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# LEGAL PROTECTION OF CULTURAL HERITAGE PROPERTIES IN SPANISH STATE MUSEUMS

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**Abstract:** Cultural goods comprise a pearl in the crown of Spanish Historical Heritage granted the highest level of protection provided on the basis of both state and Autonomy law. State-owned museum institutions not only take under their wing the most significant cultural heritage

but are also a cultural good. This article aims at bringing the reader closer to the legal structure of historical heritage protection in Spain, defining the place of the museum within this system, the tasks imposed on museums, and their management.

**Keywords:** law, museum, Spain, protection of historical heritage, cultural good.

## Foreword

Spain is a country composed of 17 Autonomous Communities and two towns with an autonomous status, situated in Africa. The decentralised political system does not limit the independence of the Autonomies. Notice that the inhabitants of particular regions possess a profound awareness of distinctness resulting predominantly from the turbulent history of cultures and nationalities stratified in this country – starting with the Iberian peoples arriving on the peninsula, followed by the Celts, the Greek, Carthaginian and Phoenician colonies ultimately vanquished by the Romans, the Jews brought over by Hadrian, the warring barbarian tribes and Muslim rulers all the way to the incorporation of Asturias, Castile, and Catalonia into the Frankish state. One can thus imagine the enormous and disparate legacy left behind in this region by all the above-listed peoples and become acquainted with the diversity of Spanish historical heritage by touring museums. Spain offers over a thousand museums and 400 collections – a legacy that has been ensured legal protection: a total of more than 300 legal acts,<sup>1</sup> both state and of the Autonomies.

The law in question is based on the Constitution: art. 44 and 46 of the Constitution of Spain (La Constitución Española)<sup>2</sup>

obligates public authorities to promote access to culture and scientific research aimed at the preservation and support of activities intent on the enrichment of the historical, cultural, and artistic heritage of all the peoples of Spain regardless of legal status and ownership. Furthermore, the state's duty involves punishing eventual offenses committed against listed goods. Spanish law guarantees all citizens access to culture and heritage and introduces the extensive concept of heritage comprising both public and private property, which should be protected identically.

Among the above-mentioned legislation acts as many as 84 pertain to legal regulations concerning museums. The Ministry of Education, Culture and Sport (with the assistance of a body named: Subdirección General de Museos Estatales Ministerio de Educación, Cultura y Deporte) published electronically a Museum Code (Código de Museos)<sup>3</sup> – a collection of all legal acts concerning museums and issued in Spain. The acts in question were divided into eight categories: national regulations, collection management, norms on national museums, access to information and research, intellectual property, historical memory and restitution, economic-administrative management, and legal acts of Autonomous Communities. Each Autonomous Community possesses at least one act on

historical or cultural heritage, and the majority – a separate act encompassing museology. Jointly, the Communities passed 29 legal acts associated with the museum institution.

## State law

The most important state legal act on the protection of historical heritage in the Kingdom of Spain is the Spanish Historical Heritage Act from 1985 (Ley del Patrimonio Histórico Español<sup>4</sup>, further as: Act), of key importance also for the regulation of the museum institution. Another prominent legislative act is the Royal decree 620/1987 of 10 April, which accepted the Regulation on National Museums and the Spanish Museum System (Regalement de Museos de Tularidad Estatal y del Sistema Espanol de Museos<sup>5</sup>). According to art. 59, 3 of the Act museums in Spain are *institutions of a permanent nature that acquire, preserve, investigate, communicate and exhibit collections of historical, artistic, scientific and technical or any other cultural nature for the purposes of study, education and viewing (contemplación)*. This definition is compatible with the norm of the International Committee for Museums (ICOM).

In the Kingdom of Spain first normative regulations concerning the museum and clearly referring to heritage go back to the first decade of the twentieth century. From 1933 museums have been consistently treated as institutions serving the protection of heritage, similarly as archives and libraries. From 1985 the Act not only recognizes a museum to be heritage as such, but state museums are considered to be cultural goods remaining under the protection of a special regime by means of which the Act encompasses the most exceptional and significant heritage (art. 60, 1). It

is thus necessary explain what the components of Spanish historical heritage are – they comprise movable and immovable objects of an artistic, historical, paleontological, archaeological, documentary, literary, scientific or technical nature and include buildings, different movable objects as well as archaeological excavation sites, gardens, and parks of artistic, historical, and anthropological value. These assets are the same as the ones listed in the definition of a museum.

Mention of *any other cultural nature*, which ends the definition of a museum, somewhat compensates for the absence of a reference of this right to the protection of, e.g. ethnological values. Paleontological and natural heritage was forgotten in the comprehension of the range of museums in the Act although later it was taken into consideration in the definitions proposed by some of the Autonomous Communities. Two years after the proclamation of the Act, the Regulation on National Museums and the Spanish Museum System repeated the same definition of the museum. In other words, present-day regulations regarding both heritage and museums clearly describe museums and collections as integral historical heritage goods, which are thus also subjected to the detailed regulations of the Act and the legal regime established therein.<sup>6</sup> The basic scheme encompasses three levels of protection, which, arranged in growing order, are presented as follows:

1. Spanish Historical Heritage;
2. General Inventory of Movable Objects (Inventario General de Bienes Muebles);
3. General Registry of Objects of Cultural Interest (Registro General de Bienes de Interés Cultural).

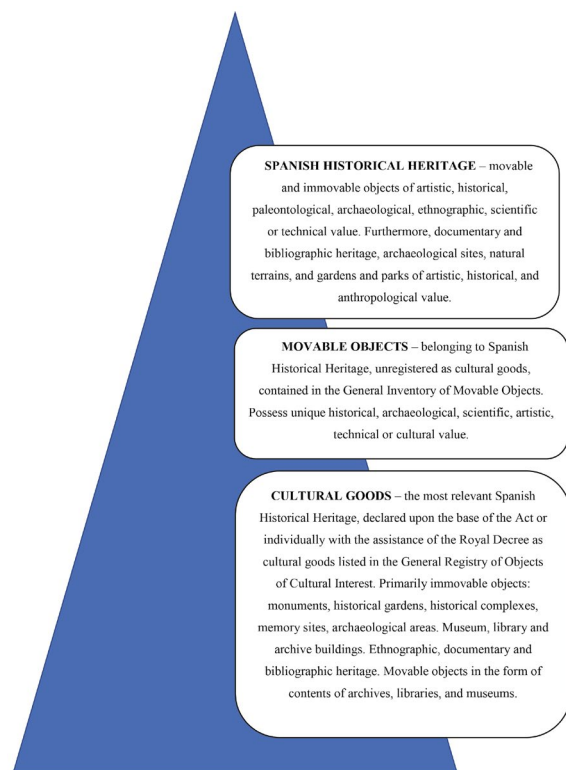
The concept of a cultural good conceals a maximum level of protection provided by the Act. Cultural goods established by law include buildings designated for archives, libraries, and state museums as well as movable goods stored in them. Cultural goods individually established by the Royal Decree demand a previous initiation of administrative procedure. An object acknowledged to be a cultural good must be included in the Register, which contains its history and distinguishing marks. Due to the fact that cultural goods could assume the form of both public and private goods their owners *shall be obligated to permit and facilitate inspection (...) and public visits, which shall be free (...) at least four days a month* or deposit and exhibit them in a suitable center for maximum five months every two years (art. 13, 2). Any sort of an attack aimed at those goods, such as plunder or the violation of regulations, is punishable (art. 65 and 69) and export is forbidden (art. 29 and 65,1).

Protection offered to cultural goods by the Act also entails their import, the criteria and methods of purchase by the Kingdom of Spain, the right to preemption, tax exemptions, national information plans, heritage restoration, promotion and increasing awareness of heritage as well as assorted restrictions intent on preserving it. These limitations are exemplified by the prohibition contained in art. 19, 3 concerning the placing of *commercial advertisement and any type of cable, aerial and visible ducting in historical gardens and on the façades and roofs of monuments declared to be of cultural interest*. Each construction, which alters the character of immovable monuments, to which this article pertains, or changes their appearance is also forbidden, More, in reference to historical monuments and

**Table 1. Museums and collections in Spain**

CATEGORY	MUSEUMS	COLLECTIONS
Fine arts	166	61
Archaeology	158	41
Modern art	90	31
Arts and crafts	19	8
<i>Casa museo</i>	69	19
Science and technology	46	12
Natural sciences and history	45	16
<i>De sitio</i>	33	16
Specialist	116	56
Ethnography and anthropology	167	103
General	105	32
Historical	94	26
Textiles and clothes	2	–
Other	12	9
TOTAL	1122	430

Source: prep. by author upon the basis of data from the Ministry of Education, Culture and Sport of Spain



Prep. by author

gardens the same article provides that placing in them or in their vicinity any sort of signs or symbols requires *express authorisation from the organisations responsible for the enforcement of this Law*. Presumably, such a provision is contrary to the categorical prohibition established in par. 3 of the same regulation, but it concerns placing signs or symbols with a clear-cut advertisement or propaganda purpose or the disclosure of particular products and brands. In turn, above-mentioned par. 2 refers to the use of the same elements albeit not for the purpose of advertisement but for the sake of information, e.g. traffic signs or posters concerning a given historical monument.<sup>7</sup>

Mention is now due to the control performed by state administration, which can, e.g. check the condition of the cultural good at all times – as has been mentioned, the owner is compelled to make it available for examination or to loan it for temporary exhibitions. Cultural property *shall be preserved, maintained and safeguarded by its owners and sometimes possessors* (art. 36,1). The Act also includes, i.a. a prohibition to use movable cultural goods *unless the values recommending its preservation are not placed at risk* (art. 36, 2); state administration *may prevent demolition and suspend any type of building work or action on a property declared of cultural interest* (art. 37, 1); there also exists the possibility of expropriating property that is a cultural good if there exists *the risk of destruction or of deterioration or its usage that is incompatible with its values*. This pertains also to buildings *preventing or hindering the view of property covered by a declaration of cultural interest* (art. 37, 3). The Act contains penalties for administrative infringements (fines, the obligation to repair and restore the cultural good to its original state) and the violation of regulations (art. 76). In addition, the Act places

upon public authorities the duty of preserving, consolidating, and improving property declared to be of cultural interest by using all technical methods (art. 39, 1).

Chapter II of the Act is composed of eight articles strictly associated with museums, archives, and libraries. Regarding the establishment of museums, the Act declares that state administration can, after prior consultations with a suitable Autonomous Community, create any museums *it considers appropriate when cultural and social needs make this necessary irrespective of the initiative of other organisations, institutions or private persons* (art. 61, 1). Museums on a national level are set up by Royal Decree (art. 61, 2).

The Act mentions fundamental tasks facing state administration, which, first, promotes the communication and co-ordination of all state-owned museums on Spanish territory. With this purpose in mind it *may collect any information from them it considers appropriate and may inspect their functioning and take measures to improve the fulfillment of their purposes in the terms given (...)* (art. 61, 3). Secondly, state administration guarantees *for all Spanish citizens access to State-owned (...)* museums, *without prejudice to any restrictions which may be laid down which could be established for the purpose of preservation of the property held in them or the function of the institution itself* (art. 62).

Buildings in which state-owned museums are installed as well as any buildings or land, on which museums are to be installed, *may be declared to be of public utility for the purposes of their expropriation. This declaration may be made extensive to any adjacent buildings or land if so required for security reasons for proper preservation of the buildings or the property they contain* (art. 64).

Moreover, the Act also contains a regulation declaring that state-owned museums *may accept deposits of property that is privately-owned or that belongs to other public Administrations in accordance with official regulations* (art. 63,1). Museums cannot sell or in any other way dispose of cultural goods from their collections. They may, however, deposit some objects in other places or loan them for shorter or longer periods of time. Notice that public museums are not the owners of their collections. In accordance with art. 6,1 of the Regulation on National Museums and the Spanish Museum System state-owned museum collections are an element of Spanish historical heritage and thus belong to the state administration and its autonomous organisations ascribed to State Museums. Moreover, museums may have as deposits private objects for their exhibitions, but in accordance with a general principle they must obtain suitable permission. Movable cultural goods are discussed in a special regulation in accordance with which public administration organs may transfer their ownership only amongst each other but not to third parties (art. 28, 2). This means that movable property cannot be sold, and that the government can exchange with another state cultural property *of at least the same value and historical significance* (art. 34). A special category is National Heritage (Patrimonial Nacional) belonging to the Royal Crown and regulated by an Act of 1982 (Ley 23/1982, de 16 de junio, reguladora del Patrimonio Nacional).<sup>8</sup> The ownership of works of art belonging to this category is inalienable. After the transference of its ownership to a museum the cultural property, which is a donation made

by a private person, shares the legal regime of the remaining part of the collection in which it had been placed.

According to art. 2 of the Regulation on National Museums and the Spanish Museum System functions fulfilled by a museum include:

- the conservation, cataloguing, restoration, and exposition of previously arranged collections;
- studies conducted within the range of the possessed collections or their specialties;
- the organisation of temporary scientific and information exhibitions in accordance with the nature of the museum;
- the preparation and publication of catalogues and monographs about their collections;
- the development of didactic activity concerning its contents;
- all other functions that in accordance with statutory norms or with legal or control regulations have been entrusted to them.

## Museum ownership and management

Museums constituting public property are managed by state administration, the administrations of Autonomous Communities or local administrations. For the sake of coordinating their policy public museums (and certain private ones) are integrated within the Spanish Museum System (art. 26–27 of Royal Decree 111/1986); regional law is applied in the case of other museums.

We may distinguish the following museums:

### 1. State:

- a) directly administered by the Ministry of Culture and its autonomous organs,
- b) whose management was transferred to Autonomous Communities,
- c) administered by particular ministries,
- d) administered by particular public bodies, royal academies.

### 2. Private:

- a) belonging to foundations, corporations, etc.,
- b) Church:
  - diocesan,
  - cathedral,
  - parish and monastic.

## State museums

This category of museums is composed of national museums, those owed by autonomous organisations (e.g. the Prado

Museum), and certain special-theme museums. The administration of state-owned museums is the domain of the Ministry of Education, Culture and Sport through:

- the Subdirectorate-General for State Museums (Subdirección General de Museos Estatales), which is an administrative unit – a component of the Directorate-General for Fine Arts and Cultural Assets and for Archives and Libraries (Dirección General de Bellas Artes y Bienes Culturales y de Archivos y Bibliotecas) promoting and coordinating activity associated with museums on a national level. The Subdirectorate-General manages 16 museums and is active in 64 institutions in accordance with agreements made with the Autonomous Communities; its activity consists of investments in the infrastructure, issuing permits for the transference of resources, and providing technical advice in its capacity as the owner of those buildings and collections. Additional functions fulfilled by the Subdirectorate-General encompass: advice concerning state museums managed by other ministries, coordination of the system of Spanish museums co-operating with other administrations, public or private subjects regarding issues connected with a given museum, reinforcing the position of the museum in social awareness, and international co-operation upon the level of communication and exchange with museum institutions all over the world.
  - the Higher Council for Museums (Junta Superior de Museos), an older consultation organ of state administration concerning museums.
  - the Spanish Museum System (Sistema Español de Museos), an instrument of the co-operation and coordination of museums assigned to the Ministry of Culture, museums supervised by other ministries, and museums, which made suitable agreements, e.g. particular private museums (including Church ones) possessing essential collections.<sup>9</sup> Established by Royal Decree 620/1987 of 10 April.
- The year 2009 marked the creation of a Network of Spanish Museums (Red de Museos de España) for the purpose of coordinating museums administered and owned by the state, co-operation between public administrations regarding museums, as well as promoting and increasing the effectiveness of managing those museums and institutions constituting their parts. Out of more than 1000 Spanish museums 139 were included into the network. The Ministry of Education, Culture and Sport is the administrator of 83 museums comprising the category of national museums, of which:

**Table 2. Museums in Spain – division according to ownership and administration categories**

		MUSEUMS	COLLECTIONS
Ownership	State	813	250
	Private	285	176
	Mixed/joint	24	6
Administration	State	791	251
	Private	309	171
	Mixed/joint	22	10

Source: prep. by author upon the basis of data from the Ministry of Education, Culture and Sport of Spain

- 16 are subjected to the Directorate-General for Fine Arts and Cultural Assets and for Archives and Libraries, i.e. are entirely and exclusively administered by the Ministry;
- 64 museums are administered by Autonomous Communities (upon the basis of agreements). Art. 148 of the Constitution allows Autonomous Communities to assume competences in: *museums, libraries, and conservatories of interest to the Autonomous Community*. On the other hand, in accordance with art. 149 the state holds exclusive competence over *museums, libraries, and archives belonging to the State without prejudice to their management by the Autonomous Communities*. These articles comprise a legal foundation upon whose basis Statutes of the Autonomies assumed competence relating to issues entrusted to them via the intermediary of suitable transference decrees, which resulted in decentralisation within the world of museums and important administrative reorganisation. With the exception of an article containing the definition of the museum in the Act, the remaining norms are very general and concern only state-owned museums within the range of their establishment, coordination, and mutual communication. On the other hand, within regulations pertaining to the whole state and after a confirmation of the statute, each Autonomy devised detailed legislation concerning museums for the sake of regulating the functioning and creation of museums that are not state property. The acts in question are extremely similar.<sup>10</sup>
- Three museums are considered to be special and are supervised by the Department of Culture (la Secretaría de Estado de Cultura):
  - The Prado National Museum functions as a special public unit (Organismo Público Especial)<sup>11</sup> possessing legal personality and full capability to perform legal, public, and private activity for the sake of the realisation of its purposes. The Chairman of the Museum is the Minister of Education, Culture and Sport, responsible for its custody and the approval of general plans of activity and initial budget projects. The Museum organs are the Chairman of Prado Museum, the President of the Royal Patrimony, and the Museum Director.<sup>12</sup> – The Reina Sofía National Art Centre (Museo Nacional Centro de Arte Reina Sofía) accepted the status of an Autonomous Institution (Organismo Autónomo)

in the state. Despite the fact that it is subjected to public control it possesses more rights and independence than other public museums (see: Royal Decree 1432/1985). Just like the Prado it has a legal personality and is entitled to make purchases, but not to sell or exchange artworks from its collections. Permission issued by the Minister of Culture is required to remove any work from the possessed exhibits. In each case autonomous institutions are dependent on the Ministry responsible for strategically steering them, assessing, and controlling the results of their activity.<sup>13</sup> The Museum is administered by the Chairman of the Museum (delegated to this post from the Ministry of Culture), the President of the Royal Patrimony, and the Museum Director.

- The National Theatre Museum is administered exclusively by the National Institute for the Scenic Arts and Music (INAEM);
- 56 museums belong to other ministries, independent bodies, royal academies, etc.

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Today, Spanish museums are an example of unity in diversity. Managing them is based on a relation between state and autonomous administration. In order to understand museum law two levels of knowledge about legislation are required: on the one hand – the one directly connected with museums and the general conception of the law of Spanish historical heritage, and on the other hand – decidedly more practical legal knowledge. The Spanish legal order regarding museums demonstrates that:

- at present the museum is a historical heritage institution and serves the conception of cultural heritage;
- all museum collections are regarded as integral historical heritage goods, regardless of their nature or typology;
- certain immovable properties and collections are regarded as cultural goods upon the basis of the Act, and thus are recognized as important heritage subjected to a special legal regime;
- museums most important for the whole country have been provided special protection and granted exceptional status and competences, as in the case of The Prado Museum or The Reina Sofía National Art Centre;
- cultural goods kept in museums can be, first and foremost, preserved, and this is a priority task.

## Przypisy

<sup>1</sup> In accordance with data obtained from the search engine of the *Official State Gazette (Boletín Oficial del Estado)* <https://www.boe.es/legislacion/legislacion.php> [accessed on: 20 February 2018].

<sup>2</sup> La Constitución Española de 1978, B.O.E: 311, 29/12/1978.

<sup>3</sup> [https://www.boe.es/legislacion/codigos/codigo.php?id=177\\_Codigo\\_de\\_Museos\\_&modo=1](https://www.boe.es/legislacion/codigos/codigo.php?id=177_Codigo_de_Museos_&modo=1) [dostęp: 20.02.2018].

<sup>4</sup> Ley 16/1985, de 25 de junio, del Patrimonio Histórico Español, BOE núm. 155, de 29 de junio de 1985.

<sup>5</sup> Real Decreto 620/1987, de 10 de abril, por el que se aprueba el Reglamento de Museos de Titularidad Estatal y del Sistema Español de Museos, BOE núm. 114, de 13/05/1987.

<sup>6</sup> M. Morente del Monte, *Museo y patrimonio. Del objeto a la planificación estratégica*, Revista museos.es, nr 3/2007, s. 21.

<sup>7</sup> C.B. Rodríguez, *La colocación de elementos visibles en los monumentos y conjuntos históricos: un aspecto clave en la conservación*, Sevilla 2001, s. 37.

<sup>8</sup> Ley 23/1982, de 16 de junio, reguladora del Patrimonio Nacional, BOE» núm. 148, de 22 de junio de 1982, páginas 16948 a 16950.

<sup>9</sup> <http://www.mecd.gob.es/cultura-mecd/areas-cultura/museos/informacion-general.html> [dostęp: 20.02.2018]

<sup>10</sup> F.H. Hernandez, *Manual de la museología*, Madrid 1998, s. 76-78.

<sup>11</sup> <http://www.e-torredebabel.com/leyes/legislacion-cultural/estatuto-museo-nacional-prado-2004.htm> [dostęp: 5.02.2018].

<sup>12</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2003-21539> [dostęp: 5.02.2018].

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