

A.L. 246 ta' l-2003

**ATT TA' L-2002 DWAR IL-PATRIMONJU KULTURALI
 (ATT NRU. VI TA' l-2002)**

**Regolamenti ta' l-2003 dwar it-Treġġigh Lura ta' Proprjetà
 Mnehhija Illegalment minn Territorju ta' Stat Membru fl-Unjoni
 Ewropea**

BIS-SAHHA ta' l-artikolu 55 ta' l-Att ta' l-2002 dwar il-Patrimonju Kulturali, il-Ministru Ghaz-Żgħażaġh u L-Arti għamel dawn ir-regolamenti li ġejjin:-

1. (1) It-titolu ta' dawn ir-regolamenti hu Regolamenti ta' l-2003 dwar it-Treġġigh Lura ta' Proprjetà Mnehhija Illegalment minn Territorju ta' Stat Membru fl-Unjoni Ewropea.

Titolu u bidu fis-sehh.

(2) Dawn ir-regolamenti għandhom jitqiesu li dahlu fis-sehh fid-9 ta' Settembru, 2003.

2. F'dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem ma tkunx tehtieġ xort'ohra-

Tifsir.

“l-Att” tfisser l-Att ta' l-2002 dwar il-Patrimonju Kulturali;

it-tifsiriet “proprjetà kulturali” u “patrimonju kulturali” huma dawk speċifikati fl-Att u fl-Anness mad-Direttiva, inklużi kollezzjonijiet pubbliċi katalogati fl-inventarji ta' mużewijiet, f'arkivji jew f'kollezzjonijiet ikkonservati f'libreriji;

“kollezzjonijiet pubbliċi” tfisser kollezzjonijiet li huma l-proprjetà ta' Stat Membru, ta' awtorita lokali jew reġjonali fi hdan Stat Membru jew istituzzjoni li tkun tinsab f'dak it territorju u li tiġi definita bħala pubblika skond il-liġijiet ta' dak l-Istat Membru, liema istituzzjoni tkun jew il-proprjeta' ta', jew tkun iffinanzjata b'mod sostanzjali minn dak l-Istat Membru jew minn awtorita lokali jew reġjonali, inklużi l-inventarji ta' istituzzjonijiet ekkleżjastiki;

“Stat Membru rikjedenti” tfisser Stat Membru ta' l-Unjoni Ewropea li fit-territorju tiegħu jkun jinsab oġġett kulturali li jkun tneħħa llegalment mit-territorju ta' xi Stat Membru iehor.

Skop.

3. (1) Dawn ir-regolamenti se jaghtu sehħ lid-dispożizzjonijiet tad-Direttiva tal-Kunsill Ewropew 93/7 tal-15 ta' Marzu, 1993 li titratta dwar it-treġġigh lura ta' oġġetti kulturali llegalment imnehhija mit-territorju ta' Stat Membru, hawnhekk izjed 'il quddiem imsejjha "id-Direttiva".

(2) Dawn ir-regolamenti japplikaw biss għal daww l-oġġetti kulturali li jkunu ġew imnehhija mit-territorju ta' Stat Membru fl-1 ta' Jannar, 1993 jew wara dik id-data.

Treġġigh lura ta' oġġetti kulturali

4. Oġġetti kulturali li jkunu ġew illegalment imnehhija mit-territorju ta' Stat Membru fl-Unjoni Ewropea għandhom jitreġġghu lura skond il-proċeduri u fiċ-ċirkostanzi li hemm provdut dwarhom f'dawn ir-regolamenti u fid-Direttiva.

5. Is-Sovrintendenza tal-Patrimonju Kulturali mwaqqfa bl-artikolu 7 ta' l-Att tkun l-awtorita' mahtura biex taqdi d-dmirijiet li hekk provdut dwarhom f'dawn ir-regolamenti.

Trasferimenti li jsiru bi ksur tal-liġijiet ta' Stat Membru rikjedenti.

6. Kull trasferiment ta' proprjeta' kulturali jew patrimonju kulturali, ukoll jekk temporanju, huwa illegali jekk dan isir bi ksur tar-regolamenti tad-Direttiva jew tal-liġijiet ta' l-Istat Membru rikjedenti.

Proċeduri quddiem qorti kompetenti.

7. (1) Stat Membru li jkun qed jibda talba għat-treġġigh lura ta' oġġett kulturali li jkun tneħħa llegalment mit-territorju tiegħu, jkollu jedd jibda proċeduri quddiem il-qorti kompetenti f'Malta, kontra l-pussessur jew, fin-nuqqas, kontra d-detentur ta' dak l-oġġett.

(2) Salv kif xort'ohra provdut fir-regolament 8 ta' dawn ir-regolamenti, il-qorti kompetenti għandha tordna t-treġġigh lura ta' dak l-oġġett kulturali jekk dan ikun tneħħa llegalment minn ġot-territorju nazzjonali.

Treġġiegh lura ta' oġġetti lil Stat Membru rikjedenti

8. (1) Meta jiġi ordnat it-treġġiegh lura ta' xi oġġetti, il-qorti kompetenti tal-pajjiż mitlub jibgħat lura l-oġġett għandha tagħti lill-pussessur dak il-kumpens li tqis xieraq skond iċ-ċirkostanzi tal-każ, sakemm tkun sodisfatta li l-pussessur ikun aġixxa bonafidi u jkun ha hsieb sew u eżerċita kull attenzjoni dovuta meta kien qed jakkwista l-oġġett.

(2) L-Istat Membru rikjedenti għandu jhallas dak il-kumpens meta jingħata lura l-oġġett.

(3) L-ispejjeż li jsiru fit-twettiq ta' deċizjoni li tkun tordna li oġġett kulturali jingħata lura, u għas-salvagwardja u l-konservazzjoni ta' dak l-oġġett, għandhom jiġu mgarrba mill-Istat Membru rikjedenti.

(4) Hlas li jsir għal kumpens ġust u l-ispejjeż imsemmija fis-subregolamenti (1) sa (3) ta' dan ir-regolament għandhom isiru mingħajr preġudizzju għad-dritt ta' l-Istat Membru rikjedenti li jiehu azzjoni bil-ħsieb li jirkupra dawk l-ammonti mingħand il-persuni responsabbli għat-tnehhija illegali ta' l-oġġett kulturali minn got-territorju tiegħu.

9. (1) Kull azzjoni li tittiehed bis-sahħa ta' dawn ir-regolamenti għandha tkun mingħajr preġudizzju għal kull proċedura ċivili jew kriminali li tista' ssir, taħt il-liġijiet nazzjonali ta' l-Istat Membru involut, mill-Istat Membru rikjedenti u, jew mis-sid ta' oġġett kulturali li jkun ġie misruq.

Ligijiet nazzjonali ta' l-Istati Membri.

(2) Fit-twertiq tal-poteri stabbiliti b'dawn ir-regolamenti, id-dmir ta' min għandu jgħib il-provi jkun regolat skond il-liġi ta' l-Istat Membru li tkun saritlu t-talba.

10. (1) F'każ ta' donazzjoni jew suċċessjoni, il-pussessor ma jkunx f'pożizzjoni iktar vantaġġuza mill-persuna li jkun akkwista l-oġġett minn għandha b'dak il-mezz.

Status skond id-dritt Ċivili.

(2) Il-proċeduri dwar l-ghoti lura skond dan l-avviż ma jistgħux idumu iktar minn sena wara li l-istat rikjedenti jkun sar jaf fejn ikun l-oġġett kulturali u l-identita tal-pussessor jew detentur tiegħu.

(3) Dawk il-proċeduri ma jistgħu f'ebda każ jinbdew aktar minn tletin sena wara li l-oġġett ikun tneħħa llegalment minn got-territorju ta' l-istat rikjedenti. Madankollu fil-każ ta' oġġetti li jiffurmaw parti mill-kollezzjonijiet pubblici elenkati fl-inventarji ta' mużewijiet, arkivji jew kollezzjoniet ikkonservati f'libreriji, u beni ekkleżjastiċi fl-Istati Membri fejn ikunu soġġetti għal arrangament ta' protezzjoni speċjali taħt il-liġi nazzjonali, il-proċeduri dwar it-treġġiegh lura jkunu suġġetti għal perjodu li jiskadi wara hamsa u sebghin (75) sena, minbarra fi Stati Membri fejn il-proċeduri ma huma suġġetti għal ebda perjodu ta' żmien jew fil-każ ta' kull ftehim bilaterali bejn l-Istati Membri fejn jiġi stipulat perjodu li jeċċedi l-hamsa u sebghin (75) sena.

(4) Ma jistgħux jinbdew proċeduri dwar it-treġġiegh lura jekk it-tneħħija minn got-territorju nazzjonali ta' l-Istat Membru ttejjem milli tibqa' titqies bħala attivita illegali f'dak il-waqt meta jkunu se jinbdew dawk il-proċeduri.

11. (1) Il-proċeduri jistgħu biss jinbdew permezz ta' talba li ssir bil-miktub minn Stat Membru.

Mod kif isiru l-proċeduri.

(2) Flimkien ma' din it-talba għandhom ukoll jintehmzu:

(a) dokument li jiddeskrivi l-oġġett indikat fit-talba fejn jiġi wkoll dikjarat li dan huwa oġġett ta' valur kulturali; u

(b) dikjarazzjoni mill-awtoritajiet kompetenti ta' l-Istat Membru rikjedenti li l-oġġett kulturali kien ġie imnehhi illegalment minn ġot-territorju tiegħu.

Awtoritajiet
ċentrali.

12. (1) L-awtorità ċentrali ta' l-Istat Membru rikjedenti għandha minnufih tgharraf lill-awtorità ċentrali ta' l-Istat Membru li tkun saritlu t-talba li jkunu ġew mibdija proċeduri bil-ghan li jitregġa' lura dak l-oġġett.

(2) L-awtorità ċentrali ta' l-Istat membru li ssirlu t-talba għandha minnufih tgharraf lill-awtoritajiet ċentrali ta' Stati Membri ohra.

Registru li jinżamm
mis-Sovrintendenza.

13. Is-Sovrintendenza għandha żżomm registru fejn jitniżżlu dawk l-oġġetti kulturali li jkunu ġew imnehhija minn Malta, u dwar ir-rikjesti li jsiru minn Stati Membri ohra sabiex jitregġgħu lura oġġetti kulturali li jkunu tnehhew illegalment minn ġot-territorju tagħhom.

Dmirijiet ohra tas-
Sovrintendenza.

14. (1) Jekk l-oġġett kulturali li jkun ġie mreġġa' lura ma jkunx jagħmel parti minn kollezzjoni pubblika, is-Sovrintendenza jkollha d-dmir li tipprovi dwar il-kustodja ta' l-oġġett sakemm dan ikun jista' jinghata lill-proprjetarju leġittimu tiegħu.

(2) Il-kunsinna ta' l-oġġett kulturali hija soġġetta għar-rimbors lis-Sovrintendenza ta' l-ispejjez li tkun għamlet għall-kustodja temporanja, konservazzjoni u restituzzjoni ta' dak l-oġġett.

(3) Meta l-persuna li lilha jitregġa' lura l-oġġett kulturali ma tkunx magħrufa, is-Sovrintendenza għandha tippubblika avviz dwar dan fil-Gazzetta.

(4) Jekk il-pussessur leġittimu ma jitlobx li jinghata lura l-oġġett kulturali fi żmien hames snin mill-pubblikazzjoni ta' dak l-avviz imsemmi fis-subregolament (3) ta' dan ir-regolament, l-oġġett isir proprjetà ta' l-Istat li jkollu l-obbligu li jikkonservah u li jagħmel l-aħjar użu possibbli minnu li jirrendi profitt.

L.N. 246 of 2003

**CULTURAL HERITAGE ACT, 2002
(ACT NO. VI OF 2002)**

**Return of Cultural Objects Unlawfully Removed from the
Territory of a Member State of the European Union,
Regulations, 2003**

By virtue of article 55 of the Cultural Heritage Act, 2002, the Minister for Youth and the Arts has made the following regulations:-

1. (1) The title of these regulations is the Return of Cultural Objects unlawfully removed from the Territory of a Member State of the European Union Regulations, 2003. Title and commencement.

(2) These regulations shall be deemed to have come into force on the 9th September, 2003.

2. In these regulations, unless the context otherwise requires – Interpretation

“Act” means the Cultural Heritage Act 2002;

The definitions “cultural property” and “cultural heritage” are those specified in the Act and in the Annex to the Directive, including public collections listed in the inventories of museums, archives or collections conserved within libraries;

“public collections” means collections which are the property of a Member State, local or regional authority within a Member State or an institution situated in its territory and defined as public in accordance with the legislation of that Member State, such institution being the property of, or significantly financed by, that Member State or a local or regional authority, including inventories of ecclesiastical institutions.

“requesting Member State” means a Member State of the European Union in whose territory a cultural object which was unlawfully removed from the territory of another Member State is located.

3. (1) These regulations shall give effect to the provisions of European Council Directive 93/7 of the 15 March, 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, hereafter referred to as “the Directive”. Scope.

(2) These regulations shall apply to cultural objects unlawfully removed from the territory of a Member State on or after the 1st January, 1993.

Return of Cultural Objects.

4. Cultural objects which have been unlawfully removed from the territory of a Member State of the European Union shall be returned in accordance with the procedure and in the circumstances provided for in these regulations and in the Directive.

5. The Cultural Heritage Superintendence, established by article 7 of the Act, shall be the authority appointed to carry out the duties provided for in these regulations.

Movement in Contravention of laws of requesting Member State

6. Any movement of cultural property or cultural heritage, even if temporary, is illegal if affected in contravention of the regulations of the Directive or of the laws of the requesting Member State.

Proceedings before competent court.

7. (1) A Member State initiating a request for the return of a cultural object which has been unlawfully removed from its territory shall be entitled to initiate proceedings before the competent court in Malta, against the possessor or, in default, the holder of the said object.

(2) Save as otherwise provided for in regulation 8 hereof, the competent court shall order the return of the cultural object in question where it is found to have been unlawfully removed from the national territory.

Return of object to requesting Member State.

8. (1) Where the return of the cultural object is ordered, the competent court in the requested State shall award the possessor such compensation as it deems fair according to the circumstances of the case, provided that it is satisfied that the possessor has acted in good faith and exercised due care and attention in acquiring the object.

(2) The requesting member state shall pay such compensation upon the return of the object.

(3) Expenses incurred in implementing a decision ordering the return of a cultural object, and for the safe-keeping and conservation of the said object, shall be borne by the requesting Member State.

(4) Payment of the fair compensation and the expenses referred to in subregulations (1) to (3) hereof shall be without prejudice to the right of the requesting Member State to take action with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

9. (1) Any action undertaken by virtue of these regulations shall be without prejudice to any civil or criminal proceedings that may be brought, under the national laws of the Member State involved, by the requesting Member State and, for the owner of a cultural object that has been stolen.

National Laws of
Member States.

(2) In the exercise of the powers established by these regulations the burden of proof shall be governed by the legislation of the requested Member State.

10. (1) In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by that means.

Civil law status.

(2) Return proceedings provided for in this notice may not be brought more than a year after the requesting state became aware of the location of the cultural object and the identity of its possessor or holder.

(3) Such proceedings may at all events, not be brought more than thirty years after the object was unlawfully removed from the territory of the requesting member state. However, in the case of objects forming part of public collections listed in the inventories of museums, archives or or collections conserved in libraries collections, and ecclesiastical goods in the Member States where they are subject to special protection arrangements under national law, return proceedings shall be subject to a time limit of seventy-five (75) years, except in Member States where proceedings are not subject to a time limit or in the case of bilateral agreements between Member States laying down a period exceeding seventy-five (75) years.

(4) Return proceedings may not be brought if the removal from the national territory of the requesting Member State ceases to be an unlawful activity at the time when such proceedings are to be initiated.

11. (1) Proceedings may only be brought following a written request by a Member State.

Manner of
proceedings.

(2) Such request has to be accompanied by:

(a) document describing the object covered by the request and stating that it is a cultural object; and

(b) a declaration by the competent authorities of the requesting Member State that the cultural object has been unlawfully removed from its territory.

Central authorities.

12. (1) The central authority of the requesting Member State shall forthwith inform the central authority of the requested Member State that proceedings have been initiated with the aim of securing the return of such object.

(2) The central authority of the requested Member State shall forthwith inform the central authorities of other Member States.

Superintendence to keep register.

13. The superintendence shall keep a register of cultural goods illegally removed from Malta, and of the requests from other Member States to return cultural objects unlawfully removed from their territory.

Other duties of Superintendence.

14. (1) If the returned cultural object does not belong to a public collection, the Superintendence has the duty to provide for its custody until the delivery to its rightful owner can be affected.

(2) The delivery of the cultural object is subject to the reimbursement to the Superintendence of the expenses sustained for the temporary custody, conservation and restitution of the said object.

(3) When the person to whom the cultural object has to be returned is unknown, the Superintendence shall publish a notice in the Gazette.

(4) If the rightful owner does not claim the cultural object within five years from the publication of the said notice in subregulation (3) hereof, the good becomes the property of the State who is obliged to conserve it and make the most profitable use of it possible.