

Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

GERMANY

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

Germany ratified the Convention on 30 November, 2007 (entry into force: 29 February, 2008).

2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

The Convention was implemented in national law by means of the 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 of 18 May 2007 (Federal Law Gazette I, p.757).
(Hereinafter "Act on the Return of Cultural Property").

(b) Definition of "cultural property" used by the national laws

The definition of "cultural property" in the Act on the Return of Cultural Property corresponds to that used in the Convention [see Section 6 (2), No. 2 of the Act].

The definition of "protected German cultural property" is, by contrast, provided in Section 1 (3) of the Act.

- (c) Specialized units
- (d) Administrative coordination
- (e) Working meetings

On account of Germany's federal structure, the Act on the Return of Cultural Property is executed by the 16 *Landër* (federal states). However, responsibility for coordination and contact with foreign states requesting the return of cultural property lies with the Federal Foreign Office and the Federal Commissioner for Culture and the Media. The [names of the responsible agencies](#) in the *Landër* and at federal level can be ascertained online. In addition, there is close cooperation with the customs authorities, the Federal Criminal Police Office and INTERPOL.

3. Inventories and identification

- (a) Inventories
- (b) Definition of "cultural property" and "national treasures"

The [Database of Cultural Property of National Significance](#) (*Datenbank national wertvolles Kulturguts*) is publicly accessible and available online. It contains a list of German cultural property which is subject to special protection against removal.

Section 1 (1) of the Act to Protect German Cultural Property against Removal defines which cultural objects are registered as "of national importance". The *Land* in which the cultural object is located is responsible for its registration. Both individual objects as well as collections under public or private ownership may be registered. Once the procedure has been initiated by the competent Land authority, the cultural property may no longer be transferred abroad.

Some cultural property which is not registered as "of national importance" is protected by individual *Land* legislation on the protection of architectural heritage if this provides for the registration of movable cultural property.

A [separate database](#) exists for cultural property confiscated during the National Socialist persecution and cultural property removed the Second World War. This database is also available online.

(c) Reference to the Object ID standard

The official Database of Cultural Property of National Significance contains all the relevant information on each object (type, author, material, etc.). In order to protect the owner's privacy and to protect the object against theft, the publicly accessible register does not contain information on the owner and the location of the registered cultural property. As a result, the information provided here largely corresponds to the rules on the Object-ID Standard.

(d) Systems to combat theft and to train staff

Security features and equipment in German museums, libraries and archives are generally state-of-the-art and of a high standard. Most objects are secured by effective mechanical devices. Stock which is not on display is stored in secure repositories for which special rights of access are required. Museums and other facilities keep inventories, and some have a digital inventory. Digitalization of these inventories will be further expanded in the coming years.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

The protection of archaeological monuments is regulated by the [laws on the protection of archaeological heritage of the individual Länder](#). According to these laws, archaeological excavations always require authorization. Archaeological finds must be reported. Most of the *Land* laws on the protection of archaeological heritage contain a provision known as the "law of treasure trove", which states that archaeological finds become the property of the *Land* in which they are found. Where this provision is not included in the relevant legislation (as is the case in Bavaria, Hesse and North Rhine-Westphalia), the finder and the site owner each acquire ownership of equal shares in the archaeological find.

(b) Illegal excavations

Illegal excavations of archaeological objects are, unfortunately, also a problem in Germany. The growing number of illegally used, privately owned metal detectors is proving to be a particular problem, since (in principle) a permit is also required to use a metal detector. Offences are prosecuted.

5. Monitoring of the export and import of cultural property

(a) Estimate of the scale of the illicit export or import of cultural property (statistics)

(b) Problem of the illicit export of cultural property

(c) Main rules for monitoring the export and import of cultural property

On account of the border-free internal market in the EU, there is no comprehensive monitoring of the import and export of cultural property at Germany's external borders, only at the external borders if the internal market area. Nevertheless, in order to protect the EU Member State's cultural property, Directive 93/7/EEC takes effect by granting entitlement to the return of illegally exported cultural property. The export of cultural property from Germany is illegal where it has been registered as "of national importance". The export of cultural property outside of the EU internal market is, by contrast, monitored. Authorization is required to export cultural property which is classified in one of the categories listed in the Annex to Council Regulation (EC^o) No. 116/2009 (OJ L 39/1 of 10 February 2009). The *Länder* are responsible for issuing export licenses.

On account of the border-free EU internal market the importing of cultural property into Germany from other EU Member States is not monitored. The import and export of Iraqi cultural property is, however,

monitored. Pursuant to Council Regulation (EC) No. 1210/2003, the import, export and trade in Iraqi cultural property is subject to prohibitions and strict restrictions.

For further information on this issue, see the [“Guidelines for importing and exporting cultural property into and out of Germany”](#) (available online)

- (d) Rules provided for the restitution of illicitly imported cultural property
- (e) Obstacles encountered in securing the restitution of illicitly exported cultural property
- (f) Circumstances in securing the restitution of a stolen cultural object

Section 6 (2) of the Act on the Return of Cultural Property provides a general entitlement to the return of cultural property which has been exported to Germany and unlawfully removed from a State Party to the Convention. The entitlement to the return of cultural property can be asserted by the requesting state vis-à-vis the current owner before an administrative court. On account of the prohibition under international law of retroactive effect, the entitlement to the return of cultural property only applies to cultural property which was exported to Germany after 26 April 2007. If, however, it cannot be established whether the cultural property was exported to Germany before or after this date, it is deemed to have been removed after this date and is thus subject to entitlement to return.

In addition, the entitlement to the return of archaeological objects that were unknown prior to their exportation to Germany was created in the German Implementing Act [cf. Section 6 (2), number 1, of the Act on the Return of Cultural Property]. Implementation in Germany thus goes beyond the UNESCO Convention.

6. System for trade-in, acquisition, ownership and transfer of cultural property

The art and antiquities trade and the auctioning business are subject to special duties of care. Furthermore, special duties to keep records apply to cultural property [cf. Section 18 (1) of the Act on the Return of Cultural Property].

In order to prevent the illegal trade in cultural property on the internet, a voluntary agreement was reached with the eBay auction house in 2008 to the effect that cultural property may not be auctioned without proof of origin. Cultural property without proof of origin is removed from the website. A warning displayed on the website informs users that the trade in cultural objects at particular risk (and are included in the ICOM Red Lists) is prohibited.

No separate statistics or sales figures are available for the trade in cultural property. For the rest, the trade in cultural property is subject to general civil law regulations. German civil law does not provide any special legal status over and above that, for instance the “non-marketability” of cultural property.

7. Bilateral agreements

Germany’s implementing Act has created a general regulation and a general entitlement to the return of cultural property for all States Parties to the Convention. No bilateral agreements have been signed beyond that.

II. Code of ethics, awareness raising and education

The UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM Code of Ethics for Museums are well known. Since, however, neither are legally binding, there is no monitoring of compliance by the state. Numerous art dealers’ associations have their own codes of conduct. There is public awareness of the ICOM Red Lists (although, cf. eBay agreement), and they are made available to the facilities which need to work with them.

III. Cooperation with other international and regional agencies

The Federal Criminal Police Office and the *Land* criminal police offices, which are responsible for offences in the field of the protection of cultural property, regularly call up information from the INTERPOL

Database. A "Guide to Practice" provides government agencies with an overview of the legal and procedural rules, in particular as regards criminal law and what to do when other states submit international requests for mutual assistance.

General criminal law provisions exist in regard to receiving stolen goods, misappropriation, theft and fraud. It is immaterial what type of object is involved in a particular offence.

In view of the fact that Germany is bound by EU law, the UNESCO-WCO Model Export Certificate for Cultural Objects does not apply to Germany; export licenses are issued by the responsible *Land* authorities as a form in keeping with Council Regulation (EC) No. 116/2009. No export licenses over and above that are necessary.

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Germany currently has no plans to accede to this Convention.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Germany is actively involved in the work of the UNESCO Intergovernmental Committee (ICPRCP).

3. UNESCO Database of National Cultural Heritage Laws – contribution and update

Germany has submitted relevant legislation to the UNESCO Database of National Cultural Heritage Laws and is working on having the German laws translated into other languages than those already provided in the database.