

Disclaimer

This is the English translation of the *Wet tot uitvoering van de op 14 november 1970 te Parijs tot stand gekomen Overeenkomst inzake de middelen om de onrechtmatige invoer, uitvoer of eigendomsoverdracht van culturele goederen te verbieden en te verhinderen (Uitvoeringswet UNESCO-verdrag 1970 inzake onrechtmatige invoer, uitvoer of eigendomsoverdracht van cultuurgoederen)* [1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act] as enacted on 12 June 2009. Please note that this English translation is not legally binding. It is the Dutch-language text of the Act that is legally binding. The most recent version of the text of the Act can be found, in Dutch, on the website: <http://www.wetten.nl>. At the end of this document there is a translation table for the titles of legislation etc. used in this Act.

Further information can be obtained from the Ministry of Education, Culture and Science (www.minocw.nl; e-mail address: ocwinfo@postbus51.nl) or the Cultural Heritage Inspectorate (www.erfgoedinspectie.nl; e-mail address: info@erfgoedinspectie.nl).

Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted in Paris on 14 November 1970 (1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act

AMENDED BILL

We, Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who see or hear these presents! Be it known:

Whereas We have considered that it is desirable to implement by statute the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970, Dutch Treaty Series 1972, no. 50 and 1983, no. 66) and in this connection to make amendments to, inter alia, the Code of Civil Procedure, the Civil Code and the Cultural Heritage Preservation Act;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

CHAPTER 1: GENERAL

Section 1

In this Act the following terms have the following meanings:

a) Our Minister: Our Minister of Education, Culture and Science;

- b) Convention: the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted in Paris on 14 November 1970 (Dutch Treaty Series 1972, no. 50 and Dutch Treaty Series 1983, no 66);
- c) State Party: a state that has ratified the Convention;
- d) cultural property: property which has been designated by each state, on religious or secular grounds, as being of importance for archaeology, prehistory, history, literature, art or science and hence of essential importance to its cultural heritage and which belongs to one of the categories of cultural property listed in article 1 of the Convention.

Section 2

The following are designated as cultural property for the Netherlands:

- a) the protected property referred to in section 1 (a) of the Cultural Heritage Preservation Act;
- b) the movable property referred to in section 14a of the Cultural Heritage Preservation Act.

Section 3

It is prohibited to import into the Netherlands cultural property which:

- a) has been removed from the territory of a State Party in breach of the provisions adopted by that State Party in accordance with the objectives of the Convention in respect of the export of cultural property from that State Party or the transfer of ownership of cultural property; or
- b) has been unlawfully appropriated in a State Party.

Section 4

The return of cultural property imported into the Netherlands in breach of the prohibition referred to in section 3 may be claimed, subject to articles 1011a-1011d of the Code of Civil Procedure, by proceedings brought by the State Party from which the property originates or by the person with valid title to such property.

CHAPTER 2: AMENDMENT OF THE CODE OF CIVIL PROCEDURE

Section 5

The Code of Civil Procedure is amended as follows:

- A. The following articles are inserted after article 1011:

Article 1011a

1. Legal proceedings for the return of a movable pursuant to section 4 of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act must be instituted against the possessor, whom failing the holder of the cultural property, before the court that has jurisdiction in accordance with the rules of this Code.

2. On pain of nullity the following must be served together with the writ of summons:

a) a document describing the movable whose return is sought and showing that the movable is cultural property within the meaning of section 1 (d) of the Implementation Act referred to in the opening words and is therefore of essential importance for the cultural heritage of the State Party from which the cultural property originates;

b) a declaration by the State Party from which the cultural property originates that this cultural property has been removed from the territory of that state in breach of the rules governing the export and transfer of ownership of cultural property as adopted by that State in accordance with the objectives of the Convention as referred to in the Implementation Act, or that this cultural property has been unlawfully appropriated in that State Party.

Article 1011b

Our Minister of Education, Culture and Science may take the necessary measures as referred to in article 1010 for the benefit of a State Party claiming the return of cultural property.

Article 1011c

The costs incurred in implementing a judicial decision for the return of a movable pursuant to article 1011a must be borne by the State that instituted the legal proceedings. If the proceedings were instituted by the person with valid title to the cultural property, the costs must be borne by that person. The same applies to the costs incurred in connection with the physical preservation of the cultural property and to the costs of any provisional measures as referred to in article 1010.

Article 1011d

If the cultural property would be exposed to danger in the event of its return, the court may stay the execution of a judgment obtained pursuant to article 1011a until such time as the cultural property is no longer in danger.

B. Article 1012 reads as follows:

The ownership of cultural property whose return has been claimed by a Member State pursuant to article 1008 or by a State Party pursuant to article 1011a must be determined, after the return of the property, by the national law of the State that instituted the proceedings for return.

CHAPTER 3: AMENDMENT OF THE CIVIL CODE

Section 6

Book 3 of the Civil Code is amended as follows:

A. The following article is inserted after article 86a:

Article 86b

1. Article 86 may not be invoked against a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted in Paris on 14 November 1970 or against a person with valid title to such property if, pursuant to section 4 of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act, they institute legal proceedings as referred to in article 1011a of the Code of Civil Procedure for the return of a movable as referred to in that article.

2. A court that allows a claim in proceedings as referred to in paragraph 1 must award the possessor such compensation as it deems fair according to the circumstances of the case if it is satisfied that the possessor exercised due diligence in acquiring the movable, unless a claim without compensation would have been possible where article 86, paragraph 3 is applicable.

3. The compensation must in any event include what is owed to the possessor under articles 120 and 121. It must be paid when the movable is handed over.

B. In article 87, paragraph 1 'and 86a' is replaced by ', 86a and 86b'.

C. The following new article is inserted after article 87:

Article 87a

1. To determine whether a possessor has exercised due diligence in acquiring cultural property as referred to in section 1 (d) of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act, account is taken of all circumstances of the acquisition, in particular:

- a) the capacity of the parties;
- b) the price paid;
- c) whether the possessor consulted every reasonably accessible register of stolen cultural property and any other relevant information and documentation which he could reasonably have obtained and whether the possessor consulted accessible agencies;
- d) whether the possessor took all steps that a reasonable person would have taken in the circumstances.

2. A dealer as referred to in article 437 of the Criminal Code will not be deemed to have exercised due diligence in accordance with article 86b, paragraph 2 in acquiring cultural property if he has failed to:

- a) ascertain the identity of the seller;
- b) require the seller to provide a written declaration that he is competent to dispose of the property;
- c) record in the register to be kept by him the provenance of the cultural property, the name and address of the seller, the purchase price paid to the seller and a description of the cultural property;
- d) consult the registers of stolen cultural property which it would be appropriate to consult in the circumstances, given the nature of the cultural property.

3. An auctioneer who does not fulfil the requirements of due diligence referred to in paragraphs 1 and 2 when accepting cultural property for public auction or who returns this cultural property to the person presenting it for public auction without having fulfilled these

requirements of due diligence acts unlawfully in relation to the persons who are able to institute proceedings for return as referred to in article 86b.

D. Article 88, paragraph 2 is replaced by:

2. Paragraph 1 may not be invoked as a defence to proceedings as referred to in article 86a, paragraphs 1 and 2 and article 86b, paragraph 1.

E. The following new paragraph is added to article 99:

3. Paragraph 1 may not be invoked as a defence to proceedings as referred to in article 86a, paragraph 1 and article 86b, paragraph 1.

F. In article 238, paragraph 4 the words 'or article 86b, paragraph 1' are added after 'article 86a, paragraphs 1 and 2' .

G. The following new article is inserted after article 310b:

Article 310c

1. Proceedings for the return of a movable on the basis of section 4 of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act will be barred five years after the start of the day following that on which the whereabouts of the movable and the identity of the possessor or the holder become known and in any event thirty years after the start of the day following that on which the movable was removed from the territory of the State Party from which it originates.

2. The latter time limit is seventy-five years in the case of movables that form part of public collections which are listed in the inventories of museums, archives and libraries' conservation collections or in the inventory of an ecclesiastical institution. For the purpose of this paragraph public collections are deemed to be collections which are the property of a State Party, a local or regional authority within a State Party or an institution situated in the territory of a State Party and defined as public in accordance with the legislation of that State Party, such institution being the property of, or significantly financed by, that State Party or a local or regional authority of that State Party.

CHAPTER 4: IMPLEMENTATION AND ENFORCEMENT

Section 7

Our Minister must do whatever is necessary to implement articles 2, 5, 6, 7, 9, 10, 13 (a), (b) and (d) and 14 of the Convention, except in relation to the imposition as referred to in article 10 (a) of the Convention on antique dealers of rules the breach of which is a criminal offence. Further rules may be laid down by ministerial order in connection with such implementation.

Section 8

The following are responsible for supervising compliance with the provisions of this Act and for carrying out the requisite investigations:

- a) the inspector referred to section 1 (f) of the Cultural Heritage Preservation Act and the officials referred to in section 15, subsection 1 of that Act, and
- b) customs officials of the Tax and Customs Administration.

Section 9

The officials referred to in section 8 (a) are empowered to:

- a) enter a dwelling without the consent of the occupant and to take with them the necessary equipment;
- b) demand that the occupant show them the cultural property present in the dwelling;
- c) seal off areas and objects in so far as this is reasonably necessary for the exercise of the powers referred to in section 5:17 of the General Administrative Law Act;
- d) exercise the power referred to in section 5:17 of the General Administrative Law Act, if necessary with the help of the police.

Section 10

1. Where there is a reasonable suspicion that the prohibition in section 3 has been contravened Our Minister may take into custody the cultural property concerned for such period as Our Minister considers necessary in order to enable the State Party from which the

cultural property originates to arrange for attachment of such property, which period may not exceed twelve weeks.

2. Our Minister records his decision in writing before taking cultural property into custody and gives notice of the custody to the person holding the property and, if possible, also to the possessor. The written decision constitutes an administrative decision. If the situation is so urgent that Our Minister is unable to record in advance and in writing the decision to take into custody, he must arrange for it to be recorded in writing and published as quickly as possible thereafter.

3. The period of custody may be extended once for a maximum of twelve weeks. Subsection 2 applies *mutatis mutandis*.

4. Custody ends when the cultural property has been attached on the instructions of the State Party from which it originates or the period for custody expires unused.

Section 11

Chapters 2 and 3 of the Customs Act, with the exception of section 10 of chapter 2 of that Act, apply *mutatis mutandis* to the officials referred to in section 8 (b).

CHAPTER 5: CONCLUDING PROVISIONS

Section 12

The Cultural Heritage Preservation Act is amended as follows:

A. Section 6 is repealed.

B. In section 14a the following subsection 3 is inserted after subsection 2:

3. The prohibition referred to subsection 1 also applies to:

a) protected monuments and historic buildings and parts thereof, within the meaning of section 1 (d) of the Monuments and Historic Buildings Act;

b) illicitly excavated objects;

c) archival materials and elements thereof within the meaning of section 1 (c) (1^o), (2^o) and (3^o) of the Public Records Act 1995, provided that they are more than fifty years old.

C. Section 14a, subsection 3 is renumbered as subsection 4.

Section 12a

The Property Law (Conflict of Laws) Act is amended as follows:

Section 1, subsection 2 will read as follows:

2. This Act is without prejudice to Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a member state (OJEC L 74), the Protection of Cultural Property from Illicit Export (Implementation) Act and the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act.

Section 13

Sections 3 and 4 do not apply if the breach of the provisions referred to in section 3 (a) or the unlawful appropriation referred to in section 3 (b) occurred before the entry into force of this Act.

Section 14

This Act enters into force with effect from a date to be determined by Royal Decree.

Section 15

This Act may be cited as the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern diligently implement it.

Done

The Minister of Justice

The Minister of Education, Culture and Science

Translation Table

This table provides the Dutch names of all Codes, Protocols, Acts etc. that have been mentioned in this translation to enable the reader to find the original Dutch texts.

	English	Dutch
1	Dutch Treaty Series	<i>Tractatenblad</i>
2	Code of Civil Procedure	<i>Wetboek van Burgerlijke Rechtsvordering</i>
3	Civil Code	<i>Burgerlijk Wetboek</i>
4	Cultural Heritage Preservation Act	<i>Wet tot behoud van cultuurbezit</i>
5	Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act	<i>Uitvoeringswet UNESCO-verdrag 1970 inzake onrechtmatige invoer, uitvoer of eigendomsoverdracht van cultuurgoederen</i>
6	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	<i>Overeenkomst inzake de middelen om de onrechtmatige invoer, uitvoer of eigendomsoverdracht van culturele goederen</i>
7	Criminal Code	<i>het Wetboek van Strafrecht</i>
8	General Administrative Law Act	<i>Algemene wet bestuursrecht</i>
9	Customs Act	<i>Douanewet</i>

10	Monuments and Historic Buildings Act	<i>Monumentenwet</i>
11	Public Records Act	<i>Archiefwet</i>
12	Property Law (Conflict of Laws) Act	<i>Wet conflictenrecht goederenrecht</i>
13	Protection of Cultural Property from Illicit Export (Implementation) Act	<i>Implementatiewet bescherming cultuurgoederen tegen illegale uitvoer</i>