

# Argentina

Juan Javier Negri

Negri & Pueyrredon Abogados, Buenos Aires

## A. Protection of cultural property

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

Argentina is a federal country, so there are three levels of legislation: federal, provincial and municipal. Federal law is strictly enforced, but controls are more relaxed at provincial and municipal levels, especially regarding sites and buildings protection.

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

Under the Cultural Heritage Act (Law 25197, enacted in 1999), 'cultural goods' are those objects, living beings or sites constituting the expression or evidence of human creation and the evolution of nature and having exceptional archaeological, historical, artistic, scientific or technical value.

There is a further definition of 'historical and artistic cultural property' comprising:

'...all human or natural/human works of irreplaceable nature, whose peculiarity, unity, rarity and/or antiquity confers upon them an exceptional national or universal value from a historical, ethnological or anthropological point of view, as well as architectural works, sculptures, paintings and those having archaeological nature.'

In addition to 'cultural property', under the statute creating the National Commission on Historical Monuments, Sites and Assets (Law 27103, enacted in 2014, amending a prior statute originally enacted in 1940), certain goods may be declared 'of national interest' if they have 'historical or artistic value'.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?

If a particular asset is classified as 'cultural property' under the 1999 statute, it will only be subject to classification, with no further consequences. If an asset is declared to be a protected asset under the 2017 statute, any transaction affecting it, or its export, will require the prior intervention and authorisation of the Ministry of Culture. In the case where the intervention imposes limitations on property rights, the owner must be indemnified.

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

The authority defining which assets are to be considered of 'national interest' is the Ministry of Culture through the National Commission on Historical Monuments, Sites and Assets.

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, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?**

Yes. Argentina ratified the convention with no reservations or changes pursuant to Law 19943 (1972). Argentina is strictly enforcing the convention, basically when pre-Columbian artifacts are involved.

6. **Has your country ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?**

Yes. Argentina ratified the convention with no reservations or changes pursuant to Law 25257 (2000).

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

Yes. Argentina has ratified in 2002 the 1976 El Salvador Convention on the Protection of the Archaeological, Historic and Artistic Heritage (the 'El Salvador Convention').

## **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?**

Export permission is granted to works by living or deceased artists (if, in the latter case, no more than 50 years have run after the death), except if the work has been declared to be part of the national cultural heritage of Argentina.

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

The National Board of Cultural Assets and Sites.

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

Proceedings are carried out online and, normally, permission is granted within 24 hours.

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

No.

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

Yes. The work by living artists, in practice, finds no restrictions. Works by artists who have been dead for over 50 years find more difficulties.

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

No. The owner must file an expropriation lawsuit with such purpose.

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

Yes, on a case-by-case basis.

**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 exporter may face criminal charges.

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

There are many precedents in which the state has seized artworks illegally entered into Argentina and then later returned them to the country of origin. There are no precedents in which Argentina has claimed back artworks illegally exported from Argentina.

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

Under the El Salvador Convention (see question A.7 above), all countries party to the Convention must take all legal steps to ensure that no export or import restrictions of artworks are violated. If legal actions are required, the country whose assistance has been requested must file the legal action itself.

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

Normally no, however, the buyer could allege, and evidence, good faith.

**5. Which regulations exist for the protection of the purchaser against title claims?**

None. To the extent artworks constitute mobile property, 'possession equals title', unless strong evidence can be provided that the buyer knew, or had reason to know, that the artwork was illegally transferred.

**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?**

If the export licence is defective, the foreign lender may face severe difficulties to obtain protection.

**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?**

Argentine statutes providing tax exemptions to the import or export of artworks specifically indicate that the benefits are granted to their bona fide holders. Thus, it can be reasonably held that good faith evidenced locally would prevail over a foreign claim of an illegal export.

## **D. Due diligence obligations**

### **1. What general due diligence is required from the seller/buyer of artwork if the artwork is intended to be exported?**

The seller or buyer should require from the counterparty appropriate evidence that the artwork was declared for Argentine tax purposes plus a detailed invoice or receipt from the seller.

### **2. Are there any anti-money laundering regulations applicable in the art trade and at art auctions?**

Yes. Art dealers and auctioneers must provide information to the relevant authorities from time to time.