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Procedures for Returning Movable Cultural Assets that Have Illegally Left the Territory of a Union State

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Abstract: The European Union's free market allows assets to transit multiple countries without restrictions or prohibitions. At the same time, the cultural assets market has expanded significantly, with a high level of interest, especially visible through the surge of cultural events flooding Europe in post-pandemic times. Nonetheless, the European Union had a well-established legal framework as far back as 1993. The freedoms provided by the Union's policies regarding the movement of assets have also impacted on this category of assets, which often reflects the history of a people, a country, or evidence of the civilization belonging to a specific geographical area. Whether we are discussing cultural assets owned by the state or cultural assets forming part of private collections, their legal transit and trade have been a constant concern for the Union's legal bodies and the public authorities of each member state. However, problems arise from the illegal departure of such assets from the territory of a Union state, especially in situations where the assets transit multiple countries and cannot be retrieved. Icons, paintings, artifacts, jewellery, and similar items become objects of interest for individuals seeking illegal profit by removing these assets from Union territories under any circumstances. To address this, the European Union updated legislation in this sector in 2014, to which Romania adhered. Moreover, the aim of this extensive approach is to highlight the constant concern for updating legislation in the country during this period and the awareness of the loss of cultural assets considered treasures.

Keywords: cultural assets; Union space; free market; treasure; cultural belonging

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1. Legislative History at the European Level

Articles 34–36 of the Treaty on the Functioning of the European Union highlights a series of freedoms for member countries regarding the import and export of assets, as well as their transit within the Union. Nevertheless, Article 36 specifies that its provisions regarding the prohibition of quantitative restrictions do not conflict with “bans or restrictions on imports, exports, or transit justified on grounds of public morality, public order, public security, the protection of health and life of humans and animals, or the conservation of plants, the protection of national treasures possessing artistic, historic, or archaeological value, or the protection of industrial and commercial property” (Article 36, sentence, 2025).

The goal of these freedoms is the creation of a unified, non-fragmented market across the Union, which allows “EU citizens to benefit from a wider variety of products and offers EU economic operators access to a vast internal market, encouraging trade and competition and improving efficiency” (Commission Communication 2021/C 100/03, 2025).

However, alongside these advantages of being an EU member, entities eager to illegally acquire or exploit cultural heritage assets have emerged. These activities occur primarily because of the enormous financial gains. The latest statistics show that in 2024, the global art market reached a transaction value of \$57.7 billion, even though it’s assumed that the pandemic years significantly affected trade in these types of assets (The Global Market, 2025). Furthermore, between 2022 and 2023, Romania recorded art transactions totaling €9.4 million (Annual Reports, 2025), with the most valuable sold pieces including works by painters Nicolae Grigorescu, Nicolae Tonitza, and Ștefan Luchian.

Initially, the legislation in this field was founded upon Council Directive 93/7/EEC of 15 March 1993 on the return of cultural assets that have illegally left the territory of a Member State¹. This legal act laid the groundwork for an international cooperation system among EU Member States aimed at identifying cultural heritage assets of a state that had illegally exited its territory, facilitated their return, and ensured effective communication between central authorities to reduce the costs of identification and return procedures. Later, due to new developments in practice, the intensification of criminal phenomena, and the emergence and expansion of international policing bodies, the Directive was amended by Directive 96/100/EC²

¹ Published in OJ L 74, 27.03.1993.

² Published in OJ L 60, 01.03.1997.

and Directive 2001/38/EC¹ of the European Parliament and Council. Together with Regulation (EC) No 116/2009 on the export of cultural assets², they formed the core legislative framework in the area.

Currently, Directive 2014/60/EU on the return of cultural assets that have illegally left the territory of a Member State and amending Regulation (EU) No 1024/2012³ represents the applicable legislative source for Member States, reforming the original directive mentioned earlier alongside Regulation (EC) No 116/2009 on the export of cultural assets.

2. Content

Directive 2014/60/EU aims to broaden its scope to include “any cultural asset classified or defined by a Member State, in accordance with national legislation or administrative procedures, as national heritage with artistic, historic, or archaeological value under Article 36 of the TFEU.” (Preamble, 2025, p. Point 9) Specifically, it refers to “assets of historical, paleontological, ethnographic, numismatic, or scientific interest, whether or not they are part of public or other collections or constitute individual items, and regardless of whether they originate from legal or clandestine excavations, provided that they are classified or defined as national heritage assets” (Preamble, 2025, p. Point 9). Equally important, the Directive removed criteria related to age, value, or category of the asset for it to be subject to the return procedure, thus streamlining the recovery process.

Thus, this procedure requires the existence of a central authority in each state with several responsibilities, including ensuring cooperation with other states; identifying the cultural object reported as having left the territory of another state (the requesting state); locating the holder or possessor of the object, where possible; notifying other Member States when cultural assets are discovered within its territory or when there are signs that such assets have illegally exited other states; allowing, within six months of a request, the claimant state to carry out investigations to determine whether the object is indeed a cultural asset belonging to it; taking, together with the requesting state, measures concerning the conservation of the cultural asset and preventing its evasion from restitution; and facilitating the restitution process. Therefore, each such case involves a requesting Member State, whose cultural asset

¹ Published in OJ L 187, 10.07.2001.

² Published in OJ L 39, 10.02.2009.

³ Published in OJ L 159, 28.05.2014.

has departed from its territory, and a requested Member State, where the cultural asset was currently located.

To support the procedures covered by the Directive, central authorities of Member States may use the European Internal Market Information System (IMI) module designed specifically for cultural assets, governed by Regulation (EU) No. 1024/2012¹. IMI is an online system that facilitates not only “the exchange of information between public authorities involved in implementing EU legislation but also helps authorities fulfil their obligations for cross-border administrative cooperation in multiple areas related to the single market” (Sistemul de informare al pieței interne (IMI)/Internal Market Information System (IMI), 2025). Since 2008, IMI has enabled more than 485,000 exchanges of information and, since 2024, it has supported 102 cross-border procedures across 21 legal domains (Sistemul de informare al pieței interne (IMI)/Internal Market Information System (IMI), 2025).

The actual restitution process for a cultural asset that has illegally left the territory of another EU Member State begins with the injured state initiating a legal action for restitution against the possessor or holder of the asset before a court designated by each requested state as competent. This action must meet three essential conditions:

- The asset must be adequately described.
- Official documents must confirm that it is a cultural asset as defined by the Directive.
- Competent authorities of the requesting state must issue a declaration that the asset left its territory illegally.

Additionally, through IMI or other communication channels, the competent central authority of the requesting state informs the central authority of the requested state about the legal action being initiated, and the latter then notifies other Member States of the situation.

The Directive also provides limitation periods applicable to the right to request the return of cultural assets that have illegally left the territory of a Member State in general, and those applicable specifically to rights concerning cultural assets that have illegally left the territory of a Member State after January 1, 1993²:

¹ Published in OJ L 316, 14.11.2012.

² Article 15(2) of the Directive leaves it to the discretion of the Member States to extend its scope to the period prior to this date.

- A **general limitation period of three years**, which begins “from the date on which the competent central authority of the requesting Member State became aware of the location of the cultural asset and the identity of its possessor or holder” (Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State, 2014, p. 10, Article 8);
- A **special limitation period of 30 years**, which begins, in any circumstance, “from the date on which the cultural asset illegally left the territory of the requesting Member State” (Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State, 2014, p. 10, Article 8);
- A **special limitation period of 75 years**, “applicable to assets that are part of the public collections referred to in Article 2 point 8 and assets that are included in the inventories of ecclesiastical or other religious institutions in Member States in which these assets are subject to special protection under national legislation” (Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State, 2014, p. 10, Article 8).

Additionally, there are two exceptions to these statutes of limitations: Member States where such proceedings are exempt from restriction, and situations in which bilateral agreements between Member States include a statute of limitations that is more than 75 years.

Another important aspect emphasized by the Directive is that if, between the date the asset illegally left the territory of the Member State and the date the action is initiated, the departure became legal, then the action will be dismissed as inadmissible.

Otherwise, in all cases where the court finds that the conditions for the restitution of the cultural asset are met, the action will be upheld. The requesting State will be required to pay compensation to the possessor, provided that the possessor proves good faith in the acquisition process, especially through documents submitted in the case file. The requesting State may recover the compensation from the person who illegally removed the cultural asset from its territory.

In the most recent report published by the European Commission on the results of the Directive’s implementation—namely the First Report on the Application of Directive 2014/60/EU of the European Parliament and of the Council of 15 May

2014 on the return of cultural assets that have left the territory of a Member State illegally and amending Regulation (EU) No 1024/2012 (recast), published on 18.11.2021—positive effects are recorded in the regulated field, with Member States frequently using the IMI system to support judicial cooperation on this front.

However, Member States have reported several difficulties regarding the definition of “cultural asset” as provided by the Directive, noting “that the directive should also cover cultural assets that have been illegally exported from a Member State, without requiring the cultural asset to hold the specific status of ‘national heritage good,’ since some national courts tend to offer a restrictive interpretation of the category of cultural assets that could be claimed for restitution under the directive (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), 2025, p. 4).”

Likewise, attention was drawn to situations in which certain cultural assets that illegally left the territory of one Member State could be assimilated as legally sold/purchased within the territory of another Member State, if specific legislative conditions regarding the origin of such assets are not in place—conditions that should be regulated specifically by European legislation. Naturally, at this critical point, it is also considered the growing online trade of cultural assets.

Furthermore, the Member States have complained that the legal procedure incurs high costs, which is why, by the time of the report’s publication, only two restitution actions between Member States had been identified. The requirement to prove the illegal departure from the Member State’s territory is considered problematic, especially when the asset has passed through non-EU countries. Four of the Member States consulted regarding the benefits of the Directive even proposed the establishment of a network for mutual judicial assistance, in reference to Article 6 of the Directive, and deemed the appointment of a European prosecutor acting in the interest of the requesting Member State necessary.

All these aspects would lead to strengthening the provisions of the Directive and improving the effectiveness of the procedures it regulates.

3. The National Legislation

In Romania, the transposition of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural assets that have illegally left the territory of a Member State,

followed by Directive 2014/60/EU of the European Parliament and the Council of 15 May 2014 on the return of cultural assets that have illegally left the territory of a Member State and amending Regulation (EU) No 1024/2012, was carried out through Law No. 182/2000 on the protection of the national mobile cultural heritage¹.

The Romanian legislator's continuous efforts to harmonize legislation in this field are reflected in the extensive and frequent amendments made to this legal act, the most recent being Ordinance No. 22/2024 for the amendment and completion of Law No. 182/2000, which brings reforms to the classification procedure of mobile cultural assets², the responsibilities of bodies active in this field, and more (Rusu, 2015, p. 247).

Law No. 182/2000 mentions in Article 6 paragraph (3) that "The Ministry of Culture represents the Romanian state in domestic and international relations concerning the national mobile cultural heritage." And through Article 7 paragraphs (1) and (2) of the same normative act, it is stated that: "(1) The competent authorities are obligated to take all necessary steps, in accordance with the legal provisions in force and the international conventions to which Romania is a party, to recover cultural assets that have been illegally exported, stolen from museums or collections, or are held abroad without legal justification. (2) The competent authorities commit to participating in any jointly organized international operation, based on a cooperation agreement, aimed at prohibiting and preventing illicit operations of import, export, and property transfer of cultural assets".

In Chapters IX and X of Law No. 182/2000, the legislator thoroughly addresses the situation of returning mobile cultural assets that have illegally left the territory of a European Union Member State, generally setting out the same provisions as Directive 2014/60/EU, along with the method of recovery for cultural assets that have illegally left Romania's territory.

3.1. Return of Mobile Cultural Goods that Have Illegally Left the Territory of a Member State

What must be emphasized is that, under the provisions of Article 62 paragraph (1) of Law No. 182/2000: "If during a criminal investigation conducted in accordance

¹ Republished in Official Monitor no. 259 of 09.04.2014.

² Published in the Official Monitor no. 93 of 31.01.2024.

with the law, there are discovered indications that a cultural asset, located on the territory of the Romanian state, has illegally left the territory of a European Union Member State, the Prosecutor's Office attached to the High Court of Cassation and Justice shall notify the interested state, in accordance with Law No. 302/2004 on international judicial cooperation in criminal matters, republished, with subsequent amendments and completions." Further, Article 63 of the law emphasizes that any EU Member State may request the Prosecutor's Office attached to the High Court of Cassation and Justice, respecting the provisions of Law No. 302/2004 on international judicial cooperation in criminal matters. The resolution of the situation can be achieved either amicably—through the competent Romanian authorities, which are obliged to mediate the situation between the requesting state and the possessor/holder of the cultural asset—or through the courts. In Romania, the competent court to adjudicate actions for the restitution of a cultural asset that has illegally left the territory of a European Union Member State is the Bucharest Court of Appeal. This action is brought by the interested state against the possessor or holder of the good and follows the same conditions specified in the Directive, including respecting the limitation periods of three, thirty, or seventy-five years, considering the exceptions that allow for derogation from these time frames.

Subsequently, if the court finds that all admissibility conditions have been met, it will grant the request, order the restitution of the cultural asset, and award compensation to the possessor—but only if the possessor has made diligent efforts (such as checking whether the good appears in accessible registers of stolen cultural items, verifying its provenance, ensuring a fair purchase price, etc.) in acquiring the item. In other words, both the provisions of the Directive and the domestic legislation in this matter reflect the doctrine of *caveat emptor*, placing the burden of proof on the buyer (Stavaru & Soltan, 2019). The judgment issued can be appealed within fifteen days of its pronouncement, and the appeal shall be heard urgently by the High Court of Cassation and Justice.

Additionally, the state has the right to take legal action against the person who was found to have unlawfully removed the cultural asset from its territory, as well as to start other civil or criminal proceedings in line with the requesting state's national legislation, if the asset was returned after the previously mentioned procedures and the requesting state was required to compensate the legitimate possessor.

We also add the provisions of Article 6 paragraph (3) of the UNIDROIT Convention of June 24, 1995 on stolen or illegally exported¹ cultural assets, which mention the possibility that “in place of compensation and in agreement with the requesting state, the possessor who must return the cultural asset to the territory of that state may decide: a) to remain the owner of the good; or b) to transfer ownership, either for payment or free of charge, to a person of his or her choosing who resides in the requesting state and who offers the necessary guarantees.” Even though this exception is not included in the Directive, European states that are parties to the Convention may apply it without reservation (The list of States Parties, 2021).

It is also worth noting that in the case of an international dispute regarding the recovery of a mobile cultural asset that has illegally left the territory of a Union state, having passed through multiple EU countries before reaching a third country, the original state has the option to invoke other internationally recognized treaties or forms of judicial cooperation ratified between the concerned states. Specifically, in addition to the UNIDROIT Convention of June 24, 1995, the provisions of the Convention on Measures to be taken to prohibit and prevent the illicit import, export, and transfer of ownership of cultural assets² may also be applicable.

Provisions from the previously mentioned normative acts, both international and European, were applied by the European Court of Human Rights in the case of *The J. Paul Getty Trust and Others v. Italy* (Application no. 35271/19), resolved by the judgment of August 2, 2024 (Document Collections, 2025). The J. Paul Getty Trust is the largest art entity in the world, based in the United States of America, gathering within its managed institutions (museums, art galleries) artworks from around the globe, with an estimated value of approximately 7.7 billion dollars (J. Paul Getty Trust, 2025). The reason it turned to the Court was to request a ruling that the confiscation order issued by the Italian state concerning the bronze statue titled “Victorious Youth” (found by an Italian fisherman in the Adriatic Sea in 1964), acquired by the Trust in 1977 for \$3,950,000 from a German dealer, was illegal, constituting a violation of the right to peacefully and quietly enjoy property, a right provided under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms³.

Broadly speaking, the Trust contested that Italy was not the rightful owner of the statue, pointing out that in several rulings between 1966–1970, where criminal

¹ Published in the Official Monitor no. 176 of 30.07.1997.

² Adopted in Paris, on 14.11.1970, Romania becoming a party to the treaty on 06.12.1993.

³ Adopted in Rome, on 04.11.1950, ratified by Romania on 31.05.1994.

charges were pursued against those who had found and repeatedly sold the statue, judges stated it was not certain that the cultural asset belonged to Italy's heritage. The statue was identified in 1973 on German territory at an art dealer, and following years of negotiations, it was acquired by the Trust.

Since 1973, the Italian state had fought to reclaim the statue, facing numerous legislative obstacles: investigating how it had left Italy, secured transport or export licenses (if any existed), and even prosecuted those responsible. As the treaties mentioned earlier came into force, their provisions—combined with Italy's determination to bring the statue home—led to the issuance of a confiscation order in 2010. Years of legal challenges followed, during which Italy, through its rulings, not only clarified its ownership but also emphasized that the order aimed to restore public control (state authority) over cultural assets passed down from ancient times and presumed to be state-owned in the absence of specific domestic laws.

In 2019, the recognition process for the order's effects in U.S. territory was in its early stages, during which time the Trust petitioned the Court, which ruled that the confiscation order did not violate the rights invoked by the Trust. However, the Court also criticized the Trust for its negligence in performing due diligence during acquisition and highlighted the need for states to implement stronger protective measures for these categories of cultural assets. This ruling stands as the clearest example of a European state's resolve in recovering mobile cultural assets that have illegally left its territory.

3.2. Recovery of Mobile Cultural Goods that Have Illegally/Legally Left Romania's Territory

Chapter X of Law No. 182/2000 on the protection of mobile cultural heritage highlights the conditions under which the Ministry of Culture can recover a mobile cultural asset that has left the country illegally.

In the initial phase, the procedure provides for the possibility that the Ministry may request another Member State to conduct investigations to determine the location of the good as well as the identity of its possessor/holder. The request must include sufficient information regarding the item in question. Additionally, the Ministry of Culture retains active procedural standing in legal actions concerning the restitution of the asset.

Following the publication on January 17, 2024, in the Official Journal of the European Union of the list of central authorities designated by Member States to handle the return of cultural assets that have illegally left a Member State's territory—in application of Article 4 of Directive 2014/60/EU (Directive 2014/60/EU, 2014)—it is noted that Romania's designated central authority in this field is the Ministry of Culture – Tulcea County Directorate for Culture.

It is worth noting that the most numerous and recent amendments have affected both procedures, as well as extending the categories of mobile cultural assets that must be protected under Law No. 123/2017 for the amendment and completion of Law No. 182/2000 on the protection of the national mobile cultural heritage¹. It was also stated that the Government of Romania, through the Ministry of Culture, is obliged to submit to the European Commission, every five years, a report on the actions introduced regarding the restitution of cultural assets that have illegally left the territory of a Member State of the European Union.

In cases where assets have been legally removed from Romania to the European Union, Law No. 182/2000 conditions the activity on the existence of a certificate of free circulation, while for areas outside the Union, definitive or temporary removal is allowed only based on an export license or export certificate. All these documents may be issued by the decentralized public services of the Ministry of Culture, in accordance with the procedure established by Government Decision No. 518/2004 approving the Methodological Norms regarding the definitive or temporary export of mobile cultural assets².

Article 38 of Law No. 182/2000 states that mobile cultural assets owned by the state or administrative-territorial units may be taken out of the country only temporarily and solely for organizing exhibitions abroad, laboratory investigations, restoration, or expert evaluation, while items classified as "treasure" and owned by private individuals or legal entities may only be taken out temporarily. Additionally, failure to comply with regulations regarding the circulation of such assets or to return cultural heritage items within the legal deadlines constitutes criminal offenses, punishable by imprisonment from 6 months to 3 years or by a fine.

Following the events of January 2025, where pieces from Romania's Dacian treasure were stolen from the Drents Museum in the Netherlands, the Ministry of Culture proposed a draft Government Decision to amend and complete the Methodological

¹ Published in the Official Monitor no. 415 of 06.06.2017.

² Published in the Official Monitor no. 370 of 28.04.2004

Norms on the definitive or temporary export of mobile cultural assets, approved by Government Decision No. 518/2004 (Proiect de Hotărâre/Draft Decision, 2025). The revision changes the allowed durations for which mobile cultural assets may be exported, stating that temporary exports may occur for a period of 6 months, with only one possible extension, also for 6 months. Furthermore, Article 1 paragraph (4) of the draft states that “Classified mobile cultural assets may be exported temporarily for exhibition purposes only if they have been present on Romanian territory for at least 6 months between exhibitions.” The draft also introduces new terms such as “definitive export” and “temporary export,” reshaping the definition of classified mobile cultural assets in the “treasure¹” category, now including items from the “fund” category. Responsibilities are expanded and clarified² for those involved in preserving items received for or delivered to exhibitions—from the moment of handover until the return to the institution that owns the cultural asset (exhibition participants, organizers, etc.).

Overall, the draft tightens conditions for exporting mobile cultural assets. Documentation required for export is more strictly regulated, with firm submission deadlines, protective and integrity-guaranteeing procedures, and direct involvement of the Ministry of Culture in validating related requests. The draft also addresses cases where a good does not return within Romania’s borders following temporary export at the established deadline³, or where a good is taken out of the country without a temporary or definitive export certificate⁴. The draft underwent public debate and was set to receive the Legislative Council’s approval before being presented for Government adoption—and the proposed measures were necessary.

¹ The Draft Decision states in art.2 point f) that “movable cultural goods classified in the legal category “treasure” or in the legal category “fund”, hereinafter referred to as classified movable cultural goods, are goods which, following the development and completion of the classification procedure, have been included in the legal category “treasure” or in the legal category “fund”, of the national movable cultural heritage, under the terms of the law”.

² For example, the “exhibition curator” changes its name to “exhibition courier”.

³ Article 12 paragraph (2) of the Draft: “(2) Failure to return temporarily exported movable cultural goods within the Romanian borders, within the term established by the export certificate or within the term established by the export certificate extending the term issued according to the provisions of art. 10, or any violation of one of the conditions of this temporary removal of a cultural good represents illegal departure from the territory, according to the provisions of art. 61 letter b) of Law no. 182/2000”.

⁴ Article 12 paragraph (3) of the Draft: “(3) The removal from the country, by any means, of movable cultural goods for which the temporary or definitive export certificate, issued under the law, has not been obtained, constitutes an illegal export operation. according to the provisions of art. 37 paragraph (5) of Law no. 182/2000.”

4. Conclusions

The ongoing effort to update European Union legislation in line with the cultural assets market's dynamics, and to harmonize national regulations, highlights public authorities' awareness of the need to protect these types of assets—to preserve generational heritage, maintain artifacts, paintings, and icons that reflect the culture of each country.

Likewise, at both Union leadership level and within each Member State, a clear need has emerged for judicial cooperation in this field, precisely so that cultural assets illegally leaving a state's territory may be identified and returned as swiftly as possible.

The development of IT systems to aid in the identification of cultural assets and the facilitation of cross-state cooperation enhances not only the possibility of curbing illegal practices in this domain but also increases trust between states in each other's central authorities.

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