

COOPERATION BETWEEN THE MEMBERS OF THE EUROPEAN UNION IN PROTECTION OF CULTURAL VALUES

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Summary

In the provisions of the scientific article, the author analyzes the formation of cooperation between the Member States of the European Community in the field of protection of cultural property since the introduction of the single European market in 1993 and to the present day. This study presents the formation of cooperation in the field of export of cultural values. It was found that special control has been established, and the criteria for issuing licenses for the export of cultural property are the items' age and value. Particular attention is paid to the peculiarities of legal regulation and cooperation in the field of return of cultural objects illegally moved from the territory of an EU member state. It is determined that in order to combat the illicit trafficking of cultural property, the current legislation has expanded opportunities for cooperation and exchange of information between Member States. Greater emphasis is placed on the development of cooperation in the field of import of cultural values from non-EU countries, which provides for the creation of a centralized electronic database of imported cultural values.

Keywords: European Union, Single European Market, harmonisation of law, export of cultural values, import of cultural values, return of cultural goods

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1. Introduction

Cultural values are an important source of scientific knowledge of both art history and the history of mankind as a whole. UNESCO estimates that the world's annual illicit trade in cultural goods exceeds US \$ 2 billion and is the third largest after drugs and weapons. In the context of the pandemic, the illicit trafficking of cultural property has gained new momentum, as epidemiological restrictions have allowed cultural traders to take advantage of reduced security at archeological sites and museums to engage in illegal excavations and thefts with impunity. Moreover, the shadow business, which thrives in conflict-affected regions, is a threat to international peace and security.

Therefore, one of the most important areas of cooperation between states is the protection of cultural values. The international community has developed universal regulations on the protection of cultural property and the prevention of its illegal movement. However, at the regional level, activities for the protection of cultural property are also an important area of cooperation between Member States. Given the European integration intentions of the Ukrainian state, it is of special interest to study the development of cooperation between the member states of the European Union in the field of protection of cultural values and the current state of its legal regulation.

2. The beginning of cooperation in the field of protection of cultural values

The integration processes in Europe, which led to the emergence of such a supranational entity, which is now the European Union were primarily due to economic and political goals. Although the Treaty of Rome of 1957 defined the development of the culture of the Member States as one of the activities of the Community, the sphere of culture in general and the protection of cultural property in particular, have exclusively belonged to the internal competence of the Member State for a long time.

It should be noted, that the European Economic Community (EEC) has succeeded to some extent in regulating the protection of cultural property in Commission Recommendation of 20 December 1974 to Members States concerning the protection of the architectural and natural heritage (75/65/EEC), which reflects Europe's cultural identity is now seriously threatened with decay and disappearance and urgent measures are needed. In the 1980s, resolutions of the EEC Council of Ministers of Culture identified the need for Europe's architectural heritage, the preservation of works of art and artifacts, and the establishment of effective cooperation within the Community in this field (*Melnychuk, 2011: 266*).

With the signing of the Maastricht Treaty in 1992, cultural policy was officially recognized as one of the activities of the European Union, and the creation of a Single European Market within a united Europe necessitated closer cooperation in the legal field to stop the growing illegal export of cultural property. In order to achieve concerted action in this field, Regulation № 3911/92 of the EEC Council of Ministers on the export of cultural goods of 9 December 1992 was adopted (*Council Regulation (EEC) № 3911/92*).

The document operated with such a concept as "cultural goods", the content of which was disclosed in the appendix and included fourteen categories of cultural values and provided for the procedure of export of such goods outside the territory of the European Union. A system of control and monitoring of their movement was established. In particular, a European license for the export of cultural goods was introduced (its form was defined in the Annex to Regulation № 753/93 of 30 March 1993 laying down rules for the implementation of Regulation № 3911/92), which was necessary for the export of cultural property outside the customs territory of the Community, which operated in the territory of all EU member states. In practice, this has given all EU Member States the confidence that cultural values cannot leave the territory of the Community without a minimum of control by each EU country (*Shulgovskaya, 2013: 157*).

Regulation № 3911/92 on the export of cultural goods has been substantially amended and clarified several times, in particular one of such document being the Regulation of the EEC Council № 974/2001 of 14 May 2001, which generally led to the need for a clearer and more rational statement of its provisions and reflected in its codification (*Council Regulation (EC) № 116/2009*). The regulation defines the list of cultural values in Annex A for the export of which an EU license is required. Those are, for example, archeological objects, books older than 100 years, all antiques, vehicles older than 75 years, maps printed more than 200 years ago, archives older than 50 years. Moreover, cultural values are covered by the Regulations only if they meet the value limits of Annex B of the Regulations or exceed them, for example, for a painting – 150 thousand euros; watercolors, gouache, pastels – 30 thousand euros; sculptures, books, collections – 50 thousand euros; mosaics, engravings – 15 thousand euros; archives, manuscripts, archaeological objects – regardless of cost.

Therefore, when deciding on the issuance of a license for the export of cultural property, the EU criteria are the age and value of the items. It should be noted that national legislation is often much stricter than EU law. In some EU countries, the export of items permitted under

an EU license may be prohibited by national law or an additional national license (certificate) may be required.

EU export licenses are authorized to be issued mainly by the Ministries of Culture, although in some countries there are other bodies that monitor and control the import and export of cultural property, and this may be other agencies, as well as museums, libraries (List of authorities). The EU license is the main instrument of customs control and must be presented to the customs authorities (List of customs) when making a customs declaration. It should be noted that the use of single model licenses in the EU simplifies standard customs controls on the export of works of art, although the rules for drawing up documentation for the import and export of works of art differ in the European Union countries.

3. Development of cooperation in the field of return of cultural values

An important area of cooperation between the states in the EU is the return of cultural objects illegally moved from the territory of an EU member state. In order to develop a common policy, Council Directive 93/7 / EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State of the European Community was adopted (*Council Directive 93/7/EEC*). Because, unlike regulations, EU directives are not directly applicable, they require implementation by each EU Member State into national law.

This document guaranteed the return of cultural objects classified as national treasures of art historical or archaeological value on the basis of national legislation or administrative procedures if they: belong to one of the categories defined in the Annex to the Directive, form an integral part of public collections in museum registers, archives, and libraries or similar institutions.

Council Directive 93/7 / EEC provided that the competent authorities of the EU Member States would follow an established procedure that simplifies the procedure for the return of cultural property. An EU member state is obliged, at the request of another EU state, to search for the relevant cultural property and find out who owns it. In the event that any EU Member State discovers in its territory a cultural property that may have been illegally exported from the territory of another EU Member State, it undertakes to notify the relevant State and to take all necessary measures to physically preserve the valuable property. object and prevent by all possible methods any attempt to deviate from the return of cultural property to the Homeland (*Kotys, 2013: 180*).

A study of the effectiveness of the Directive, based on the reports of the EU Member States on its practical application, which they were obliged to send every three years, indicated the existence of a number of problematic issues.

The low rates of the actual return of cultural objects illegally removed from the territory of the Member States over the years of the Directive have shown that its effectiveness is limited for a number of reasons:

- establishing strict eligibility criteria for facilities covered by the Directive (defined in the Annex to the Directive indicating financial and age thresholds);
- insufficient time to bring an action for return (one year from the date on which the requesting Member State became aware of the location of the cultural object and of the identity of its owner or owner);
- the cost of compensation to which the owner could be entitled under the Directive (*Górka, 2016 :29*).

In view of these shortcomings, the Directive needed to be revised to make it a more effective tool for restoring the cultural property. As well as to improve the mechanisms of

administrative cooperation and consultation between central authorities to enable them to better implement the Directive.

Following public discussions, various options have been worked out, from leaving the Directive unchanged with the encouragement of Member States to ratify the 1970 UNESCO Convention to its full revision with a view to amending its scope to all objects classified as national treasures, increase of terms for filing a claim for return and inspection of a cultural object; coordination of terms of compensation to the owner. To improve administrative cooperation, it was proposed to facilitate the use of the module "IMI" (the Internal Market Information System), for information exchange and joint consultations.

Note that the ratification by the Union of the 1970 UNESCO Convention on Measures to Prohibit and Prevent the Illicit Import, Export and Transfer of Ownership of Cultural Property and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Property of 1995 (UNIDO Convention) were rejected because they can be joined only by the state separately, and not the organization as a whole. Note that the 1970 UNESCO Convention was ratified by 141 states (The 1970 Convention), including 26 EU member states, but only a little more than half of them (15) ratified the 1995 UNIDROIT Convention, which is primarily intended to address problems of restitution of cultural values.

4. Improving legislation on the return of cultural sites within the EU

On 15 May 2014, the European Parliament and the Council of the European Union adopted Directive 2014/60 / EC on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) № 1024/2012. Among the key changes, it should be noted that the scope of Directive 2014/60 / EU has been significantly expanded, namely, it applies to all cultural objects that can be defined as "national values of artistic, historical or archaeological value", respectively to national law or administrative procedures within the meaning of Article 36 of the Treaty on the Functioning of the European Union (TFEU).

The Directive stipulates that the central authorities of the Member States must cooperate and facilitate consultations through the IMI (Internal Market Information System) in order to locate an illegally exported cultural object, identify the owner and/or holder, and inform that the cultural object, the object is found, and if there are reasonable grounds to believe that it was illegally taken out, to inspect the cultural object, to take measures for the physical preservation of the cultural object and to act as a mediator for its return.

The new rules increase the time limit for initiating return proceedings, namely that the procedure must be initiated no later than three years after the requesting Member State has become aware of the location of the cultural object and the identity of its owner or holder. And in the event of a return decision, the court of competent jurisdiction of the requested Member State shall award the owner fair compensation depending on the circumstances of the case, provided that the owner has exercised due care and diligence in purchasing the item. In addition, there are currently non-exhaustive criteria for interpreting the concept of due diligence and attention shown by the owner when purchasing the object. It should be noted that such criteria are based on those set out in the provisions of the 1995 UNIDROIT Convention.

Another innovation is that the deadline for submitting national evaluation reports and the Commission's report on the application of the Directive has been extended from three to five years. As the first five-year period expires at the end of 2020, the analysis of reporting will help assess the effectiveness of the return mechanism for illegally exported cultural objects established by the new Directive 2014/60 / EU.

Member States had to transpose the provisions of Directive 2014/60 / EU by 18 December 2015. For example, in the Netherlands, the Law on the Implementation of Directive 2014/60 / EU was published in the Dutch Bulletin of Acts, Ordinances, and Decrees in June 2015, and although the new instrument introduced a broader approach to cultural heritage protection in the EU, its implementation did not lead to serious changes in the country's legislation. After all, with the implementation of Council Directive 93/7 / EEC of 15 March 1993, a number of complex issues in this area have been resolved, including a reasonable balance between the interests of primary owners and the interests of innocent buyers (*Heese, 2016: 105*). While cultural property reform has taken place in Germany, Parliament has adopted a new law on cultural property, transposing the new Directive 2014/60 / EU; improved implementation of the 1970 UNESCO Convention; contains provisions on the 1954 Hague Convention; and the regulation of 1955 on the protection of national cultural values of Germany in accordance with EU and international standards (*Peters, 2016: 87*). And in Italy during the transposition, there were problems of harmonization of national legislation (Landscape and Cultural Heritage Code) with EU legislation (*Frigo, 2016: 79-80*).

According to the provisions of Directive 2014/60 / EU, each EU country designates a body that deals with the return of cultural objects. In order to share experiences and good practices in the implementation of the Directive, the European Commission has set up an Expert Group on Return of Cultural Objects, which is included in the Register of Expert Groups and other similar organizations.

It should be noted that in addition to the protection of the national cultural heritage of the Member States under Regulation 116/2009 and Directive 2014/60 / EU, an important exception to the free movement of goods is made for the cultural property of Iraq and Syria. As a result of the hostilities in Iraq, Council Regulation (EC) № 1210/2003 of 7 July 2003 concerning certain restrictions on economic and financial relations with Iraq was adopted. The regulation prohibits the import, export, or trade of all Iraq's cultural property, although there are two exceptions. If the owner of the cultural object can prove that the object was taken out of Iraq before August 6, 1990, and also if the object is officially returned to the Iraqi institutions according to the purpose of safe return, according to the UN Security Council Resolution 1483 (2003). As regards Syria, similar rules are included in Council Regulation (EU) № 36/2012 of 18 January 2012 concerning restrictive measures in relation to the situation in Syria (*Peters, 2016: 95*).

It is known that terrorist organizations, in particular the Islamic State, have been organizing mass looting of archeological sites and museums in the regions of Syria and Iraq under their control since 2014. The sale of such items, including to EU countries, is aimed at financing terrorist activities and money laundering.

5. A new legal framework for controlling the import of cultural property from outside the EU

With the exception of restrictions on the import of Iraqi and Syrian cultural sites, the European Union has long had no common legislation establishing common rules for controlling the import of cultural property from outside the EU. That is, there was a loophole where illegally seized cultural property from outside the EU could enter the single market because the requirements for their import are defined as for any other product for which a customs declaration is provided.

The strengthening of the fight against terrorist financing and illicit trade in cultural property was reflected in a joint statement by the European Commission and the High

Representative of the European Union for Foreign Affairs and Security Policy in 2016 on the intention to prepare a legislative proposal to address the import of cultural property to the EU (*Joint Communication...*).

The legislative process was completed in April 2019, and on June 27, the Regulation 2019/880 on the import and import of cultural objects came into force (*Regulation 2019/880 EU*). In particular, the Regulation prohibits the importation into the EU of cultural property listed in Annex A (12 groups of cultural property, including rare collections and specimens of fauna, flora, minerals and anatomy and objects of paleontological interest; archaeological excavations (in including ordinary and secret) or archaeological discoveries on land or underwater, etc.), if they were illegally removed from the territory of the country in which they were created or found. Although the general ban does not require systematic monitoring, the competent authorities of the Member States will take appropriate measures when attempting to import such cultural goods.

With regard to the import of cultural property, the Regulation stipulates that for cultural objects older than 250 years it is necessary to issue an import permit (license), and for cultural objects older than 200 years worth 18 thousand euros and above – it is necessary to present an importer statement. Member States need to organize cooperation between their competent authorities for the effective implementation of the regulation.

Member States need to organize cooperation between their competent authorities for the effective implementation of the regulation. Therefore, although the new rules for the circulation of cultural property came into force on December 28, 2020, the application of some provisions has been postponed to allow the necessary implementation measures. It is assumed that these measures will provide effective protection against illegal trade in cultural property and prevent their loss.

It should be noted that joint efforts in the fight against the smuggling of cultural property continue. On May 30, 2018, the *EU Directive 2018/843* on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing was adopted, which added the art market to the list of regulated industries. As a result, since 2020, the rules for the design and movement of works of art across the borders of the European Union have changed. Banks, art galleries, and auctions are obliged to collect and provide government agencies with information about transactions and clients, the powers of intermediaries. All transactions in the amount of EUR10 000 and above, regardless of the form of payment, come under control.

6. Conclusions

Thus, the above suggests that since the creation of the single market, the European Union has paid considerable attention to cooperation in the field of protection of cultural property. The Community regulates the export of cultural property through the introduction of licensing controls. And although for a long time in the European Union there was no general legislation governing the import of cultural heritage, in 2019 came into force legislation governing the import of cultural property from non-EU countries. To ensure effective protection against illegal trade, a centralized electronic database of imported cultural property will be created. No less important area of cooperation is the return of cultural objects illegally moved from the territory of an EU member state. The analysis of the practice of application of the EU Council Directive 93/7 / EEC, which has been in force since 1993 in this area, has shown the low efficiency of the established procedure. Therefore, in order to address the issues and harmonize the legal framework of the European Union on the right of Member States to return cultural objects and national treasures from one country to another, a new Directive 2014/60 / EU was adopted in

2014. Enhanced cooperation through the exchange of information, the use of formal requests and return procedures, or the use of amicable settlements has opened up new opportunities for the return of an illegally seized object. Examining the first reporting on the application of Directive 2014/60 / EU will determine whether it has become an effective tool in the fight against illicit trafficking in cultural objects.

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