Cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars

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The Committee on Legal Affairs adopted the own-initiative report by Pavel SVOBODA on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars. The report noted that that the looting of works of art and other cultural goods, during armed conflicts and wars, as well as in times of peace, is a **major shared concern** that needs to be addressed in terms of both prevention and restitution of looted cultural property. According to the impact assessment of the Commission proposal for a regulation of the European Parliament and of the Council on the import of cultural goods, **80 to 90 % of global antiquities sales are of goods of illicit origin.** Members noted that valuable artworks, sculptures and archaeological artefacts are being sold and imported into the EU from certain non-EU countries, with the profits potentially being **used to finance terrorist activities**. They felt that it was essential to make a firm commitment against illicit trafficking in cultural goods such as works of art plundered during the **armed conflicts and wars in Libya, Syria and Iraq**.

Need for a regulatory framework

Members pointed out that **no EU legislation** exists that explicitly and comprehensively governs restitution claims for works of art and cultural goods looted in armed conflicts by private individuals. Restitution claims have mainly been addressed by means of public international law. The insufficiently developed dimension of private law, both at international and European level, contributes to legal uncertainty in cross-border restitution, not only as regards completed transactions in Nazi-looted art but also with respect to future cases. Members stressed that in order to set up a comprehensive regulatory framework, **private law must be taken into account more intensely**. They called on the Commission and the Member States to **issue recommendations and guidelines** to raise awareness of the need to support national institutions in the Member States as regards restitution claims.

Provenance

Whilst provenance research and European cooperation have proven useful for the identification and subsequent restitution of looted objects, and have in some cases prevented the financing of terrorist groups or wars, Members regretted that due to the **absence or differences in rules between Member States concerning provenance research** and due diligence, many cross-border restitution claims cannot be carried out in an effective and coordinated way. They asked the Commission, therefore, to **harmonise the rules on provenance research** and to incorporate some of the basic principles of the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects. The report suggested the development of **common principles on access to public or private archives** containing information on property identification and location and the creation of a **central meta-database** that takes account of the available information, is updated regularly and can be accessed by all relevant actors.

Members also advocated:

- special training programmes in provenance research at Union and national level, in order to improve expertise, including through cross-border projects;

- digitisation projects that would establish digital databases or connect existing ones in order to facilitate the exchange of such data and provenance research;

- a comprehensive listing of all cultural objects, including Jewish-owned cultural objects plundered by the Nazis and their allies, from the time of their spoliation to the present day;

- the creation of a documentary record or a transaction register that is as detailed as possible;

- Member States sharing information on existing practices with regard to the provenance check of cultural goods, and intensifying cooperation in order to harmonise the control measures and administrative procedures aimed at establishing the provenance of cultural goods.

Statutes of limitations

The report noted that these often create difficulties for claimants in restitution matters, and it called on the Commission to assess the issue and strike the right balance for the limitation period applicable to looted art restitution claims, including Nazi-looted art restitution claims, which should take into account both the protection of the interests of the victims of looting and theft and those of the market.

The committee also called on the Commission and Member States to:

- establish reliable **statistics** on the precise scale of looting of and illicit trade in cultural property;

- identify **civil law measures** to help overcome the difficult problems encountered by private parties seeking the restitution of works of art genuinely belonging to them, and develop a new debating framework for the identification of **best practices and solutions** for the present and the future;

- adopt measures aimed at making both the **art market** and the potential buyers of artefacts aware of the importance of provenance research, given that such research is linked to the due diligence obligation;

- cooperate with **third countries** with a view to establishing fruitful partnerships, taking into account, to this end, the principles set out in the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects;

- consider establishing a **specific alternative dispute resolution mechanism** for dealing with cases of restitution claims of looted works of art and cultural goods in order to overcome existing legal obstacles, such as a hybrid form of arbitration and mediation

Lastly, the committee supported the idea that cross-border restitution procedures, and the active promotion of provenance research, should be addressed in the context of the **2018 European Year of Cultural Heritage initiative.**