

DECREE LAW NB. 25 OF NOVEMBER 1937 (*)¹

Concerning the protection of the national historical and artistic heritage

The President of the Republic of the United States of Brazil, exercising the powers vested in him under article 180 of the Constitution, decrees:

CHAPTER 1

THE NATIONAL HISTORICAL AND ARTISTIC HERITAGE

Article 1 – The national historical and artistic heritage shall comprise all movable and immovable property existing in the country, the preservation of which is in the public interest either because of its connection with memorable events in the history of Brazil or because of its exceptional archaeological, ethnographic, bibliographic or artistic value.

Paragraph 1 – The property referred to in this article shall only be regarded as an integral part of the national historic and artistic heritage when the items concerned have been entered, separately or in groups, in one of the four registers referred to in Article 4 of this law.

Paragraph 2 – Both the natural monuments and sites and landscapes worthy of preservation and protection by virtue of the outstanding qualities with which they have been endowed by nature or human agency, shall be classified with the property referred to in this article and must also be registered.

Article 2 – This law shall apply to items belonging both to individuals and to corporate bodies under private law and domestic public law.

Article 3 – The national historical and artistic heritage shall not include works of foreign origin.

- (1) belonging to diplomatic or consular missions accredited to the country;
- (2) decorating vehicles belonging to foreign companies operating in the country;
- (3) included among the items of property referred to in Article 10 of the introduction to the Civil Code and still subject to the personal law applicable to the owner;
- (4) belonging to companies dealing in historical or artistic objects;
- (5) brought into the country for commemorative, educational or trade exhibitions.

Paragraph 1 – The National Historical and Artistic Heritage Department (*)² shall provide authorization for the free movement of the works mentioned under (4) and (5) above.

- 1- Published by the Union's Daily Journal of 6 December 1937 and republished in the Union's Daily Journal of 11 December 1937.
- 2- Instituto do Patrimônio Histórico e Artístico Nacional (IPHAN)

Chapter II

REGISTRATION

Article 4 – The National Historical and Artistic Heritage Department shall keep four registers in which the works referred to in Article 1 of this law shall be entered as follows:

- (1) The Archaeological, Ethnographic and Landscape Register shall contain entries concerning property classified as archaeological, ethnographic, Amerindian or folk art as well as those mentioned in paragraph 2 of Article 1;
- (2) The Historical Register shall contain entries concerning property of historical interest and works of art of an historical nature;
- (3) The Fine Arts Register shall contain entries concerning works classified as national or foreign works of applied art.

Paragraph 1. Each of the registers may consist of several volumes

Paragraph 2 – Property included in the categories listed under (1), (2), (3) and (4) of this article shall be defined and specified in the regulations for the execution of this law.

Article 5. Property belonging to the Union, States and Municipalities shall be registered as a matter of course by order of the Directory of the National Historical and Artistic Heritage Department. However, the act of registration must be notified to the body to which the property belongs or which has the care thereof, with a view to producing the necessary effects.

Article 6. The registration of property belonging to individuals or corporate bodies under private law be effected on a voluntary or on a compulsory basis.

Article 7. Registration shall be effected on a voluntary basis whenever the owner requests, in the opinion of the Advisory Board of the National Historical and Artistic Heritage Department, the property meets the requirements for classification as an integral part of the national historical and artistic heritage or whenever the owner assents in writing to a notice requiring the property to be entered in one of the registers.

Article 8. Compulsory registration shall be effected when the owner refuses to agree to registration of the property.

Article 9. Compulsory registration shall be effected in accordance with the following procedures:

- (1) the National Historical and Artistic Department shall, through its competent agency, serve upon the owner a notice requiring him to agree to the registration within 15 days of receipt of the notice or, if he objects thereto, to state within the same period the reason for his objection;
- (2) if no objection is received within the prescribed period, which may under no circumstances be extended, the Director of the National Historical and Artistic Department shall simply issue an order directing that the property be entered in the appropriation register;
- (3) if the objection is lodged within the prescribed period, it shall be notified within a further period of 15 days which may under no circumstances be extended, to the body that initiated the process of registration, with the request that the said body should furnish the grounds for its initiative. The case shall then be referred regardless of costs, to the Advisory Board of the National Historical and Artistic Heritage Department that shall take a decision thereon within 60 days of its receipt. This decision is irrevocable.

Article 10. The registration of the property referred to in Article 6 of this law shall be deemed provisional or definitive, depending on whether the procedure is initiated by notification or concluded by the entry of the said property in the appropriate register.

Paragraph 1. For all purposes, barring the provision under Article 13 of this law, provisional registration shall be deemed equivalent to definitive registration.

CHAPTER III

Article 11. Registered property belonging to the Union, States or Municipalities, being inalienable by nature, may be transferred only from the aforesaid entities to another.

Paragraph 1. Following transfer of property, the party entering into possession shall report the transaction immediately to the National Historical and Artistic Heritage Department.

Article 12. Then inalienability of the registered historical and artistic works owned by individuals or by corporate bodies under private law shall be restricted in accordance with the provision of this law.

Article 13. The definitive registration or privately owned property shall, at the instance of the competent agency of the National Historical and Artistic Heritage Department, be entered for all due purposes in the register kept by the registrars of property and noted alongside the record ownership.

Paragraph 1. In the event of transfer of ownership of the property referred to in this article, the new owner shall see to it that the transfer is registered within 30 days, subject to a fine equal to 10 per cent of the value of the property even in the case of transfers by court order or *causa mortis*.

Paragraph 2. In the event of a change in the location of such property, the owner shall, within the same period and subject to the same fine, enter the property in the register of the place to which it has been moved.

Paragraph 3. Any transfer shall be notified by the recipient and any change of location shall be notified by the owner to the National Historical and Artistic Heritage Department.

Article 14. Registered property may not be removed from the country, save for a short period, without transfer of ownership and for cultural exchange or purposes, at the discretion of the Advisory Board of the National Historical and Artistic Department.

Article 15. Any attempt to remove registered property from the country under circumstances other than those provided for in the preceding article shall be punishable by confiscation of the property by the Union or by the State in which it is located.

Paragraph 1. If the owner is found responsible, he shall incur a fine equal to 50 per cent of the value of the property, which shall be withheld, by way of surety, until such time as the fine is paid.

Paragraph 2. If the offence is repeated, the fine shall be doubled.

Paragraph 3. In addition to incurring the fine referred to in the previous paragraphs, any person attempting to remove registered property from the country shall be subject to the penalties prescribed in the Penal Code for the crime of smuggling.

Article 16. The owner shall report the loss or theft of any item of registered property to the National Historical and Artistic Heritage Department within five days. Failure to do so shall be punishable by a fine equal to 10 per cent of the value of the property.

Article 17. Under no circumstances may be registered property be destroyed, demolished or disfigured nor may be repaired, painted or restored,

without the special prior authorization of the National Historical and Artistic Heritage Department. Offences shall be punishable by a fine equal to 50 percent of the value of the damage caused.

Paragraph 1. In the case of property belonging to the Union, States or Municipalities, the authority responsible for infringement of the provision of this article shall itself incur the fine.

Article 18. Without the prior authorization of the National Historical and Artistic Heritage Department, no construction that impedes or impairs the view of the registered property may be erected nor any advertisements or bills posted in the vicinities of the said object.

Article 19. Any owner of the registered property who is unable to undertake necessary preservation and repair works owing to a lack of funds shall notify the National Historical and Artistic Heritage Department of the need of such works. Failure to do so shall be punishable by a fine equal to twice the amount at which any deterioration in the said property is assessed.

Paragraph 1. Upon receipt of the notification and having verified that the works are necessary, the Director of the National Historical and Artistic Department shall have them carried out at the expense of the Union, a time limit of six months being set for initiation of the works or take steps to have the owner expropriated.

Paragraph 2. In the event of failure to comply with any of the measures referred to in the preceding paragraph, the owner may apply for deletion of the property from the register.

Paragraph 3. When it has been established that registered property is urgently in need of preservation or repair, the National Historical and Artistic Heritage Department may plan or execute the work on its own initiative and at the expense of the Union, without waiting for the notification by the owner referred to in this article.

Article 20. Registered property shall be subject to permanent supervision by the National Historical and Artistic Heritage Department, which may inspect the property whenever it considers fit. Owners or custodians of the property who seek to hinder the inspection shall incur a fine of 100.000 réis, or double that amount if the offence is repeated.

Article 21. Offences against the property referred to in Article 1 of this law shall be regarded as offences against the national heritage.

Article 22. If registered property belonging to an individual or to a corporate body under private law is to be sold, the Union, the States and the Municipalities shall, in that order, have a right of pre-emption in respect of such property.

Paragraph 1. It shall not be permissible to dispose of such property until it has been offered, at the same price, to the Union, States and Municipalities in which it is situated. The owner shall notify the holders of the right of pre-emption that they have 30 days in which to exercise the said right, following which it shall be forfeit.

Paragraph 2. Any form of disposal of registered property that fails to comply with the provisions of the preceding paragraph shall be null and void. Holders of a right of pre-emption may seize the propriety and impose a fine of 20 percent of the value thereof on the seller and purchased, who shall be severally liable for payment of the fine. The nullification shall be pronounced, in the legally required form, by the judge who grants the sequestration order, which shall be lifted only after payment of the fine, provided that none of the holders of the right of pre-emption has purchased the property within the prescribed period of 30 days.

Paragraph 3. The right of pre-emption shall not debar the owner freely encumbering the registered property with a pledge, antichresis or mortgage.

Paragraph 4. Registered property may not be sold by court order unless the holders of the right of pre-emption have been notified of the sale by the court. Any public notices of sale issued before such notification has been given shall be null and void.

Paragraph 5. The holder of the right of pre-emption shall enjoy the right of remission, if it is not exercised by the person in whom such power is legally vested, until such time as the instrument of public sale or the adjudication order has been signed.

Paragraph 6. The right of remission on the part of the Union, the State and the Municipality in which the property is situated may be exercised for up to five days following the signing of the instrument of public sale or the adjudication order. The deed may not be executed before expiry of the period, save where the party acquiring the property through public sale or pursuant to the adjudication order is one of the holder of the right of pre-emption.

CHAPTER V

GENERAL PROVISIONS

Article 23. The Executive shall make arrangements for the conclusion of agreements between the Union and the states, with a view to improved co-ordination and development of activities relating to the protection of the national historical and artistic heritage and standardization of complementary State legislation in that field.

Article 24. In addition to the National History Museum and the National Museum of Fine Arts, the Union shall maintain as many other national museums as are necessary for the preservation and display of national and artistic works in its

possession. It shall furthermore take steps to promote the establishment of State and Municipal museums with similar aims.

Article 25. The National Historical and Artistic Heritage Department shall seek to reach agreement with the church authorities, scientific, historical or artistic institutions, individuals and corporate bodies with a view to obtaining their co-operation on behalf of the national historical and artistic heritage.

Article 26. Dealers in antiquities, works of art of any kind, manuscripts and old and rare books shall register on a special basis with the National Historical and Artistic Heritage Department. Furthermore, they shall provide that department with comprehensive lists of the historical and artistic property in their possession every six months.

Article 27. Auctioneers intending to sell items of the kind referred to in the preceding article must submit a list of the articles to the competent agency of the National Historical and Artistic Heritage Department, failing which they shall incur fine of 50 percent of the value of the article sold.

Article 28. No article of the kind referred to in Article 26 of this law may be offered for sale by dealers or auctioneers, unless it has been previously authenticated by the National Historical and Artistic Heritage Department or by an expert approved by that Department. Offences shall be punishable by a fine equal to 50 percent of the value assigned to the object.

Paragraph 1. The aforementioned object shall be authenticated upon payment of a valuation fee equal to 5 percent of the article's value, if the later amount is less than or equal to 1,000 *mil réis* plus five *mil réis* per thousand *mil réis* or part thereof for values in excess of that amount.

Article 29. The holder of a right of pre-emption shall have a special claim over the precedents of the public sale of the registered property in connection with the payment of fines imposed for infringement of this law.

Paragraph 1. Only those claims entered in the appropriate register prior to the registration of the property by the National Historical and Artistic Heritage Department shall have priority over the claim referred to in this article.

Article 30. Any legislation contrary to the provisions of this law is hereby repealed.

Rio de Janeiro, November 30, 1937, 116th year of the Independence and 49th year of the Republic.

GETÚLIO VARGAS

Gustavo Capanema

Getúlio Vargas - President of the Republic of the United States of Brazil

Gustavo Capanema - Minister of Education and Culture