THE CIRCULATION OF CULTURAL OBJECTS: IMPORT, EXPORT AND TRANSFER OF OWNERSHIP

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WHAT TO LOOK FOR WHEN BUYING A WORK OF ART

Difference between:

• Works of art made by contemporary artists
WHAT TO LOOK FOR WHEN BUYING A WORK OF ART

• And ancient art

THE TRADE OF WORKS OF ART MADE BY CONTEMPORARY ARTISTS

• Contemporary artists are, in most cases, eager to sell and export their creations
• Such trade is a lucrative and legitimate business
• Often encouraged by national authorities
• National legislation, in most countries, does not prevent import, export and transfer of ownership
• The market is constantly fueled by new creations
THE TRADE OF ANCIENT WORKS OF ART

Some ancient works of art may be considered by national authorities

• As “national treasures”

THE TRADE OF ANCIENT WORKS OF ART

• or part of their “cultural heritage”

• Either specific or entire categories of works of art are called protected cultural objects or cultural property
THE TRADE OF PROTECTED CULTURAL OBJECTS

• and therefore the law may restrict their:
  • transfer of ownership: selling them can be forbidden or limited to inside the country of origin
  • export: they may be sold but they are forbidden to leave the country
  • or both transfer of ownership and export

WHY THESE MOVEMENT RESTRICTIONS?

• For reasons of public or national interest:
  • they are important elements of the national identity and/or history
  • or researchers/scientists should have access to them for study
  • or the public should be able to admire them
  • or they are part of a monument or an archaeological site the integrity of which needs to be preserved
  • Or a combination of these reasons
THE TRADE OF PROTECTED CULTURAL OBJECTS

- They may belong to the State or other public authorities or to private individuals or entities
- Their movement is limited even if they are in legitimate private hands
- Therefore contrary to the trade of works of art made by contemporary artists, the market of ancient works of art is more limited:
  - by nature, as one cannot create ancient objects
  - and because of the movement restrictions of the ancient works of art which are considered by the law as cultural objects

FROM A LEGAL POINT OF VIEW

Trade of works of art made by contemporary artists

- look at copyright law (not our topic today)
- and at criminal law:
  - Would the work of art be a counterfeited one (a fake) ?
  - or a stolen one
  - in both cases, the seller and the buyer can be prosecuted and punished by national laws, almost under all legislations in the world.
FROM A LEGAL POINT OF VIEW

Trade of ancient art
➢ Look at criminal law
  • Do I sell or want to buy an ancient object which has been stolen:
    • in the country where I buy it
    • or in another country?
  • Selling or buying a stolen object is a criminal offence prosecuted and punished by most legislations in the world.

FROM A LEGAL POINT OF VIEW

Trade of ancient art
➢ But also look at the legislation protecting cultural heritage
  • Is the object originated from the country where I sell/buy it or from another country?
  • Is the object considered as a protected cultural object under the national law of its country of origin
    It is often the case for objects which are more than 50, 75 or 100 years (depending of the country) and which belong to several categories listed in the law.
FROM A LEGAL POINT OF VIEW

• does such national law allow that it be traded/sold/bought
• if it is allowed, does such law allow that it be exported outside the country of origin?
• if it comes from another country, has it been imported (to the country where I sell/buy it) against the law on import of cultural objects?

FROM A LEGAL POINT OF VIEW

➢ Specific cases of objects which seem to come
  • from under the ground
  • or from under the sea
➢ Does the legislation in the country of origin provide that they belong to the State?
  • If yes, taking them is a criminal offence of theft of State property)
FROM A LEGAL POINT OF VIEW

So, there are many situations where a seller or a buyer of an ancient object could be, even in good faith, in situation where he/she acts against a law and may be prosecuted as such.

FROM LAW TO PRACTICE

- However because ancient cultural objects do circulate though borders despite national legislations,
- international Conventions have been adopted, where governments commit to seize and prosecute as well as to collaborate so that protected cultural objects stolen or illegally exported be retrieved and returned to the country of origin.
INTERNATIONAL CONVENTIONS

- The 1995 UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects now ratified by 47 countries.

FROM CONVENTIONS TO PRACTICE

- Several countries are active in requesting the return of stolen or illegally exported cultural objects
  - either through diplomatic channels
  - or even through courts
- ASEAN Ministers called upon collaboration between ASEAN Members
UN SECURITY COUNCIL

In 2014 United Nations Security Council:

• Requested all UN Member States to search, arrest and prosecute individuals or groups involved in the trade of cultural objects from Syria and Iraq
• On the basis that such trade contributes to the financing of terrorism.

THEREFORE, PRECAUTIONS NEED TO BE TAKEN BEFORE SELLING OR BUYING ANCIENT WORKS OF ART

• Checking if they are not listed in a data base of stolen cultural objects: Interpol data base, Art Loss Register, national data bases if any.
• Checking the national legislation of the countries where the object is sold and where it may be originating from: UNESCO data bases of legislations.
• Checking the ICOM Red Lists issued by the International Council of Museums
INTERNATIONAL CODE OF ETHICS FOR DEALERS IN CULTURAL PROPERTY 1999

• For decades, several Art dealers’ associations (ex: CINOA) have adopted rules of professional ethics to promote collections which are respectful of legislations.
• In 1999, UNESCO adopted the international Code of Ethics for Dealers in Cultural Property.
  • Reflecting the commitment of many art dealers to respect the laws protecting cultural heritage
  • Numerous Art dealers now advertise that they adhere to the Code in order to strengthen their professional reputation.