

Russia

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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?

The Russian regulation of cultural and art objects includes legislative acts of general application, such as the Constitution of the Russian Federation (the 'Constitution'), the Law on Protection of Consumers' Rights, as well as specific rules which are prescribed in the Fundamental Principles of Legislation of the Russian Federation on Culture, special federal laws, laws of constituent entities of Russia and subordinate legislation on culture.

In addition, acts of the Eurasian Economic Union (EAEU) are binding in Russia. In particular, the Regulations on export of cultural property, documents of national archive funds and originals of archive documents from the customs territory of the EAEU (Annex No 8 to the Decision of the Board of the Eurasian Economic Commission of 21 April 2015, No 30) are currently in effect. This act determines the procedure for export of cultural property, documents of national archive funds and originals of archive documents from the customs territory of the EAEU, which are subject to special preferential measures.

As for Russian legislation, the main social and cultural rights of individuals are established by the Constitution, which states that everyone has the right to participate in cultural life, to make use of institutions of culture as well as to have access to items of cultural value. The Constitution also states that for the purposes of protection of items of cultural value certain restrictions on movement of goods and services may be imposed.

The Fundamental Principles of Legislation of the Russian Federation on Culture govern the activities in the spheres of research, protection, usage and restoration of historical and cultural monuments, literature, cinematography, architecture and design. The document defines items of cultural value in their broad meaning as moral and aesthetic ideals, rules and model of behaviour, languages, dialects and mode of speech, national traditions and handicrafts, works of culture and arts, results and methods of scientific research of the cultural activities, buildings, constructions, objects and technologies which have historic and cultural value as well as territories and objects that are unique in historical and cultural respect.

Among the federal laws of specific use, the following are worth mentioning:

- the Federal Law on Items of Cultural Heritage (Monuments of History and Culture) of Peoples of the Russian Federation regulates preservation, usage, popularisation and state protection of items of cultural heritage and defines items of cultural heritage as real estate objects (including objects of archaeological heritage) and other objects historically related

to their territories, works of arts, sculpture and crafts, objects of science and technics and other objects of material culture that have been created as a result of historical events and being of special value from historical, archaeological, architectural, urban construction, arts, science and technics, aesthetic, ethnologic, anthropologic or social cultural point of view and being the evidence of epochs and civilisations, original sources of information on cultural origination and evolution;

- the Federal Law on Export and Import of Items of Cultural Value sets forth rules on crossing border for items of cultural value and state control over them. At the same time, it is important to note that this Federal law regulates only import into and export of cultural property from Russia to states that are not members of the EAEU, as well as providing tax benefits to non-governmental organisations that import cultural property;
- the Federal Law on the Museum Fund of the Russian Federation and Museums in the Russian Federation (the ‘Museums Law’) establishes a special legal status for the museum fund and the procedures for creating museums in Russia and their legal status; and
- the Federal Law on Archive-Keeping in the Russian Federation regulates storing, gathering, listing and using documents of the Archive Fund of Russia.

Rules applicable to the items of cultural heritage connected with the land use and town planning activities can be found in the Land Code, the Town Planning Code and other related laws.

The list is not exhaustive and the rules on cultural and art objects are set forth in other pieces of legislation of the Russian Federation.

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

According to the Fundamental Principles of Legislation of the Russian Federation on Culture, ‘cultural property’ shall mean moral and aesthetic ideals, standards of behaviour, languages and dialects, national traditions and customs, historical toponyms, folklore, art crafts, works of culture and art, the results and methods of scientific research of cultural activities, buildings with historical and cultural importance, territories and objects, which are historically and culturally unique.

The Federal Law on Export and Import of Items of Cultural Value applies the term ‘items of cultural value’ in its strict interpretation as movable items of a material world, irrespective of the time of their creation, which have historical, artistic, scientific or cultural significance.

The Federal Law on Items of Cultural Heritage (Monuments of History and Culture) of Peoples of the Russian Federation defines the cultural heritage objects as objects of immovable property (including archaeological heritage objects) and other objects with historically related territories, works of painting, sculpture, decorative and applied art, objects of science and technology and other objects of material culture that were created as a result of historical events and are of historical value.

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?

Generally, Russian law does not restrict private property in the civil circulation. As distinct from the said general rule, items recognised as cultural property become subject to a different regulation irrespective of the nature of ownership (state, public or private). This regulation mostly affects export and sale of the cultural property by either prohibiting export or requiring a special export permission granted by an authorised body.

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

Pursuant to Russian law, a decision on whether an item belongs to cultural property is made upon an expert opinion issued by a certified expert institution.

The Ministry of Culture maintains a register of experts in cultural property and takes a decision on the attestation, on suspension of the attestation, on termination of the attestation of experts in cultural property.

The procedure for conducting an expert examination of cultural property, including criteria for attributing objects to cultural property is regulated by the Government of the Russian Federation and the Ministry of Culture.

Further, the Council for the Preservation of Cultural Heritage and Development of the International Exchange of Cultural Property is intended to assist the Ministry of Culture in performing its functions of regulating the export, temporary export, import and temporary import of cultural property, preserving cultural heritage, promoting international cultural cooperation and mutual acquaintance of the peoples of the Russian Federation and other states with each other's cultural property.

The Ministry of Culture also maintains a register of immovable objects of cultural property.

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?

The Union of Soviet Socialist Republics (USSR) ratified the 1970 UNESCO Convention in 1988. Russia being a legal successor of the USSR is currently a party to the Convention.

The most distinguishing features of the Russian implementation legislation are as follows:

- first, in accordance with its Fundamental Principles of Legislation of the Russian Federation on Culture, Russia has adopted and implemented the policy aimed at returning items of cultural value illegally exported from its territory. Moreover, Russia elaborates and takes the required actions for the preservation of its cultural heritage;
- second, the Ministry of Culture of the Russian Federation is a state authority that exercises supervision over import and export of items of cultural value in Russia; and

- third, the Ministry of Culture is in charge of registering events of loss, forfeit and theft of items of cultural value, arranging and informing state authorities and the public of Russia on such events pursuant to the 1970 UNESCO Convention.

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?

Russia signed the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects on 29 June 1996. However, as of today, Russia has not ratified this Convention and it is, therefore, not in effect in Russia.

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

Russia has ratified a number of other international conventions relating to cultural property and the relevant trading activities, among them are: the Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol to the Hague Convention (the Hague, 14 May 1954); the Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972). Moreover, in 2018 Russia signed the European Convention on Offences against Cultural Property (CETS No 221), which had been concluded in Nicosia on 19 May 2017. However, this Convention has not yet entered into force.

Russia is also a party to various bilateral treaties in the sphere of cultural collaboration, for instance, the bilateral Treaty between the Government of the Russian Federation and the Government of the Republic of Estonia on Cooperation in the Sphere of Cultural Property Preservation (Tallinn, 4 December 1998).

B. Restrictions on the export of cultural property and artwork

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

The Federal Law on Export and Import of Items of Cultural Value sets forth a list of items of cultural value, which are not allowed to be exported from the territory of Russia without the obligation of their return:

- items of cultural value of a special historical, artistic, scientific or other cultural significance (for example, art objects created before 1917), except from the export of such objects by the person who created it;
- items of cultural value permanently stored in state and municipal museums, archives, libraries, other state and municipal institutions of the Russian Federation that carry out permanent storage of cultural property;
- items of cultural value included in the Archive Fund of the Russian Federation, the Museum Fund of the Russian Federation, as well as in the National Library Fund, including those in private ownership; and
- archaeological items.

Exports of cultural property for which the EAEU has established a permit procedure for export are carried out by individuals for personal use on the basis of a permit document for the export of cultural property, and by individuals registered as individual entrepreneurs and legal entities on the basis of an export licence for cultural property.

The items of cultural value can be exported by their legal owner (the person authorised by such owner) or the author of such items of cultural value.

1.1 Under which conditions is export permission granted?

Export permission for permanent and temporary export is granted based on the results of mandatory expert evaluation of cultural values; submission of the certain package of documents to the authorised state agency; and checking of the items of cultural value in the database of stolen and lost items of cultural value.

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

The territorial bodies of the Ministry of Culture grant permission for export of the items of cultural value. In its activity, the state agencies follow the results of an expert opinion issued by one of the certified expert organisations.

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

The procedure of granting the export permission (licence) includes the following stages:

Stage 1: Examination performance

Obligatory examination of cultural property is carried out in respect of movable objects declared as cultural property and for export of which an export permission (licence) is needed. Cultural property is examined at the request of an individual or legal entity and at the request of the authorised body, customs or other law enforcement agency. The examination of cultural property is carried out on a contractual basis by certified experts in cultural property. The time limit for the examination of cultural property is 15 calendar days.

Stage 2: Collection of the documents required for export/temporary export

For the purpose of getting the export permission, one shall collect and submit to the authorised body an application accompanied by the following documents:

- expert opinion (see Stage 1 above);
- a copy of a foreign trade agreement with annexes, and in case of absence of a foreign trade agreement, a copy of another document confirming the intentions of the applicant in respect of exported cultural property signed by the applicant;
- copies of documents confirming the possession right with respect to the exported cultural property signed by the applicant;

- the written consent of the owner of the cultural property to the export of the cultural property in the case of a declaration for the export of cultural property not owned by the applicant;
- a list of the cultural property in duplicate with its description; and
- photographs of the cultural property in two copies in colour.

Stage 3: Application

Apply with the request for export accompanied by the said documents to the authorised body (the Ministry of Culture).

Stage 4: Granting the export permission (licence)

The decision on granting the export permission (or refusal to grant the said export permission) shall be made within 20 working days upon registration of the application and the provision of all documents.

It is also worth mentioning that the export of the items of cultural value requires payment of a state duty.

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

No monetary threshold is provided by Russian law.

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

The time of creation of the artwork and the circumstance of the artist still being alive does not matter.

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

Refusal to grant the export permission does not oblige the state to buy out the respective artwork.

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

Russian law aims at the protection of the cultural heritage. Therefore, neither a temporary export of items of cultural value for exhibitions abroad, nor an export for conservation, nor an export for private reasons of owners, is free from compliance with certain formal requirements.

For instance, the temporary export of items of cultural value for exhibition is subject to a similar procedure of getting export permission from the Ministry of Culture. The time limit for the temporary export of cultural property, taking into account extensions of the temporary export of cultural property, is five years. The said procedure additionally requires collection of the following documents by an applicant: ownership documents, insurance documents, contract with the host party, expert opinion, inter alia. The procedure of temporary export requires the applicant to notify the Ministry of Culture on the return of the cultural objects with attachment of the expert opinion within ten days after return.

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?

Pursuant to the Federal Law on Export and Import of Items of Cultural Value, a breach of export restrictions shall be considered as an act of smuggling that may lead to administrative and criminal liability: both for the illegal import and export of items of cultural value, and for the non-return to the territory of the Russian Federation of temporarily exported items of cultural value. A penalty for such illegal action might be rather severe including a prison sentence.

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

The Fundamental Principles of Legislation of the Russian Federation on Culture establish that Russia conducts a focused policy on return of illegally exported items of cultural value. All illegally exported items of cultural value recognised as cultural domain of the people of Russia shall be returned to Russia irrespective of their current location, time and circumstances of export. Russia elaborates and performs measures on protection of cultural inheritance of the people of Russia. The Russian Federation ensures that the burial sites of the Russian compatriots are not destroyed and are properly sustained.

Similar rules are set forth in the Federal Law on Export and Import of Items of Cultural Value, which provides that cultural property illegally exported from Russia shall be returned in accordance with the international treaties, regulations of EAEU and the Russian legislation.

The Ministry of Culture is a competent authority for claiming back unlawfully exported or stolen items of cultural value to Russia.

For prevention of the illegal export and import of items of cultural value and the transfer of ownership rights, as well as restituting illegally exported and imported items of cultural value to their legitimate owners, the Ministry of Culture regulates the export and import of items of cultural value in cooperation with similar authorities, governmental and non-governmental organisations in other countries.

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

Repatriation of items of cultural value moved to USSR in the course of the Second World War is subject to separate regulation by the Federal Law on Items of Cultural Value Moved to the USSR as a Result of the World War II and Located in the Territory of the Russian Federation, dated 15 April 1998, No 64-FZ.

The aforementioned law provides for three regimes of repatriation of items of cultural value depending on the applicant:

(i) *Belarus, Estonia, Latvia, Lithuania, Moldova and Ukraine (simplified procedure)*

Repatriation is subject to following conditions: consent of listed countries to ensure the repatriation of Russian items of cultural value on the basis of reciprocity and compensation of the expenses borne in regard with identification, expertise, storage, restoration and transportation of items of cultural value.

(ii) *Other interested states*

For the purposes of repatriation an interested state shall file a claim to return items of cultural value and officially confirm that it did not receive any consideration from Germany or its military allies: Bulgaria, Hungary, Italy, Finland and Romania ('former enemy states').

Moreover, it should provide evidence that one of the following conditions is satisfied:

- items of cultural value of interested states were forcibly confiscated and illegally removed from their territory by former enemy states;
- items of cultural value were the property of religious organisations or charitable institutions and did not serve the interests of militarism and/or Nazism (or fascism); and
- items of cultural value belonged to individuals who were deprived of these items because of their active struggle against Nazism (or fascism) and/or because of their race, religion, or national affiliation.

(iii) *Former enemy states*

Former enemy states are also entitled to claim the return and repatriation of items of cultural value in case of proving that items of cultural value were either the property of religious organisations or charitable institutions and did not serve the interests of militarism and/or Nazism (or fascism) or belonged to individuals who were deprived of these items of cultural value because of their active struggle against Nazism (or fascism) and/or because of their race, religion, or national affiliation.

The claim to return and repatriate items of cultural value may be filed at any time as soon as the interested state becomes aware of any illegally exported items of cultural value being located in the Russian Federation, but not later than 18 months from the date of publication of the respective information on the website <http://lostart.ru/ru>, which is the official source defined by the Russian Government to post information on such items of cultural value.

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

The previous version of the Federal Law on Export and Import of Items of Cultural Value provided that a bona fide purchaser of cultural property, with the seizure of cultural property from him, was entitled to fair compensation. In the current version of the law this provision is repealed.

5. Which regulations exist for the protection of the buyer against title claims, in general?

A good faith purchaser is protected under Russian law. In general, a purchaser enjoys a good faith defence in case of vindication claims. In order to protect his rights, a purchaser

should provide evidence in respect of two facts: payment for the property and good faith (the fact that he or she took all reasonable measures to verify the seller's rights to dispose of the property). However, the above protection will be lost in cases where the property acquired by a purchaser was earlier lost by its owner or a person to whom it was transferred by its owner and/or the property was stolen from these persons and/or possession of the property was lost against the will of the owner.

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?

There is no special legislation on anti-seizure guarantee or immunity from seizure in Russia, with the exception of items of cultural values directly owned by foreign states; such items of cultural values enjoy the immunity of a foreign state.

As indicated above, violations related to the movement of items of cultural value across the state border may result in criminal liability for smuggling – in this case, an object can be seized as material evidence or, if there is a special value, it is transferred to the property of the Russian Federation.

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?

According to the Federal Law on Export and Import of Items of Cultural Value illegally imported items of cultural value are subject to detention and may be transferred to the authorised body to ensure their examination.

In cases of theft and export of items of cultural value, the Ministry of Culture assists the owners in filing claims for the removal of items of cultural value from illegal possession to foreign courts in accordance with the laws of these respective states, and also facilitates the return of these items of cultural value to the Russian Federation or to the owner. In order to identify stolen or illegally imported items of cultural value, the Ministry of Culture of the Russian Federation organised the maintenance of a register of facts of loss and theft of cultural property (https://opendata.mkrf.ru/opendata/7705851331-heritage_lost_objects).

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?

Due diligence requirements with regard to the items of cultural value being exported are focused on the Federal Law on Export and Import of Items of Cultural Value and EAEU law.

Accordingly, the buyer should comply with the following due diligence procedure and obtain, in particular, the following information in order to verify the status of the items of cultural value:

- information on the origin of the items (whether illegal acquisition and import into Russia might have taken place);
- data on whether pieces are of historical, artistic, scientific or any other value;

- data on whether the items are permanently stored in state and municipal museums, archives, libraries and any other state storage facilities; and
- details about the date of creation of the relevant item of cultural value (check whether it was created 100 or more years ago).

If any of the aforementioned circumstances are present, the relevant items of cultural value can be sold and exported from the territory of Russia only in compliance with the following special procedures and obtaining special permissions:

- expert evaluation of the items of cultural value to be exported. In Russia, such examination is conducted by experts accredited by the Ministry of Culture; and
- verification of legal capacity of the seller, the ownership title to the items and the lack of third-party rights over the relevant piece of art (for example, the pre-emptive right of Russia).

The seller is recommended to obey the following rules when intending to sell items of cultural value:

- a seller shall verify and ensure the legal status and transferability of an item of cultural value;
- with regard to transactions on donation or purchase and sale in respect of museum items and museum collections belonging to the private part of the Museums Fund of the Russian Federation, a donee or purchaser shall comply with all the obligations of the donor or seller. Nevertheless, with regard to items of cultural value of this category, the state has a pre-emptive right of purchase; and
- if the sale and purchase of items of cultural value is performed for the subsequent import thereof, then the restrictions set forth in the Federal Law on Export and Import of Items of Cultural Value should also be taken into account.

The transaction should also be in writing.

Furthermore, the seller shall conduct due diligence in respect of the buyer and verify the buyer's legal capacity to enter into the transaction.

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

Pursuant to the Federal Law on Combating Legalisation of Illegally Gained Income and Financing of Terrorism, information on operations with monetary funds or other property is subject to obligatory control if the value of the transaction is equal to or exceeds RUB 600,000 (approximately €7,500) or its equivalent in foreign currency. Information on such transactions shall be provided to the Federal Service for Financial Monitoring.

In addition, Russian authorised bodies participate in international exchange of information with other states for the purposes of detection and confiscation of criminally gained incomes.