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**INTERNATIONAL ISSUES OF TRAFFICKING OF CULTURAL
PROPERTY**

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Abstract

Globalization covers all aspects of society, including cultural interaction. Cultural exchanges are an important condition for international cooperation. However, alongside with positive effects, cultural exchanges have negative consequences. International issues of cultural property trafficking are investigated through the example of the decision by the District Court of Amsterdam of December 14, 2016 on transfer of items of Scythian collections from the State Historical and Archeological Museum-Reserve Chersonese Tavrichesky, the Eastern-Crimean Historical and Cultural Museum-Reserve, the Bakhchisaray Historical, Cultural and Archeological Museum-Reserve and Central Museum of Taurida to Ukraine. The paper considers arguments provided by the museums of Crimea and the Ministry of Culture of Ukraine, the Convention and recommendation of UNESCO, the UNIDROIT convention, the Soviet museum legislation of 1918–1991, acts of the Commonwealth of Independent States (CIS) and the legislation of Ukraine. The decision is analyzed in the context of its legal effects on specific museums, and in terms of creating a legal precedent as the basis for decisions to be made in similar situations. The author comes to the conclusion that the issue of the Crimea's status disagreed by Russia and Ukraine worsens the conditions for the Crimean museums: Ukraine will not have the right to create analogue museums the Crimean museums will be limited in the right of intermuseum exchanges, and their museum collections will be under threat (even if the thieved valuables sent abroad are found, nobody knows whether they will be returned back to Russia, but not to Ukraine).

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Keywords: Crimean museums, legislation of Ukraine, UNESCO, UNIDROIT.



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1. Introduction

Globalization covers all aspects of society, including cultural interaction. One of the aspects of cultural interaction is knowledge of achievements of other cultures. This knowledge can be obtained through cultural exchanges: tours of theaters and musicians, translation and publication of literary works, etc. Museum exchanges, including export of museum collections to other countries, hold a significant place in the system of cultural exchanges. Museum exchanges are an important condition for international cultural cooperation, formation of a positive image of the country and its culture. However, along with positive impact, these exchanges have also negative effects. The issue of cultural property as an object of international legal regulation has been studied in terms of formal and legal regulations (Boguslavsky, 1979; Klebanov, 2011). The main focus was on the development and improvement of the international law in order to enhance cultural exchanges. However, in recent years, this issue often reveals itself in the context of bilateral or trilateral events (typically negative) that imply consideration of the historical genesis of the event and its interpretation in terms of national legislations of the countries concerned.

2. Problem Statement

International issues of trafficking of cultural property and museum exchanges are investigated through the example of the decision made by the District Court of Amsterdam of December 14, 2016 on the transfer of items of Scythian collections from the State Historical and Archaeological Museum-Reserve Chersonese Tavrichesky, Eastern-Crimean Historical and Cultural Museum-Reserve, Bakhchisaray Historical, Cultural and Archaeological Museum-Reserve, the Central Museum of Tauris to Ukraine.

In 2013, items from four museums of the Republic of Crimea, which was part of Ukraine at that time, were exported to Germany and exhibited there at the exhibition *Crimea is a Golden Island in the Black Sea* (De Krim – Goud En Geheimen Van De Zwarte Zee). In early 2014, the exhibition moved to Holland to the Allard Pearson Museum at the University of Amsterdam. Officially, the exhibition opened on February 6, 2014.

On February 22, 2014, the president of Ukraine V. Yanukovich fled from Kiev. On May 25, new elections were held in Ukraine, and P. Poroshenko became the president. During these events, the status of Crimea also changed: on March 16, 2014, the local authorities of the Autonomous Republic of Crimea and the city of Sevastopol held a referendum on the issue of reunification with Russia. On March 18, 2014, Crimea signed a treaty on accession of the Republic of Crimea to the Russian Federation. As a result, the ownership of 2,111 items sent to the exhibition *Crimea: The Golden Island in the Black Sea* was questioned. The Pearson Museum did not dare to take responsibility and submitted the case to the court.

3. Research Questions

We analyzed the legal grounds for the arguments provided by the museums of Crimea and the Ministry of Culture of Russia, on the one hand; and the Ministry of Culture of Ukraine, on the other hand. These issues are investigated based on UNESCO conventions and recommendation, the UNIDROIT convention, the Soviet museum legislation of 1918–1991, the laws of the Commonwealth of Independent States (CIS) and the legislation of Ukraine.

4. Purpose of the Study

The purpose of the study was to investigate the decision by the Amsterdam District Court of December 14, 2016 in terms of its legal grounds and legal implications for both specific museums and international cooperation of museums.

5. Research Methods

The study was performed in the framework of institutional and systemic approaches. The author used structural-functional analysis and formal-logical method (to analyze legal documents and the practice of their enforcement), and comparative historical and historical-genetic methods.

6. Findings

To consider the legal issues associated with museum exchanges and the trafficking of cultural property, we first analyze the documents regulating the trafficking of cultural property.

A) *international documents*: 1. *UNESCO Recommendation that defines the principles of international regulation of archaeological excavations of December 5, 1956* (UNESCO, 1956). The Recommendation stated that "each Member State should clearly define the principles which hold good on its territory in regard to the disposal of finds from excavations". This should be based on the following: a) the items found during excavations should be assigned to the museums of the country in which the excavations are carried out to compile complete collections; b) each Member State should take all necessary measures to prevent the illicit export of items found during excavations (Clause 29); c) it is desirable that Member States take all appropriate measures to return these items. It is recommended to conclude bilateral agreements to resolve issues related to the implementation of this Recommendation.

2. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. The document defines the key requirements for the trafficking of cultural property.

3. *UNO Convention on the Law of the Sea of December 10, 1982*, which dealt with the regulation of underwater archeology, and its provisions were the basis for subsequent international agreements on the rights to underwater finds.

4. *UNIDROIT Convention on Stolen or Illegally Exported Cultural Property of June 24, 1995* (CINTD, 1995). It was adopted for the development of private law procedures to return illegally displaced cultural property. The private-law claim is the main mean to return cultural property. Priority is given directly to the person who owns the items, or to the court. This issue can be resolved through diplomatic channels. The Convention has not been ratified by the Russian Federation, hence its mechanism cannot be used to the full extent (Pashkevich, 2007).

B) *CIS documents*:

1. *Agreement on returning cultural and historical property to the states of their origin of February 14, 1992*. This is the first document to regulate the relations of the CIS countries with respect to cultural heritage issues. However, the effect of this Agreement in Russia was canceled by the Decree of the Supreme Soviet of the Russian Federation No. 2802-1 of May 20, 1992 (Korol, 2008).

2. *Agreement on cooperation in the field of culture of May 15, 1992*. The parties recognized the need to create an Interstate Commission of Experts to consider issues and develop recommendations for restitution of cultural and artistic treasures based on bilateral or multilateral agreements. However, this rule remained declarative.

3. *Agreement on succession issues of the former USSR with respect to the state archives of July 6, 1992* enshrined the principle of indivisibility of archival funds and previously performed funding. The question arises: is it possible to use the same principle to consider museum funds as historically established aggregates, the integrity of which should not be violated?

4. *Regulation on the procedure for returning illegally exported and imported cultural property approved by the Decision of the Heads of Government of the CIS countries of October 9, 1997* (CNTD, 1997). The Regulation contains the provision that in case of conflict issues not settled through negotiations, the interested states apply to the CIS Economic Court. However, Ukraine ceased representation at the statutory bodies of the Commonwealth on August 28, 2018. All this complicates implementation of the mechanisms of the Commonwealth to resolve the issue of Crimean values.

C) The issue of the ownership of the Crimean values should also be considered in terms of the national legislation of Ukraine on culture and cultural heritage.

To solve the issue of property, it is important to consider the status of the museums during the period when Crimea was part of Ukraine. The State Historical and Archeological Museum-Reserve Chersonese Tavrichesky was founded by Ukraine, and the other three museums, the Eastern-Crimean Historical and Cultural Museum-Reserve, the Bakhchsaray Historical, Cultural and Archaeological Museum-Reserve, and the Central Museum of Tavrida, were founded by the Autonomous Republic of Crimea.

One of the main arguments of all four museums of Crimea was that they "exist longer than the state of Ukraine exists" and many of the disputed items became the property of museums before Crimea became part of Ukraine. Most of the archaeological finds were made during the Russian Empire and the USSR.

The second argument was certain "precedents": in the twentieth century, Crimea was part of various states and administrative entities, but no one questioned the ownership of these and other items stored in them. Why in the XXI century, when the status of Crimea has changed, this right is questioned?

The third argument was that the exhibits are part of collections, and their division violates their scientific and cultural integrity. It implied "the principle of the indivisibility of museum collections."

Consider the third argument. The principle of the indivisibility of collections is specified only in Russian legislation – the Law on the Museum Fund of the Russian Federation and Museums in the Russian Federation of May 26, 1996 No. 54-FZ, Article 7, Museum Collection, which states that "the museum collection is indivisible". International documents are concerned about the observance of property rights only for the state and do not imply interference in the internal regulation of this issue. The UNESCO conventions and recommendations specify only public rights (associated with state rights); they do not mention the rights of local communities. The rights of local communities are mentioned only in the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Property* (CNTD, 1995). However, to apply it to this situation, it is necessary to prove that Scythian, Chinese, etc. artifacts are sacred or important for any of the Crimean communities and are used for traditional or ritual rites of this community (Clause 8, Article 3).

The UNESCO Recommendation, which defines the principles of international regulation of archaeological excavations (UNESCO, 1956), provides few opportunities. It allows the state to redistribute archaeological items within the country and between museums.

The second argument that all the parties recognized the right of museums to own these items will be in close connection with the first one: what was the legal basis that allowed the Crimean museums to own these items until 2013, until the artifacts were exported for the exhibition? This concerns the features of the regulation of ownership of the cultural heritage of the Soviet period. Both Russia and Ukraine recognize themselves as the successors of the USSR. They did not abolish certain documents of the Soviet government regarding the trafficking and ownership of museum items and collections.

On October 5, 1918, the Council of People's Commissars issued a decree On Registration, Recording and Preservation of Monuments of Art and Antiquity Owned by Individuals, Communities and Institutions. The decree instructed the museum authorities "to make the primary state registration of all monumental works and clothing monuments of art and antiquity, both as entire collections, and as individual items, irrespective of the possession." The decree allowed the museum authorities to seize antiquity and art works from those who did not provide the necessary conditions for the storage of cultural monuments (Gardanov & Kononov, 1955). In Soviet Russia in 1918, the right of inheritance was abolished. The owners of items and collections became not the owners, but life users and custodians of property. Cultural heritage was considered by the Soviet authorities solely as state property. After the final establishment of Soviet power in Crimea in autumn, 1920, these decrees were extended to its museum institutions. Although the private trafficking of historical and cultural property was allowed in 1934, the ownership of museums to items and collections was not restored. The fact that the owner of museum items was not a museum, but the state is confirmed by numerous intermuseum transfers of cultural property in order to optimize collections.

When documents on the demise of the USSR and creation of the CIS were signed in 1991, not only the political space was divided, but the issues of property division were resolved, including historical and cultural property. Within the framework of the CIS, the Agreement on Mutual Recognition of Rights and Regulation of Property Relations of October 9, 1992 was signed. The independent states mutually recognized the transfer of some items to their ownership, with the exception of those that were built to eliminate force majeure circumstances. Thus, the items and collections located in state museums of Crimea passed into the ownership of Ukraine.

Similar to any modern state, Constitution is the key regulatory legal act of Ukraine. Among its provisions, most important in the Constitution of Ukraine are as follows (UkraineGovernment, 1996): 1) according to Article 2 "Ukraine is a unitary state"; 2) according to Article 54 "The state ensures the preservation of historical monuments and other items of cultural heritage, takes measures to return cultural property located outside its borders"; 3) Articles 133–135 and 137–138 determine the features of the status of Crimea and Sevastopol within Ukraine, and the subjects of their authority.

The Constitution of Ukraine does not contain a special article on types of ownership, but a number of articles mention state, private and communal property (Section 11 Local Self-Government, Articles 142, 143).

The Law of Ukraine No. 249/95 On Museums and Museology of June 29, 1995 does not specify the principle of indivisibility of museum collections. However, Art. 1 defines museum fund of Ukraine as "a

collection of individual museum items and museum collections permanently stored in Ukraine regardless of their origin and ownership, as well as museum items and collections outside its borders, are owned by Ukraine or subject to return to Ukraine in accordance with international agreements." The provisions of Art. 7, 9, and 10 allow the state of Ukraine to create "backup museums" (similar to Gugun), which is supported by the provisions of Art. 14 and Art. 18 on the sources of replenishment of museum collections. According to Art. 15 of the Law on Museums of Ukraine, "museum items and collections of the state part of the Museum Fund of Ukraine are assigned to museums for operational management." According to Art. 15-2, "museum items and collections referred to the state part of the Museum Fund of Ukraine are not subject to alienation, except for the exchange for other museum items and collections".

7. Conclusion

Thus, the following conclusions can be drawn:

1) During the Soviet period, state ownership of museum items and collections was established. At the same time, the regulatory documents developed in the Russian Empire were abolished. The Crimean museums in the USSR had the right of operational management only. After the demise of the USSR and the declared independence of Ukraine, this state gained the rights to cultural property located on its territory.

2) The legislation of Ukraine defines the authorities of state museums with respect to their collections only as the operational management, but not the ownership. At the same time, intermuseum transfers of individual items and collections, optimization of the museum network, etc. are assigned to the state.

3) Difficulties in determining the status of Crimea between Russia and Ukraine actually lead to worsening of the position of Crimean museums on a global scale: they are limited in intermuseum exchanges, and the museum collections are now at risk. In addition, in case cultural property is unlawfully removed from the territory of Crimea, the stolen, even if it is found, can be returned not to the Russian Federation but to Ukraine.

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