

The reform proposal of the Italian Code on cultural property

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In August 2015 a proposal for the revision of the Italian Code of cultural property has been presented by a group of major players in the Italian art world including the National Association of Auction Houses, Christie's, Sotheby's, Artcurial, the National Association of the modern and contemporary art galleries, the National Association of the antique dealers, Art Defender and

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The proposal has been made as the Italian art market is burdened by several restrictions concerning the circulation of artworks. These restrictions have a negative effect on the Italian art market, which, in 2013, only had a global market share of 1%.

Taking into account the worldwide relevance of Italian cultural patrimony, this market share is considered to be too low.

According to the Italian Code on cultural property actually in force, a free circulation license from the Italian Ministry of Culture is needed to export from Italy an artwork which was made more than 50 years ago by a deceased artist.

There is no threshold value for the application of the rule. Accordingly, a painting with no economic value might be barred from exportation in the same way as a painting from Giorgio De Chirico; by contrast, the threshold set forth by the CEE Regulation 116/2009 for paintings is of EUR 150,000, hence less restrictive than under Italian law.

It also has to be noted that, depending upon the office charged with the exportation license, the outcome can be very different. Moreover the criteria applied by the exportation office to decide whether an artwork is part of the Italian cultural patrimony are still the same ones provided for in an act dated 13 May 1974. Therefore, the criteria set forth in the seventies still regulate the contemporary Italian art market! In addition, the term of 40

days pursuant to which the exportation office has to release or deny the license is not mandatory. The exportation office can therefore avail itself of a longer and unpredictable term.

This legal regime, linked with the well known practice of the notification (the so called "notifica" which is a form of pledge given in relation to an artwork by the Ministry of Culture whereby the same artwork is barred from exportation and is subject, in case of a sale, to the preemption right of the state) creates a high level of uncertainty in the Italian market.

Beyond other consequences (such as attempts to smuggle artworks out of the country or to export them before they fall under the 50 year restriction rule), this system causes collectors and art dealers to divert the sales to other EU countries (and in Switzerland), where the laws on the circulation of art are more predictable.

The proposal for reform deposited before the Italian House of Representatives on 5 August 2015 is based on the following points:

1. Extension of the 50 year term to 70 years;
2. Application to the Italian law of the threshold value set forth by the CEE Regulation 116/2009;
3. In case of rejection of the exportation license, obligation of the State to acquire the artwork within 180 days (it is however unclear whether there will indeed be an effective obligation of the State to acquire the artwork);

4. Update of the criteria to be applied in deciding whether an artwork is part of Italian cultural patrimony.

The new criteria to be elaborated by the Ministry of Culture will be based on the following points:

1. The rarity of the artwork, considering the presence of similar artworks in Italian private or public collections;
2. The distinctiveness of the artwork with reference to the significance of

the representation or of the specific technique;

3. For artworks originating from another country or of a foreign author, a specific connection of the artwork, or of the author, to the Italian cultural patrimony.

The reform proposal is currently under discussion and we will learn in the next months if it will come into effect.