

**URBAN MANAGEMENT.  
URBAN CULTURAL HERITAGE PROTECTION  
IN SOME COUNTRIES IN THE EUROPEAN UNION**

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***Abstract:** In the vision of the world organization, the destruction or degradation of the cultural heritage means the disappearance of the memory and cultural identity of the citizens of a state, in consequence, the incapacity of sending this heritage to the future generations. Romania adhered at these treaties and conventions, aware that the creation of a durable future can not take place without including in the developing strategies of the countries the valuing of what it has more valuable – its natural and cultural heritage. Its destruction or neglecting means the irreversible poverty of the Romania's contribution, as a member of the European Union, at the European and world cultural diversity.*

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In the year 1972, the Organization for the United Nations for Education, Science and Culture (UNESCO) proposed a plan of protection of the cultural heritage in the world, by “The Protection of the Natural and Cultural World Heritage”, convention that includes a list of places and goods belonging to the world heritage, known as the Common Heritage of Mankind.

Are known and recognized at world level other related documents of UNESCO:

- a) International Charter for the Conservation and Restoration of Monuments and Sites, Venice (1964);
- b) Convention regarding the protection of the world, cultural and natural heritage, Paris (1972);

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- c) Convention for the Safeguarding of Intangible Cultural Heritage (2003);
- d) Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005);
- e) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970);
- f) Convention on the Protection of the Underwater Cultural Heritage (2001);
- g) Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (1954) and the Protocol no. 2 (1999);
- h) Recommendation on International Principles Applicable to Archaeological Excavations (1956).

Our survey proposed to highlight – in a wider documentary – the way in which the national legislations of the member states of the European Union were concerned about the management of their urban cultural heritage. We believe it is a first step towards the highlighting of some possible lessons and for Romania that we will be able to explain in the following research, within a grant financed by European structural Funds.

In **AUSTRIA**, the legal basis – the federal Law regarding the protection of the historical monuments (1923) takes into account movables and immovable (including rests and traces of human living, soil formations, sites) of cultural, historical, artistic importance, whose conservation is of public interest. By conservation it is understood the keeping, protection from destruction, modification or unauthorized transfer outside the borders (section 1, art.1). The law establishes the conditions for the protection of the monuments of public interest, the public interest being defined as local, regional or national (section. 1, art. 2).

Are considered monuments: assemblies (farms, castles, main buildings and annexes of all types), furniture, objects and artifacts that respond to an imperative cultural, historical, artistic public or local/national interest (section 1, art. 3).

The conservation measures have at basis the regulation and the decisions of the Austrian Federal Office for the Care of Monuments (FOCM) or the orders of the State Archives from Austria. Regarding the architectonic assemblies, their conservation is done by a decision of FOCM (section.1, art. 4).

The monuments being in public property, in the state property or of other public bodies, institutions, funds, of the recognized churches or of religious companies, the public interest is established by FOCM, ex officio or at the request of a party (section. 2, art. 1).

FOCM has the obligation to place under the law incidence the immovable monuments provided by law, putting restrictions regarding their sale. In the same time it is provided their registration in the topographic register (sections. 2, art. 2 lit. a). The Office is obliged to present to the owners, mayors or ministers of the lands the technical and historical data regarding the buildings or objects that will be placed under the law incidence. The law also provides the possibility of signaling the fraudulent introduction of some monuments on the list of those that will be protected by law. Regarding the parks and the gardens, their inclusion among those protected by law is done on the basis of a special documentation. In the situation when these are not in the property of local authorities, their inclusion on the list is done with the owner's agreement or of the majority of owners.

Destruction of historical or cultural monuments enters under the law. Destruction is considered: the intervention over a monument as a whole or on some parts, resulting in changing its overall unity, adding different elements to it or changing its original function and the destruction of parks by changing their original destination (sect. 2, art. 4).

The destruction as any modification of a monument requires the approval of FOCM unless there is a contrary statutory provision and in the conditions under which the monument is in obvious danger. Notwithstanding any other provision of law, in the case of the monuments belonging to religious cults, their change or modification is made with the consent of the respective religious authorities.

The sale of the monuments requires the approval of FOCM, subject to comply with certain conditions, involving keeping them in good condition, the approval being valid for five years. Given that an imminent danger threatens the status of a monument whose owner can not protect it, FOCM can pass that monument in its own property (sect. 2, art. 6).

Research and archaeological excavations made in order to discover historical objects need the FOCM approval.

Everyone is obliged to provide to FOCM and to its local structures the data, information and documents required for the identification, discovery

and preservation of historical and cultural monuments. The owners or the other persons entitled to maintain and protect movable and immovable monuments must notify FOCM if they discover faults or identify potential destructions of the monument, having the obligation to proceed as soon as possible to repair the damage. FOCM has the right to send experts to monitor all these works.

If it is identified the risk that a monument can be destroyed, modified or sold, thus bringing substantial harm to the national heritage, the competent administrative authority, at FOCM request or ex officio, can take appropriate measures to prevent the imminent danger. If the measures to be taken are not prescribed by law, they can be applied only if their cost can be deducted as compensation. In case of imminent danger, the owners or users must accept the change of ownership (sect. 3, art. 31).

The costs for the assurance, conservation and research of the monuments can be financed by grants and federal subventions, according to the provisions of the art. 32.

- The punishment for destroying, altering, endangering a historical or cultural monument is fined. In addition, it can be preceded to the seizure of that monument.
- In case are not complied the requirements for any damage or danger hanging over a monument, such property shall be confiscated. Violation of this legal provision is punishable by a fine, which can have a maximum amount of 50.800 euros.
- The person who sells or buys a heritage object evading the legal provisions is punishable by a maximum fine of 25.400 euros.
- The person who prepares incorrect reports for reimbursement, modifies the reference state of the discovered objects, uses metal detectors or other illegal devices, who marks unlawfully or improperly historical monuments and cultural monuments and prevents the research or study of the monuments, is punishable by a fine of up 5.000 euros.

**BELGIUM** applies a legislation dating from 1984. It is about the Code for Land-use planning, Urbanism, Heritage and Energy.

Belgium is a federal state composed of three regions: the Flemish Region, Wallonia and Brussels-Capital Region. Each region has a comprehensive legal framework ensuring the protection of cultural heritage.

In Wallonia, for example, was adopted a code concerning the land - use planning, urbanism, heritage and energy. According to the document the heritage is defined as all the assemblies of immovable whose protection is founded on historical, archaeological, scientific, artistic, social or technical reasons:

- Monuments - isolated architectural or sculptural achievements, decorative elements that are integral part of these works;
- Architectural ensembles - integrated rural or urban building, coherent enough to make topographically definable the object, remarkable by their homogeneity or integration into the overall landscape;
- Sites - all natural and all works that combine nature with human activity;
- Archaeological sites - any land, geological formation, monument or architectural ensemble comprising or about which there are indications that it would contain archaeological goods.

Integrated Conservation represents all measures aimed at ensuring the preservation of heritage in an appropriate framework, built or natural (art. 185). According to the provisions of the Art. 186, the state, the regions, communities, Walloon constructions societies, real estate companies, municipalities, churches, public welfare centers which will begin the construction of a new building are required to present a study showing that the work for which they requires the authorization will not affect the heritage assets which they have in ownership, which are registered on protection listed, in order to classify them.

For the purposes of the Code, the owners are those individuals, public or private, holding a right of ownership, usufruct, lease, use, dwelling on immovable property classified as heritage. The Code refers to "the small popular heritage", which consists of elements built, isolated or forming part of an assembly, with relevance for a local population or that contributes at supporting the feeling of belonging to a population and which are or not subject to safeguards.

The Government maintains updated and publishes an inventory of property (art. 192), which can register on property protection immovable, on its own initiative, at the Commission for monuments' proposal, at the request of the Mayors, at the request of 300 people entered in the population register for municipalities with more than 5.000 inhabitants, 600 people for

municipalities with a population between 5.000 and 30.000 inhabitants, 1.000 people for municipalities with more than 30.000 inhabitants or at the request of the owner of that good according to Art. 193. The decree of registration of a good in the protection list is published in the Official Gazette.

The owner of a cultural heritage, classified by decree, can not change and can not accept the change of that good if not according to the law. Any total demolition of a protected cultural property is prohibited. Partial demolition works may be admitted, without the good to be classified, provided that its characteristics are not substantially affected and in the conditions under which the works are the result of a process of dislocation, consolidation, restoration or enhancement of that good, by a decision of the Government.

Moving in whole or in part of a protected cultural property is prohibited, unless it is urged to save the property. In this case the further measures of disassembly, transfer and reassembly must be taken in the place established by the Government. Where a good from the list is threatened by downfall, the mayor can not decide the partial or total demolition without the consent of the Government. The effect of the listing shall be transmitted to any owner of that property.

A property owner is required to maintain it in good condition. It is considered a breach of these obligations the failure of performing the studies or works in accordance with the instructions contained in the "sanitary card", according to art. 212 of the Code. The Government may require the reduction of subsidies for these works for owners who have breached their legal obligations.

The owners of the classified goods must, once every five years, to submit a statement of the material condition of the property, based on the results of a study on its physical state, to establish for the next five years, a plan of necessary studies and works to ensure the whole conservation and restoration of the monument in question. "The Sanitary Card" shall include technical guidelines on the general physical condition of the monument, the degree of conservation, the need to conduct additional prior studies, the emergency degree of construction works and their financial estimation. The Government indicates the works and studies that it deems to be given priority for subsidies. If the owner does not send the sheet within the term established by the Government sheet and he does not execute the works

provided for granting subsidies from the government, the region, municipality or province can replace him and take the necessary conservation measures for protecting or saving the good. In this case that subsidies are obtained by the respective public administration. If the property belongs to a private person who has not fulfilled the obligations to maintain the property, the authorities may proceed to its expropriation. Unless otherwise agreed between the concerned parties, the expropriation of the property is done in its entirety, even if is classified as only partially protected monument (art. 212).

The Walloon Heritage Institute, public institution with legal personality, created by the Law on the control of public interest bodies (1954), has as object of activity giving assistance to the monuments owners in order to restore them, ensuring the conservation and improvement in heritage, harnessing regional properties, raising public awareness about protecting and heritage value (Art. 217-218). The Institute has competence in respect of expropriation proposals for the public interest causes, can achieve financial operations necessary to achieve its objectives, may be associated with physical or legal persons for the creation of companies to participate in the restoration of the monuments, within budget limits, may grant annual grants to some physical or legal persons responsible for operating the protective properties on the list, may give grants for profit associations, municipalities, provinces, higher education institutions to cover the expenses necessary for the initiatives or for public awareness activities.

- The Code establishes the penalties for the violation of the provisions relating to the obligation to obtain a certificate of urbanism, for performing works without authorization in areas listed in governmental protection, for transformation, partial or total change of the buildings included in the government list, for total or complete change of rural or urban landscapes, for cutting or changing the appearance of "remarkable trees" classified in Government records. Any person who commits any of the crimes listed above is punishable by imprisonment of between 8 days and 3 months and a fine of an amount between 100 and 300.000 euros or just one of the sentences.

- The infractions committed by using the land and placing mobile or fixed installations can be attributable to whom installed them or to the landowner. The infractions set out above are punishable by imprisonment of

between 15 days and 6 months and fined with an amount of between 2.000 and 600.000 euros, if the perpetrators are specialists in the field concerned (art. 154).

• Art. 526 of the Criminal Code provides that any person who changes, destroys, mutilates, degrades the tombs, sepulchral monuments or other symbols and monuments, statues, paintings, art objects placed in churches, temples, public buildings, is punishable by imprisonment from 8 days to 1 year and a fine of up to 500 euros.

**FRANCE**, European country so rich in an urban cultural heritage of exception, has a set of rules on the matter, of which the most important are:

- Law from 31<sup>st</sup> of December 1913 regarding historical monuments
- Law no. 92 from 25<sup>th</sup> of February 1943;
- Decree no. 81-428 for the application of the Law no. 80-532 from 15 July 1980 regarding the protection of public collections against the bad intentioned acts;
- Law from 2<sup>nd</sup> of May 1930 regarding the protection of natural monuments and sites with historical, spectacular, scientific or legend character.

Buildings whose conservation is important, from the point of view of art history or the public interest, are classified as historical monuments, in whole or in part by the Minister of Culture, depending on a number of criteria:

- 1) Megalithic monuments which include prehistoric sites, in accordance with the Law no. 92 of 25<sup>th</sup> of February 1943;
- 2) The buildings needed to isolate, identify and restore a building preserved or proposed for preservation and protection;
- 3) Properties, with or without buildings, located within the visibility perimeter of a building preserved or proposed for conservation. In the legal sense, these properties must be located within a radius of less than 500 meters and be visible in the same time with the preserved building, according to the Law. 62-824 from 21<sup>st</sup> of July 1962;
- 4) Exceptionally, this field of application can be expanded to over 500 meters by decree of the State Council, after consulting the higher commission regarding the historical monuments.

Are considered as part of the list of preserved buildings the properties included in the general list of monuments, officially published in 1900 by



the Department of Fine Arts, and the properties included or not in this list, classified in accordance with the Law from 30<sup>th</sup> of March, 1887.

Preserved buildings and monuments can be destroyed or moved, even in part, or may be subject to restoration, repair or modification only with the approval of the Ministry of Culture. All the works are performed under the supervision of the competent minister and on the state expense, including the buildings that are considered essential for the French heritage, but do not belong to the state.

According to the Law no. 92 of 25<sup>th</sup> of February 1943, the modification without a notice of a heritage building, the removal from the list of a building or of an object of movable heritage, the representation of movable heritage objects, the transfer, assignment without notice of the furniture heritage objects included in the published inventory, shall be punished by a fine.

Any violation of the legal provisions, such as:

- Distorting the effects of the conservation action of a building,
- Modification of an application for expropriation in the case of introduction of a building in the preserved heritage buildings list,
- Structural alteration to a preserved building,
- Change of the prior authorization requirements imposed for a new construction,
- Transformation or alteration of buildings found on the visibility perimeter of a preserved building,
- Damage to a movable heritage object,

shall be punished by a fine, without prejudice to the action for damages that may be exercised against those who coordinated the work. In addition, the Ministry of Culture may determine rehabilitation locations for these buildings at the expense of the offender and may request to the relevant court a decision to rehabilitate the destroyed monument, at the expense of the offender.

■ The Law from 2<sup>nd</sup> of May 1930 on the protection of natural monuments and of sites of historical, scenic, scientific or legend character provides the following:

- listing of natural monuments and of preservation sites presenting historical, artistic, scientific or picturesque interest is achieved by decree of the State Council, this one also setting the procedure for notification of the owner. Advertising can replace notification in cases where the monument has a very large

number of owners or local government does not know the identity or address of the owner;

- monuments' characteristics or of classified sites can not be destroyed or altered without special approval of the competent minister, after consulting the competent institutions in French heritage protection;
- is punishable by fine the breach of art. 4 paragraph 3, art. 11, paragraph 2 and 3 and art. 13, paragraph 3 from the law, listed above.
- any person who intentionally destroys, mutilates or damages the image of a natural monument or of a registered site is punishable by penalties provided in the art. 257 of the Criminal Code.

■ According to art. 322 paragraph 2 of Criminal Code, the infraction of destruction, degradation or deterioration of heritage assets belonging to another person shall be punished with imprisonment up to two years and a fine of 30.000 euros, unless there were minor damage.

Drawing of inscriptions, symbols or designs without prior authorization, on walls, vehicles, highways or street furniture is punished by fine of 3.750 euros and community work when there were minor damages.

The infraction defined by paragraph 1 shall be punished with imprisonment up to three years and a fine of 45.000 euros and those defined by paragraph 2 with 7.500 euro fine and community service when the property destroyed, degraded or damaged is:

- Of public utility and is owned by a physical or legal person;
- A record, document, or an original act of public authority;
- A movable or building or part thereof;
- An archaeological discovery made during excavations or accidentally;
- A field containing debris or objects stored or deposited;
- A museum, library or archive belonging to a public entity responsible for the protection of historical monuments;
- An object presented in an exhibition of historical, cultural or scientific nature organized by a public body.

The penalty is punishable even if the author is really the owner of the property. If the penalty occurs because the owner belongs to an ethnic group or is made on the basis of race or religion, the penalties increase to three years in prison and 45.000 euros fine.

**GERMANY** registered the preoccupation of protection of the cultural heritage since the Fundamental law, the German Constitution, as also other special laws, the most important being:

- Law regarding the cultural heritage protection (1949) (land Baden-Wurttemberg);
- Law regarding the monuments protection (1995) (land Berlin).

According to the Constitution, the protection and preservation of historical monuments comes in the responsibility of the Lands, as part of their policy of cultural sovereignty, so that in Germany there are 16 laws on the protection of monuments. On the other hand, at federal level are regulated directions responsibility of protecting monuments, for example, the co- financing co-obligation if in question are monuments of national interest. The Federal Ministry for Culture and Media implements the program "Cultural monuments of national value", which includes buildings, archaeological sites, historic gardens and parks, by which they receive financial support.

The first law for the protection of historical monuments was in Baden-Wurttemberg in 1949, which served as an example for other lands otherwise. The legislation was amended and supplemented, especially in the 90s, following the reunification of Germany. The aim was to create the legal basis for the preservation, protection, management and study of monuments. In case of archaeological monuments, the goal was to keep them in situ, excavation being considered a form of destruction.

We hereby exemplify with the two lands to whose special legislation made reference:

- In the land Baden-Wurttemberg the legal basis is the Law regarding the protection of cultural heritage, obliging the historical monuments' owners - individuals, churches, municipalities or state - to preserve and maintain them, to the extent that such actions are "just and reasonable" (art. 6). The aim of protecting, maintaining and monitoring of cultural monuments is to prevent any form of deterioration, being the responsibility of the Land authorities within the limits set by legislation in force (art. 1). A monument can be destroyed, removed, can undergo a transformation or can be moved from where it is only with the consent of the authority for historical monuments protection (art. 8).

The law defines historical monuments as objects, assemblies or parts of objects, including here also the archaeological sites whose preservation is

required by scientific, artistic, historical interests, being of public interest. The monuments of a special importance are subject to special protection through registration in a list of monuments. Adding or deleting a monument from this list belongs to the highest authority of the Land. The owners or administrators of a monument that found a destruction of a certain monument or the production of damage are required to notify the authority for monuments protection. That authority may order that the objects, parts of objects or monuments to be included in the provisional list of protected monuments. The list is no longer in force if the registration is not completed within one month or if it is not renewed every six months.

As far as the legal regulations provides the obligation of giving some objects or parts of objects belonging to the historical heritage, the owners or administrators are required to perform this action without causing damage to those objects, according to the Art. 18.

Local authorities may, with the consent of the structures for the protection of monuments, to put under the protection of the law the entire local territory, with all that means: streets, squares, historic ensembles that have economic, artistic or historical importance and whose protection can serve to a public interest. People who discover objects or parts of objects that may represent an economic, cultural or historical interest and whose protection can serve to a common interest are obliged to present them to the local or national authorities responsible for historical monuments protecting.

- For the purposes of the Law on the protection of monuments, applicable in the Berlin Land, the monuments are considered objects, assemblies or parts of objects, including archaeological sites, whose preservation is required by scientific, artistic, historical interests and are of public interest. Monuments include also the streets, squares, parks, cemeteries, alleys, mobile artifacts, annexes and their utilities.

According to art. 3, the person who discovers a historical monument / object / artifact during a building work is required to suspend them immediately and notify the competent authorities of the Land. The works stop for a period of four working days, during which the monument / object should be kept in the condition in which it was discovered. The competent authority may extend this period if the monument status requests it. Also, it may, without prejudicing the right of property, evaluate the monument / site / object in order to protect it or scientific purposes, but not more than six months after the announcement of the discovery. Monuments / items that

are not claimed by an owner shall enter, by law, in the property of the Berlin Land.

All monuments are included in a public list. Movable artifacts which are in state property shall be recorded in an inventory. The registration of the lists is made ex officio or at the request of the persons entitled, as also their radiation when the conditions for which the monument was listed are no longer met. Lists and inventories are public, according to Art. 4 of the law.

Specialized authorities for the protection of historical monuments are designated locally and have among their responsibilities the fulfillment of the legal provisions, systematic inventory of monuments and publication of these inventories, organizing and conducting investigations and maintenance of discovered objects and monuments, advising and supporting the owners; publication of research scientific results regarding the historical monuments.

Persons entitled by law to hold and manage monuments and heritage objects are bound to preserve them; authorities may require the entitled persons to protect historical monuments. Persons entitled by law to own or manage historical monuments may request reimbursement based on the importance of the work performed. Provincial authorities can take the performing of these works if the entitled persons do not do it. Tenants, lessees or other users of the monuments are obliged to apply the legal provisions regarding the protection of monuments.

Are considered infractions: failure to comply the provisions regarding the announcement of the discovery of a monument / object / artifact, failure to keep the object in original condition for four days, conducting archaeological excavations or research without authorization, failure to implement the enforceable orders of the competent authorities, neglecting of parks, gardens, cemeteries classified as monuments, failure to provide information and documents to the competent authorities or to allow their access to the respective lands. Any person who commits any of the infractions referred to above shall be punished by a fine of up to 500.000 euros, according to art. 19 of the Law on the protection of monuments; the same amount of the fine is provided by the Law on the protection of historical monuments in Hamburg; in Bavaria land the fine is 250.000 EUR, in the Hesse land is between 250.000 and 500.000, while in Mecklenburg-Vorpommern land, between 150.000 and 500.000.

**GREECE**, also recognized for the richness of the cultural heritage, applies a recent legislation, but that sums the centuries experience regarding the Hellenic State.

According to the Law. 3028/2002 regarding the protection of antiquities and of the cultural heritage, the cultural fortune of the country is formed by cultural assets situated inside the borders of Greece, including the territorial seas, as also within other sea areas where Greece has relevant jurisdiction, according to the international law. The cultural heritage includes, also, intangible cultural assets.

The protection of the cultural heritage of the country takes into account the following aspects:

- a) location, research, registration, documentation and study of the elements that compose it;
- b) preserving and preventing the damage, modification and any direct or indirect damages brought to the cultural heritage;
- c) preventing illegal excavation, theft and illegal export;
- d) the maintenance and restoration of cultural property, whenever it is necessary;
- e) facilitating public access to cultural heritage assets;
- f) promoting and integrating the cultural heritage in contemporary social life;
- g) education and also aesthetic training and awareness of citizens about the importance of cultural heritage.

The protection of monuments, archaeological sites and historical places is included in all planning objectives of economic, urban and environment development, of the state or of municipalities.

The monuments are listed, documented and recorded in the National Archive of Monuments, which is kept at the Ministry of Culture. The organization and functioning of the Archive is done by presidential decree, issued on a proposal from the Minister of Culture. The decree specifies, among other things, the method of monuments recording, the method of data protection, the conditions for exercising the right of access to research data, as any other necessary detail.

The inspection report on the status of each immovable monument, conducted by the competent department of the Ministry of Culture is recorded at least once every three years in the National Archive of Monuments.

Ancient monuments immovable / fix or movable, with an older date than the year 1453 belong to the state in terms of ownership and possession, are imprescriptible and can not be sold, according to the provisions of Art. 966 Civil Code. Ancient cultural goods which have been or are discovered during subsequent excavations are also owned by the state, are imprescriptible and can not be sold. Movable ancient monuments that represent archaeological discoveries, regardless of their dating, belong to the state in terms of ownership and possession, are imprescriptible and can not be sold. The ownership right for other movable monuments dating after 1453 is exercised in accordance with the terms and conditions of Law no. 3028/2002.

Ancient monuments immovable / fix older than 1453 can not be the subject of proceedings for confiscation. In accordance with the provisions of the Art. 22 paragraph 2-4, the owner, possessor or holder of a right of ownership of a fix or immovable monument where is preserved an ancient cultural property must cooperate with the authorities and follow the instructions of conservation and protection of the monument. He must allow periodic or ad hoc inspections of local administration, under the procedures of written noticing, having the obligation to inform without delay any incident that could endanger the monument.

The owner or possessor shall be responsible for preserving, enhancing or protecting a monument degraded without delay, at his own expense, under the supervision and coordination of local administration in accordance with the provisions of art. 40-41. If the owner or possessor has not taken any action, the right holder shall have the same responsibility, but this one can return with an action for recourse against the owner or possessor. If the administration considers that the conservation or consolidation works have been unduly delayed or prove inadequate, is entitled to take all the necessary measures to protect the monument, reserving the right to recover the full amount or part of the expenses from the responsible person in accordance with the provisions on public revenue collection.

The protection and conservation of movable monuments is performed by the right holder or its owner. This one is obliged to inform the local administration about the precise location of the cultural object as also about any intention to execute its rehabilitation. They will also allow, periodic or ad hoc inspections of competent structures of local administration, being obliged to notify in writing any incident occurred at the cultural property. If

the monument is threatened by an imminent threat of damage, loss or destruction, the administration may take all necessary measures, repairing the property at the owner expenses or may decide to transfer it in order to protect it at a public museum or other suitable place. According to the art. 43, the owner of the rights for a movable cultural good must take all necessary measures for its preservation. If the local administration believes that keeping is not done properly, this one must take all necessary measures at the expense of the responsible person, in whole or in part.

Restoration of immovable monuments, especially preserving, consolidation, installation of protective shelters as also works of landscape design, rehabilitation or reintroduction in the public circuit have as aim the preserving of material existence, of their authenticity. They are carried out according to a study approved by the local administration, with the approval of its council, if the works are of major importance, by a decision of the Minister of Culture, with the approval of the council. For the study approval is required a prior documentation on that monument. The urgent preservation and consolidation works are carried out by the local administration, without delay and without further formalities. The specific rules governing the preparation of studies and works execution falling within the law applicability framework are established by a decision of the Minister of Culture. Specifically, they refer to the registration, listing, documenting and studying of monuments, issuing relevant diagnostic and architectural studies, as also drafting studies regarding the conservation, protection, restoration, consolidation, management and integrated use of heritage assets for the application of quality control system in terms of preservation and restoration of historical monuments.

- Heritage assets theft is punished with imprisonment up to 10 years in accordance with the provisions of the Art. 372 from the Criminal Code, where the stolen goods have a big value and were stolen from a building, an excavated site, museum, antiques storage space or a place where a collection is stored. If the theft was committed by two or more persons, who have joined with the aim to commit theft or armed robberies, or in case of infractions, usually, an extra punishment is required.

- Embezzlement of funds aimed for the protection of historical monuments shall be punished with imprisonment up to 10 years, according to the art. 375 from Criminal Code, in the case when the funds



embezzlement regards a monument of high value or in case of usual infractions.

Receipt and use of monuments which represent the object of an infraction is punishable with imprisonment up to 10 years, according to art. 394, paragraph 1 from Criminal Code, if the object of heritage has a particularly high value, and the perpetrator knew that was the result of an infraction or in case of usual infractions.

- According to the art. 56 paragraph 1, any person who destroys, causes damages, pollutes, makes impossible or prevents the use of a cultural monument or object that is part of a museum collection, being exposed to the public in an enclosed or open space, is punished with imprisonment up to 2 years if the act is not punished more severely under another provision. If the monument belongs to the transgressor, the imprisonment punishment is for 3 years. If the monument has an extremely high value, being committed in an organized criminal activity or by two or more persons who have joined together to commit such an activity, imprisonment shall not exceed 10 years.

In **ITALY**, the protection of cultural heritage has old springs and legal framework begins with the express provisions of the Italian Constitution and with a series of special legal regulations:

- Legislative Decree no. 34/2011 aiming the financial intervention of the state in the culture field;
- Law no. 45 from 16<sup>th</sup> of April 2009 regarding the ratification and application of the second Protocol of Convention from Haga (1954);
- Law no. 157 from 23<sup>rd</sup> of October 2009 regarding the ratification and application of the Convention regarding the protection of the subsea cultural heritage;
- Legislative Decree no. 98/2011;
- Law no. 85 from 28<sup>th</sup> of May 2010.

In accordance with the provisions of the Legislative Decree no. 98/2011, the protection of historical monuments and performing profile actions receives a grant of 3% of the amounts obtained by the Ministry of Infrastructure and Transport from the road tax. The amounts are allocated for the projects realization of national and international importance and concern the protection, conservation and enhancement of cultural heritage,

promotion and use of cultural goods to obtain funds needed for local / national infrastructure development.

At its turn, the Law no. 85 from 28<sup>th</sup> of May 2010 regarding the assets allocation by municipalities, provinces, metropolitan cities and regions to preserve their cultural monuments, states the following:

- The State, subject to agreement concluded within the Unified Conference, identifies the goods that will be given without onerous title to the municipalities, provinces, cities and metropolitan regions, according to the criteria of territoriality, with the principle of subsidiarity, for the simplification of the procedures, depending on the financial capacity and in connection with the duties and functions of the respective entity, as also for the environmental conservation.

- Local authorities in a state of financial difficulty can not sell the goods allocated to them, these ones being able to be used for institutional purposes only, pursuant to art. 244 from the Consolidated Law regarding the local public administration and Legislative Decree no. 267 of 18<sup>th</sup> of August 2000.

- The local authority, following the transfer of cultural goods, must assure their promotion in the public interest and of the respective territorial collectivity. Each institution provides public information about the cultural property assessment process, including advertising on its website, can organize forms of popular consultation, including by Internet, in accordance with the institution's norms.

- State-owned cultural goods must be transferred, free of charge, to the municipalities, provinces, cities and metropolitan regions, even in undivided shares based on the following criteria:

- a) Subsidiarity and territoriality principles- by applying these criteria, cultural assets are allocated in the territory given their history, unless the nature of the cultural object requires their allocation in a particular province, city, metropolitan area or region suited to meet maximum protection and management requirements, taking into account also the relationship which should exist between cultural assets and the functions transferred to the new institutional level;
- b) Criterion of simplification - in applying this standard, cultural goods must be exploited at maximum by the local authorities of the regions, without requiring authorizations, urbanism plans and urban transformations;

- c) Financial capacity – in order to fulfill the financial eligibility requests regarding the protection, management and valuing of the cultural goods;
- d) The correlation between tasks and functions - understood as a link between the competences and functions held / carried out by the entity that is responsible for the protection, management and enhancement of the cultural object;
- e) Environmental protection – applying this criterion are taken into considering the physical, morphological, environmental, landscape, cultural and social aspects of the goods transferred in order to ensure the development of the territory and maintaining the environmental values.

In Italy, European country with an exceptional cultural heritage, the efforts of law practitioners and theoreticians are focused on the fighting the most significant antisocial acts bringing prejudicial to national cultural heritage: archaeological poaching practiced by "grave robbers" as also taking out across borders or illicit export of cultural goods within the international traffic, clandestine, with archaeological goods.

**GREAT BRITAIN**, conservative and deeply rooted in the concerns of its cultural heritage management, applies mainly two rules: the Law of ancient monuments and archaeological areas (1979) and the Law of treasures (1996).

The legislation contains a number of measures regarding the investigation, preservation and recording of historical monuments, governing the operations and activities that may affect the archaeological areas, in accordance with the provisions of the Law regarding the territory arrangement (1972) and the Law regarding the historic buildings and ancient monuments (1953) as also to recover state subsidies given for the conservation of monuments or obtaining grants or private funding in the field.

A secretary of state is in charge of the law application, who consults a governmental structure – the Commission for buildings and historic monuments of Great Britain. The competences of the secretary of state are: To place on the monuments list of any construction that meets the legal requirements or of any heritage object; to amend the list; to exclude from the list any monument or object. He shall immediately inform the owner or the one who uses it if he is not the owner, as also the local authority in whose area is the monument, about the measures taken. He also has to

notify the Commission for historical buildings and monuments. The Secretary of State must keep up to date the *Register of Sasines*, document originating from the Scottish legislation, where are recorded, even since 1617, all transfers of feudal properties: the legalized copy of the entry or exit from the list of a monument in Scotland.

Are considered infractions the following facts: the execution of works that lead to the demolition, destruction or deterioration of a protected monument under the law; the execution of unauthorized works with the purpose to demolish or repair a monument or a part thereof, or to make changes; the execution of works of any kind to a land on which stands a monument protected by law. All infractions are punishable by criminal fine.

Works of any kind can be made only by written agreement signed by the Secretary of State, in accordance with the terms and conditions of the agreement. One of the conditions may regard the physical or legal person responsible for carrying out the works themselves, these ones having to be approved by the commission if the monument in question is in England, or by the Secretary of State or other person authorized by the Secretary of State in other cases. The only works that can be performed urgently, without the prior consent of the Secretary of State, are the situations of national security or public health protection, the notification must be given as soon as possible.

A person who has an interest regarding a monument, or a part thereof, which is located in England, Wales or Scotland, may request to the Secretary of State the tutelage of the monument. If the monument is in England, the Secretary of State must consult with the commission.

The interest on an ancient monument located in England and Wales, which qualifies a person to get the tutelage of the monument according to the legal provisions, can be achieved as follows:

- Payment of a fee for obtaining the right of full possession;
- Paying a leasing fee for a minimum period of 45 years;
- Lease on life for the applicant or another person.

The Secretary of State, the commission and any local authority have the obligation to conserve / manage all the monuments that are under their tutelage. According to the law, these structures have the power to perform all the necessary works for the monument maintenance, to exercise a control and to have an appropriate management. That means examining the

monument, opening sites or even the relocation of the monument for its conservation. Funding of all works is done from the state budget.

In Great Britain, fighting crime in heritage goods field forms the study object within the Center for Research on Illegal Transactional Antiquities of the Institute for Mc Donald Archaeological Research from Cambridge. The Law from 1996 clarifies this aspect claiming special categories of movable antiquities, called "treasure" that include: objects containing at least 10% gold or silver and are old of at least 300 years; coins dating back at least 300 years (if the coins contain less than 10% gold or silver must be at least 10 coins found in the same place); objects found in the same place or were previously found along with another object of the treasure. Any discovery of this kind should be notified to the authorities' representative, authorized in the district where this was performed, and the archaeologists must obey the same rules. The discovery is forwarded to an expert to be evaluated. If it is declared a treasure, this can be acquired by a museum, where the value of the object is determined by a commission of independent experts and paid as a reward (archaeologists can not receive rewards).

Failure to report a treasure constitutes an infraction punishable by imprisonment of up to three months, a fine of 5.000 pounds or both penalties together.

In **NETHERLANDS** is applied the Law regarding the protection of cultural heritage (1984) and the Law of historic monuments and buildings, quite severe regulations, placing the field under the authority of a competent ministry.

In the vision of the Dutch authorities, the cultural good must fulfill:

- A symbolic function, which means that the good must remind of important people and events in the history of the Netherlands;
- a connection function, which means that the good is an essential part, of an obvious importance in education, including in the study of Dutch cultural history;
- a function of reference, which means that the good has an essential contribution in the research field of other objects of artistic or scientific importance.

The competent Minister, with the consent of the owner of the cultural object and of the Council, may decide to protect a collection of cultural-historical or scientific special importance, irreplaceable and indispensable, which must be kept as part of the Dutch cultural heritage. When introducing the collection in the national heritage, it is realized a general description of

the protected collection and is established a catalog of items belonging to the collection. Each item of the movable collection is included in a catalog, considering being a protected object. In emergencies, the Minister may decide to introduce a cultural good in the national heritage before getting the advisory opinion of the council. In such cases, the council's opinion is requested when a decision is taken regarding the protection of the heritage property.

Funding of conservation actions of cultural goods of the heritage is done from the state budget. Heritage objects can not be offered for auction, can not be sold, mortgaged, leased or lent to a non-resident, in order to locate it within another building without prior notification of the intention. The location of a protected object can not be changed without written notice to the profile service within the ministry.

The owner of a protected property must inform the person to whom it transfers the ownership right that this one will own a heritage object. Any person who has custody of a protected object is obliged to submit, upon request, to the competent bodies and to inform without delay if it is lost or destroyed. No one can transfer from the Netherlands, without the written consent of the owner, the movable property forming part of a public collection, as are listed in the inventory of a museum, of an archive or permanent collection of a library owned by the State or other public body. If the owner does not file a declaration to that effect, the holding license of the object issued by the Minister can be canceled. The prohibition referred to above applies to a movable cultural good making part of:

- the inventory of movable goods with cultural-historical or scientific value belonging to a church, to an independent structure thereof, or to other religious association;
- A public collection listed as part of the inventory of a museum, an archive or a permanent collection of a library whose owner is a legal entity of private law, which is largely financed with subsidies from the state or by other public body;
- the inventory of movable cultural-historical or scientific value established by the Minister according to the law.

Furthermore, the prohibition referred to above, applies to the monuments and historic buildings, to their component parts according to the provisions of the art. 1 letter d from the Law of monuments and historical

buildings, as to the objects discovered during illegal archaeological excavations, provided that they are older than 50 years.

The law regarding the protection of cultural heritage (2001) regulates, in **PORTUGAL**, the modalities in which the state is obliged to protect and highlight the cultural heritage, having the obligation to send to future generations the national cultural heritage. The inventory of cultural property comprises movable and immovable objects reflecting: the creative genius of man, symbolic or religious confessions, remarkable confessions of experience or historical, aesthetic values, urban architectural design, collective memory, important scientific evidence etc.

Financing the conservation works of heritage monuments is mainly done by the owner / holder of other rights, the State having the obligation to finance the works exceeding a certain amount.

- The infractions provided by the Criminal Code are the following:
  - Moving the cultural property without the approval of the competent institutions shall be punished by imprisonment of up to three years and a fine;
  - Illegal export of cultural goods shall be punished with imprisonment up to five years and a fine;
  - Destruction by fault of a movable cultural good is punished with imprisonment of up to one year and a fine;
  - Destruction of traces, goods or other archaeological evidences is punishable with imprisonment up to three years and a fine.
- Export infraction of cultural goods outside the customs territory of the European Union under false licenses or submitting false documents in order to obtain licenses, shall be punished by a fine between 250.000 and 15.000.000 euros if the offense was committed by a physical or legal person. The same penalty shall be applied for the illegal movement, demolition or destruction of a cultural property of national significance.

**SPAIN** protects its heritage firstly by the Royal Constitution, as also by a specific law – the Law regarding the national historical heritage (1985).

Spanish Historical Heritage consists of movable and immovable objects of artistic, historical, paleontological, archaeological, ethnographic, scientific or technical interest. It also includes documentation and bibliography, archaeological sites, areas like natural sites, gardens and parks of artistic, historical or anthropological value.

Without bringing prejudice to the powers of other public authorities, it is the duty and essential attribute of state administration in accordance with the disposals of the art. 44 and 46, 149 paragraph 1 and 2 of the Constitution, to guarantee the Spanish historical heritage, to promote and guarantee the access of all citizens to it. In addition, in accordance with the disposals of the Constitution, the state government will protect such goods from the illegal export and destruction.

Regarding the Spanish historical heritage, the state administration adopts the appropriate measures to facilitate the cooperation with / and between other public authorities and to gather and provide necessary information to achieve the mentioned goals.

It is for the state government competence to seek at international level the properties included in the Spanish historical heritage, in order to recover any such property that could have been exported illegally and to exchange cultural, technical and scientific information regarding this with other states and international organizations, in according with the Constitution provisions.

Communication and exchange of action programs and information regarding the Spanish historical heritage will be facilitated by the historical heritage Council, which will be composed of one representative of each autonomous community, appointed by its Council of administration.

In order to perform in good conditions the activity, the state administration may consult the following structures: the Council of certification, evaluation and export of properties belonging to the Spanish Historical Heritage, Royal Academies, Spanish universities, the Spanish National Research Council and important councils established by state administration and, in terms of autonomous communities, the institutions recognized by this one (art. 3).

For the purposes of the art. 4, the destruction of a property refers to any act or omission committed over a property included in the Spanish historical heritage, which leads to the risk of loss or damage. In such cases, regardless of the powers of the autonomous communities, the state administration may request the competent service of the Governors Council of the Autonomous Community, at any time, to take urgent measures to prevent the damages. If this request is not met, the state administration will act as needed in order to recover and protect that property.

Measures taken in order to request that administrative bodies and judicial control courts to proceed in accordance with the legal provisions for



the defending of the property, that is part of the historical heritage of the state, are public.

The property declared of cultural interest is recorded in a general register held by the state administration. In the register will be notified all initiated proceedings that lead to the recording of a monument into the cultural heritage up to the pronouncing of a final decision.

Any construction or excavation work carried out in an historic site or in an archaeological area declared of cultural interest requires a permit from the authority responsible for protecting these goods. Before granting the authorization, it may require prospective studies where appropriate, as also excavations, in accordance with the terms provided in the Title V from the law. Placing any kind of commercial advertising, cables, antennas etc., is prohibited in the archaeological areas.

A fee of 1% of the total budget allocated to local public works supplies a fund for the conservation or enrichment of Spanish historical heritage or for the promotion of the artistic creativity. Are exempted from the previous provisions the types of works for which the total budget does not exceed 600.000 euros and those relating to national defense or security and safety of the public services. The specific method of allocating funds from the collection of the fee of 1% shall be determined by regulations.

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