

Antiquities and the Cultural Property Transfer Act

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The trade in antiquities poses different questions. Here the concern lies in the illicit excavation of archaeological sites and the export of objects in breach of the laws of their countries of origin. Basel occupies a notable place in this field. The Antikenmuseum Basel und Sammlung Ludwig, opened in the 1960s, is the only Swiss museum devoted exclusively to the art of the ancient Mediterranean. Its foundation owed much to Basel collectors and to the numismatist and dealer Herbert Cahn, whose firm Münzen und Medaillen AG had made Basel a centre of the trade in ancient coins and antiquities since the 1940s.¹

For decades Switzerland was regarded internationally as a place where antiquities of unclear origin could be traded with few questions. Swiss civil law protected the good-faith acquirer after five years, after which the original owner could no longer reclaim a stolen object. In the early 2000s, Italian investigations into the international antiquities trade led to searches of warehouses in Geneva and Basel, where archives and objects were seized at the request of Italian prosecutors. Several of these objects were later returned to Italy.²

Switzerland changed this framework fundamentally after ratifying the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 2003. The Cultural Property Transfer Act, in force since 1 June 2005, implements the Convention. It permits the conclusion of bilateral agreements with other states, which Switzerland has concluded with Italy, Greece, Egypt, Cyprus, Colombia, Peru, China and a number of further countries. Under these agreements, cultural property imported in breach of the export rules of the partner state can be reclaimed. The Act also extended the period after which a good-faith acquirer of cultural property is protected from five to thirty years and created a specialised service within the Federal Office of Culture.³

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The due diligence duties of art dealers under the Act form the core of the system. Before acquiring an object, a dealer must be satisfied that the supplier is entitled to dispose of it and that it has not been stolen, illegally excavated or illegally imported. The dealer must establish the identity of the supplier, obtain a written declaration of the right of disposal and keep records for thirty years. The Federal Office of Culture may inspect the premises of dealers. Violations are punishable and may lead to the confiscation of the objects concerned. The Federal Supreme Court has held in its case law on good faith that persons dealing in sectors with a known risk of tainted goods must apply heightened care before relying on the seller's word.⁴

1 Notes

1. On the Antikenmuseum Basel und Sammlung Ludwig (opened 1966) and the role of Herbert Cahn and Münzen und Medaillen AG in the Basel antiquities trade, see the publications of the museum and the literature on the history of the antiquities trade. Dates to be verified. ↩
2. On the seizures of antiquities and dealer archives in Swiss warehouses in the early 2000s at the request of Italian prosecutors and the subsequent repatriations, see the reporting of the press and the literature on the antiquities trade, e.g. Peter Watson and Cecilia Todeschini, *The Medici Conspiracy* (2006). To be verified. ↩
3. UNESCO Convention of 14 November 1970, ratified by Switzerland in 2003; Cultural Property Transfer Act (SR 444.1); Art. 934 para. 1bis of the Swiss Civil Code (thirty-year period for cultural property); bilateral agreements under Art. 7 CPTA. List of partner states to be verified. ↩
4. Art. 16 and Art. 24–25 CPTA (SR 444.1) on the due diligence duties of dealers, inspections and penalties; on heightened care in sectors with a risk of tainted goods under Art. 3 para. 2 of the Swiss Civil Code, see the case law of the Federal Supreme Court. To be verified. ↩

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