

Remark:

The Act on the Protection of Cultural property (Cultural Property Protection Act – KGSG) of 31 July 2016 [entry into force on 6 August 2016] replaced the Act of 18 May 2007 given below. This Act of 2007 is not in force anymore; however, it has relevance with regard to the Act of 2016 (Section 52 (3) KGSG) in cases in which the cultural property is proven of having been located in Germany or the EU single market prior to 6 August 2016.

Act

**implementing the UNESCO Convention of 14 November 1970
on the means of prohibiting and preventing the illicit import,
export and transfer of ownership of cultural property**

(Act Implementing the Cultural Property Convention)
(*Ausführungsgesetz zum Kulturgutübereinkommen – KGÜAG*)*)

of 18 May 2007

The *Bundestag* has adopted the following Act:

Act

**implementing the UNESCO Convention of 14 November 1970
on the means of prohibiting and preventing the illicit import,
export and transfer of ownership of cultural property
and implementing**

**Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects
unlawfully removed from the territory of a Member State**

(Act on the Return of Cultural Property)
(*Kulturgüterrückgabegesetz – KultGüRückG*)

**Chapter 1
General provisions**

**Section 1
Definitions**

(1) “Cultural Property Convention” means the UNESCO Convention of 14 November 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (Federal Law Gazette [*Bundesgesetzblatt*] 2007, Part II, p. 626).

(2) “State Party” means any State which has ratified, acceded to or accepted the Cultural Property Convention.

*) Article 1 of this Act shall serve to implement Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 74, p. 74), most recently amended by Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001 (OJ L 187, p. 43).

(3) “Protected German cultural property” means objects which are protected under the Act to Prevent the Exodus of German Cultural Property in the version published on 8 July 1999 (Federal Law Gazette, Part I, p. 1754), as modified by Article 71 of the Regulation of 29 October 2001 (Federal Law Gazette, Part I, p. 2785), as amended, through entry in the “*Verzeichnis national wertvollen Kulturgutes*” [register of cultural objects of national importance] or the “*Verzeichnis national wertvoller Archive*” [register of archives of national importance] or for which registration has been initiated and notice of the initiation of registration has been published.

Section 2

Central authorities

The Federation and the *Länder* shall each appoint their central authorities.

Chapter 2

Assertion of claims for the return of protected German cultural property

Section 3

Claims for return against other Member States of the European Union

Claims for the return of cultural property which has been unlawfully removed to the territory of another Member State of the European Union shall be asserted extrajudicially and judicially by the *Länder*, in consultation with the central federal authority, in the respective Member State of the European Union within the scope of the provisions in force in that Member State.

Section 4

Claims for return against other States Parties

Claims for the return of cultural property which has been unlawfully removed to the territory of another State Party shall be made through diplomatic offices.

Section 5

Ownership

(1) Ownership of protected German cultural property which is returned to the territory of the Federal Republic of Germany upon request under the terms of this Act shall be governed by the provisions of German property law.

(2) Claims and rights to cultural property under civil law shall not be affected by claims for return within the meaning of section 6 of this Act.

Chapter 3

Claims of other States for return

Section 6

Conditions for an obligation to return

(1) An object which was unlawfully removed to the territory of the Federal Republic of Germany from the territory of another Member State of the European Union after 31 December 1992 shall be returned to that Member State at its request if

1. this object, before its removal, or, in the case of archaeological objects that were unknown prior to their removal, within one year after the competent authority of the Member State concerned was able to gain knowledge of the object, was publicly classified under the national legislation or administrative procedures of the requesting Member State as a national treasure possessing artistic, historic or archaeological value within the meaning of Article 30 of the Treaty establishing the European Community or its classification as a national treasure had been initiated and notice of the initiation of classification had been published, and
2. the object either
 - a) belongs to one of the categories listed in the Annex to Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 74, p. 74), most recently amended by Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001 (OJ L 187, p. 43) or
 - b) is listed as part of a public collection in the inventory of a museum, an archive or a religious institution or in the inventory of a library's conservation collection and the collection itself or the institution to which it belongs is equivalent to a public institution under the legislation to which it is subject.

(2) An object which was unlawfully removed to the territory of the Federal Republic of Germany from the territory of another State Party after 26 April 2007 shall be returned to that State Party at its request if

1. this object, before its removal, or, in the case of archaeological objects that were unknown prior to their removal, within one year after the competent authority of the State Party concerned was able to gain knowledge of the object, was, on religious or secular grounds, specifically designated by the requesting State Party as being of importance for archaeology, pre-history, history, literature, art or science or its designation had been initiated and notice of the initiation of designation had been published, and
2. the object belongs to one of the categories specified in Article 1 of the Cultural Property Convention.

An object shall be deemed to be "specifically designated as being of importance" within the meaning of sentence 1, number 1, if it has been individually identifiably entered by another State Party in a list of important public and private cultural property. The list must be publicly accessible without unreasonable obstacles in the territory of the Federal Republic of Germany. If it cannot be ascertained whether an object which was specifically designated before 26 April 2007 as being of importance within the meaning of sentence 1, number 1, was brought into the

territory of the Federal Republic of Germany before or after this date, it shall be deemed to have been brought into the territory of the Federal Republic of Germany after this date.

(2a) If, due to civil commotion, armed conflict or comparable circumstances, the requesting State is prevented from initiating the classification or designation or publishing notice of such initiation within the period specified in subsection (1), number 1, or subsection (2), sentence 1, number 1, the period shall not begin to run until these circumstances have ceased to exist.

(3) Rights acquired by the possessor or third parties on the basis of contractual disposition or disposition by way of judicial execution or execution of an attachment order shall not conflict with the obligation to return.

(4) Cultural property shall be deemed to have been unlawfully removed from the territory of another State if its export was in breach of the rules of that State on the protection of cultural property.

(5) Unlawful removal shall also mean any failure to return an object at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.

(6) The costs of return and of the measures necessary to secure and preserve the cultural property in question shall be borne by the requesting State.

Section 7

Party claiming return, party obliged to return

(1) The claim for return shall accrue to the Member State of the European Union or State Party from whose territory the cultural property was unlawfully brought into the territory of the Federal Republic of Germany.

(2) The party obliged to return shall be the person physically holding the cultural property on his own account or for a third party.

Section 8

Procedure for effecting and securing return

(1) The *Länder* shall be responsible for the measures necessary to locate, secure and return returnable cultural property.

(2) If the authorities competent for the return of cultural property become aware of cultural property which is strongly suspected to have been unlawfully brought into the territory of the Federal Republic of Germany from another Member State of the European Union or State Party and is to be returned to that State, they shall issue a stop-removal order for the same or ensure that a stop-removal order is issued by the respective competent authority. Such stopping of removal shall be reported to the central federal authority without delay.

(3) The cultural property covered by the stop-removal order may only be passed on to other persons or institutions with the written consent of the competent central authority of the *Land* concerned.

(4) It shall be prohibited for cultural property covered by a stop-removal order pursuant to subsection (2) to be exported, withheld from the competent authority, damaged or destroyed.

(5) The stop-removal order shall be rescinded if none of the Member States of the European Union or States Parties to be notified by the competent central authorities pursuant to section 12 request the return of the cultural property covered by the order within the stipulated period. A request for return must be submitted to the competent central authority within two months. The period shall begin to run upon receipt of the notice of the stop-removal order by the competent authority of the Member State of the European Union or State Party from whose territory the cultural property was unlawfully removed. The claim for return must be substantiated.

(6) The cultural property covered by the stop-removal order shall be secured in accordance with *Land* legislation if there is reason to fear that its return to the requesting State may be hindered or that it may sustain damage.

Section 9

Ownership of returned cultural property

Ownership of cultural property after return shall be governed by the property law of the requesting State.

Section 10

Compensation

(1) The party obliged to return the cultural property shall be obliged to return it only upon payment of fair compensation, unless the requesting State furnishes proof that at the time such party acquired the cultural property he was aware that it had been unlawfully removed from the territory of the requesting State or was unaware of this fact due to gross negligence. When determining the amount of compensation, deprivation of use of the cultural property shall be taken into account, fairly weighing the interests of the general public against those of the party obliged to return it. Compensation for lost profits and for other economic losses not directly connected with deprivation of use shall be paid to the party obliged to return the cultural property if and insofar as this appears called for in order to avert or offset undue hardship.

(2) Compensation shall be paid by the requesting State.

(3) If the requesting State promises in writing that the rights of the party obliged to return the cultural property shall not be affected by its return, the requesting State must only reimburse that party for the costs he incurred in trusting that he would be able to keep the cultural property in the territory of the Federal Republic of Germany.

(4) If the returnable cultural property was donated, bequeathed or left to the party obliged to return it, he shall bear the burden of the donor's or testator's breach of the duty to exercise due care.

Section 11

Limitation period and expiration of the claim for return

(1) The claim for return of the requesting State shall be time-barred one year after its authorities become aware of the location of the cultural property and the identity of the party obliged to return it. The provisions of the German Civil Code [*Bürgerliches Gesetzbuch*] regarding suspension and recommencement of the limitation period shall apply *mutatis mutandis*. The claim for return shall, however, expire no later than 30 years after the cultural property was unlawfully exported from the requesting State.

(2) In the case of cultural property forming part of a public collection of the requesting State within the meaning of section 6 subsection (1), number 2, letter b, the claim for return shall expire after 75 years. This claim for return shall not expire, however, if and insofar as it is not subject to a limitation period and a time limit for expiration under the law of the State requesting return.

(3) If the competent authority of the requesting State subsequently issues a valid export licence for unlawfully exported cultural property, the return of such property may no longer be requested. The same shall apply if such export becomes lawful on the basis of a change in legislation which subsequently enters into force.

Section 12

Tasks of the Federation and the central authorities of the *Länder*

(1) The central authorities of the *Länder* shall in particular carry out the following tasks associated with the repatriation of cultural property of Member States of the European Union or of States Parties which has been unlawfully brought into the territory of the Federal Republic of Germany:

1. Upon application by the requesting State, seek a specified item of cultural property which has been unlawfully removed from its territory and identify the owner or possessor. The application must include all information needed to facilitate this search, in particular published notice of the item's classification as cultural property of national importance and references to its actual or presumed location;
2. enable the competent authorities of the requesting State to check that the object in question of the requesting State is an item of cultural property, provided that such check is made within two months of the notification provided for in subsection (2), number 1, or a notification through diplomatic offices. If such check is not made within the stipulated period, the obligations specified in numbers 3 and 4 shall cease to exist;
3. carry out and, where required, order the implementation of any necessary measures, in cooperation with the State concerned, for the physical preservation of the cultural property;
4. prevent, by the necessary interim measures, any action to evade the return procedure.

(2) In respect of requests for return by Member States of the European Union, the central authorities of the *Länder* shall in addition carry out the following tasks:

1. Notify the Member States of the European Union concerned, where cultural property is found and there are reasonable grounds for believing that it has been unlawfully removed from the territory of another Member State of the European Union;
 2. act as an intermediary between the owner or possessor and the requesting Member State of the European Union with regard to return. *Land* law may provide that, irrespective of the initiation of return proceedings, the claim for return shall first be clarified in an arbitration procedure, insofar as the party claiming return and the party obliged to return are in agreement on this point.
- (3) In respect of requests for return by States Parties which are not Member States of the European Union, the Federal Foreign Office, in cooperation with the central federal authority, shall in particular carry out the tasks described in subsection (2) through diplomatic offices.

Section 13 **Initiation of return proceedings by the requesting State**

- (1) Irrespective of the possibility of seeking an amicable settlement regarding the return of cultural property, the requesting Member State of the European Union or State Party may initiate return proceedings before an administrative court against the party obliged to return.
- (2) Proceedings may be initiated three months after the request for return is received by the competent central authority. The statement of claim must be accompanied by a description of the contested object and by the documents and declarations necessary to prove that the conditions have been fulfilled.
- (3) The burden of proof of the existence of a claim for return, the claim to compensation of the party obliged to return and the circumstances of relevance for the amount of compensation shall be governed by German law.
- (4) If the court finds for the plaintiff, it shall at the same time rule on the compensation to be paid to the defendant.
- (5) Section 6 subsection (6) shall remain unaffected.
- (6) Without prejudice to the action taken by the State, the entitled party shall be free to enforce his rights against the possessor through recourse to the ordinary courts of law.

Chapter 4

Provisions for the protection of important cultural property of other States

Section 14

Licence requirement

- (1) A licence shall be required in order to bring objects entered in the list of important cultural property of the States Parties into the territory of the Federal Republic of Germany.
- (2) The list of important cultural property of the States Parties shall be compiled by the Federal Government Commissioner for Culture and the Media and updated as necessary. This task may be assigned to the central federal authority. The list shall contain the individually identifiable objects which have been specifically designated by the States Parties as being of importance within the meaning of Article 1 of the Cultural Property Convention as well as a reference to whether export from the State of origin is prohibited in principle on the basis of legislation for the protection of cultural property. Each entry and any changes thereto shall be published in the Federal Gazette.
- (3) The Federal Government shall be authorized to issue ordinances not requiring the consent of the *Bundesrat* to regulate the procedure and the conditions for compiling, maintaining and updating the list.

Section 15

Licence

- (1) The licence shall be issued if the export of the object from the State of origin is not prohibited.
- (2) The central federal authority shall be responsible for issuing the licence.

Section 16

Involvement of the customs authorities

- (1) The direct removal of objects from third countries as well as the export of cultural property which is subject to
1. the Act to Prevent the Exodus of German Cultural Property
 2. an import or export regulation issued by the European Communities
- shall be subject to supervision by the customs authorities within the area of application of this Act.
- (2) The Federal Ministry of Finance shall be authorised, in agreement with the Federal Government Commissioner for Culture and the Media, to regulate the details of the procedure indicated in subsection (1) by way of ordinances not requiring the consent of the *Bundesrat*, in particular concerning the obligations to notify, declare, furnish information and provide ancillary assistance as well as the obligations to tolerate inspection of business papers and other

documents and to tolerate examinations and the taking of samples and specimens without payment.

Section 17

Seizure and confiscation by the customs offices

(1) If, within the framework of supervision by the customs authorities pursuant to section 16 subsection (1), doubts arise as to whether the removal of objects requires a licence pursuant to section 14 subsection (1) or whether the licence presented is lawful, the competent customs office may, until such doubts are clarified, impound the objects or have them impounded by a third party at the expense of the person with the right of disposal over them. To clarify the doubts, the customs office may demand that the person with the right of disposal produce a certificate, issued by an independent expert institution or expert who has been recognized as such by the Federal Government Commissioner for Culture and the Media, confirming that the objects in question are not objects contained in the list within the meaning of section 14 subsection (2).

(2) If it is found during customs handling that objects have been brought into the territory of the Federal Republic of Germany without the prescribed licences, they shall be seized by the competent customs office. If the prescribed licences are not produced within one month of seizure, the competent customs office shall order the objects confiscated; the time limit may be extended for a reasonable period but not exceeding a total of six months.

(3) If objects are seized or confiscated, the costs thus incurred, in particular for proper storage, movement or return shipment, shall be imposed upon the importer. If the importer cannot be identified, the costs shall be imposed upon the sender, the carrier or the person placing the order if such party was aware of the circumstances that gave rise to the seizure or confiscation.

(4) The Federal Government Commissioner for Culture and the Media shall publish notice of the independent expert institutions and experts within the meaning of subsection (1), sentence 2, in the Federal Gazette.

Section 18

Recording obligations in the art and antiques trade and in the auction trade

(1) The operator of an art or antique dealership or an auction house shall, in the event of purchase and sale of cultural property within the meaning of subsection (2), record the following information:

1. a description which is sufficient to establish the identity of the item of cultural property,
2. specification of its origin, if known,
3. the name and address of the seller, the supplier, the purchaser and the client,
4. the prices for purchase and sale.

He shall thereby identify the supplier and the purchaser. The records, along with the supporting documents and receipts, shall be kept on the business premises for a period of ten years.

(2) An object with a value of at least 1000 euros shall be deemed to be cultural property within the meaning of subsection (1), sentence 1, if

1. it belongs to one of the categories set out in Part A of the Annex to Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods (OJ L 395, p.1, 1996 L 267, p. 30), most recently modified by Council Regulation (EC) No 806/2003 of 14 April 2003 (OJ L 122, p. 1), as amended, and
 2. its value corresponds to at least the financial thresholds set out in Part B of the Annex to Regulation (EEC) No 3911/92.
- (3) A recording obligation pursuant to subsection (1) shall not exist if records meeting the requirements specified in subsection (1) are already being maintained and kept on the basis of general bookkeeping obligations under the German Commercial Code [*Handelsgesetzbuch*] or the German Fiscal Code [*Abgabenordnung*].

Section 19

Right to information and access

The rights to information and access to which the competent authorities and their authorized representatives are entitled for the purposes of implementation of this Chapter shall be governed by the Trade Regulation Code [*Gewerbeordnung*].

Chapter 5

Provisions governing criminal penalties and regulatory fines

Section 20

Criminal provisions

(1) Any person who

1. in contravention of section 8 subsection (4) exports cultural property covered by a stop-removal order or withholds the same from the competent authority,
2. in contravention of section 8 subsection (4) damages or destroys cultural property covered by a stop-removal order or
3. brings an object into the territory of the Federal Republic of Germany without a licence pursuant to section 14 subsection (1)

shall be punished by a term of imprisonment of up to three years or by a fine.

(1a) In cases falling under subsection (1), number 2, criminal liability pursuant to section 304 of the German Criminal Code [*Strafgesetzbuch*] shall remain unaffected.

(2) Any person who acts on a commercial or habitual basis in cases falling under subsection (1) shall be punished by a term of imprisonment of up to five years or by a fine.

Section 21
Provisions governing regulatory fines

(1) Any person who wilfully or negligently

1. in contravention of section 18 subsection (1), sentence 1, does not record information or does not do so correctly, completely or in good time,
2. in contravention of section 18 subsection (1), sentence 3, does not keep a record or does not keep it for the prescribed period of time

shall be deemed to have committed a regulatory offence.

(2) The regulatory offence may be punishable by a fine of up to fifty thousand euros.

Section 22
Powers of the customs authorities

In the event of suspicion of regulatory offences and criminal offences under this Act and under the Act to Prevent the Exodus of German Cultural Property, the competent administrative authorities and public prosecution offices may also have the main customs offices and the customs investigation offices conduct investigations (section 161, sentence 1, of the Criminal Procedure Code [*Strafprozessordnung*]). Section 37 subsections (2) to (4) of the Foreign Trade and Payments Act [*Aussenwirtschaftsgesetz*] shall apply *mutatis mutandis*.

The constitutional rights of the *Bundesrat* have been observed.

The foregoing Act is hereby signed.
It shall be promulgated in the Federal Law Gazette.

Berlin, the 18th of May 2007

The Federal President
Horst Köhler

The Federal Chancellor
Dr. Angela Merkel