POLAND

NATIONAL REPORT ON THE IMPLEMENTATION OF THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

2011 - 2015
ANNEX I
GUIDELINES FOR THE PREPARATION OF REPORTS BY MEMBER STATES ON THE APPLICATION OF THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

I. Information on the implementation of the UNESCO Convention of 1970 (with reference to its provisions)

1. Ratification of the Convention

(a) Has this Convention already been ratified? Yes

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);

- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;

- the extent to which UNESCO can assist in completing the process?

2. Implementation in the national legal system and in the organization of services

(a) Give the references of the principal national regulations adopted in order to implement the 1970 Convention?

Poland, which ratified the ‘UNESCO Convention of 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property’ already possessed legislation applicable to part of the obligations incurred by this ratification. At this time the legal act that regulated the control of the export of cultural goods was the ‘Act of February 15, 1962 on the protection of cultural property and museums.’ Its content contained a provision that the export of cultural goods is prohibited although in exceptional cases, after the confirmation that the lack of the given object will not impair national cultural heritage,
could the appropriate minister responsible for matters of culture and art, after having obtained the opinion of specialist organs, approve the export of such goods. In another piece of legislation, namely in the act of 2003 on the ‘protection and guardianship of monuments’ there are many provisions meant to act against the illicit export of cultural goods. Questions of the protection of archival materials are regulated by the ‘Act of July 14, 1983 on national archival resources and archives.’ It should be noted that the Polish legal system includes a system of permits and licenses for the export of cultural goods and that it also includes criminal provisions penalizing such export. The provisions of the convention are taken into account in the creation of legislation dealing with the protection of cultural heritage. Poland as a member of the European Union has adjusted its export control system to make it consistent with the provisions of (EEC) ‘Council Regulation no. 3911/92 from December 9, 1992 concerning the export of cultural goods’ (presently replaced by (EEC) ‘Council Regulation no. 116/2009 from December 18, 2008 in the matter of the export of cultural goods,’ European Union Journal of Laws, October 2, 2009 and its executory regulations).

(b) A definition of “cultural property” agreeing with the definition proposed by the 1970 Convention is important in order to increase the effectiveness of international cooperation. State what definition is used by the national laws of the country concerned.

In the Polish legal system, despite the fact that the term ‘cultural goods’ exists in legislation (including in the Constitution of the Republic of Poland and in the Criminal Code) it is not defined. In the ‘Act of July 23, 2003 on the protection and guardianship of monuments’ which “defines the subject matter, scope and form of the protection of monuments and their care, the principles of creating a national program for the protection of monuments and their care, the financing of conservation, restoration and construction work on monuments and also the organization of organs to protect monuments” (art. 1 of the Act) the concept of monument is defined. In keeping with art. 3 of the above-mentioned act, a monument is a immovable or movable property, their parts or assemblies that are manmade or related to man’s activity and which constitute a testimony to a previous epoch or event the memory and protection of which is in societal interest on account of its historical, artistic or scientific value. On the other hand an archeological monument is an immovable artifact that occupies space on ground, below ground or under water and that constitutes the remains of the existence and activity of man and which is composed of cultural strata and the creations located within or traces of such creations or a moveable monument that is created from such. Separate regulations relate to the protection of archival materials which, which despite the fact that in
the understanding of art. 1 of the UNESCO Convention of 1970 constitute cultural goods do not, nevertheless, in the context of Polish legislation, constitute monuments. Matters related to their protection are regulated by the ‘Act of July 14, 1982 on national archival resources and on archives.’

(c) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments (police, customs)?

In Poland the task of the protection of cultural heritage is undertaken by the General Conservator of Monuments and by provincial (voivodeship) conservators of monuments. Poland also possesses specialist organizations such as:

- National Institute for Museums and Public Collections;
- National Heritage Board of Poland.

Their statutory tasks are closely related to the protection of cultural heritage in the area indicated in the question.

Combating illicit trafficking in cultural goods is also the purview of the Police, Customs and the Border Guard. In their structures, these organs have designated persons appointed to coordinate actions related to the protection of cultural heritage.

(d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.

In Poland cooperation occurs on the basis of agreements between the engaged parties.

In November 2004, an agreement was reached between the Ministry of Finance represented by the Head of the Customs Service, the Ministry of Culture and National Heritage represented by the General Conservator of Monuments and the Ministry of Internal Affairs and Administration represented by the Chief of Police and the Chief Commander of the Border Guard for the purpose of cooperation in combating the illicit export or import of monuments. This agreement is meant to increase the efficiency of the cooperation in material regulated by the convention as well as to facilitate the flow of information between state institutions.
Another important document is the agreement between the General Conservator of Monuments and the Chief of Police in which they obligate themselves to cooperate and mutually act in combating crime against cultural monuments. This act was signed in March of 2005. Both documents create the framework of cooperation between individual institutions in the context of the protection of cultural heritage.

The above acts led to the conclusion of many agreements at the local level that improve cooperation in increasing the security of the movement of cultural goods. On the basis of this cooperation representatives of state organs learn during training sessions how to counteract the import of inventoried cultural goods stolen in other states from museums, places of worship, secular buildings and from other similar institutions.

(c) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

Specialist trainings and academic conferences take place during which current legal problems are discussed and threats are analyzed. Representatives of both specialized institutions and law enforcement agencies that deal in the protection of cultural heritage participate in such events.

3. Inventories and identification

(a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.

In Poland the collections of public institutions are relatively well protected against theft, because there are a number of legal acts that provide detailed rules for the protection and technical security of these entities and collections. Statistics indicate that they are less often victims of crime than are private collections. Controls are also conducted of museums in the context of compliance with safety procedures and in addition specialized training for security personnel are conducted.

(b) Specify the degree of precision, at the national level, of the definition of “cultural property” covered by international conventions (see above 1.2(b)). State whether “national treasures” are identified in an official, tentative or exhaustive list.

In the current Polish legislation this role can be fulfilled by the definition of cultural goods defined in the statutes, and thus as monuments.
The ‘ACT of July 23, 2003 on the protection and guardianship of monuments’, article. 3 pt. 1 defines a monument as an "immovable or movable object or part or group thereof, made by man or connected with man’s activity and constituting a testimony to a past era or event, the preservation of which is in the interest of society due to its historical, artistic, scientific or academic value". The law divides monuments into movable and immovable ones with further specification of the object of protection provided in art. 6, in which particular categories of monuments are designated.

Based on this regulation subject to protection and care in Poland are immovable monuments, regardless of their condition, that constitute:

- cultural landscapes, rural arrangements and sets of buildings, works of architecture and construction, works of defense construction, technical facilities, in particular mines, steel mills, power plants and other industrial plants, cemeteries, parks, gardens and other forms of designed green spaces, and places commemorating historical events or activities of prominent personalities or institutions.

Movable monuments that are subject to protection and care are:

- works of fine arts, handicrafts and functional art, collections that constitute sets of objects collected and organized according to the concept of the persons that created these collections, numismatic and historical relics, especially military-related, flags, seals, badges, medals and decorations, products of technology, and especially devices, means of transport, machinery and tools that testify to material culture characteristic of old and new forms of economy and document the level of science and the development of civilization, library materials arising prior to January 1, 1949, musical instruments, products of folk art and crafts and other ethnographic objects, objects commemorating historical events or the activities of eminent personalities and institutions and also archaeological monuments.

Monuments are protected by:

- entry into the register of monuments;

- recognition as an historical monument;

- creating a cultural park;

- the establishment of protection in the zoning plan, or in the decision on location of a public investment, or in a decision establishing the conditions to build, or in the decision
to authorize the implementation of road investment, or in the decision to establish the location of a railway line or in a decision not to permit the realization of an investment in an airport for public use.

Monuments are entered into the register of monuments on the basis of a decision taken by the provincial conservator at the request of the owner. The decision on the entry of a movable monument can be issued independently in the case of a justified fear of destruction, damage or illegal export abroad.

Monuments are not registered that are encompassed by museum inventory lists or that are part of the national library collection.

A monument entered in the register, which has been subject to destruction that has resulted in the loss of its historical, artistic or scientific value or which value that was the basis for the decision on entry into the register was not confirmed by new research is deleted from the register. From the registry is deleted a monument that has been entered into the inventory of a museum or has become part of the national library collection. Removal from the register occurs on the basis of a decision by the minister responsible for culture and national heritage.

(c) To what extent is the Object ID standard used? Is the standard adapted to the State’s needs?

In the case of the standard Object ID in Poland, there are special programs such as Safe Resources - Safe Collections. According to the project design it is the standard for the documentation of monuments and works of art, created in order to identify objects missing as a result of a crime, natural disaster or being lost. It is a standardized way of describing a work of art or a product of material culture of aesthetic, historical or material value. The program is implemented by the National Institute for Museums and Public Collections and the Main Police Headquarters, with the cooperation of representatives of museums and the art market. Its basis were the functioning museum cards and the standard description - Object ID.

(d) Are there systems to combat theft and to train museum staff and have specific measures been adopted for libraries, archival and manuscript repositories, and any specialized units established to monitor them?

Such mechanisms are included in the implementing acts to the Act of November 21, 1996 on museums and in particular in the:
• 'Regulation of the Minister of Culture and National Heritage of September 2, 2014 on protection of museum collections against fire, theft and other dangers threatening their destruction or loss,' which contains detailed provisions on the protection of museum collections;

• 'Regulation of the Minister of Culture from August 30, 2004 on the scope, form and method of registering monuments in museums;'

• "Regulation of the Minister of Culture and National Heritage of May 15, 2008 on the conditions, manner and procedure for conveying museum artifacts."

Concerning library materials - library assets, which are of outstanding value and importance to the national heritage, are included in the national library collection. Special procedures for dealing with library materials from this collection is regulated by the executive act to the act of June 27, 1997 on libraries in the form of the regulation by the Minister of Culture and National Heritage of July 4, 2012 concerning the national library collection.

Regarding the protection of archives, this has been regulated in the 'Act of July 14, 1983 on national archival resources and on archives.'

There are a number of authorities entitled to control the institutions that hold public collections. They include, among others, the Supreme Audit Office; the Minister of Culture and National Heritage and Provincial Conservators of Monuments.

4. Archaeological excavations

(a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.

The regulations on archaeological heritage are set by two legal documents:

- 'Act of July 23, 2003 on the protection and guardianship of monuments’ (original regulation: OJ 2003 no 16, item 1568, consolidated text)
- 'Regulation of July 27, 2011 of the Minister of Culture and National Heritage concerning the implementation of conservation, restoration and construction works, conservation and architectural research and other activities carried out on registered monuments and archaeological research’ (original regulation: OJ no. 165, item 987; new amendment: OJ, 2015, item 383)
1. Decisions concerning archaeological heritage and archaeological excavations are made by respective voivodeship [provincial] inspectors of monuments, who:

   a. set the scope and character of archaeological research when construction, earth works or other similar activities that can destroy or damage archaeological monuments;

   b. issue permits to carry out archaeological research, specifying the conditions that must be met by an archaeologist or an investor – depending on whom has applied for the permit;

   c. control archaeological excavations (after prior notification and in the presence of a controlled person);

   d. can stop the excavations if they are conducted contrary to the conditions of the permit or without the permit;

   e. having stopped the works, can order the obtaining of a permit, execute a certain arrangement of the site, or to take certain actions to ensure conformity of the works with the existing permit;

   f. can change or withdraw the permit if – in the light of new facts and circumstances – the research can lead to the damage or destruction of a monument;

   g. on accidental discovery of an archaeological monument, inspect the site and, if necessary, order the carrying out of archaeological excavations.

2. Decisions concerning underwater maritime heritage are made by a Maritime Office Director in agreement with the respective voivodeship conservator of monuments.

3. Archaeologists wanting to carry out archaeological excavations have to meet the following criteria set in the Regulation:

   a. possess a Master in Archaeology;

   b. have 12 months of field practice, regardless of whether they were completed during or after university studies. (Field-walking, augering, research carried
out in “surveillance mode” i.e. archaeologists monitoring construction sites, and post-exavation study may not be included in the duration of the practice.)

(b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

In Poland, there still exists a problem of illegal archaeological excavations and we are not able to precisely determine its scale. It started in the 1990’s with the appearance of portable metal detectors on the market. Until 2003 there were no legal regulations of the use of detectors in search for archaeological objects, and the existing provisions of the ‘Act of July 23, 2003 on the protection and guardianship of monuments’ (original regulation: OJ 2003 No 16., Item 1568, consolidated text) are ineffective. In Poland there are approx. 50,000 users of metal detectors. The services responsible for protection of monuments, burdened with administrative issues, do not have enough means or the human resources to adequately control the objects of archaeological heritage in the field. Low detection of this type of crime and poor public awareness of the value of archaeological heritage for society as a whole contribute to the escalation of illegal excavations. Treasure hunters lobby actively in the media, selling a false image of innocent explorers, persecuted by a severe State for their love of the past. As a result, their activity is accepted by society easier than are the arguments of monument protection officers. In order to combat archaeological crime the National Heritage Board of Poland monitors e-commerce and provides training for police. A few years ago the National Team for Combating Crime against the National Heritage at the Police Headquarters was dissolved. Henceforth systematic cooperation was replaced by ad hoc actions.

5. Monitoring of the export and import of cultural property

(a) Give an estimate of the scale of the illicit export or import of cultural property. Are up to-date statistics compiled on the theft of cultural property?

Estimating the scale of the illegal export and import of cultural goods is difficult due to limitations on border control related to Polish membership in the Schengen area. Limitations on the movement of cultural goods cause that the number of such crimes actually committed can significantly vary from the number identified through legal actions.

In Poland, current statistics showing the theft of cultural property are made available by the Main Police Headquarters. Information about such losses is also entered on an ongoing basis into a national list of monuments stolen or illicitly exported abroad. The ‘Act of July 23, 2003
on protection and guardianship of monuments' imposes on the organs of the Police, Border Guard and the Customs administration the legal obligation of immediately providing information about monuments that were stolen or illicitly exported for the purpose of inclusion in this informational database.

(b) Is the illicit export of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?

The principle of the free movement of persons, goods, services and capital in force in the European Union imposes de facto limitations on the export control of monuments. The legal protection of cultural property based on the dual control by the Polish state and EU institutions theoretically allows efficient prevention of the illegal export of works of art through the procedures of restitution of illegally exported works of art, but it has its limitations associated with the costs of proceedings and ease of the movement of objects. Another problem concerns the unambiguous identification of cultural goods by the customs and border services. This is connected with the fact of the dispersal of information amongst many sources on searched for objects of individual countries, which makes their clear identification difficult.

(c) What are the main rules (administrative and legal) for monitoring the export and import of cultural property (existence of an export certificate, public information about the rules in force)? What categories of cultural property are covered by the rules?

The Act on protection and guardianship of monuments dated July 23, 2003 contains provisions relating to export controls through a system of export licenses. Currently, there are four types of export licenses for taking monuments out of the country:

- A one-time permit for permanent export of a monument - this permit is issued by the minister responsible for culture and national heritage protection. The Minister of Culture and National Heritage may refuse to issue a one-time permit for the permanent export of a monument, in the case in which the monument is of special value for the cultural heritage. With respect to library materials, such a permit is issued by the director of the National Library.
- A one-time permit for the temporary export of a monument - this permit is issued by the voivodeship conservator at the request of the individual or organizational unit,
which possesses the monument, intending to export it once for the purpose of usage or
exhibition or for carrying out conservation work.

- Multiple individual permit for temporary export of a monument - this permit is issued
  by the voivodeship conservator at the request of an individual or organizational unit,
  which possesses the monument, intending to export it abroad several times for usage
  or exhibition purposes.

- Multiple general permit for the temporary export of monuments - this permit is issued
  by the voivodeship conservator at the request of a museum or other cultural institution
  that in connection with its activity repeatedly intends to export its collections, in whole
  or in part, for the purposes of exhibition.

The obligation to have these documents has been limited to only those monuments that
meet the criteria of both proper age and the sum shown in the relevant categories. A
similar solution, upon which the legislator based its act, exists in Council Regulation
(EEC) No 116/2009 of December 18, 2008 on the export of cultural goods. In practice, the
categories from the annex of the above-mentioned act was adjusted to Polish conditions
and implemented into the law on the protection and guardianship of monuments.

Currently, licenses for export from the country require the following categories of items:

- archaeological monuments that are more than 100 years old and part of
  archaeological collections or have been obtained as a result of archaeological
  excavations or accidental discoveries;

- elements which are an integral part of architectural monuments, interior design,
  monuments, statues and works of artistic craftsmanship that are more than 100
  years old;

- paintings made using any technique and on any material that are more than 50 years
  old and which value is higher than 40,000 PLN;

- watercolors, gouaches and pastels made on any material that are more than 50 years
  old and which value is higher than 16,000 PLN;

- mosaics and drawings made using any technique and on any material, which are
  more than 50 years old and which value is higher than 12,000 PLN;

original works of graphic art and dies for their execution and original posters that
are more than 50 years old and which value is higher than 16,000 PLN;
- original sculptures, statues or their copies made using the same technique as the original, which are more than 50 years old and which value is higher than 20,000 PLN;
- single photographs, films and their negatives, which are more than 50 years old and which value is higher than 6,000 PLN;
- single manuscripts or those included in collections that are more than 50 years old and which value is greater than 4,000 PLN;
- single books or in collections that are more than 100 years old and which value is higher than 6,000 PLN;
- single printed maps and scores that are more than 150 years old and which value is higher than 6,000 PLN;
- collections and items from zoological, botanical, mineralogical or anatomical collections which value is higher than 16,000 PLN;
- historical, paleontological, ethnographic or numismatic collections the value of which is higher than 16,000 PLN;
- means of transport, which are more than 50 years old and which value is higher than 32,000 PLN;
- other categories, not mentioned, that encompass monuments, which are more than 50 years old and which value is higher than 16,000 PLN.

The export of monuments exceeding those thresholds or not brought back within the period of validity of their permit may result in the sanction of art. 109 of the Act, "Whoever exports a historical artifact abroad without a permit or does not return the historical artifact, once it has been exported abroad, during the period of validity of the permit, shall be subject to imprisonment of between 3 months and 5 years. If the offender committing an act referred to in article 109.1 has acted unintentionally, they shall be subject to a fine, community work or imprisonment of up to 2 years." For export of a monument without permission the confiscation of the object is also possible, even if it is not a property of the perpetrator, as is a payment towards a specific public interest related to the preservation of monuments.

- registered monuments;
- included in public collections that are owned by the State Treasury, local government units and other organizational units included in the public finance sector;
- located in the inventories of museums or the national library collection.