

PRACTICAL OPERATION OF THE 1995 UNIDROIT CONVENTION

GREECE

I. Information regarding the application of the UNIDROIT Convention (referring to the provisions of the Convention)

1. Ratification, approval, acceptance or accession

(a) Is your country a Party to the UNIDROIT Convention? **If so:**

- *Were implementing regulations required, and if so, in respect of which points?*

Greece has acceded the 1995 Convention on 19.7.2007 (entry into force on 1.1.2008). Implementing regulations have not been adopted yet, given that our National Legislation covers the main points of the UNIDROIT Convention.

- *Did ratification/accession pose any particular difficulties and if so, what were these difficulties, and how were they resolved?*

The designation of the competent court as far as jurisdiction is concerned was one of the particular difficulties envisaged during the ratification process, apart from the fact that ratification itself is a time-consuming process.

- *Did the use of the legal concepts employed in the Convention create any problems?*

No

2. Definition

In order to benefit from the system set in place by the UNIDROIT Convention, "cultural objects" need not be designated by the State, as is on the contrary required under the 1970 UNESCO Convention.

- *Which is the definition retained in your country's legislation?*

According to Law 3028/2002 "On the protection of Antiquities and Cultural Heritage in General", Article 2, paragraph 1:

a) "Cultural objects" shall mean testimonies of the existence and the individual and collective creativity of humankind:

b) "Monuments" shall mean cultural objects which constitute material testimonies and belong to the cultural heritage of the country and which deserve special protection on the basis of the following distinctions:

(i) "ancient monuments or antiquities" shall mean all cultural objects dating back to prehistoric, ancient, Byzantine and post-Byzantine times up to 1830, subject to the provisions of Article 20. Archaeological monuments shall

also include caves and paleontological remains, for which there is evidence that there are related to human existence.

(ii) "Recent monuments" shall mean cultural objects dating after 1830, which deserve protection due to their historical or scientific significance, in accordance with the distinctions of Article 20.

(iii) "Immovable monuments" shall mean monuments which have been attached to, and remain on the ground or on the seabed or on the bed of lakes or rivers, as well as monuments which are found on the ground or on the seabed or on the bed of lakes or rivers and cannot be removed without damage to their value as testimonies. Immovable monuments shall also include installations, structures and the decorative and other elements, which form an integral part of the monuments, as well as their surroundings.

(iv) "movable monuments" shall mean monuments, which are not immovables.

3. Theft

- (a) How many cultural objects are stolen in your country each year, and where do most of these thefts occur (percentage) (museums, places of worship, private homes, archaeological sites, ...)?

STOLEN OBJECTS: 2009-2012

Year	Icons	Liturgical heirlooms	Coins	Ancient vases, stelai, figurines, tools, etc	Architectural members	Modern Art objects
2009	218	14	8	5	23+	1
2010	55	9	-	-	11	-
2011	1	-	-	10	10	-
2012 (up to 24-5-2012)	4	4	-	80	3	3

Most of the thefts have occurred in worship places (86% in 2009, 84% in 2010, 21% in 2011). Although museums had not suffered any theft since 1992, in 2012 two thefts took place in Greek Museums (National Gallery in Athens and Museum of the Olympic Games in Antiquity in Olympia).

It should be stressed that the exact number of stolen objects from clandestine excavations, is unknown.

CLANDESTINE EXCAVATIONS

YEAR	NUMBER OF CLANDESTINE EXCAVATIONS
2009	30
2010	53
2011	106
2012 (up to 24-5-2012)	40

(b) Claims for restitution of stolen cultural property brought under the Convention

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What results were obtained (please enclose the relevant decision)?*

No

- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What results were obtained (please enclose the relevant decision)?*

No

(c) Did your country's courts **encounter any difficulties** in applying the concepts enshrined in the Convention when called upon to apply the UNIDROIT Convention? If so, which?

There has not been such a court decision so far but it is obvious that since the Convention was ratified by Greece and therefore constitutes internal law, any court which in the future would judge a relevant case is obliged to take into account the national legislation.

(d) Claims for restitution of stolen cultural property brought in accordance with other procedures

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What was the procedure chosen? What results were obtained?*

Claims have been brought either against individuals through the respective State or against institutions (museums).

From a legal point of view, the procedure chosen varies in each particular case, the safest way being the adoption of an ad-hoc agreement with the holder. In the case of States being the holders an Intergovernmental agreement and fruitful negotiations seem to be the safest legal basis.

Indicatively, during the years 2009-2011, the Greek State brought claims for 13 icons and 7 parts of wall-papers dating in the byzantine period which had been stolen and the objects were returned.

- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What was the procedure chosen? What results were obtained?*

The Greek State, by its own initiative has informed other States about stolen objects illegally removed from abroad and confiscated in Greece and following the International Law has agreed to return the objects to their countries of origin when the claims were legally based and archaeologically documented.

Indicatively, in 2009 stolen wall paintings were returned to Italy and at the moment there is a procedure going for the restitution of a Ruben's stolen painting to the Museum of Ghent (Belgium).

(e) A cultural object that has been unlawfully excavated (or lawfully excavated but unlawfully retained) shall be **considered stolen** when consistent with the law of the State where the excavation took place (Article 3(2)).

- *Does your legislation provide for State ownership of such objects? Please specify*

According to Law 3028/2002 "On the protection of Antiquities and Cultural Heritage in General", Article 21, paragraph 3:

3. Ancient movable monuments, which constitute finds from excavations or other archaeological research, regardless of their dating, belong to the State in terms of ownership and possession, are *extra commercium* and imprescriptible.

- *Has your country encountered difficulties in obtaining recognition of such ownership in restitution proceedings brought before foreign courts? Please provide examples.*

The crucial problem in such cases is that the burden of proof lies with the Greek State which has to prove that the objects have been illegally excavated.

(f) Claims for restitution of some objects (Article 3(4)) shall not be subject to **time limitations** other than a period of three years, unless a Contracting State makes a declaration to the contrary (Article 3(5)).

- *Does your legislation provide for such a time limitation? If so, what is that limitation and to what type of property does it apply?*

According to the National Legislation, the claims for restitution for all monuments (see above point 2. Definition) are not subject to a time limitation.

- *At the time of ratification/accession, did your country make such a declaration or did it envisage doing so?*

Yes, such a declaration was made, as follows:

"Article 3, paragraph 5 :

GREECE (at the time of accession): The claims for restitution are not subject to a time limitation".

(g) The concept of "**due diligence**" on the part of the possessor of the cultural object and the criteria applied in determining such (Article 4(1) and 4(4)).

- *Can you indicate any decisions handed down in your country as to the "diligence" exercised, or that should have been exercised, by a possessor (in particular in terms of the character of the parties), and as to the proof adduced?*

There have not been such decisions so far.

- *Does your country operate a "reasonably accessible register of stolen cultural objects"? Please specify*

All stolen cultural goods which are accompanied by photographs, are included in the database of Interpol, which is an international reasonably accessible register. The Ministry of Culture and Tourism also operates a register with all stolen objects (either accompanied by photographs or not) which is not accessible to the public.

4. Illegal export

(a) The conventional mechanism is based on breach of **national legislation** prohibiting the export of (certain) cultural objects.

- *Does your country have such legislation and if so, what type of object does it cover (please specify any references, where applicable)?*

According to Article 34 of Law 3028/2002:

Article 34

Export of cultural objects

1. The export of monuments from Greek territory shall be prohibited, subject to the provisions of the following paragraphs.
2. The export of monuments may be allowed upon permit, provided that there are not of special significance to the cultural heritage of the country and the unity of important collections shall not be affected.
3. With respect to monuments which are less than one hundred years old, an export permit may be granted, if their presence is not considered necessary for the cultural heritage of the country.
4. The export of cultural objects for which the procedure of classification has been initiated in accordance with the second section of Article 20, paragraph 2, shall be allowed before the expiration of the time period required for the issuance of the final decision on classification.
5. The export of monuments which have been confirmed to have been imported temporarily in the country and are legally in the possession or ownership of the interested person shall be allowed.
6. The export of monuments referred to in Article 20, paragraph 1(a), (b) and 6 which have been confirmed to have been imported legally into Greek territory before the last fifty years shall be allowed, provided that they had not been exported from Greek territory beforehand. The provisions of the second section of Article 33, paragraph 3, shall apply *mutatis mutandis*.
7. The export permit shall be granted by a decision of the Minister of Culture, following an opinion of the Council. The decision shall be issued

within a time period of four (4) months or in exceptional cases within six (6) months from the date of submission of the relevant application.

8. In case an export permit has not been granted, the provisions of Article 28, paragraph 8 may be applied.

9. An export permit for specific monuments may be granted to antique dealers and merchants of recent movable monuments, which shall be valid for two (2) years.

10. The export of monuments, which belong to the State, shall be allowed only if the conditions of Article 25 are fulfilled.

(b) Article 17 of the Convention requires Contracting States to provide the Depositary with **written information** in one of the official languages of the Convention (English and French) **concerning the legislation regulating the export** of its cultural objects, and to update that information from time to time.

- *Did your country provide the Italian Government (the Depositary of the Convention) with the text of your country's relevant legislation or a summary thereof, within six months of ratification or accession, and has that information been updated since that time?*

The Greek Government provided the Depositary (Italian Government) of the Convention with written information in the English language, concerning the national legislation regulating the export of its cultural objects. This information is about to be updated in order to include the very recent changes of the relevant Greek legislation.

(c) **Requests for the return** of illegally exported cultural objects **brought under the Convention**

- *Has your country (or have any of its nationals) ever brought such a request for the return of an illegally exported cultural object? What results were obtained (please enclose the relevant decision)?*

No

- *Has your country (or have any of its nationals) ever been the subject of such a request for the return of an illegally exported cultural object? What was the procedure chosen? What results were obtained?*

No

(d) Did your country's courts **encounter any difficulties** in applying the concepts enshrined in the Convention (for example, "significantly impairs" an interest, "significant cultural importance") when called upon to apply the UNIDROIT Convention – Article 5(3))?

There have not been such cases brought to the Greek Courts yet.

(e) Requests for the return of illegally exported cultural objects in accordance with other procedures

- *Has your country (or have any of its nationals) ever brought such a request for return? What was the procedure chosen? What results were obtained?*

Claims have been brought either against individuals through their respective States or against institutions (e.g museums).

From a legal point of view, the procedure chosen varies in each particular case, the safest legal basis being the adoption of an ad-hoc agreement with the holder. In the case of States being the holders, an Intergovernmental agreement and fruitful negotiations seem to be the safest way.

Indicatively, during the years 2009-2011, 96 objects have been returned.

It should be stressed that during the same period a great number of objects have also been repatriated as a result of the intention of their foreign "owners" to return them to their country of origin.

- *Has your country (or have any of its nationals) ever been the subject of such a request for return? What was the procedure chosen? What results were obtained?*

The Greek State is very sensitive on matters concerning the prohibition of illicit import, export and transfer of ownership of cultural property. This is why it always takes the appropriate steps to recover and return any illegally imported cultural property at a request of the State of origin, provided that the requesting State furnishes the necessary documentation, photographs and other evidence to establish its claim for recovery and return.

II. Other legal, judicial and administrative measures taken by States – impact of Convention

1. More favourable rules

(a) The purpose of the Convention is to establish "**common, minimal legal rules** for the restitution and return of cultural objects between Contracting States" (Preamble) and it does not "prevent a Contracting State from applying any rules more favourable" to such restitution or return (Article 9(1)).

- *Does your country apply any other, or more favourable, rules in this field and if so, which?*

The Greek Legislation which is applied might be considered more favourable in respect of the definition of monuments and the time limitation for restitution.

2. Bilateral or multilateral agreements

(a) The Convention “initiates a process that will **enhance international cultural cooperation**” (Preamble) and offers the opportunity to States of entering into “**agreements** with one or more Contracting States, **with a view to improving the application of this Convention in their mutual relations**” (Article 13(2)).

- *Has your country entered into such agreements, or is it planning to do so ? Please specify.*

Greece has not yet concluded agreements in accordance with article 13 of the UNIDROIT Convention. However, it has concluded bilateral Agreements with France, China and Switzerland, according to the UNESCO 1970 Convention.

3. Impact of the UNIDROIT Convention

(a) Has the adoption of the UNIDROIT Convention resulted in any **practical changes** in the way your country protects its cultural property (whether you are a Contracting State or not)?

- *For example, has the Convention had a positive impact on the fight against illegal trafficking of cultural objects? Has its adoption affected the extent of trafficking in your country or of the transit of such objects through your territory?*

Due to the fact that a very small number of States (especially the importing ones) have become contracting Parties to the Unidroit Convention, one cannot make safe conclusions especially in respect of the second part of the question.

(c) Since the Convention was first adopted, **non-binding instruments** have been developed relating to “**due diligence**”, such as “codes” for art dealers and auctioneers in the United Kingdom, or UNESCO’s International Code of Ethics for Dealers in Cultural Property.

- *Does your country have such an instrument? Please specify*

Greece has not developed a relevant instrument, however art dealers and auctioneers in Greece apply the UNESCO’s International Code of Ethics for Dealers in Cultural Property, Greece being a member State of UNESCO.

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