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Current challenges of Spanish religious heritage*

*Le sfide attuali del patrimonio religioso spagnolo**

ABSTRACT Historical and artistic heritage is an essential element of a country's culture, and in Spain it is also an important economic and tourist asset. A large percentage of the historical and artistic heritage belongs to the Catholic Church. State legislation on cultural heritage does not provide for a differentiated regime for ecclesiastical heritage, which nevertheless poses unique challenges. This article analyses some of the main challenges facing the Spanish ecclesiastical heritage in the light of the current legislation: the definition of the categories of property protected by the regulations, the distribution of powers between the State and the Regions, the harmonisation of religious and cultural use, and the financing of the necessary actions for the conservation, dissemination and promotion of the historical and artistic heritage.

ABSTRACT Il patrimonio storico e artistico è un elemento essenziale della cultura di un Paese, e in Spagna rappresenta anche una rilevante risorsa economica e turistica. Gran parte del patrimonio storico e artistico appartiene alla Chiesa cattolica. La legislazione statale sul patrimonio non prevede un regime differenziato per il patrimonio ecclesiastico, che tuttavia pone sfide uniche. Questo articolo esamina alcune delle sfide più significative che il patrimonio ecclesiastico spagnolo deve affrontare alla luce della legislazione vigente: la delimitazione delle categorie di beni protetti dalla normativa, la distribuzione delle competenze tra Stato e Regioni, l'armonizzazione dell'uso religioso e culturale e il finanziamento delle azioni necessarie per la conservazione, la diffusione e la valorizzazione del patrimonio storico e artistico.

SUMMARY: Introduction - 1. Background and current situation - 1.1 Background - 1.2. Regulation - 1.3 Competence - 2. Composition of the heritage - 2.1. Assets and their types - 2.2 Particular categories - 3. Protection of the heritage. 3.1 – Responsibility - 3.2. Actions - 3.3. Criminal protection and administrative sanctions - 4. Religious and cultural interplay - 4.1 Harmonization of religious and non-religious uses - 4.2 Tourist and study visits – 5. Funding of the heritage - 5.1. Public sources - 5.2 Private sources - 6. Conclusions.

Introduction

Culture is a valuable element of society that should be - and usually is - legally protected. Social States usually regulate this element at the highest level, singularizing some elements of the culture that deserve particular attention, as is the case of heritage.

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Spain is no exception to this trend. The Constitution includes general access to culture in the chapter about citizens' rights and duties; it also devotes a separate article to protecting heritage. Spanish heritage, however, has a singular characteristic that is not recognized in the Constitution and barely in the Law that develops it. The overwhelming majority of the heritage is religious, mostly Catholic, a feature that is easily explained if we gaze at ancient and recent history.

Despite the process of secularization of the country, religious heritage remains a valuable part of Spain's culture and wealth. Therefore, an approach to the regulation of its religious heritage will help to understand some of the issues that have long been, and still are, at the core content of Church-State relations.

1 - Background and current situation

1.1 - Background

The heritage often reflects history, and Spain is no exception. The country was built as a blend of cultures that left their hallmark in its culture, which is still visible today despite some developments in the Modern epoch. At the end of the XV century, the so-called Catholic Kings, Isabel I of Castile and Fernando II of Aragon, achieved the highly desired unity of the country after a long period of Muslim domination. Religious unity was regarded as essential to obtaining that goal. Thus, Muslims and Jews, who settled for centuries in the land, were expelled unless they converted to Christianity.

There was no religious liberty until 1978, when the Constitution enshrined this right¹. Religious communities other than Catholicism were established then in Spain, but they were a minority and still are today. Understandably, the heritage belonging to these religious minorities is almost nonexistent. Indeed, not a small number of elements of Spanish heritage have a Muslim or Jewish hallmark, but this heritage currently belongs to the State, in most cases, or to private owners.

The Catholic background of the society and a history of State confessionalism - often even entanglement between Church and State - explain most issues related to the heritage. State confessionalism went through different challenges that affected the heritage. In the Middle Ages, the Kings and the Nobility founded monasteries and convents, constituting a significant part of the current heritage. The XIX century, however, witnessed several Government seizures of the religious heritage, depriving the Catholic Church of one of its primary funding sources. Despite the current trends of secularization, there is a Catholic

¹ A Religious Freedom Act was enacted in 1967 that allowed religious communities to establish in the country, and to have properties and goods in Spain since then on. However, it was a law limited in its scope.



imprint in all areas of society, and Catholicism continues to be the majority religion in the country.

The actual framework of the regulation of religious heritage is pervaded by the principles enshrined in the Constitution of 1978 and the International Treaties signed by Spain.

Neutrality, separation of Church and State, and cooperation (the so-called *laicidad*) are the basis for the relations between civil and religious powers. Article 16.3 of the Spanish Constitution establishes that

“no religion shall have a state character. The public authorities shall consider the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions”².

Thus, the principle of neutrality goes alongside the principle of cooperation; it implies that public authorities cannot ignore the religious element of society, and therefore, the religious element of a big part of the Spanish heritage, but cannot discriminate against any religious denomination either. Besides, the State must cooperate with religious denominations in those issues of shared interest; religious heritage is undoubtedly among them.

The general access of citizens to the culture³ and the social function of the property⁴ are also principles of the Constitution that impact the heritage, as they may result in the imposition of specific duties or restrictions to the ownership. Those dispositions must be construed according to article 9.2, which requires public powers

“to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life”.

1.2 - Regulation

Laws

² The aim and scope of the reference to the Catholic Church in the Constitution is a widely discussed matter. Some authors see it as a nuanced endorsement of the Catholic Church; others, on the contrary, consider it a recognition of the influence of the Catholic Church in Spanish culture and history. See E. NASARRE, *La posición de la Iglesia católica en el Derecho español*, in *Almogaren*, n. 36, 2005, pp. 85-107.

³ Article 44: “1. The public authorities shall promote and watch over access to culture, to which all are entitled. 2. The public authorities shall promote science and scientific and technical research for the benefit of the general interest.” This Article should be construed together with the Preamble of the Constitution, which protects the Spaniard’s culture and will promote the progress of culture.

⁴ Article 33: “1. The right to private property and inheritance is recognised. 2. The content of these rights shall be determined by the social function which they fulfill, in accordance with the law. 3. No one may be deprived of his or her property and rights, except on justified grounds of public utility or social interest and with a proper compensation in accordance with the provisions of the law”.



The regulation of the heritage is multi-layered. All levels of the juridical system converge to protect it. The highest level is that of the Spanish Constitution, which deals with the heritage in article 46. This article states:

“The public authorities shall guarantee the preservation and promote the enrichment of the historical, cultural, and artistic heritage of the peoples of Spain and of the property of which it consists of, regardless of its legal status and ownership. Offences committed against this heritage shall be punished under criminal law”.

Two remarks about this article are appropriate. First, this norm is included in the chapter on economic and social principles, whose protection is not as strong as the protection granted to fundamental rights and freedoms⁵. However, the statement of article 46 is not a bare declaration. It entails compulsory action by the public authorities aiming to protect and develop the heritage. Second, it considers the heritage as a whole, regardless of who the owner is⁶. Thus, the heritage protected by the constitutional text comprises both public and private items, although there are differences in their regimes, that will be mentioned in due time.

This article of the Constitution was developed through the Law of Spanish Historical Heritage⁷ (LSH) and the Royal Decree approving the Regulations relating to the Law⁸. These texts were modified several times since their enactment, but the amendments had a minimal outreach. The regulation of the heritage has remained almost unaltered for the past four decades⁹. Some authors made the case for a new law¹⁰. The Government

⁵ See **A.C. ÁLVAREZ CORTINA**, *Destino al culto y valor cultural (conurrencia y conflicto)*, in **A.C. ÁLVAREZ CORTINA, M. RODRÍGUEZ BLANCO** (coords.), *La religión en la ciudad. Dimensiones jurídicas del establecimiento de los lugares de culto*, Comares, Granada, 2012, p. 80.

⁶ See **A. MOTILLA**, *Bienes culturales de la Iglesia Católica: Legislación estatal y normativa pacticia*, in **A. VEGA, M. MARTÍN, M. RODRÍGUEZ BLANCO, J.M. VÁZQUEZ GARCÍA-PENUELA** (coords.), *Protección del patrimonio cultural de interés religioso. Actas del V Simposio Internacional de Derecho Concordatario*, Comares, Granada, 2012, p. 50.

⁷ Law 16/1985, June 25, of the Spanish Heritage.

⁸ Royal Decree 111/1986, January 10, of partial development of the Law of Spanish Heritage June 25, 1985. This Royal Decree is not labelled “Regulation”; the Government avoid that denomination because the Royal Decree did not develop all the content of the Law of Spanish Heritage. However, it not only develops around 70 per cent of the Law, but also complements it establishing the competent bodies of the State, some rules about the transmission of the assets, and so on. Therefore, its proper title would be “Regulation of partial development of the Law of Spanish Heritage”. See **J. GARCÍA FERNÁNDEZ**, *Estudios sobre el Derecho del Patrimonio Histórico*, Colegio de Registradores de España, Madrid, 2008, p. 149.

⁹ See an analysis about the fulfillment of the aims of the Law in **L. ANGUITA**, *Reflexiones sobre la ley 16/1985, de 25 de junio, del patrimonio histórico español*, in **M.J. ROCA, O. GODOY**, *Tutela jurídica del patrimonio cultural*, Tirant lo Blanch, Valencia, 2021, p. 69.

¹⁰ See on this issue **J.L. ÁLVAREZ**, *El patrimonio cultural: de dónde venimos, donde estamos, a donde vamos*, in *Revista Patrimonio Cultural y Derecho*, n. 1, 1997, pp. 15-22; **A. PÉREZ DE ARMIÑÁN**, *Una década de la Ley de Patrimonio Histórico*, in *Revista Patrimonio*



even publicized a project to amend the Law in 2021, but there has not been news on its development ever since¹¹.

There is no specific regulation of the religious heritage. Moreover, there are almost no references to the religious heritage in the LSH and its Regulation, which is quite remarkable as more than three quarters of Spanish heritage is religious, mostly Catholic¹². Only two norms refer to religious heritage in general (section 28) and to Catholic properties in particular (Additional Disposition 5). In a first approach, it could be understood that religion is part of the culture, and no specific mention should be made, also taking into consideration the principle of neutrality. However, even if the general regulation does not singularize the religious heritage, its management cannot ignore that feature¹³. It implies that issues of common interest must be decided in accordance with the religious denominations. That is why the agreements should have an important role in settling the basis of cooperation for the preservation, promotion, and enjoyment of the religious heritage.

Agreements with the religious denominations

Right after the enactment of the Constitution, the State signed four Agreements with the Holy See, establishing the basis of the new order of relations State-Church. One of the Agreements deals with Education and Cultural Affairs, although it is devoted mainly to education¹⁴. The Preamble recognises that the Church's historical, artistic, and documental heritage constitutes a crucial part of the Nation's cultural heritage. Therefore, the collaboration of the Church and the State is

Cultural y Derecho, n. 1, 1997, pp. 33-52; **J. GARCÍA FERNÁNDEZ**, *La protección jurídica del Patrimonio Cultural. Nuevas cuestiones y nuevos sujetos a los diez años de la Ley de Patrimonio Histórico Español*, in *Revista Patrimonio Cultural y Derecho*, n. 1, 1997, pp. 53-74; **J.M. ALEGRE**, *Observaciones para la revisión de la Ley del Patrimonio Histórico Español de 1985*, in *Revista Patrimonio Cultural y Derecho*, n. 13, 2009, pp. 11-18; **L. ANGUITA**, *Reflexiones sobre la ley*, cit., p. 68; **M.R. ALONSO**, *La tercera generación de leyes de patrimonio histórico*, in *Revista Patrimonio Cultural y Derecho*, n. 18, 2014, pp. 11-28.

¹¹(<https://www.cultura.gob.es/servicios-al-ciudadano/informacion-publica/audiencia-informacion-publica/cerrados/2021/modificacion-lphe-salvaguardapci.html>).

¹² The percentage estimate of the religious heritage varies depending on the source. A. Motilla considers it makes 80 per cent of the total Spanish heritage (**A. MOTILLA**, *Bienes culturales*, cit., 46), while Lourdes Labaca raises that percentage until 90 per cent (**L. LABACA**, *El patrimonio cultural de la Iglesia católica en España*, in *RIIPAC*, n. 3, 2013, pp. 53-100).

¹³ Currently, the Catholic Church has 3.161 assets of its heritage declared of cultural interest. There are more than 500 municipalities in Spain where the only asset of Cultural Interest, the highest category of protection provided by the LSH, is the church or churches on the site. The economic impact of the Catholic heritage and the Catholic festivities is € 9,896,000, equivalent to 3 per cent of the country's Gross Domestic Product (<https://www.conferenciaepiscopal.com.es/datos-generales-la-iglesia-espana/>).

¹⁴ Agreement of January 3, 1979, between the Spanish State and the Holy See, concerning Education and Cultural Affairs; published on December 15, 1979. The Agreement on Juridical Affairs, approved on the same date, also has an article regarding the inviolability of the Church's archives.



needed to place this heritage in service and for the enjoyment of society, as well as to protect and increase it. The Agreement contains only one article, number XV, about the heritage¹⁵. It reiterates the Church's willingness to place its historical, cultural, and documentary heritage at the service of society. To make their common interests effective, the Church and the State will agree to ensure the preservation, cataloguing, and exhibition of the Church's cultural heritage. This legal framework will facilitate the best possible conservation of the heritage, preventing their deterioration or loss while providing access to them for academic research and study.

The authors' opinions on this article of the Agreement are not coincident. Some think that the Agreement's reference to the heritage is too broad and lacks essential content. It should have mentioned, at least, the religious usage of the goods of the Church Heritage, as well as the State's compromise to respect it. Also, the Agreement does not establish the way for the cooperation, deferring it to a Joint Commission that will be created in the future. Some even think that the religious heritage would not be protected against new seizures of the State, as the ones that took place during the XIX Century¹⁶. On the contrary, other authors understand that the Agreement provides an accurate framework for preserving the religious heritage, as the State is bound to collaborate in its maintenance and restoration¹⁷. Besides, both the State and the Church ease their approach, facilitating mutual understanding. The Holy See accepts the State's protection of the heritage as a whole, and the State recognises the property rights and other rights *in rem* belonging to the Church entities on their heritage¹⁸.

The Agreement does not establish how the cooperation will occur. Instead, it says that a Joint Commission - that should be created within a year- will oversee any issue of common interest of the State and Church related to the heritage¹⁹. The Commission was created, but its scope was

¹⁵ The Additional Disposition n. 7 of the LSH establishes that according to the law, the international treaties signed by the State are binding for the public administration. This is quite a strange and pointless declaration, as the Constitution itself establishes that validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order (article 96.1), and they are not subordinated to the law.

¹⁶ See **I.C. IBÁN, S. FERRARI**, *Derecho y religión en Europa Occidental*, McGraw Hill, Madrid, 1998, p. 71; **L. LABACA**, *El patrimonio cultural*, cit., p. 28.

¹⁷ See **M. RODRÍGUEZ BLANCO**, *Libertad religiosa y confesiones. El régimen jurídico de los lugares de culto*, Centro de Estudios Políticos y Constitucionales, Madrid, 2000, pp. 158-159; **I. ALDANONDO**, *Patrimonio histórico, artístico y documental*, in **AA. VV.**, *Acuerdos Iglesia-Estado español en el último decenio: su desarrollo y perspectivas*, Bosch, Barcelona, 1987, p. 187; **R. TEJÓN**, *Confesiones religiosas y Patrimonio cultural*, Ministerio de Justicia, Madrid, 2008, p. 223.

¹⁸ See **A. MOTILLA**, *Bienes culturales*, cit., p. 58.

¹⁹ In fact, this is the only compulsory statement in the Agreement. See **A. MOTILLA**, *Bienes culturales*, cit., p. 57. Also on this Commission, **A.C. ÁLVAREZ CORTINA**, *Bases para una cooperación eficaz Iglesia-Estado en defensa del patrimonio histórico, artístico y cultural*, in *Ius Canonicum*, n. 25, 1985, p. 293.



much more limited than it appears at first sight, due to the distribution of powers between the State and the Regions. The Regions began to enact laws and approve agreements regarding the heritage of their respective territories, implementing their competencies on the matter²⁰.

Nonetheless, the Joint Commission approved a "*Document on the legal framework for actions of common interest about the Historic and Artistic Heritage*" on October 30, 1980²¹. Although it is not a proper legal instrument, this Document contains some relevant declarations²². The first statement is that the State explicitly recognises the Church's ownership of its heritage. However, some restrictions may apply to ensure the fulfilment of articles 46 and 33 of the Constitution about general access to the culture and the social function of the property. The State will compensate for these limitations with technical and economic cooperation to preserve and enrich the heritage. It also establishes that, as a general rule, the religious usage of the heritage has priority over the cultural one. On its side, the Church will place these goods at the service of the society, taking care of them and using them in accordance with its historical and artistic value. Further agreements will be approved to develop the principles of the Document better when applied to specific items: libraries and archives, movable goods, museums, buildings, and archaeological sites²³.

On March 30, 1982, another Agreement between the State and the Church was signed. It is entitled "*Norms for the Elaboration of the Inventory of Historic and Artistic goods, both movable and unmovable, belonging to the Catholic Church in Spain*". No more agreements of this Joint Commission have been approved since then.

Regarding the agreements with other religious denominations, the State signed three Agreements with Jewish, Muslim and Evangelical Federations, approved on November 10, 1982²⁴. In matters of heritage, the Agreements with the Jews and Muslims only establish that these Communities will cooperate with the State to preserve and promote their cultural heritage²⁵. That cooperation will include the creation of an

²⁰ See **A. MOTILLA**, *Régimen jurídico de los bienes histórico-artísticos de la Iglesia Católica*, Madrid, Eurolex, 1995, p. 120.

²¹ This document has not been officially published; this fact poses doubts about its nature. It can be found on the Bulletin of the Spanish Conference of Bishops, n. 14, 1987.

²² See **I. ALDANONDO**, *El marco constitucional, libertad religiosa y tutela de los bienes culturales*, in **J. ROSSELL, R. GARCÍA** (coords.), *Derecho y Religión*, Edisofer, Valencia, 2020, p. 611.

²³ References to agreements on specific issues can be found in other chapters below.

²⁴ See Laws 24, 25, 26/1992, November 10. The agreements were approved by Law, not as an international treaty, as these communities do not have an international status. However, the content of the Law was previously agreed between the State and the religious communities.

²⁵ Article 13: "The State and the Federation of Jewish Communities [the Islamic Commission of Spain] shall cooperate to conserve and further Jewish [Muslim] historic, artistic and cultural heritage which shall remain at the service of society, for contemplation and study. Such cooperation shall include drawing up a catalogue and inventory of such heritage as well as the creation of Trusts, Foundations or other



inventory as well as trusts or other entities with a cultural aim. There is no other provision regarding establishing a joint commission like the one mentioned in the Agreement with the Catholic Church. The Agreement with the Evangelicals does not even mention the religious heritage, as these communities do not have heritage at all.

1.3 - Competence

The political structure of Spain, with seventeen autonomous communities and two autonomous cities, impacts the governing of most issues, including the heritage²⁶. The Constitution establishes the basis for distributing the competencies that belong to the State and the Regions²⁷. Regarding the topic at stake, the State has powers over the protection of the heritage and national monuments against exportation and despoliation, as well as over the museums, libraries, and archives belonging to the State²⁸. The regional governments have powers over museums, libraries, and monuments of regional interest²⁹.

This distribution of powers between the State and the Regions was controversial. A judgment of the Constitutional Court of 1991 dealt with this matter but did not completely clarify it³⁰. According to this ruling, the exclusive powers of the State and the Regions are concurrent, aiming to protect the heritage better. The Constitutional Court identifies the inherent role of the Regions on matters of culture, as this is an identifying element of the land; at the same time, it remarks the State powers aiming

institutions of a cultural nature". The Agreement with the Muslim Communities adds that these cultural institutions shall include representatives of the Islamic Commission of Spain. As already said, the heritage belonging to these communities is too meagre. Some initiatives try to preserve and foster this part of the heritage. That is the case of "*Camino de Sefarad*", a network of Spanish Jewish Quarters.

²⁶ For the sake of simplicity, I will use the term *Region* to refer to the *Comunidad Autónoma*, a Spanish territorial unit with no parallel in other countries. *Comunidades Autónomas* have legislative and administrative powers, but not a judiciary, in their respective territories.

²⁷ The current political structure stemmed anew from the Constitution of 1978. Due to this and other historical and political reasons, the clash between the Central Government and the Regions because of the scope of their respective powers has been quite frequent. Although the matter cannot be explained at length here, it is essential to know this context to better understand the issue.

²⁸ Article 149.1-28 of the Spanish Constitution. Article 149.2 establishes that "Without prejudice to the jurisdiction which may be assumed by the Autonomous Communities, the State shall consider the promotion of culture a duty and an essential function and shall facilitate cultural communication between the Autonomous Communities, in collaboration with them." A detailed explanation of the competence of the various State bodies and agencies can be found in I. GONZÁLEZ-VARAS, *Conservación del patrimonio cultural. Teoría, historia, principios y normas*, 2nd ed., Cátedra, Madrid, 2018, pp. 635-637.

²⁹ Article 148.1-15, 16 of the Spanish Constitution.

³⁰ STC 17/1991, January 31. This judgment required a modification of the Royal Decree that developed the LHS; it was made by the Royal Decree 64/1994, January 21, amending Royal Decree 111/1986 of 10 January 1986 on the partial implementation of the Law 16/1985, of June 25, of Spanish Heritage. A further ruling on the matter, STC 122/2014, July 17, did not state anything new in this field.



at the protection of the general cultural heritage, as well as in the implementation of measures that require a wider scope³¹. However, the LSH was not amended to adapt its content to these judgments; therefore, there are some matters where State and Region's competencies overlap because they are not clearly delineated. For instance, the categories of property protected by historical heritage regulations do not align with state and regional legislation. The regional laws sometimes use rather imprecise terms and talk about social, anthropological, or industrial heritage. It is also unclear on which grounds a monument shall be considered of regional or national interest. In some cases, the standard used for this delimitation is the location, while in others, the strength of the link to local culture, or other factors, are considered³². Thus, the final picture is not crystal clear, and may result in a weaker protection of the heritage.

Within this framework, all Regions enacted laws about their cultural heritage³³. Some common elements can be highlighted, although each has particular features.

The regional laws follow the pattern of the LSH regarding the definition of heritage and the means for its preservation and enhancement. They often contain a mandate to cooperate with the Catholic Church, and less frequently, with other religious denominations³⁴. Eventually, they state the participation of Church authorities in some advisory boards with competencies in matters of heritage.

³¹ On this issue, see **E. HERRERA**, *La protección jurídica del patrimonio religioso en Cantabria*, Ediciones Universidad de Cantabria, 2014, p. 21 ss.

³² See **L. ANGUITA**, *Reflexiones sobre la ley*, cit., pp. 74-75; **I. GONZÁLEZ-VARAS**, *Conservación del patrimonio cultural*, cit., pp. 639-640. These differences, among other elements, led to some controversies between regions regarding the final destiny of some religious assets. See on this regard **B. PORTA**, *Los conflictos competenciales entre Comunidades Autónomas provocados por el traslado de bienes de la Iglesia integrantes del patrimonio histórico*, in **M.J. ROCA**, **O. GODOY**, *Patrimonio histórico-artístico de la Iglesia Católica. Régimen jurídico de su gestión y tutela*, Tirant lo Blanch, Valencia, 2018, p. 129 ss. One of the most remarkable was the conflict between the regions of Aragon and Catalonia about the assets of the Monastery of Sijena. See a summary of this matter in **I. ALDANONDO**, *El marco constitucional*, cit., pp. 618-19.

³³ Regional legislation is gathered in many publications. An updated official compendium of all state and regional laws can be found in (https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=175_Patrimonio_Cultural_de_las_Administraciones_Publicas&modo=2). Other publications summarise the content, or comment at length the laws of a region. See, among others, **I. GONZÁLEZ-VARAS**, *Conservación del patrimonio cultural*, cit., p. 640 ss; **A.C. ÁLVAREZ CORTINA**, *Destino al culto*, cit., pp. 86-87; **R. TEJÓN**, *Confesiones religiosas*, cit., p. 409 ss; **Y. GARCÍA RUIZ**, *Planteamiento general del tratamiento de los bienes culturales de titularidad eclesiástica en el ámbito autonómico español*, in **A. VEGA**, **M. MARTÍN**, **M. RODRÍGUEZ BLANCO**, **J.M. VÁZQUEZ GARCÍA-PEÑUELA** (coords.), *Protección del patrimonio cultural*, cit., pp. 196-198, and literature cited.

³⁴ See **I. ALDANONDO**, *El marco constitucional*, cit., p. 617.



Many regions signed agreements with the Dioceses as a way to foster cooperation in the field of heritage³⁵. All agreements establish joint committees between Church-State at the regional level - mirroring the national one - to decide on matters of common interest within their competencies. These committees have usually been much more active than the national committee, as acting at a level closer to the location of the heritage eases the operations and makes them more efficient³⁶. It is also noteworthy the signature of sectorial agreements that have a narrower scope, but this way, the funds can be allocated to specific actions that otherwise might remain unattended³⁷. Examples of these agreements are those signed to make the regional inventory, to preserve a Church library in return for granting access to their archives, repair musical instruments or allow concerts on Church premises.

Although much less numerous, agreements with other religious denominations can be found in several regions. They have a more restricted scope; mainly, they recognise the Protestant, Jewish, or Islamic heritage as a part of the regional heritage. However, there are some exceptions, as some agreements have a wider target. It is the case of the Agreements between the Jewish community and the Regional Governments of Madrid and Catalonia, that establish a commitment to cooperate in protecting and developing the historical, artistic, literary and, eventually, archaeological heritage³⁸.

Finally, local entities also intervene in the heritage within their competencies. These are mainly related to the protection of heritage and urban planning. However, the prospective actions that might be developed are less critical for the heritage due to the lower levels of both financial means and political power of the councils and other local entities³⁹. It should be noted that there are agreements with religious bodies also at the local level. They are usually signed by several local

³⁵ See **A. MOTILLA**, *Bienes culturales*, cit., p. 60 ss.; **M. RODRÍGUEZ BLANCO**, *Los convenios entre las Administraciones Públicas y las Confesiones Religiosas*, Navarra Gráfica de Ediciones, 2003.

³⁶ See **A. MOTILLA**, *Bienes culturales*, cit., p. 62. The activities of the joint committees provided for in these agreements include: joint preparation of programmes and budgets for areas of culture that affect the Church; issuing technical opinions on requests for financial and technical assistance from the Church and the awarding of such requests; establishing an order of priorities for the requests received; drawing up cataloguing and inventory modules for the Church's cultural assets; issuing opinions on the advisability of moving assets for security reasons or for more appropriate use. See **I. ALDANONDO**, *El marco constitucional*, cit., p. 613.

³⁷ A. Motilla gives notice of these agreements in **A. MOTILLA**, *Bienes culturales*, cit., p. 63 ss.

³⁸ See **R. TEJÓN**, *Confesiones religiosas*, cit., p. 405.

³⁹ See **I. GONZÁLEZ-VARAS**, *Conservación del patrimonio cultural*, cit., p. 638. The LSH recognises the role of the City Councils in matters of heritage in section 7: "The City Councils shall cooperate with the competent bodies for the execution of this Law in the conservation and custody of Spanish Historical Heritage within their municipal boundaries, adopting the appropriate measures to avoid its deterioration, loss or destruction." The function of City Councils consists of mere cooperation, without any decision power.



entities of different levels (City Councils, Province Councils, Island Councils) and dioceses, as well as other religious entities like cathedrals. The contents, necessarily related to the powers of the local entities, have much to do with tourism. This way, some local entities provide the guides, ushers, or security, in exchange for opening the premises for tours⁴⁰.

2 - Composition of the heritage

2.1 - Assets and their types

It is not easy to define the items and premises that constitute the heritage, and, therefore, fall within the scope of the laws that regulate it.

The first problem is the different wording of the legal texts on the matter. Article 46 of the Constitution refers to the “historical, artistic and cultural” heritage. This text was widely criticised because “cultural” is not a specific category, but a broad term that comprises the other categories⁴¹. Nonetheless, the term “culture” is too wide to be helpful in heritage matters. Culture reflects people’s way of life, development, and customs in a certain epoch. For example, soccer is a part of today’s Spanish culture. Stadiums and other premises, as well as manifestations related to soccer, have a big impact on numerous areas of life, including the economic one; there are even tourist tours to the soccer stadiums, that are very successful. However, nothing related to soccer is - at least currently - part of the Spanish heritage as understood in the laws⁴². A certain item’s historical or artistic value should concur to be part of the heritage.

The LSH only mentions the historical heritage in its title as if the Law aimed to develop just one aspect of the heritage. Despite what the title might suggest, the Law applies not only to items of historical significance but also to those with artistic and other values as well. The Law and its Regulation also apply to museums, archives, and libraries of general interest. The problem worsens if we consider other regional, local, or international laws because they use different expressions to refer to the heritage⁴³.

⁴⁰ See A. MOTILLA, *Régimen jurídico*, cit., p. 168. See more on this matter in the chapter about the funding.

⁴¹ See J. GARCÍA FERNÁNDEZ, *Estudios sobre el Derecho*, cit., p. 92 ss.

⁴² See L. ANGUITA, *Reflexiones sobre la ley*, cit., pp. 85-87.

⁴³ See L. ANGUITA, *Reflexiones sobre la ley*, cit., pp. 77-78, who analyses and compares the title and scope of the regional laws in force in Spain. It must be noted that the Agreement with the Catholic Church does not describe or in any other way enumerate the categories of goods that constitute the heritage. This author understands that the proper way to regulate this issue would be that the State declared the categories of goods that should be part of the heritage, and the Autonomous Communities would decide the items that fall into those categories in their respective territories.



From a practical point of view, the LSH provides a list of categories of assets that form the heritage. According to section 1, Spanish Historical Heritage includes immovable property and movable objects of artistic, historical, paleontological, archaeological, ethnographic, scientific, or technical interest⁴⁴. Documentary and bibliographic heritage, archaeological sites and areas, natural sites, gardens, and parks of artistic, historical, or anthropological value also form part of Spanish Historical Heritage, as well as those assets of the intangible cultural heritage, under the provisions of special legislation⁴⁵.

This list poses a challenge common to all relations that pretend to be comprehensive: it leaves some categories aside and comprises others that not so clearly should be included. The most noticeable example is the music, which is not mentioned in the list of section 1 despite its undoubted historical and cultural value. On the contrary, paleontology belongs to the natural sciences, not to the human ones, without prejudice of its potential historical value⁴⁶.

The LSH refers to several categories of assets, but it is somehow confusing because it does not systematically regulate these categories. Considering the Law's content, three layers of protection can be identified. The first level is the regular one, applied by default to the assets not belonging to other categories. No special declaration from the public powers is needed to consider an asset part of the heritage⁴⁷. Second, the movable goods of singular relevance that had not been declared "BIC" - assets of cultural interest - must be included in a General Inventory. Finally, the items of the heritage that have a unique value may be declared as BIC, which enjoy a regime of special protection, and to that aim, they must be registered in a special public Registry⁴⁸. The LSH does not state the requirements to declare an item as a BIC; it only says that the assets can be declared BIC either by the LSH itself⁴⁹ or through a Royal Decree on an individual basis⁵⁰. Later on, the STC 17/1991 clarified that the competence to declare an asset as a BIC corresponds to the Region, unless the item is ascribed to the State public services or belongs

⁴⁴ It should be pointed out that the definition of "immovable property" is broader than the concept of the Civil Code. Sect. 334 of the Civil Code considers immovable properties the land, buildings, roads and constructions of all kinds attached to the ground. Also, the trees, plants and their fruits, as long as they are attached to the land or constitute part of a property. The LSH says that all elements that are deemed inherent to the property are also considered part of the immovable good (sect. 14 LSH).

⁴⁵ The aforementioned Project of amendment of the LSH included the cinematographic and audiovisual heritage in this definition.

⁴⁶ See L. ANGUITA, *Reflexiones sobre la ley*, cit., p. 87.

⁴⁷ STC 181/1998, September 17, FJ 8.

⁴⁸ Sect. 12 LSH.

⁴⁹ Sect. 40.2 and 60.1 LSH consider BICs the caves, shelters and sites containing rock art, as well as the buildings where State-owned Archives, Libraries and Museums are installed, and the movable property of the heritage held therein.

⁵⁰ Sect. 9 LSH. This section states that the work of a living author cannot be declared a BIC, except with the express authorization of its owner or through its acquisition by the public authorities.



to the National Heritage⁵¹. No need for consultation or conformity of the religious community is necessary to declare a religious asset as BIC⁵².

The norms that apply to the different kinds of goods are spread throughout the Law. Besides, although the LSH aimed to regulate heritage as a whole, some categories of assets are subject to other regulations that define their regime. Archives and intangible heritage are perhaps the most relevant ones in the religious heritage.

2.2 - Particular categories⁵³

Documents

The LSH defines documents, for the purpose of the Law, as any expression in natural or conventional language and any other graphic, sound, or image expression recorded on any type of material support, including computer media. The scope of the Law is quite broad. Documentary heritage comprises the documents from any period generated, conserved or collected in the exercise of their function by any public body. It also includes documents older than forty years generated, conserved or collected in the exercise of their activities by religious entities (among others), as well as documents older than one hundred years old that have been generated, preserved or collected by any other private entities or individuals⁵⁴.

The archives of the Catholic Church are well known for their ancient origin and wide content, which make them a privileged source of history. The ecclesiastical authorities manifested their concern about these instruments by issuing regulations on archives since the Middle Ages⁵⁵. Currently, the Code of Canon Law contains general rules on the matter along the text. However, they are insufficient to guarantee the

⁵¹ See STC 17/1991, FJ 10. According to the Law 23/1982, of June 16, the National Heritage is the public body responsible for the assets owned by the State that have come from the legacy of the Spanish Crown, and for administrating the rights of the Royal Foundations and Patronages. This institution manages 24 palaces, monasteries, and royal convents, which house more than 160,000 historical-artistic pieces from all disciplines. The information is published on the webpage of the National Heritage.

⁵² A political party, Popular Party, proposed that the LSH included the National Conference of Bishops as a consultation body on matters of heritage, the same way that Universities, Royal Academies, etc. were included. The proposal was dismissed. See **R. TEJÓN**, *Confesiones religiosas*, cit., p. 319.

⁵³ Archaeological heritage is considered a special category by the LSH (see sections 40-45), but those norms pose less challenges for the religious heritage. Therefore, it is not considered in this chapter.

⁵⁴ See sect. 49. Besides, the State may declare as Documentary Heritage those documents which, without reaching the age indicated in the previous sections, deserve such consideration.

⁵⁵ See a brief account of this matter in **I. CANO**, *Patrimonio documental y estatuto jurídico de los archivos eclesiásticos*, in **A. VEGA, M. MARTÍN, M. RODRÍGUEZ BLANCO, J.M. VÁZQUEZ GARCÍA-PEÑUELA** (coords.), *Protección del patrimonio cultural*, cit., p. 180 ss.



proper management of the documents and archives, and the dioceses have issued their own norms⁵⁶.

The religious documentary heritage in Spain is broad, as it is the number of parishes and other ecclesiastical entities that have archives, like monasteries⁵⁷. A National Association of Ecclesiastical Archivists was created to preserve this part of the heritage in 1971⁵⁸. In 1976, it approved a Regulation on Ecclesiastical Archives, that facilitated the publication of a guide containing all ecclesiastical archives in Spain⁵⁹.

The main issue related to the religious archives is the harmonization of the general access to the documents, as they are part of the common heritage, and privacy protection. The Agreement Concerning Legal Affairs establishes that the State shall respect and protect the inviolability of the archives, registries, and other documents of the Church⁶⁰. Nonetheless, many archives of the Church might be of free access without damaging anybody's privacy. On this matter, the Church and the State regulations differ. The Regulation of the Ecclesiastical Archives established a period of 75 years to grant free access to the Church documents⁶¹. The LSH considers part of the heritage the documents generated by religious entities older than 40 years; as such, they are bound by the norms of the LSH about access for study or other purposes. This difference does not seem to be a big challenge, however. The Regulation of the Ecclesiastical Archives states that the period of 75 years might be flexible if the ecclesiastical authority considers that there is no danger in the consultation.

Intangible heritage

The intangible heritage is recognised in the LSH, although not in an explicit manner and, anyway, insufficiently. It is embedded in the ethnographic heritage, which refers to the scientific description of peoples and cultures with their customs, habits, and mutual differences. Its regulation is also minimal. Section 46 establishes that the ethnographic heritage comprises the knowledge and activities that are or have been a relevant expression of the traditional culture of the Spanish

⁵⁶ See I. CANO, *Patrimonio documental*, cit., p. 185.

⁵⁷ It was much wider, but wars and Government seizures of the XIX century diminished it. Due to these events, part of this heritage is kept in the State Historical Archive, sections of Clergy, Military Orders, Codices and Cartulars and Sigillography. (<https://www.cultura.gob.es/cultura/areas/archivos/mc/archivos/ahn/fondos-documentales/introduccion.html>)

⁵⁸ (<https://scrinia.org/asociacion/historia/>).

⁵⁹ (<https://scrinia.org/publicaciones/guia-de-archivos>). The current edition of the guide, of 2001, is under revision to be updated.

⁶⁰ See article I-6.

⁶¹ Section 3 Regulation on Ecclesiastical Archives. See on this issue I. ALDANONDO, *Aspectos jurídicos de los archivos eclesiásticos*, in *Dimensiones jurídicas del factor religioso. Estudios en homenaje al Profesor Alarcón*, Universidad de Murcia, 1987, p. 19 ss.



people in its material, social, or spiritual aspects, without further dispositions⁶².

Following international trends, Spain ratified the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage in 2006⁶³. It led to the enactment of the Law 10/2015, for the Safeguarding of the Intangible Heritage (LSIH)⁶⁴. This independent regulation attracted criticism, as some authors understood that its content should have been included in the LSH to achieve an integrated treatment of all types of heritage in a single legislative instrument⁶⁵. Religious intangible heritage is not mentioned in the Law, although it is included in its scope. As happened with the LSH, this gap was criticised, as the religious usages and customs are, by far, the most numerous⁶⁶.

The LSIH considers part of the intangible heritage the usages, representations, expressions, knowledge, and techniques that communities, groups, and, in some cases, individuals recognise as an integral part of their cultural heritage⁶⁷. The Law does not rely on the antiquity of the items to consider them part of the heritage but on the fact that they are alive, dynamic, and an element of the people's culture. Nonetheless, the manifestations of the intangible heritage usually have a place and time framework, as well as a material support. Therefore, the protection of the LSIH reaches the material goods associated with an intangible manifestation⁶⁸.

⁶² Section 47.3, more specifically, establishes that knowledge or activities that derive from traditional models or techniques used by a given community are considered to be of ethnographic value and shall enjoy administrative protection. In the case of knowledge or activities that are in foreseeable danger of disappearing, the competent administration shall adopt the appropriate measures leading to the scientific study and documentation of these assets.

⁶³ (<https://ich.unesco.org/en/convention>).

⁶⁴ The legislation of the Regions regulates the intangible heritage either in their general laws of heritage or by means of special laws. This second way is considered more in line with the UNESCO approach to the matter. See on this issue **C. LÓPEZ BRAVO**, *El patrimonio cultural inmaterial en la legislación española. Una reflexión desde la Convención de la UNESCO de 2003*, in *Patrimonio cultural y Derecho*, n. 8, 2004, p. 208. See also an account of the regional laws in **I. ALDANONDO**, *Régimen jurídico del patrimonio cultural inmaterial religioso*, in *Anuario de Derecho Eclesiástico del Estado*, vol. XXXIX, 2023, pp. 534-535.

⁶⁵ See **I. ALDANONDO**, *Régimen jurídico*, cit., p. 536. That is not the only controversial item. The juridical literature also values negatively the technical quality of the Law: the Preamble is longer than the articles, the Law has poor content, and it seems devoted to justifying the State powers as confronted with the Regional powers. See **R. MARZAL**, *El patrimonio cultural inmaterial*, Thomson Reuters Aranzadi, Navarra, 2018, p. 29, whom I partially follow in this section.

⁶⁶ Among others, see **A.J. SÁNCHEZ**, *El patrimonio cultural inmaterial y las técnicas jurídico-administrativas de protección de los bienes muebles e inmuebles a él asociados*, in *Revista Española de Derecho Administrativo*, n. 186, 2017, p. 232. A detailed account of the religious manifestations of the intangible heritage can be found in **L. LABACA**, *Las festividades religiosas: manifestaciones representativas del Patrimonio Cultural Inmaterial*, in *Revista sobre Patrimonio Cultural*, n. 8, 2016, pp. 1-177.

⁶⁷ See sect. 2.

⁶⁸ Section 4 LSIH. See **I. ALDANONDO**, *Régimen jurídico*, cit., p. 541.



A special feature of this Law is that it attributes a relevant role to the communities, groups, and even individuals, who must recognise the intangible heritage, define it as part of their identity, and guarantee its continuity. Thus, civil society has a broad participation in identifying and preserving this kind of heritage. The Law does not provide elements to determine who the relevant communities or groups are, but certainly, the religious communities would have that consideration concerning the religious intangible heritage.

The LSIH establishes that those elements with a high cultural value, deep roots, and significance in Spain will be declared “Representative Manifestation of the Intangible Cultural Heritage” as a measure of protection and safeguarding; they will be registered in the Inventory of Intangible Cultural Heritage⁶⁹. Four of the twelve recognised items to date are religious⁷⁰: *Semana Santa*, *Belenismo*, *Fiesta del Sexenni*, *Toque Manual de Campanas*. Spain also has twenty-one elements of the International Immaterial Heritage of UNESCO⁷¹. Six of them are religious, although more than those six have some elements or links to religious festivities or traditions.

The State authorities are aware of the difficulties that safeguarding this kind of heritage often experiences. To this aim, the State implemented a Special Plan, which will pursue coordinated action by all public powers and agents in the conservation, improvement, and promotion of the Spanish Immaterial Heritage.

3 - Protection of the heritage

3.1 - Responsibility

The LSH states that the assets of the Spanish Historical Heritage must be conserved, maintained, and protected by their owners, holders of rights in rem, or possessors⁷². Notably, the Law refers to the items possessed, not only owned. This precision is necessary because a significant number of the Church’s properties were formally transferred to private ownership during the Government confiscations in the nineteenth century, to avoid their seizure. As a result, some people are the formal owners, but the goods are possessed, in different ways and means, by the Catholic Church.

Besides this general rule, the LSH considers that the conservation of BICs and goods included in the General Inventory is of public interest.

⁶⁹ See sect. 12.

⁷⁰ (<https://www.portalinmaterial.cultura.gob.es/pci-nacional.html>).

⁷¹ (<https://www.cultura.gob.es/cultura/areas/patrimonio/mc/patrimonio-inmaterial/elementos-declarados/lista.html>).

⁷² Sect. 36 LSH. In 2022, the Spanish dioceses allocated € 47,244,310 to 465 projects in the maintenance and reparation of its religious heritage. In the last 10 years, the Church has allocated € 608,294,423 to the conservation and rehabilitation of the ecclesiastical heritage (<https://www.conferenciaepiscopal.es/iglesia-en-espana/iglesia-en-numeros/>).



Therefore, the LSH establishes a subsidiary intervention of the public powers if their owners do not take the actions required to maintain them. In this case, the Law allows some measures to protect the heritage: proceeding to a subsidiary execution of those actions, providing loans to get them done, or even getting the movable goods in the temporary custody of a public institution. In case of unfulfillment of the duties of maintenance and preservation of a BIC, the State can expropriate it for reasons of social interest⁷³.

These norms apply to the religious heritage, as the principle followed by the Spanish legislation regarding the protection and maintenance of the heritage is the principle *propter rem*, that is to say, the measures apply regardless of who owns it⁷⁴. The maintenance and restoration of religious buildings and other assets is an issue of common interest of the Church and the State, and, as such, the cooperation of both entities is required to achieve that aim, as stated in the Cultural Agreement⁷⁵.

3.2 - Actions

The protection of the cultural heritage has two converging objectives: to protect the materiality of the properties from degradation and destruction, and to protect them from a use of dominant ownership that would deprive the collective enjoyment of these properties, as provided for in the Constitution⁷⁶.

Maintenance and reparations

The accurate maintenance and reparation of the heritage is essential to protect it from deterioration. Despite its importance, the regulation of this matter in the LSH is somehow chaotic⁷⁷. Although the LSH devotes a special chapter to the protection of heritage, we can find norms on this issue widespread throughout the law. A systematization of the dispositions will help to understand the public powers' duties on the matter.

Precautionary controls

⁷³ Sect. 36.3 LSH.

⁷⁴ I. ALDANONDO, *El marco constitucional*, cit., p. 607.

⁷⁵ The Preamble of the Agreement says that "The Church's Historical, Artistic and Documental patrimony continue to be an extremely important part of the cultural estate of the Nation. Therefore, placing this Patrimony in the service and for the enjoyment of society, its conservation and its increase justify collaboration of the Church and State".

⁷⁶ See J. GARCÍA FERNÁNDEZ, *Estudios sobre el Derecho*, cit., pp. 47, 139.

⁷⁷ See R. CABALLERO, *Títulos constitucionales y técnicas administrativas de intervención del Estado en el patrimonio histórico-artístico de titularidad eclesiástica*, en M.J. ROCA, O. GODOY, *Patrimonio histórico-artístico*, cit., pp. 206-207.



The Law establishes some precautionary controls for when maintenance or repair works must be performed on an immovable asset declared of cultural value.

All BIC's owners must allow inspection by State authorities to check if they are in good condition or need repair or restoration⁷⁸. Once the need for an intervention has been stated, the owner must obtain authorisation from the competent authorities to do those works. The same permission is required if there is any change in the use of the asset. As far as the LSH applies to whomever the heritage's owner is, the change in the use or the reuse of the ecclesiastical heritage is a decision that belongs to the religious entity that owns the asset. However, changing the use of a BIC requires the authorization of the competent bodies. This requirement is mentioned after stating that the use of assets declared to be of cultural interest, as well as movable assets included in the General Inventory, are subject to the condition that the values that make their conservation advisable are not endangered⁷⁹. Therefore, it may be understood that the authorization should be granted if the change meets that condition.

It should be noted that the Code of Canon Law contains norms that limit the use or reuse of sacred items⁸⁰. Thus, the internal law of the Catholic Church is the first protection against an inadequate use of religious assets, including those belonging to the heritage. However, no specific law exists on the reuse of religious heritage other than the LSH and the precautions it poses.

Only when that previous authorization is granted can the owner apply for the local license required for those works. The interventions that lack those permissions are illegal and may be reconstructed or demolished⁸¹.

Although both the State and the Church are interested in the conservation of the premises belonging to the heritage, they may disagree on the work to be done on the assets. The requirements of religious norms - like those related to the liturgy - might be in contradiction with the better protection or exhibition of the asset. The Supreme Court judged on a paradigmatic case where the religious and cultural interests collided⁸². The Cathedral of Avila was compelled to remove the works done to comply with the liturgical requirements from the II Vatican Council. Those works pose certain risks for the protection of some gravestones; the contemplation of those gravestones was also affected. The Cathedral's plea to maintain the works was dismissed because the Supreme Court understood that the modifications needed to

⁷⁸ Sect. 13 and 26 LSH.

⁷⁹ Section 36.2 LSH.

⁸⁰ See J.M. MARTÍ, *Patrimonio cultural e interés religioso (católico) y nuevos usos*, Dykinson, Madrid, 2021, p. 182 ss., comments the dispositions of the Canon Law regarding the Church assets that are not used for religious aims any more.

⁸¹ Sect. 19.1 and 23 LSH.

⁸² STS 528/2009 - ECLI:ES:TS:2009:528.



comply with the liturgical requirements could be done through other technical means that allowed the contemplation and preservation of the gravestones. The ruling understands that, even though it was not the case at stake if there should be a choice between the religious and the cultural aim, the first would prevail⁸³.

Another permission is established in the LSH to protect the heritage, although it does not refer to the BIC itself but to the surrounding properties. When a procedure to declare a certain immovable as BIC begins, all the local licenses for works that affect that immovable are halted until the procedure ends⁸⁴.

Material intervention on the assets

Once the permissions have been granted, the Law establishes some norms related to the execution of the works to preserve the value of the assets.

The first statement is that the goods must be preserved as originally. To that aim, any action that could damage or disrupt its enjoyment must be avoided. Therefore, installing marketing placards, banners, wires, or aerials in the façade of the BICs is prohibited. The prohibition, however, cannot affect the symbols of faith placed in the buildings, as well as those announcements of the religious services or any other advertisement related to the activities that will be held in the building. In any case, it must be done in such a way as to minimally affect the aesthetic of the building. Moreover, any construction that alters the character of the BIC or disturbs their contemplation is also prohibited⁸⁵.

The LSH gives some instructions about the scope of the repairs. Attempts at reconstruction must be avoided, except when original parts of the property are used, and their authenticity can be proven. If materials or parts indispensable for their stability or maintenance are added, the additions must be recognisable and avoid mimetic confusion. Also, the restorations shall respect the contributions of all existing periods. Removing any of them shall only be authorised on an exceptional basis, provided that the elements to be removed represent an apparent degradation of the property and that their removal is necessary

⁸³ The ruling, widely cited in the juridical literature, is somehow confusing and even contradictory. Nonetheless, it is clear in highlighting the preferential character of the religious aim over the cultural value. See a comment on this judgment in **S. NIETO**, *Tensión entre destino al culto y valor cultural del patrimonio eclesiástico*, in **A. VEGA, M. MARTÍN, M. RODRÍGUEZ BLANCO, J.M. VÁZQUEZ GARCÍA-PENUELA**, (coords.), *Protección del patrimonio cultural*, cit., p. 89 ss.; **J.M. MARTÍ**, *Patrimonio cultural*, cit., p. 174 ss.; **I. ALDANONDO**, *La interpretación jurisprudencial sobre la coordinación entre valor de cultura y valor de culto en la sentencia del Tribunal Supremo de 10 de febrero de 2009*, in *Patrimonio Cultural y Derecho*, n. 13, 2009, pp. 205-217; **A.C. ÁLVAREZ CORTINA**, *Destino al culto*, cit., pp. 99-104.

⁸⁴ Sect. 16.1 LSH.

⁸⁵ Sect. 19 LSH.



to allow a better historical interpretation of the property. The removed parts shall be duly documented⁸⁶.

The LSH finally establishes some precautions in the event that an asset of the heritage is in a situation or ruin. The State authorities are legitimated to intervene as an interested party in the procedure to declare the ruin of a BIC. Also, the demolition of a BIC requires the State's previous authorization. However, the actual trend is to avoid the demolition of a BIC and try to preserve and rehab the assets belonging to the heritage⁸⁷.

Limits to the transmission and removal

Together with the material conservation, protecting the heritage implies also shielding it against illicit transmission, avoiding an unfair diminution of the country's heritage⁸⁸.

The protection and enjoyment of the heritage require in some cases that the asset remain in a context or a place. Thus, the laws established some limits to mobility, varying according to the type of asset.

Immovable assets declared as BIC are inseparable from their surroundings⁸⁹. They may not be moved or removed unless it is essential for reasons of significant force or social interest and, in any case, following the procedure set out in the Law⁹⁰.

Regarding movable goods, the LSH pays special attention to exports, although there are several regimes, depending on the level of protection. Movable BICs cannot be exported at all⁹¹. Movable goods included in the General Inventory and those older than one hundred

⁸⁶ Sect. 39 LSH. See on this regard **R. CABALLERO**, *Títulos constitucionales*, cit., pp. 207-208, and in particular footnote n. 58.

⁸⁷ Sect. 24 LSH; **M. RODRÍGUEZ BLANCO**, *El deber legal de conservación de los inmuebles y la ruina como situación de crisis: su aplicación a las construcciones integrantes del patrimonio cultural eclesiástico*, in *Anuario de la Facultad de Derecho de la Universidad de Alcalá*, vol. VIII, 2015, p. 67 ss.

⁸⁸ The authorities' worries about the circulation of the heritage come from afar. In the XIX century, following the Government's seizures of the religious heritage, a Writ of April 28, 1837, forbade the export of paintings, books and ancient documents. This was an answer -yet not very productive- to the invasion of art merchants who tried to profit from the goods seized from the Church. See on that matter **J. GARCÍA FERNÁNDEZ**, *Estudios sobre el Derecho*, cit., pp. 209-210.

⁸⁹ The definition of "immovable asset" in the LSH is broader than that used in the Civil Code, as it comprises not only the building, but also "all those elements that may be considered consubstantial with the buildings and form part of them or of their surroundings, or have formed part of them, even if they can be separated to form a perfect whole that can be easily applied to other constructions or to uses other than their original one, whatever the material they are made of and even if their separation does not visibly harm the historical or artistic merit of the building to which they are attached" (Section 14.1)

⁹⁰ Sect. 18 LSH.

⁹¹ Sect. 5 LSH.



years need previous authorization from the State to be exported⁹² and pay the tax established in the Laws⁹³. They also need authorization for temporary leasing⁹⁴.

The Law protects against illegal export of movable goods with different measures that reach all steps in the export process. On the one hand, the LSH regulates a preferential right of acquisition in favor of the State; section 29 says that whenever an application for export is made, the declaration of value made by the applicant shall be considered an irrevocable offer of sale to the State Administration which, if it does not authorise the export, shall have six months to accept the offer and one year after that to make the appropriate payment. On the other hand, the Law sanctions the export without authorization with the nullity of the operation and the loss of the property, that is transferred to the State. Besides, the State authorities will do whatever they consider accurate to recover the illegally exported asset⁹⁵.

The transmission of movable goods poses some challenges, because the LSH established some restrictions that apply only to religious items. As a general rule, the transmission of any movable good of the heritage should be notified to the State authorities, but there is no other limitation regarding the beneficiary of the transmission⁹⁶. However, movable goods possessed by ecclesiastical entities, declared as BICs or included in the General Inventory, cannot be transmitted to private owners in any way⁹⁷; they can only be transmitted to the State entities or other ecclesiastical entities⁹⁸. The Law contains a similar restriction to the transmission of the assets belonging to public entities; thus, the regime applied to the religious heritage is similar to that of the public goods. The reason behind this norm was the interest of the State to maintain the heritage in the hands of the public or ecclesiastical entities to avoid their spread and better guarantee the people's access to that heritage. It considers both the extraordinary volume of the Catholic heritage and the non-profit nature of the Church⁹⁹.

⁹² Sect. 5 LSH. The State can also declare other goods of the heritage as non-exportable.

⁹³ Sect. 30 LSH.

⁹⁴ Sect. 31 LSH.

⁹⁵ Sect. 29 LSH. It should be highlighted that section 36 of the TFUE allows the State restrictions to the free circulation of goods of the heritage. This recovery, however, seems to be complicated in practice in the international sphere outside the UE. See on this regard **R. CABALLERO**, *Títulos constitucionales*, cit., p. 217.

⁹⁶ See sect. 38 LSH. See on this issue **L. LABACA**, *El patrimonio cultural*, cit., p. 19 ss.

⁹⁷ Additional Disposition n. 2 of the LSH established that this limit will apply to all movable goods of the ecclesiastical entities for 10 years. This period was prolonged afterward, one time after another; the latest was in 2021, when the Law 6/2021, April 28, that modifies the Law on the Civil Registry, implemented a new extension of the norm for another 5 years (See Additional Disposition).

⁹⁸ Cfr. sect. 28 LSH. See the historical background of this norm in **J.M. ALEGRE**, *Evolución y régimen jurídico del patrimonio histórico*, Ministerio de Cultura, Madrid, 1994, t. I., p. 620.

⁹⁹ See **R. TEJÓN**, *Confesiones religiosas*, cit., p. 333.



This burden imposed by the Law on religious assets was controversial for several reasons. Some authors understood that this limit was not necessary to protect the heritage. The Law did not take into account that the sales of religious items belonging to the Catholic Church have special warranties in Canon Law to protect them¹⁰⁰. These precautions, together with the general measures established in the LSH in case of transmission of movable assets of the heritage would be enough to protect the integrity of the Spanish heritage¹⁰¹.

The Law was also criticised for referring to “ecclesiastical” authorities instead of “religious”, assuming this issue has to do with the heritage of the Catholic Church, although it is not expressly mentioned. It would be undue discrimination to impose such a burden on the Catholic Church and not on other religious communities¹⁰².

Another claim raised in this regard was that this limit to the transmission of religious movable goods clashes with the Constitution, which protects private property in article 33, and imposes the principle of equal treatment under the law in article 14¹⁰³. A more qualified opinion considers that the LSH does not violate the Constitution but deprives the Catholic Church of an essential content of the property right¹⁰⁴.

The criticism, however, was not unanimous. Part of the juridical literature understands that this limitation should be construed in the framework of the principle of cooperation between Church and State and the compromises that both parties assumed in the Agreement of Cultural Affairs of 1979¹⁰⁵.

3.3 - Criminal protection and administrative sanctions

The theft of religious artistic items is a scourge that hampers the protection of the heritage, that goes well beyond the Spanish borders. Day after day, the media give notice of stolen items from churches and other religious buildings¹⁰⁶. The abandonment of Church premises due to the depopulation of rural areas, and the lack of means to protect them, eased the criminals’ actions. The stolen items usually enter the international commercial flow of antiquities, complicating the recovery of those works of art¹⁰⁷.

¹⁰⁰ See canon 1291-1293 of the Code of Canon Law.

¹⁰¹ See **R. CABALLERO**, *Títulos constitucionales*, cit., p. 221.

¹⁰² See **Y. GARCÍA RUIZ**, *Titularidad y conservación de los bienes culturales destinados al culto*, in **R. RAMÍREZ** (coord.), *Régimen económico y patrimonial de las confesiones religiosas*, Tirant, Valencia, 2010, p. 217 ss.

¹⁰³ See **I. ALDANONDO**, *El marco constitucional*, cit., p. 616; **R. TEJÓN**, *Confesiones religiosas*, cit., p. 343.

¹⁰⁴ See **A. MOTILLA**, *Bienes culturales*, cit., p. 56.

¹⁰⁵ See **M. VIDAL** *Bienes culturales y libertad de conciencia en el Derecho Eclesiástico Español*, Universidad de Valladolid, 1999, pp. 145-147; **Y. GARCÍA RUIZ**, *Titularidad y conservación*, cit., p. 230.

¹⁰⁶ See as an example (https://www.elconfidencial.com/el-grito/2022-10-18/robos-arte-sacro-espana_3508206/).

¹⁰⁷ The Civil Guard has a special group that deals with these matters, in tight



Beyond this problem, the Criminal Code protects the heritage, regulating the offenses or damages to the heritage as punishable acts or aggravating penalties for some crimes if committed on those assets¹⁰⁸. The Code establishes a punishment of jail and disqualification for those who demolish or alter buildings singularly protected due to their historical, artistic, cultural or monumental interest. Perpetrators will also pay for the reconstruction or restoration of the damaged goods. A penalty of imprisonment and a fine will be imposed on those who in any other way damage or despoil the heritage, as well as the payment for the restoration.

The Criminal Code also regulates bribery in matters of heritage, imposing a penalty of prison and a fine, besides the common bribery, which entails the civil servant's disqualification.

Spain is a signatory of The Hague Convention of 1954¹⁰⁹ and its Second Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 26 March 1999¹¹⁰. According to these texts, Spain has undertaken to prevent the export of goods from an occupied territory and the confiscation of goods from an occupied territory. The Protocol also establishes some precautions in the event of an attack and the rules for the protection of cultural assets in an occupied territory. These texts are relevant as Spain's participation in humanitarian, monitoring, and peacekeeping missions in areas involved in armed conflict has increased over the years.

Although some authors have questioned the advisability of including these obligations in the LSH, the reality is that Spain's obligations under these treaties are not aimed at protecting Spanish historical heritage - the subject of the law - but rather the heritage of a foreign country¹¹¹. Anyway, even though the Hague Convention is not mentioned in the Criminal Code, article 613.1 somehow resembles this Convention, as it establishes a special protection for assets of high importance¹¹².

cooperation with other international unities.

¹⁰⁸ See sections 321-324 of the Criminal Code of 23 November 1995. Other Laws that contribute to the protection of the heritage are Organic Law 12/1995, December 12, of Repression of Smuggling; Law 1/2017, April 18, on the return of cultural objects unlawfully removed from Spanish territory or from another Member State of the European Union, which transposes Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014.

¹⁰⁹ Ratified on June 9, 1960, BOE 24 November 1960.

¹¹⁰ Ratified on June 21, 2001, BOE 30 March 2004.

¹¹¹ See **J. GARCÍA FERNÁNDEZ**, *Estudios sobre el Derecho*, cit., pp. 498-500.

¹¹² A penalty of four to six years imprisonment shall be imposed on anyone who, on the occasion of an armed conflict, commits or orders to be committed any of the following acts: (a) Attacks or commits reprisals or hostile acts against cultural property or places of worship which constitute the cultural or spiritual heritage of peoples, provided that such property or places are not near a military objective or used in support of the military efforts of the enemy and are duly marked; (b) Misusing cultural property or places of worship referred to in subparagraph (a) in support of military action; (c) Misappropriating, looting, pillaging or vandalizing cultural property or



4 - Religious and cultural interplay

4.1 - Harmonization of religious and non-religious uses

The harmonization of different uses of assets that have a cultural value is not an exclusive problem for religious items. It may affect other goods of the heritage. For example, a palace may also be home to a royal family or a State authority. In that case, the enjoyment of the heritage should be combined with the privacy of the family life or other functions of the premises¹¹³. However, as a high percentage of the Spanish heritage belongs to the Catholic Church, the interplay of cultural and religious usages of the assets is a major concern in this field.

Some goods belonging to religious entities are devoted to non-religious activities, but they constitute a minority. A substantial part of the religious heritage plays a vital role in Catholic worship or other religious functions¹¹⁴. Actually, the religious use of those goods and premises is its primary aim, the reason behind their construction and care, and as such should be protected¹¹⁵. At the same time, the religious heritage is part of the country's shared history and culture, which the State must protect and foster; therefore, it should be accessible to everybody, not only worshipers or members of the Church.

This dual inseparable value is the most salient feature of the religious heritage, and has legal implications. The Church's rights over its heritage may suffer limitations aimed at fulfilling the State's duties established in article 46 of the Constitution: making the common heritage accessible to all people. The Catholic Church recognises these people's rights and is willing to cooperate in the accomplishment of those goals¹¹⁶. Thus, it accepts the limitations of its powers, although it considers that the religious use of the heritage is a priority over the cultural ones¹¹⁷.

places of worship referred to in subparagraph (a) on a large scale. The penalty will be higher if the heritage enjoys special protection. See on this regard **I. CANO**, *Protección penal de los lugares de culto*, in **A.C. ÁLVAREZ CORTINA, M. RODRÍGUEZ BLANCO**, (coords.), *La religión en la ciudad. Dimensiones jurídicas del establecimiento de lugares de culto*, Comares, Granada, 2012, p. 110.

¹¹³ See **M. RODRÍGUEZ BLANCO**, *Libertad religiosa*, cit., p. 162. In Spain, some of the premises of the National Heritage host numerous official events linked to the Head of State, that limit the general access to those assets.

¹¹⁴ The term "religious use" is wider than "worship", as it includes not only rites or liturgical ceremonies, but everything that entails an external homage to the divine. See **R. CABALLERO**, *Títulos constitucionales*, cit., p. 189. For example, the monastic life implies a "religious usage" of the premises where the monks live, even though they only worship in some places within those premises.

¹¹⁵ See **R. CABALLERO**, *Títulos constitucionales*, cit., p. 185. The Author affirms that protecting the religious use of those goods is also a way of making the heritage sustainable.

¹¹⁶ Sect. XV of the Agreement.

¹¹⁷ The Document of 1980 recognises the priority of religious use over cultural one,



The religious use of the heritage is not legally protected by any law nor in the Agreements with the Catholic Church. Therefore, the problems should be solved individually by consensus between the Church's and the State's authorities¹¹⁸. However, there are some constitutional bases where the protection of religious use relies on¹¹⁹:

- Sect. 16-1 protects the autonomy of the religious communities. That includes the freedom to organise worshipping and other religious activities in their own buildings and premises without interference from the State

- Sect. 16.3 says that the State should consider the citizens' religious beliefs in its political action. Therefore, a secularization of the religious heritage would violate this mandate.

- Sect. 20 b protects the freedom of artistic expression, which comprises not only the creation of the work of art but also the respect of its destiny, aim, and inner sense.

Based on these dispositions, we can see how the laws try to balance the religious and cultural elements in practice.

4.2 - Tourist and study visits

The owners of the assets belonging to the heritage decide the terms to access and enjoy them. It means that religious entities will establish the conditions, times, and other circumstances to visit the immovable and movable assets of the religious heritage.

The LSH contains several limitations to the owner's rights, ensuring general access to the Spanish heritage. Besides the necessary entrance for inspection, already mentioned, the Law establishes two types of access that must be allowed by the owners: for study and research, and tourist visits¹²⁰.

Regarding the access for study and research, the LSH says that the owners are obliged to facilitate the study of the asset, following a reasoned request by the researcher. No more norms are provided; thus, it could be understood that access should be granted if the application is consistent and well-supported. The religious entity may determine the times and conditions of study to respect the religious use of the asset.

As for the tourist visits, the public's access to immovable assets of the heritage will be determined by the religious entity. The requirements of general access imposed by the LSH are minimal, and apply only to assets declared as BIC: the religious entity should grant access free of charge at least four days a month, on previously designated days and

but it is not enough to decide all the possible controversies.

¹¹⁸ See **M. RODRÍGUEZ BLANCO**, *Libertad religiosa*, cit., pp. 163-164. This author understands that often, the conflict may be more apparent than real. See also **A. MOTILLA**, *Bienes culturales*, cit., p. 52.

¹¹⁹ See **I. ALDANONDO**, *El marco constitucional*, cit., pp. 608-610.

¹²⁰ Section 13.2 LSH.



times¹²¹. This limitation to the private use of the assets is wide enough to avoid conflicts between religious use and general access to the heritage. In practice, visits to religious heritage are usually organised out of worship times without significant controversy. However, even compliance with this obligation may be totally or partially waived by the civil authorities when there is a justified reason. Therefore, the Law provides the appropriate framework to exempt the religious entities from the obligation of granting access to the BICs for religious reasons, such as when a special religious event or festivity coincides with the visiting hours. Nonetheless, these situations are exceptional and do not pose a real problem.

Visitors could be required to comply with specific rules established by the religious entities inside the buildings - silence, wearing appropriate clothes, and so on. Some issues may arise related to this matter. A particular case is that of the premises that belong to masculine or feminine religious orders that only allow the visits of men or women, respectively. In a first approach, this restriction might be seen as discriminatory; however, respect for religious rules could be a justified reason to deny access to people of the other sex. This problem arose, in fact, in a monastery belonging to the Carthusian monks in Aragon. The building itself is a monument, but it also keeps valuable works of art inside, remarkably some fresco paintings by Francisco de Goya, a renowned painter of the XVIII century. Access to the monastery was granted through an agreement between the Regional Government and the monastery. However, due to the strict rules of the religious order, only men could get into the premises and, therefore, enjoy the contemplation of the paintings. As awareness of equality increased, voices were raised calling for women's access to the Carthusian monastery. The controversy ended with some reforms in the access that allowed visitors to visit the paintings without disturbing the cloistered life of the monks¹²².

Beyond this case, a significant number of monasteries had been declared BIC, and, therefore, they should be somehow accessible to the people. Different solutions may be explored to harmonize the respect of the cloistered life and the access to those assets: allowing the visit to some parts of the building restricting the life of the nuns or monks to other parts; translating some movable goods to another building with free access; and so on¹²³. New means of access should not be underestimated: virtual visits, for example, or the use of artificial intelligence, could

¹²¹ This norm is not always respected, apparently. A number of webpages of assets of the religious - as well as non-religious - heritage do not reflect those days of free entrance.

¹²² Information on this issue can be found at (<https://patrimonioculturaldearagon.es/patrimonio/cartuja-de-nuestra-senora-de-aula-dei/>). Currently, the monastery is run by another community, non-cloistered.

¹²³ See on this issue **R. TEJÓN**, *Confesiones religiosas*, cit., pp. 331-332.



facilitate the enjoyment of items of the religious heritage that will not be otherwise accessible¹²⁴.

In the case of movable assets, free access four days a month to the place where it is exhibited is compulsory. However, the deposit of the asset in a place that meets the appropriate conditions of security and exhibition for a maximum period of five months every two years may also be agreed upon as a substitute obligation. Besides, the movable items included in the general inventory must be lent to temporary exhibitions organised by public entities with the appropriate guarantees. Such loans shall not be obligatory for a period of more than one month per year¹²⁵.

These norms seem compatible with the religious use of the assets. Nonetheless, they should be construed in accordance with the specific characteristics of each item of the religious heritage. There are some movable goods whose translation would be against their inner sense; that is the case of some burials, images, or other sacred objects that attract thousands or millions of people, either worshipers or tourists, to a specific place. Spain has many examples: St. Jacques's burial at the end of the Way of Santiago or the sacred column in the Basilic of El Pilar in Zaragoza, to name just a couple. The idea of a loan of the burial or the column is unthinkable, even though they are movable goods, as it would deprive the premises of their meaning.

In some instances, combining the religious and the cultural uses may pose more significant challenges, due to the imbalance of the cultural or religious activities to the detriment of the other. The search for a more stable regulation of the activities may avoid conflicts. This was the solution adopted by two shrines that receive regular massive pilgrimages due to popular devotion, regulated through a trust to reconcile these premises' religious and cultural aspects¹²⁶.

5 - Funding of the heritage

5.1 - Public sources

Direct

The LSH devotes its title VIII to the measures to foster the preservation, maintenance, and rehabilitation of the heritage. As far as the LSH applies to all heritage, it automatically includes religious assets. Some norms

¹²⁴ See **O. ALLARL-CHÉRIE**, *Intelligent cathedrals: Using augmented reality, virtual reality, and artificial intelligence to provide an intense cultural, historical, and religious visitor experience*, in *Technological Forecasting & Social Change*, n. 178, 2022, 121604.

¹²⁵ Article 26.6 LSH.

¹²⁶ They are Montserrat, in Catalonia, and Covadonga, in Asturias. Both civil and religious authorities belong the Board of the Trust. See on this matter **M. RODRÍGUEZ BLANCO**, *Libertad religiosa*, cit., pp. 173-176, who gives a detailed account of the dispositions that apply to these two places of the religious heritage.



have been developed in other laws or dispositions of the public authorities; all together, they provide the framework of direct public funding for religious heritage.

The main sources in this category are the following:

- Subsidies: The State provides aid on a competitive basis (calls governed by specific terms that include, among other aspects, valuation criteria), as well as direct and nominative subsidies, which are budgetary allocations whose beneficiaries are specified in the General State Budget¹²⁷. Financial aid may be provided by departments or agencies not exclusively dedicated to culture. In recent years, tourism departments have become natural partners for funding programmes, and lines of collaboration have been established¹²⁸. Although this method of funding is relevant, it is worth pointing out that it is not a stable source of funding, as it depends on the fluctuation of policies and the amount of money allocated to this aim, among other contingent elements¹²⁹.

European Funds are also a source for funding operations that involve the promotion of cultural heritage. They may come from specific European programmes, such as Creative Europe and Horizon Europe. There are many calls for subsidies aimed at cultural heritage. Generally, public or private organisations with a minimum of two years of existence, which have their legal personality and belong to Member States of the European Union, can participate in these calls¹³⁰.

- The so-called 2 per cent cultural is one of the most essential ways to fund the heritage. In the budget of each public work financed in whole or in part by the State, an item equivalent to at least 2 per cent of the funds contributed by the State shall be included, to finance works for the conservation or enrichment of Spanish Historical Heritage or the promotion of artistic creativity, to be done preferably in the work itself or in its immediate surroundings¹³¹. As a general rule, only public assets may benefit from this measure¹³². However, there are some exceptions

¹²⁷ See sect. 22 of the Law 38/2003, November 17, on General Subsidies, and 65 of Royal Decree 887/2006, that develops Law 38/2003.

¹²⁸ Green Paper on the Sustainable Management of Cultural Heritage, Spanish Government, 2023, p. 44 ss.

¹²⁹ See L. ANGUITA, *Reflexiones sobre la ley*, cit., p. 91.

¹³⁰ Green Paper on the Sustainable Management of Cultural Heritage, Spanish Government, 2023, p. 45.

¹³¹ Section 68 LSH. Initially the percentage was 1 per cent. It was raised after the pandemic by means of the Law 14/2021, October 11. Section 68.2, 3 also states that if the public work is to be built and operated by private individuals by virtue of an administrative concession and without the financial participation of the State, the percentage shall be applied to the total budget for its execution. Works whose total budget does not exceed € 600.000, those affecting the security and defence, and the works of maintenance of the historic heritage, are exempted from those provisions. Of the funds generated with the 2 per cent cultural, a part, 1 per cent, must be allocated to promoting artistic creativity until 2025. As an example, the last call to apply this 2 per cent was issued in 2023; the amount to be allocated to the heritage was € 50 million in 2024 and 30 million in 2025. See BOE 22 July 2023, n. 22268.

¹³² Order from the Ministry of Development FOM 1932/2014, September 13, BOE 22 October 2014. This limit to public owners has been criticised; it burdens and limits



where religious heritage can find its way into this public funding: private owners can benefit from these funds if the assets are included in the UNESCO World Heritage List¹³³ or the religious buildings are included in National Plans on Heritage, such as the Cathedrals or the Monasteries Plan.

- Cultural visits to some assets of the heritage are a direct or indirect source of funding. The Spanish cathedrals are a good example. They have a big indirect impact on the local economy¹³⁴, but besides this feature, many are joining a general trend of charging for visits. This income is an additional funding source, as alms and other public or private contributions are often insufficient to maintain the building¹³⁵.

There is no general regulation about the entrance tickets or other offerings on religious buildings that are part of the heritage. The only norm is the already mentioned which imposes four days of free entrance monthly. Therefore, the religious entity that owns the building decides on this issue.

Either the requirement of an entrance ticket and, that being the case, its amount, varies in practice. Some buildings have free entrance around the year. Others require a payment between 2-10 euros; finally, others have certain premises, usually of unique cultural value, reserved for paying visitors. Of course, entrance to participate in worshipping acts is always free, although this entrance often does not imply an opportunity to visit the Church.

- Works aiming at the conservation, maintenance, and rehabilitation of assets of cultural interest have preferential access to official credit. Through agreements with public and private entities, the State may establish the conditions for enjoying the benefits of credit¹³⁶.

- Within the scope of their power, Regions, provincial councils, and local entities also contribute to the direct funding for the heritage. Regarding the Regional funds, they are pretty similar to the State ones. The only feature that might be highlighted is that norms from some regions allow public authorities to provide direct subsidies when a particular action is needed to conserve the assets, and the owner demonstrates that he has no means to do it¹³⁷.

stated on the LSH apply to all assets, whoever their owner, these funds should also benefit all owners, not only the public ones. See **L. ANGUITA**, *Reflexiones sobre la ley*, cit., p. 92.

¹³³ Spain is the third country in the world with the most assets in that list (45), and some of them belong to the Catholic Church. See **R. CABALLERO**, *Títulos constitucionales*, cit., p. 212.

¹³⁴ According to a report of an independent agency referring to the six main Catholic cathedrals, their impact on the national Gross Domestic Product is € 388,500,000, and the number of employees is 8.800. The report can be found on the webpage of the Spanish Conference of Bishops.

¹³⁵ See the declarations of the Secretary of the Spanish Conference of Bishops in (<https://alfayomega.es/por-que-pagar-para-entrar-en-una-iglesia/>).

¹³⁶ Section 67 LSH.

¹³⁷ See **R. TEJÓN**, *Confesiones religiosas*, cit., p. 454.



Indirect

The system of tax relief and tax incentives that apply to religious heritage is established by laws of different nature. Some of them are recognised in the Agreements with the religious entities; others, in the LSH and the Law of Patronage; also, the laws of particular taxes establish the conditions for enjoying those benefits. Moreover, the General Budget Laws, approved yearly, must also be considered, as they often update the amounts or modify other elements of the tax system. Besides, some benefits are recognised because the asset's owner is a religious or non-profit entity; others are due to the condition of assets belonging to the heritage, declared BIC, or included in the General Inventory. All these items combined provide a set of rules that are not wholly coherent and challenging to navigate.

Leaving aside the subjective tax benefits for religious denominations as such and considering the tax benefits stated for the heritage, we find various measures¹³⁸.

- All assets of the Spanish Heritage are exempted from property tax and local taxes¹³⁹. The respective tax laws develop the scope of these exemptions, which is broader than the scope stated in the LSH.

- BICs and movable items included in the General Inventory are exempted from VAT and import taxes¹⁴⁰.

- Deduction of a percentage of the amount invested in the acquisition, maintenance, reparation, or exhibition of cultural assets from income tax or society tax. Although the religious entities are not subjected to income tax and society tax, these measures may indirectly benefit religious entities as recipients of patronage from individuals or entities encouraged to apply these tax relief measures. To this aim, ecclesiastical entities have the status of patronage beneficiaries, within the laws meaning, of the tax regime for non-profit entities¹⁴¹. These deductions can also be obtained for the donation of heritage assets or cultural items of exceptional value. In this latter case, if the donation is made in favour of entities that pursue the fostering and diffusion of the heritage, religious entities may be included among them¹⁴².

¹³⁸ A detailed description of all the tax benefits for religious entities, including those for their religious heritage, can be found in **R. BENEYTO**, *Régimen tributario de los bienes culturales de titularidad eclesiástica*, en **A. VEGA**, **M. MARTÍN**, **M. RODRÍGUEZ BLANCO**, **J.M. VÁZQUEZ GARCÍA-PEÑUELA** (coords.), *Protección del patrimonio cultural*, cit., p. 245 ss., specially, regarding the heritage, p. 285.

¹³⁹ Sect. 69 LSH and 62.2-b Royal Decree 2/2004, March 5, approving the revised text of the Law Regulating Local Treasuries.

¹⁴⁰ Article 54 Law 37/1992, December, of Value Added Tax.

¹⁴¹ Law 49/2002, December 23, 2002, on the tax regime for non-profit organisations and tax incentives for patronage (Law on Patronage), sect. 16 and Additional Disposition 9. See **R. CABALLERO**, *Títulos constitucionales*, cit., p. 213.

¹⁴² Sect. 17 Law on Patronage. It will not be easy to determine if a certain item has a "special value". See **R. CABALLERO**, *Títulos constitucionales*, cit., p. 215.



- Since the Law of Patronage was enacted in 2002, the General State Budget can establish preferential patronage actions which will enjoy more significant tax benefits¹⁴³. From then on, some Laws of General Budget included, among those actions, the maintenance and restoration of some assets belonging to the Spanish Heritage. This has been advantageous for religious denominations, mainly for the Catholic Church, due to the number of premises and monuments it owns. Still, it has also benefited other religious communities that have signed agreements with the State¹⁴⁴. However, some authors do not consider this measure praiseworthy, as the State should be neutral instead of establishing advantages for some projects; it is the civil society, and not the State, who must decide which endeavours deserve their economic contribution on equal terms¹⁴⁵.

- Payment of tax debts may be made using the delivery of assets that are part of the Spanish Historical Heritage, declared as BICs, or included in the General Inventory¹⁴⁶. This norm has been criticised even though it was conceived precisely to prevent the sale of such goods to pay tax debts¹⁴⁷. One of the inconveniences of this measure is that public authorities often cannot place the items in an appropriate environment. They must also assume the cost of their maintenance and conservation, burdening the State financially¹⁴⁸. Also, it has been suggested that some major corporations may take advantage of this loophole to reduce their tax burden and make a profit by purchasing these goods through the guise of phoney patronage. Therefore, some scholars argue that this particular payment should only be allowed in exceptional cases of bankruptcy or similar¹⁴⁹. Other authors understand that, even though this measure has been replicated in the regional laws, it has not been a big deal so far; besides, it cannot be considered a general incentive, as both the Ministries responsible for Culture and Taxes must accept the payment¹⁵⁰.

Finally, the State regulated through Royal Decree 1680/1991 the State Guarantee, a public insurance system through which the Spanish State assumes the commitment to ensure assets of interest temporarily transferred for public display in State institutions.

Special plans

¹⁴³ Sect. 22 Law 49/2002.

¹⁴⁴ See **M. RODRÍGUEZ BLANCO**, *Las confesiones religiosas en el marco del régimen jurídico del mecenazgo*, Edisofer, Madrid, 2005, p. 105.

¹⁴⁵ See **J. PEDREIRA**, *El régimen fiscal del sector no lucrativo y del mecenazgo*, Thomson Aranzadi, Navarra, 2003, p. 260.

¹⁴⁶ See article 73.

¹⁴⁷ See **R. BENEYTO**, *Régimen tributario*, cit., p. 315.

¹⁴⁸ See **L. MARTÍN-RETORTILLO**, *Nuevas perspectivas en la conservación del patrimonio histórico: una recapitulación global*, in *Revista Aragonesa de Administración Pública*, n. 19, 2001, p. 44.

¹⁴⁹ See **L. MARTÍN-RETORTILLO**, *Nuevas perspectivas*, cit. p. 44.

¹⁵⁰ See **L. ANGUITA**, *Reflexiones sobre la ley*, cit., p. 94.



Several specific programs for funding religious heritage can be mentioned.

The LSH contains the general framework to establish National Heritage Plans¹⁵¹. These plans are conceived as instruments for the management of the heritage. Their goal is to define a methodology to set up the actions needed to preserve the heritage and establish a programme of interventions, coordinating the actions of all the government bodies and other interested agents¹⁵². Within those plans, an executive document establishes the specific needs of every asset and the economic agenda to meet those needs.

There are two main plans of interest for the religious heritage: the Plan of Cathedrals and the Plan of Monasteries.

National Plan for Cathedrals

This Plan is the outcome of the collaboration between the public powers and the ecclesiastical authorities. It aims to preserve the cathedrals, which are privileged items of the history and culture of the country. It takes into account the value of these pieces of heritage and the current circumstances, like the stronger pollution, the increase in tourism, and so on¹⁵³.

In 1997, the Ministry for Culture and the Spanish Conference of Bishops signed a General Plan for Cathedrals¹⁵⁴. Within that framework, the State, the Regional Government, and the Dioceses will set up a project, called "Director Plan", for every cathedral. The Director Plan describes the asset's current status, its risks, the priority interventions needed to preserve it, the prospective schedule, and the budget for 8-10 years. It also creates a commission to follow up on the development of

¹⁵¹ Sect. 2.2 and 3.1 LSH. The State agency responsible of these plans is the Instituto de Patrimonio Cultural de España.

¹⁵² The National Plans were born in the second half of the 1980s, once the powers over heritage had been transferred to the Autonomous Communities and a new Historical Heritage Law was in place. The first National Plan was for cathedrals, drawn up in 1987 and approved in 1990, followed by those for Industrial Heritage, Defensive Architecture, Cultural Landscape, and Abbeys, Monasteries and Convents in the first decade of the 21st century. See **A. CARRIÓN**, *Plan Nacional de Catedrales*, Ministerio de Educación, Cultura y Deportes, 2015, p. 4.

¹⁵³ A complete account of this Plan can be found in (<https://www.cultura.gob.es/planes-nacionales/dam/jcr:51237635-e3ae-4bb7-9d1a-130a03c13909/01-maquetado-catedrales.pdf>). See also **A. MOTILLA**, *Bienes culturales*, cit., pp. 68-69. A critical comment of this Plan can be found in **S. NIETO**, *Tensión entre destino al culto*, cit., p. 82 ss. Some Regions had their own Plan on Cathedrals, that allocate regional funds to the specific works of preservation of the Cathedrals; an example is the Plan Catedrais 2021-2027 in Galicia.

¹⁵⁴ This General Plan was not officially published, but this fact has not affected its efficacy. See **M. RODRÍGUEZ BLANCO**, *El Plan Nacional de Catedrales: contenido y desarrollo*, in *Revista Española de Derecho Canónico*, vol. 60, 2003, p. 718.



the Director Plan¹⁵⁵. A further step is the coordination of the prospective sources of funding for each Director Plan.

The General Plan for Cathedrals establishes three primary sources of funding: the Spanish Government will fund its part of these actions, and the General State Budget Law will consider them as a priority in the patronage, granting tax benefits for private contributions to this aim. Regional and local entities will also contribute to this goal through their competences and means. The third source will be the Church's funds, through the Cathedral's Metropolitan Chapter. The Church also assumes responsibility for applying for grants from the European Union in addition to appealing for assistance from its own members. The Director Plans will set up the percentage of the financial contribution corresponding to each part. Particularly interesting are the agreements for economic cooperation signed with private companies¹⁵⁶.

The Plan is currently under revision, with the idea of achieving a broader cooperation, not only regarding the conservation and restoration but also for the daily management of these monuments¹⁵⁷.

National Plan for Abbeys, Monasteries and Convents

With 712 monasteries, Spain is home to a third of the world's contemplative life, and is the country with the largest number of monasteries in the world¹⁵⁸. The monasteries and convents often house artworks due to the strong links that some of these premises had with the nobility and the kings. This circumstance prevented the loss of a big part of the movable heritage, as it was protected from the destruction and plunder of frequent wars. They also convey the important immaterial heritage of monastic life, such as music, liturgy, and more¹⁵⁹.

These buildings are facing particular challenges nowadays. Some are closing because of the decreasing number of monks and nuns. The incoming of monks and nuns from other countries and cultures requires adjustments. Besides, some premises are used for activities other than the monastic life, with the intent of reusing these spaces. All these elements

¹⁵⁵ Once the individual projects were set up, it became clear that the Plan could not reach all Spanish Cathedrals (a total of 90). Therefore, on November 21, 2006, a new partial agreement between the Spanish Government and the Catholic Church established a priority in the Cathedrals, stating which ones were in more urgent need of help. R. TEJÓN, *Confesiones religiosas*, cit., p. 246.

¹⁵⁶ Province Councils and banks often played an important role in funding these Director plans. See M.C. MUSOLE, *Planes nacionales para la conservación y restauración del patrimonio cultural eclesiástico*, in R. RAMÍREZ (coord.), *Régimen económico*, cit., p. 320.

¹⁵⁷ See S. MESSEGUER, *La gestión del patrimonio cultural de titularidad eclesiástica*, in A. VEGA, M. MARTÍN, M. RODRÍGUEZ BLANCO, J.M. VÁZQUEZ GARCÍA-PEÑUELA (coords.), *Protección del patrimonio cultural*, cit., p. 481.

¹⁵⁸ (<https://declusura.org/vida-contemplativa/>).

¹⁵⁹ See M.C. MUSOLE, *Planes nacionales*, cit., p. 305. Also, (<https://www.cultura.gob.es/planes-nacionales/planes-nacionales/abadias-monasterios-conventos/definicion.html>).



may put the heritage at risk and justify an intervention that guarantees their conservation¹⁶⁰.

The Ministry for Culture and the National Conference of Bishops signed an agreement on March 25, 2004, to set up the National Plan for Abbeys, Monasteries and Convents. The Plan aims to establish uses and management models that guarantee the conservation of these premises. The actions funded by the State must be complemented with other actions such as public visits, dissemination of knowledge, and so on, respecting the identity and religious use of the site.

This Plan mirrors, somehow, the National Plan for Cathedrals. It requires a Director Plan for each monastery, convent, or abbey that assesses the risks and decides the interventions necessary for its maintenance and preservation; it should also deal with the harmonisation of the religious and non-religious usages, trying not to disturb the cloistered life. The funding sources are similar to the ones of the Plan for Cathedrals.

Other Plans

The Plans mentioned above target, specifically, religious heritage. However, this religious heritage must also be affected by other Plans aiming to protect other items of the heritage, whoever their owner is. This way, the Plan for Landscapes included the restoration of Muslim graveyards in Galicia and Andalusia, or a monastery in Madrid, that were within the area of the respective landscapes¹⁶¹.

- Particular attention deserves the Way to Santiago. This is one of the most famous pilgrimage routes since the Middle Ages, attracting yearly millions of people from all over the World that walk towards the burial of St Jacques, in Compostela (Northwest Spain)¹⁶². It has been awarded many recognitions; among them, it was recognised as a cultural asset back in 1962, and it is the First Cultural Route recognised by the Council of Europe¹⁶³. Undeniably, its origin, and still its primary goal, is religious. However, the enormous impact on the tourism, economy, and society of the route is so broad that currently, a special Council of the State and the Regions - Consejo Jacobeo, established in 1991 - deals with

¹⁶⁰ (<https://www.cultura.gob.es/planes-nacionales/dam/jcr:236fedc4-a421-4735-8141-45207f9d4e04/folleto-leer-plan-abadias.pdf>).

¹⁶¹ The information of these plans can be found in (<https://www.cultura.gob.es/planes-nacionales/planes-nacionales/paisaje-cultural.html>).

¹⁶² The Way or Ways to Santiago -as there are several routes- deserved a particular attention in the Galician Law on Heritage 5/2016, May 4, which devotes its Title VI to the regulation of this item.

¹⁶³ "As a result of this pilgrimage, a rich heritage was formed. Tangible heritage such as places of worship, hospitals, accommodation facilities, bridges, as well as non-tangible heritage in the form of myths, legends and songs are present along the Santiago Routes and can be enjoyed by the traveller." (<https://www.coe.int/en/web/cultural-routes/the-santiago-de-compostela-pilgrim-routes>).



the management and preservation of the Way¹⁶⁴. Surprisingly, despite its religious significance, no ecclesiastical authorities belong to or collaborate in any other way with that Council. Even the Council's webpage does not mention its spiritual meaning but highlights its historical, cultural, and natural value¹⁶⁵, unlike the Council of Europe, which confirms its primary religious value.

- The State has also implemented a Special Plan for the Safeguarding of the Immaterial Heritage, which will pursue coordinated action by all public powers and agents in the conservation, improvement, and promotion of the Spanish Immaterial Heritage¹⁶⁶.

From another perspective, European funds from NextGenerationEU allowed the implementation of the Recovery, Transformation, and Resilience Plan in Spain. This aid package, intended for both public and private entities, allows the allocation of public resources "to sustain the production fabric, employment, and family income and to mitigate the economic and social impact" of the economic post-pandemic crisis. Among the multiple areas it aims to promote, modernise or update, it includes the protection of cultural heritage in order to recognise the culture "as a hallmark, mirror, and source of learning and defence of the territory's values". This funding is intended for the ecological transition, digital transformation, equality, and social and territorial cohesion in different areas, which is why there are many calls for subsidies aimed at cultural heritage sponsored by different ministerial departments, for which a vocation for sustainability is necessary¹⁶⁷.

5.2 - Private sources

Spain does not have a long culture of private funding of public interests. Despite the aforementioned measures, the private contribution to these endeavours is not as strong as in other countries. However, the Government tried to foster the participation of private persons and entities in certain initiatives through the Law of Patronage¹⁶⁸.

The Law of Patronage regulates the pacts for cooperation between a religious entity that has an agreement with the State and a company or

¹⁶⁴ Among other benefits, it contributed to the survival of many rural communities and villages, whose inhabitants found a new way of life in the accommodation and services to the pilgrims since the big development of the Way in the 1990s.

¹⁶⁵ (<https://www.cultura.gob.es/consejo-jacobeo/consejo-jacobeo-mcd.html>). The Catholic Church has its own program of management, development and information on the Way to Santiago; it is very active in this regard, with several bodies involved in numerous actions related to the Way and its spiritual meaning, including a periodical Bulletin. See (<http://catedraldesantiago.es/peregrinacion/>).

¹⁶⁶ The information about this Plan and its implementation can be found in (https://www.libreria.cultura.gob.es/libro/plan-nacional-de-salvaguarda-del-patrimonio-cultural-inmaterial_1765/).

¹⁶⁷ Green Paper on the Sustainable Management of Cultural Heritage, Spanish Government, 2023, p. 46.

¹⁶⁸ Article 25 of the Law on Patronage.



any other private entity. According to them, the company or entity would provide funding for a particular activity or action, whether in cash, in kind, or services carried out in the exercise of the collaborator's own economic activity, and the religious entity would advertise that support¹⁶⁹. Religious entities have signed this kind of agreement mainly to foster the conservation, restoration, and rehabilitation of the heritage and to maintain places of worship, mostly cathedrals. This is the case of the Agreement between the Spanish Conference for Bishops and Endesa in 1998 - still in force - contributing to the cathedrals' lighting¹⁷⁰. At the regional and local levels, several agreements exist between the trustees of certain premises -usually cathedrals - and private companies¹⁷¹. An example of this collaboration is the restoration of the Cathedral of Vitoria in the Basque Country. To this aim, the Dioceses and the local and regional governments created a non-profit institution, which launched a project to obtain private funds from companies and individual donors¹⁷². In Castile-Leon, widely regarded as one of the richest regions in Europe in terms of religious heritage, a significant project is the series of exhibitions "Las Edades del Hombre", with twenty-seven editions thus far. An ecclesiastical foundation oversees this project; public institutions and private companies collaborate in the annual exhibitions¹⁷³.

Besides more traditional sources of income, like ticket sales, renting out spaces, and the profits resulting from exhibitions (such as sales made in stores), crowdfunding is a new source that should not be underestimated. Although it is not fully developed yet, it can be gathered as a reliable way of implementing small projects that attract people's attention. One of the leading non-profit associations in the area of heritage, *Hispania Nostra*, fostered the first platform of crowdfunding aiming at the maintenance and preservation of the heritage, including the religious one, that, according to its webpage, collected more than € 800.000 from 8.600 different collaborators¹⁷⁴. Another initiative that deserves to be mentioned is *Sacrum*, a Professional Platform for Religious Heritage and Related Industries in Spain. It is a non-profit entity of a professional, commercial and cultural nature. It aims to create a

¹⁶⁹ Article 25 of the Law of Patronage. See on this topic **M. RODRÍGUEZ BLANCO**, *Las confesiones religiosas*, cit., pp. 111-112; **R. BENEYTO**, *Régimen tributario*, cit., p. 337 ss. The Decree-Law 6/2023, December 19 modified the Law on Patronage on this matter, extending the scope of these agreements.

¹⁷⁰ The webpage of this company details the project funded since 1998 (<https://www.fundacionendesa.org/es/cultura/proyectos-de-iluminacion>). As can be seen most of the projects of enlightenment have religious heritage as beneficiaries.

¹⁷¹ Cfr. **M. RODRÍGUEZ BLANCO**, *Las confesiones religiosas*, cit., pp. 111-112.

¹⁷² See **S. MESSEGUER**, *La gestión del patrimonio*, cit., p. 485. More information on the project can be found at <http://www.catedralvitoria.com/index.php>.

¹⁷³ This series of exhibitions of cultural assets began in 1998, and continue today. There have been 26 editions, some of them abroad. See at <https://lasedades.es/exposiciones/>.

¹⁷⁴ (<https://crowdfunding.hispanianostra.org>). There are already some examples of this kind of crowdfunding of the religious heritage. See the restoration of the organ of a small church in the province of Segovia: (<https://crowdfunding.hispanianostra.org/organo-escalona-prado-segovia/3495>).

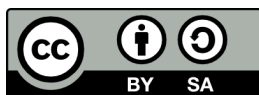


professional platform that integrates all groups linked to the religious world, as well as groups, entities, institutions and individuals who demand these products and services¹⁷⁵. It promotes exhibitions, conferences, contests, and other activities to achieve that goal.

Besides, the wide field of non-profit entities may be a source of income or a way to raise money. The civil associations, usually called “asociación de amigos”, bridge the private initiative and the public policies. These private associations, usually related to one or several assets -typically, a cathedral or a museum - promote the conservation of the heritage, its diffusion, and so on, through fundraising activities, organizing events that contribute to the knowledge and preservation of the assets, and even volunteering, as the Law on volunteering includes the culture in its scope¹⁷⁶.

6 - Conclusions

The protection of religious heritage is at a crossroads. The developments of society, both civil and ecclesiastical, pose some challenges that are still to be solved. A significant number of ancient religious buildings are abandoned, or religious assets are used for a different aim than their original ones. Indeed, the religious element should somehow be preserved to be faithful to history. At the same time, this reality requires new ways of dealing with the heritage. The solution is not at all uniform. Rural and urban areas meet very different difficulties. In rural areas, depopulation requires the implication of the whole community to save the heritage. In urban areas, tourism may be an opportunity, but also a risk for the heritage. Besides, disruptive technologies and artificial intelligence can make heritage more accessible to everyone, but they can also deprive people of the contemplation of real works of art, which nothing can really replace. Balancing all these elements is a complex task, but absolutely unavoidable.



¹⁷⁵ (<https://sacrumexpo.com>).

¹⁷⁶ Law 6/1996, January 15, of Volunteering, sect. 4.