



CULTURAL PROPERTY LAW

MOVABLE CULTURAL PROPERTY

Decree-Law no. 148/2015 was published on 4 August and will come into force on 1 September. This new Decree-Law establishes the regulations under Law no. 107/2001 of 8 September ("LQPC"), insofar as it relates to movable cultural property, and introduces specific provisions on the classification, cataloguing and movement of this cultural property.

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The most important features of the new regulations are:

i) The regulations define the procedural steps to be followed when arranging, carrying out and completing the process of classification and cataloguing. In contrast with the "summary" regime established in the LQPC, the new Decree-Law introduces specific provisions on the deadlines, the official bodies involved, the investigative process and the effects of classification and cataloguing of movable cultural property. By way of illustration, the new regulations:

a) Make express reference to the viability of the preliminary refusal order within 20 days of filing of the request for classification;

b) Specify the new criteria for the assessment of cultural value to make it possible to decide whether or not to classify the property as being of national interest ("national treasure") or public interest. The decision as to whether property is of municipal interest is dealt with separately in the legislation. These new criteria are the state of conservation of the property, the processes used to create the property and the actual need to protect and value the property;

c) Require a mandatory opinion of the National Cultural Council; and

d) Prohibit the breaking up and dispersal of integral parts of any property, sets or collections classified as being of national interest. In turn, the breaking up or dispersal of integral parts of property, sets or collections classified as being of public interest requires the prior authorisation of the responsible cultural heritage authority.

Make the prior communication rules (i.e. at least 30 days before the cultural property leaves the country) applicable to the exportation and dispatch of cultural property of municipal interest.

ii) When it comes to the movement of movable cultural property, the main changes are that the new regulations:

- a) Set a period of 60 days to take the decision on the authorisation for temporary or permanent export or dispatch of classified movable cultural property, or movable property in the process of being classified as being of national or public interest. As an exception, a period of 120 days applies to the permanent exportation or dispatch of cultural property classified as being of public interest;
- b) Make the prior communication rules (i.e. at least 30 days before the cultural property leaves the country) applicable to the exportation and dispatch of cultural property of municipal interest;
- c) Specify that the cultural heritage authorities may not refuse a request for temporary or permanent exportation or dispatch of catalogued cultural property, unless it is deemed that the cultural property in question is capable of being classified. In this case, the cultural heritage authority must begin the classification process immediately. The deadline for the decision on such an authorisation is 60 days;
- d) Provide that when authorisation is given for classified or catalogued cultural property to leave the country definitively, the registration of this property in the respective classification and cataloguing register will be cancelled;

e) The requirement for prior communication of at least 30 days before the cultural property leaves the country applies to i) situations involving unclassified or uncatalogued movable cultural property, which is not in the process of being classified or catalogued, and to ii) property classified of being of municipal interest. However, the new regulations determined that this requirement does not apply in two situations: i) movable cultural property that is less than 50 years old (except in the case of collections and specimens from zoological, botanic, mineralogy and anatomical collections, and of collections of historical, palaeontological, ethnographic or numismatic interest); and ii) when the exportation or dispatch in question relates to cultural property owned by the person who created it, regardless of its age, but as long as the exportation and dispatch are carried out by the author or by his or her representative.

f) Set the period of 15 days as from the date of the prior communication (30 days, as mentioned above) of a given situation of exportation or dispatch for the cultural heritage authority to assess the cultural value of the property in question. The authority may place a preliminary ban on the exportation or dispatch of the property as a provisional measure that must be communicated to the interested parties. If the period of 15 days passes without the cultural heritage authority issuing any decision, the exportation or dispatch is deemed to be lawful.

Make it clear that movable cultural property may not (without the consent of the owner) be classified as being of national or public interest until 10 years have passed from the date of the permanent importation or admission.

g) Expressly provide for the exportation licence rules contained in Implementing Regulation (EU) no. 1081/2012, of the Commission, of 9 November 2012 to be applicable.

h) Make it clear that movable cultural property may not (without the consent of the owner) be classified as being of national or public interest until 10 years have passed from the date of the permanent importation or admission.



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BRUNO PACHECO (detalhe)
 Studio Ashtray, 2006
 Contentores de plástico e tintas de óleo
 68 x 25 x 25 cm
 From the collection of
 the PLMJ Foundation

iii) The new regulations provide for the conversion of the previous forms of protection of movable cultural property. The aim of the changes is to establish guiding principles for the processes of re-evaluating and converting the type of protection applicable to cultural property that was classified or catalogued under the rules that preceded the LQPC. The preamble to the new legislation seems to suggest the idea that, in the main, re-evaluation processes will be triggered for cultural property catalogued or classified in the 1930s or 1950s. Those decades saw a very high number of classification and cataloguing processes, in contrast with the inactivity seen in the period between the end of the 1980s and beginning of the 21st century. This inactivity only ended in 2006, with Decree no. 19/2006 of 18 July, which classified around 1600 pieces of movable cultural property as being of natural interest. In the context of these processes, it is important to note that:

a) The processes may culminate in a change in the type of protection in question that determines conversion to a different level of classification - national or public interest - or even to simply being catalogued. Alternatively, the process may establish the removal of the protection in question (in which case the property will cease to appear on the classification or catalogue register);

b) With the necessary changes, the administrative procedure rules established in this new regulatory legislation are applicable. To this extent, the criteria defining the parameters of cultural interest must be observed, the National Cultural Council must issue an opinion and the interested parties have the right to be heard in the process;

c) Finally, these conversion processes must be completed within a maximum period of four years from the date the legislation comes into force (i.e. by 4 August 2019), except if this is extended for an equal period on the basis of a reasoned order of the member of the Government responsible for culture.

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The Lawyer European Awards, 2015-2012

 Iberian Law Firm of the Year
Who's Who Legal, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

 Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011