

# Austria

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## A. Protection of cultural property

### 1. What are the key characteristics of your country's regulations on cultural heritage and national patrimony?

Austria has a stringent regime of protection of cultural property that stipulates strong incisions into the right of ownership and transfer. Transfer restrictions not only apply upon the export from Austria, but even upon a transfer of ownership within the country. Objects protected under Cultural Property Law may not be altered or destroyed by its owner. More importantly, the owner is obliged to conserve the object, to a reasonable extent, and at his or her own expense.

In terms of restitution, the Austrian regime has been strongly impacted by European harmonisation (most notably Directive 2014/60/EU) and the 1970 UNESCO Convention, allowing for impartial restitution proceedings before a Civil Law Court.

### 2. Under your national law, which criteria must be met, in order to classify goods as cultural property?

'Cultural property' is defined as all man-made objects of artistic, historical or other cultural significance. The broad definition of the term 'object' leads to a fairly wide scope, including – among others – antiques, paintings, drawings, miniatures, statues, reliefs, coins, excavated objects and musical instruments. Cultural property may also be vested in the arrangement of several objects (eg, a collection), effectively rendering them inseparable.

Cultural property is to be protected – meaning formally placed under protection by an administrative deed – in cases where public interest mandates their conservation. This will typically be the case where the 'total amount' of cultural heritage in Austria would be impacted negatively in terms of quantity, variety or distribution. Limitations of the export of an object may apply based on the nature of the object, even without formal protection having been enacted.

A de-classification from the status of cultural property or revocation of the protection can be applied for in cases where either the public interest to protect the object has ceased to the extent that a protection is no longer necessary, or in cases where a scientific re-evaluation of the object has led to the conclusion that its protection is no longer befitting. Needless to say that such cases occur only rarely.

**3. What are the legal consequences arising from classifying an asset as cultural property? Does the classification of a private asset as cultural property affect the right of ownership?**

The right of ownership is affected in a multitude of ways. Most importantly, free transfer of ownership (be it within the Austria's federal borders or be it internationally) is limited and subject to the cultural heritage protection authorities' consent.

For more information on cross-border restrictions, see Section B below.

Further, the classification as cultural heritage imposes several duties on the owner, most importantly the duty to maintain the object at his or her own expense to a reasonable extent – as well as the obligation not to alter or destroy it. The abidance by these rules is safeguarded by strict fines and even stricter rules for criminal prosecution.

**4. Which authorities in your country define cultural property and who advises these authorities?**

Two authorities define cultural property.

The Federal Antiquities' and Monument's Office (Bundesdenkmalamt – hereinafter FAMO) is assigned to protect cultural property in general, meaning all cultural property that is not being supervised by other agencies – ie, all categories besides the ones explicitly assigned to the National Library.

The National Library (Nationalbibliothek) is the competent authority to supervise the protection of books, pictures, motion pictures, video and sound recordings created for the purpose of documentation of public information.

On appeal, matters assigned to these two authorities will be decided by Federal Administrative Court (Bundesverwaltungsgericht).

All of the above are consulted by an expert advisory board (Denkmalbeirat) established at the Federal Ministry of Education, Arts and Culture, a panel consisting of 60 volunteer experts. The board does not have the power to render binding decisions, but its recommendations are well reputed and will, in general, be followed.

**5. Has your country ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?**

In light of the EU Commission's recommendations, Austria gave in to ratifying the 1970 UNESCO Convention on 1 July 2015. Together with Directive 2014/60/EU, it has been implemented within the framework of the Cultural Heritage Restitution Act (*Kulturgüterückgabegesetz – KGRG*). This Act provides for the legal framework to initiate restitution proceedings before a civil court. In such proceedings, the government authorities may participate as observers but are not parties.

The KGRG allows for the restitution of cultural property that was illegally exported from its country of origin – most notably in breach of the UNESCO Convention or in breach of EU law. This may apply either to objects unlawfully removed from their country of origin, or for

objects that were initially lawfully removed, but whose permission has later ceased to exist. Unlawfulness must be given at the time of import to Austria.

Proceedings are held before a civil court. The owner of the object is entitled to compensation if he or she acted diligently upon acquisition of the object. This will, in general, be the case if he or she had reason to believe the import was lawful (eg, when acquiring from a trustworthy source), and when he or she inquired available resources/databases of stolen object of the concerned category. Possessors acting in bad faith upon acquisition are also obligated to pay the rightful owner compensation of legal costs.

**6. Has your country ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and, regarding the illegal export of cultural objects and artwork: what are the main characteristics of the national implementation?**

Austria has not ratified the 1995 UNIDROIT Convention.

**7. Has your country ratified any other international conventions or bi-lateral agreements relating to the export of cultural objects?**

Most notably, Austria is bound by EU Directive 2014/69/EU on the return of cultural objects unlawfully removed from the territory of a Member State, which has been implemented into national law by the KGRG (see question A.5 above).

## **B. Restrictions on the export of cultural property and artwork**

**1. What are your country's export restrictions regarding cultural property and artwork?**

**1.1. Under which conditions is export permission is granted?**

A fairly strict regime is set forth in the Cultural Heritage Protection Act (*Denkmalschutzgesetz – DMSG*). In general, the export of protected cultural property as well the export of cultural property not yet protected is subject to permission by the authorities.

Concerning the former, export regulations are very stringent and export permissions will only be granted in crucial cases, meaning in cases where the intrinsic value of the export of the object itself outweighs the public interest that lead to its protection as cultural property in the first place. Burden of proof lies with the proprietor of the object.

Concerning the latter, the competent ministry regularly publishes a decree of *de minimis* thresholds, below which a permission is not necessary. Should the authorities conclude that an object not formally protected may not be exported, it is obliged by law to initiate protection proceedings concerning the object. Thus, a request for granting an export permission may lead to unpleasant consequences for the owner of a cultural object.

Exceptions to this rule may apply to restituted artworks and works of contemporary arts, which may be exported without the need for permission, unless they have been

formally declared public heritage. Further exceptions apply in the cases of temporary import of artworks to Austria (see question B.3 below).

**1.2. Which authority grants such export permission and who advises this authority?**

See the response to question A.4 above.

**1.3. What does the proceeding look like, who are the parties to the proceeding and what is the duration of the proceeding?**

In the first instance, the petitioner requesting permission is the only party before the responsible office. The advisory board will be called upon in a consulting role. On appeal before the Administrative Court, the role of the responsible office shifts to that of a regular party defending its decision. In general, there is no cost compensation in these proceedings. Duration depends on the workload of the office/court but lies within EU averages.

**1.4. Are there any monetary thresholds (*de minimis*)?**

See the response to question B.1.1 above.

**1.5. Does the circumstance of the artist still being alive or the time of creation of the artwork matter?**

Yes, Section 16(4) of DMSG provides for an exception for the export of the work of contemporary artists. Works of contemporary artists, and works of artists deceased no longer than 20 years ago, do not require an export permission, unless they already are under protection.

**2. Is the state obliged to buy out the artwork for which an export permission was denied?**

No.

**3. Are there any exceptions to these regulations, for example, temporary export for exhibitions, conservation or private reasons of the owner?**

There are some exceptions to the general rules stated above. Temporary export may be permitted in return for a security deposit amounting to twice the market value of the object, so long as the return of the object to Austria is not endangered.

In practice, the most important exception is the permit to re-exportation. Such permit must be applied for within three years of importation into Austria at the latest. Given the artwork was previously outside of Austria, and it was imported lawfully, the authorities are obliged to permit the re-exportation. Such permits are usually granted for ten years but may be extended up to 50 years.

Further, objects that are classified as foreign cultural heritage, that are temporarily imported for exhibition may be declared immune.

## **C. Consequences in case of violation of export restrictions; restitution and repatriation of illegally exported cultural property?**

### **1. What are the legal consequences in case of breach of export restrictions?**

Besides monetary fines, the Austrian legal framework provides for restoring orders. Where cultural property was exported without permission, the authorities may order the exporter to effect appropriate measures to retrieve the object at its own expense. This may include the order to purchase the object. Objects retrieved this way may be expropriated by the state.

### **2. Give a description of the regulations and practices in your country relating to the restitution and repatriation of illegally exported cultural property?**

See question A.5 above for restitution according to the KGRG.

Furthermore, the Art Restitution Act (*Kunstrückgabegesetz* – KRG) provides for a legal regime dedicated to the restitution of Nazi-looted art.

### **3. Under which conditions does your country assist foreign countries seeking repatriation of cultural property/artwork?**

Most notably within the framework of the Internal Market Information (IMI) System which provides for support in the repatriation before the initiation of civil proceedings. As set forth in Directive 2014/69/EU, the central institutions of the Member States concerned are to cooperate in order to ease repatriation.

### **4. Does a buyer enjoy protection against restitution claims for violation of foreign export restrictions?**

For compensation and due diligence, see the response to question A.5 above.

### **5. Which regulations exist for the protection of the purchaser against title claims?**

The civil law title to cultural property is to be treated independently of its cultural property status. In terms of ownership, for the duration of its unlawful removal, the legal fiction applies that the property law statute of the country of origin continues to apply until the object is returned to its country of origin. This is to provide that the unlawful removal cannot serve to improve the removers' legal situation, for example, by allowing him or her to acquire the object through adverse possession.

### **6. Does a lender from abroad enjoy protection against seizure of items on loan to local exhibitors if the good fails to have proper export licence?**

The wording of the law does not provide for exceptions for objects on loan – if the removal was unlawful, the restitution regime applies. For further information, see question A.5 above. However, foreign loans may – under some circumstances – be eligible for temporary immunity. Such immunity will protect the artwork from seizure.

7. **What regulations exist concerning the import of cultural property that may have been exported illegally from its country of origin or that is the subject of claims?**

See the response to question A.5 above.

## **D. Due diligence obligations**

1. **What general due diligence is required from the seller/buyer of artwork if the artwork is intended to be exported?**

As already touched upon in question A.5 above, due diligence requirements depend on the trustworthiness of the sources from which the object was acquired (eg, reputed auction houses versus backyard sales). Other factors include whether the buyer is a commercial or private entity. Where available, public databases of unlawfully removed objects will have to be inquired as part of a thorough due diligence process.

2. **Are there any anti-money laundering regulations applicable in the art trade and at art auctions?**

Stringent and complex regulations apply to art dealers and auction houses, who are required to identify the person economically responsible for a purchase above the threshold of €10,000. Duties include the documentation of valid ID, the analysis of corporate structures in order to define the natural person on whose behalf the transfer is being effected, as well as pre-emptive information of tax authorities.