

416/2002 Z.z. (Coll.)

ACT

of 20 June 2002

on the Return of Cultural Objects Unlawfully Removed from the territory of the Slovak Republic

Amendment: 149/2005 Z.z. (Coll.)
Amendment: 374/2013 Z.z. (Coll.)
Amendment: 376/2015 Z.z. (Coll.)
Amendment: 125/2016 Z.z. (Coll.)

The National Council of the Slovak Republic has resolved and enacted as follows:

Introductory provisions

Section 1

Subject of application of the Act

This Act shall regulate the procedure for the return of cultural objects that were unlawfully removed from the territory of the Slovak Republic to the territory of another Member State of the European Union (hereinafter referred to as "the Member State"), or from the territory of another Member State to the territory of the Slovak Republic.

Section 2

Definition of basic terms

(1) For the purposes of this Act, the term cultural object shall mean an item which is defined by the Slovak Republic or the relevant Member State, either before or after its unlawful removal from the territory of the Slovak Republic or the relevant Member State, as a part of the national cultural heritage having an artistic value, historical value or archaeological value under the laws or administrative procedures of the Slovak Republic or the relevant Member State.

(2) For the purposes of this Act, the national cultural heritage of the Slovak Republic shall include the following cultural objects:

- a) national cultural monuments¹⁾ or their parts,
- b) archaeological findings²⁾ and findings³⁾,
- c) collectors' items⁴⁾,
- d) historical library documents and historical books, 5)
- e) archival documents,6)
- f) objects of cultural value⁷⁾, except for the objects defined in paragraph c).

(3) Unlawful removal of a cultural object from the territory of the Slovak Republic or the territory of a Member State shall mean

- a) removal of a cultural object from the territory of the Slovak Republic or the territory of a Member State which is contrary to the regulations to protect the national cultural heritage, or which is contrary to a special regulation⁸⁾, or
- b) failure to return a cultural object removed for a temporary period after the expiry of a period of its lawful temporary removal, or any violation of other conditions relating to such a temporary removal. 9)

(4) The Public Collection of the Slovak Republic shall consist of national cultural monuments or their parts, archaeological findings, findings, collectors' items, historical library documents and historical books, archival documents and objects of cultural value owned by the Slovak Republic, a higher territorial unit, municipality, or managed by a legal entity established by the law or by government authorities, higher territorial unit or municipality, or owned by a legal entity in which the state, municipality or higher territorial unit has a more than 20% share .

(5) The Requested State shall mean the state in whose territory the cultural object which was unlawfully removed from the territory of another Member State is located.

(6) The Requesting State shall mean the state from whose territory the cultural object was unlawfully removed.

(7) Return shall mean physical return of an unlawfully removed cultural object to the territory of the Requesting State.

Section 3

Jurisdiction

(1) The central government authority of the Slovak Republic competent to fulfil the tasks related to the return of unlawfully removed cultural objects shall be the Ministry of Culture of the Slovak Republic¹⁰⁾ (hereinafter referred to as “the Ministry”).

(2) In searching for unlawfully removed cultural objects, the Ministry shall cooperate with the relevant central government authorities of Member States, and it shall advise them of the finding, loss or misappropriation of cultural objects immediately after having learnt thereof. The Ministry shall support consultations among the relevant internal authorities of the Slovak Republic and other Member States searching for unlawfully removed cultural objects.

Slovak Republic as Requested State

Section 4

Procedure of the Ministry in searching and inspecting cultural objects

(1) Upon a written request of a central government authority of the Requesting State the Ministry shall commence searching for an unlawfully removed cultural object in the territory of the Slovak Republic.

(2) The request shall contain

- a) a description of an unlawfully removed cultural object and its photographs, if any are available, and the place where the cultural object is expected to be,
- b) documents proving that the object qualifies as a cultural object under the legal regulations of the Requesting State,
- c) a statement of the Requesting State showing the grounds of unlawfulness of the removal of the cultural object,
- d) identification particulars of the person that may own or possess the unlawfully removed cultural object

(3) If the Ministry identifies the place in which the unlawfully removed cultural object is located it shall take forthwith any measures necessary to protect it while simultaneously advising thereof the Requesting State and the owner or possessor of the unlawfully removed cultural object (hereinafter referred to as “the owner or holder”).

(4) The Ministry shall allow the competent authorities of the Requesting State to conduct an inspection of the unlawfully removed cultural object found in the Slovak Republic within a period of six months from the day of the notification pursuant to subsection 3; if the competent authorities of the Requesting State fail to attend such an inspection in the given period, the Ministry shall cancel its hitherto measures.

(5) The execution of an inspection shall be ordered by a decision of the Ministry. An appeal against such a decision shall not have a suspensive effect.

(6) An inspection must be conducted depending on the nature of the cultural object with participation of at least one specialist appointed by the Ministry.

(7) The owner or possessor of the cultural object shall be obliged to sustain the performance of the inspection thereof at the place itself, if such a place is not their residence¹¹⁾, or they shall submit the cultural object for inspection at the place that was determined in advance.

Section 5

Measures to safeguard an unlawfully removed cultural object

(1) In order to safeguard an unlawfully removed cultural object on the ground of a decision of the Ministry, the owner or possessor shall

- a) hand such an object over for a necessary time to the custody at a place determined in advance until the completion of the proceedings for the return of an unlawfully removed cultural object,
- b) submit documentary evidence required along with other evidential means proving the mode of acquisition of the cultural object.

(2) An appeal against a decision issued pursuant to subsection 1 shall not have a suspensive effect.

Section 6

Reimbursement for the inspection and measures to safeguard an unlawfully removed cultural object

(1) The Ministry shall reimburse the owner or possessor

- a) the costs incurred in relation to the inspection of the cultural object pursuant to Section 4 subsection 5,
- b) costs incurred in relation to the measures pursuant to Section 5,
- c) lost profit or lost income amounting to their average income. 12)

(2) The Ministry shall issue a decision concerning the reimbursement set out in subsection 1 upon a request of the owner or possessor. The owner or possessor may request the reimbursement pursuant to subsection 1 within 15 days after the day of execution of the inspection or measures pursuant to Section 5, otherwise such a right shall expire.

(3) The reimbursement pursuant to subsections 1 and 2 shall also pertain to the owner or possessor of the cultural object who will prove that the cultural object which was subject to the inspection is not identical with the unlawfully removed cultural object that is being searched for.

(4) The Ministry shall enforce the costs incurred by the Slovak Republic in implementing the measures pursuant to subsections 1 and 3 against the Requesting State.

Section 6a

Period for the enforcement of the right to be returned a cultural object unlawfully removed from the territory of the Requesting State

(1) The right to be returned an unlawfully removed cultural object pursuant to this Act may not be enforced after the expiry of three years after the day when the relevant central authority of the Requesting State learnt of the place where the cultural object is located and of the identity of its owner or possessor.

(2) The right to be returned an unlawfully removed cultural object pursuant to subsection 1 may not be enforced after the expiry of 30 years after the day when a cultural object was unlawfully removed from the territory of the Requesting State unless otherwise provided in subsection 3.

(3) In the case of cultural objects which are a part of public collections under domestic legal regulations of the Requesting State and cultural objects recorded in the inventories of churches and religious societies of the Requesting State in which their protection is subject to special regulations, the period for enforcement of the right to be returned the unlawfully removed cultural object shall be 75 years after the day when the cultural object was unlawfully removed from the territory of the Requesting State, save for the cases

a) where the law of the Requesting State lays down the non-applicability of statutory limitations to the right to be returned the unlawfully removed cultural objects, or

b) where the Requesting State has a bilateral treaty with the Slovak Republic in which a period for the return of unlawfully removed cultural objects is agreed to exceed 75 years.

Section 7

Conciliation proceedings

(1) Where it is expedient to initiate conciliation proceedings between the central authorities of the Requesting State and the owner or possessor aimed at the return of the unlawfully removed cultural object to the territory of the Requesting State and the Requesting State and the owner or possessor expressly agree to such conciliation proceedings, the Ministry shall have a status of mediator.

(2) Where based upon the conciliation proceedings pursuant to subsection 1 the central authorities of the Requesting State and the owner or possessor enter into an agreement to return the unlawfully removed cultural object to the territory of the Requesting State, the owner or possessor of such an object shall be entitled to a reasonable reimbursement of costs if they ensured adequate protection of the cultural object.

(3) The costs incurred by the procedure pursuant to subsection 2 shall be borne by the Requesting State. The Slovak Republic shall return the unlawfully removed cultural object to the Requesting State only after having been reimbursed the costs incurred in relation to its search and finding.

Section 8

Motion to commence court proceedings

(1) Upon a motion of the Requesting State a court shall decide to return the unlawfully removed cultural object in accordance with a special regulation. 13)

(2) A motion as per subsection 1 may be filed in the periods defined in Section 6a.

(3) The Ministry shall inform the relevant central authorities of other Member States of a motion to commence court proceedings having been filed immediately after being informed of such a motion by the central authorities of the Requesting State.

(4) Where the court decides to return the cultural object pursuant to subsection 1, it shall award reasonable damages to the owner in the light of the circumstances of a particular case if the owner has proved to have proceeded with due diligence in acquiring the cultural object.

(5) In deciding whether the owner has proceeded with due diligence all the acquisition-related circumstances should be taken into consideration, in particular, documentation concerning the origin of the cultural object, permit to export the cultural object required by the legal regulations of the Requesting State, nature of the stakeholders, the price paid, the fact if the owner examined the available registers of stolen cultural objects and any other relevant information that could have been actually obtained, or any other measures that may or should have been taken under the same circumstances.

(6) Damages shall be paid by the Requesting State to the owner after the returning of the unlawfully removed cultural object.

Expenses related to the return of an unlawfully removed cultural object

Expenses related to the return of an unlawfully removed cultural object shall be paid by the Requesting State.

Section 9a

Right of the Requesting State to be reimbursed

The payment of reasonable damages pursuant to Section 8 subsection 4 and expenses specified in Section 9 shall not affect the right of the Requesting State to claim the reimbursement of such amounts from the persons liable for the unlawful removal of the cultural object from its territory.

Slovak Republic as Requesting State

Section 10

Procedure of the Ministry in searching and inspecting cultural objects

(1) The Ministry shall immediately request from the central authorities of the Requested State to search and find the cultural object unlawfully removed from the territory of the Slovak Republic after it has found that such an object is located in the territory of the Requested State. The request shall contain particulars specified in Section 4 subsection 2.

(2) The Ministry shall conduct an inspection of the cultural object unlawfully removed from the territory of the Slovak Republic that was found in the territory of the Requested State; the inspection shall be performed within six months after the Requested State having been advised of the fact that such an object was found in its territory.

Section 10a

Period for the enforcement of the right to be returned a cultural object unlawfully removed from the territory of the Slovak Republic

(1) The right to be returned an unlawfully removed cultural object pursuant to this Act may not be enforced after the expiry of three years after the day when the Ministry learnt of the place where the cultural object is located and of the identity of its owner or possessor.

(2) The right to be returned an unlawfully removed cultural object pursuant to subsection 1 may not be enforced after the expiry of 30 years after the day when a cultural object was unlawfully removed from the territory of the Slovak Republic unless otherwise provided in subsection 3.

(3) In the case where cultural objects are a part of public collections pursuant to Section 2 subsection 4 and in the case where cultural objects are recorded in the church inventories in the Slovak Republic, the right to be returned the unlawfully removed cultural object is not subject to statutory limitations.

Section 11

Motion to commence court proceedings

(1) The Ministry may file a motion with a court of the Requested State against the owner or possessor of an unlawfully removed cultural object to commence court proceedings for the return of such an object if the conciliation proceedings aimed at the return of an unlawfully removed cultural object to the territory of the Slovak Republic was unsuccessful.

(2) A motion to commence court proceedings for the return of an unlawfully removed cultural object must contain, beside general particulars of a motion laid down by a special regulation of the Requested State,

- a) a detailed description of the unlawfully removed cultural object,
- b) photographs of the unlawfully removed cultural object, if any is available,
- c) the place where the unlawfully removed cultural object is expected to be located in the territory of the Requested State,
- d) documents which prove that the object qualifies as a cultural object pursuant to the legal regulations of the Slovak Republic,
- e) identification particulars of the person that may own or possess the unlawfully removed cultural object in the territory of the Requested State.

(3) The Ministry shall notify the central government authority of the Requested State of the motion to commence court proceedings having been filed.

Section 12

Right of the Slovak Republic to be reimbursed

Expenses related to the return of an unlawfully removed cultural object and reasonable damages awarded by the court of the Requested State shall be paid by the Ministry. This shall not affect the right of the Ministry to be reimbursed the

costs pursuant to the first sentence by a natural or legal person that removed such a cultural object unlawfully, or took part in its unlawful removal, from the territory of the Slovak Republic to the territory of another Member State. The Ministry shall enforce the right to be reimbursed the costs pursuant to the first sentence against such a person forthwith.

Section 13

Rights to the returned cultural object

(1) By entering into an agreement on the return of the unlawfully removed cultural object to the territory of the Slovak Republic based on conciliation proceedings or based on a court judgment of the Requested State which imposed a duty to return the unlawfully removed cultural object to the territory of the Slovak Republic, the ownership right of the owner of the cultural object or the right of possession of the possessor of the cultural object shall remain unaffected.

(2) After returning the unlawfully removed cultural object to the territory of the Slovak Republic the Ministry shall hand the cultural object over to the owner or possessor thereof forthwith, if any of them is known.

(3) In the case where the owner or possessor of the cultural object is unknown the Ministry shall place the returned cultural objects at a suitable place until its owner or possessor has been identified.

Section 14

Repealed as from 20 April 2005

Section 15

Cooperation

(1) Everyone is obliged¹⁴⁾ to render the Ministry its assistance in the process of searching and returning of unlawfully removed cultural objects.

(2) The Ministry shall reimburse lost profits or lost income to a legal entity or natural person that rendered the Ministry its assistance in the process of searching and returning unlawfully removed cultural objects equalling the amount of their average income. 12)

(3) The compensation pursuant to subsection 2 shall be awarded by the Ministry upon request of a legal entity or natural person as defined in subsection 2. A request of costs reimbursement may be filed within 15 days after the day when the assistance was rendered, otherwise such a right shall expire.

(4) In contact with the relevant authorities of the Requested State when rendering mutual assistance, consultations and dissemination of information about the cultural objects that were stolen or unlawfully removed from the territory of the Slovak Republic, the Ministry shall employ a module of internal market information system^{14a)} (hereinafter referred to as "the information system module").

(5) For the exchange of the information pursuant to Section 8 subsection 3 and Section 11 subsection 3, the Ministry shall use the information system module in compliance with the relevant legal regulations on the protection of personal particulars and privacy^{14b)} without prejudice to the right of the Ministry to use other communication means alongside the information system module.

Section 16

Fines

(1) The Ministry may impose a fine upon the owner or possessor in the amount not exceeding EUR 16,596.00, if

- a) the owner or possessor wilfully interferes with the execution of inspection of the unlawfully removed cultural object being searched for,
- b) fails to submit the unlawfully removed cultural object for inspection at the place determined in advance,
- c) fails to submit the unlawfully removed cultural object being searched for to the custody at the place determined in advance,
- d) fails to submit the required documentary evidence or other evidential means proving the mode of acquisition of the cultural object being searched for.

(2) The fine shall be payable within 30 days after the day when the decision whereby it was imposed becomes final.

(3) The fine may be imposed within 1 year after the day when the Ministry learnt of the unlawful conduct, however, within three years, at the latest, after the owner or possessor committed the unlawful act.

(4) When determining the amount of fines the gravity and duration of unlawful conduct and significance of the unlawfully removed cultural object shall be taken into consideration.

(5) The proceeds from fines shall become revenues of the state budget.

Section 17
Common provisions

(1) Proceedings to return the unlawfully removed cultural object may not be started if the removal of the cultural object from the territory of the Requesting State at the time of the intended commencement of the proceedings is no longer unlawful.

(2) Proceedings pursuant to Section 4 subsection 5, Section 5, Section 6 subsection 2, Section 15 subsection 3 and Section 16 shall be governed by the general regulation on administrative procedure. 15)

(3) This Act shall apply to the proceedings for the return of unlawfully removed archival documents⁶⁾, unless otherwise provided by a special regulation.16)

(4)By 18 December 2020 and every five years thereafter, the Ministry shall submit to the European Commission a report on the application of this Act.

Section 17a

This Act shall transpose the legally binding acts of the European Union listed in Annex.

Final provisions

Section 17a

This Act shall transpose the legal act of the European Communities and the European Union listed in Annex No.2.

Section 18

Effect

This Act shall take effect on the day of the coming into force of the Treaty on the Accession of the Slovak Republic to the European Communities.

Act No. 149/2005 Z.z. /Coll./ took effect on 20 April 2005.

Act No. 374/2013 Z.z. /Coll./ took effect on 1 January 2014.

Act No. 376/2015 Z.z. /Coll./ took effect on 18 December 2015.

Act No. 125/2016 Z.z. /Coll./ took effect on 1 July 2016.

Rudolf Schuster m.p.

Jozef Migaš m.p.

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ANNEX 1

Repealed as from 18 December 2015

ANNEX

LIST OF TRANSPOSED LEGALLY BINDING ACTS OF THE EUROPEAN UNION

Directive of the European Parliament and of the Council 2014/60/EU of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending the Regulation (EU) No. 1024/2012 (Recast) (OJ EU L 159, 28 May 2014).

1) Section 2 subsection 3 of the Act No. 49/2002 Z.z. /Coll./ to protect the monuments, as amended by the Act No. 104/2014 Z.z. /Coll./ (the full wording No. 238/2014 Z.z. /Coll./).

2) Section 2 subsection 5 of the Act No. 49/2002 Z.z. /Coll./, as amended (the full wording No. 238/2014 Z.z. /Coll./).

3) Section 40 subsection 1 of the Act No. 49/2002 Z.z. /Coll./ as amended by the Act No. 104/2014 Z.z. (Coll.) (the full wording No. 238/2014 Z.z. /Coll./).

4) Section 2 subsection 2 of the Act No. 206/2009 Z.z. /Coll./ on the museums and galleries and on the protection of cultural objects and amending the Act of the Slovak National Council No. 372/1990 Zb./Coll./ on administrative offences, as amended.

5) Section 2 subsection 8 of the Act No. 126/2015 Z.z. /Coll./ on the libraries and amending the Act No. 206/2009 on the museums and galleries and on the protection of cultural objects and amending the Act of the Slovak National Council No. 372/1990 Zb./Coll./ on administrative offences, as amended by the Act No. 38/2014 Z.z. /Coll./.

6) Section 2 subsection 2 of the Act No. 395/2002 Z.z. /Coll./ on the archives and registries and amending the relevant Acts, as amended.

7) Section 2 subsection 1 of the Act No. 206/2009 Z.z. /Coll./.

- 8) Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods (O.J. EU L 39, 10 February 2009).
- 9) For example Section 25 subsection 2 of the Act No. 49/2002 Z.z. /Coll./, as amended by the Act No. 104/2014 Z.z. /Coll./, Section 17 subsection 5 of the Act No. 206/2009 Z.z. /Coll./, as amended by the Act No. 38/2014 Z.z. /Coll./
- 10) Section 18 subsection 1 paragraph b) of the Act No. 575/2001 Z.z. /Coll./ on the organisation of the activities of the government and on the organisation of the central government.
- 11) Article 21 subsection 1 of the Constitution of the Slovak Republic.
- 12) Section 134 and 135 of the Labour Code.
- 13) Code of Civil Procedure for Contested Cases
- 14) Article 44 subsection 2 of the Constitution of the Slovak Republic.
- 14a) Regulation of the European Parliament and of the Council (EU) No. 1024/2012 of 25 October 2012 on the administrative cooperation via the internal market information system and on the repealing of the decision of the Commission 2008/49/EC (Regulation on the IMI) (O.J. EU L 316, 14 November 2012), as amended.
- 14b) Act No. 122/2013 Z.z. /Coll./ on the protection of personal particulars and amending the relevant Acts, as amended by the Act No. 84/2014 Z.z. /Coll./.
- 15) Act No 71/1967 Zb. /Coll./ on the administrative procedure (Code of Administrative Procedure), as amended by the Act No. 215/2002 Z.z. /Coll./.
- 16) Act No. 395/2002 Z.z. /Coll./, as amended.