

## *European Convention on Offences relating to Cultural Property*

Delphi, 23.VI.1985

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Believing that such unity is founded to a considerable extent in the existence of a European cultural heritage;

Conscious of the social and economic value of that common heritage;

Desirous of putting an end to the offences that too often affect that heritage and urgently adopting international standards to this end;

Recognising their common responsibility and solidarity in the protection of the European cultural heritage;

Having regard to the European Conventions in the criminal and cultural fields,

Have agreed as follows:

### **Part I – Definitions**

#### **Article 1**

For the purposes of this Convention:

a. "offence" comprises acts dealt with under the criminal law and those dealt with under the legal provisions listed in Appendix I to this Convention on condition that where an administrative authority is



competent to deal with the offence it must be possible for the person concerned to have the case tried by a court;

b. "proceedings" means any procedure instituted in respect of an offence;

c. "judgment" means any final decision delivered by a criminal court or by an administrative body as a result of a procedure instituted in pursuance of one of the legal provisions listed in Appendix I;

d. "sanction" means any punishment or measure incurred or pronounced in respect of an offence.

## **Part II – Scope**

### **Article 2**

1. This Convention shall apply to the cultural property listed in Appendix II, paragraph 1.

2. Any Contracting State may, at any time, declare that for the purposes of this Convention it also considers any one or more of the categories of property listed in Appendix II, paragraph 2, as cultural property.

3. Any Contracting State may, at any time, declare that for the purposes of this Convention it also considers as cultural property any category of movable or immovable property, presenting an artistic, historical, archaeological, scientific or other cultural interest, that is not included in Appendix II.

### **Article 3**

1. For the purposes of this Convention, the acts and omissions listed in Appendix III, paragraph 1, are offences relating to cultural property.

2. Any Contracting State may, at any time, declare that, for the purposes of this Convention, it also deems to be offences relating to cultural property the acts and omissions listed in any one or more subparagraphs of Appendix III, paragraph 2.

3. Any Contracting State may, at any time, declare that, for the purposes of this Convention, it also deems to be offences relating to cultural property any one or more acts and omissions that affect cultural property and are not listed in Appendix III.

### **Part III – Protection of cultural property**

#### **Article 4**

Each Party shall take appropriate measures to enhance public awareness of the need to protect cultural property.

#### **Article 5**

The Parties shall take appropriate measures with a view to co-operating in the prevention of offences relating to cultural property and the discovery of cultural property removed subsequent to such offences.

### **Part IV – Restitution of cultural property**

#### **Article 6**

The Parties undertake to co-operate with a view to the restitution of cultural property found on their territory, which has been removed from the territory of another Party subsequent to an offence relating to cultural property committed in the territory of a Party, notably in conformity with the provisions that follow.

#### **Article 7**

1. Any Party that is competent under Article 13 shall, if it thinks fit, notify as soon as possible the Party or Parties to whose territory cultural property has been removed, or is believed to have been removed, subsequent to an offence relating to cultural property.
2. Any Party from whose territory cultural property has been removed, or is believed to have been removed, subsequent to an offence relating to cultural property, shall notify as soon as possible the Party that is competent in accordance with Article 13, paragraph 1, sub-paragraph e.
3. If such cultural property is found on the territory of a Party which has been duly notified, that Party shall immediately inform the Party or Parties concerned.
4. If cultural property is found on the territory of a Party and if that Party has reasonable grounds to believe that the property in question has been removed from the territory of another Party subsequent to an offence relating to cultural property, it shall immediately inform the other Party or Parties presumed to be concerned.
5. The communications referred to in the preceding paragraphs shall contain all information concerning the identification of the property in question, the offence subsequent to which it was removed and the circumstances concerning the discovery.
6. The Parties shall ensure the fullest possible distribution of the notifications which they receive pursuant to the provisions of paragraph 1.

## **Article 8**

1. Each Party shall execute in the manner provided for by its law any letters rogatory relating to proceedings addressed to it by the competent authorities of a Party that is competent in accordance with Article 13 for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.
2. Each Party shall execute in the manner provided for by its law any letters rogatory relating to proceedings addressed to it by the competent authorities of a Party that is competent in accordance with Article 13 for the purpose of seizure and restitution of cultural property which has been removed to the territory of the requested Party subsequent to an offence relating to cultural property. Restitution of the property in question is however subject to the conditions laid down in the law of the requested Party.

3. Each Party shall likewise execute any letters rogatory relating to the enforcement of judgments delivered by the competent authorities of the requesting Party in respect of an offence relating to cultural property for the purpose of seizure and restitution of cultural property found on the territory of the requested Party to the person designated by the judgment or that person's successors in title. To this end the Parties shall take such legislative measures as they may consider necessary and shall determine the conditions under which such letters rogatory are executed.

4. Where there is a request for extradition, the return of the cultural property mentioned in paragraphs 2 and 3 shall take place even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed or to other reasons of fact.

5. The requested Party may not refuse to return the cultural property on the grounds that it has seized, confiscated or otherwise acquired rights to the property in question as the result of a fiscal or customs offence committed in respect of that property.

## Article 9

1. Unless the Parties otherwise agree, letters rogatory shall be in the language of the requested Party, or in the official language of the Council of Europe that is indicated by the requested Party in a declaration addressed to the Secretary General of the Council of Europe, or where no such declaration has been made in either of the official languages of the Council of Europe.

2. They shall indicate:

- a. the authority making the request,
- b. the object of and the reason for the request,
- c. the identity of the person concerned,
- d. the detailed identification of the cultural property in question,
- e. a summary of the facts as well as the offence they constitute and shall be accompanied by an authenticated or certified copy of the judgment whose enforcement is requested, in the cases covered by Article 8, paragraph 3.

## **Article 10**

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

## **Article 11**

Execution of requests under this Convention shall not entail refunding of expenses except those incurred by the attendance of experts and the return of cultural property.

## **Part V – Proceedings**

### **Section I – Sanctioning**

#### **Article 12**

The Parties acknowledge the gravity of any act or omission that affects cultural property; they shall accordingly take the necessary measures for adequate sanctioning.

### **Section II – Jurisdiction**

#### **Article 13**

1. Each Party shall take the necessary measures in order to establish its competence to prosecute any offence relating to cultural property:

a. committed on its territory, including its internal and territorial waters, or in its airspace;

- b. committed on board a ship or an aircraft registered in it;
  - c. committed outside its territory by one of its nationals;
  - d. committed outside its territory by a person having his/her habitual residence on its territory;
  - e. committed outside its territory when the cultural property against which that offence was directed belongs to the said Party or one of its nationals;
  - f. committed outside its territory when it was directed against cultural property originally found within its territory.
2. In the cases referred to in paragraph 1, sub-paragraphs d and f, a Party shall not be competent to institute proceedings in respect of an offence relating to cultural property committed outside its territory unless the suspected person is on its territory.

### **Section III – Plurality of proceedings**

#### **Article 14**

1. Any Party which, before the institution or in the course of proceedings for an offence relating to cultural property, is aware of proceedings pending in another Party against the same person in respect of the same offence shall consider whether it can either waive or suspend its own proceedings.
2. If such Party considers it opportune in the circumstances not to waive or suspend its own proceedings it shall so notify the other Party in good time and in any event before judgment is given on the substance of the case.

#### **Article 15**

1. In the eventuality referred to in Article 14, paragraph 2, the Parties concerned shall through consultation endeavour as far as possible to determine, after evaluation of the circumstances of each case notably with a view to facilitating the restitution of the cultural property, which of them alone shall

continue to conduct proceedings. During this consultation the Parties concerned shall stay judgment on the substance without however being obliged to extend that stay beyond a period of 30 days as from the despatch of the notification provided for in Article 14, paragraph 2.

2. The provisions of paragraph 1 shall not be binding:

- a. on a Party which despatches the notification provided for in Article 14, paragraph 2, if the main trial has been declared open there in the presence of the accused before despatch of the notification;
- b. on a Party to which the notification is addressed, if the main trial has been declared open there in the presence of the accused before receipt of the notification.

#### **Article 16**

In the interests of arriving at the truth, the restitution of the cultural property and the application of an adequate sanction, the Parties concerned shall examine whether it is expedient that one of them alone shall conduct proceedings and, if so, endeavour to determine which one, when:

- a. several offences relating to cultural property which are materially distinct are ascribed either to a single person or to several persons having acted in unison;
- b. a single offence relating to cultural property is ascribed to several persons having acted in unison.

#### **Section IV – Ne bis in idem**

#### **Article 17**

1. A person in respect of whom a final and enforceable judgment has been rendered may for the same act neither be prosecuted nor sentenced nor subjected to enforcement of a sanction in another Party:

- a. if he was acquitted;
- b. if the sanction imposed:



- i. has been completely enforced or is being enforced, or
  - ii. has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty, or
  - iii. can no longer be enforced owing to the expiry of a limitation period;
- c. if the court found the offender guilty without imposing a sanction.

2. Nevertheless, a Party shall not, unless it has itself requested the proceedings, be obliged to recognise the ne bis in idem rule if the act which gave rise to judgment as directed against either a person or an institution or any thing having public status in that Party, or if the subject of the judgment had itself a public status in that Party.

3. Furthermore, a Party in whose territory the act was committed or considered to have been committed under the law of that Party shall not be obliged to recognise the ne bis in idem rule unless that Party has itself requested the proceedings.

### **Article 18**

If new proceedings are instituted against a person who has been sentenced in another Party for the same act, then any period of deprivation of liberty imposed in the execution of that sentence shall be deducted from any sanction which may be imposed.

### **Article 19**

This section shall not prevent the application of wider domestic provisions relating to the ne bis in idem rule attached to judicial decisions.

## **Part VI – Final clauses**

### **Article 20**

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 21**

1. This Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 20.

2. In respect of any member State which subsequently expresses its consent to be bound by it the Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date of deposit of the instrument of ratification, acceptance or approval.

#### **Article 22**

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 23**

No Party is bound to apply this Convention to the offences relating to cultural property committed before the date of entry into force of the Convention in respect of that Party.

#### **Article 24**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of one month after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

#### **Article 25**

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

- a. with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal or non-unitary States;
- b. with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions with its favourable opinion.

#### **Article 26**

In no case may a Party claim application of this Convention by another Party save in so far as it would itself apply this Convention in similar cases.

## Article 27

Any Party may decide not to apply the provisions of Articles 7 and 8 either where the request is in respect of offences that it regards as political or where it considers that the application is likely to prejudice its sovereignty, security or "ordre public".

## Article 28

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the right not to apply any one or more provisions of Articles 8, paragraph 3, 10, 13 and 18. No other reservation may be made.
2. Any State which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.

## Article 29

1. Any Contracting State may, at any time, by declaration addressed to the Secretary General of the Council of Europe, set out the legal provisions to be included in Appendix I to this Convention.
2. Any change of the national provisions listed in Appendix I shall be notified to the Secretary General of the Council of Europe if such a change renders the information in this appendix incorrect.
3. Any changes made in Appendix I in application of the preceding paragraphs shall take effect in each Party on the first day of the month following the expiration of a period of one month after the date of their notification by the Secretary General of the Council of Europe.

## Article 30

The declarations provided for in Articles 2 and 3 shall be addressed to the Secretary General of the Council of Europe. They shall become effective in respect of each Party on the first day of the month following the expiration of a period of one month after the date of their notification by the Secretary General of the Council of Europe.

### Article 31

The European Committee on Crime Problems of the Council of Europe shall follow the application of this Convention and shall do whatever is needed to facilitate a friendly settlement of any difficulty which may arise out of its execution.

### Article 32

1. The European Committee on Crime Problems may formulate and submit to the Committee of Ministers of the Council of Europe proposals designed to alter the contents of Appendices II and III or their paragraphs.

2. Any proposal submitted in accordance with the provisions of the preceding paragraph shall be examined by the Committee of Ministers which, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee, may approve it and instruct the Secretary General of the Council of Europe to notify the Contracting States thereof.

3. Any alteration approved in accordance with the provisions of the preceding paragraph shall enter into force on the first day of the month following the expiration of a period of six months after the date of despatch of the notification provided for in that paragraph unless a Contracting State notifies an objection to the entry into force. In the event of such an objection being made, the alteration will only enter force if the objection is subsequently lifted.

### Article 33

1. The notifications and information provided for in Article 7 shall be exchanged between the competent authorities of the Parties. However, they may be sent through the International Criminal Police Organisation – Interpol.

2. The requests provided for in this Convention and any communication made under the provisions of Part V, Section III, shall be addressed by the competent authority of a Party to the competent authority of another Party.

3. Any Contracting State may, by a declaration addressed to the Secretary General of the Council of Europe, designate which authorities will be its competent authorities within the meaning of this article. Where such declaration is not made the Ministry of Justice of the State in question will be deemed to be its competent authority.

#### **Article 34**

1. Nothing in this Convention shall prejudice the application of the provisions of any other international treaties or conventions in force between two or more Parties on the matters dealt with in this Convention provided that the said provisions are more compelling with respect to the duty to restitute cultural property affected by an offence.

2. The Parties may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate the application of the principles embodied in it.

3. However, if two or more Parties have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in the future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.

4. Parties ceasing to apply the terms of this Convention to their mutual relations in accordance with the provisions of the preceding paragraph shall notify the Secretary General of the Council of Europe to that effect.

#### **Article 35**

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

### **Article 36**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Convention in accordance with Articles 21 and 22;
- d. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Delphi, this 23rd day of June 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.