

GERMANY

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

2011-2015

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 *Länder* (federal states). However, responsibility for coordination and

(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. Many have digital or digitized inventories. Digitization of these inventories will be further expanded in the coming years. Staff usually is specialized by profession. Further education is offered.

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 *Länder* 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), 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, as in many countries, a problem in Germany, too. 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 EU internal market, there is no comprehensive monitoring of the import and export of cultural property at Germany's external borders, only at the external EU borders. Nevertheless, in order to protect the EU Member States' cultural property, Directive 2014/60/EU of 15 May 2014 (a recast of the former Directive 93/7/EEC of 15 March 1993) takes effect by granting entitlement to the return of illegally

provide any special legal status over and above that, for instance there is no “res extra commercium” provision in German law for cultural property.

7. Bilateral agreements

Germany's implementing Act has created a general regulation and a general entitlement to the return of illegally exported cultural property for all States Parties to the 1970 Convention. No bilateral agreements are necessary with regard to return proceedings.

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 authorities. 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 also in German for art dealers, police and customs. . Moreover, the Federal Foreign Office (FFO) has published in print and online a leaflet “Illicit trade in cultural property is threatening humanity's cultural heritage” specifically directed to buyers and tourists. On the FFO's website tourists can find travel advice concerning cultural goods by country. The German customs authority offers online specific information on the protection of cultural property and the respective customs regulations. Among others, one example for awareness-raising activities, is the international conference “Cultural Heritage in Danger: Illicit excavations and trade”, held in Berlin at the German FFO in December 2014. Several national and international experts, including representatives from UNESCO and ICOM, discussed the current situation and perspectives for future developments in the area of protecting cultural property.

III. Cooperation with other international and regional agencies

The Federal Criminal Police Office and the *Länder* criminal police offices, which are under supervision of the competent public prosecution offices responsible for offences against 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.

In view of the fact that Germany is bound by EU law, the UNESCO-WCO Model Export Certificate for Cultural Objects is not specifically used by German authorities, export

Mediterranean area. This 3 year project is funded by the German Government with 1,2 Mio EUR.

Moreover, Germany has introduced a joint initiative with the Iraqi government to save the cultural heritage of Iraq. On 28 May 2015, the General Assembly adopted the resolution "Saving the cultural heritage of Iraq" (A/69/L.71) presented jointly by Iraq and Germany, which proposes a set of measures to end the destruction and looting of archaeological sites, historical buildings and cultural artifacts carried out by the self-proclaimed "Islamic State" (ISIL / Da'esh). The resolution affirms that intentional attacks against cultural heritage sites may amount to war crimes and urges all states to hold the perpetrators of such attacks accountable. It also urges all states to improve their legal and administrative frameworks in order to prevent the illicit trafficking of stolen artifacts. It also calls on local leaders to stand up for the preservation of their cultural heritage and requests the international community to assist Iraq in documenting and preserving the historical treasures of its ancient civilization.

V. 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 the UNIDROIT 1995 Convention, but implements - based on the Directive 2014/60/EU - a similar provision on due diligence requirements with regard to granting compensation in case of the return of cultural property.

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 Laws – contribution and update

Germany has submitted all its relevant legislation to the UNESCO Database of National Cultural Heritage in German as well as in English, French and Spanish.