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Tamar Mskhvilidze*

Lex situs, as a Regulative Principle of the Right to the Object of Cultural Heritage

Unethical, immoral trafficking of cultural property is illegal in most states. The commercial imperative is not responsive to the cultural flow, the importance of inter-generational transmission of culture, or the need to take control over the free movement of cultural property. The demand for antiquities greatly exceeds the diminishing legitimate supply. Suppliers (robbers, dealers, brokers) evade the law when making transnational transactions. Private international law can play a vital role in regulating the cross-border transfer of cultural goods.

Keywords: *Choice of Law, Jurisdiction, Illegal trade in cultural objects, The Bona Fide Purchaser, The Legality of an object.*

"Since physical cultural heritage is one of the world's most important non-renewable resources, a special effort is needed to redress the imbalance between our needs and its protection."[1]

1. Introduction

Cultural objects form separate classes of objects that speak to the human condition and reflect the life conditions of individuals and communities. People tend to develop an emotional attachment to antiquities. Defining art is quite difficult. It has been called an "unimaginable resource" that can make everything visible and clear.[2] The free and joyous activity creates art, transforms experience, or alleviates suffering.[3] Its effect can make a bulwark against an oppressive social order or prompt us to pursue cooperation.[4] Globalization has led to a rise of an interest in the economic exploitation of cultural heritage, and the effects of the liberalization of trade in goods and services in a market economy have affected cultural identity and diversity. Cultural heritage is admitted as a mechanism for sustainable enhancement and an important tool for the economy of developing countries. In terms of the evolution of international trade, the media, and technology, local cultures attract more

* Doctor of Law, assistant professor of Akaki Tsereteli State University, senior researcher-collaborator of the Law Institute of the European University. https://orcid.org/0000-0001-6795-1941.

1 *Bernard M., Jokilehto F. Jukka.,* Management Guidelines for World Cultural Heritage Sites, ICCROM, Second Edition, 1998, Rome.

2 *Baudrillard J.,* The Conspiracy of Art, tr A Hodges, The MIT Press, 2005,65.

3 *Gilkey L.B.,* Can Art Fill the Vacuum in D Apostolos-Cappadona (ed), Art, Creativity and the Sacred, 1996, 187-189.

4 *Tolstoy L.,* What Is Art? tr A Maude The Brotherhood Publishing Company, 1898, 210.

attention.[5] Cultural heritage law is a conceptual framework in a legal form and mirrors the trends and development of international cultural law and its interaction with other areas of law. It emerged as a separate category of law in 1990. The cultural component of the cultural heritage is capable of carrying a composite meaning that embraces the tangible results of cultural activities, the processes of artistic and scientific creativity, and the ways of life of groups and communities.[6] Today's art market is a multibillion-dollar industry. The sale of art objects is an intercontinental, transnational trade and easily crosses national borders.[7] The tentacles of illicit trade permeate the cultural life of society in both developed and developing economies. Cultural trafficking replaces art and cultural objects. Traffickers try to avoid legal claims by moving cultural heritage objects. The sale of illegally obtained objects in the art market worldwide is an important commercial activity, with a large number of dealers involved in the international trade of this type of product.

Private international law is called upon to assert its role in the international market for antiquities and art. The true owner (individuals, museums, or businesses) or the source state tries to obtain restitution or return of an object that has been stolen, looted, excavated, or smuggled into another jurisdiction. Most of the crimes do not meet with criminal punishment. The owners have to prefer civil actions. Due to illegally removed archaeological or cultural objects, states or owners file a lawsuit in the country of illegal trade or transit where the conflicts are regulated by the rules of private international law. A defendant with prior knowledge of an impending claim can relocate a cultural object to avoid the establishment of jurisdiction based on the location of the object. Protection encompasses interim measures that are designed to prevent action to evade a return procedure after the unlawful removal of a cultural object from the territory of a particular state.[8] Cultural heritage law

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5 *Belder L.,* The legal protection of cultural heritage in international law and its implementation in Dutch Law, 2013, 24.

6 Roodt *C.,* The Role of Private International Law in the Protection of Art and Cultural Objects, 2015, 3, 6.

7 In the report of the UNESCO Institute for Statistics on the International Flow of Cultural Goods and Services, cultural heritage is discussed as the so-called Part of the "basic cultural goods". In 2002, legal trade in cultural goods reached 3.7% of the total "major cultural goods" and amounted to $1,807.4 billion in exports and $2,644.2 billion in imports. The EU is the market leader in both imports and exports of heritage goods. In 2005, the EU exported 87% and imported 38.5%, while the US exported 9.4% and imported 54%. In 2008, global sales of fine and decorative arts comprised €42.2 billion which is 12% less than the peak of €48.1 billion in 2007. As a result of the global recession, in 2009 sales of decorative arts comprised €42.2 billion which is 12% less than the peak of €48.1 billion in 2007. As a result of the global recession, in 2009 sales decreased by approximately 26% to 31.3 billion euros. In 2010 Art market was considered to be growing again, due to the important role of China. 6 billion euros of sales came to the auction which was 23% of the global market. Today, the internet has become an important platform for art trade. The increase in the value of cultural goods, facilitated by the development of transportation and communication, led to the illegal export of antiquities and cultural objects. The annual value of this new form of illegal global industry is over a billion dollars. According to Interpol, this illegal international market is second only to drug trafficking and arms trade. In the EU's 2012 Trafficking Report, the illegal art trade is listed as one of the largest criminal trades. <http://www.interpol.int/en/Crime-areas/Works-of-art/Frequently-asked-questions> [21.09.2023]; *Belder L.,* The Legal Protection of Cultural Heritage in International Law and its Implementation in Dutch Law, 2013, 66.

8 *Roodt C.,* The Role of Private International Law in the Protection of Art and Cultural Objects, 2015, 16-17.Transnational trafficking of cultural property through clandestine excavations or illegal removals has become a major problem. Many sites of ancient civilizations have been recklessly looted and are already

greatly influences the choice of law concept and its scope. Private international law, to protect art and cultural objects, can offer different models and guidelines for fighting against illicit trade. Both disciplines manage global legal diversity in the context of merging private and public law. Private international law defines the rights of cultural institutions, owners, owners, dealers and traffickers.[9]

2. The Context in Which Private International Law Meets Cultural Heritage

Iran v. Berend, one of the most conspicuous cases[10] concerns the permanent deprivation of ownership of cultural heritage, the extremely enduring problem of efficient regulation in the illegal market of treasure, and the ineffective measures to prevent the alienation and trade of the items on the black market. In a recent case before the High Court in London, a dispute over the antiquity of the ancient city Persepolis involved the possibility of enforcing Iran's national patrimony law under English conflict of laws principles. However, the judge declined to apply the principle of renvoi. If he had held for Iran under this conflict of laws theory, perhaps the private law of England and Wales would have become a powerful basis for source nations seeking to enforce their national patrimony declarations abroad.

The case concerned a fragment of an Achaemenid limestone relief, carved in the first half of the fifth century B.C. The carving had been buried from the time of the invasion of Alexander the Great until 1932 when it was excavated by Ernst Herzfeld. Persepolis is a historic monument, and many Iranians view Persepolis in much the same way as the Greeks view the Acropolis.[11]

In 1974 Denyse Berend, a French citizen, purchased the relief at an auction in New York through an agent. For 30 years the limestone relief hung in her Paris home. but on April 19 an injunction was granted in favor of Iran which sought to block the sale temporarily. Under certain legal provisions, the discussion about the alienation of the object was postponed until the final consideration of the case. Iran sought the return of the object as a part of a national monument. Berend defended her claim for ownership on three grounds. First, she argued the fragment should be classified as movable property. Under English conflict of laws regulation, French law should govern the dispute; because under the Lex situs principle, Berend obtained title only when she took delivery of the object in France, in November 1974. Second, Berend also argued that she took possession in good faith and obtained a good title under article 2279 of the French Civil Code. Thus, she would have obtained a title by prescription under article 2262 of the French Civil Code.[12]

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irretrievably lost to human cultural heritage and future research. Not only is this a frequent attack on people's cultural heritage, but it is also a growing source of funding for war and terrorist activities in conflict zones. Press Office of the Federal Government Commissioner for Culture and the Media / Press and Information Office of the Federal Government, 11044 Berlin, Key aspects of the new Act on the Protection of Cultural Property in Germany, 2016, 6 (in Georgian).

9 Roodt *C.,* The Role of Private International Law in the Protection of Art and Cultural Objects, 2015, 35.

10 *Fincham D.,* Rejecting Renvoi for Movable Cultural Property: The Islamic Republic of Iran v. Denyse Berend International Journal of Cultural Property, 2007, 111-116. *Routledge C. F.,* International Law and the Protection of Cultural Heritage, 2010, 151.

11 In theory, many scholars suspect that the reliefs inspired the sculptors who created the Parthenon. *Sadigh S.,* Cultural Heritage Network, Court of London Ignores Iran's Ownership of Achaemenid Bas-relief, 2007, 132.

12 *Fincham D.,* Rejecting Renvoi for Movable Cultural Property: The Islamic Republic of Iran v. Denyse Berend International Journal of Cultural Property, 2007, 112.

Initially, Iran argued that the fragment should be classified as immovable property. When it was sitting in Persepolis, it was hardly movable, at least until it was cut away. This argument was rejected by the judge, however, he made clear that as a matter of English and French law, the fragment was to be characterized as movable property. Forced to admit that the object was movable, Iran argued that the English court should have applied French international private law and used the doctrine of renvoi. Renvoi describes the situation in which a court appeals the material and conflict of law regulations of a foreign state which may sometimes refer back to the law of a third nation, which was Iran in this case. In introducing renvoi, Iran also argued that a French Judge would find an exception to the general Lex situs rule and apply Iranian law by looking to the policy embodied in some international agreements to which France has agreed in recent years, including the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Iran asserted that a French judge should have applied Iranian law in these circumstances because the relief was taken from Persepolis after 1932. Renvoi has never been applied to movables in English law. Justice framed the issue as follows: as a matter of the English conflict of laws rules, in determining the question of title to the fragment as movable property situated in France, will the English court apply only the relevant substantive provisions of French domestic law or apply the relevant international private law?[13]

Iran indicated a general desire to apply the rules of the nation in which an object is located, however, to get this result, the court would have to invoke the rather difficult and controversial doctrine of renvoi. An English judge ruled out the use of a reference to movable cultural property. He noted that the Lex situs norm or the location of the object determined the application of French conflict of law rules. In this case, a defendant acting in good faith would have acquired title to the fragment by taking possession of it in November 1974.

Ultimately, the English judge had to interpret the French law. The judge found it less likely to apply Iranian law by the French court. Based on the testimony of two French legal experts, the court presented several considerations why the French side would deny it. First, there was no precedent for such an application in France. Second, by not acting to incorporate the UNESCO convention into domestic law French legislature strongly indicated its unwillingness to be bound by its provisions. Third, the application of the Iranian law would mean that there were no limitations provisions in the case. Fourth, the Iranian legislature would not have any provisions allowing for compensation to Berend for her purchase of the relief in good faith.[14]

In the case, *Government of Peru v. Johnson,* the Government of Peru,[15] plaintiff in this action, contended that it was the legal owner of eighty-nine artifacts, supposedly stolen or illegally excavated pre-Columbian gold, ceramic, and textile artifacts. Peru, following its law, asserted pre-Columbian sites in the country to be the property of the state. The US federal district court rejected Peru's request

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13 *Fincham D.,* Rejecting Renvoi for Movable Cultural Property: The Islamic Republic of Iran v. Denyse Berend International Journal of Cultural Property, 2007, 112.

14 Ibid., 114,115.

15 *Fincham D.,* How Adopting the Lex Originis Rule Can Impede the Flow of Illicit Cultural Property, Columbia Journal of Law and the Arts, 2009, 117-118; *Routledge C.F.,* International Law and the Protection of Cultural Heritage, 2010, 151.

because the state failed to prove whether the law applied to the excavation of the objects. According to the law of Peru, artifacts in historical monuments, including unregistered artifacts, are the property of the state. This rule of law could not affect the judge's reasoning noting that "things will remain in a private collection, such things can be transferred through a gift deed, in law or will." Conforming to the court decision, it could not sufficiently establish whether Peru had ever tried to reclaim ownership of the items before they were removed from the country. Thus, Peruvian law did not provide much more than export restrictions.

3. The Right to Own a Cultural Object in Private International Law

The trade-in cultural objects in liberal capitalist societies are characterized by the commercial imperative that the bona fide purchaser of a moveable object should gain the right to ownership regardless of provenance. The market facilitates the ease of ownership and the development of commerce in many countries around the world. The norms of conventional business may apply to the transfer and exchange of many art forms, but the protection of museum exhibits, the pieces obtained on the black market, and some forms of local cultural heritage require different rules and approaches.[16] This feature is most prominent at art fairs where culture is a globally traded commodity, the market largely unfettered, and the mechanisms keeping illegal self-interests in check completely ineffective in capitalist markets.[17] The transboundary transfer of a material cultural object deprives the true owner of the right to his ownership and the object loses its special status because the state cannot control its export. Import and export control measures as a normative basis for international regulation are controversial because a state might have to establish ownership by filing a lawsuit. A common law legal system provides a country with a right to ownership of undiscovered archaeological objects is a recognized basis for a claim for restitution. The validity of transferring movable property is regulated by the widespread principle of Lex situs: the law of the jurisdiction where the object was located at the time of the transaction.[18] The principle of Lex situs affects the right to transfer property and refers to the law of that area where the item was transferred. It can make the individuality of a cultural object ineffective. The court of the country can avoid this consequence after it decides to apply foreign law

[16] For example, a purchaser of cultural property in Germany must trust the seller to adequately and reasonably verify the provenance of the property to avoid being subject to a return claim by another state based on illegal export. Legitimate art dealers are protected by law who, considering qualifications and their association's codes of conduct, are adequate intermediaries between buyer and seller. This is designed to limit trade in art and antiquities to items of legal and unequivocal provenance. The sale of stolen, illegally excavated, or imported cultural property is prohibited in Germany. This prohibition applies not only to the professional art market but also to anyone selling cultural heritage items (including via the Internet). In addition, dealers of cultural objects are required to keep records of their transactions. As in Austria and Switzerland, the shelf life has become 30 years instead of 10 in Germany. Press Office of the Federal Government Commissioner for Culture and the Media / Press and Information Office of the Federal Government, 11044 Berlin, 2016 Key aspects of the new Act on the Protection of Cultural Property in Germany,11.

[17] Roodt *C.,* The Role of Private International Law in the Protection of Art and Cultural Objects, 2015, 13.

[18] *Staker C.,* Public International Law and the Lex Situs Rule in Property Conflicts and Foreign Expropriations, 58 Brit. Y.B. Int'l L., 1988, 151, 164.

on the protection of archaeological objects, regulations on the export and import of cultural heritage, and legal declarations[19] of state ownership of undiscovered antiquities.

The case illustrating the application of Lex situs involved precious, miniature carvings and works stolen from England and the objects of Japanese cultural heritage, Netsuke, which were transported and sold in Italy.[20] The works then found their way back to England when a purchaser in good faith delivered them to an auction house for sale. The owner filed a lawsuit against the auctioneer. According to the defendant, although the items were returned to the nation where they were stolen, the plaintiff had no legal claim because the sale was done in good faith and Italian law recognized the defendant's right to property. The English court agreed, holding the validity would be determined according to Italian law, which was the law of the place where the goods were situated at the time they were transferred. Following the judge, the title of a bona fide purchaser was superior to that of the original owner, even in the case of a stolen moveable object. Under Italian private law, a bona fide purchaser who buys a thing from a non-owner seller immediately acquires ownership upon the conclusion of the transaction. The court did not consider the case based on the factor of cultural value of the carvings. If the court had applied English law, the statute of limitations would not have expired. The statute of limitations does not apply to claims for compensation by the dispossessed owner if the acquisition was made in bad faith. The statute of limitations begins to run only upon the first bona fide transfer of the stolen property. Under Italian private law, a purchaser in good faith who buys a thing from a non-owner seller immediately acquires ownership upon the completion of the transaction.[21] The court did not consider the case allowing for the factor of cultural value of the carvings. If the court had applied English law, the statute of limitations would not have expired. The statute of limitations does not refer to claims for compensation by the dispossessed owner if the acquisition was made in bad faith. The statute of limitations begins to be set only upon the first bona fide transfer of the stolen property.[22]

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects refers to the return of an object to its original owner, a state, an individual, or a legal entity. Article 3(1) of the convention establishes the rule of *nemo dat quod non habet* (‘’no one can give what they do not

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19 There is an opinion that the Lex situs rule considers the relationship between the true owner and the bona fide purchaser, and does not take into account the relationship between the owner and the thief. It gives importance to the post-theft transaction but ignores how the crime affects the owner's practical interests. The Lex situs principle reinforces the commercial imperative applied to transactions involving cultural objects. By reference to private international law, an applicable law must be chosen in favor of the party who has lost property due to theft, and time must not affect the right forfeited. *Roodt C., Miller D. C.,* Stolen Cultural Property: Implications of Vitium Reale in Private Law and Private International Law, 2013, 1, 3, 6.

20 *Winkworth v Christie Manson and Woods Ltd* 1980; *Fincham D.,* How Adopting the Lex Originis Rule Can Impede the Flow of Illicit Cultural Property, Columbia Journal of Law and the Arts, 2009, 115. *Roodt C., Miller D.C.,* Stolen Cultural Property: Implications of Vitium Reale in Private Law and Private International Law, 2013.

21 *Gazzini I.F.,* Cultural Property Disputes: The Role of Arbitration in Resolving Non-Contractual Disputes, Transnational Publishers Inc, 2004, xxiii.

22 S. 4 of the Limitation Act 1980. Kenyon and MacKenzie (n 9) 241. *Miller D.C.,* Stolen Cultural Property: Implications of Vitium Reale in Private Law and Private International Law, 2013, 4.

have"). In the case of movable objects, this rule favors the original owner over a purchaser in good faith. The fact of purchasing the item in good faith cannot be opposed to the request to return the item. The Convention does not allow a presumption of bad faith on the part of the owner in the absence of an export certificate. Moreover, it does not prevent trade that is legal under the Lex situs through the calculated tricks of professional traffickers adroit at the transnational movement of cultural objects. The result in Winkworth would not have been different even if the UNIDROIT Convention had been incorporated into English law.[23]

In the case of Iran v. Barakat Galleries,[24] the Republic of Iran brought a claim against an international gallery in the Great Britain and was able to apply its national law under the Lex situs rule. The issue concerned eighteen antiquities, 5,000-year-old carved jars, cups, and bowls, allegedly excavated in the Jiroft region of Iran. For the issue of ownership, Iran founded the claim under the National Heritage Protection Act of 1930 and 1979. These laws authorized the confiscation of antiquities that were removed and taken out of the country without prior government notification or permission.[25] The preliminary issues were (i) whether Iran could show that it had a sufficient title to sue in conversion, and if so (ii) whether the Court should recognize and enforce that title to admit a claim in conversion against the defendant. By Article 26 of the Civil Code of the Islamic Republic of Iran, fortifications, fortresses, moats, military earthworks, arsenals, weapons, stores, warships, and similarly the furniture and buildings of the Government buildings and telegraph wires, museums, public libraries, historical monuments and similar objects, in brief whatever property movable or immovable is in use by the Government for the service of the public or the profit of the state, may not privately be owned. The same provisions shall apply to property that shall have been appropriated for the public service of a province, city region, or town. Iran argued that the 1979 Law on the Prevention of Unauthorized Archaeological Excavations claimed the state as the owner of all its undiscovered antiquities. The court of appeals allowed Iran to return the objects. The court believes "that it is not the label which foreign law gives to the legal relationship, but its substance, which is relevant. If the rights given by Iranian law are equivalent to ownership in English law, then English law would treat that as ownership for the conflict of laws."[26] Making the decision the judge noted: " Given our conclusion that the finder did not own the antiquities (and the fact, as was common ground, that the owner of the land from which they came had no claim to them), there are only two possibilities. Either they were "bona vacantia" to which Iran had an immediate right of possession and which would become Iran's property once Iran obtained possession and which could not become the property of anyone else or they belonged to Iran from, at least, the moment that they were found. Iran's rights to antiquities found

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23 *Roodt C., Miller D.C.,* Stolen Cultural Property: Implications of Vitium Reale in Private Law and Private International Law, 2013, 5.

24 See: <https://plone.unige.ch/art-adr/cases-affaires/jiroft-collection-2013-iran-v-barakat-galleries> [21.09.2023]. *Fincham D.,* How Adopting the Lex Originis Rule Can Impede the Flow of Illicit Cultural Property, Columbia Journal of Law and the Arts, 2009, 118.

25 *Government of Islamic Republic of Iran v. The Barakat Galleries Ltd.* 2007. *Belder L.,* The legal protection of cultural heritage in international law and its implementation in Dutch Law, 2013, 22.

26 *Fincham D.,* How Adopting the Lex Originis Rule Can Impede the Flow of Illicit Cultural Property, Columbia Journal of Law and the Arts, 2009, 120.

were so extensive and exclusive that Iran was properly to be considered the owner of the properties found."

The court concluded: "The claim of Iran was given for conversion under English law. The state owns the property in the same way as the citizen, there is no obstacle to vindicate".[27] In this case, we can see that the UK court considered the national public interest of another sovereign state in protecting national cultural heritage to be more important than the legal protection of the private property rights of the Gallery, which considered that the purchase of cultural objects in European auction houses (in Switzerland, France and Germany) had resulted in securing a title that could be upheld in court.[28] This is in contrast to earlier similar cases in which UK judges had decided that public law provisions of other states could not prevail over legitimate private property rights in the UK courts.[29]

A remarkable case is the 2009 Schoeps v Museum of Modern Art, where the Picasso painting "Boy Leading a Horse"[30] was given to his wife as a wedding gift in 1927 by Paul von Mendelssohn-Bartholdi, a German banker of Jewish origin. In the 1930s he sold the painting against his will because of Nazi duress. It was delivered to a Jewish dealer in Switzerland in 1934. The painting was sold to an art dealer in 1936 who bequeathed it to the Museum of Modern Art in New York.[31] Paul's heirs filed a lawsuit against the museum. A temporary transfer to Swiss territory meant that Swiss law was less likely to apply. According to the court, the issue had to be governed by German law. Following the New York conflict of law regulations, there were five factors to be considered: the place of contracting, the place of negotiation, the place of performance, the location of the subject matter of the contract, and the domicile or place of business of the contracting parties. All five of these factors support the application of German law to the issue of whether the transfer of these German-held Paintings was a product of Nazi duress. If German law applies, the next issue is whether one is talking about the ordinary German Civil Code, or whether the standard that should be invoked is that contained in Military Government Law 59 ("MGL 59"), a law put in place by the Allies during the postwar occupation of Germany that establishes a presumption that property was confiscated if it was transferred between January 30, 1933, and May 8, 1945, by a person subject to Nazi persecution. However, this regulation did not replace the German Civil Code. It simply established a limited regime under which claims brought in a particular tribunal, which no longer exists, and by a given deadline, which has passed, were entitled to a special presumption, which is no longer available. Despite the scant information about the paintings, their transfer was explained by the historical circumstances of the economic pressure of the Nazi regime directed against the Jews and their property. According to relevant provisions of the German Civil Code, the plaintiff's evidence was

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27 Ibid.

28 Regulations of 3 Nov. 1930 (Iran National Heritage Protection Act), articles 17, 18, 25, 41 and 51. *Belder L.,* The legal protection of cultural heritage in international law and its implementation in Dutch Law, 2013, 22.

29 Attorney General of New Zealand v. Ortiz 1984, King of Italy v. de Medici 1918. *Belder L.,* The Legal Protection of Cultural HJeritage in International Law and its Implementation in Dutch Law, 2013, 22.

30 *Kreder J.A.,* The New Battleground of Museum Ethics and Holocaust-Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust? Oregon Law Review, Vol. 88, 2009, 65-72.

31 *Symeonides S. C.,* The American Choice-of-Law Revolution: Past, Present and Future, Martinus Nijhoff Publishers 2006,15-24.

sufficient to establish factual issues as to whether the claim should be upheld under § 138 and/or § 123. Claimants have adduced competent evidence that Paul never intended to transfer his painting and that he was forced to transfer it only because of threats and economic pressures by the Nazi government. Although German law governed the issue of duress, the second question that had to be clarified was the validity and legal consequences of the sale to the dealer in 1936, since this sale could protect the rights of the bona fide purchaser – the Museum of Modern Art, even if the transfer was forced. The New York law administered the issue for claimants. As mentioned by the museum, the arrangement had to be done according to the norms of Switzerland, where the sale took place. New York case law has long protected an owner's right to recover stolen property, even in the possession of a bona fide purchaser. Under Swiss law, owners of stolen goods receive less protection. The exception enabling the owner of lost or stolen property to reclaim it even from a good faith purchaser applies only for five years. Regarding the transfer of property, the law of the country where the transfer took place is relevant. Such a result is not inevitable if the other country has a more significant relationship with the parties and the property that becomes applicable. When the parties do not intend that the property will remain in the jurisdiction where the transfer took place, that forum will have a lesser interest in having its law applied. The painting was held at the time of its sale by the Galerie Rosengart in Lucerne, Switzerland, which was run by Thannhauser, a legally independent entity. It was immediately shipped to New York where the purchaser lived, and the painting was paid for by a check made out to a New York bank. The owner of the painting whether Paul, his wife, or Thannhauser, was not a Swiss resident or citizen at the time. The work has been in New York for over 70 years and now it is the property of a major New York cultural institution. Under these circumstances, the New York law applies to the sale of the painting. The Museum asserted that the claim experienced an unreasonable length of time. According to the court decision, German law governed the issue of duress related to the sale or transfer of the painting, while New York law governed whether the plaintiffs' claims were allowable. In an order dated January 20, 2009, the court also indicated that New York law, not Swiss law, applies to the issues raised by the parties regarding the validity and legal effect of transferring the property to Paley, the US purchaser. The case ended in February 2009 with a settlement between the parties, the painting remained at the museum. The principle of Lex situs has a simple function: when an object is purchased in good faith, it will be protected even if its location changes in the future. The principle has a practical advantage, because “the country in which the thing is located has an effective power over the movable property.” In addition, this norm reinforces the principle of good faith, allowing states to determine the applicable law on property within their jurisdiction. Importantly, the principle promotes commercial convenience and predictability, as the buyer only needs to determine the law of one jurisdiction before entering into a transaction.[32]

4. Conclusion

In recent years, the issue of how objects of art and antiquities end up in public and private collections has become increasingly active. Despite the tendency to prevent the flow of illegal cultural property, courts

[32] Roodt *C.,* The Role of Private International Law in the Protection of Art and Cultural Objects, 2015, 115.

dealing with cultural heritage property disputes fail to administer justice effectively, quickly, and objectively, and ignore the rights of owners and possessors.

Private international law can provide states with regulatory tools to control the requirements of the market and closely align demand planning cycles with ethical aspirations. The demand leads to the looting of cultural material, feeds the black market, and contributes to the outflow of cultural heritage objects. Therefore, effective mechanisms are needed to ensure that legislation sets appropriate standards for trading and purchasing property.

Bibliography:

1. *Baudrillard J.,* The Conspiracy of Art, tr A Hodges, The MIT Press, 2005, 65.
2. *Belder L.,* The Legal Protection of Cultural Heritage in International Law and its Implementation in Dutch Law, 2013, 22, 24, 66.
3. *Feilden B.M., Jokilehto J.,* Management Guidelines for World Cultural Heritage Sites, ICCROM, 2nd Edition, 1998, Rome.
4. *Fincham D.,* Rejecting Renvoi for Movable Cultural Property: The Islamic Republic of Iran v. Denyse Berend International Journal of Cultural Property, 2007, 111-116, 112, 114.
5. *Fincham D.,* How Adopting the Lex Originis Rule Can Impede the Flow of Illicit Cultural Property, Columbia Journal of Law and the Arts, 2009, 115, 118, 120.
6. *Gazzini I.F.,* Cultural Property Disputes: The Role of Arbitration in Resolving Non-Contractual Disputes, Transnational Publishers Inc, 2004, xxiii.
7. *Gilkey L.B.,* Can Art Fill the Vacuum in D Apostolos-Cappadona (ed), Art, Creativity and the Sacred, 1996, 187-189.
8. *Roodt C.,* The Role of Private International Law in the Protection of Art and Cultural Objects, 2015, 3, 6, 16-17, 13, 35, 115.
9. *Roodt C., Miller D.C.,* Stolen Cultural Property: Implications of Vitium Reale in Private Law and Private International Law, 2013, 1, 3-6.
10. *Routledge C. F.,* International Law and the Protection of Cultural Heritage, 2010, 151.
11. *Sadigh S.,* Cultural Heritage Network, Court of London Ignores Iran's Ownership of Achaemenid Bas-relief, 2007, 132.
12. *Symeonides S. C.,* The American Choice-of-Law Revolution: Past, Present and Future, Martinus Nijhoff Publishers 2006, 15-24.
13. *Staker C.,* Public International Law and the Lex Situs Rule in Property Conflicts and Foreign Expropriations, 58 Brit. Y.B. Int's L., 1988, 151, 164.
14. *Tolstoy L.,* What Is Art? The Brotherhood Publishing Company, 1898, 210.
15. *Kreder J.A.,* The New Battleground of Museum Ethics and Holocaust-Era Claims: Technicalities Trumping Justice or Responsible Stewardship for the Public Trust? Oregon Law Review, Vol. 88, 2009, 65-72.
16. Press Office of the Federal Government Commissioner for Culture and the Media / Press and Information Office of the Federal Government, 11044 Berlin, Key aspects of the new Act on the Protection of Cultural Property in Germany, 2016.