

BABEȘ – BOLYAI” UNIVERSITY

CLUJ- NAPOCA

FACULTY OF HISTORY AND PHILOSOPHY

DOCTORAL SCHOOL OF INTERNATIONAL RELATIONS

AND SECURITY STUDIES

*Preventing and combating crime on national and
international cultural heritage assets online*

PHD THESIS SUMMARY

PhD. Supervisor:

Dr. Habil. Cristian Anton Găzdac

PhD. Student:

Loredana Florea

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Summary

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The objective of protecting national and international cultural heritage in the context of the impact of globalization and digitalisation on trade in antiques and works of art can only be achieved if an adaptation is made to the changes and evolutions of the last 20 years.

The cultural heritage market has been transferred during this period mainly to the virtual space, which does not have clearly established and efficiently implemented transnational norms and regulations. Demand for works of art and artefacts has skyrocketed as a result of increasing pressure on the market and the prospect of high easy incomes, which has boosted traffic in cultural heritage objects. The pressure of demand had two effects: the intensification of archaeological poaching and robberies, while flooding the market with fakes by using the antique trafficking chain. The largest cultural heritage market in the world is the USA, seconded by Western European countries, mainly the United Kingdom.

The aim of the paper is to establish the current status of cultural heritage protection at national and international level by placing in the digital age and the context of globalization of trade in cultural heritage goods, individualizing the auction.

The challenges posed by the major changes in trade in cultural heritage goods produced by the entry into the digital age and the phenomenon of globalization raise a number of questions that we have sought to answer in our research:

- What is the effectiveness of the protection provided by the national and international legal framework for online commerce that transcends national borders?
- How has the auction adapted to the digital age and what are the vulnerabilities?
- What is the role and value of documenting the sources of origin?
- If the procedure for returning illegally traded goods is functional and what difficulties does it encounter?

This paper analyzed the legal framework dedicated to the protection of national and international cultural heritage, respectively the way in which the legislative norms in force work, their concordance. In this sense, it was considered to achieve a clear definition of the context in which the crimes affect it, proposals to systematize the crimes, but also the analysis of the constituent elements of the crimes and their fixation in the legislative norms in force.

The research was applied by reporting on significant cases in which cultural heritage goods have been damaged, lost or traded on the national and international market. Some of these cases were analyzed in the light of the regulations provided by law no. 182/2000 on the protection of mobile cultural heritage or by O.G. no. 43/2000 on the protection of the archaeological heritage and the declaration of some sites as areas of national interest. The international legislative instruments provided by the UNESCO Convention of 1970/1972, the UNIDROIT Convention of 1995, respectively the legislative regulations of each state were also used.

Thus the thesis is structured in five chapters: Chap. I Introduction, Chapter II Auction - form of trading of cultural heritage goods, Chapter III Documentation of sources of origin - the key to preventing and combating illegal trade in artifacts, Chapter IV Restitution of cultural heritage goods - prevention and combating illegal trade, Chapter V General conclusions.

Chapter I The introduction presents the motivation and necessity of the topic approached by placing it in the current context, as well as the research methodology used.

Chapter II The auction - a form of trading of cultural heritage goods is dedicated to the analysis of the historical evolution of the auction, both in Romania and internationally, capturing the incidental legal norms in trade and cultural heritage protection. The case study analyzed the applicability of the above-mentioned legislation in the following relevant cases: Dacian votive plaques Bitus, Statuette of the scribe Sekhemka, 76 Egyptian artifacts.

Currently most auctions are online, even the auctions organized by the auction houses have an online component, being announced on the Internet on their website with the catalog display and presentation of features, there is the possibility of online participation in auctions, which are broadcast live by the auction houses. auctions. Exclusively online auction sites have seen a vertically upward development, such as: eBay, eBid, Bonanza, Webstore.com, OnlineAuction.com. At the beginning of 2018, the largest online auction site eBay had over 162

million registered users. The most important auction houses in the world are Christie's and Sotheby's, which have established a duopoly on the most valuable sales of art and antiques.

The trend is for exponential growth in online auctions, including the sale of cultural heritage goods, which can be sold. In this context, from the point of view of the protection of the cultural heritage, the highest risk is represented by the lack of control of the legality of the sale of artifacts by ensuring international compliance with the provisions of the 1970 UNESCO Convention and nationally the legislation of origin of cultural heritage goods.

The stake is the documentation of the source of legal origin. The most important issue is the lack of obligation to submit documents of origin on most online auction sites. If in the case of auction houses there is an obligation to comply with legal provisions and to verify the source, in the case of online sites this obligation does not exist. In the absence of authentication of the source of origin on online auction sites there is a risk of counterfeiting.

The value of the auctions organized by the auction houses is clearly higher than those carried out through the sites exclusively online: the auctions with values ranging between thousands and hundreds of millions of euros are carried out through the auction houses, while the values of antiques traded through the sites Auctions range from a few euros to a maximum of several thousand or tens of thousands of euros. The explanation lies in the guarantees of authenticity and legality offered by the auction houses.

Global online auctions are not regulated in accordance with international law for the protection of cultural heritage and national laws, with the exception of auction houses, other online auction sites are not required and do not verify the source of movable cultural heritage. . The lack of regulation of online auctions allows the illicit sale of artifacts and the loss for the universal cultural heritage of goods with high historical, cultural, scientific and material value.

Chapter III Documentation of sources of origin - the key to preventing and combating the illegal trade in artifacts is dedicated to the phenomenon of illegal trafficking of cultural heritage goods. When artifacts are stolen, they lose their value primarily by often removing the link to the context in which they were discovered. Artifact theft would not be possible and would not be current if there were no market in which significant revenues could be obtained. Robbers, thieves and artifact smugglers are connected to the antiques market through intermediaries, which creates

the appearance of legality in order to facilitate illegal exports by producing false documents, attesting to the origin and allowing the sale / purchase on the antiques market at high prices. Intermediaries are the most important link and come from: art dealers, curators and museum staff, art collectors, businessmen, civil servants.

The Case Studies section includes cases that illustrate the path that cultural heritage goods follow in the illicit trade, which begins in the supply phase, continues with the transfer phase or in the development of criminal links in the application phase and the final sale phase. Any intervention aimed at combating the illegal trade in cultural goods should therefore be carried out at every stage of the supply chain. The cases analyzed from this perspective were: the statue of Aphrodite "Getty", the golden Mesomphalos religious libation vessel from ancient Greece, the Kourus statuette.

Given the high number of heritage assets, counterfeit or with falsified documentation of origin, placed on the market in conjunction with the advanced technology involved in counterfeiting and related to the costs involved in testing and expertise of authenticity, extreme caution is required in purchasing artifacts from free market, but also from antique dealers. On the other hand, artifacts that have documents of origin may be forged or have forged documentation, the only guarantees of authenticity will be obtained from the verification and other sources of documents of origin and analysis by an expert in the field.

The documentation of the origin preserves the value and historical importance of the cultural heritage goods by keeping the traceability and the connection with the context of origin. At the same time, it is the only way to certify the authenticity of the artifacts and avoid counterfeits and forgeries, created to mislead bona fide buyers. Another effect is that the artifacts, which have documented provenance, are valued at higher prices on the market of cultural heritage goods.

Chapter IV Restitution of cultural heritage assets - preventing and combating illegal trade is dedicated to the importance of restitution, methods of restitution, terminological differences regarding restitution versus return / repatriation or retention / retention, legal provisions governing restitution / return of cultural heritage assets and interest in the procedure.

In the section Illustrative cases of returned cultural heritage goods, a series of relevant cases were analyzed: the Dacian Spirals, the Rosetta Stone and the Epoea of Gilgamesh.

The interest-oriented approach to refund management aims to provide at least four additional contributions to the debate on the return and return of cultural materials:

- an analysis of the shortcomings of the existing legal regime of international law and of the State's current practices in resolving restitution disputes,
- an analysis of the various interested parties involved in the refund disputes, their respective reasons and interests,
- identifies common interests in cultural heritage based on legal concepts recently developed under international law, namely 'common heritage of mankind', 'common concern', 'common but differentiated responsibility' and 'international cooperation',
- a detailed analysis - both from a legal and a policy point of view - of the wide range of complementary and alternative mechanisms to current restitution practices.

The application of these complementary and alternative mechanisms can produce results with multiple benefits for all parties involved in international cultural heritage disputes.

Chapter V General conclusions summarizes a series of proposals such as:

- Specific regulations on online auctioning.
- Implementation on the market of cultural heritage, especially online, of the filter of origin by establishing the obligation to present property documents, which verifies the origin, with expected effect in dramatically reducing the illegally obtained artifacts presented for sale and reducing archaeological poaching . An important component of this filter is the provision of an export certificate at the time of removal from the country of origin and import to the country of destination, thus considerably limiting smuggling of cultural heritage objects.
- The creation of general principles in the field of restitution and return based on three considerations: first, international treaty law does not adequately recognize the interests of the various stakeholders involved (including the "common interest" in the protection of cultural heritage); secondly, although bilateral agreements may generally be more effective in recognizing the interests of the parties involved, they are generally not able to update these interests in a uniform way due to unequal bargaining power; and thirdly, these bilateral agreements do not provide grounds for resolving similar cases. Instead, the general principles may facilitate the

settlement of restitution disputes, even in the absence of applicable legal instruments and the negotiating powers of the parties involved.

Resolving restitution disputes based on common interests can facilitate the development of sustainable and cooperative solutions. Depending on the needs of the parties involved, there are a variety of complementary and alternative solutions. These include: temporary or permanent loan agreements and / or the exchange of cultural materials; manufacture of replicas; physical return of the requested object without title transfer; as well as joint custody and / or shared management.

In order to intervene effectively in stopping or diminishing the online trade with cultural heritage goods, we propose the adoption of the following measures:

- Establishment of a filter by online platforms in case of mentioning areas related to cultural heritage through the need to approve the establishment of the account / group by a structure within the management of the platform;

- Providing for the obligation of the existence of a form of authentication of the identity of persons who use an account or are members of a group;

- Requesting to obtain and present a specialized opinion / authorizations from the country of origin of the person involved;

- Establishing the obligation to present the documents of origin or acquisition of the traded cultural heritage goods;

- Apply sanctions for online trading platforms in the case

- Non-application of filters and control over the illicit trade in antiques.

The evolution of the market with cultural heritage goods has entered another era by capitalizing on the opportunities offered by the phenomenon of globalization and digitalization, and the protection of cultural heritage can no longer be effectively achieved by the current legal framework at international and national level. cultural. It is practically a market that is not subject to regulations, the only limitation existing through the possible measures adopted by the online platforms in case of a complaint. Failure to adopt a set of legal or regulatory measures online in the coming years will have the effect of continuing the explosion of crime with national and

international cultural heritage assets in the online environment with irreparable damage to the universal cultural heritage.

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