



TEXTS ADOPTED

P8_TA(2019)0037

Cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars

European Parliament resolution of 17 January 2019 on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars (2017/2023(INI))

The European Parliament,

- having regard to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the second protocol thereto of March 1999,
- having regard to its resolution of 14 December 1995 on the return of plundered property to Jewish communities¹ and of 16 July 1998 on the restitution of property belonging to Holocaust victims²,
- having regard to the package of measures adopted in December 2016 to strengthen the EU's capacity to fight the financing of terrorism and organised crime, delivering on the commitments made in the Action Plan against terrorist financing of 2 February 2016 (COM(2016)0050), and to its proposal for a regulation of the European Parliament and of the Council on the import of cultural goods of 13 July 2017 (COM(2017)0375),
- having regard to its resolution of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Daesh³,
- having regard to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995,
- having regard 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 State⁴,
- having regard to Article 1 of Protocol 1 to the European Convention on Human Rights,
- having regard to Article 17 of the Charter of Fundamental Rights of the European

¹ OJ C 17, 22.1.1996, p. 199.

² OJ C 292, 21.9.1998, p. 166.

³ OJ C 346, 21.9.2016, p. 55.

⁴ OJ L 159, 28.5.2014, p. 1.

Union,

- having regard to Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods¹,
 - having regard to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters², and in particular Article 7(4) thereof,
 - having regard to its resolution of 17 December 2003 on a legal framework for free movement within the internal market of goods whose ownership is likely to be contested³,
 - having regard to the 2016 study by its Directorate-General for Internal Policies on ‘Cross-border restitution claims of art looted in armed conflicts and wars and alternatives to court litigation’,
 - having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)⁴,
 - having regard to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970,
 - having regard to Council Resolution 14232/12 of 4 October 2012 on the creation of an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET),
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Culture and Education (A8-0465/2018),
- A. whereas, according to Interpol, the black market for works of art is becoming as lucrative as those for drugs, weapons and counterfeit goods;
- B. whereas, according to the impact assessment of the Commission proposal for a regulation on the import of cultural goods, 80 to 90 % of global antiquities sales are of goods of illicit origin;
- C. whereas cultural heritage constitutes one of the basic elements of civilisation, given, for example, its symbolic value and cultural memory of humankind uniting people; whereas in recent years a string of crimes against world cultural heritage have been perpetrated by warring factions and terrorist entities all over the world, and whereas valuable artworks, sculptures and archaeological artefacts are being sold and imported into the

¹ OJ L 39, 10.2.2009, p. 1.

² OJ L 351, 20.12.2012, p. 1.

³ OJ C 91E, 15.4.2004, p. 500.

⁴ OJ L 119, 4.5.2016, p. 1.

EU from certain non-EU countries, with the profits potentially being used to finance terrorist activities; whereas it is essential to make a firm commitment against illicit trafficking in cultural goods such as works of art plundered during the armed conflicts and wars in Libya, Syria and Iraq; whereas cultural goods are of major cultural, artistic, historical and scientific importance and must be protected from unlawful appropriation and pillage;

- D. whereas soon after the end of the Second World War, attempts were made to find and return looted property to its country of origin;
- E. whereas the restitution of objects traded and/or excavated or obtained illegally must be ensured with regard to the EU's commitment to fair processes and victim compensation, as well as the UNESCO constitution and conventions on heritage protection;
- F. whereas the Washington Conference Principles on Nazi-Confiscated Art, the Vilnius Forum and the Terezin Declaration on Holocaust Era Assets and Related Issues have all emphasised the importance of providing restitution for individual immovable property; whereas the number of artworks that have been restituted since the Washington Conference is estimated to fall between 1 000 and 2 000¹; whereas there is no complete list of artworks restituted in recent years;
- G. whereas artworks are still missing and are waiting to be returned to their rightful owners or to their heirs; whereas at the Washington Conference in 1998 Jonathan Petropoulos made an estimate that around 650 000 artworks had been stolen throughout Europe, and Ronald Lauder stated that 11 000 pieces of art worth between USD 10 and 30 billion at the time (1998) were still missing; whereas the Claims Conference-WJRO generally responds that there are no accurate estimates: approximately 650 000 artworks were stolen, of which perhaps 100 000 remain missing;
- H. whereas litigants continue to encounter legal problems owing, on the one hand, to the often very specific nature of their claims and, on the other, to the expiration of post-war restitution laws, the non-retroactivity of conventional norms, the lack of any definition of looted 'art', statute of limitations provisions on claims or the provisions on adverse possession and good faith;
- I. whereas restitution claims of looted works of art and cultural goods have mainly been addressed by means of public international law; whereas these rules must be complemented by stronger rules in private international law;
- J. whereas the insufficiently developed dimension of private law, both at international and European level, contributes to legal uncertainty in cross-border restitution cases of looted works of art and cultural goods, not only as regards completed transactions in Nazi-looted art but also with respect to future cases;
- K. whereas no EU legislation exists that explicitly and comprehensively governs restitution claims for works of art and cultural goods looted in armed conflicts by private individuals;
- L. whereas UNESCO, in conjunction with major auction houses, museums and renowned

¹ According to the Claims Conference-WJRO Looted Art and Cultural Property Initiative.

collectors in Europe, is developing advanced research into the provenance of these works in order to be able to return them to their owners;

- M. whereas the International Council of Museums (ICOM) has been publishing ‘Red Lists’ of categories of objects vulnerable to illicit trafficking for more than a decade, with the aim of complementing the Interpol database on stolen property;
1. Regrets that, to date, there has been practically no follow-up to its resolution on a legal framework for free movement within the internal market of goods whose ownership is likely to be contested, in which Parliament called on the Commission to undertake a study on a number of aspects related to civil and procedural law rules, provenance research, cataloguing systems, alternative dispute resolution mechanisms and the value of creating a cross-border coordination administrative authority; considers that Article 81(2) of the Treaty on the Functioning of the European Union could serve as a legal basis for conferring powers on the Union to act in this field;
 2. Underlines that the looting of works of art and other cultural goods, during armed conflicts and wars, as well as in times of peace, is a major shared concern that needs to be addressed in terms of both prevention and restitution of looted cultural property in order to protect and ensure the integrity of the cultural heritage and identity of societies, communities, groups and individuals;
 3. Notes that insufficient attention has been paid at EU level to the restitution of works of art and cultural goods looted, stolen or illegally obtained, inter alia in armed conflicts, in particular in the fields of private law, private international law and civil procedure; calls on the Commission to protect, support and encourage cross-border restitution claims of cultural assets displaced and misappropriated as a result of state-sanctioned acts of plunder or looted during armed conflicts; calls on the Commission and the Member States to issue recommendations and guidelines to raise awareness of the need to support national institutions in the Member States as regards restitution claims;
 4. Stresses that institutions such as UNESCO and Interpol are calling for the strengthening of the protection of cultural heritage and the empowerment of states to put in place measures to facilitate restitution;
 5. Regrets that there are no reliable statistics on the precise scale of looting of and illicit trade in cultural property; calls on the Commission and the Member States to establish reliable statistics in this field;
 6. Expresses concern that most current political and legislative initiatives focus exclusively on public, administrative and/or criminal law; stresses that in order to set up a comprehensive regulatory framework, private law must be taken into account more intensely; calls on the competent authorities to adopt all appropriate measures and initiatives to achieve this;
 7. Considers that further investigation is needed to shed light on the dark field of illicit trade in cultural property and to obtain better information about its scale, structure and size, such as by the ILLICID project currently under way in Germany for example;
 8. Welcomes the recognition by some Member States that the unique problems associated with restitution claims of works of art and cultural goods looted, stolen or illegally

obtained in armed conflicts and wars need to be addressed in order to arrive at legal solutions ensuring the property rights of private individuals, state and local government institutions and religious associations unfairly dispossessed of their works of art during armed conflicts or wars;

9. Stresses the importance of raising collective awareness to denounce these illegal practices and recalls that each object removed from its owner represents a historical and scientific value lost forever;
10. Notes that the most efficient way of countering trafficking in cultural goods and the development of the illegal art market, as well as supporting restitution, is to foster the development of fair practices in art trade and restitution from a transnational and global perspective, in terms of both their intended preventive effect and the coercive or punitive impact being sought;
11. Considers that in order to have a set of rules that can effectively prevent looting and smuggling of works of art and cultural goods, and to achieve a fully transparent, responsible and ethical global art market, the Commission should seek to cooperate with third countries with a view to establishing fruitful partnerships, taking into account, to this end, the principles set out in the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects;
12. Considers that EU legislative action, including the dimension of private international law, would be appropriate for future transactions only;
13. Considers that it is time to put an end to the years of convolutions and nuances if a responsible and ethical European art market is to be established; calls on the Commission, in this regard, to identify civil law measures to help overcome the difficult problems encountered by private parties seeking the restitution of works of art genuinely belonging to them; calls at the same time on the Commission to develop a new debating framework for the identification of best practices and solutions for the present and the future;
14. Welcomes the Commission's proposal for a regulation on the import of cultural goods, as well as the amendments to the proposal adopted by Parliament on 25 October 2018¹; reiterates, in view of the global scope of the art market and the number of objects in private hands, the need for further efforts concerning the cross-border restitution of works of art and cultural goods looted in armed conflicts and wars; underlines that provenance research and European cooperation have proven useful for the identification and subsequent restitution of looted objects, and have in some cases prevented the financing of terrorist groups or wars;
15. Regrets that due to the absence or laxity of or differences in rules between Member States concerning provenance research and due diligence, many cross-border restitution claims cannot be carried out in an effective and coordinated way, which may foster looting and trafficking and provide incentives for smuggling as a result; notes that as a result of the lack of common standards, the applicable procedure often remains unclear to all stakeholders, including museums, art dealers, collectors, tourists and travellers; asks the Commission, therefore, to harmonise the rules on provenance research and to

¹ Texts adopted, P8_TA(2018)0418.

incorporate some of the basic principles of the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects;

16. Emphasises that there is an urgent need to actively promote the systematic recourse to high-quality and independent provenance research in order to identify looted art works, to facilitate their restitution to the legitimate owners, to achieve a fully transparent, responsible and ethical art market, and to effectively prevent and deter looting and trafficking of art and cultural goods from armed conflicts and wars; notes the possibilities offered by European financial instruments in this direction; calls on the Commission and Member States to encourage and support special training programmes in provenance research at Union and national level, in order to enable in particular those involved in the fight against the illicit trade in cultural goods to develop and improve their expertise, including through cross-border projects;
17. Considers that provenance research is closely linked to the due diligence obligation applicable when acquiring works of art and constitutes a major concern for all the actors in the art market as acquiring stolen artworks knowingly or through negligence, is punishable under certain national laws;
18. Considers that care should obviously be taken to create a comprehensive listing of all cultural objects, including Jewish-owned cultural objects plundered by the Nazis and their allies, from the time of their spoliation to the present day; urges the Commission to support a cataloguing system, to be used also by public entities and private art collections, to gather data on the situation of looted, stolen or illegally obtained cultural goods and the exact status of existing claims; urges the Commission to support digitisation projects that would establish digital databases or connect existing ones in order to facilitate the exchange of such data and provenance research;
19. Considers that to enable proper provenance research, a documentary record or a transaction register that is as detailed as possible needs to be created; asks the Commission to actively support the drafting of common guidelines on such registers and to adopt appropriate measures in order to encourage Member States to introduce a general obligation for art market professionals to maintain such a transaction register and, more generally, to adhere to the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects;
20. Urges the Commission to encourage provenance research activities throughout the Union and to support it financially; suggests that the Commission organise a discussion forum in order to exchange best practices and find the best solutions for the present and the future;
21. Calls on the Commission to consider establishing a specific alternative dispute resolution mechanism for dealing with cases of restitution claims of looted works of art and cultural goods in order to overcome existing legal obstacles, such as a hybrid form of arbitration and mediation; stresses the importance of clear standards and transparent and neutral procedures;
22. Notes that statutes of limitation often create difficulties for claimants in restitution matters; calls on the Commission to assess the issue and strike the right balance for the limitation period applicable to looted art restitution claims, including Nazi-looted art restitution claims, which should take into account both the protection of the interests of the victims of looting and theft and those of the market; considers that the US Holocaust

Expropriated Art Recovery Act could serve as an example;

23. Calls on the Commission to consider taking legislative action to strengthen the legal system for cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars on the basis of private international law instruments;
24. Calls on the competent EU institutions to encourage Member States to share information on existing practices with regard to the provenance check of cultural goods, and to intensify their cooperation in order to harmonise the control measures and administrative procedures aimed at establishing the provenance of cultural goods;
25. Points to the lack of coordination at Member State level regarding the interpretation of the notion of ‘due diligence’; calls on the Commission to clarify the notion of ‘due diligence’ in relation to good faith; points, as an example, to Article 16 of the Swiss Federal Law on the International Transfer of Cultural Property, which bans dealers and auctioneers from entering into an art transaction if they have any doubt as to the provenance of the object; notes that under this law the burden of proof is partly transferred to the seller; however, the possessor of an artwork cannot rely on the principle of good faith if he or she is unable to prove that he or she paid due attention at the time of acquisition; calls on the Commission to adopt measures aimed at making the art market and also the potential buyers of artefacts aware of the importance of provenance research, given that such research is linked to the due diligence obligation;
26. Urges the Commission to develop common principles on access to public or private archives containing information on property identification and location and to proceed to a thorough mapping of existing databases of cultural goods and to envisage the creation of a central meta-database that takes account of the available information, is updated regularly and can be accessed by all relevant actors; considers that on the basis of this central meta-database, a common cataloguing system should be put in place which could use standardised object IDs; asks the Commission, therefore, to encourage the introduction of the object IDs developed and promoted by ICOM and other organisations as the market standard within the internal market as a whole; points out that such a database should be connected with INTERPOL’s ‘Stolen Works of Art Database’ and be updated regularly;
27. Considers that the creation, for the purposes of enabling more thorough and accurate provenance research, of a documentary record or transaction register of cultural property could be a further useful complement to the above-mentioned database; asks the Commission to adopt appropriate measures in order to encourage Member States to introduce a general obligation for art market actors to maintain such documentary records or transaction registers and, more generally, to adhere to the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects;
28. Considers that the central database should function on the basis of a common cataloguing system whereby objects would be identified in a standardised manner (taking into account characteristics such as materials, techniques, measurements, inscriptions, title, subject, date or period, etc.);
29. Calls on the Commission to identify common principles on how ownership or title are established as well as rules on prescription and standards of proof and the concept of looting and art, taking into account the relevant rules in force in the Member States;

30. Calls on the Member States and candidate countries to make all necessary efforts to adopt measures to ensure the creation of mechanisms which favour the return of the property referred to in this resolution and to be mindful that the return of artworks looted, stolen or illegally obtained in the course of crimes against humanity to the rightful claimants is a matter of general interest under Article 1 of Protocol 1 to the European Convention on Human Rights;
31. Highlights that in order to have a set of rules that can effectively prevent the looting and smuggling of works of art and cultural goods, and to achieve a fully transparent, responsible, accountable and ethical global art market, the Commission should seek to cooperate with third countries and to establish fruitful partnerships favouring the return of the property referred to in this resolution while taking into account both the principles set out in the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects and Article 1 of Protocol 1 to the European Convention on Human Rights;
32. Recalls that education fosters respect and appreciation for art works and other cultural goods as symbols of cultural heritage, and that it therefore plays an important role in preventing and discouraging looting and illicit trade in cultural goods; calls on the Commission and the Member States to encourage and support educational and awareness-raising activities in this regard, including in non-formal and informal settings;
33. Calls on the Commission and all the relevant competent authorities to adopt measures aimed at making both the art market and the potential buyers of artefacts aware of the importance of provenance research, given that such research is linked to the due diligence obligation;
34. Recalls that close cooperation between police and customs services at European and international level is essential in combating the illicit trafficking in works of cultural heritage;
35. Supports the idea that cross-border restitution procedures concerning works of art and cultural goods looted, stolen or illegally obtained, and the active promotion of provenance research, should be addressed in the context of the 2018 European Year of Cultural Heritage ('EYCH') initiative; calls, therefore, on the Commission and the working group it has set up to include this item in their working plan detailing the activities for the 2018 EYCH;
36. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.