

RESEARCH ARTICLES

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Greek Law 4355/2015 Implementing Directive 2014/60/EU on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State

Abstract: Greece takes a strong stance towards the protection of cultural heritage and the return of cultural goods to their country of origin. Several cases in recent years have taken place with regard to cultural goods that have been returned from third countries to Greece, and which have left the country in either an illegal or an ambiguous manner. Returns were affected either on the basis of legal proceedings or an amicable resolution. Greece's role in the EU and international *fora* has been important for the protection of cultural heritage. Greek law is one of the most comprehensive and protective laws in the area, especially by reason of the fact that the country has occasionally suffered from looting, is rich in cultural treasures and does not always offer adequate means to effectively protect all treasures found in its soil and waters. This article examines the notion of a "cultural object" under Greek law and what constitutes

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– according to this law – “unlawful removal” from the country’s territory. It also discusses how Greek courts understand the notion of “due care and attention”, according to Article 10 of the Directive 2014/60/EU, and why it is important that in cases where return is ordered, the possessor is the one to demonstrate that s/he exercised due care and attention in acquiring the object in order for her/him to be compensated. Comments are made as to changes that need to be introduced in Greek law by reason of implementing the Directive. Finally, this article discusses future functioning and efficiency of this new EU legal instrument.

Keywords: European Union, Directive 2014/60/EU, Council Directive 93/7/EEC, movement of cultural goods, Greek implementation of Directive 2014/60/EU, illegal trade in art, unlawful movement of artefacts

Introduction

In December 2015 Greece implemented Directive 2014/60 of the European Union (EU) on the return of cultural objects unlawfully removed from the territory of a Member State (hereinafter: “New Directive”)¹ by Law 4355/2015.² Greece has had legislation on the protection of cultural heritage since 1932,³ and the currently

¹ 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, 28.05.2014, p. 1) recasting Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 74, 27.03.1993, p. 74), which has been substantially amended by Directive 96/100/EC of the European Parliament and of the Council of 17 February 1997 amending the Annex to Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 60, 1.03.1997, p. 59) and Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001 amending Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 187, 10.07.2001, s. 43) of the European Parliament and of the Council. See also the Corrigendum to 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, 28.05.2014), OJ L 147, 12.6.2015, p. 24.

² Law 4355/2015 of 18 December 2015 on the adaptation of Greek legislation to the 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 other provisions, Greek Official Gazette A' 178/18.12.2015.

³ Law No. 5351/1932 of 24 August 1932 with respect to antiquities; also in 1950 Law No. 1469/1950 on the protection of a special category of buildings and art works dating after 1830 was enacted; translation of both instruments are available at http://www.unesco.org/culture/natlaws/media/pdf/greece/greece_act_5351_24_08_1932_eng_ofot.pdf [accessed: 28.11.2016].

binding Law was enacted in 2002 (Law 3028/2002)⁴ and was supplemented later by Law 3058/2008.⁵ These laws take into account both the international treaties in the area,⁶ i.e. the 1970 UNESCO Convention and the 1995 UNIDROIT Convention,⁷

⁴ Law No. 3028/2002 of 28 June 2002 for the protection of antiquities and cultural heritage in general; translation at <http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> [accessed: 28.11.2016]. This law was enacted because Law 5351/1932 was outdated, given that there had been much evolution in the area, including the enactment of relevant EU legislation and international conventions. In particular, with regard to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (14 November 1970, 823 UNTS 231; hereinafter: 1970 UNESCO Convention) there was no provision in Greek cultural property law for cases where cultural goods originating from other countries had been illegally imported or traded in Greece.

⁵ Law No. 3658/2008 of 22 April 2008 on Measures for the Protection of Cultural Goods (<http://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/36582008.pdf> [accessed: 28.11.2016]). Its main provisions concern the setting up of the Directorate for the “Documentation and Protection of Cultural Goods”, which aims at the protection of cultural goods and the combating of the illicit trade in antiquities, especially through the quest, documentation of origin and trading, and the claiming of movable monuments which are products of theft, misappropriation, clandestine excavation, or illegal lifting from the sea or have which have been illegally transferred in the country or abroad. This Directorate cooperates with a Police officer, a District Attorney, a Committee of Experts, as well as with any enforcement agency in the country, including customs and equivalent agencies abroad. It also provides, in Article 13, for the international jurisdiction of Greek courts and the applicable law. According to this Article, Greek courts have the exclusive international jurisdiction to try cases relating to disputes of ownership, possession and holding of “movable monuments” (i.e. cultural goods). Greek cultural property law applies to disputes involving Greek movable monuments, irrespective of any other law applicable to the dispute. Crimes provided for in Greek cultural property law are punished according to Greek penal laws even if they have taken place abroad.

⁶ Greece has ratified most international conventions concerning the protection of cultural property (in those cases where a convention has been signed and not ratified it is indicated in the list below as “signed”). These include: Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954, 249 UNTS 240; hereinafter: 1954 Hague Convention) – 9 February 1981; Protocol for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954, 249 UNTS 358) – 9 February 1981; Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (26 March 1999, 38 ILM 769) – 20 April 2005; 1970 UNESCO Convention – 5 June 1981; UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (24 June 1995, 34 ILM 1322; hereinafter: 1995 UNIDROIT Convention) – 19 July 2007; Convention Concerning the Protection of the World Cultural and Natural Heritage (16 November 1972, 1037 UNTS 151) – 17 July 1981; Convention for Safeguarding of the Intangible Cultural Heritage (17 October 2003, 2368 UNTS 1) – 3 January 2007; Convention on the Protection and Promotion of the Diversity of Cultural Expressions (20 October 2005, 2440 UNTS 311) – 3 January 2007; European Cultural Convention (19 December 1954, ETS No. 018) – 10 January 1962; European Convention for the Protection of the Architectural Heritage (3 October 1985, ETS No. 121) – 27 May 1992; European Convention on Offences Relating to Cultural Property (23 June 1985, ETS No. 119) – signed on 23 June 1985; European Convention for the Protection of the Archaeological Heritage (revised) (16 January 1992, ETS No. 143) – 10 July 2006; Framework Convention for the Protection of National Minorities (1 February 1995, ETS No. 157) – signed 22 September 1997; European Landscape Convention (20 October 2000, ETS No. 176) – 17 May 2010; European Convention for the Protection of the Audiovisual Heritage (8 November 2001, ETS No. 183) – signed 8 November 2001.

⁷ See I.A. Stamatoudi, *Restitution of Stolen and Illegally Exported Cultural Objects in the Context of the Unidroit Convention 1995*, in: P. Torremans (ed.), *Legal Convergence in The Enlarged Europe of the New Millennium*, Kluwer Law International, The Hague 2000, p. 109.

and EU legislation.⁸ On top of this, the protection of cultural property in Greece is considered to be a constitutional right, a duty of the State, and is enshrined in Article 24 of the Constitution of Greece.⁹

Greece traditionally belongs to those countries that are rather protective towards their national cultural heritage, i.e. those countries that are internationally known as “export countries”¹⁰ in the sense that they are rich in cultural property, there is a constant demand for their treasures abroad, and this demand does not necessarily correspond to the legal exportation of those treasures. This reality is taken into account by Greek legislation, which provides for a comprehensive and rather strict regime of protection of national cultural property.

This article is divided into three parts. The first part provides some thoughts and comments on the New Directive, focusing mainly on the novelties it introduces in EU law. The next part examines the notion of national treasures under Greek law, and consequently the extent to which the Directive applies when it comes to the protection of Greek national treasures. The third part discusses the changes introduced into Greek law as a result of the New Directive. Conclusions are offered at the end of the article.

The New Directive in a nutshell

The previous EU Directive on the return of cultural objects illegally removed from the territory of a Member State (hereinafter: Council Directive 93/7/EEC) was enacted in the context of the Single Market policy and was adopted when internal frontiers were abolished on 1 January 1993. One of its main objectives was to reconcile the fundamental principle of the free movement of goods, as laid down by Article 34 of the Treaty on the functioning of the European Union¹¹ (TFEU),¹² with

⁸ For an analysis of the EU legislation in the area, see I.A. Stamatoudi, *Cultural Property Law and Restitution. A Commentary to International Conventions and European Union Law*, Edward Elgar Publishing, Cheltenham (UK) – Northampton (US) 2011, p. 112 ff.

⁹ Article 24: “1. The protection of the natural and cultural environment constitutes a duty of the State. The State is bound to adopt special preventive or repressive measures for the preservation of the environment. [...] 6. Monuments and historic areas and elements shall be under the protection of the State. A law shall provide for measures restrictive of private ownership deemed necessary for protection thereof, as well as for the manner and the kind of compensation payable to owners.” Constitution of Greece (revised), 27 May 2008, <http://www.hri.org/docs/syntagma> [accessed: 28.11.2016].

¹⁰ I.A. Stamatoudi, *Cultural Property Law...*, p. 19 ff.

¹¹ Treaty on the Functioning of the European Union (consolidated version), OJ C 326, 26.10.2012, p. 47; Article 34 TFEU: “Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”

¹² See I.A. Stamatoudi, *National cultural treasures and the free movement of goods in the Single Market*, in: E. Trova (ed.), *Cultural Heritage and the Law*, Sakkoulas Publications, Athens 2003, p. 261 (in Greek). See also I.A. Stamatoudi, *The national treasures exception in Article 36 EC: How many of them fit the bill?* “Art, Antiquity and Law” 1998, Vol. 3.1, p. 39.

the protection of national treasures, as set out in Article 36 of the TFEU.¹³ Council Directive 93/7/EEC provided for cooperation mechanisms and a procedure for returning national treasures when these left the territory of a Member State unlawfully. It was complemented by Regulation 116/2009 on the export of cultural goods,¹⁴ which sets up uniform preventive controls at the EU's external borders allowing the competent authorities in the Member States – where cultural goods were exported to a third country – to take account of the interests of the other EU Member States.

Council Directive 93/7/EEC did not prove to be a success. Between 1993 and 2013 only 15 claims had been filed under the Directive, and only 7 of them were successful. This was due to a variety of reasons. Firstly, the Directive did not manage to bridge the differences between the diverging traditions and mentalities in the area. On the one hand there were countries (especially those of the South) that had severe problems with pillage, illegal excavation, and illegal export of their cultural property, and on the other hand there were countries with a vibrant art market, auction houses, galleries, collectors and important museums. Council Directive 93/7/EEC was rather limited in scope, which resulted in a failure to build trust among EU Member States that it would actually work as an effective tool for the return of cultural treasures to their country of origin.

An illegally removed treasure came within the scope of the Council Directive 93/7/EEC only if it belonged to one of the categories listed in the Annex to the Di-

¹³ Article 36 TFEU (ex Article 30 TEC): “The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of [...] the protection of national treasures possessing artistic, historic or archaeological value [...]. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.” See D. Voudouri, *Circulation et protection des biens culturels dans l'Europe sans frontières*, “Revue du Droit Public” 1994, Vol. 110, p. 483; D. Papagiannis, *The Notion of Cultural Goods under Community Law*, in: E. Trova (ed.), *Cultural Heritage and the Law*, Sakkoulas Publications, Athens 2004, pp. 607, 608, 609; T. von Plehwe, *European Union and the Free Movement of Cultural Goods*, “European Law Review” 1995, Vol. 20, pp. 431, 434; P. Pescatore, *Le commerce de l'art et le Marché Commun*, “Revue Trimestrielle de Droit Européen” 1985, a.XXI (1), Vol. 21, p. 451; A. Biondi, *The Merchant, the Thief and the Citizen: The Circulation of Works of Art within the European Union*, “Common Market Law Review” 1997, Vol. 34, p. 1173; P. Stagos, *The Free Movement of Artistic Goods in the Community and the Cultural Dimension of European Integration*, “Greek European Law Review” 1986, p. 683 (in Greek); A. Ferrer-Correia, *La vente nationale d'objets d'art sous l'angle de la protection patrimoine culturel*, “Annuaire de l'Institut de Droit International” 1991, 64-I, session de Bâle, pp. 90, at 90-121 and 140-192; F. Rigaux, *Libre circulation des biens culturels et protection des trésors nationaux*, “European Review of Private Law” 1994, Vol. 2, p. 95; A. Grammatikaki-Alexiou, *International Trade of Cultural Property and Private International Law*, XV, Sakkoulas Publications, Thessaloniki 2002, p. 52-54; B.T. Hoffman, *International Art Transactions and the Resolution of Art and Cultural Property Disputes: A United States Perspective*, in: B.T. Hoffman (ed.), *Art and Cultural Heritage. Law, Policy and Practice*, Cambridge University Press, Cambridge 2006, pp. 159, 163; J. Goyder, *Free Movement of Cultural Goods and European Community Law*, “International Journal of Cultural Property” 1992, Vol. 1.1, p. 219; A. Mattera, *La libre circulation des œuvres d'art à l'intérieur de la Communauté et la protection des trésors nationaux ayant une valeur artistique, historique ou archéologique*, “Revue du Marché Unique Européen” 1993, Vol. 2, p. 9.

¹⁴ Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods (codified version), OJ L 39, 10.02.2009, p. 1.

rective and met certain minimum financial and chronological thresholds.¹⁵ This did not sit well with the EU Member States' different traditions and laws, which did not necessarily follow or correspond to these criteria. Moreover, the one-year time limitation that was provided for in the Council Directive 93/7/EEC for filing a claim for return was too short. Many claims were statute-barred even before they were brought forward.¹⁶

There was also the issue of compensation.¹⁷ The possessor of the object was entitled to compensation if he could prove that he exercised due care and attention when acquiring it. That was problematic because "due care" meant different things in different Member States, which used their own legal traditions to interpret it. Some interpreted it more liberally whilst others more restrictively. Some approached cultural objects as any other chattel, whilst others took into account the fact that special care should have been taken for cultural objects. Perhaps one could argue that today Member States are no longer allowed to use their national laws to interpret a notion enshrined in EU legislation unless Member States' discretion is expressly provided in the law. All other notions found in EU law should be construed in a uniform and autonomous manner.¹⁸ Yet the exact nature of this matter is not obvious unless a notion has been further elaborated in some EU (legal) instrument or interpreted by the Court of Justice of the European Union (CJEU).

In addition, the Directive provided for the payment of compensation where it was proven that the possessor had exercised due care when acquiring the object.¹⁹ This obligation could entail a high cost for the State claiming back the object (in some cases it may even have had to "buy" it back), and in addition recourse to the courts could be prohibitive because of, for example, the legal costs.²⁰

¹⁵ See Article 1 and the Annex to the Council Directive 93/7/EEC.

¹⁶ See Article 7 of the Council Directive 93/7/EEC.

¹⁷ See Article 9 of the Council Directive 93/7/EEC.

¹⁸ The CJEU in *UsedSoft (C-128/11 UsedSoft GmbH v. Oracle International Corp.* [39] (nyp)) provided that according to settled case-law the need for a uniform application of European Union law and the principle of equality require that the terms of a provision of European Union law, which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, must normally be given an independent and uniform interpretation throughout the European Union. See also Case C-5/08 *Infopaq International* [2009] ECR I-6569 [27]; Case C-34/10 *Brüstle* (nyp) [25]; Case C-510/10 *DR and TV2 Denmark* (nyp) [33]; Case C-357/98 *Yiadom* [2000] ECR I-9265 [26]; Case C-245/00 *SENA* [2003] ECR I-1251 [23] and Case C-306/05 *SGAE* [2006] ECR I-11519 [31].

¹⁹ See Article 9 of the Directive.

²⁰ See the *Republic of Austria v. Altmann*, 541 US 677 (2004) concerning five paintings stolen by the Nazis. "Under Austrian law, the filing fee for such a lawsuit is determined as a percentage of the recoverable amount. At the time, the five paintings were estimated to be worth approximately US\$135 million, making the filing fee over US\$1.5 million. Although the Austrian courts later reduced this amount to \$350,000, this was still too much for Altmann, and she dropped her case in the Austrian court system".

Also the administrative co-operation between Member States was insufficient. Typically, information concerning illegal cultural property did not come from the Member States' authorities responsible for the application of the Directive, but from other sources. This was because Member States would either not use or were not convinced to use this process. It could also be due to the fact that Member States used alternative methods or routes to claim back their cultural objects, which were less cumbersome and for that reason more effective. Recourse to penal courts, direct negotiations with the possessor, or recourse to the mechanisms of international conventions, as implemented in the national laws of some states, or use of the national law on chattels or cultural heritage, are only some examples.

While the New Directive has rectified many of these issues others were not included in the final text. A rather important omission was the failure to change the rule providing that EU Member States do not have to accept claims relating to cultural objects that were removed from their territory before 1st January 1993 unless they choose to do so. Greece and Cyprus have chosen to extend the scope of their laws beyond this date. Thus EU countries may, according to Greek law, claim the return to their own territory of objects found in Greek territory even if their removal incurred before 1st of January 1993. A second issue that was not dealt with by the New Directive was that no provision was made for auction houses to be diligent with regard to the auctioning of cultural treasures and abide by the international conventions and the relevant UNESCO International Code of Ethics for Dealers in Cultural Property or other industry standards in the area.²¹

Despite the above, one cannot dispute the fact that the New Directive is a vastly improved legislative instrument compared to the previous one, and that it incorporates to a considerable extent the evolution and progress made in the area. Not only does it incorporate the 1970 UNESCO Convention (which was also the case with the previous Directive) but it also adopts some of the provisions of the 1995 UNIDROIT Convention, such as those on time limitations,²² due diligence, the criteria of due diligence and good faith acquisition, and the reversal of the burden of proof when good faith needs to be proven.²³

²¹ *International Code of Ethics for Dealers in Cultural Property*, http://portal.unesco.org/culture/en/ev.php-URL_ID=13095&URL_DO=DO_TOPIC&URL_SECTION=201.html [accessed: 28.11.2016]. See also I.A. Stamatoudi, *Codes of Ethics for Dealers in Cultural Property: How effective are they?*, Hellenic Ministry of Culture and Sports, General Directorate of Antiquities and Cultural Heritage, Athens 2016, p. 80 (in Greek). Also, according to the European Parliament about 40,000 cultural objects are removed illegally every year and only a very small number of them are returned to their countries of origin. (European Parliament (2014), *Return of illegally exported cultural objects: simpler rules approved by culture MEPs*, 10.04.2014, <http://www.europarl.europa.eu/news/pl/news-room/20140407IPR42640/return-of-illegally-exported-cultural-objects-culture-meps-back-simpler-rules> [accessed: 28.11.2016]. Cultural objects are the third most smuggled item, after drugs and arms, according to UNESCO and UN statistics).

²² Article 3 of the 1995 UNIDROIT Convention.

²³ Article 4 of the 1995 UNIDROIT Convention.

Greek law

The notion of national treasures according to Greek law

The New Directive aims – through co-operation – to facilitate the physical return of cultural treasures back to the EU country from which they had been illegally removed. The New Directive no longer contains criteria (in terms of the types of cultural goods and their dating) with respect to the national treasures that fall within its scope. Thus the Annex found in the previous Directive has been repealed. Under the current regime all cultural objects identified as “national treasures possessing artistic, historic or archaeological value” by an EU Member State are covered by the New Directive and may therefore form the object of a claim for their return to their country of origin.

Greece, as well as a number of other states, had expressed the view that another reason why the system under the previous Directive was not effective was the fact that there were difficulties demonstrating to an EU Member State from which an object was claimed that the object in issue fell within the list of those treasures covered by the Directive. This is no longer required. It suffices that the claimant argues that the treasure at issue forms part of its national cultural heritage, and this is derived from its national law. This has indeed been a significant step forward.

Greek law defines its cultural treasures as follows: According to Article 1 of Law 3028/2002 “[t]he cultural heritage of the Country consists of the cultural assets located within the borders of the Greek territory, including the territorial waters, as well as within other sea zones on which Greece has relevant jurisdiction in accordance with international law.” Cultural heritage also includes intangible cultural assets. Thus, Greek cultural heritage includes any cultural asset (tangible or intangible) falling within Greek borders.

Special provisions exist for tangible cultural property, i.e. “cultural objects” which are the “testimonies of the existence and of the individual and collective creativity of man”.²⁴ According to Greek law, these include “monuments”²⁵ (i.e. cultural objects meriting special protection [both “immovable” and “movable”]), archaeological sites, and historical sites. Cultural objects, which constitute material testimonies, belong to the cultural heritage of the Country and deserve special protection.²⁶

Greek law defines “immoveable monuments” as monuments, which a) have been attached to and remain on the ground or the seabed or on the bed of lakes or rivers (e.g. buildings); or b) are found on the ground or the seabed or on the bed of lakes or rivers and cannot be removed without damage to their value as testimonies (e.g. ship wrecks); or c) installations, constructions and decorative and other

²⁴ Article 2 of Law No. 3028/2002.

²⁵ This is a term used in Greek cultural property law.

²⁶ Article 2 of Law No. 3028/2002.

elements, which form an integral part of the monuments, as well as their immediate surroundings (e.g. mosaics).²⁷

According to Greek law, “movable monuments” are the monuments that are not deemed as immovable.²⁸ Movable monuments (hereinafter: m.m.) are divided in Greek law into the following categories:²⁹

- m.m. dating until 1453;
- m.m. dating from 1454 to (and including) 1830 and fall within one of the categories below:
 - findings of excavations or archaeological research;
 - dismembered from immovable monuments;
 - religious worship instruments, including religious paintings;
- m.m. between 1453 and 1830 that do not belong in one of the aforementioned categories but have been classified by the Ministry of Culture as monuments;
- cultural goods which are older than 100 years and which have been classified by the Ministry of Culture as monuments;
- cultural goods dating within the last 100 years which have been classified by the Ministry of Culture as monuments;
- similar sets of movable cultural objects of a particular social, technical, folklore, ethnologic or general historical, artistic or scientific interest and which are exceptionally classified as monuments by reason of the fact that they are rare, their identification is difficult, and there is a risk of loss or destruction.

Classification requires an act by the Minister of Culture, which refers expressly to a particular object and classifies it as national cultural heritage.

Ownership of national cultural treasures

The distinction between the various types of cultural treasures corresponds to special regimes of regulation for each of them concerning ownership, possession, export, import, lending, and trading. With respect to movable monuments, the situation is as follows: Movable monuments a) dating up to 1453; or b) which have been or are revealed during excavations or in the course of other archaeological research; or c) (i) findings of excavations or archaeological research, (ii) dismembered from immovable monuments, (iii) religious worship instruments including religious paintings dating from 1454 and until 1830, belong to the State and are untradeable and imprescriptible.³⁰ Any natural or legal person may only acquire a right of possession in accordance with what is provided in the law, but cannot

²⁷ Article 2(b)(cc) of Law No. 3028/2002.

²⁸ Article 2(b)(dd) of Law No. 3028/2002.

²⁹ Article 20 of Law No. 3028/2002.

³⁰ Article 21 of Law No. 3028/2002.

become an owner. That which falls outside the aforementioned categories can be privately owned, but ownership is exercised in accordance with specific conditions provided in the law.³¹

Amendments in Greek Law

In accordance with the New Directive, Greek law now requires the use of the Internal Market Information (IMI) system, which was introduced by Regulation 1024/2012,³² for conducting the administrative cooperation and the exchange of information between central national authorities.³³

It also extends the time limit for initiating return proceedings from one to three years. More particularly Member States have a) six months (instead of two they used to have under Council Directive 93/7/EEC) to run a check on whether cultural property that has been found in another Member State constitutes a national treasure; and b) three years (instead of one according to the previous regime) to initiate proceedings for its return.³⁴ If the object at issue forms part of a public collection, defined in Article 2(8), or belongs to inventories of ecclesiastical or other religious institutions in the Member States wherein they are subject to special protection arrangements under national law, return proceedings shall be subject to a time limit of 75 years, except where there is a bilateral agreement with another Member State providing for a period exceeding 75 years, or the claim is imprescriptible according to a Member State's law.

The law also applies to the treasures of any Member State that have been removed from its territory not only after 1st January 1993 (as provided by the Directive), but also before that date.³⁵

In addition it establishes that the possessor of a cultural object should prove that he/she exercised due care and attention when acquiring the object in order to obtain compensation when its return is ordered. The criteria used in this respect are based on Article 4 of the 1995 UNIDROIT Convention concerning due diligence. The agency that is responsible for the application of the Directive is the Department of Documentation and Protection of Cultural Goods, which belongs to the Directorate of the Management of the National Archive of Monuments, Documentation and Protection of Cultural Goods.

³¹ See D. Papapetropoulos, *Law 3028/2002 on the Protection of Antiquities and Cultural Heritage in General*, Sakkoulas Publications, Athens 2006 (in Greek); E. Trova (ed.), *Cultural Heritage and the Law*, Sakkoulas Publications, Athens 2003 (in Greek); A. Samara-Krispi (ed.), *Protection and Return of Cultural Treasures*, Sakkoulas Publications, Athens – Thessaloniki 2011 (in Greek).

³² Council Regulation (EU) No. 1024/2012 of 25 October 2012, concerning administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (“the IMI Regulation”), OJ L 316, 14.11.2012, p. 1.

³³ Article 6 of Law No. 4355/2015.

³⁴ Article 7 of Law No. 4355/2015.

³⁵ Article 3 of Law No. 4355/2015.

Article 5 of Greek Law 4355/2015 provides for issues of judicial protection. In particular any EU Member State may file a suit against the possessor (and in case no possessor exists against the holder) of the good that has been illegally removed from its territory. The suit is filed with the One Member Court of First Instance. Member States may also apply for an injunction. They may ask in particular for the prohibition of any act of possession or holding as well as the recognition of their right to possess the good.

Article 6 of the new Greek Law provides that the competent agency in the Ministry of Culture shall inform immediately the competent agency of the country in which the suit was filed or an injunction was applied for the return of the object. The same agency also informs the agencies of the remaining Member States about the suit. This exchange of information is made through IMI.

Article 7 provides that the right to file a suit is time-barred after three years from the date the relevant agency of the claiming state came to learn the place where the cultural object was and the identity of its possessor or holder.

According to Article 8 the possessor is entitled to equitable remuneration in case the return is ordered, but only if he or she exercised due care and attention when acquiring the good. In determining whether the possessor exercised due care and attention, consideration is given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any other relevant information which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances. In the case of a donation or succession, the possessor is not in a more favourable position than the person from whom he or she acquired the object.³⁶

The requesting Member State pays any compensation due upon the return of the object.³⁷ Expenses incurred in implementing a decision ordering the return of a cultural object are borne by the requesting Member State.³⁸ The same applies to the costs of preserving the good.³⁹ The requesting State may claim the amounts it paid for equitable remuneration to the possessor or costs of preservation for the object from those that are responsible for the illegal removal of such good.⁴⁰

Article 9 provides that in case the suit is successful the ownership of the good is governed by the law of the state to where it is returned. The owner of the good has to pay the State the costs and expenses it incurred (including the compensation it may have paid) to the good faith owner.

³⁶ Article 8(3) of Law No. 4355/2015.

³⁷ Article 8(2) of Law No. 4355/2015.

³⁸ Article 8(5) of Law No. 4355/2015.

³⁹ *Ibidem*.

⁴⁰ *Ibidem*.

Conclusions

One should start from the premise that cultural property is not an abstract concept. It is closely linked to the history of a state and at the same time it forms the pillar of the world's cultural heritage. Cultural heritage is all that defines us, our roots, our traditions, our cultures, and our visions. It is what makes us different and unique in the mosaic of world cultures and contributes effectively to cultural diversity. By respecting peoples' cultures, one respects the people themselves, their mentalities, philosophies, ideals, and their stance in the world. That's why this New Directive is far more than just a piece of legislation. It has its own semantics. Irrespective of any deficiencies, it nevertheless is a clear signpost that the principles and trends in cultural property law, both as they stand today and as they develop in the future, favour an effective protection of cultural property, as this property is defined by each state itself on the basis of its own tradition and mentality.

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Irini A. Stamatoudi

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