

SPAIN

LEGAL BASIS

- 1. Is your State a party to international legal instruments guaranteeing the immunity of State owned cultural property on loan (including bilateral agreements) such as the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)?**

Yes, Spain deposited its instrument of accession to the United Nations Convention on Jurisdictional Immunity of States and Their Property (2004) on 21 September 2011.

- 2. Does your State recognise the customary international law nature of Part IV of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)? More specifically, does your State consider that, pursuant to a rule of customary international law, cultural property owned by a foreign State while on temporary loan is not considered as property specifically in use or intended for use by the State for other than government non-commercial purposes?**

Yes, Spain believes that Part IV of the *UN Convention on Jurisdictional Immunity of States and Their Property* (2004) codifies customary international law. Spain considers that cultural property owned by a foreign State is not a property in use or intended for use by the State for other than government non-commercial purposes. The Immunity Act, passed in 2015, contains a provision in this sense.

- 3. Has your State adopted a national legislation on immunity concerning:**
 - a. Specifically cultural objects of foreign States; or**
 - b. more generally, property of foreign States intended for official/public use; or**
 - c. more generally, cultural objects either owned by foreign States or by private individuals?**

If so, please provide information concerning national legislations (in particular title, source and content; if possible, please provide official translations in French or in English and/or references to online sources).

In 2015, Spain enacted an Immunity Act (*Ley Orgánica 16/2015 sobre privilegios e inmunidades de los Estados extranjeros, las Organizaciones Internacionales con sede u oficina en España y las Conferencias y Reuniones internacionales celebradas en España*). It is a comprehensive Act, covering: immunities of States; immunities of Heads of State, Heads of Government and Ministers of Foreign Affairs; immunities of warships and other State ships, as well as State aircrafts; immunities of foreign Forces; immunities of International Organizations, having their seat or an office in Spain; immunities (and privileges) of international meetings held in Spain.

As for immunities of States, the Act follows mainly the *UN Convention on Jurisdictional Immunity of States and Their Property* (2004), as Spain has already expressed its consent to be bound by this instrument. Chapter II (Articles 17-20) is devoted to State immunity from measures of constraint in connection with proceedings before a Spanish court. Article 17.1 states that no pre-judgment and post-judgment measures of constraint against property of a third State can be taken in connection with a proceeding before a Spanish court, unless the State has expressly consented or has allocated property for the satisfaction of the claim which is the object of that proceeding. Article 17.2 establishes a limitation to the rule of immunity, applying only in relation to the post-judgment measures of constraint, when it concerns the property specifically in use or intended for use by the State for other than government non-commercial purposes and located in Spain. Article 20 completes this provision, establishing a

list of property of a State that shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes:

- a) property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations or delegations to organs of international organizations or to international conferences;
- b) property of a military character or used or intended for use in the performance of military functions;
- c) property of the central bank or other monetary authority of the State used for the purposes of these institutions;
- d) property forming part of the cultural heritage of the State or part of its archives or property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale;
- e) State vessels and aircrafts”.

So property forming part of the cultural heritage of the State or part of its archives or property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale are immune, unless the foreign State expressly or tacitly consents to the contrary.

The Immunity Act has not been translated into English yet, but an English version will be ready soon. The Spanish version can be consulted in the following site: <http://www.boe.es/buscar/pdf/2015/BOE-A-2015-11545-consolidado.pdf>

4. Does your State consider that there are limitations to the rule of immunity of State owned cultural property on loan, in particular in the event of an armed conflict or when there are return obligations deriving from international or European law?

Certain provisions under International Humanitarian Law and European Law may work as limitations to the general rule of immunity of State owned cultural property on loan. However, at the present time there is not enough domestic case law or experience in practice to give a definitive answer to this question.

As for International Humanitarian Law, Spain has ratified the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols (respectively, Spanish Official Gazettes nº 282, November 24th 1960, nº 178, July 25th 1992 and nº 77, March 30th 2004). The 1954 Hague Convention and its Protocols provide that the High Contracting Parties undertake to prevent the exportation, from a territory occupied by them during an armed conflict, of cultural property. Therefore, under very specific circumstances, this provision could be a limitation to the general rule of immunity. Other limitations may apply under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, to which Spain is a party.

In relation to European Law, certain limitations to the general rule of immunity may arise from the Directive (EU) 2014/60 of the European Parliament and the Council, of 15 May 2014, on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) 1024/2012 (Recast). In that regard, it is worth noting that the Directive 2014/60/EU does not provide for the immunity of State owned cultural property on loan.

In conclusion, although there are obligations deriving from International and European Law which may be construed as limitations to the general rule of immunity of State owned cultural property on loan, there is still not enough domestic case law or practical experience to respond to this question.

- 5. Does your State consider that the rule of immunity of cultural property extends to other categories of property other than those owned by a State, i.e. property in possession or control of a State (such as property belonging to a State museum)?**

In Spain's opinion, cultural objects belonging to State museums are part of a State's property, so the rule of immunity applies to them.

NATIONAL PRACTICE AND PROCEDURE

- 6. Is there national case-law in the field of immunity of State owned cultural property on loan? If so, please provide information on these decisions (date of the judgment, authority that issued the judgment, name of the parties, main points of law, French or English translation of the judgment or summary of the judgment in English or in French).**

For the time being, there is no national case-law in the field of immunity of State owned cultural property on loan.

- 7. Does your State resort to "letters of comfort" or other practice guaranteeing the recognition of the immunity from seizure of State owned cultural property on loan?**

Yes, by demand of the institutions which organize the exhibits in Spain, and when loaners request it, the Director General for Fine Arts and Cultural Heritage ("Director General de Bellas Artes y Patrimonio Cultural") signs a "letter of comfort", the text of which has been previously reviewed by the State Legal Service at the Ministry of Culture and Sports.

- 8. Is the immunity granted automatically to State owned cultural property on loan or is it subject to approval by a State authority?**

The immunity of cultural property on loan results from customary international law (codified by the *UN Convention on Jurisdictional Immunity of States and Their Property*, 2004) and from the Spanish Immunity Act. It is granted automatically and the Spanish courts must respect it *ex officio* (Art. 49 Immunity Act).

The document by which the anti-embargo immunity is recognized is, precisely, the "letter of comfort" signed by the Director General for Fine Arts.