

MODULE 3
THE PROTECTION OF THE ITALIAN CULTURAL
HERITAGE IN THE ITALIAN LEGAL SYSTEM

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HISTORICAL FRAMEWORK OF THE LEGISLATION ON CULTURAL AND LANDSCAPE HERITAGE

LEGISLATIVE FRAMEWORK

- Article 9 of the Italian Constitution: "the Republic promotes the development of culture and protects the landscape and the historical and artistic heritage of the Nation";
- Law No 5 of 29 January 1975, which established the "Ministry for Cultural and Environmental Heritage";
- the Decree of the President of the Republic No 283 of 7 September 2000, which establishes the absolute inalienability of some categories of assets;
- Legislative Decree No 490 of 29 October 1999 on the 'Consolidated Law on the Protection of the Cultural and Environmental Heritage.

HISTORICAL FRAMEWORK OF THE LEGISLATION ON CULTURAL AND LANDSCAPE HERITAGE

LEGISLATIVE FRAMEWORK

- Code of Cultural Heritage and Landscape issued by Legislative Decree No 42 of 22 January 2004;
- Rules on rights *in rem* contained in the Civil Code and the rules on administrative procedures (Law 241/1990);
- The main amendments to the Code, Legislative Decree 42/2004, were first introduced with the two Legislative Decrees No 156 and No 157 of 24 March 2006, in relation to the cultural heritage and the landscape respectively;
- Legislative Decree no. 62/2008.

«RIFORMA FRANCESCHINI» LEGGE N. 106 DEL 29 LUGLIO 2014

- MIBACT REGIONAL SECRETARIATS
- SIMPLIFIED “SOVRINTENDENZE”
- ARCHIVES
- LIBRARIES
- COLLEGIAL DECISIONS
- MUSEUMS
- FOREIGN DIRECTORS FOR MUSEUMS
- REGIONAL MUSEUM POLES

CULTURAL HERITAGE

- The new Code of Cultural and Landscape Heritage, which became operative on 1 May 2004, has 184 articles and an annex. It is divided into five parts:
 1. general provisions,
 2. cultural assets,
 3. landscape assets,
 4. sanctions and
 5. transitional provisions;
- The annex lists assets subject to specific provisions
- Article 2 of the Code establishes that the cultural heritage consists of cultural assets and landscape assets, which are respectively defined in the following paragraphs of the Code

CULTURAL HERITAGE

- But what is cultural heritage? ⇒ Italian civil law defines 'heritage' as the set of legal relationships of economic content, assets and liabilities, belonging to a given subject.
- In administrative law, on the other hand, national heritage is defined as that which pertains to the wealth of a country, regardless of whether it belongs to private individuals or public bodies.



The State acts as the defender or guardian of that heritage, becoming the holder of the right to exercise protection and interfering with the subjective rights of individual citizens.

DEFINITION OF CULTURAL HERITAGE

- A definition of cultural heritage that includes both cultural and landscape assets
- Cultural assets are the immovable things identified in Articles 10 (Cultural assets) and 11 (Assets subject to specific protection provisions) that are of artistic, historical, archaeological, ethno-anthropological, archival and bibliographic interest, but also other things identified by or under the law as having a value of civilisation.
- The law does not say what is meant by artistic, historical, archaeological or ethno-anthropological interest. It merely states that with this characteristic the object becomes a cultural asset. It is therefore necessary to refer to what legal doctrine has developed: the interest that the object expresses is the result of the recognition that the community gives to it.

DEFINITION OF CULTURAL HERITAGE

- Article 10 of the Code divides cultural assets according to whether they belong to the public or private sector.



What clearly emerges from the Code is that a different gradation of interest in the property is established in relation to the ownership of the property itself.

THE ADMINISTRATIVE ORGANISATION FOR THE MANAGEMENT OF CULTURAL GOODS

THE MINISTRY

- Law no. 5 of 29 January 1975 established the Ministry for Cultural and Environmental Heritage with the task of protecting and enhancing the value of works of art and natural beauty;
- With Legislative Decree no. 368 of 1998 the name of the central administration was changed to Ministry of Cultural Heritage and Activities;
- The organisation of the Ministry was further reformed by Legislative Decree no. 3 of 8 January 2004, which provided for a further division into 4 departments, 10 general directorates and four functional areas (cultural and landscape heritage, archives and books, research and innovation, entertainment and sport).
- Article 5 of Legislative Decree no. 3 of 2004 introduced the Regional Directorates for Cultural and Landscape Assets, which have different tasks from the previous Regional Superintendencies
- Law n. 106, 29 July 2014, «Riforma Franceschini»

THE CULTURAL HERITAGE IN INTERNATIONAL LAW

- The 1970 UNESCO Convention (Paris International Convention of 14 November 1970, ratified by Law No. 873 of 30 October 1975) concerns the prohibition and prevention of illicit import and export of cultural goods
- The 1972 UNESCO Convention (Paris Convention of 21 November 1972 on the Protection of the World Cultural and Natural Heritage, ratified by Law No. 184 of 6 April 1977) is the convention on the protection of the world's cultural and natural heritage
- On 24 June 1995, the UNIDROIT Convention was signed in Rome to facilitate the return of illegally exported or stolen goods by setting up procedures for both return and restitution.
- Italy implemented it with Law No 233 of 7 June 1999
- At the international level, the UNESCO Convention on the Protection of the Undersea Cultural Heritage was adopted in Paris on 2 November 2001
- The Montego Bay Convention on the Law of the Sea of the United Nations of 10 December 1982 governs the law of the sea and the exploitation of its resources

EUROPEAN LAW

- Article 151 of the EC Treaty
- Articles 34-35-36 TFUE
- Regulation (EEC) No 3911/92, abrogated by Regalement 116/2009
- Directive (ECC) No 7/93
- Lisbon Treaty contain very precise limits that make EU intervention little more than support for the already existing cultural policies of individual Member States



It therefore emerges that the Union's regulation of cultural heritage cannot disregard **national legislation** and there is nothing to suggest that this direction will change.

PUBLIC AND PRIVATE REAL ESTATE

- A. PUBLIC REAL ESTATE
 - I. State property
 - II. Non-disposable and available assets
 - III. The regime of public goods in the new Code of Cultural Heritage
- B. PRIVATE REAL ESTATE ASSETS

THE COLLECTION AND MUSEUM ASSETS PROTECTION AND CONSERVATION OF CULTURAL HERITAGE

- THE COLLECTION AND MUSEUM ASSETS
- PROTECTION AND CONSERVATION OF CULTURAL HERITAGE:
- I. Protection measures.^[L]_[SEP]
- I.a. Prohibitions and authorisations
- I.b. Precautionary measures.
- II.a. Conservation measures
- II.b. Restoration
- II.c. Preservation obligations imposed.

THE CIRCULATION OF CULTURAL GOODS IN A NATIONAL CONTEXT AND ENHANCEMENT OF CULTURAL HERITAGE

- **CIRCULATION:**
 - I. Public goods
 - IV. The sale of cultural goods to the public

- **ENHANCEMENT:**
 - I. Management
 - II. The use of cultural heritage
 - V. Exhibitions and displays.

- **EXPROPRIATION:**
 - Article 42, paragraph 3, of the Constitution
 - II. Expropriation for archaeological interest.

FINDINGS AND DISCOVERIES

- I. The archaeological research concession;
- II. Occupation for archaeological purposes;
- III. The detection of archaeological heritage;
- IV. Accidental discovery;
- V. Underwater archaeology;
- VI. Archaeological areas and parks.

THE CRIMINAL PROTECTION OF CULTURAL HERITAGE

- Legislative Decree no. 42/2004 includes very different offences:
 - A. the contraventions of illegal works (art. 169), illegal use (art. 170) and unlawful placement and removal (art. 170),
 - B. the contraventions of unlawful works (Art. 169), unlawful use (Art. 170) and unlawful placement and removal (Art. 171),
 - C. we come to the crime of counterfeiting works of art (Art. 178),
 - D. cases that punish violations of alienation (Art. 173) and unlawful removal or exportation (Art. 174).
- The framework of the Code is completed by the two offences provided for by **Articles 733 and 734 of the Criminal Code**, relating, respectively, to the damage to the national archaeological, historical or artistic heritage and to the destruction or defacement of natural beauty

THE HISTORY OF THE VAN HUYSUM «VASE OF FLOWERS»



THE RETURN OF THE VAN HUYSUM «VASE OF FLOWERS»

- The Vase of Flowers by the Dutch painter Jan van Huysum returned in 2019 to the Pitti Palace in Florence, to the exact spot where it was stolen in July 75 of years after;
- The work had remained in the Pitti Palace until 1940, when the palace was evacuated due to the start of the war, and the paintings were placed in wooden crates and initially transported to the Villa Medicea in Poggio a Caiano.
- Towards the end of the war, after it had already been moved, the crate containing Jan van Huysum's Vase of Flowers was opened, and in July 1944 a corporal, who had taken possession of the painting, sent the painting as a gift to his wife in Halle an der Saale, Germany.

THE RETURN OF THE VAN HUYSUM «VASE OF FLOWERS»

- The painting was handed back to Italy in 2019 by German Foreign Minister Heiko Maas during a ceremony held in the Sala Bianca of Palazzo Pitti, in the presence of Foreign Minister Enzo Moavero Milanesi, the Minister for Cultural Heritage and Activities Alberto Bonisoli, the Commander General of the Carabinieri, Giovanni Nistri, and the Director of the Uffizi Gallery, Eike Schmidt.
- Minister stressed, "On the one hand, I am convinced that protecting our cultural heritage also means fighting the illegal art market relentlessly, and on the other hand, it requires teamwork. The restitution of the works of art to Italy and to the city of Florence," he continued, "proves this, and not only because of the symbolic value involved. Today we are writing a new and important page in the cultural relations between the two founding countries of the European Union".

THANK YOU FOR YOUR ATTENTION