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Legally binding are the original law texts in an official Swiss Language such as German, French and Italian.

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# **Federal Act on the International Transfer of Cultural Property**

## **(Cultural Property Transfer Act, CPTA)**

dated June 20, 2003

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*The Federal Assembly of the Swiss Confederation,*

Pursuant to Articles 69, para. 2 and 95, para. 1, of the Swiss Federal Constitution<sup>1</sup>, in execution of the UNESCO Convention from November 14, 1970<sup>2</sup> on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention 1970), after having examined the Message of the Federal Council dated November 21, 2001<sup>3</sup>,

*decides:*

### **Section 1: General Provisions**

#### **Article 1**      Scope and Purpose

<sup>1</sup> This Act regulates the import of cultural property into Switzerland, its transit and export as well as its repatriation from Switzerland.

<sup>2</sup> With this Act, the Confederation desires to make a contribution to the maintenance of the cultural heritage of mankind and prevent theft, looting, and illicit import and export of cultural property.

#### **Article 2**      Terms

<sup>1</sup> *Cultural property* is defined as significant property from a religious or universal standpoint for archeology, pre-history, history, literature, arts or sciences belonging to the categories under Article 1 of the UNESCO Convention of 1970.

<sup>2</sup> *Cultural heritage* is considered the entirety of cultural property belonging to one of the categories under Article 4 of the UNESCO Convention 1970.

<sup>1</sup> SR 101

<sup>2</sup> BBI 2002 635

<sup>3</sup> BBI 2002 535

<sup>3</sup> *Contracting states* are considered states having ratified the UNESCO Convention of 1970.

<sup>4</sup> *Specialized body* refers to the administrative body responsible for executing the tasks outlined in Article 18.

<sup>5</sup> *Illicit import* refers to an import in violation of an agreement in terms of Article 7 or a measure in terms of Article 8, para. 1, letter a.

## **Section 2 Registries of Cultural Property**

### **Article 3** Federal Registry

<sup>1</sup> Cultural property of the Confederation of significant importance for the cultural heritage is registered in the Federal Registry.

<sup>2</sup> The registration has the following effect:

- a. cultural property may neither be acquired by adverse possession nor acquired in good faith;
- b. the claim for return is not subject to a statute of limitation;
- c. the definitive export of the cultural property from Switzerland is prohibited.

<sup>3</sup> The registration of cultural property in the Federal Registry may be removed, to the extent that:

- a. the cultural property no longer has a significant importance to the cultural heritage;
- b. consolidation speaks in favor of an ensemble;
- c. the Confederation loses its title to the cultural property or waives the same.

<sup>4</sup> The specialized body operates the Federal Registry in the form of an electronic database and publishes the same.

### **Article 4** Cantonal Registries

<sup>1</sup> To simplify checks at the borders, the Cantons, which regulate the export of cultural property within their territories, may connect to the federal database:

- a. registries of their cultural property;
- b. registries of privately-owned cultural property, to the extent approval to this end is granted by the private party.

<sup>2</sup> The Cantons may declare that cultural property in their registries may neither be acquired through adverse possession nor in good faith and that the claim of return is not subject to a statute of limitations.

### **Section 3: Import and Export**

#### **Article 5** Export Permit for Cultural Property Registered in the Federal Registry

<sup>1</sup> Whoever desires to export cultural property registered in the Federal Registry from Switzerland requires authorization of the specialized body.

<sup>2</sup> Authorization shall be granted if:

- a. the cultural property is exported on a temporary basis; and
- b. the export occurs for reasons of research, conservation, exhibition, or similar reasons.

#### **Article 6** Swiss Repatriation Claims

<sup>1</sup> The Federal Council will claim the right of repatriation vis-à-vis all other contracting states should cultural property registered in the Federal Registry be illicitly exported from Switzerland. Any compensation and costs will be carried by the Confederation.

<sup>2</sup> The Federal Council will claim the right of repatriation at the request of a Canton vis-à-vis all other contracting states should cultural property registered in a cantonal registry be illicitly exported from Switzerland. Any compensation and costs will be carried by the requesting Canton.

#### **Article 7** Agreements

<sup>1</sup> For the protection of cultural and foreign affairs interests and to secure cultural heritage, the Federal Council may conclude international treaties with contracting states on the import and repatriation of cultural property (Agreements).

<sup>2</sup> The following conditions must be fulfilled:

- a. the scope of the agreement must be cultural property of significant importance to the cultural heritage of the contracting state in question;
- b. the cultural property must be subject to export provisions in the state in question for the purpose of protecting cultural heritage; and
- c. the contracting state must grant reciprocal rights.

#### **Article 8** Limited Measures

<sup>1</sup> To protect a state's cultural heritage jeopardized by exceptional events, the Federal Council may:

- a. enable the import, transit, and export of cultural property, tie it to conditions, limitations, or prohibitions;

- b. participate in common international actions in terms of Article 9, UNESCO Convention of 1970.

<sup>2</sup> The measures must be limited in time.

#### **Article 9**      Repatriation Claims based on Agreements

<sup>1</sup> Whoever possesses cultural property illicitly imported into Switzerland, can be sued for repatriation by the country from which the cultural property was illicitly exported. In particular, the country filing suit must show that the cultural property is of significant importance to its cultural heritage and was imported illicitly.

<sup>2</sup> The court can suspend the execution of repatriation until such time as the cultural property is no longer in jeopardy during repatriation.

<sup>3</sup> The country filing suit carries the costs for measures necessary for securing, maintaining, and repatriating the cultural property.

<sup>4</sup> Claims for repatriation by a state are subject to a statute of limitation of one year after its authorities gain knowledge of where and with whom the cultural property is located, at the latest, however, 30 years after the cultural property is illicitly exported.

<sup>5</sup> Whoever acquires cultural property in good faith and must return the same, has a claim for compensation at the time of repatriation, oriented to the purchase price as well as necessary and useful expenses for protecting and maintaining the cultural property.

<sup>6</sup> The state filing suit must pay the compensation. The person required to return the cultural property retains a right of retention of the same until compensation is paid.

### **Section 4: Return Guarantee**

#### **Article 10**      Request

Should cultural property of one contracting state be on temporary loan for an exhibition in a museum or another cultural institution in Switzerland, the institution borrowing the cultural property may request that the specialized body issue a return guarantee to the loaning institution for the period of the exhibition as stipulated in the loan agreement.

#### **Article 11**      Publication and Procedures for Objections

<sup>1</sup> The request is published in the Federal Bulletin. The publication contains a precise description of the cultural property and its origin.

<sup>2</sup> If the request clearly fails to fulfill the conditions for issuing a return guarantee, the request will be denied and not published.

<sup>3</sup> Parties pursuant to provisions of the Federal Act on Administration Procedure from December 20, 1968<sup>4</sup>, may file an objection in writing to the specialized body within 30 days. The deadline commences with publication.

<sup>4</sup> Failure to file an objection, precludes the parties from further action.

#### **Article 12** Issuance

<sup>1</sup> The specialized body decides on the request for issuing a return guarantee.

<sup>2</sup> The return guarantee may be issued in the event that:

- a. no person claims ownership to the cultural property through an objection;
- b. the import of the cultural property is not illicit;
- c. the loan agreement stipulates that the cultural property will be returned to the contracting state of origin following the conclusion of the exhibition.

<sup>3</sup> The Federal Council may establish additional requirements.

#### **Article 13** Effect

The return guarantee means that neither private parties nor authorities may make legal claims to the cultural property as long as the cultural property is located in Switzerland.

### **Section 5: Financial Assistance to the Benefit of Maintaining Cultural Heritage**

#### **Article 14**

<sup>1</sup> The Confederation may grant financial assistance:

- a. to museums or similar institutions in Switzerland for the temporary fiduciary custody and conservatory care of cultural property that is part of the cultural heritage of another state and is in jeopardy in that state due to exceptional events;
- b. for projects to maintain the cultural heritage of other contracting states;
- c. under exceptional circumstances to ease the restitution of the cultural heritage of contracting states.

<sup>2</sup> Financial assistance pursuant to paragraph 1, letter a, may only be paid out when the fiduciary custody:

- a. occurs in agreement with the authorities of the other state; or
- b. occurs under the auspices of UNESCO or another international organization for the protection of cultural property.

## **Section 6: Conveyance of Cultural Property**

### **Article 15** Conveyance to Federal Institutions

<sup>1</sup> Federal institutions are prohibited from acquiring or exhibiting cultural property that:

- a. was stolen, lost against the will of the owner or illegally excavated;
- b. are part of the cultural heritage of a state and have been illicitly exported from the same.

<sup>2</sup> Federal institutions offered such property must immediately report it to the specialized body.

### **Article 16** Duty of Diligence

<sup>1</sup> In the art trade and auctioning business, cultural property may only be transferred when the person transferring the property may assume, under the circumstances, that the cultural property:

- a. was not stolen, not lost against the will of the owner, and not illegally excavated;
- b. not illicitly imported.

<sup>2</sup> Persons active in the art trade and auctioning business are obligated:

- a. to establish the identity of the supplier or seller and require a written declaration from the same of his or her right to dispose of the cultural property;
- b. to inform their customers about existing import and export regulations of the contracting states;
- c. to maintain written records on the acquisition of cultural property by specifically recording the origin of the cultural property, to the extent known, and the name and address of the supplier or seller, a description as well as the sales price of the cultural property;
- d. to provide to the specialized body all necessary information on fulfilling this duty of diligence.

<sup>3</sup> The records and receipts must be stored for 30 years. Article 962, para. 2, Swiss Law of Obligations<sup>5</sup>, applies accordingly.

**Article 17** Inspection

<sup>1</sup> To inspect adherence to duty of diligence, the specialized body has access to business rooms and storage areas of persons active in the art trade and auctioning business.

<sup>2</sup> When the body has reasonable suspicion that criminal activity is present under this Act, the specialized body will file a complaint with the competent criminal prosecution authorities.

**Section 7: Authorities**

**Article 18** Specialized body

The Confederation appoints a specialized body for the execution of this Act, specifically assuming the following tasks:

- a. advising and supporting the Federal Authorities on issues of the transfer of cultural property and coordinating the corresponding work;
- b. advising the cantonal authorities on issues of the transfer of cultural property and working together with them;
- c. representing Switzerland vis-à-vis foreign authorities on issues of the transfer of cultural property;
- d. working together with authorities from other states to secure their cultural heritage;
- e. providing information on issues of the transfer of cultural property to persons active in the art trade and auctioning business as well as other interested circles;
- f. maintaining a listing of information centers on reported stolen cultural property;
- g. administering the Federal Registry in the form of an electronic database and publishing it (Art. 3);
- h. issuing return guarantees (Art. 10–13);
- i. inspecting compliance to the duty of diligence of persons active in the art trade and auctioning business (Art. 16 and 17).

**Article 19** Customs

<sup>1</sup> Customs authorities inspect the transfer of cultural property at the border.

<sup>2</sup> They are authorized to withhold suspicious cultural property during import, transit, and export, and report it to criminal prosecution authorities.

<sup>3</sup> Arrival of cultural property at customs storage facilities is considered import in terms of this Act.

#### **Article 20** Criminal Prosecution Authorities

<sup>1</sup> The competent criminal prosecution authorities will order the seizure of the cultural property when suspicion exists that the cultural property was stolen, lost against the will of the owner or illicitly imported into Switzerland.

<sup>2</sup> Each seizure must be reported immediately to the specialized body.

### **Section 8: Official and Legal Assistance**

#### **Article 21** Official Assistance in Switzerland

The competent authorities from the Confederation, Cantons, and Municipalities provide all the data required for the execution of this Act to each other as well as the appropriate oversight authorities.

#### **Article 22** International Official and Legal Assistance

<sup>1</sup> The Federal Authorities responsible for the execution of this Act may cooperate with competent foreign authorities and international organizations and bodies and coordinate inquiries to the extent that:

- a. it is required for the execution of this Act; and
- b. the foreign authorities, international organizations or bodies are bound by official secrecy or are subject to a corresponding duty to observe secrecy.

<sup>2</sup> They may request delivery of required data from foreign authorities. In order to receive the data, they may provide them data specifically on:

- a. the quality, quantity, destination and location of use, purpose of use as well as the recipients of cultural property;
- b. the persons participating in the delivery or procurement of cultural property;
- c. the financial arrangement of the transactions.

<sup>3</sup> The Federal Authorities may provide the data pursuant to paragraph 2 on their own initiative or at the request of the foreign state, to the extent that the state in question:

- a. retains reciprocal rights;
- b. guarantees that data will only be processed for purposes pursuant to this Act; and
- c. guarantees that the data may only be used in criminal proceedings, if legal assistance in criminal proceedings would not be precluded by the type of crime; in this case, the competent federal administrative authorities consult the Federal Office of Justice in advance on the possibility of legal assistance in criminal proceedings.



**Article 23** Relationship to the Legal Assistance Act

Legal assistance may be provided to the competent foreign authorities for violations of this Act. Such violations are not considered as currency, trade, or economic crimes in terms of Article 3, para. 3, Legal Assistance Act from March 20, 1981<sup>6</sup>; the procedural provisions of this Act apply accordingly.

**Section 9: Criminal Sanctions**

**Article 24** Misdemeanor

<sup>1</sup> To the extent that the offence is not threatened with a higher sanction under another provision, punishment of imprisonment up to one year or a fine up to 100,000 Swiss Francs will be imposed on whoever intentionally:

- a. imports, sells, distributes, procures, acquires, or exports cultural property stolen or otherwise lost against the will of the owner;
- b. appropriates excavation finds in terms of Article 724, Swiss Civil Code<sup>7</sup>;
- c. illicitly imports cultural property or incorrectly declares the same during import or transit;
- d. illicitly exports cultural goods listed in the Federal Registry or incorrectly declares the same during export;

<sup>2</sup> If the offender acts negligently, the sanction is a fee of up to 20,000 Swiss Francs.

<sup>3</sup> If the offender acts on a professional basis, the sanction is jail for up to two years or a fine of up to 200,000 Swiss Francs.

**Article 25** Violations

<sup>1</sup> To the extent that the offense is not threatened with a higher sanction under another provision, a person may be fined up to 20,000 Swiss Francs, who within the art trade or auctioning business:

- a. disregards the duty of diligence (Art. 16);
- b. frustrates inspections (Art. 17).

<sup>2</sup> Attempts and aiding and abetting are punishable acts.

<sup>3</sup> Punishment may be dispensed for lesser violations.

**Article 26** Violation in Businesses

Articles 6 and 7 of the Federal Act on the Administrative Penal Code from March 22, 1974<sup>8</sup> apply to violations in businesses.

<sup>6</sup> SR 351.1

<sup>7</sup> SR 210

<sup>8</sup> SR 313.0

**Article 27** Criminal Prosecution

The Cantons are responsible for prosecuting and assessing criminal activities pursuant to this Act.

**Article 28** Seizure of Cultural Property and Assets

Cultural property and assets seized under Articles 58 and 59 of the Swiss Penal Code<sup>9</sup> are assigned to the Confederation. The Federal Council controls their application. It considers the purposes of this Act to this end.

**Article 29** Disclosure Requirement

The customs authorities and the competent criminal prosecution authorities are required to disclose violations of this Act to the specialized body.

## **Section 10: Appeal and Data Protection**

**Article 30**

<sup>1</sup> The general provisions of the Federal Act on the Organization of the Federal Judiciary govern the complaint procedures against decrees pursuant to this Act.

<sup>2</sup> Legislation on the protection of data governs the processing of personal data.

## **Section 11: Final Provisions**

**Article 31** Implementation

The Federal Council shall enact the provisions for implementation.

**Article 32** Amendments to Applicable Law

The following legislation is amended as follows:

### **1. Swiss Civil Code<sup>10</sup>**

*Art. 72, para. 1 and 1<sup>bis</sup>*

<sup>1</sup> Derelict natural bodies or antiquities of scientific value are the property of the Canton where the items are found.

<sup>1bis</sup> Such items may not be sold without the permission of the

<sup>9</sup> SR 311.0

<sup>10</sup> SR 210

competent cantonal authorities. They can neither be acquired by adverse possession nor acquired in good faith. The claim for return is not subject to a statute of limitation.

*Art. 728, para. 1bis*

<sup>1bis</sup> Under the reservation of statutory exceptions, the period for adverse possession of cultural property is thirty years pursuant to Article 2, para. 1, Cultural Property Transfer Act from June 20, 2003<sup>11</sup>.

*Art. 934, para. 1bis*

<sup>1bis</sup> The claim for the return of cultural property lost against the will of the owner in terms of Article 2, para. 1, Cultural Property Transfer Act from June 20, 2003<sup>12</sup>, is subject to a statute of limitations of one year after the owner gains knowledge of the locations and the ownership of the cultural property, at the latest, however, 30 years after the property is lost.

## 2. Swiss Law of Obligations<sup>13</sup>

*Art. 196a*

c. For cultural-property

For cultural property in terms of Article 2, para. 1, Cultural Property Transfer Act from June 20, 2003<sup>14</sup>, the claim for guaranteeing the sold rights expires one year after the purchaser discovers the fault, in any case, however, 30 years after conclusion of the contract.

*Art. 210, para. 1bis*

<sup>1bis</sup> For cultural property in terms of Article 2, para. 1, Cultural Property Transfer Act from June 20, 2003<sup>15</sup>, the claim expires one year after the purchaser discovers the fault, in any case, however, 30 years after conclusion of the contract.

<sup>11</sup> SR ...; AS ... (BBl 2003 4475)

<sup>12</sup> SR ...; AS ... (BBl 2003 4475)

<sup>13</sup> SR 220

<sup>14</sup> SR ...; AS ... (BBl 2003 4475)

<sup>15</sup> SR ...; AS ... (BBl 2003 4475)

### 3. Federal Act on Private International Law from December 18, 1987<sup>16</sup>

*Art. 98a*

3. Cultural  
property

The court at the domicile or registered office of the defendant or at the location where the cultural property is located has jurisdiction for claims to return cultural property pursuant to Article 9, Cultural Property Transfer Act from June 20, 2003<sup>17</sup>.

### 4. Federal Act on the Protection of Nature and Home Country from July 1, 1966<sup>18</sup>

*Art. 24, para. 1, provision c*

<sup>1</sup> Punishment of imprisonment for up to one year or a fine of up to 100,000 Swiss Francs may be imposed on whoever intentionally and without justification:

- c. destroys or seriously damages natural bodies or antiquities of scientific value contained in the ground (Art. 724, para. 1, CC<sup>19</sup>);

#### **Article 33** Non-retroactivity

This Act is not applicable retroactively. In particular, it is not applicable to acquisition activities that took place prior to this Act entering into force

#### **Article 34** Referendum and Effective Date

<sup>1</sup> The present Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall set the date of entry into effect.

National Council, June 20, 2003

Council of States, June 20, 2003

The President: Yves Christen

The President: Gian-Reto Plattner

The Secretary: Christophe Thomann

The Secretary: Christoph Lanz

Date of Publication: July 1, 2003<sup>20</sup>

Expiration of the referendum deadline: October 9, 2003

<sup>16</sup> SR 291

<sup>17</sup> SR ...; AS ... (BB1 2003 4475)

<sup>18</sup> SR 451

<sup>19</sup> SR 210

<sup>20</sup> BB1 2003 4475