

DISCLAIMER: This document constitutes an uncertified/non-official English translation of the Federal Act on the Return of Unlawfully Removed Cultural Objects (Return of Cultural Objects Act – RCOA). For legal purposes, only the authentic text of the Federal Act, as it appears in the Federal Gazette, should be used. Whilst every effort was made to provide accurate information, The Federal Chancellery cannot take responsibility for the accuracy or linguistic quality of the text.

Entire text of the Return of Cultural Objects Act, version as at 16.02.2017

Complete title

Federal Act on the Return of Unlawfully Removed Cultural Objects (Return of Cultural Objects Act – RCOA)

Original version: Federal Gazette I Nr. 19/2016 (NR: GP XXV RV 880 AB 1015 S. 119. BR: AB 9550 p. 852.)

[CELEX-Nr.: 32014L0060]

Other text

The National Council has decided:

Preamble/promulgation clause

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**Section 1
General provisions
Objective**

§ 1. This Federal Act governs the implementation of Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) Nr. 1024/2012 (recast), Official Journal L 159 of 28.5.2014 p. 1 as well as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Federal Gazette III Nr. 139/2015.

Cultural Objects

- § 2. A “cultural object” within the meaning of this Federal Act means an object which
1. is defined or classified by a Member State, either before or after its unlawful removal, as a national treasure within the meaning of Article 36 of the Treaty on the Functioning of the European Union (TFEU), or
 2. is protected by the legislation of a State Party as part of its cultural heritage within the meaning of Articles 1, 4 and 5 of the UNESCO Convention and is recognisable as such without investing unreasonable effort or expense.

Unlawful Removal

- § 3. A cultural object has been unlawfully removed if
1. it was exported from the territory of a Member State after 31st December 1992
 - a) in breach of its legal provisions on the protection of national cultural objects or
 - b) in breach of Regulation (EC) Nr. 116/2009 on the export of cultural objects, Official Journal L 39 of 10.02.2009, p. 1,
 2. it was exported from the territory of a State Party after 31st December 2015
 - a) without an export certificate pursuant to Article 6 of the UNESCO Convention, or
 - b) after being stolen within the meaning of Article 7 letter b of the UNESCO Convention, or
 3. it was not returned to the Member State or State Party upon the expiry of a period of lawful temporary removal ending after 31st December 1992.

Unlawful Import

§ 4. It is unlawful and prohibited to import a cultural object to Austria if that cultural object was unlawfully removed from a Member State or State Party and this removal was unlawful at the time of import to Austria.

Other Definitions

- § 5. (1) “Member State” means a member state of the European Union.
- (2) “State Party” means a state which has ratified the UNESCO Convention, acceded to it or accepted it and which is bound by this Convention under international law.
- (3) “requesting State” means the Member State or State Party from whose territory the cultural object was unlawfully removed.

(4) “requested State” means the Member State or State Party in whose territory a cultural object, which has been unlawfully removed, is located.

(5) “return” means the return of the cultural object to the territory of the requesting State.

(6) “religious institutions” means legally recognised churches or religious communities including their institutions, officially registered religious confessional communities and equivalent institutions in a Member State or State Party.

(7) “possessor” means the person physically holding the cultural object on his own account.

(8) “holder” means the person holding the cultural object for third parties.

(9) “public collections” mean collections which are defined as public in accordance with the legislation of the requesting State, which are the property of the requesting State, of a local or regional authority within that requesting State, or of an institution situated on the territory of that requesting State, such institution being the property of, or significantly financed by, the requesting State or a local or regional authority.

Central Authorities in Austria

§ 6. (1) The central authorities pursuant to Article 4 Directive 2014/60/EU are the Federal Monuments Office (in cases concerning cultural objects pursuant to § 2 nr. 1) and the Austrian State Archives (in cases concerning archive materials pursuant to § 25 of the Monument Protection Act – MPA, Federal Gazette Nr. 533/1923, as amended). They must provide assistance to the central authorities of the requesting Member State when identifying unlawfully removed cultural objects.

(2) The central authorities will, using a module of the Internal Market Information System (“IMI”), established by Regulation (EU) Nr. 1024/2012 on administrative cooperation through the Internal Market Information System and repealing the Commission decision 2008/49/EC (the “IMI Regulation), Official Journal L 316 of 14.11.2012, specifically customised for cultural objects,

1. upon written request by a requesting Member State, seek a cultural object which has been unlawfully removed from its territory, as well as its possessor or holder, provided that the request includes all information required for conducting the search, in particular information about the presumed location of the cultural object,
2. notify the requesting Member State if the cultural object is found in the territory of the Republic of Austria and there are reasonable grounds for believing that the cultural object was unlawfully removed from the territory of the requesting State,
3. as far as possible, enable the competent authorities of the requesting Member State to check whether the object in question is a cultural object, provided that the check is made within six months of the notification pursuant to nr. 2,
4. to contribute to securing the cultural object according to § 22, if the check pursuant to nr. 3 is done within the timeframe stipulated,
5. act as intermediary between the owner, the possessor and the holder and the requesting State in order to achieve an amicable agreement regarding the return of the cultural object,
6. make the other notifications to the central authorities in the Member States as set out in Directive 2014/60/EU,
7. assist the central authorities of the requested Member State in clarifying the question of whether enforcement should be done in or out of court in a specific case,
8. enforce claims of the Republic of Austria to the return of unlawfully removed cultural objects as well as to reimbursement of compensation paid and expenses incurred,
9. preserve the public interest pursuant to § 1 subsection 2 MPA
 - a) in the cultural object remaining in the territory of the Republic of Austria, or
 - b) in the return of the cultural object to the territory of the Republic of Austria,
 and
10. after the customs authorities or customs bodies have discharged their duties pursuant to § 20 subsection 3, work towards clarifying whether an unlawful import has taken place.

Conventions with State Parties

§ 7. The Federal Chancellor may, if he/she possesses the relevant power pursuant to Article 66 subsection 2 of the Federal Constitutional Law, conclude conventions with the State Parties to enable recognition of cultural objects pursuant to § 2 subsection 2 by defining categories or actual objects and facilitate the enforcement of return claims of the Republic of Austria in the respective State Party.

Temporary Measures

§ 8. If, due to extraordinary circumstances, such as a natural disaster or armed conflict, a State Party is not able to protect its cultural objects from being unlawfully removed pursuant to § 3 nr. 2, and it is foreseeable that these cultural objects will be imported to Austria, the Federal Government may, by Regulation, enable the identification of such cultural objects by defining categories or actual objects.

Duties of Care

§ 9. Whoever trades cultural objects for a profit must

1. take measures to ensure that he/she does not transfer ownership in cultural objects which were imported unlawfully to Austria, either for or without payment, and
2. keep records identifying the cultural object and its importer and documenting the purchase and sale price as well as all export permits and keep these records on file for thirty years, starting with the transfer of ownership in the cultural object

with the due care of a proper businessperson, according to the circumstances of the individual case.

Section 2

Enforcement of Claims for Return in Austria

Requests

§ 10. (1) Within three years of becoming aware of the location of the cultural object and of the identity of the possessor or holder, the requesting State can submit a request to a court for the return of a cultural object which has been unlawfully removed and which is located in Austria. The request must be addressed to the person/entity who holds the cultural object on its own or a third party's account (referred to hereinafter as the "opponent")

(2) In order for the request to be admitted, the requesting State must attach the following documents to it:

1. a description of the cultural object,
2. a declaration that the request concerns a cultural object pursuant to § 2, and
3. a declaration that the cultural object was unlawfully removed.

(3) If a document under subsection 2 is missing, this constitutes a remediable procedural defect.

Jurisdiction of the Courts and Procedure

§ 11. (1) The request for the return of a cultural object must be submitted to the regional court competent for civil law matters in whose jurisdiction the opponent is domiciled for general judicial purposes. Unless this Federal Act provides to the contrary, the procedure is governed by the Non-Contentious Matters Act, Federal Gazette I 111/2003, as amended.

(2) If the requesting State is a Member State, the court must notify the competent central authority in Austria of the request as well as its decision on the request without delay.

(3) The Republic of Austria has party status in all proceedings concerning the return of a cultural object.

Lapse of Claims

§ 12. (1) Unless subsection 2 provides to the contrary, the claim to return lapses 30 years after the cultural object was unlawfully removed from the territory of the requesting State, regardless of when the requesting State became aware of this.

(2) In case of cultural objects pursuant to § 2 subsection 1, which form part of a public collection in the requesting State, or are included in the inventory of an ecclesiastical or religious institution, the following applies:

1. the claim to return lapses 75 years after the cultural object was unlawfully removed from the territory of the requesting State, regardless of when the requesting State became aware of this.
2. the claim to return does not lapse if it is not subject to a time limit under the legislation of the requesting State.
3. if a bilateral convention provides for a time limit of more than 75 years, the claim to return lapses upon the expiry of this longer period.

Order to Return the Cultural Object; Burden of Proof

§ 13. (1) The court must order the return of the cultural object to the requesting State by resolution, if it has accepted that the object concerned is a cultural object which has been unlawfully imported pursuant to § 4, its removal from the territory of the requesting State would have been unlawful when the request was made and the claim to return has not lapsed.

(2) The requesting State bears the burden of proof.

Ownership of Returned Cultural Objects

§ 14. Acquisition and loss of ownership in cultural objects after their return is governed by the legislation of the requesting State, provided that the acquisition or loss of ownership relates to sets of circumstances which were completed between the unlawful removal and the return of such cultural objects.

Compensation

§ 15. (1) If a cultural object must be returned, the court must order the requesting State to pay fair compensation to the owner or possessor, if the latter proves that they exercised due care when acquiring the cultural object.

(2) In determining whether due care was exercised upon acquisition, all circumstances of the acquisition must be considered, in particular the documentation of the object's provenance, the export permits necessary under the legislation of the requesting State, the character of the parties, the price paid, whether accessible registers of stolen cultural objects and information which could be reasonably obtained were consulted, and whether any other step which a reasonable person would have taken in the circumstances was taken.

(3) If the owner or possessor acquired the cultural object without making payment, they only have claim to compensation to the extent that their direct legal predecessor would have been entitled to it.

(4) A pledge or other right *in rem* in a cultural object which must be returned also extends to any compensation determined by the court.

Reimbursement of Costs

§ 16. (1) The court must order the requesting State to reimburse the involved parties for the appropriate costs of enforcing and defending their legal rights, including the costs of legal representation, unless such involved parties did not exercise due care when acquiring the cultural object.

(2) Furthermore, the court must order the requesting State to reimburse all foreseeable expenses of returning the cultural object and the costs of any measures necessary for its physical preservation (such as the costs of measures to secure pursuant to § 22) to the involved party bearing (or which bore) these costs.

(3) The requesting State must pay the compensation determined by the court pursuant to § 15 and the costs determined under subsections 1 and 2 concurrently with the return of the cultural object. In cases falling under § 15 subsection 4, the compensation must be placed on deposit.

Coincidence of Claims

§ 17. (1) The claim of an owner for restitution of a stolen cultural object takes precedence over the requesting State's claim for return.

(2) If a civil law proceeding for the restitution of the cultural object is pending, the proceeding for the return of the unlawfully removed cultural object may be stayed until a final and legally binding decision has been made in the restitution proceeding.

(3) The requesting State's claim for return is without prejudice to any criminal law measures.

Section 3

Claims for Return of the Republic of Austria

Enforcement

§ 18. (1) The enforcement of the claim for return of an unlawfully removed cultural object by the Republic of Austria as a requesting State, whether done in or out of court, must be carried out by the central authority if it concerns a cultural object pursuant to § 2 nr. 1. Unless there is imminent danger, the consent of the Federal Chancellor must be obtained prior to enforcement before the courts.

(2) The central authority must give written confirmation to the central authority of the requested State that export was unlawful or, if a court proceeding in the matter is already pending, to the court in the requested State.

(3) If the public interest in preservation pursuant to § 1 subsection 2 MPA has not yet been determined by decree and there is no preliminary protection pursuant to § 2 MPA or § 2a MPA, but the export was unlawful pursuant to section 16 subsection 1 MPA, the central authority must initiate a proceeding for the confirmation of public interest by decree. The initiation of the proceeding will have the effect of protection by virtue of legal presumption until the central authority enacts a decree.

Reimbursement of Compensation Paid and Costs Incurred; Preservation and Transfer of Ownership in Returned Cultural Objects

§ 19. If an unlawfully removed cultural object is returned, the person (or persons, who are jointly and severally liable) responsible for the unlawful export of the cultural object must reimburse the Republic of Austria for any compensation it must pay according to the decision of the court in the requested State as well as other costs incurred by the Republic of Austria.

Section 4

Concluding Provisions

Cooperation of other Authorities

§ 20. (1) The Federal Police must provide assistance to the competent authorities and bodies upon their request to ensure that those authorities and bodies are able exercise their powers within the scope of their respective statutory spheres of action.

(2) The central authorities as well as the other governmental departments charged with executing this Federal Act may make use of the legal representation and advice services of the Federal Attorney according to the Federal Attorney Act, Federal Gazette I Nr. 110/2008, as amended.

(3) The customs authorities and customs bodies must cooperate in executing the prohibition on unlawful import under § 4 within the scope of the powers conferred upon them pursuant to § 26 Customs Law Implementation Act (CLIA), Federal Gazette Nr. 659/1994, as amended. If a cultural object is registered for a customs procedure or is discovered when applying customs law and there are sufficient indications of unlawful import, then – without prejudice to acceptance of the registration – disposals over the cultural object must be prohibited and the central authority notified without delay in order to clarify whether the import was lawful. For the remainder, § 29 CLIA applies.

(4) The other bodies of the Federation, the federal provinces and the municipalities, and also the representation authorities of the Austrian state abroad, must provide assistance to the central authorities within the scope of their respective statutory spheres of action.

Obligation to Provide Information

§ 21. Everybody has an obligation to provide the central authorities and the other competent authorities and courts in Austria with all information necessary for preparing or carrying out proceedings based on this Federal Act and to permit the inspection and academic examination of cultural objects which may have been unlawfully exported, as well as any objects associated with the cultural object, or objects which must be examined for the purposes of comparison. This does not affect any statutory confidentiality obligations or statutory rights to remain silent.

Measures to Secure

§ 22. (1) If there is a danger that an unlawfully imported cultural object will be prevented from being returned to a Member State or State Party from whose territory that cultural object was unlawfully removed, the competent district administrative authority must, upon the request of the Federal Monuments Office or, in cases concerning archive materials pursuant to § 25 MPA, the Austrian State Archive, register the cultural object or order that it is placed in mandatory custody or issue other appropriate measures to secure it.

(2) The Federal Monuments Office and the Austrian State Archive have the right as parties to raise a complaint of illegality against decrees enacted under subsection 1 pursuant to Article 132 subsection 5 of the Federal Constitutional Law and final complaints pursuant to Art 133 para 8 of the Federal Constitutional Law, Federal Gazette Nr. 1/1930, as amended.

Sanctions

§ 23. (1) Whoever intentionally

1. imports a cultural object to Austria in breach of the provisions of § 4, or transfers ownership in such a cultural object for or without payment in breach of § 9 nr. 1, or
2. renders measures to secure pursuant to § 22 ineffective, or breaches such measures,

will be punished by the district administrative authority with a fine of up to EUR 50,000. The attempt is also punishable.

(2) Whoever

1. intentionally omits to keep records pursuant to § 9 nr. 2, or
2. intentionally destroys such records prematurely

will be punished by the district administrative authority with a fine of up to EUR 25,000.

(3) Whoever intentionally omits to provide information pursuant to § 21 will be punished by the district administrative authority with a fine of up to EUR 5,000.

Exemption from Duties

§ 24. Procedures carried out on the basis of this Federal Act are exempted from administrative duties.

Execution

§ 25. (1) The Federal Minister for Justice is charged with the execution of §§ 10 to 17, to the extent that this concerns enforcement before the courts.

(2) The Federal Minister for Finance is charged with the execution of § 20 subsection 3.

(3) The Federal Chancellor is charged with the execution of the remaining provisions.

Entry into Force, End of Effectiveness

§ 26. This Federal Act enters into force on the expiry of the day when it is announced. At the same time, the Federal Act implementing the Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State, Federal Gazette I Nr. 67/1998, last amended by the Federal Act published in the Federal Gazette I Nr. 112/2003 and the Regulation of the Federal Minister for Education and Cultural Affairs setting out the categories of cultural objects within the meaning of the Federal Act implementing the Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State, Federal Gazette II Nr. 483/1999, ceases to be effective.