about the necessity to preserve historical, environmental, and cultural property and to share knowledge on Burdur’s own culture. It also aims to achieve coordination among the relevant institutions to promote the historical and touristic values of Burdur, and prevent the smuggling of cultural and natural property within the governing boundaries of the province. Various educational activities for the citizens and children were organized under this project by the administrative provincial bodies, the Provincial Museum Directorate, and gendarmerie teams.

Various activities for children are also organized frequently by the museum directorates subordinated to the Ministry in order to create awareness and consciousness about the cultural heritage and the necessity to protect it. The ‘Children/Museum/Drama Training’ project named ‘Hittite through the eyes of children – Exploring Hattusa’⁵¹ implemented by the Çorum Museum Directorate can be given as an example. Another example is the ‘Children-Friendly Museum’ project initiated by the Ministry and which aims to render museums more attractive for children and create a participatory and learning environment for them.⁵² Some seminars/conferences about the relevant legislations are also organized by the Museum Directorates, Provincial Culture and Tourism Directorates, and expert staff at universities.

⁴⁹ REPUBLIC OF TURKEY MINISTRY OF CULTURE AND TOURISM DIRECTORATE GENERAL FOR CULTURAL HERITAGE AND MUSEUMS, 41ST INTERNATIONAL SYMPOSIUM OF EXCAVATIONS, SURVEYS, AND ARCHAEOOMETRY (June 17-20, 2019), <https://kvmgm.ktb.gov.tr/Eklenti/63693,41sem2019prengpdf.pdf?0>.

⁵⁰ Information on this project can be found at the following link: Kültür ve Tabiat Varlıklarını Koruma Projesi – Burdur, TÜRKİYE KÜLTÜR PORTALI, <https://www.kulturportali.gov.tr/turkiye/burdur/ilprojeleri/kultur-ve-tabiat-varliklarini-koruma-projesi>.

⁵¹ In the news, the main purpose of this project is described as, to develop the awareness of culture and tourism in Turkey starting from the elementary school age and thus to foster a generation of individuals who recognize Turkey’s cultural values, protect them and transfer them to future generations. The related news in Turkish can be found at the following link: *Çocuk Gözüyle Hititler “Hattuşa’yı Keşfediyorum” Çocuk/Müze/Drama Eğitim Projesi*, ARAŞTIRMA VE EĞİTİM GENEL MÜDÜRLÜĞÜ <https://aregem.ktb.gov.tr/TR-12168/cocuk-gozuyle-hititler-hattusayi-kesfediyorum-cocukmuze-.html>.

⁵² A news article on this project can be found at the following link: *Bakanlık’tan “çocuk dostu müze,”* İHA, May 20, 2009, <http://www.ih.com.tr/haber-bakanliktan-cocuk-dostu-muze-71665/>.



Interior of Hagia Sofia Museum, former Greek Orthodox Christian patriarchal cathedral, later an Ottoman imperial mosque, 24 April 2012, Wikimedia Commons Creative Commons Attribution-Share Alike 3.0 Unported license.

B. Which government agencies or cultural institutions document and track cultural property?

The Ministry is authorized to take the necessary measures or have others take the necessary measures to conserve immovable cultural and natural property.

C. Describe how law enforcement and prosecutorial and penal systems are involved in violations of cultural property law

In case a theft from a museum, conservation site or collector, or an illicit sale of protected cultural property takes place, the General Directorate for Cultural Heritage Museums is responsible for immediately notifying the the Ministry of Interior's Department of Anti-Smuggling and Organized Crime (*Kaçakçılık ve Organize Suçlarla Mücadele Daire Başkanlığı* ("KOM")) and its provincial agencies, the Ministry of Interior's INTERPOL-Europol Department, the Ministry of Customs and Trade, the Gendarmerie General Command, the Turkish Coast Guard, Museum Directorates, and other collectors and museums. The General Directorate must ensure that the theft is thoroughly investigated by these institutions. Once notified, the police and gendarmerie all over the country are tasked with searching for the stolen item, seizing it when found, and handing it over to the relevant state museum or research facility for identification and safekeeping. Those involved are detained, and may be subject to criminal prosecution pursuant to Articles 67 and 68 of the Law No. 2863.

In January 2018 alone, the police discovered and thwarted three separate attempts to smuggle artefacts out of the country, including one operation in Istanbul that seized over 20,000 items – reportedly the largest single raid in Turkey's

history.⁵³ In its most recent report, KOM stated that it conducted 339 police operations in 2016, as a result of which 62,875 artefacts were seized and 638 suspects were arrested. Notably, there were 27 percent fewer theft cases in 2016 than in 2015.

D. Are there procedures for the recovery of cultural property (under treaties or other agreements) that has been ‘lost’ to foreign nations?

Turkey is a signatory to many international conventions that are soft law instruments, and therefore lack a binding force. According to several reports and news, this has led Turkey to adopt less conventional methods to convince the relevant foreign authorities to return the Turkish cultural property, for instance by threatening to revoke excavation permits in Turkey or to not lend important cultural, historical, artistic or archaeological pieces to museums in the relevant country. These allegations have never been confirmed by the Turkish government, and in each case a reason was given to explain its conduct.

The General Directorate and the General Directorate of Customs Enforcement also coordinate with foreign law enforcement and international organizations, including INTERPOL and the World Customs Organization. Once the INTERPOL-Europol branch of the Turkish National Police has been informed of the theft or illegal sale, the cultural property in question is put on INTERPOL’s Stolen Art Database.⁵⁴ Most recently, a *papier mâché* calligraphy tablet and two candlesticks dating back to the nineteenth century and one late Roman sculpture were added to this list.

Turkey has been able to bring home at least a dozen of artefacts with the help of foreign and international recovery operations. INTERPOL has played a key role in six of these cases, including one relating to a gold brooch that was smuggled out of Turkey in 2005 which was found through an investigation led by Germany and INTERPOL, and another one relating to a sarcophagus depicting the twelve labours of Hercules which was found by Swiss customs officials at the border.

The biggest obstacle Turkey faces in coordinating the process with INTERPOL and police forces is the difficulty in proving the provenance of a cultural property item that has been seized within the borders of Turkey while in transit or seized outside the borders of Turkey. The difficulty is due to a lack of a public record of Turkish cultural and natural property which would make it possible to show that the seized property has been smuggled from Turkey.

E. Analysis of enforcement/lack of enforcement: how does the law on paper match current and past practice?

The return of illicitly exported cultural property to Turkey has been a priority for the Ministry. Very recently, mosaics were successfully returned to the Zeugma Mosaic Museum in Gaziantep as a result of a collaborative effort. According to local media news reports, the operation began back in 2012 when two professors in Ohio, USA confirmed that the mosaics belonged to the Zeugma mosaic in Gaziantep.⁵⁵ A collaborative effort between the Ministry, the Ministry of Internal Affairs, the Ministry of Foreign Affairs and the Federal Bureau of Investigation lasted for six years. It was later revealed that the mosaics were purchased by Bowling Green State University in Ohio from a dealer back in 1965. The university was not aware of the illicit export of the mosaics. After a long negotiation period, the mosaics were brought back to Turkey on 5 October 2018.

Similar negotiations are being held with the Berlin Museum in Germany, the Louvre Museum in France, and the State of Denmark.⁵⁶ As demonstrated above, enforcement is strict, especially when it comes to the return of illicitly exported cultural property. However, further information is not available on the current situation with respect to enforcement procedures and the preservation of cultural property in Turkey.

F. What is the funding for law enforcement and prosecutions?

The conservation of immovable cultural and natural property owned by public institutions and organizations is subsidized by the allocation of an annual budget for this purpose.

Some expenses are paid through the money deposited to the Revenues Authority collected from the excavation

⁵³ See Ömer Erbil, *Artifacts Seized in Istanbul Kept in Archeology Museums’ Storages*, HÜRRİYET DAILY NEWS, Jan. 12, 2018, <http://www.hurriyetdailynews.com/artifacts-seized-in-istanbul-kept-in-archeology-museums-storages-125642>.

⁵⁴ *Stolen Works of Art Database*, INTERPOL, <https://www.interpol.int/en/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database>.

⁵⁵ A news article on the campaign for the return of the mosaic back to Turkey: *Giriş Tarihi, Kaçırılan Zeugma mozaikleri için kampanya*, SABAH, June 11, 2014, <https://www.sabah.com.tr/kultur-sanat/2014/06/11/kacirilan-zeugma-mozaikleri-icin-kampanya>.

⁵⁶ A news article on Turkey’s intention for the return of illicitly exported cultural property and the whole newsletter can be found at the following link: *Ana Sayfa, Türkiye çalınan tarihi eserlerini geri istiyor*, BLOOMBERG HT, Aug. 29, 2017, <https://businessht.bloomberght.com/guncel/haber/1614162-turkiye-calinan-tarihi-eserlerini-geri-istiyor>.



Veue de Temple de Ste. Sophie, now the Museum of Hagia Sofia, public domain, Wikimedia Commons.

directors when the Ministry issues or extends the period of the relevant licenses. These include wages and expenses relating to guards that are temporarily recruited to protect the excavation, sounding and survey site and the cultural property found during the survey, sounding and excavation, the expenses concerning the reconstruction and restoration of the site, and compensation for potential damage that may arise during the excavation. If the Ministry provides this funding, provisions for these expenses do not have to be deposited with the Revenues Authority.

V. SPECIFIC QUESTIONS

A. Definitions

1. What terms and classifications exist for the categorization of cultural property under the laws?

Under the law, cultural property is categorized as movable and immovable property. A separate category of ethnographic cultural property exists as well.

B. Administration and management

1. What institution or ministry administers cultural property?

The Ministry of Culture and Tourism administers cultural property.

2. What institution or ministry historically managed cultural property?

The Directorate of Ancient Arts and Museums was established at the end of the 19th century as a result of increased legislative activities in the field and awareness regarding the importance to preserve cultural heritage. Over time, this entity became more institutionalized under the Ministry of Education. For almost thirty years, the General Directorate

of Ancient Arts and Museums was a sub-entity of the Ministry of Education.

In 1971, a separate Ministry of Culture was established. In 1977, these two ministries were merged to become the Ministry of Culture and Education. In 1982, a separate ministry of culture and tourism was established. The relevant sub-entity under this ministry was entitled the General Directorate of Ancient Arts and Museums. Finally, in 1989, the current relevant directorates entitled the General Directorate of Cultural and Natural Heritage and the General Directorate of Monuments and Museums were established. Currently, these directorates are overseen by the Ministry of Culture and Tourism.

3. Explain the basic administrative structure and the process through which an object passes.

Article 4 of the Law No. 2863 gives the procedure to be followed by an individual who discovers a cultural property item:

“Persons who discover movable and immovable cultural and natural property, owners, proprietors or occupants who know or have recently found out about the existence of cultural and natural property on the land they own or use shall be obliged to notify the nearest museum directorship or the village headman or the local administrators of other places within three days at the latest.

If such property is in military garrisons and restricted areas, the relevant command levels shall be notified in line with the relevant procedure.

The village headman, the local administrator receiving such notification or the relevant authorities that are directly notified of such property shall take the necessary measures to protect and secure the property. The village headman shall notify the nearest local administrator of the situation and the measures taken on the same day. The local administrator and other authorities shall notify in writing the Ministry and the nearest museum directorship within ten days.

Upon receiving this notification, the Ministry and Museum Director shall instigate proceedings as soon as possible in accordance with the provisions of this law.”

C. Registration

1. Is there a state registry or database?

The registry decisions of immovable cultural property are available on the website of the General Directorate.⁵⁷ The procedure for the registry process is regulated under the Registration Regulation for Immovable Property. Article 8 of the Registration Regulation for Immovable Property states that decisions on categorizing a piece of land (or any immovable) under protection will be registered at the Land Registry.

According to the Registration Regulation for Movable Property, a commission is assigned to examine movable cultural property and to decide whether such property should be kept under protection. Appeal to the commission’s decisions is possible. The movable cultural property, which is not placed under protection, is to be returned to its owners with a document stating this decision. If the commission decides that such property might be mistakenly sold or transferred as cultural property under protection, then these items will be submitted to a museum.

Article 10 of the Registration Regulation for Movable Property specifies a category that opens the way to private ownership of cultural property. Accordingly, if the commission decides that the cultural property in question should be placed under protection but that there is no need to submit such property to a museum, then these items will be returned to their owners after being registered in the museum.

Article 3 of the Registration Regulation for Movable Property clarifies the definition of registration. There is no nationwide registry of movable cultural property. Instead, such property will be registered to the registries of the museums where they are submitted. However, as the Law does not set out a specific inventory system, each museum uses its own – some being more effective than others.

In 2014, the General Directorate initiated the National Inventory System of Museums to not only create a unified national database containing detailed information about movable cultural property, but also to develop a single model for inventory and storage that can be used nationwide. The project provides museums and experts with a tool to

⁵⁷ Taşınmaz Kültür Varlıklarının Tesciline İlişkin Koruma Bölge Kurulu Kararları, KÜLTÜR VARLIKLARI VE MUZELER GENEL MÜDÜRLÜĞÜ, <https://kvmmgm.ktb.gov.tr/TR-76275/tasinmaz-kultur-varliklarinin-tesciline-iliskin-koruma-.html>.

coordinate research activities, exhibitions, and other projects relating to these artifacts, and monitors their locations at any given time to combat damage, loss, and/or theft. The national database can be found online but is currently under construction as all museums are transferring their registries to the online database. Accordingly, a digital cultural archive will be created and be made accessible to all citizens from the state's online information system (i.e., *e-devlet*).

2. Does state law require registration of both state-owned cultural property and cultural property held by individuals within that state? Under what law or laws?

According to Article 10 of the Registration Regulation for Movable Property, even if cultural property is not submitted to a museum, it should still be registered.

3. What institution or ministry administers the registry/database?

The documentation and inventories of archaeological sites and monuments have been carried out by the Department of Registration of the General Directorate, in connection with the Ministry of Culture and Tourism or its predecessors. This database containing records of monuments and sites is available to the public.⁵⁸

4. What terms and classifications exist for the categorization of cultural property under a state or ministerial registry or database?

The commissions that evaluate cultural property are comprised of experts appointed by relevant museums. These experts have discretion to apply their own criteria to decide if the objects in question fulfill the definition of cultural property under the Law No. 2863.

5. Are registries publicly accessible?

The database of immovable cultural property is available online.⁵⁹

The registries of museums, as explained above, are the registries where movable cultural property is registered. Although these registries are not available online, a request can be filed to the relevant office in the museums. These requests are examined by museum officials and registries may be accessed once the request is approved.

6. Are registration requirements for either commercial property held for sale or private property held as heirlooms or as art collections enforced? Where and how? Are there penalties - in law or in fact?

There are over 100,000 immovable assets registered in Turkey, more than 16,000 of them being archaeological sites. In terms of movable cultural property, museums are obligated under the Law No. 2863 to maintain a detailed inventory of their collections. However, as the Law does not set out a specific inventory system, each museum uses its own – some being more effective than others.

D. Domestic private ownership and transfer by inheritance, gift or sale

1. Is private ownership permitted? (Describe any restrictions on private ownership, if any)

Private collections of cultural property are governed by the Regulation on Private Museums and Private collectors are subject to the Collectors Regulation. For instance, the issue of inheritance is governed by these regulations. Privately owned cultural property may be purchased by the Ministry.

There are private collections of cultural property, including private museums. Both private collections and private collectors must be registered and the locations of collections must be declared.

2. Is inheritance or gifting permitted? (Describe any limitations on transfer, time frame etc.)

Regarding the immovable cultural property, Article 13 of the Law No. 2863 provides that “movable cultural and natural property requiring protection owned by the Treasury and other public institutions and organizations registered and declared duly and immovable property belonging to these that are within the designated conservation site cannot be sold and donated to real and legal persons without the permission of the Ministry of Culture and Tourism.”

⁵⁸ *Anıtlar ve Sitler, supra* n. 47.

⁵⁹ *Id.*



Storm over Edremit Bay, Turkey, Author Michael, 22 September 2007, Creative Commons Attribution-Share Alike 2.0 Generic license.

As for the movable cultural property, Article 26 of the Law No. 2863 provides that: “public institutions and organizations, natural and legal persons and foundations can create collections of all kinds of cultural property to develop their service or fulfill their purpose and establish museums, so long as they obtain permission from the Ministry of Culture and Tourism.”

Private museums are allowed to sell or interchange all kinds of movable cultural and natural property included in their collections, provided that they obtain permission from the Ministry and preserve the integrity of the collection. The museums subordinated to the Ministry have a priority purchase right and the museum directorate to which the museum subordinated in terms of audit shall be informed about the relevant cultural and natural property by delivering a copy of the sale or transfer contract.

3. Is transfer by sale permitted? (Describe any limitations on transfer)

Given that all movable and immovable cultural property belongs to the state, its sale is highly regulated. The Law No. 2863 sets the bar high when it comes to the sale or donation of immovable and movable cultural property (with the exclusion of certified movable ethnographic property).

As such, only the property falling outside the scope of Article 25 can be bought or sold at auction⁶⁰, assuming the individual or group has obtained a three-year license from the Ministry to do so. When selling the artifact at auctions, owners must also inform state-run museums to give them an opportunity to purchase it.

Most importantly, no sale or donation of movable cultural property can take place abroad, although the Government of Turkey can allow temporary exhibitions if the host state can provide the necessary guarantees and insurances against the risk of damage, loss, and other threats.

⁶⁰ Law No. 2863, art 25, *supra* n. 5.



Panorama of Acropolis, Bergama (Pergamon), Turkey, photo by Adam Jones from Kelowna, BC, Canada, 22 May 2011, Creative Commons Attribution-Share Alike 2.0 Generic license.

The buying, selling, and transferring of certified movable ethnographic property is allowed within the borders of the country.

The Ministry, the Ministry of National Defense or the Higher Institute for Atatürk, Culture, Language and History can purchase movable cultural property relating to the period of the Turkish War of Independence, the History of the Republic of Turkey and Atatürk.

The State has a priority purchase right for the objects and antiquities that can be freely purchased and sold.

E. Preemption and confiscation

- 1. Under the various laws or at different points in time, does a non-permitted transfer of private property actually result in a confiscation/seizure, and/or transfer of ownership to the state?**

Museums affiliated to the Ministry or specialist custom services the exit gates can monitor the transport of cultural property out of the country. As a result of this domestic control, if an antiquity is identified as not having the permission to be taken abroad, it shall be returned to its owner.

- 2. What other actions or treatment of the cultural property will trigger a transfer of ownership to the state under the law? Is there compensation?**

Antiquities excluded from the classification and registration and that do not need to be submitted to museums shall be returned with a document to their owners. Antiquities not taken back within one year by their owners can be submitted to a museum or sold by the State.

F. Application

- 1. How broadly or narrowly is the national law applied, in actual fact, in the following circumstances:**
 - a) Domestic transfer by inheritance and gift transfers?**
 - b) Domestic transfer by sale?**

Trade of cultural property is only authorized for movable cultural property that was:



- i. Not placed under protection; or
- ii. Placed under protection but not submitted to a museum.

The trade of such cultural property is regulated by the Regulation on Trade. According to Article 6 of this Regulation, a permit from the Ministry is required for trade. Application for the permit should be submitted to the directorate of the nearest museum. Permits are valid for three years.

2. Is there a system of registration for legal trade in cultural property, such as a dealer's registry?

No separate dealer's registry specifically conceived for cultural property traders exists. However, in order to obtain the Ministerial permit for engaging in the trade of cultural property, the applicant should already be registered as a trader in the Chamber of Commerce. This criterion is provided for under Article 6 of the Regulation on Trade.

3. Is there a system for the documentation of objects in a dealer's inventory?

Pursuant to Article 9 of the Regulation on Trade, the documents, showing that the relevant cultural property objects are subject to trade, should be kept by the traders and should be requested by buyers. Such documents should be presented to inspectors assigned by museums or the Ministry.

G. Religious heritage and community property

1. Are objects of religious heritage included or excluded within state controls?

Objects of religious heritage, which fall under the definition of cultural property under the Law No. 2863 and requiring protection, are placed under the State control. Such objects are kept in museums and registered in the registries of the relevant museums. Collections containing objects of Muslim heritage, such as old copies of the Qur'an and objects pertaining to the Prophet Muhammad, are named 'Holy Relics' (*Kutsal Emanetler*). Such objects are frequently exhibited in various parts of Turkey.

For instance, according to an announcement on the website of the General Directorate⁶¹, objects including an antique lamp, an early Qur'an, and hairs from the beard of the Prophet Muhammad were exhibited in the City History Museum of the Beypazarı Municipality in November 2017. These objects are officially registered in the Ankara Ethnography Museum and were temporarily lent to the City History Museum of the Beypazarı Municipality.

⁶¹ "Kutsal Emanetler" sergisi, KÜLTÜR VARLIKLARI VE MUZELER GENEL MÜDÜRLÜĞÜ, Nov. 29, 2017, <https://kvmgm.ktb.gov.tr/TR-197147/kutsal-emanetler-sergisi.html>.

2. Are objects of religious heritage belonging to individuals included or excluded within state controls? Family Bibles? Marriage documents? Letters or photographs?

As stated above, before the entry into force of the Fourth Antiquities Code, privately-owned property was not under state protection. Thus, objects such as family bibles, marriage documents, letters or photographs, privately owned before the entry into force of the Fourth Antiquities Code are excluded from state control.

3. Do national cultural property laws include community-owned artifacts, such as objects used in religious rituals or ceremonies by a minority or majority religion?

'Holy Relics' collections which are kept separately in museums do not include any objects pertaining to non-Muslim religions. However, these non-Muslim ritual objects are still kept under protection and maintained in museums as long as they qualify as cultural property requiring protection under the Law No. 2863.

For instance, one of the most extensive 'Holy Relics' exhibitions is in the Topkapi Palace Museum. According to the museum's website⁶², this collection only includes objects pertaining to the Prophet Muhammed and some caliphates. Objects pertaining to non-Muslim figures are not included in this exhibition. On the other hand, Turkey has many Christian churches dating back to Byzantine times. These churches have been converted into museums under the Ministry, e.g., the Chora Museum in Istanbul. These museums are not included in 'Holy Relics' collections.

4. Is there a date-based division or a point at which such community records or property is held to belong to or be under the "protection" of the state government when it is over a certain age?

As stated above, there is no specific date under which title vests in the state. Article 23 of the Law No. 2863 specifies the cultural property that should be put under protection:

"The following shall be movable cultural and natural property to be protected:

a) (*Amended: 17/06/1987 – 3386/9 art.*) All kinds of cultural and natural property from geological periods, prehistory and recorded history, that have documentary value in terms of geology, anthropology, prehistory, archaeology and art history *reflecting the social, cultural, technical and scientific characteristics* and level of the period they belong to.

All kind of [...] *icons, [...], parchment or documents inscribed or described on metal, balances, coins, stamped or inscribed tablets, handwritten manuscripts or books with tezhip (gilding), miniatures, embossing of artistic value, oil or water colour paintings, reliques (muhallefat), [...]* portable goods and their parts made of tiles, soil, glass, wood, textiles. Cultural property of ethnographic quality relating to science, *religion* and mechanical (mihaniki) arts including artifact tools and equipment reflecting the social mission of peoples."⁶³ (*emphasis added*)

5. Does national cultural property legislation apply to the export of such minority individual or community property?

The same legislation on export restrictions applies to all cultural property requiring protection even if this property belongs to a minority community. There is no exception created for objects pertaining to minority communities.

H. Archeological work

1. Is there a system of registration for metal detectorists or private archaeological groups?

Any kind of survey, sounding and excavation must be registered and relevant permissions should be obtained. Article 35 entitled 'Permit to survey, sound and excavate' of the Law No. 2863 provides for the procedure to be followed:

"The Ministry of Culture and Tourism shall have the exclusive right to survey, sound and excavate with the view of recovering movable and immovable cultural and natural property subject to the provisions of this law. Permits to survey shall be given by the Ministry of Culture and Tourism to Turkish and foreign teams and organizations whose scientific and financial capacity has been appraised and approved by the Ministry. Permit to survey and excavate shall be given by the Council of Ministers upon proposal of the Ministry of Culture and Tourism. Survey, sounding, and excavation undertaken by Ministry of Culture and Tourism officials or Turkish scientists assigned by the Ministry shall be bound to a permit by the Ministry of Culture and Tourism. A license for survey, sounding and excavation in restricted military zones shall be issued in the name of the experts that have been notified by the above mentioned

⁶² *The Privy Room and Holy Relics Chamber*, TOPKAPI PALACE, <https://topkapisarayi.gov.tr/en/content/pavilion-holy-mantle-and-holy-relics>

⁶³ Law No. 2863, art. 35, *supra* n. 5.



Furniture plaque: hawk ca. 18th century B.C., Anatolia, probably from Achemhöyük, Old Assyrian Trading Colony, Ivory, Metropolitan Museum of Art, New York, Gift of Mrs. George D. Pratt, in memory of George D. Pratt, 1937

teams and organizations upon permission of the General Staff. Unless a justification is provided to the Ministry of Culture and Tourism, the teams and organizations cannot change the names on this license.

The Ministry of Culture and Tourism shall determine which underwater regions have cultural and natural property to be protected with the cooperation of the relevant institutions and organizations and publish these via a Council of Ministers decision. In these regions, sports diving shall be prohibited and excavation and sounding shall be allowed provided that a permit be obtained according to the provisions of article two.”⁶⁴

There is also the Regulation on Excavation according to which Turkish archeologists should submit their application to excavate to the Ministry and foreign archeologists should submit theirs to the respective consulate/embassy of Turkey in their city.

The Ministry has the ultimate right to survey, sound, and excavate immovable and movable cultural property, although it may grant a one-year renewable permit to Turkish and foreign teams and organizations to do so under certain conditions. Chapter 4 of the Law No. 2863 regulates the permits and procedure to be followed regarding excavations. Article 35 of the Law No. 2863 reads as follows: “Permit to survey and excavate shall be given by the Council of Ministers upon proposal of the Ministry of Culture and Tourism”. This permit to excavation is non-transferable.

A representative from the Ministry must be present during the excavations to monitor the work; any movable cultural property excavated must be transferred to the appropriate State museum.

Private individuals can also obtain licenses to “treasure hunt” although they cannot do so on protected immovable cultural property.

The enforcement of these provisions cannot be certainly confirmed by publicly available sources. However, according to news reports, there is some enforcement of these regulations.

In addition, the Regulation on Treasure Hunting sets out the guidelines on where treasure hunters can operate. Such operations should be led by an expert assigned by the nearest museum to the treasure site. All costs should be borne

⁶⁴ *Id.* at ch. 4.

by the treasure hunter. The site for treasure hunting cannot exceed 100 m².

2. Is archaeological work within the country organized and managed by the government through a ministry of culture or by universities through archaeological departments, or both?

The archeological work within the country is organized and managed by the government through the Ministry and by universities through archeological departments.

3. Who gives permissions for archaeological excavations and study to domestic archaeologists?

The Ministry gives permissions for archeological excavations and study to domestic archeologists as well as foreign archeologists in Turkey. A commissioner from the Ministry supervises the excavation activities. The sites are protected by Security and Gendarmerie Forces.

4. Who grants permissions for foreign archaeological excavations and what are the requirements for permit or criteria for qualifications?

Foreign archeological excavations are subject to the same requirements as their Turkish counterparts. A minor differentiation is the inclusion of the Ministry of Foreign Relations, as foreign archeologist teams are required to submit their request for permission to the consulate/embassy of Turkey in their related country. The consulate/embassy will submit the request to the Ministry after including its opinion on the application. Article 6 of the Regulation on Excavation sets out this requirement.

Also recently, the Ministry imposed a new requirement on foreign archeologist excavation teams through a decree of the Council of Ministers. Accordingly, at least 51% of such teams must be comprised of Turkish archeologists in order to continue their work in Turkey. This new requirement was imposed in June 2018 with the purpose of training more Turkish archeologists. Accordingly, some 600 Turkish nationals were expected to take part in the excavations led by foreign teams.⁶⁵

5. Is foreign archaeological work subject to review or even censorship by the state? (Are other private sectors involved?)

According to recent local news reports⁶⁶, foreign archeologist teams are currently leading excavations in 32 antique cities in Turkey.

The requirement that at least 51% of the team should comprise Turkish archeologists might be interpreted as a barrier against foreign archeological work. Recent statistics showing the number of foreign archeological work that was affected by this new rule is not yet available. Therefore, its impact is unknown.

I. Unauthorized/criminal extraction of archaeological objects/looting

1. Are there domestic laws prohibiting unauthorized extraction of archaeological objects?

Both domestic criminal and civil laws prohibit the unauthorized extraction of archeological objects, subject to two to five years of imprisonment and a judicial fine. However, they are not always enforced promptly, and usually only occasionally.

Article 74 of the Law No. 2863, entitled “Unlicensed survey, excavation and sounding” provides that:

“Persons who sound or excavate to find cultural property without a license *shall be punished with a prison sentence of two to five years*. However, if the excavation or sounding location is not a preservation site or any other area protected according to this Law, the penalty will be reduced by one third.

Persons who hunt for treasures without permission shall be punished with a prison sentence of three months to two years. However, if these acts are committed with the aim of smuggling cultural property out of the country or by the persons who have the duty to protect the cultural property, the penalty will be increased up to twofold.

⁶⁵ Ömer Erbil, *New Regulation Imposes ‘Turkish Majority Crew’ Rule for Archeological Excavations*, HÜRRİYET DAILY NEWS, June 21, 2018, <http://www.hurriyetdailynews.com/new-regulation-imposes-turkish-majority-crew-rule-for-archeological-excavations-133598>

⁶⁶ *Türkiye’deki Yabancı Kazılara Yüzde 51 Türk Şartı*, ARKEOFİLİ, June 30, 2018, <https://arkeofili.com/turkiyedeki-yabanci-kazilara-yuzde-51-turk-sarti/>.



Panorama of Booksellers in Beyazıt Square, Süleymaniye District, Istanbul, Turkey, photo by Adam Jones from Kelowna, BC, Canada, 16 May 2011, Creative Commons Attribution-Share Alike 2.0 Generic license.

In case the person delivers the cultural property found by committing the crimes defined in this article to the local civil authority before the investigation starts, the court might reduce the penalty to two-thirds.

In case the person who hunts for treasures without a license gives the names of the individuals who induced him to commit such a crime by providing the necessary equipment and hands them into the authorities before the prosecution starts, the court might not only reduce the penalty, but also decide not to give any penalty.” (*emphasis added*)

J. Criminal and civil penalties for illicit trade in cultural property

1. What is the penalty for violation of illicit trade provisions?

The illicit trade of cultural property is punishable by two to five years of imprisonment. The offence is punishable by five to twelve years of imprisonment and with a judicial fine of up to five-thousand days imprisonment if it is committed by way of exporting the cultural property abroad.

Article 67 of the Law No. 2863 regulates both the obligation to report and the prohibition to trade cultural property as follows:

“Persons who violate the obligation to notify regarding the discovery of cultural and natural property intentionally and without excuse shall be punished with a prison sentence of six months to three years.”

Persons who tender, sell, offer, buy, and/or accept the unreported cultural and natural property shall be punished with a prison sentence of two to five years and judicial fine up to five-thousand days. However, in this case, penalties will not be subjected for the crime defined in the first paragraph.

Persons who trade movable cultural property that has been prohibited from being traded without permission shall be punished with a prison sentence of six months to three years.”

2. Do the laws allow seizure and forfeiture?

According to Article 75 of the Law No. 2863, cultural property seized because of the crimes listed in the Law, should be delivered to a museum. As illicit trade of cultural property is a crime under Turkish law, a public prosecutor is supposed to issue a search warrant for the enforcement officials to conduct the search and then seize and forfeit the items.

3. Are these laws/regulations enforced?

To ensure that these laws are implemented, there are two entities that monitor auction house catalogs, place warnings on popular internet websites specializing in the sale of antiquities, and require sellers to provide the official certificates, registrations, and licenses from the General Directorate or its Museum Directorates before being allowed to place an ad on these websites:



- KOM within the Turkish National Police of the Ministry of Interior; and
- the provincial directorates of Anti-Smuggling and Fighting Against Smuggling and Organized Crime which coordinate all anti-smuggling activities in Turkey.

The Ministry has recovered several cultural artifacts from abroad after reviewing auction catalogs. For instance, a Yortan jug that was up for sale on eBay in Australia was transferred to Turkey after negotiations with Australian authorities in 2014. Turkey also recovered other items, such as a piece of sarcophagus that was being sold at Gorny and Mosch auction house in Munich, silver coins that were being sold at the Los Angeles Numismatic Fine Arts and Bank Leu auction houses in the U.S. and Switzerland, respectively.⁶⁷

The General Directorate of Customs Enforcement of the Ministry of Customs and Trade is another institution responsible for preventing illicit traffic of cultural property through customs.

The Anti-Smuggling Branch functioning under the General Directorate of Cultural Heritage and Museums of the Ministry of Culture and Tourism ensures the necessary coordination between the other relevant Ministries dealing with anti-smuggling activities. Specially trained archeologist police officers accompany seizure teams.

4. What happens to seized property?

Article 75 of the Law No. 2863 states that cultural property seized because of the crimes listed in the Law, should be delivered to a public museum.

For instance, according to news reports⁶⁸, after a seizure in Istanbul in March 2017, where 386 items of cultural property were seized, all items were delivered to the Istanbul Archeology Museum.

5. What is the penalty for violation of illicit possession of cultural property provisions?

The illicit possession of cultural property is punishable by one to three years of imprisonment in addition to a judicial fine of imprisonment for up to three-thousand days.

K. Enforcement authorities and actions

1. What national agencies are responsible for enforcement of cultural property laws?

The Ministry, the Grand National Assembly, the Ministry of National Defense and the General Directorate of the Foundations are responsible for the enforcement of cultural property laws.

The General Directorate, part of the Ministry and based in Ankara, is the designated task force to protect cultural

⁶⁷ Merve Stolzman, *Turkey Rules: Cultural Heritage Protection Efforts Explained*, CENTER FOR ART LAW, Mar. 26, 2018, <https://itsartlaw.org/2018/03/26/turkey-rules/>.

⁶⁸ The related news report can be found at Ana Sayfa, *İstanbul'da tarihi eser operasyonu*, İHA, Mar. 20, 2017, <https://www.ih.com.tr/haber-istanbulda-tarihi-eser-operasyonu-631626/>.



Album of Calligraphies Including Poetry and Prophetic Traditions (Hadith), ca. 1500, calligraphy by Shaikh Hamdullah ibn Mustafa Dede, probably Istanbul, ink, watercolor, and gold on paper, Metropolitan Museum of Art, New York, Purchase, Edwin Binney 3rd and Edward Ablat Gifts, 1982

property in Turkey. It operates together with 63 regional Directorates, each specializing either in the protection, surveying or restoration of cultural assets, and coordinates with 193 museums and 138 archaeological sites to perform its various duties.

All information and documentation regarding any cultural property stolen from a museum, ruin or collector in the country is delivered without delay to the Department of Anti-Smuggling and Organized Crime of the Ministry of Interior, the INTERPOL-Europol Department, the Ministry of Customs and Trade, the Gendarmerie General Command, the Turkish Coast Guard Command, all Governorates, the museum directorates under the Ministry, and the collectors. Such property is looked for all over the country and the customs services as well as the police and gendarmerie units within the provinces are alerted.

All kinds of reports regarding cultural property smuggling and illegal excavations that are received by the Ministry are subject to coordinated investigations by these institutions, while the necessary legal processes are initiated for any person arrested in conjunction with them.

The gendarmerie and police take the necessary operational precautions to prevent illegal excavations. For instance, the gendarmerie units operating in the provinces under the supervision of the Gendarmerie General Command of the Ministry of Interior conduct frequent patrols as well as planned and unplanned checks around and within archeological sites, ruins, ancient cities, mounds, Tumulus, necropolises, and areas where treasures are sought unlawfully within their areas of responsibility. Denunciations to 156 gendarmerie denunciation line and information obtained by the gendarmerie intelligence units are evaluated. The gendarmerie units also monitor and evaluate the denunciation lines on the internet in cooperation with the relevant non-governmental organizations, whereas the information obtained from these sources is processed in coordination with the judicial authorities.

The provincial police forces of the Department of Anti-Smuggling and Organized Crime within the Turkish National Police of the Ministry of Interior conduct operations against illegal excavation incidents within their area of responsibility and legal investigations are launched for any person(s) caught. Moreover, the provincial museum directorates of the Ministry have training programs intended to raise awareness about conservation of the cultural heritage.

The Ministry also supports all kinds of training activities. Furthermore, situation assessments are made by each museum within its area of responsibility through site surveys and determinations so as to fight against this crime in coordination with the institutions.

2. What federal, state or local prosecutors prosecute and which courts have jurisdiction over cultural property violations?

As illicit exportation of cultural property and unlicensed excavations are penalized under the Law No. 2863, such violations are prosecuted by public prosecutors. Criminal courts have jurisdiction over such issues.

Turkey does not have a federal structure and hence all criminal courts have jurisdiction over the cases.

3. How many prosecutions are there each year for violation of cultural property laws, export laws and related offences?

This information is not publicly available.

4. How many convictions are there each year for violation of cultural property laws, export laws and related offenses?

There are no publicly available statistics about the subject matter. However it can be deduced from local news reports that nationwide there is at least one seizure, followed by the arrest of suspects, per week.

5. Is there information available on the financial value of seizures of cultural property?

A list of seized cultural property as a result of seizures, returns from foreign States, and discovery is published on the website of the General Directorate.⁶⁹ However, information on the financial value of such property is not publicly available.

Some news reports provide an estimated value of seized property for individual seizures. For instance, a seizure

⁶⁹ The list can be found at: *Yurt Dışından İadesi Sağlanan Eserler*, KÜLTÜR VARLIKLARI VE MUZELER GENEL MÜDÜRLÜĞÜ, <https://kvmgm.ktb.gov.tr/TR-44470/yurt-disindan-iaresi-saglanan-eserler.html>.



View of Uçhisar from a hot air balloon, Cappadocia, Turkey, Author Bernard Gagnon, 21 May 2014, Creative Commons Attribution-Share Alike 3.0 Unported, 2.5 Generic, 2.0 Generic and 1.0 Generic license.

conducted on 8 October 2018 resulted in the seizure of two mini-statues which were, according to news reports, worth 6 million TL.⁷⁰

L. Consistency of application of cultural property law

- 1. Can the classification of an object or a real estate property as a cultural property be extinguished? (Can something revert from being cultural property to not being cultural property? Who manages this?)**

Cultural property classification process is led by the General Directorate. The Law No. 2863 regulates the classification of an object or real estate as a cultural property.

Article 7, entitled “Identification and registration” provides that: “The identification of immovable cultural and natural property and natural sites shall be coordinated by the Ministry by obtaining the view of the relevant institutions and organizations the activities of which will be affected.”

Article 8, entitled “Decision-making powers related to the conservation site” provides that: “Conservation Councils shall identify the conservation site of the cultural and natural property to be protected that has been registered according to article seven, and make decision on whether or not to build and install in this area. The decision of the Conservation Councils can be objected to according to paragraph two of article 61.”

- 2. Are there requirements for archaeological excavation as part of state or other government development and construction? Are these regulations enforced?**

There is no special treatment for objects found as a result of state or government sponsored construction works. Please refer to the response under V(B)(3) for the process to be followed when a cultural property item is discovered.

- 3. Are there requirements for archaeological excavation as part of private development and construction? Are these regulations enforced?**

⁷⁰ The related news can be found at the following link: *Jandarmadan 6 milyon TL'lik tarihi eser operasyonu*, Posta, Oct. 8, 2018, <https://www.posta.com.tr/jandarmadan-6-milyon-tlik-tarihi-eser-operasyonu-2056385>.

A good example of how archeological property is handled during a construction project is the Marmaray project. The Marmaray project consisted of the construction of an underwater rail linking the European and Asian sides of Istanbul. Many archeological items, namely a Neolithic settlement in Yenikapi, were discovered during the excavations. Interviewed by a local newspaper, the Director of Istanbul Archeological Museums stated the following:

“We came across these findings thanks to these transportation projects. Of course these projects might have some disadvantages as well. But one of the main advantages of these projects has been these excavations. We had no clue about that settlement in Yenikapi and we would not have discovered it had it not been for these projects. And no one would have allocated that amount of money for these excavations. The excavations have been a present of these projects to Istanbul.”⁷¹

These items were then exhibited in a separate museum opened by the Ministry. This instance is a good demonstration of enforcement of relevant regulations.

4. Are there private collections of cultural property? Are they well known? Are there private museums?

Article 26 of the Law No. 2863, entitled “Museum, private museum and making collection” states: ‘

“The Ministry of Culture and Tourism shall have the mandate to build and develop museums of cultural and natural property falling under the scope of this Law.

[...] Museums to be established by natural and legal persons can keep and exhibit movable cultural property provided that they remain within the field of activities recorded in the permit issued by the Ministry of Culture and Tourism. Museums that conserve movable cultural property shall have the status of state museums.”

There is also the Collectors Regulation detailing out the process of collecting cultural property and opening museums. According to this Regulation, a “collector” is a “private or legal person who collects or will collect cultural and natural movable property in need of protection for the sake of their protection, treatment, benefit of and curiosity”.

Historically, Article 21 of the Law No. 1710 did not allow entities without a legal personality to qualify as collectors. The Law No. 2863 had ambiguous wording and leaves doubt as to whether entities without a legal personality can qualify as collectors.

Those who want to qualify as collectors should submit a written application to the nearest museum’s directorate with the documents listed in the Collectors Regulation. Experts in the relevant museum will examine whether the collector’s place has the optimum standards for the preservation of the cultural property. The Ministry will issue the authorization to become a collector.

Similarly, the Regulation on Private Museums specifies the procedure to be followed in order to open a private museum. Such museums should get an authorization from the Ministry. Each private museum is subject to inspection by a public museum. There are currently 244 private museums authorized by the Ministry. The details regarding their management is also set out in the Regulation on Private Museums. According to Article 9 of the Regulation on Private Museums, the list of items kept in private museums should be approved by the Ministry. Two copies of this list should be notarized and one copy should be given to the public museum which is responsible for the private museum.

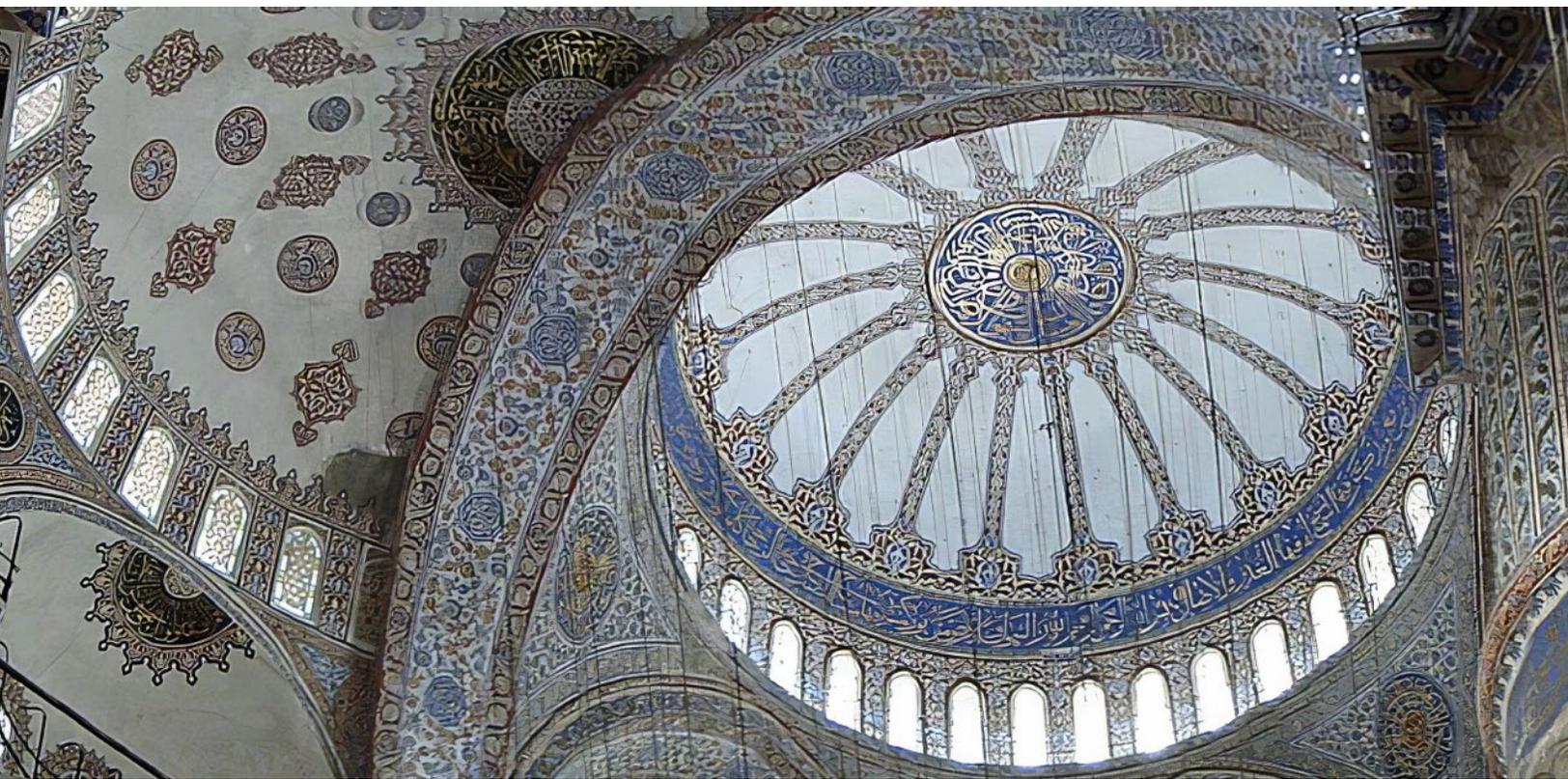
Following are some of the well-known private museums:

- *İstanbul Arkeoloji ve Kültür Müzesi* owned by Istanbul University;
- *Sadberk Hanım Müzesi* owned by Vehbi Koç Foundation;
- *Pera Müzesi* owned by Suna-İnan Kiraç Foundation;
- *Bakı Müzesi* owned by Hüsamettin Koçan-Bayburt Kültür Sanat Foundation.

5. Is there a privileged group that collects art or artifacts that is “allowed” to do so?

Although some wealthy foundations, like Vehbi Koç Vakfı, own several private museums with a considerable amount

⁷¹ “Marmaray and Metro Archaeological Findings May Take Istanbul’s History Back 6,500 Years,” HÜRRIYET DAILY NEWS, Dec. 2, 2013, <http://www.hurriyetdailynews.com/marmaray-and-metro-archaeological-findings-may-take-istanbul-history-back-6500-years-58813>.



Panorama of Ceiling of "Sultan Ahmet Mosque", also known as "Blue Mosque", Sultanahmet District, Istanbul, Turkey, photo by Adam Jones from Kelowna, BC, Canada, 16 May 2011, Creative Commons Attribution-Share Alike 2.0 Generic license.

of cultural property, they are subject to the same regulations and rules as other private collectors and private museum owners.

6. If there is an illicit art and artifact market in the country, who are the participants? Is there a public marketplace, whether in galleries or in a bazaar? On higher social levels?

Despite the Turkish authorities' efforts to halt illegal excavations and smuggling, Turkish cultural objects that should not have been exported still find their way to foreign auction houses. For instance, a rare coin from the ancient port of Ephesus was sold by Heritage Auctions in New York as part of a large lot of ancient coins. At least one Turkish news report suspects that this coin, as well as several others from Turkey sold on the same day, were likely smuggled out of the country.⁷²

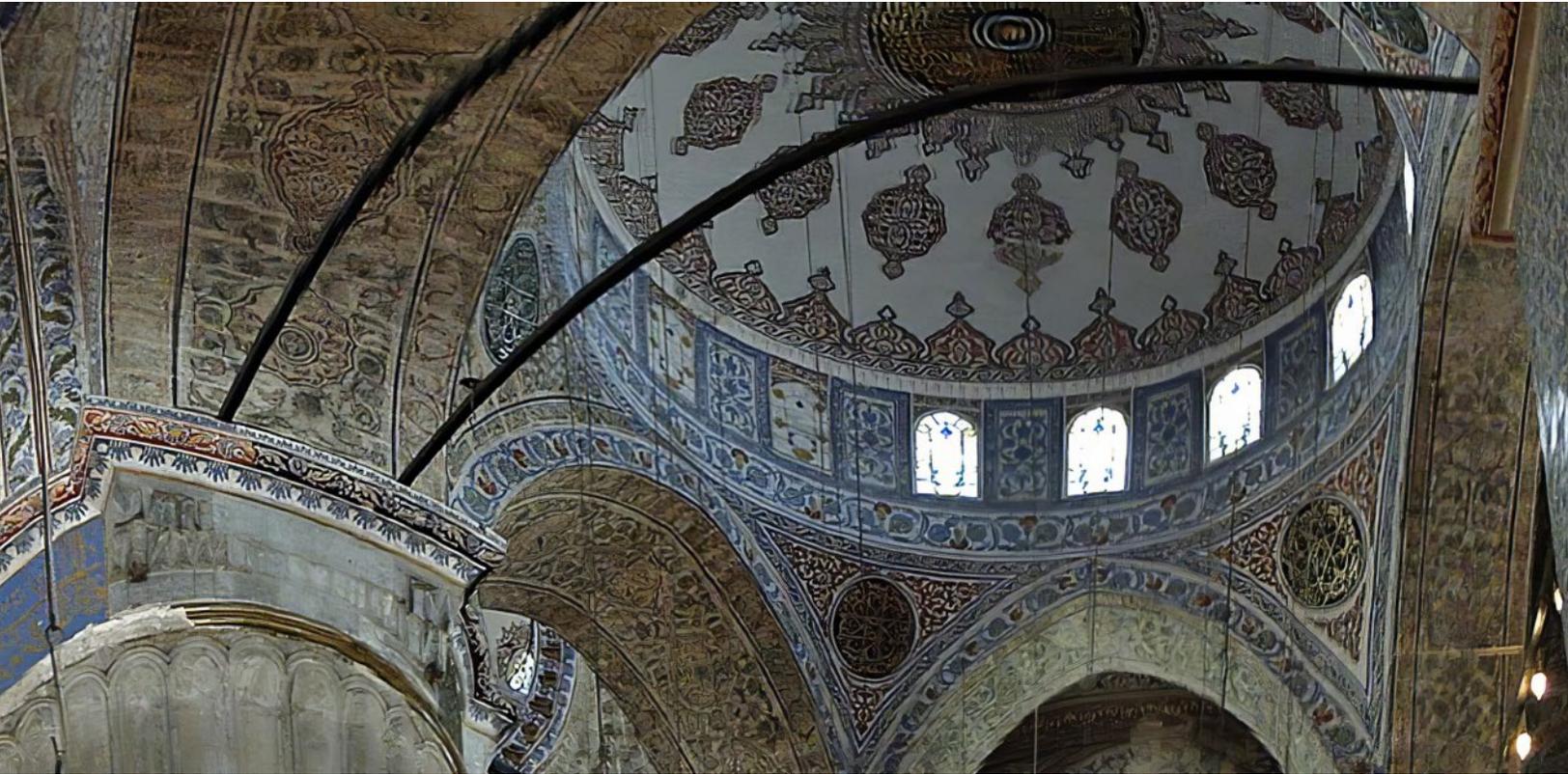
The hard task of tracking movable and easily concealed property falls to a group of individuals whose manpower and resources are simply not sufficient to police the large array of ancient artifacts and sites within its borders. This, coupled with the number of locals who view cultural property as a good source of income, and the large flow of expats and tourists in and out of the country, demonstrates the significant obstacles that Turkey faces in preventing the illicit export of its cultural treasures and tracking the artifacts and smugglers once they have been stolen. Turkey itself admits that while border and coast patrols are performed, it lacks the infrastructure and resources to monitor the entirety of its vast coastline.

M. Application of international cultural property laws

1. Does the country apply the same sort of export restriction that it places on its own cultural property to the cultural property of other nations? Explain and give examples.

According to Article 33 of the Law No. 2863, cultural property can be freely brought into Turkey. The Law No. 2863 does not specifically address the issue of cultural property of other nations and there are not any news reports relating

⁷² Özgen Acar, *Ender Efes Sikkesi 1 milyon liraya satışta*, CUMHURİYET, Jan. 3, 2018, http://www.cumhuriyet.com.tr/haber/kultur-sanat/898047/Ender_Efes_Sikkesi_1_milyon_liraya_satista.html.



to the seizure of such property.

According to the provisions of the Regulation on Ethnographic Cultural Property, those who bring cultural and natural property into the country are obliged to declare a photographed inventory list specifying the qualifications (name, type, size, etc.) of each piece. A copy of this list must also be submitted to museums.

2. Does the country allow domestic trade in cultural property of other nations which have restrictive cultural property laws?

Article 7 of the 1970 UNESCO Convention states that the State Parties to the Convention undertake to “prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to the Convention after the entry into force of the Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution”.

Turkey, as a party to the 1970 UNESCO Convention, does not allow any kind of possession or trade of cultural property that has been illicitly exported to Turkey. This applies to bona fide third party buyers who did not know that the sold property was the illicitly traded cultural property of another nation.

3. Does the nation participate in international efforts to preserve cultural property in other nations? UNESCO projects? World Monuments Fund projects?

Turkey participates in projects under the guidance of UNESCO in order to preserve and protect its cultural heritage sites. An example is a project between Turkey, Japan and UNESCO entitled “*Safeguarding the Rock-hewn Churches of Cappadocia, Turkey: Conservation of Rock Structures and Wall Paintings*”.⁷³ The project term was three years and funding of USD 1.2 million was provided by Japan’s Funds-in-Trust for the Preservation of World Cultural Heritage.

Turkey currently participates in a project of the World Monuments Fund (“**WMF**”). In 2011, Turkey signed a project with WMF to preserve the Ani Cathedral and the Church of the Holy Savior in northeastern Turkey. Ani Cathedral is a cathedral from the 10th and 11th centuries A.D., when what is now eastern Turkey was home to Armenian

⁷³ UNESCO, *Turkey and Japan Launch Project to Safeguard the World Heritage Site of Cappadocia (Turkey)*, UNESCO, July 18, 2013, <https://whc.unesco.org/en/news/1057>.

Bagratid. The cathedral is accepted as an important part of Armenian medieval architecture. The cathedral was first placed under World Monuments Watch of WMF in 1996. Currently, WMF is working with Anadolu Kültür (WMF's local partner, a non-profit cultural institution in Turkey) to improve the conditions of the zone for visitors and raise awareness about the cathedral. The overall aim of the project is to sustainably protect, enhance, and develop the fragile World Heritage property.⁷⁴

In 2011, Istanbul's Haydarpaşa Railway Station, which is a major intercity rail station and transportation hub in the city was listed by WMF as a site in need of preservation. The station was the busiest rail terminal in Turkey and the Middle East and one of the busiest in Eastern Europe. A fire broke out in November 2010 at the historical train station, engulfing the landmark building's roof in flames and threatening the entire structure. The entire roof of the building was destroyed by the flames and some parts of the structure's top story collapsed. Istanbul authorities have previously suggested a major architectural transformation project that would reconstruct the historic Haydarpaşa train station by demolishing the Haydarpaşa port.⁷⁵

VI. TRENDS, THE FUTURE AND THE IMPACT OF PLANS AND / OR INITIATIVES

A. How would the researchers characterize trends in their state's national policy on cultural heritage since UNESCO – and over the last 10-15 years? Changing, fixed? In what areas?

Recently, Turkey has become more cautious on preserving the cultural property on its land (this is in addition to Turkey's increased caution on recovering stolen and illicitly exported cultural property from foreign countries – see below). The impact of UNESCO has been noticeable. As thousands of cultural works were illicitly excavated and exported from the historic land during the reign of the Ottoman Empire, Turkey is working towards recovering the stolen artifacts and ensuring their return to Turkey.

A recent article analyzing trends in Turkey's national policy on cultural heritage highlighted Turkey's failure and unwillingness to preserve and retribute its cultural property. More specifically, the article asserted that “the condition of some of Turkey's most prized museums and archaeological sites, such as the Temple of Artemis in Ephesus (an Ancient Wonder of the World) and Topkapi Palace, suggest that the country may lack the resources, and the will, to preserve and secure its numerous open-air museums from looting and destruction.”⁷⁶

Similar criticisms were made to the Ministry in relation to the construction works in Gobekli Tepe, where the world's oldest known temple, predating Stonehenge by 6,000 years, is located. The archeological site, recently added to UNESCO's list of world heritage sites, provides an important insight as to the way people were living in Upper Mesopotamia about 11,500 years ago.⁷⁷ The Ministry allegedly risked damaging the Neolithic remains by using concrete and heavy equipment to build a walkway and roof.⁷⁸

Additionally, some of the government-sponsored infrastructural projects have led to the destruction of cultural property, especially immovable cultural property. The Ilisu Dam located on the Tigris river project is the most current and perhaps most controversial one amongst these government-sponsored infrastructural projects. The Ilisu Dam was built as part of Turkey's Southeastern Anatolia Project (*Güneydoğu Anadolu Projesi* (“GAP”)), introduced in 1989 as an overall regional development plan which included the construction of 22 dams, 19 of which for hydro-electric power.⁷⁹ The GAP covers nine Turkish provinces which are located in the basins of the Euphrates and Tigris rivers. Although, it is claimed to be a regional development project with a focus on “sustainable human development” by the Ministry of Industry and Technology,⁸⁰ the GAP has been widely criticized for its adverse effects on environment, cultural heritage,

⁷⁴ From September 28 to October 5, 2013, an international workshop called ‘Ani in Context’ was convened in Turkey's Kars region by gathering a team of experts from Turkey, Armenia, Russia, Macedonia, the United States, France, and Norway. The purpose of the workshop was to extend the focus to include other important heritage sites in the region with a relationship to Ani, and to assess current conditions, as well as the significance and preservation potential of the surveyed sites. The report that presents the main findings of the workshop, and includes some suggestions for possible follow-up activities can be found at ANADOLU KÜLTÜR, http://www.anadolukultur.org/images/UserFiles/Documents/Editor/Ani%20in%20Context%20Report_EN_Final-3.pdf

⁷⁵ See 67 *World Heritage Sites Threatened, Including One in Turkey*, HÜRRIYET DAILY NEWS, Oct. 31, 2011, <http://www.hurriyetdailynews.com/67-world-heritage-sites-threatened-including-one-in-turkey-6384>.

⁷⁶ Stolzman, *supra* n. 68.

⁷⁷ *Göbekli Tepe*, UNESCO, <https://whc.unesco.org/en/list/1572/>.

⁷⁸ Ömer Erbil, *Construction Around Site of Göbeklitepe Stirs Debate*, HÜRRIYET DAILY NEWS, Mar. 21, 2018, <http://www.hurriyetdailynews.com/construction-around-site-of-gobeklitepe-stirs-debate-129089>.

⁷⁹ See e.g. Doc. No. 9301: *Cultural Aspects of the Ilisu Dam Project, Turkey*, COUNCIL OF EUR. PAR. ASSEMB. (Dec. 18, 2001) <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9579&lang=en>.

⁸⁰ *What's GAP?*, GAP: MINISTRY OF INDUS. & TECH., <http://www.gap.gov.tr/en/what-is-gap-page-1.html>.



Furniture support: female sphinx with Hathor-style curls ca., 18th century B.C. Old Assyrian Trading Colony, probably found at palace at Achemhöyük in central Anatolia, Metropolitan Museum of Art, New York, Gift of George D. Pratt, 1932

and population in the area.⁸¹ In particular, the Ilisu Dam, which might become active any minute, is expected to leave around 300 archeological sites in the Hasankeyf area under water.⁸² According to one commentator, “[a]llianoi, a Roman spa town, and parts of ancient Zeugma, which is on UNESCO’s tentative list, are already buried under sand and water because of Turkey’s controversial dam projects, and the 12,000-year-old town of Hasankeyf is likely to follow.”⁸³ Although the Ministry is leading projects to move some parts of the site, including mausoleums, shrines and baths, to protected areas, a considerable portion of the site, including the famous man-made caves, will be flooded.⁸⁴ In early 2018, Turkey’s Constitutional Court dismissed a filing raised by the ‘Initiative to Keep Hasankeyf Alive’ (*Hasankeyf’i Yaşatma Girişimi*), an organization founded in 2006 to prevent the construction of the project and which currently brings together activists and multiple organizations (e.g., affected municipalities, environmental, cultural and human rights non-profit organizations, professional associations and trade unions). Following this decision, five Turkish nationals, including Prof. Zeynep Ahunbay, a leading Turkish scholar of antiquities, challenged the Ilisu Dam project before the European Court of Human Rights (“ECHR”). In its decision *Ahunbay and Others v. Turkey* dated 21 February 2019, the ECHR declared the application inadmissible, noting that there is no consensus between Member States in relation to whether there is a universal individual right to the protection of cultural heritage.⁸⁵

The government has also been criticized for not being transparent about the destruction/stealing of cultural property. According to a news article, around two hundred artworks were missing from the Ankara State Art and Sculpture Museum and some were replaced by replicas.⁸⁶ Robberies have occurred since the *coup d’état* of 1980, which was not disclosed to public until 2010.

While the government has achieved some success in recovering smuggled cultural and natural property by coordinating with INTERPOL, as explained above, there is no uniform system to determine the provenance of a seized piece, and the government is highly reliant on academics and experts to conduct forensic analysis. Examples of experts’ valuable work in relation to pieces of cultural property include the return of the antique jewellery known as the ‘Troy Gold’ previously displayed in the Penn Museum. In fact, the expert analysis proved that the soil found on the Troy archaeological site matched the soil found on the pieces of the ancient jewellery, as a result of which the Penn Museum agreed to an indefinite loan to Turkey.⁸⁷

B. Are there any draft laws, regulations or proposals in relation to cultural property, and will they have a significant impact on the current system?

Currently, there are no draft laws, regulations or proposals in relation to cultural property.

C. Are there any broader economic or political initiatives that will have an effect on the trade or ownership of cultural property? If so, what would be their potential impact?

Turkey actively litigates illicit trade and looting of cultural property from its lands before foreign courts. Examples of such cases include *Turkey v. The Met*⁸⁸ and *Turkey v. OKS Partners*.⁸⁹

The former was between Turkey and the Metropolitan Museum of Art in New York. The subject matter of the case was a stockpile of over 360 Lydian artifacts. They were illegally excavated in the city of Uşak and then illicitly exported back in 1966. The Met started exhibiting these pieces in 1970. The Turkish ambassador to Washington issued a formal demand for the return of these pieces in 1986. A case was filed before the New York Federal District Court in 1987 after the formal demand of the ambassador was denied. The case was settled in 1993. Some thought that the Met did not want to have this litigation on its record and wanted to protect the museum’s reputation.

⁸¹ Mehmet Berkun, *Hydroelectric Potential and Environmental Effects of Multidam Hydropower Projects in Turkey*, 14 ENERGY FOR SUSTAINABLE DEV. 320 (2010).

⁸² Mathias Depardon, *In Turkey, a Power Play Will Leave Ancient Towns Underwater*, NAT’L GEOGRAPHIC (2018) <https://www.nationalgeographic.com/magazine/2018/11/turkey-flooding-dams-displaced-antiquities-mesopotamia/>. The Hasankeyf archeological site was officially classified as a category-one archeological site in 1978.

⁸³ Stolzman, *supra* n. 68.

⁸⁴ Rachel Brown, *This Medieval Tomb Weighs 1,100 Tons. Watch Workers Move it On Wheels*, NAT’L GEOGRAPHIC, May 23, 2017, <https://www.nationalgeographic.com/news/2017/05/zeynel-bey-tomb-mausoleum-turkey-relocation-video-dam-flooding-archaeology/>.

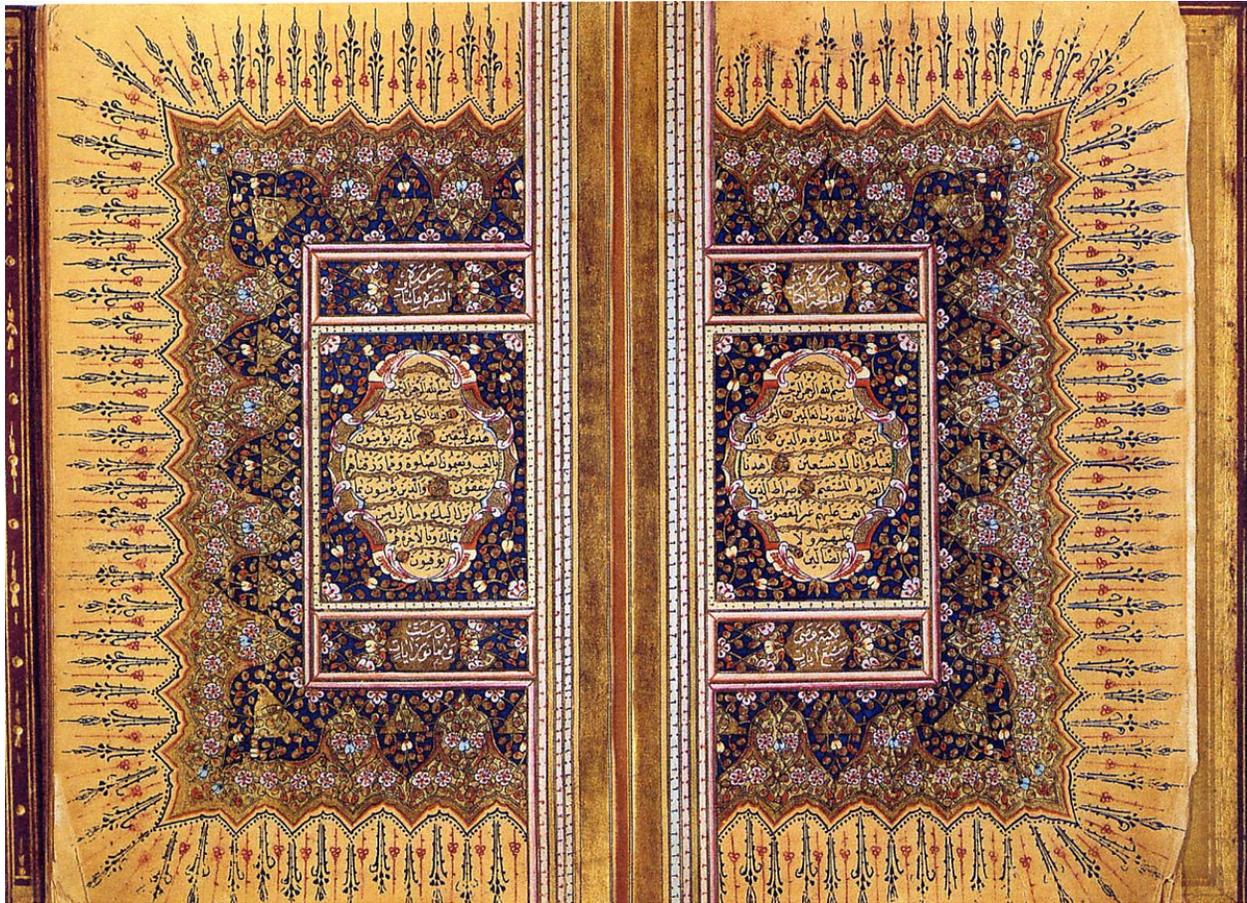
⁸⁵ *Decision Ahunbay and Others v. Turkey - Impact of the Planned Construction of a Dam on the Hasankeyf Archaeological Site*, COUNCIL OF EUR., Feb. 21, 2019, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%7B%22003-6336974-8286675%22%7D>. (PDF file must be downloaded).

⁸⁶ *Ministry Admits Grand Theft from Art Museum*, HÜRRIYET DAILY NEWS, Aug. 8, 2012, <http://www.hurriyetdailynews.com/ministry-admits-grand-theft-from-art-museum-27288>.

⁸⁷ Stolzman, *supra* n. 68.

⁸⁸ *Republic of Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990).

⁸⁹ *Republic of Turkey v. OKS Partners*, 797 F. Supp. 64 (D. Mass. 1993).



Qur'an Manuscript, dated A.H. 1268/A.D. 1851–52, Turkey, Metropolitan Museum of Art, New York, Gift of Elizabeth M. Riley, 1980

The latter concerned a collection of over 2000 silver Greek coins that were illegally excavated in the city of Antalya in 1984 and then illicitly exported. OKS Partners were dealers based in the US. They purchased 1700 of these coins. Turkey demanded the return of these coins. After the request was denied, Turkey filed a lawsuit before the Massachusetts Federal District Court in 1989. This case was also settled and coins were returned to Turkey. As a gesture, Turkey agreed to display the coins with a thank-you note to one of the OKS Partners, William I. Koch⁹⁰.

These cases set precedent for future possible lootings, at the very least for foreign museums and dealers.

Turkey is also resorting to bilateral diplomatic relations in settling similar disputes. A recent example is the bilateral agreement signed between Germany and Turkey in May 2011 relating to the return of the Boğazköy Sphinx from Berlin's Pergamon Museum to Turkey (see above). This deal concerned a Hittite Sphinx that was illicitly exported from Boğazköy, Turkey, a national heritage site listed in the World Heritage List as 'Hattusha the Hittite Capital'. The negotiations between Germany and Turkey were concluded after Turkey threatened to ban all German archeologists from digs in the country. As a result, two countries signed a Memorandum of Understanding in Ankara, and Germany returned the Sphinx.

Additionally, Turkey is cooperating with INTERPOL in discovering illicitly exported cultural property. The Stolen Works of Art database, created by INTERPOL in 1995, has helped Turkey to identify and recover around 2000 artifacts between 1995 and 2011. This database is open to law enforcement officials of Turkey who can see the listed artifacts and identify those that might have been exported from Turkey.

⁹⁰ More information on this display, see Ece Velioglu, et al., *Elmalı Hoard – Turkey and OKS Partners*, ARTHEMIS, <https://plone.unige.ch/art-adr/cases-affaires/elmalı-hoard-2013-turkey-and-oks-partners>