Art Law Update

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2025 HEAR Act Is Now Law

On April 13, President Trump signed the 2025 Holocaust Expropriated Art Recovery Act (2025 HEAR Act) into law after it passed unanimously in the Senate and by a two-thirds vote in the House of Representatives.

The 2025 HEAR Act addresses the challenges faced by claimants who lost artwork or other property as a result of Nazi persecution from 1933-1945. The original 2016 HEAR Act replaced state statutes of limitations with a nationwide limit of six years, starting from the date of the claimant's actual knowledge of the property's location. It also resuscitated old claims for which the statute of limitations had expired, opening a window during which claims could be brought. The 2016 HEAR Act was to sunset at the end of 2026.

The 2025 HEAR Act builds on the 2016 version of the law to significantly expand the law's reach. First, the 2025 HEAR Act removes the expiration date of December 31, 2026, and — notably — eliminates other time-related defenses. With the 2025 HEAR Act's enactment, the only time bar affecting claimants is that they must file suit within six years of discovering "(1) the identity and location of the artwork or other property; and (2) a possessory interest of the claimant in the artwork or other property."

The 2025 HEAR Act states that courts have "frustrated" the intent of the 2016 law by dismissing lawsuits on procedural grounds. Notwithstanding the 2016 HEAR Act, some courts had permitted a laches defense to go forward. For example, in *Zuckerman v. Metropolitan Museum of Art*, 928 F.3d 186 (2d Cir. 2019), the Second Circuit Court of Appeals held that the plaintiffs' claims were barred by the defense of laches, because although the 2016 HEAR Act revived claims that would otherwise have been barred by state statutes of limitations (a defense at law), it did not preclude defendants from asserting a laches defense (a defense at equity). The 2025 HEAR Act removes this defense by explicitly eliminating "defenses based on the passage of time, including laches, adverse possession, acquisitive prescription, and usucapion."

The 2025 HEAR Act also eliminates the applicability of other non-merits bases for dismissal, including adverse possession and the act of state doctrine. The statute points to *Cassirer v. Thyssen-Bornemisza Foundation*, 89 F.4th 1226 (9th Cir. 2024) (determining that California's choice-of-law rules required application of Spanish law, under which the museum had acquired prescriptive title to a painting by Camille Pissarro) and *Saher v. Norton Simon Museum of Art at Pasadena*, 897 F.3d 1141 (9th Cir. 2018) (relying on the act of state doctrine to hold that acts of the Dutch government, which held paintings taken from their owner by the Nazis in a forced sale, should be deemed valid) as illustrating the need for this change in the law.

The 2025 HEAR Act expressly expands the law's ability to reach foreign sovereigns. Plaintiffs suing a foreign state that owns a work of Nazi-looted art (such as a state-run museum) previously had to overcome the Foreign Sovereign Immunities Act by showing they fell within an exception, one of which applies to property that is taken in violation of international law. Under the 2025 law, any claim falling within the HEAR Act is deemed to fall within this exception, therefore a U.S. court will have jurisdiction.

Notably, the 2025 HEAR Act is applicable not just to claims filed after the date of enactment, but also to claims that are pending on the date of enactment, claims that are pending appeal, and claims for which the time to file an appeal for has not expired. Thus, claimants such as the plaintiffs in *De Csepel et al. v Republic of Hungary et al.*, who are petitioning the D.C. Circuit to rehear their appeal, may be able to overcome the procedural hurdles they previously faced, such as when the court determined that the Foreign Sovereign Immunities Act barred their claim. In the most recent development in the long-running *De Csepel* case, the D.C. Circuit held that U.S. courts lacked jurisdiction over the claims because the plaintiffs failed to demonstrate that the artworks at the center of their case fall within the Foreign Sovereign Immunities Act's expropriation exception. Now, the *De Csepel* claimants may argue that they fall within one of the Foreign Sovereign Immunities Act exceptions and should have the chance to argue their claims on their merits.

The 2025 HEAR Act also eases the burden of service of process, allowing a defendant to be served in any U.S. judicial district "where the defendant may be found, resides, has an agent, or transacts business." Although high-profile Holocaust art litigation typically has not turned on service issues, this addition underscores how the 2025 HEAR Act is removing barriers for claimants.

What's Next for Holocaust Art Litigation?

This new law could have a significant impact, due to the large number of potential claimants. According to the bill's sponsors, out of roughly 600,000 works of known Nazi-looted art, 100,000 are still unrecovered. Museums, auction houses, and collectors, which have faced increased claims from the heirs of collectors whose art was misappropriated during the Nazi period, will see these claims continue and will have fewer defenses available to them. By the same token, the heirs of Nazi persecution victims now have renewed opportunities to pursue claims without the procedural obstacles that previously could have blocked their claims.

FOR MORE INFORMATION

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