

### H. NATIONAL CONGRESS THE COMMISSION OF LEGISLATION AND CODIFICATION IT RESOLVES TO SEND: CODIFICATION OF THE LAW OF CULTURAL HERITAGE

**CODIFICATION 2004 - 027** This Codification was prepared by the Commission of Legislation and Codification, in accordance with the arranged in the number 2 of the Art. 139 of the Political Constitution of the Republic. Art. 1.-By means of Decree Not. 2600 of June 9, 1978, published in the Official Record Not. 618 of 29 of same month and year, created to himself the Institute of Cultural heritage with personería juridical, assigned to the House of the Ecuadoran Culture, which it replaces to the Direction of Artistic Patrimony and it will be financed by the resources that annually will consist in the Budget of the National Government, across the Chapter corresponding to the Culture and Education Department. Art. 2.-The National Institute of Cultural heritage is content for: the Directory, the National Direction, the Subdepartments and other technical and administrative units that will consist in the respective Regulation. It is a function of the Directory to dictate and to approve the Organic Functional Regulation. The Directory is content of the following members: The Education Secretary and Culture or his Delegate, who will preside at it; The National Minister of Defence or his Delegate; The Minister of Government, Worship, Police officer and Municipalities or his Delegate; The President of the Episcopal Ecuadoran Conference or his Delegate; The President of the House of the Ecuadoran Culture or his Delegate; The Director of Cultural heritage; and, The President of the National Council of Higher education, CONESUP or his Delegate. Born secretary of this Organism is the Secretary of the National Institute of Cultural heritage.

Art. 3.-The National Director of the Institute will be named by the Directory, and he will be the legal representative of the Organism. There will correspond to him the delegation and representation of the Country in every international meeting related to his competition. Art. 4.-The Institute of Cultural heritage, will have the following functions and attributions: a) To investigate, to preserve, to restore, to exhibit and to promote the Cultural heritage in the Ecuador; as well as to regulate in accordance with the Law all the activities of this nature that are realized in the Country; b) To prepare the inventory of all the goods that constitute this patrimony in public or private property; c) To carry anthropological investigations out and to regulate in accordance with the Law these activities in the Country; d) To look over the correct fulfillment of the present Law; and, e) The others that assigns to him the present Law and Regulation. Art. 5.-For the fulfillment of the ends expressed in the previous article the Institute will enjoy exoneration of all tariff right, in accordance with the law. Art. 6.-The natural and juridical persons, the Public Force, and the Service of Customs Alertness, are forced to give his collaboration in the defense and conservation of the Ecuadoran Cultural heritage. Art. 7.-Declare goods belonging to the Cultural heritage of the State understood in the following categories: a) The archaeological monuments furniture and real estate, such as: objects of ceramics, metal, stone or any other material belonging to the pre-Hispanic and colonial epoch; ruins of fortifications, buildings, cemeteries and archaeological deposits in general; as well as

human remains, of the flora and of the fauna, related to the same epochs; b) The temples, convents, chapels and other buildings that will have been constructed during the Cologne; the paintings, sculptures, heights, objects of gold work, ceramics, etc., belonging to the same epoch; c) The ancient manuscripts and incunabula, rare editions of books, maps and other important documents; d) The objects and documents that belonged or they are related to the precursors and worthies of the National Independence or of the personages of singular relevancy in the Ecuadoran History; e) The coins, tickets, signs, medals and all the rest objects realized inside or out of the Country and in any epoch of his History, that they are of numismatic national interest; f) The stamps, stamps and all the rest objects of philatelic national interest, they have been produced in the Country or out of him and in any epoch; g) The ethnographic objects that have scientific, historical or artistic value, belonging to the Ethnographic Patrimony; h) The objects or cultural goods produced by contemporary prize-winning artists, they will be thought goods belonging to the Cultural heritage of the State from the moment of his death, and in life, which have been an object of premiación national; as well as those who have thirty years or more of having being executed; i) The works of the nature, which characteristics or values have been highlighted by the intervention of the man or which have scientific interest for the study of the flora, the fauna and the paleontology; and, j) In general, any object and production that does not consist in the literal previous ones and that are a product of the Cultural heritage of the State both of the past and of the present and that for his artistic, scientific or historical merit have been declared by the Institute, goods belonging to the Cultural heritage, is that they are in the power of the State, of the religious institutions or belong to societies or particular persons. When it should be a question of real estate it will be considered that same good belongs to the Cultural heritage of the State, his environmental and landscape environment necessary to provide to him a suitable visibility; must preserve the conditions of ambientación and integrity in which they were constructed. It corresponds to the Institute of Cultural heritage to delimit this area of influence. Art. 8.-The owners, managers and holders of objects understood in the enumeration of the previous article, are forced to make known of the Institute of Cultural heritage, by means of a detailed list the existence of the above mentioned objects in a term that determines the Institute and to allow the achievement of his inventory when the Institute determines it. Art. 9.-From the effective date of the present Law, are a patrimony of the State the archaeological goods that will be in the soil or the subsoil and in the marine fund of the Ecuadoran territory be these objects of ceramics, metal, stone or any other material belonging to the pre-Hispanic and colonial epochs, human remains being included or of the flora and of the fauna related with the same epochs, nevertheless the domain that the public or private institutions will have, comprising the societies of any nature or particular, over the surface of the ground where they will be or have been found deliberately or by chance. This exclusive domain on the part of the State spreads to the goods mentioned in the previous interjection, which will be in hands of the public or private institutions or of the natural persons, before the validity of the present Law, which existence had not been communicated to the Institute of Cultural heritage in accordance with the previous article, or it will not go so far as to do it, without fault of his current detainers, inside the period that for the effect the mentioned Institute determines in publications of press. In order to avoid confusions, the current copies of archaeological objects will have to be recorded by stamps in relief that identifies them as such. In case of objects of ceramics, the stamps will be marked before the baking. The right of property of the State will exercise across the National Institute of Cultural heritage, which will be able to retain for cultural uses the archaeological aforesaid goods, or to deliver the safekeeping of the same ones to

other important public museums of the Country. Art. 10.-The arranged in this Law not deroga the obligations of the ordinary ones of the dioceses, according to the prescribed in the 8th article. of Modus Vivendi celebrated between The Vatican and the Government of the Ecuador, on July 24, 1937. The Director of the Institute of Cultural heritage will act as representative of the Government for the fulfillment of the above mentioned article of Modus Vivendi. Art.

11.-The declaration that 7 of this Law awards the character of good belonging to the Cultural heritage of the constant State in the Art. or formulated by the Institute of Cultural heritage, does not forbid his owner to exercise the rights of mastery of the above mentioned good, with the limitations that the present Law establishes. Art. 12.-Any transference of mastery of the objects belonging to the Cultural heritage of the State, is to free or onerous title, it will do with authorization of the Institute of Cultural heritage; neither it will be possible to change place such objects without permission of the Institute. In one or another case, I commit an outrage against the needs to preserve the Patrimony, the requested authorization will be able to refuse. The Institute will regulate the commerce inside the Country of the goods of the Cultural heritage. For the nonperformance of his dispositions it will impose sanctions, and will demand before the competent judge the nullity of the transfers that will be realized without this authorization.

Art. 13.-can realize repairs, neither restorations nor modifications of the goods belonging to the Cultural heritage without authorization previous of the Institute. The infractions of the arranged in this article will transport pecuniary sanctions and prison of up to one year. If as result of these interventions there had gone off the characteristics of a cultural good the owner will be forced to return it to his previous conditions, owing the Institute, to impose also an annual fine until this restitution is fulfilled. The fines will do to themselves extensive the contractors or managers of works, material authors of the infraction, being able to come inclusive up to the seizure. Art.

14.-The municipalities and other organisms of the public sector can neither order nor authorize demolitions, restorations or repairs of the real estate that belong to the Cultural heritage of the State without permission previous of the Institute, being responsible for the infraction the official who gave the order or extended the authorization, who will be punished by the fine that indicates the Law. Art. 15.-The municipalities of those cities that possess Historical Centers,

urban sets or outlying buildings which architectural characteristics are worth being preserved will have to dictate ordinances or regulations that protect them and that previously they have obtained I dress well for the Institute of Cultural heritage. If the regulatory plans approved by the above mentioned municipalities should commit an outrage against these characteristics, the Institute will demand his reform and will obtain the fulfillment of this article. Art. 16.-Remains prohibited any attempt of adulteration of the goods belonging to the Cultural heritage of the State, his conservation and consolidation being tried by all the means of the skill, limiting itself to restoring, previous the authorization of the Institute of Cultural heritage, which was absolutely indispensable and always making the additions recognizable. Art. 17.-The organisms of the public sector, the religious institutions, the societies or particular persons who possess goods belonging to the Cultural heritage of the State, have the unavoidable obligation to allow, on request of the Institute, his visit in days and hours previously indicated, for the observation, the study and the photographic or drawn reproduction of the objects subject to this Law that they belong or that have in possession.

It is a faculty of the Institute to inspect the places where cultural goods existed by means of his delegates, presentation previous of the respective credentials. Art. 18.-The negligence in the conservation of goods belonging to the Cultural heritage of the State, will be punished by the confiscation of the work if danger of his destruction will exist, in whose case, his owner will be indemnified with 25 % of the value of the

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Written by Gaëtan Juillard

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good, valued by experts. Art. 19.-Any person can denounce to the Institute of Cultural heritage the infractions to the present Law; and, in case of his veracity is stated, he will have right to a gratification of up to 25 % of the value of the imposed fine. This denunciation will have the character of reserved. Art. 20.-will not impose any tax on himself on the objects furniture that consist in the inventory of the Cultural heritage of the State, remaining exonerated from the payment of the current taxes that could affect them, such as the tax to the revenue, that is to say, they enjoy entire and automatic exception and exoneration of all kinds of fiscal, provincial and municipal impositions. Art. 21.-Will be exonerated from 50 % of the predial taxes and his annexes the declared buildings and constructions goods belonging to the Cultural heritage of the State that have a correct maintenance and are inventoried. When these buildings have been restored by the respective permissions of the Institute of Cultural heritage and of the municipalities, and whenever the value of the works of restoration they will come at least to 30 % of the property valuation of the building, the exoneration of the taxes will be entire for the space of five years to be counted from the completion of the work. If it will be proved that the correct maintenance has been neglected, these exonerations will be considered completed. Art. 22.-The goods belonging to the Cultural heritage that will cover some danger will be able to be withdrawn from his habitual place, temporarily for resolution of the Institute, while the risk survives. Art. 23.-No object belonging to the Cultural heritage of the State can go out of the country, except in the cases in which it is always a question of exhibitions or of other ends of publication, in temporary form, with permission of the Directory, technical report previous of the Institute. Any act that shows intention of extracting cultural goods of the country will be sanctioned in accordance with the arranged in the Law. In the cases in which in fact the above mentioned goods will have been extracted of the country these will be seized; the persons in charge will be sanctioned with prison of up to two years and the others that will be established in the Law. One declares of popular action the denunciation of the infractions contemplated in this article, and to whom they will do her one will discount them with 25 % of the value of the fine imposed in every case. Art. 24.-Are exempt from the payment of customs rights, who introduce to the Country cultural goods that in opinion of the Institute of Cultural heritage, deserve to be considered to be as such. Art. 25.-On the Regulation will concentrate the period and requisites for the exit of the country of the cultural goods that have entered with or without the above mentioned exoneration. Art. 26.-The State will try to celebrate international agreements that prevent the illicit commerce of cultural goods and facilitate the comeback of those who illegally had gone out of the Ecuador. Art. 27.-Any monument that should be placed in streets, squares, walks or parks such as sculptural groups, commemorative statues, etc. that get up in the Ecuador, will have to be provided with the permission previous to the Institute of Cultural heritage, to which the projects, planes, mock-ups will be sent to him, etc. so that he authorizes his erection. Art. 28.-No person or public or private entity can realize in the Ecuador works of archaeological excavation or paleontológica, without written authorization of the Institute of Cultural heritage. The Public Force and the customs authorities will make to respect the dispositions that are dictated in relation to these works. The nonperformance of this article will be sanctioned by prison of up to two years, the confiscation of the abstracted objects, of the vehicles and implements used for such an end and by the legal fines. Art. 29.-The Institute of Cultural heritage will only be able to grant the permission to which recounts the previous article to the persons or institutions that to his judgment the conditions necessary assemble to make it technical and properly, and whenever he believes it opportunely will have to watch by means of the persons that it designates on the course of the excavations, in accordance with the

regulations that will be sent on this matter. Art. 30.-In all kinds of mining explorations, of movements of ground for buildings, for road constructions or of another nature, the same as in building demolitions, the rights of the State remain safe on the historical monuments, objects of archaeological interest and paleontológico that could be in the surface or subsoil after the works are realized. For these cases, the contractor, manager or immediate person in charge will realize to the Institute of Cultural heritage and will suspend the works in the place where the find has happened. In case the notice of the find does it to him before any of the presidents of the provincial nuclei of the House of the Culture, it will make immediately known of the Institute, which will arrange the technical corresponding recognition, in order to decide on the importance or merit of the discovery and to dictate the respective providence. Art. 31.-In the measurement in which the permanence and continuity of some ethnic groups of the indigenous, black cultures or afroecuatorians in the Ecuador, they represent a living testimony of the plurality of the vernacular cultures, the Institute of Cultural heritage, for his own or through other organisms, will adopt the measurements conducive to the conservation of his customs, language, cultural, handmade, technical, artistic, musical, religious, ritual or community declarations that the same natives, blacks or afroecuatorians have recognized as appellants and valid for his identification and cultural expression. This conservation must not go in decline of the proper cultural evolution, improvement and social and economic integration of these ethnies. Art. 32.-For the achievement of anthropological investigations or for the subscription on the part of the National Government of any agreement with persons or national or foreign institutions, which should realize in the country studies of investigations on the aspects contemplated in the previous article, it will have to be counted necessarily with the favorable report of the Institute and the results of such investigations will be delivered in copy to the above mentioned Institute. The nonperformance of this norm will be sanctioned in accordance with the Law. Art. 33.-The folkloric, musical, choreographic, religious, literary or linguistic expressions that correspond to culturally homogeneous ethnic groups, the Institute of Cultural heritage, for yes the same or across the competently authorities, will obtain the adoption of measurements that they tend to protect and preserve fell declarations. It is a responsibility of the Institute preserving by means of the photography, cinematography, sonorous recording or for other means these declarations in all his purity. The compilation with commercial ends of these testimonies will have to be provided with the authorization previous to the Institute. Art. 34.-The Institute of Cultural heritage will stay awake so that there is not distorted the cultural reality of the country, expressed in all the declarations of his cultural pluralism, by means of the supervision and control of representations or exhibitions that have relation with the statements of the Cultural heritage of the State. Art. 35.-to expire with the targets indicated in the present Law, the Institute of Cultural heritage will be able to ask to the organisms of the public sector or Municipalities, the declaration of public utility for ends of expropriation of the real estate that direct or accesoriamente are a part of the Cultural heritage of the State. Art. 36.-Every person who goes out of the country, although it will have diplomatic character, will have to present before the Direction of Migration or of the Customs of the port of shipment, the sworn declaration of not taking in his baggage any object belonging to the Cultural heritage of the State, in accordance with the regulatory pertinent dispositions. Art. 37.-The goods belonging to the Cultural heritage of the State that will have been assembled by a state entity or by a natural person or juridical private road with a coherent criterion will be able to be declared as collection. The collection constitutes only one good for juridical effect, with indivisible character, so that the objects furniture that integrate it only will be able to be awarded to different persons, preserved

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or exhibited in different places with the authorization of the Institute of Cultural heritage. Art. 38.-that an object has lost his character of good belonging to the Cultural heritage when the deteriorations have eliminated completely his as such interest, without his restoration is feasible. Art. 39.-The national museums will be able exceptionally, to be authorized by resolution of the Directory of the Institute of Cultural heritage to exchange national or foreign objects of the Cultural heritage of the State, which possess similar characteristics with other goods national or foreign furniture that are in the exterior. Art. 40.-The Institute of Cultural heritage is authorized to impose the owners or persons in charge for goods belonging to the Cultural heritage of the State, the adoption of measurements precautelatorias for the protection of the same ones. The nonperformance of such dispositions will be sanctioned by the sorrow established in the Law. The Institute will be able also to expropriate or to seize such cultural goods with the payment of up to 25 % of the value estimated in case of expropriations.

Art. 41.-The Institute of Cultural heritage will be able to delegate the attributions of control of the fulfillment of this Law in a certain zone, to the entities and public authorities that he considers suitable. GENERAL DISPOSITIONS PRIMERA. - Corresponds to the Directory of the Institute to approve the project of his annual budget, the same one that will be submitted to consideration of the Department of Economy and Finance for his final sanction, in accordance with the Law of Budgets of the Public Sector, Organic Law of the General Controller's office of the State, Organic Law of Financial management and Control, and Organic Law of Civil Service and Administrative Career and of Unification and Homologation of the Remunerations of the Public Sector. SEGUNDA. - The result of the sanctions established in this one Law, will constitute a Patrimony of the Institute, without detriment to the penal responsibilities to which there will be place. DEROGATORIAS. - Derógase the Law of Artistic Patrimony dictated by the Constituent Assembly on February 22, 1945, published in the Supplement of the Official Record Not. 1202 of August 20, 1960; the Decree Not. 1008 of June 8, 1971 published in the Official Record Not. 266 of July 14, 1971. DISPOSITION FINAL. - This Law and his reforms, they are in validity from the dates of his respective publications in the Official Record. From now on the new numeration be quoted. This Codification was prepared by the Commission of Legislation and Codification, in accordance with the arranged in the number 2 of the Art. 139 of the Political Constitution of the Republic. Fulfilled the budgets of the Art. 160 of the Political Constitution of the Republic, be published in the Official Record.

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Quito, On October 13, 2004 SOURCES OF THE CODIFICATION OF THE LAW OF

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CULTURAL HERITAGE Political constitution of the Republic of the Ecuador, published in the Official Record Not. 1 of August 11, 1998. Supreme decree 2600 published in the Official Record Not. 618 of June 29, 1978. Supreme decree 3501 published in the Official Record Not. 865 of July 2, 1979. Law of Tributary Internal Diet, Law Not. 56 published in the Official Record Not. 341 of December 22, 1989. Law 18 published in the Supplement Record of the Official Not. 76 of November 30, 1992. Law 04 published in the Official Record Not. 396 of March 10, 1994. Law 2000-16, Law of Higher education, published in the Official Record Not. 77 of May 15, 2000. Statute of the Juridical and Administrative Diet of the Executive Function, Executive Decree Not. 2428 published in the Official Record Not. 536 of March 18, 2002. Organic law of the General Controller's office of the State, Law 2002-73 published in the Official Record Not. 595 of June 12, 2002. Executive decree Not. 2772 published in the Official Record Not. 616 of July 11, 2002. Executive decree 314 published in the Official Record Not. 68 of April 24, 2003. Organic law of Civil Service and Administrative Career and of Unification and Homologation of the Remunerations of the Public Sector, Law Not. 17 published in the Supplement of the Official Record Not. 184 of October 6, 2003. Organic law of Customs, Codification published in the Supplement of the Official Record Not. 219 of November 26, 2003. Executive decree 1179 published in the Official Record Not. 239 of December 24, 2003.