

Special rules for cultural objects
Explanatory memorandum

Introduction

For a long time, no specific conflict-of-laws rules have been applied to stolen things or cultural objects. The *lex rei sitae* principle has been almost universally applied to proprietary claims related to stolen things and cultural objects. Cultural objects were treated in the same way as any other thing in private international law. However, some recent private international law codifications provide for special rules for stolen objects and illegally exported cultural objects (see the Annex). These specific provisions imply a deviation from the traditional *lex rei sitae* principle.

Although the divergences among the various property law regimes were intended to be resolved by an international convention, the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects, its practical effect has so far remained limited due to the lack of ratification of several market countries. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property provides for a public law framework for the cooperation between the authorities of the states parties to prevent the illegal traffic of cultural property leaving unaffected the private law rules of the states parties. The International Institute of International Law adopted a resolution in 1991 in which it provided for the application of the law of the country of origin to the transfer of ownership of works of art.¹ The conflict-of-laws rule of the resolution was, however, not endorsed in any international convention. Therefore, conflict-of-laws rules continue to play a crucial role in international art-related disputes.

Article 3(3) of the Treaty on European Union states that that the Union ‘shall ensure that Europe’s cultural heritage is safeguarded and enhanced.’ Even so, EU-level conflict-of-laws rules are missing. Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State provides that ‘ownership of the cultural object after return shall be governed by the law of the requesting Member State.’² Whether this rule constitutes a conflict-of-laws rule is debated in the legal literature.³ The European

¹ Institute of International Law, *The International Sale of Works of Art from the Angle of the Protection of the Cultural Heritage*, art 2.

² Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast) OJ L 159, 28.5.2014, p. 1–10, art 13.

³ Authors suggesting a conflict-of-laws interpretation of this provision in favour of the *lex originis* principle: Erik Jayme, *Entartete Kunst und internationales Privatrecht* (Universitätsverlag Winter, Heidelberg 1994) 25; Erik Jayme, *Globalization in Art Law: Clash of Interests and International Tendencies* (2005) 38 *Vanderbilt Journal of Transnational Law* 4, 928, 937; Andrea Biondi, *The Merchant, the Thief and the Citizen: The Circulation of Works of Art within the European Union* (1997) 34 *Common Market Law Review* 5, 1173, 1191; authors calling into question the conflict-of-laws content of the rule: Kurt Siehr, *The Protection of Cultural Property: The 1995 UNIDROIT Convention and the EEC Instruments of 1992/93 Compared* (1998) 3 *Uniform Law Review* 2–3, 671, 678; Jürgen Basedow, *The Law of Open Societies: Private Ordering and Public Regulation of International Relations. General Course on Private International Law. Collected Courses of the Hague Academy of International Law*, vol. 360. (Brill, The Hague, 2013) 458; Tamás Szabados, *In Search of the Holy Grail of the*

Parliament in its European Added Value Assessment on Cross-border restitution claims of looted works of art and cultural goods and the accompanying study prepared by Professor Matthias Weller recommended the EU to enact a harmonised choice of law rule following Article 90 of the Belgian Code of Private International Law on illegally exported cultural goods.⁴ The proposal of the study has not been followed by any legislative step so far. Additionally, several scholarly proposals have been put forward advocating for an alternative connecting factor instead of the *lex rei sitae* principle (see the Annex).⁵ These developments indicate the need for creating uniform rules in this field.

The proposed rules on cultural objects are intended to be integrated into the GEDIP proposal on the law applicable to rights *in rem* in tangible assets as a new Chapter IV. GEDIP will consider in the future the possibility of elaborating conflict-of-laws rules concerning stolen assets that do not qualify as cultural object.

Article 15. General provision

Except as otherwise provided in this Chapter, the provisions of this Regulation apply to cultural objects which have been stolen or illegally removed.

The Proposal has to first clarify its relationship with the GEDIP proposal on the law applicable to right *in rem* in tangible assets. The provisions of this Proposal create special rules for stolen and illegally removed cultural objects. As a point of departure, the application of the rules of the GEDIP proposal on the law applicable to rights *in rem* in tangible assets is to be extended to cultural objects, including stolen or illegally removed cultural objects. Therefore, as long as this Proposal does not provide different rules for stolen or illegally cultural objects, they are subject to the rules of the GEDIP proposal on the law applicable to rights *in rem* in tangible assets (*lex specialis derogat legi generali*). The proposed special rules are intended to be inserted into the GEDIP proposal on the law applicable to rights *in rem* in tangible assets. This solution aims at the simplification of the regulation and avoiding the fragmentation of the different private international law instruments. Thus, the conflict-of-laws rules on the law applicable to right *in rem* in corporeal assets will be found in a single place.

Article 16. Definition

1. For the purpose of this Regulation, ‘cultural object’ means a corporeal object that is classified or defined by a state, at the time of its removal from the territory of that state, as being among the national treasures possessing artistic, historic or archaeological value under national legislation or administrative procedures.

Conflict of Laws of Cultural Property: Recent Trends in European Private International Law Codifications (2020) International Journal of Cultural Property 27, 323, 334-335.

⁴ European Parliament, The European added value of EU legislative action on cross-border restitution claims of looted works of art and cultural goods (European Union, 2017) 13, 66-67.

⁵ Tamás Szabados, In Search of the Holy Grail of the Conflict of Laws of Cultural Property: Recent Trends in European Private International Law Codifications (2020) International Journal of Cultural Property 27, 323, 327-329.

[2. The term ‘cultural object’ also includes a sacred or communally important corporeal object that belongs to and was used by a generally recognised religious, indigenous, tribal or other cultural community as part of the community’s religious, traditional or ritual use at the time of its removal.]

Legal sources aiming at the protection of cultural objects define their subject matter scope of application in different ways.⁶ The Proposal relies largely on the approach of EU law found in Article 2(1) of Directive 2014/60/EU. The definition of the Directive is amended to the extent necessary to convert it into a universal rule. The proposed rules apply exclusively to corporeal cultural objects. In accordance with the Directive, the Proposal requires an external manifestation for the qualification as cultural object: classification or definition as such by a state. In addition, the objects must be deemed to belong to the natural treasures of a state.⁷ To fall under the scope of the proposed rules, the object must be of artistic, historic or archaeological significance.

The rules are not limited to cultural objects belonging to the national treasures of the EU Member States, but they extend to cultural objects pertaining to the cultural heritage of third countries. This is in accordance with the approach of other EU legal sources, in particular with the EU Import Regulation that provides protection also for cultural objects originating from third countries.⁸

As an additional option, as laid down in paragraph 2, GEDIP can decide to extend the scope of application of the regulation to the cultural heritage of generally recognised religious, indigenous, tribal or other cultural communities. This additional rule seems necessary in particular where there is a conflict between the state and the religious, indigenous, tribal or other cultural community living in the territory of that state as a result of which the state does not recognise the community and/or not promote the protection of the community’s cultural heritage. The proposed solution would be in accordance with the recent trend in international cultural heritage law that recognises the need for the protection of cultural manifestations of indigenous and tribal communities. In particular, the United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to ‘maintain, protect and develop the past, present and future manifestations of their cultures’, including their artefacts.⁹ The cultural distinctiveness of indigenous and tribal communities has been also recognised by the ILO Indigenous and Tribal Peoples Convention.¹⁰ The UNIDROIT Convention provides more favourable rules on time limitation regarding claims ‘for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community’s traditional or ritual use’.¹¹ The impairment to ‘the traditional or ritual use of the object by a tribal or indigenous community’ is also taken into consideration under the

⁶ The different solutions are summarised in the Annex.

⁷ The concept of national treasure is also used by Article XX(f) of the GATT 1947.

⁸ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods, OJ L 151, 7.6.2019, p. 1–14.

⁹ United Nations Declaration on the Rights of Indigenous Peoples, UN General Assembly Resolution 61/295, 13 September 2007, art 11(1).

¹⁰ ILO, Indigenous and Tribal Peoples Convention, 1989 (No. 169).

¹¹ UNIDROIT Convention, art 3(8).

UNIDROIT Convention, when a court or other competent authority decides on the return of an illegally exported cultural object.¹²

There are certainly overlaps in the national treasures of the state and the cultural objects of religious, indigenous, tribal and other cultural communities as the national treasures of the state can cover also the cultural objects of communities within that state. However, the extension of the scope of application of the proposed rules may be justified, because there might be cases when a cultural object does not qualify as part of the national treasure of the state, but constitutes part of the cultural heritage of a religious, indigenous, tribal or other cultural community. It must be underlined that only the cultural objects of generally recognised religious, indigenous, tribal or other cultural communities can fall under the scope of application of the proposed rules (and not those of other sorts of communities) and only if they are 'sacred or communally important' and if they were used by that community 'as part of the community's religious, traditional or ritual use' at the time of their removal.

Article 17. The law applicable to claims for the recovery of stolen or illegally removed cultural objects

1. *A claim for the recovery of a stolen or illegally removed cultural object is governed, at the choice of the claimant, by the law of:*

(a) the state in which the object was located at the time of its theft or illegal removal from that state;

(b) the state in which the object was located at the time of the acquisition of possession by the defendant subsequent to the theft or illegal removal; or

(c) the state in which the object was located at the time of the filing of the action.

2. *If the claimant is entitled to recover the object under the law applicable under paragraph 1, but that law does not provide any reimbursement for a defendant who acquired the possession of the object in good faith for the purchase price, if any, and for reasonable expenses incurred in the preservation of the object, the defendant shall be entitled to the reimbursement provided either by the law of the state in which the object was located at the time of the acquisition of possession or by the law of the state in which the object was located at the time of its removal.*

3. *For the purpose of this article, the place of acquisition of possession is the place in a state where the cultural object was delivered based on a legal relationship underlying the acquisition.*

As it is well known, the problem regarding stolen objects is that law often has to make a choice between the claimant and a good faith possessor who is not aware of the origin of the object. The rule proposed here intends to reflect the approach of the UNIDROIT Convention at the level of conflict of laws. Pursuant to the UNIDROIT Convention, the possessor of a cultural object which has been stolen has to return it.¹³ Subject to certain

¹² UNIDROIT Convention, art 5 (3)(d).

¹³ UNIDROIT Convention, art 3(1).

conditions, the same applies to illegally exported cultural objects.¹⁴ At the same time, the possessor of a stolen or illegally exported cultural object required to return it is entitled to fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen or illegally exported and can prove that it exercised due diligence when acquiring the object.¹⁵

The first paragraph of the proposed text reproduces essentially the solution of private international law codifications granting a limited choice of law for the claimant in proceedings related to stolen or illegally exported cultural objects.¹⁶ Whether a cultural object was stolen or illegally removed is to be determined in accordance with the law of the state in which the object was located at the time of its removal. The second paragraph intends to strike a balance between the interests of the original owner and the defendant who acquired the possession of the object in good faith and recognises the right of the latter to the reimbursement of the purchase price and reasonable expenses incurred in the preservation of the cultural object on the condition that the law chosen by the original owner does not provide any reimbursement for the good faith possessor and that the law of the state in which the cultural object was acquired or the law of the state in which the object was located at the time of its removal provides for such a reimbursement for the good faith possessor upon returning the object. The law of the state of the location of the object at the time of the acquisition by the defendant applies to the ascertainment whether (s)he acted in good faith. If the defendant is entitled to reimbursement, the amount of the purchase price and reasonable expenses is to be determined by the forum seized with the claim for the recovery of the stolen or illegally exported cultural objects.

As the proposed rule regulates exclusively claims related to corporeal cultural objects, the place of acquisition can be identified with the state where the cultural object was delivered to the defendant based on a legal relationship underlying the acquisition (typically a sales contract). The rule can be equally applied if the purchaser bought the cultural object online, because the proposed rules cover exclusively corporeal cultural objects and in such a case delivery takes place physically off-line even if a transaction was entered into online.

Statutes of limitation or deadlines set for liberative prescription play an important role regarding claims related to cultural objects, because very often the claimant becomes aware of the identity of the possessor and the location of the object after the elapse of a significant period of time. Under Article 7(f) of the GEDIP proposal on the law applicable to rights *in rem* in tangible assets, the governing law extends to the issue of 'the extinction or loss of a property right'. Accordingly, the law applicable to the claim applicable under Article 17(1) also governs prescription. This rule has to be applied *mutatis mutandis* to state claims for the return of illegally removed cultural objects.

Concerning adverse possession, Article 17 enjoys priority over Article 8(2) of the GEDIP proposal on the law applicable to rights *in rem* in tangible assets. This means that, for example, the original owner may invoke his property right under the law of the State of origin on the basis of Article 17, irrespective of how he has acquired this right (e.g. by a purchase of the good, adverse possession or inheritance) and this right would prevail over the right of the new possessor under the law designated by Article 8(2). In particular, the

¹⁴ UNIDROIT Convention, art 5.

¹⁵ UNIDROIT Convention, art 4(1) and art 6.

¹⁶ See in particular Albanian PIL Act, art 40; Belgian PIL Act, art 90 and art 92; Bulgarian PIL Act, art 70; see also the Hungarian PIL Act, arts 46-47; Montenegrin PIL Act art 33; Monegasque PIL Act art 95; Romanian Civil Code, art. 2.615.

property right of the original owner may also prevail over a property right acquired by a third party by adverse possession under the law of the new location.

Article 18. Applicability of public law provisions

The public law character attributed to a provision of foreign law designated as applicable under this Chapter shall not prevent the application of that provision.

In cross-border private law disputes related to works of art, provisions having public law nature that aim at the protection of cultural heritage often claim application. The proposed rule enables the application of those public law provisions of the designated law which are applicable to the case under that law. This provision modelled on the Wiesbaden Resolution of the Institute of International Law adopted in 1975 on the application of foreign public law and Article 13 of the Swiss Private International Law Act has an outstanding significance. It takes a clear stance against the principle of non-application of foreign public law and confirms that a forum cannot reject the application of foreign rules protecting cultural heritage as part of the *lex causae* merely because they qualify as public law provisions.

Article 19. Overriding mandatory provisions protecting national treasures

Without prejudice to Article 9, in legal relationships concerning a cultural object, the court seized may give effect to the overriding mandatory provisions adopted for the protection of the national treasures by a foreign state other than the one whose law governs under this Regulation, and with which the situation has a close connection.

Although the EU itself is not a member of the 1970 UNESCO Convention, since only states can be parties to the Convention, most of the Member States of the EU are parties to the 1970 UNESCO Convention.¹⁷ It must be stressed that the 1970 UNESCO Convention establishes that the import, export or transfer of ownership of cultural property effected contrary to the provisions of the Convention by the States Parties thereto shall be illicit.¹⁸ Under the 1970 UNESCO Convention, the state parties had to introduce an export certificate and prohibit any exportation of cultural property in the absence of such export certificate. The Convention also provides that the States Parties to this Convention undertake consistent with their laws, to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property; and to recognise the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported. The 1995 UNIDROIT Convention also recognises the enforcement of foreign export regulation, when it provides for the return of illegally exported cultural objects subject to the condition that it is established that the cultural object significantly impairs certain interests of the country of exportation and the object is of significant cultural importance for the requesting State. Taking the above into account, private international law cannot disregard

¹⁷ At the moment, among the EU Member States, only Ireland and Malta are not parties to the 1970 UNESCO Convention.

¹⁸ 1970 UNESCO Convention, art 3.

foreign export and other public law legislation adopted for the protection of cultural heritage.

The proposed rule does not give rise in itself to substantive public law restrictions to the international art trade, but it recognises the private law effects of the cultural heritage protection legislation of a public law nature, such as export and import restrictions or restrictions on inalienability of cultural objects. The Proposal does not follow the principle of the non-application of foreign public law that hindered several claims related to cultural property.¹⁹ If the application of an export or import restriction or the effect of some other public law legislation adopted in view of the protection of cultural heritage arises in a private law dispute, those public law provisions should be applied or given effect as overriding mandatory provisions. Cultural heritage protection provisions may qualify as overriding mandatory provisions within the meaning of Article 9(1) of the Rome I Regulation as well as under Article 9(2) of the GEDIP proposal on the law applicable to rights *in rem* in tangible assets.²⁰

The rule provides explicitly for the possibility of giving effect to foreign overriding mandatory provisions. Article 9(1) of the GEDIP proposal on the law applicable to rights *in rem* in tangible assets authorises the application of the overriding mandatory provisions of the forum. It must be noted, however, that in relation cultural objects the problem is most often the enforcement of export prohibitions or other foreign public law restrictions adopted for the protection of cultural heritage by a state other than the forum and the one whose law governs. In the context of contractual relationships, the Nikiforidis judgment of the CJEU illustrates well that the issue of giving effect to the overriding mandatory provisions of third countries can be relevant in practice.²¹ Therefore, concerning legal relationships related to cultural objects, the possibility of the application or consideration of overriding mandatory provisions of states other than the forum and the one whose law is applicable appears in the text. Such an authorisation concerns the overriding mandatory provisions related to the protection of cultural objects, including export and import restrictions and qualification as *res extra commercium*.

¹⁹ See in particular *King of Italy v. Marquis Cosimo de Medici Tornaquinci*, 34 Times LR 623 (Chancery Division 1918); *Attorney-General of New Zealand v. Ortiz and Others*, Court of Appeal, 1 April 1982, [1982] 3 WLR 570; this principle was also discussed in *Islamic Republic of Iran v The Barakat Galleries Ltd* [2007] EWCA Civ 1374.

²⁰ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) OJ L 177, 4.7.2008, p. 6–16.

²¹ Case C-135/15 *Republik Griechenland v Grigorios Nikiforidis*, EU:C:2016:774.

APPENDIX

EXCERPTS FROM RECENT PIL CODIFICATIONS ON CULTURAL (AND STOLEN) OBJECTS AND SCHOLARLY PROPOSALS

(THE ANNEX IS BASED ON THE COLLECTION OF THE RELEVANT PRIVATE INTERNATIONAL LAW CODIFICATIONS BY PROFESSOR SYMEON SYMEONIDES)

ALBANIA: Law No. 10428 of 2 July 2011 on PIL

Article 40 Protection of cultural heritage. 1. When things included in the cultural heritage of a State are illegally exported from its territory, their recovery is governed by the law of the State in which the things were located before their exportation, but that State may opt for the application of the State in which the things are located at the time of the claim.
2. However, if the law of the State in whose cultural heritage the things belongs does not take into account the protection of the possessor in good faith, the possessor may request the protection of the law of the State in whose territory the things are located at the time of the claim.

BELGIUM: Code de droit international privé (Loi du 16 juillet 2004)

Art. 90. Lorsqu'un bien qu'un Etat inclut dans son patrimoine culturel a quitté le territoire de cet Etat de manière illicite au regard du droit de cet Etat au moment de son exportation, sa revendication par cet Etat est régie par le droit dudit Etat en vigueur à ce moment ou, au choix de celui-ci, par le droit de l'Etat sur le territoire duquel le bien est situé au moment de sa revendication. Toutefois, si le droit de l'Etat qui inclut le bien dans son patrimoine culturel ignore toute protection du possesseur de bonne foi, celui-ci peut invoquer la protection que lui assure le droit de l'Etat sur le territoire duquel le bien est situé au moment de sa revendication”.

Art. 92. La revendication d'un bien volé est régie, au choix du propriétaire originaire, soit par le droit de l'Etat sur le territoire duquel le bien était situé au moment de sa disparition, soit par celui de l'Etat sur le territoire duquel le bien est situé au moment de sa revendication. Toutefois, si le droit de l'Etat sur le territoire duquel le bien était situé au moment de sa disparition ignore toute protection du possesseur de bonne foi, celui-ci peut invoquer la protection que lui assure le droit de l'Etat sur le territoire duquel le bien est situé au moment de sa revendication.

BULGARIA: Bulgarian PIL Code (Law No. 42 of 2005 as amended by Law No. 59 of 2007)

Article 70. Where a given corporeal object belonging to the cultural heritage of a specific State has been wrongfully removed from the territory of the said State, the request of the said State for return of the said object shall be governed by the law of the said State, except where the said State has opted for application of the law of the State in which the object is situated at the time of making the request for return.

HUNGARY: Act XXVIII of 2017 on PIL (in force on 2 January 2018).

Section 46 (1) If a thing considered to be part of the cultural assets of a state leaves the territory of that state in a manner which is unlawful under the law of that state at the time of exit, the law of that state, or the law of the state in the territory of which the given thing is located at the time of the assertion of the ownership claim, shall govern the ownership claim made by the state, subject to the choice of the state enforcing the ownership claim.

(2) If the law of the state which considers the unlawfully taken thing a part of its cultural assets does not provide protection to the possessor of the thing who is acting in good faith, the possessor acting in good faith may request the protection of the law of the state in the territory of which the thing is located at the time of the assessment of the ownership claim.

Section 47 (1) Subject to the choice of the original owner, the law of the state shall govern the ownership claim for the thing taken unlawfully from his possession, in the territory of which the thing was located at the time of its disappearance, or the law of the state in the territory of which the thing is located at the time of the assessment of the ownership claim.

(2) If the law of the state in the territory of which the thing was located at the time of its disappearance does not provide protection to the possessor who is acting in good faith, the possessor acting in good faith may request protection in accordance with the law of the state in the territory of which the given thing is located at the time of the assessment of the ownership claim.

MONACO: Loi n° 1.448 du 28 juin 2017 relative au droit international privé

Article 94 : La revendication d'un meuble irrégulièrement acquis par un possesseur selon le droit de l'État où il était alors situé, est régie au choix du propriétaire, soit par le droit de l'État sur le territoire duquel était situé ce meuble lors de cette acquisition ou de sa disparition s'il s'agit d'un meuble perdu ou volé, soit par le droit de l'État sur le territoire duquel il se trouve lors de sa revendication.

Article 95 : L'action qu'exerce un État, en revendication ou en retour d'un bien inclus dans son patrimoine culturel, mais exporté de manière illicite au regard de son droit applicable au moment de l'exportation, est régie au choix de cet État, par son droit en vigueur lors de cette action, ou par le droit de l'État sur le territoire duquel ce bien est alors situé.

Toutefois, si le droit de l'État qui inclut le bien dans son patrimoine culturel ignore toute protection du possesseur de bonne foi, celui-ci peut invoquer la protection que lui assure le droit de l'État de situation du bien au moment de sa revendication.

MONTENEGRO: International Private Law Act of 23 December 2013, effective 9 July 2014.

Article 33. Cultural property. If an item, which is proclaimed as being cultural heritage of a state, has unlawfully left the territory of that state, the revindication by the state shall be governed by the law of that state except where the state chooses the law of the state on the territory of which the property is located at the time of the revindication claim.

If the law of the state that has proclaimed an item as being its cultural heritage does not grant any protection to the possessor in good faith, the latter may invoke the protection that is attributed to him by the law of the state on the territory of which the item is located at the time of the revindication claim.

ROMANIA: Civil Code (Law 287/2009 as amended by Law 71/2011 of 10 June 2011)

Art. 2.615 Applicable law to the recovery of movable possession. (1) The initial owner may choose the law applicable for recovery of possession of a stolen or illegally exported asset, between either the law of the state where the asset was located at the time of the theft or export, or the law of the state where the asset is located at the moment of the recovery of possession.

(2) However, when the law of the state where the asset was located at the time of theft or export contains no provisions concerning the protection of a third-party owner in good faith, such an owner may invoke the protection offered by the state where the asset is located at time of the claim.

(3) The provisions of paragraph (1) and (2) are also applicable to assets from the national cultural heritage of a state which are stolen or illegally exported.

Art. 2.616 Applicable law to acquisitive prescription. (1) Acquisitive prescription is governed by the law of the state where the asset was located at the beginning of the term of possession provided for this purpose.

(2) If the asset has been brought to another state where the legal term of acquisitive prescription is to be fulfilled, the owner may request that the law of this latter state be applied when all conditions required by its law are fulfilled starting from the day the asset was relocated in that state.

SERBIA: Serbian Ministry of Justice Draft of June 2014 of Law on PIL

Article 121. Cultural assets. 1. Where a thing declared to be a cultural asset of a particular state is illegally removed from its territory, the law of that state shall be applicable to its request to be returned that property, unless it chooses the law of the state in whose territory the property is situated at the time of putting forward the request for return of property.

2. Where the law of the state which has declared a particular thing to be its cultural asset do not provide protection to a person holding the cultural asset in good faith, such person may invoke the protection that is provided by the law of the state in whose territory the thing is situated at the time of putting forward the request for the return of property.

INSTITUT DE DROIT INTERNATIONAL

Resolution: The International Sale of Works of Art from the Angle of the Protection of the Cultural Heritage (Rapporteur : Mr Antonio de Arruda Ferrer-Correia) Session of Basel – 1991

Article 1. 1. For the purpose of this Resolution :

a) a "work of art" is a work which is identified as belonging to the cultural heritage of a country by registration, classification or by any relevant internationally accepted method of publicity ;

b) "country of origin" of a work of art means the country with which the property concerned is most closely linked from the cultural point of view.

2. This Resolution relates to sales concluded before or after the property has been exported from the territory of the country of origin in breach of the non-retrospective legislation of the latter on the export of cultural property.

3. This Resolution applies to all future cases where a work of art has been stolen or otherwise taken away illegally from its owner or holder, or illegally exported.

Article 2. The transfer of ownership of works of art belonging to the cultural heritage of the country of origin shall be governed by the law of that country.

Article 3. The provisions of the law of the country of origin governing the export of works of art shall apply.

Article 4. 1. If under the law of the country of origin there has been no change in title to the property, the country of origin may claim, within a reasonable time, that the property be returned to its territory, provided that it proves that the absence of such property would significantly affect its cultural heritage.

2. Where works of art belonging to the cultural heritage of a country have been exported from the country of origin in circumstances covered by in Article 1, the holder may not invoke any presumption of good faith. The country of origin should provide for equitable compensation to be effected to the holder who has proved his good faith.

3. For the purposes of paragraph 2, a holder in good faith is a person who at the time the property was acquired was unaware of, and could not reasonably be expected to be aware of, the defect in title of the person disposing of such property, or of the fact that the property had been exported in breach of the provisions of the country of origin on export. In case of gift or succession, the holder may not enjoy a status more favourable than that of the previous holder.

EUROPEAN PARLIAMENT: STUDY THE EUROPEAN ADDED VALUE OF EU LEGISLATIVE ACTION ON CROSS-BORDER RESTITUTION CLAIMS OF LOOTED WORKS OF ART AND CULTURAL GOODS, EUROPEAN ADDED VALUE ASSESSMENT AND THE ACCOMPANYING STUDY BY PROFESSOR MATTHIAS WELLER (EUROPEAN UNION, 2017)

The EU could consider enacting a harmonised choice of law rule, following, for example, Article 90 of the Belgian Code of Private International Law.

Professor Symeon Symeonides: Proposal for the previous stolen / cultural goods GEDIP sub-group

PROPOSED ARTICLE — DRAFT 1

When an object that is part of the cultural heritage of a country is removed to a Member State in violation of the law of the first country, the right of the owner to recover the object is governed by the law of that country.

However, if that law does not provide protection for a person who acquired possession of the object in good faith, the possessor is entitled to the protection provided by the law of the Member State in which the object is located at the time of the requested discovery.

Professor Symeon Symeonides: “A Choice-of-Law Rule for Conflicts Involving Stolen Cultural Property” (2005) 38 *Vand J Transnat'l L* 1177–1198

1. Except as otherwise provided by an applicable treaty or international or interstate agreement, or statute, the rights of parties with regard to a corporeal thing of significant cultural value (hereafter “thing”) are determined as specified below.

2. A person who is considered the owner of the thing under the law of the state in which the thing was situated at the time of its removal to another state shall be entitled to the protection of the law of the former state (state of origin), except as specified below.

3. The owner's rights may not be subject to the less protective law of a state other than the state of origin,

(a) unless:

(i) the other state has a materially closer connection to the case than the state of origin; and
(ii) application of that law is necessary in order to protect a party who dealt with the thing in good faith after its removal to that state; and

(b) until the owner knew or should have known of facts that would enable a diligent owner to take effective legal action to protect those rights.

Professor Gerte Reichelt: "International Protection of Cultural Property" (1985) 3 Unif. L. Rev. no. 1, 43–153

In addition to the maintenance of the *lex rei sitae* principle, she proposes the adoption of the following rules:

1. The law designated by the present law is, by way of exception, not applicable if, having regard to all the circumstances, it is manifest that the provision has only a very weak link with that law, and that it has a much closer connection with another law.

2. This provision is not applicable if the parties have chosen the law.

Determining the subject matter of international and EU legal sources

Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, The Hague, 14 May 1954

Article 1 – Definition of cultural property

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

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

Article 1

For the purposes of this Convention, the term 'cultural property' means property which, on

religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries ;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manu-factured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs ;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections ;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS, Rome, 24 June 1995

Article 2

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

A n n e x

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods (OJ L 39, 10.2.2009, p. 1–7)

Article 1 Definition

Without prejudice to Member States' powers under Article 30 of the Treaty, the term 'cultural goods' shall refer, for the purposes of this Regulation, to the items listed in Annex I.

ANNEX I

Categories of cultural objects covered by Article 1

1.	Archaeological objects more than 100 years old which are the products of:	
	— excavations and finds on land or under water	9705 00 00
	— archaeological sites	9706 00 00

	— archaeological collections	
2.	Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years	9705 00 00 9706 00 00
3.	Pictures and paintings, other than those included in categories 4 or 5, executed entirely by hand in any medium and on any material ⁽¹⁾	9701
4.	Watercolours, gouaches and pastels executed entirely by hand on any material ⁽¹⁾	9701
5.	Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material ⁽¹⁾	6914 9701
6.	Original engravings, prints, serigraphs and lithographs with their respective plates and original posters ⁽¹⁾	Chapter 49 9702 00 00 8442 50 99
7.	Original sculptures or statuary and copies produced by the same process as the original ⁽¹⁾ , other than those in category 1	9703 00 00
8.	Photographs, films and negatives thereof ⁽¹⁾	3704 3705 3706 4911 91 80
9.	Incunabula and manuscripts, including maps and musical scores, singly or in collections ⁽¹⁾	9702 00 00 9706 00 00 4901 10 00 4901 99 00 4904 00 00 4905 91 00 4905 99 00 4906 00 00
10.	Books more than 100 years old, singly or in collections	9705 00 00 9706 00 00
11.	Printed maps more than 200 years old	9706 00 00
12.	Archives, and any elements thereof, of any kind or any medium which are more than 50 years old	3704 3705 3706 4901 4906 9705 00 00

		9706 00 00
13.	(a) Collections ⁽²⁾ and specimens from zoological, botanical, mineralogical or anatomical collections;	9705 00 00
	(b) Collections ⁽²⁾ of historical, palaeontological, ethnographic or numismatic interest	9705 00 00
14.	Means of transport more than 75 years old	9705 00 00 Chapters 86-89
15.	Any other antique items not included in categories A.1 to A.14	
	(a) between 50 and 100 years old	
	toys, games	Chapter 95
	glassware	7013
	articles of goldsmiths' or silversmiths' wares	7114
	furniture	Chapter 94
	optical, photographic or cinematographic apparatus	Chapter 90
	musical instruments	Chapter 92
	clocks and watches and parts thereof	Chapter 91
	articles of wood	Chapter 44
	pottery	Chapter 69
	tapestries	5805 00 00
	carpets	Chapter 57
	wallpaper	4814
	arms	Chapter 93
(b) more than 100 years old	9706 00 00	

The cultural objects in categories A.1 to A.15 are covered by this Regulation only if their value corresponds to, or exceeds, the financial thresholds under B.

B. Financial thresholds applicable to certain categories under A (in euro)

Value:

Whatever the value

— 1 (Archaeological objects)

- 2 (Dismembered monuments)
- 9 (Incunabula and manuscripts)
- 12 (Archives)
- 15 000
- 5 (Mosaics and drawings)
- 6 (Engravings)
- 8 (Photographs)
- 11 (Printed maps)
- 30 000
- 4 (Watercolours, gouaches and pastels)
- 50 000
- 7 (Statuary)
- 10 (Books)
- 13 (Collections)
- 14 (Means of transport)
- 15 (Any other object)
- 150 000
- 3 (Pictures)

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when an application for an export licence is submitted. The financial value is that of the cultural object in the Member State referred to in Article 2(2).

For the Member States which do not have the euro as their currency, the values expressed in euro in Annex I shall be converted and expressed in national currencies at the rate of exchange on 31 December 2001 published in the *Official Journal of the European Communities*. This countervalue in national currencies shall be reviewed every two years with effect from 31 December 2001. Calculation of this countervalue shall be based on the average daily value of those currencies, expressed in euro, during the 24 months ending on the last day of August preceding the revision which takes effect on 31 December. This method of calculation shall be reviewed, on a proposal from the Commission, by the Advisory Committee on Cultural Goods, in principle two years after the first application. For each revision, the values expressed in euro and their countervalues in national currency shall be published periodically in the *Official Journal of the European Union* in the first days of the month of November preceding the date on which the revision takes effect.

Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (OJ L 159, 28.5.2014, p. 1–10)

Article 2 (1)

‘cultural object’ means an object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the ‘national treasures possessing artistic, historic or archaeological value’ under national legislation or administrative procedures within the meaning of Article 36 TFEU;

Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods (OJ L 151, 7.6.2019, p. 1–14)

Article 2 Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'cultural goods' means any item which is of importance for archaeology, prehistory, history, literature, art or science as listed in the Annex;

ANNEX

(a)	rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
(b)	property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
(c)	products of archaeological excavations (including regular and clandestine) or of archaeological discoveries on land or underwater;
(d)	elements of artistic or historical monuments or archaeological sites which have been dismembered ⁽¹⁾ ;
(e)	antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
(f)	objects of ethnological interest;
(g)	objects of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material;
(h)	rare manuscripts and incunabula;
(i)	old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
(j)	postage, revenue and similar stamps, singly or in collections;
(k)	archives, including sound, photographic and cinematographic archives;
(l)	articles of furniture more than one hundred years old and old musical instruments.

Part A. Cultural goods covered by Article 3(1)

Part B. Cultural goods covered by Article 4

Categories of cultural goods according to Part A	Combined Nomenclature (CN) Chapter, Heading or Subheading	Minimum age threshold	Minimum financial threshold (customs value)	Supplementary units
(c) products of archaeological excavations (including regular	ex 9705 ; ex 9706	More than 250 years old	Whatever the value	number of items (p/st)

and clandestine) or of archaeological discoveries on land or underwater;				
(d)elements of artistic or historical monuments or archaeological sites which have been dismembered ⁽²⁾ ;	ex 9705 ; ex 9706	More than 250 years old	Whatever the value	number of items (p/st)

Part C. Cultural goods covered by Article 5

Categories of cultural goods according to Part A	Combined Nomenclature (CN) Chapter, Heading or Subheading	Minimum age threshold	Minimum financial threshold (customs value)	Supplementary units
(a)rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;	ex 9705	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(b)property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;	ex 9705	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(e)antiquities, such as inscriptions, coins and engraved seals;	ex 9706	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(f)objects of ethnological	ex 9705	More than 200 years	EUR 18 000 or	number of items (p/st)

interest;		old	more per item	
(g)objects of artistic interest, such as:				
(i)pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);	ex 9701	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(ii)original works of statuary art and sculpture in any material;	ex 9703	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(iii)original engravings, prints and lithographs;	ex 9702 ;	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(iv)original artistic assemblages and montages in any material;	ex 9701	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(h)rare manuscripts and incunabula;	ex 9702 ; ex 9706	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)
(i)old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections.	ex 9705 ; ex 9706	More than 200 years old	EUR 18 000 or more per item	number of items (p/st)

⁽¹⁾ Liturgical icons and statues, even free-standing, are to be considered as cultural goods belonging to this category.

[²] Liturgical icons and statues, even free-standing, are to be considered as cultural goods belonging to this category.

INSTITUT DE DROIT INTERNATIONAL

Resolution: The International Sale of Works of Art from the Angle of the Protection of the Cultural Heritage (Rapporteur : Mr Antonio de Arruda Ferrer-Correia) Session of Basel – 1991

Article 1. 1. For the purpose of this Resolution :

a) a "work of art" is a work which is identified as belonging to the cultural heritage of a country by registration, classification or by any relevant internationally accepted method of publicity ;