

Spain

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A. Protection of cultural property

1. What are the key characteristics of your country's regulations on cultural heritage and national patrimony?

Spanish regulations on historical heritage are contained in Spanish Law 16/1985, of 25 June 1985, on the Spanish Historical Heritage (the 'Heritage Law'), developed by Royal Decree 111/1986 of 10 January. Some autonomous regions have their own regulations on historical heritage, which complement the protection of items of historical or cultural interest in those specific regions.

The most important items must be included in an inventory (the National Heritage General Inventory) of declared items of cultural interest in accordance with the terms provided by law, which afford them a higher level of protection.

2. Under your national law, which criteria must be met in order to classify goods as cultural property?

According to sections 1.2 and 9 of the Heritage Law, in order to classify goods as cultural property, two criteria must be met: (i) to be a movable or immovable object of artistic, historical, palaeontological, archaeological, ethnographic, scientific or technical interest; and (ii) to be declared as such by the competent administration.

Items declared as cultural property can also be: documentary and bibliographical heritage, archaeological sites and areas, as well as natural sites, gardens and parks that have artistic, historical or anthropological value.

3. What are the legal consequences arising from classifying an asset as cultural property? Does the classification of a private asset as cultural property affect the right of ownership?

The classification of a good as cultural property will imply the following main legal consequences:

- the cultural property will be in the public domain (ie, an individual may own the cultural property but the Administration will protect the artistic, historical, spiritual value of said property – therefore indirectly affecting the right of ownership);
- registration of the cultural property at issue in a general registry;
- the cultural property will need authorisations for any work or modification to be done in it;

- the cultural property will have an obligation to facilitate inspection, public visitations and investigation;
- the cultural property will be inseparable from their surroundings and non-exportable; and
- in the case of real estate, it will be mandatory to write a special plan or protect them with any other planning figure.

4. Which authorities in your country define cultural property and who advises these authorities?

At a national level, the Council of Ministers at the proposal of the Ministry of Culture (by Royal Decree) and at an autonomous region level the Governing Council of that autonomous region (by Decree).

In the first case, a favourable report from one of the following advisory institutions should also be available: the Board for the Certification, Valuation and Export of Property of the Spanish Historical Heritage (the ‘Board for Historical Heritage’), the Royal Academies, the Spanish Universities, the Higher National Council for Scientific Research and any Higher Boards officially determined by State Administration; and, with regard to the autonomous regions, the institutions recognised by them. This shall be irrespective of any advice received from other professional bodies and cultural entities.

5. Has your country ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and what are the main features of the national implementation?

Spain is indeed a State Party to the 1970 UNESCO Convention. The Convention’s ratification instrument was adopted on 13 December 1985 and published in *Official State Journal* No 31, on 5 February 1986.

Since Spain ratified the UNESCO Convention before the adoption of the Heritage Law, the main measures for implementing the Convention are contained in the Heritage Law.

6. Has your country ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and what are the main features of the national implementation?

Spain is also a State Party to the UNIDROIT Convention. The Convention’s ratification instrument was adopted on 9 May 2002 and published in *Official State Journal* No 248, on 16 October 2002. However, a number of declarations were made by Spain under certain Articles of the Convention, as indicated below:

- Article 3, sections 5 and 6: ‘A claim for restitution of a cultural object forming part of Spain’s National Heritage shall not be subject to any time limitation, pursuant to Spanish law’. This declaration is based on Articles 28 and 29 of the Heritage Law;
- Article 13, section 3: ‘Since Spain is a Member State of the European Union, it is hereby declared that, in connection with Contracting States which are also members of the European Union, it will apply the internal rules of the European Union and will therefore not apply as between these States the provisions of this Convention the scope of application of which coincides with that of those rules.’; and

- Article 16: ‘Claims for the restitution, or requests for the return, of cultural objects brought by a State under Article 8 of the Convention may be submitted under the procedure provided for in Article 16, section (b) of the Convention. The competent authority for these purposes shall be the Spanish Ministry for Education, Culture and Sport (Directorate-General for Fine Arts and Cultural Assets)’.

Some European Union rules on the protection of cultural goods must also be considered in Spain:

- Council Regulation (EC) 116/2009 on the export of cultural goods;
- Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast), implemented through Spanish Law 1/2017, 18 April, on the return of cultural objects unlawfully removed from the Spanish territory or the territory of a Member State of the EU.

7. Has your country ratified any other international conventions or bilateral agreements relating to the export of cultural objects?

Spain has also ratified the 1954 Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflicts.

B. Restrictions on the export of cultural property and artwork

1. What are your country’s export restrictions regarding cultural property and artwork?

1.1 Under which conditions is export permission granted?

For exporting this type of goods, owners or holders must obtain the specific authorisation of the administration when the goods in question are more than 100 years old or included in the National Heritage General Inventory. On the contrary, the export of goods declared as items of cultural interest and other goods forming part of Spain’s national heritage (and therefore classified as non-exportable by the administration) will be prohibited as an interim measure until a procedure is initiated to include the item in question under any of the special protection categories.

1.2 Which authority grants such export permission and who advises this authority?

At a national level, the authority granting the export authorisation regarding cultural property are both the Board for Historical Heritage and the Director-General of Fine Arts, Cultural Heritage and of Archives and Libraries. However, at an autonomous region level, each region has their own rating commissions for the assets located within their territories.

1.3 What does the proceeding look like, who are the parties to the proceeding and what is the duration of the proceeding?

The application for export authorisation must be specific and beforehand. In this regard, the export application must be submitted by the owner or the person with the

capacity to dispose of said asset/s or duly authorised for that purpose. This application must be submitted to: (i) the autonomous regions having regional Credit Rating Committees, for goods within their territory; or (ii) directly to the Board for the Certification, Valuation and Export of Spanish Historical Heritage.

Export applications will then be analysed by the Board for Historical Heritage who shall issue an opinion on that matter. Giving consideration to their opinion, the Director-General of Fine Arts, Cultural Assets and Archives and Libraries, will decide on the export application.

In the event that export is authorised, the person concerned must: (i) submit the authorisation to the Customs Office (for movements outside the boundaries of the EU); and (ii) include the transport roadmap (for movement within the EU).

There is no fixed duration for this export proceeding, it will depend on each particular case and the characteristics at issue.

1.4 Are there any monetary thresholds (*de minimis*)?

An export authorisation is needed for goods that are between 50 and 100 years old, provided that their value exceeds the following:

- drawings, prints and photographs: €15,000;
- watercolours, gouaches and pastels: €30,000;
- sculptures: €50,000; and
- paintings: €150,000.

1.5 Does the circumstance of the artist still being alive or the time of creation of the artwork matter?

Yes, as far as the work of a living author cannot be declared as cultural property, unless there is an express authorisation of its owner or if the Administration has mediated in its acquisition (section 9.4 of the Heritage Law).

2. Is the state obliged to buy out the artwork for which an export permission was denied?

No. The refusal of the export permission does not imply acceptance of the offer, which, according to the Heritage Law, must always be explicit.

3. Are there any exceptions to these regulations (eg, temporary export for exhibitions, conservation or private reasons of the owner)?

Personal property forming part of Spain's national heritage that is not exported with the required authorisation will belong to the state. These goods are not transferable and will not be subject to any time limit. The state will be responsible for taking all steps needed to recover any unlawfully exported goods. If the former owner of the goods can provide evidence of their loss or theft before their unlawful export, he or she can request recovery of the goods from the state. He or she must undertake to pay all expenses incurred for the

recovery of the goods and, where applicable, to reimburse the price paid by the state to the acquirer in good faith. An illegally exported item must be presumed to be lost or stolen when its former owner is a public law entity.

An export authorisation is not mandatory (although the export applicant must present an affidavit or other analogous document) in the following cases:

- goods that are between 50 and 100 years old whose value is below the specific amounts (see question B.1.4 above); and
- goods that are less than 50 years old, both from living and deceased authors.

C. Consequences in case of violation of export restrictions; restitution and repatriation of illegally exported cultural property

1. What are the legal consequences in case of breach of export restrictions?

The Heritage Law sets forth that the unauthorised export of a property from the Spanish Historical Heritage may constitute a contraband offence (if the value is more than €50,000) or an administrative infringement (if it is less than €50,000).

2. Give a description of the regulations and practices in your country relating to the restitution and repatriation of illegally exported cultural property

Spanish Law 1/2017, of 18 April 2017, governs this question. The EU Member State from whose territory the cultural object has been unlawfully removed is entitled to request the return of the unlawfully removed cultural object. Civil actions must be brought under certain conditions before the Spanish courts against the person physically holding or having in its possession the object claimed. The court may order the physical return of the cultural object to the territory of the requesting Member State from the territory of the requested Member State.

3. Under which conditions does your country assist foreign countries seeking repatriation of cultural property/artwork?

The Spanish government will assist foreign governments to recover objects pursuant to its obligations under both the 1970 UNESCO Convention and the Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of an EU Member State as implemented through Law 1/2017 mentioned above. In such circumstances, the Spanish Government will require evidence that the conditions in the relevant Convention are met before taking steps to contact the current owner. In order to cooperate and consult with each other, the central authorities may use the Internal Market Information System.

4. Does a buyer enjoy protection against restitution claims for violation of foreign export restrictions?

The court may award the possessor any compensation considered fair, provided that the judge deems that the possessor exercised due care and good faith when acquiring the object. In order to assess whether the possessor exercised due care, the judge may analyse all the circumstances, such as the documentary evidence regarding the origin of the object, any export authorisation requested by the requesting Member State, the position of each party,

the price paid, the consultation made by the possessor to the available inventories of stolen goods or any other information that might be reasonably obtained.

5. Which regulations exist for the protection of the buyer against title claims, in general?

See the response to questions B.1 and B.3 above.

For personal property, the main rule on buyer protection is found in the Spanish Civil Code, whereby possession of personal property acquired in good faith is equal to having title to it. If a person loses any personal property or is unlawfully deprived of it, he or she can claim it from whoever is in possession of the property in question. But if the possessor of the lost or stolen property acquired it in good faith at a public sale, the original owner will not be entitled to claim restitution without reimbursing the price paid.

6. Does a lender from abroad enjoy protection against seizure of items on loan to local exhibitors if the good fails to have proper export licence?

No specific regime is provided for in the Heritage Law or in Royal Decree 111/1986.

7. What regulations exist concerning the import of cultural property that may have been exported illegally from its country of origin or that is the subject of claims?

Legally imported works of art must be backed by documentary evidence so that the imported item can be perfectly identified. Works of art imported in this way cannot be declared to be items of cultural interest in the ten years following the date of import, this period may be extended at the request of the holder and such extension will be granted by the Administration, as many times as they are requested, provided that said request fulfils the conditions required. However, no tax will be payable on the import of personal property items when such items are declared to be of cultural interest with the owner's consent, or included in the National Heritage General Inventory. Any application filed by the owners for these purposes will have the effect of suspending tax obligations.

Relevant actions may be brought as described in the responses to questions A.6 and C.4 above.

D. Due diligence obligations

1. What general due diligence is required from the seller/buyer of artwork?

For the buyer:

No specific due diligence requirements are applicable to art buyers under Spanish law, other than the general requirements to be met by real property buyers (set forth by Spanish Mortgage Law) and personal property buyers (included in the Spanish Civil Code).

Additionally, personal property acquired at a fair or market or from a legally established trader who regularly trades in similar objects (which will often be the case with works of art) will be subject to the Spanish Code of Commerce, which sets forth that the prior owner's rights over the acquired goods will expire, without prejudice to his rights to bring any civil or criminal actions against the person who unlawfully sold the goods.

The Heritage Law also contains certain prohibitions concerning the sale of works of art:

- items of cultural interest and included in the National Heritage General Inventory that are in the possession of church-related institutions can only be transferred or sold to the state, public law entities or other church-related institutions;
- items forming part of Spain's national heritage will not be subject to any time limitations whatsoever. The acquisitive prescription of this kind of property is also prohibited by law; and
- personal property forming part of Spain's national heritage cannot be transferred or assigned by public administration bodies, other than for the benefit of other public administration bodies.

For the seller:

No particular due diligence is required from a seller when selling works of art.

2. Are there any anti-money laundering regulations applicable to (individual) sellers, dealers, auction houses or agents?

Art trade and art auctions fall under the money laundering legislation:

- Law 10/2010, of 28 April 2010, on Prevention of Money Laundering and Terrorist Financing;
- Royal Decree 304/2014, of 5 May 2014, approving the Regulation on the Prevention of Money Laundering and Terrorist Financing.