Museums and their role in international disputes – Laws and Policies

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Abstract

This dissertation was written as part of the MA in Art Law and Arts Management at the International Hellenic University.

The project refers to the role of museums in international disputes concerning the return and restitution of cultural objects. Through the assessment of cases that have made an impact on international and national legislation and adoption of solutions, principles, legal notions and policies, the particularities of the nature of such disputes is presented. The involvement of international organizations, the differences among the parties involved in these cases and the legislation that applies are examined. The most common issues of judicial procedure and alternative dispute resolution are also discussed, in an attempt to draw conclusions as to which are the most appropriate solutions, policies and protective measures museums should adopt, in order to minimize the arising disputes and safeguard not only their interests but culture as well.

Keywords: museums, cultural objects, return, immunity, dispute resolution.

Ermioni Kesisoglou
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Preface

Culture has always been a very significant factor in forming the thousands of smaller societies that make up our world. Since the ancient times, people would always find a way to express themselves through art and literature and their works, as we perceive them today, depict their whole life and history. Their way of thinking, their habits, their rituals, their traditions, the way they behaved or dressed, the way family and society acted, their political views and circumstances, the evolution of all sciences.

Living in a country with a rich history that dates back to the ancient times, I was given the opportunity to get involved with its culture and its impact to modern Greece and the rest of the world from an early age. This process made me realize how important culture and its preservation is for the next generations that would otherwise have no clue about what the world was like thousands of years ago and how our modern civilization has evolved.

Museums and all kinds of institutions that house what has remained from the past and must be preserved by all means have a huge responsibility to pass on to the future generations all evidence of history, arts, sciences and all other aspects of the activities of humanity until today.

The reason why I decided to focus on the role of museums in disputes concerning cultural objects which, most of the times, have an international character, due to the continuous activity in art and antiquities trade, is because they are the guardians of cultural property and their involvement has an impact, not only to financial and moral interests of the parties involved, but also to the way we learn to incorporate our predecessors' culture in our modern society.

During my studies in the MA in Art Law and Arts Management at the International Hellenic University of Thessaloniki, I gained very useful knowledge on these matters and I managed to realize the interrelation between museums, international organizations, states, professionals and the public and I hope I have the opportunity to pass this knowledge on and help in spreading the word regarding the protection of cultural property in the present and future.

I experienced this wonderful and charming journey to knowledge along with my fellow-students and our professors and I would like to thank them all for their contribution, interaction, respect and appreciation. I would also like to thank the University and its staff for the cooperation and assistance that made this journey easier and more pleasant. Last but not least, I would like to acknowledge my supervisor Dr. Marc Weber that provided me with interesting and useful information, guidance and support through the writing of the present project.

CONTENTS

Introduction

Cultural property disputes have always caused international discussion among the art world, including artists and people working in the arts field, museums and various institutions, but also the legal world, countries and international organizations dealing with the protection of the relevant rights. The continuous change and evolution of these matters has raised several conflicts and has led to cases that were resolved in various ways as well as cases that are still pending.

What draws the world's interest in these issues is the complexity of the relations between the involved parties and the way such disputes are being dealt with, taking into consideration the differences between the involved parties' mentality, practices and legal background. Such disputes might involve states, individuals or groups of people, legal entities of various kinds and, of course, museums. Museums play a very special role in these cases, as their interests vary and consist of several different aspects that are taken into account, while at the same time they have to obey specific laws and rules that govern their involvement.

In this dissertation several issues will be examined and numerous questions will be attempted to be answered. First of all, the nature of international disputes[1] will be defined in relation to the different parties involved, with an emphasis on museums. The dissertation will refer to the evolution of the relevant international and national legislations and the adoption of codes of ethics and policies, such as International Conventions and national laws but also Codes of Ethics for Museums and the contribution of International Organizations. It will also examine legal issues in relation to state immunity, immunity from seizure, good faith purchase, due diligence and provenance research. It will take into consideration the differences among the parties involved in international disputes, with museums on the one hand and states, individuals or indigenous peoples on the other, according to the relevant legal framework related to specific issues, such as Nazi-looted art, human rights or colonial acquisitions. The different ways of dispute resolution in cultural property cases will be discussed with regard to litigation and alternative dispute resolution, cultural diplomacy, settlement through cultural heritage instruments.

What is the role of museums in international cultural property disputes? In what ways can they be involved in such cases? What are their rights and obligations? What laws and codes of ethics apply? What are the policies they adopt or should adopt on these matters? What steps can they take in order to protect themselves from being involved in artworks claims? The project's aim is to collect and combine useful information and insight on the matter, through thorough academic research and assessment of landmark cases, so that a complete image of the museums' role and

[1] See Checchi, A. (2014), *The Settlement of International Cultural Heritage Disputes,* N.Y.: Oxford University Press, p.33-36 on the detailed analysis of the term *international dispute*.

involvement is presented, in order for conclusions to be drawn, regarding the way such organizations handle or should handle such disputes in which they are involved.

I. LEGISLATION AND RULES

There are several legal texts that regulate the disputes concerning cultural objects on a national and international basis, such as national laws, international and European Union legislation, international conventions, bilateral agreements, as well as soft law like codes of ethics or conduct that apply in such situations.

1. International Conventions

The first major steps for the protection of cultural property were taken after World War II, taking into consideration the serious damage that war had caused to important monuments and objects of cultural significance. The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict in 1954, along with its Protocol and its Second Protocol in 1999[2] sets out duties of military powers to respect and safeguard cultural property and the institutions that house it and cooperate with local authorities for this purpose, in case of war or any conflict that makes use of destructive means.[3]

One of the most important legal texts in the cultural property field is the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), that sets out rules and certifications related to the import or export of cultural objects and calls for international co-operation for the safeguarding of cultural treasures.[4] It discourages museums and other cultural institutions from acquiring objects that have been illegally exported and it encourages them to keep a very detailed inventory[5] of the objects they own, in order to enhance their protection against illicit trafficking.[6] UNESCO is also responsible for a

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[2] See a detailed commentary on the 1954 Hague Convention and its 1999 Second Protocol in Toman, J., "The Control System under the 1954 Hague Convention and its 1999 Second Protocol" in Meerts, P. ed. (2008), *Culture and International Law,* The Hague: Hague Academic Press, pp.121-153.

[3] See O'Keefe, P.J. and Prott, L.V. eds. (2011), *Cultural Heritage Conventions and Other Instruments - A Compendium with Commentaries,* Builth Wells, U.K. : Institute of Art and Law Ltd. pp.16-17 and also pp.35-37 and p.43-45 on its Protocols. Also in Vrdoljak, A.F. (2008), *International Law, Museums and the Return of Cultural Objects,* N.Y.: Cambridge University Press, pp.138-139.

[4] DuBoff, L.D. and King, C.O. (2006), *Art Law in a nutshell*, 4th ed., St.Paul, MN: Thomson/West, pp.19-20

[5] See Vrdoljak, A.F. (2008), no.3 above, pp.237-239 about the museum inventories.

[6] See in O'Keefe,P.J. and Prott, L.V. eds (2011), no.3 above, pp.64-67 a commentary on the Convention. Also in Vrdoljak, A.F.(2008), no.3 above, pp.206-208 and in Stamatoudi, I. (2011), *Cultural Property Law and Restitution - A Commentary to International Conventions and European Union Law,* Cheltenam, U.K. – Northampton, MA: Edward Elgar Publishing, pp. 31-66 a detailed analysis of the Convention.

series of Conventions that define the obligation and ways to protect the cultural, natural, underwater and intangible heritage and, more recently, the diversity of cultural expression.[7]

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was signed in 1995 and provides for a set of rules concerning the procedures for the return of cultural objects after the discovery of their location and possessor or the fact that they had been stolen.[8] Even though it has no retroactive effect, it introduces more specific provisions and is considered to be complementary to the UNESCO Convention of 1970 and aims to change the international attitude towards a more thorough protection of cultural objects.[9]

In Europe, the implementation of the Convention for the Protection of the Architectural Heritage of Europe in 1985, as well as the European Convention of the Archaeological Heritage in 1992[10] has also increased the standards of protection of monumental buildings and sites, but also moveable objects of cultural interest.

Apart from the above Conventions, there is also a pair of European legal texts on the matter of export and return of cultural objects, the Council Directive 93/7/EEC of 15 March 1993 on the Return of Cultural Objects unlawfully removed from a territory of a Member State and also the Council Regulation (EC) 116/2009 of 18 December 2008 on the Export of Cultural Goods, that apply within the European Union for its member-states. They are complementary to each other, controlling the movement of cultural objects within the borders of the Union (return from one member state to another) and beyond them (export licences)[11].

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[7] UNESCO has also organized the procedures for the following Conventions: Convention concerning the Protection of the World Cultural and Natural Heritage (1972), Convention on the Protection of the Underwater Cultural Heritage (2001), Convention for the Safeguarding of the Intangible Cultural Heritage (2003), Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

[8] DuBoff, L.D. and King, C.O. (2006), no.4 above, p.21: The treaty provides for a 3-year period after the discovery of the item's location and a 50-year limit after the time of theft, during which a claim for return can be made. There are special provisions for objects that are parts of a monument, archaeological site or public collection for which only the 3-year limitation applies.

[9] O'Keefe, P.J. and Prott, L.V.eds.(2011), no.3 above, pp.110-113 commenting on the UNIDROIT Convention. Also in Stamatoudi, I. (2011), no.6 above, where the Convention is analysed in detail in pp.66-111.

[10] *Ibid*, pp.92-93 and pp.101-103 respectively. See also pp.123-124 on the European Landscape Convention (2000) and pp.179-181 on the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (2005).

[11] *Ibid*, pp.191-192 on the Directive and p.199 on the Regulation. See also a detailed analysis of the Regulation along with Regulation 752/93 of 30 March, 1993 in Stamatoudi, I. (2011), no.6 above, pp.133-141 and the Directive pp.141-157.

2. National legislation

Most countries nowadays include in their national legislation various laws that refer to cultural property and its protection. There are different mentalities however, depending on the level of involvement of each country in the cultural sector and the kind of interests it has, if it is an importing or an exporting state. Political and diplomatic relations issues also play a significant role in the adoption of certain legislation on cultural matters.

The U.S.A. has introduced a wide variety of rules that deal with cultural property issues and, as a country that has quite a large number of museums and activities related to art trade, its courts have numerous cases to handle and have solved various relevant legal issues.

One of the most important legal instruments that the U.S. has adopted is the Foreign Sovereign Immunities Act of 1976 (FSIA)[12] that establishes jurisdiction of federal courts in cases against foreign states introducing exceptions of state immunity, such as in cases of expropriation.[13] It has thus become a very popular forum for those seeking justice against foreign countries somehow related to the U.S.

The Holocaust Expropriated Art Recovery Act of 2016[14] (HEAR Act) facilitates the return of cultural objects expropriated by the Nazis during the Holocaust era to their rightful owners by overcoming procedural restraints, such as time limitations,[15] encouraging at the same time the interested parties to turn to alternative dispute resolution.

The Native American Graves protection and Repatriation Act (NAGPRA)[16] includes provisions concerning the protection of Native Americans' human remains and artifacts, such as funerary and sacred objects and objects of cultural patrimony and provides that museums list the items they possess that are related to Indian tribes and take action to return a series of them back to their people.[17]

Aside from the U.S.A. though, most states have inserted in their legislation rules governing cultural property issues, such as the ways of protection of their national cultural treasures, the import and export requirements and certifications, the return and restitution of cultural objects to requesting states or their rightful owners, the facilitation of claims related to expropriation during times of war or occupation.

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[12] Public Law 94-583, 90 Stat.2891, 28 U.S.C. Sec.1330, 1332 (a), 1391(f), 1441(d), 1602-1611.

[13] Woudenberg, N.V. (2012), *State Immunity and Cultural Objects on Loan,* Leiden - Boston: Martinus Nijhoff Publishers, pp.110-111.

[14] Public Law 114-308, 130 Stat.1524, 22 U.S.C.1621 note.

[15] Cp. *Reif v. Nagy*, Sup. Ct. N.Y. City, April 5, 2018 ("Grünbaum Case"), which has wide-ranging implications for litigation relating to art that was lost or stolen in the Holocaust.

[16] See 25 U.S.C. Chapter 32.

[17] DuBoff, L.D. and King, C.O. (2006), no.4 above, p.271 and in Vrdoljak, A.F.(2008), no.3 above, pp.275-281 a detailed analysis of NAGPRA. Also in Chechi, A. (2014), no.1 above, p.74.

3. Soft law

In addition to strictly legal texts, there is also a series of other international instruments that apply in the field of cultural property and its protection, such as certain Recommendations by UNESCO and the Council of Europe, Declarations by UNESCO and the United Nations, or other charters and sets of principles that, although not legally binding, create a more uniform mentality on the matter and are taken into account in practice.[18] A few examples are: the Washington Conference Principles on Nazi-Confiscated Art (1998) that set out guidelines towards the identification of the rightful owners of looted art and the achievement of a just and fair solution,[19] the Vilnius Declaration of the International Forum on Holocaust Era Looted Cultural Assets (2000) that encourages the restitution of cultural objects expropriated by the Nazis to their owners and the Terezin Declaration (2009) that enhances the effort of the participating states to return confiscated items, in compliance with each state's national legislation and international commitments.[20]

The Joint Professional Policy on Museum Acquisitions or The Resolution Concerning the Acquisition of Cultural Properties Originating in Foreign countries is a statement that was adopted by the Association of Art Museum Directors (AAMD) and the International Council of Museums (ICOM), which, although not legally binding, suggests that museums comply with the UNESCO Convention and apply a series of rules forming the ethics concerning the enrichment of their collections.[21]

Aside from the Joint Professional Policy though, in November 1986, the ICOM Code of Ethics for Museums was adopted and in May 1991, the AAM Code of Ethics for Museums began to apply. Both Codes of Ethics include provisions that members should respect and standards for their operation and protection of their interests.

Other similar texts are the UNESCO International Code of Ethics for Dealers in Cultural Property (1999), the ICOM Code of Professional Ethics (2004), the AAMD Guidelines on the Acquisition of Archaeological Material and Ancient Art (2013), the CINOA Code of Ethics (2005), the DCMS "Combating Illicit Trade: Due Diligence Guidelines for Museums, Libraries and Archives on collecting and borrowing culture

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[18] O'Keefe, P.J. and Prott, L.V. eds(2011), no.3 above, p.5.

[19] See Chechi, A. (2014), no.1 above, p.76.

[20] Woudenberg, L.V. (2012), no.13 above, pp.385-386. And also in Bandle, A.L. and Theurich, S. (2011), "Alternative Dispute Resolution and Art Law – A New Research project of the Geneva Art-Law Center", *Journal of International Commercial Law and Technology*, vol.6, issue 1, 2011, pp.28-41 available at: https://plone.unige.ch/art-adr/cases-affaires/case-4-old-master-drawings-2013-feldmann-heirs-and-the-british-museum/anne-laure-bandle-and-sarah-teurich-alternative-dispute-resolution-and-art-law-journal-of-international-commercial-law-and-technology/view?searchterm=alternative+dispute+resolution (Last visited 21/01/2019).

[21] See DuBoff, L.D. and King, C.O.(2006), no.4 above, p.271, where it is mentioned that the AAMD consists of almost 90 directors of the biggest museums of the U.S. and the ICOM's members are more than 3.000 institutions that, according to the statement, should apply what is provided in the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970).

material" (2005), the IADAA Code of Ethics and Practice (2007), the Museums Association Ethics Committee "Acquisition, Guidance on the Ethics and Practicalities of Acquisition (2004), the Canadian Museums Association "Ethics, Guidelines" (2006), the MLA "Accreditation Scheme for Museums and Galleries in the United Kingdom: Template, Collections development Policy" (2011) and others on a worldwide basis.

4. International Organizations

Specialized organizations also exist and obey the rules they have established on their own, in order to protect their interests. In these texts, practical and ethical issues are regulated and specific policies are adopted, in order for the uniformity of the operation of their members to be achieved.[22] Museums that are members of such organizations should comply with their regulations, while at the same time, they ensure the protection of their rights. Some of the most important organizations in the field are the following[23]:

- The International Council of Museums (ICOM)
- The International Council on Monuments and Sites (ICOMOS)
- The International Association of Art (IAA)
- The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM)
- The Society of American Archaeology (SAA)
- The American Association of Museums (AAM)
- The American Alliance of Museums (AAM)
- The Association of Academic Museums and Galleries (AAMG)
- The Association of Art Museum Directors (AAMD)
- Office International des Musées (OIM)

[22] *Ibid*, p.23

[23] See also https://museummarket.com/AssocList.htm where a list of most American associations and committees is presented (Last visited 26/01/2019).

II. INVOLVED PARTIES

International disputes concerning cultural objects may involve states, individuals or groups of people, legal entities of various kinds and, of course, museums. A museum's position in such cases may vary,[24] taking into consideration the differences between each party's interests, mentality, practices and last, but not least, their legal background and the specific laws and rules that govern each party's involvement.

1. Museums and states

Museums have often been involved in cases in which it is a foreign state that is asking for the return or restitution of a cultural object allegedly unlawfully removed from its soil,[25] for various reasons, most commonly due to colonization or occupation and periods of war. When such a claim arises, the museum possessing the object at issue becomes part of legal actions or out-of-court procedures for the resolution of the matter.

One of the most famous cases of a country seeking the return of cultural property is the case of the Parthenon sculptures. Lord Elgin removed large pieces of the Parthenon's frieze and metopes during the period of Ottoman occupation of Greece. The removal of the marbles and their transportation to England led to the destruction of a number of pieces, but also to Elgin's bankruptcy, due to which, he decided to sell the sculptures to the British state in 1816, which then transferred them to the trustees of the British Museum. Britain had promised to return the sculptures after Greece would be independent again, but the return never happened. Greece began asking for their return from the British Museum in 1983 and has been trying to find any possible legal way to achieve their return ever since.[26] It is a case that has caused international controversy and debates, but still remains unsolved, due to the numerous issues that have occurred, such as the critical questions of whether they were lawfully removed by Elgin at the time, with permission by the Turkish government, who was it that had the power to grant such permission and whether this permission should be considered void, given that Greece was under occupation at the time of the removal of the sculptures and therefore, it should be held that the Turkish government had no jurisdiction over the country's cultural treasures.

However, the University of Heidelberg in Germany took the initiative to return a segment of Parthenon to Greece in 2006. This movement might play its role in the way

[24] See Chechi, A. (2014), no.1 above, pp.44-46 on the involvement of museums in cultural objects claims.
[25] *Ibid*, pp.40-43 on the role of states in cultural heritage-related disputes.
[26] See Stamatoudi, I. (2016), "Alternative Dispute Resolution and Insights on Cases of Greek Cultural Property: The J.P.Getty Case, the Leon Levy and Shelby White Case, and the Parthenon Marbles Case", *International Journal Of Cultural Property,* vol.23, November 2016, pp.433-457.

the British Museum will decide on the matter in the upcoming years[27], taking into consideration that it has so far refused to return the sculptures, insisting on their legitimate acquisition, the high level of protection and preservation of the objects in its premises, the large number of its visitors and the fact that it took too many years for Greece to claim them back. On the other hand, Greece claims that the sculptures are not individually created artworks, but they are parts of the Parthenon, a building that is still standing stripped from its pieces and thus, its integrity. Greece has also created the Acropolis Museum especially for this reason and has already created the spaces where the missing pieces will be placed according to their initial position.

Italy is also a country that has brought several claims related to the return of its cultural treasures that were found outside its territory, given the country's large contribution to culture throughout the ages from the antiquity up to the present days. One of the most important cases is Italy's claim for the Euphronius Krater that had been acquired by the Metropolitan Museum of Art in New York back in 1972. After thorough investigation by the Italian Carabinieri (Cultural Heritage Protection Office) and the Swiss Police, a chain of transactions between smugglers came to light, exposing Giacomo Medici and Robert Hecht, who had sold the Krater to the MET, which was thus proved to have been illicitly excavated and exported in the U.S. In order to avoid litigation and time-consuming procedures, Italy finally signed an agreement[28] with the Metropolitan Museum of Art which provided that the museum would return the requested antiquities, but Italy would abstain from legal actions and commit to long-term loans of a series of other items for display at the museum,[29] establishing at the same time a collaboration between the two parties including students, professors and researchers exchange, an agreement that became an example for other similar cases involving states and cultural institutions, that were settled amicably.[30] Italy has also requested other allegedly looted items from other important museums, such as the Museum of Fine Arts in Boston, the Princeton University Art Museum and the Cleveland Museum of Art.

However, there is a case in which Italy was responsible for the return of a cultural object to another state, that of Libya. In 1911, when Libya was under occupation, Italian troops found a sculpture, *Venus of Cyrene*, which was sent to Italy for protection and exhibited in the Museo Nazionale delle Terme di Roma. After Libya gained its independence, it asked for the sculpture and in 2000, the two states agreed on its

[27] See DuBoff, L.D. and King, C.O. (2006), no.4 above, p.11.

[28] Agreement between the Ministry for Cultural Heritage and Activities of the Italian Republic and the Metropolitan Museum of Art, New York, of 21 February 2006.

[29] DuBoff, L.D. and King, C.O. (2006), no.4 above, pp.13-14.

[30] See Contel, R., Soldan,G., Chechi, A. "Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art," Platform ArThemis, Art-Law Centre, University of Geneva on https://plone.unige.ch/art-adr/cases-affaires/euphronios-krater-and-other-archaeological-objects-2013-italy-and-metropolitan-museum-of-art?searchterm=italy+metropolitan (Last visited 24/01/2019).

return. Following two Court decisions,[31] that rejected an Italian NGO's arguments that the statue belonged to the Italian patrimony and not to an Islamic country's and that such an agreement might put other cultural objects in danger, the Venus of Cyrene was finally returned to Libya in 2008.[32]

2. Museums and individuals

Private claims are very often being dealt with by the Courts or even by alternative dispute resolution. A large number of individuals have brought claims concerning artworks of which they were somehow deprived in the past and, years after the unlawful action, they or their heirs discover that their objects have ended up in a museum. The most frequent examples refer to Nazi-looted art during the Holocaust, when hundreds of artworks were taken from Jewish people and sold and resold after the war, until they were finally acquired by a museum. There are other similar examples, such as the Russian War spoils,[33] the Dutch restitutions[34] and others deriving from war or colonization.

One of the most famous cases is the one of *Maria V. Altmann v. Republic of Austria et al.*,[35] concerning six paintings that were situated in the Belvedere museum in Vienna. Due to the fact that, on the one hand, the Foreign Sovereign Immunities Act of 1976 applied retroactively in the U.S.A.[36] and, on the other hand, the cost of judicial procedures in Austria was tremendous, since a percentage of the paintings' value had to be paid, in order for the legal proceedings to commence, Maria Altmann and the Austrian Government finally agreed on the solution of arbitration, which recognized

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[31] See: Tribunale Amministrativo Regionale del Lazio *(Sez. II-quarter)*, February 28, 2007, No. 3518, *Associazione nazionale Italia Nostra Onlus c. Ministero per i beni e le attività culturali et al.* as well as: Consiglio di Stato, June 23, 2008, No. 3154, *Associazione nazionale Italia Nostra Onlus c. Ministero per i beni e le attività culturali et al.*

[32] See Chechi, A., Bandle,A.L., Renold, M.A."Case Venus of Cyrene – Italy and Libya," Platform ArThemis, Art-Law Centre, University of Geneva on https://plone.unige.ch/art-adr/cases-affaires/venus-of-cyrene-2013-italy-and-libya?searchterm=venus+of+cyrene (Last visited 24/01/2019). Also in Chechi, A. (2008), "The return of cultural objects removed in times of colonial domination and International Law: The case of Venus of Cyrene" available at http://www.academia.edu/3426620/The_Return_of_Cultural_Objects_Removed_in_Times_of_Colonial_Domination_and_International_Law_The_Case_of_the_Venus_of_Cyrene (Academia platform) pp. 160-164 (Last visited 24/01/2019).

[33] See Bandle, A.L. and Contel, R., "Reparation Art: Finding Common Ground in the Resolution of Disputes on Russian War Spoils and Nazi-Looted Art" in Vadi, V. - Schneider, H. eds. (2014), *Art, Cultural Heritage and the Market - Ethical and Legal Issues,* Berlin-Heidelberg: Springer-Verlag, pp.27-56.

[34] See Campfens, E., "Alternative Dispute Resolution Claims and the Binding Expert Opinion procedure of the Dutch Restitutions Committee" in *ibid*, pp.61-89.

[35] See *Maria V. Altmann v. Republic of Austria et al.*, 142 F. Supp. 2d 1187 (CD Cal. 2001) and also 317 F.3d 954 (9th Cir.2002) as amended 327 F. 3d 1246 (2003).

[36] DuBoff, L.D. and King, C.O. (2006), no.4 above, p.32.

that five of the paintings had indeed been stolen from her family by the Nazis during the war and were awarded to her.[37]

In the *Portrait of Wally* case,[38] the heirs of Lea Bondi Jaray claimed the restitution of the painting from the Leopold Museum in Vienna and it took them about twelve years of litigation on whether the National Stolen Property Act (NSPA) applies in the case[39], based on proof that Dr. Leopold knew or didn't know whether the painting had been stolen. In the end, the parties involved reached a settlement which allowed the painting to return to the Leopold Museum and the heirs were paid an agreed compensation.[40]

In *Kunstsammlungen Zu Weimar v. Elicofon*,[41] two portraits by Albrecht Dürer were recovered by the Weimar Art Collection, after thirteen years of litigation, as it was proven in court that they had been stolen from the Castle Schwartzburg during World War II.[42] Mr. Elicofon had acquired them in good faith, but under New York law, no good title can be transferred from a seller that does not have one and, as a result, the Court ordered him to give the paintings to the Kunstsammlungen zu Weimar, that was recognised as their rightful owner.[43]

3. Museums and groups of people

There are many examples of various groups of people, such as indigenous peoples[44] or other kinds of associations that are related to cultural objects and wish to preserve

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[37] See Bandle, A.L. and Theurich, S. (2011), no.20 above.

[38] *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000) granting motion to dismiss. Also in 2000, U.S. Dist. LEXIS 18713 (S.D.N.Y. 2000) permitting amendment of complaint and in 2002 U.S. Dist. LEXIS 6445 (S.D.N.Y. 2002) denying motions to dismiss. Finally, the Opinion and Order, 663 F. Supp. 2d 232 (S.D.N.Y 2009) denying motions for summary judgment and ordering trial.

[39] Further analysis infra (chapter III.Litigation, ii. Immunity from seizure).

[40] Woudenberg, N.V. (2012), no.13 above, pp. 184-195 and also the case study: Contel, R., Soldan, G., Chechi, A. "Case Portrait of Wally – United States and Estate of Lea Bondi and Leopold Museum," Platform ArThemis on: https://plone.unige.ch/art-adr/cases-affaires/case-portrait-of-wally-2013-united-states-and-estate-of-lea-bondi-and-leopold-museum?searchterm=wally (Last visited 25/01/2019).

[41] See *Kunstsammlungen zu Weimar v. Elicofon*, 478 F.2d 231 (2d Cir. 1973), also 536 F. Supp. 829 (E.D.N.Y. 1981) and 678 F.2d 1150 (2d Cir. 1982). See also *Federal Republic of Germany v. Elicofon*, 358 F. Supp. 747 (E.D.N.Y. 1972) and 536 F. Supp. 813 (E.D.N.Y. 1978).

[42] DuBoff, L.D. and King, C.O. (2006), no.4 above, pp.31-32.

[43] See Chechi, A., Bandle, A.L., Renold, M.A. "Case Two Dürer Paintings – Kunstsammlungen Zu Weimar v. Elicofon," Platform ArThemis on https://plone.unige.ch/art-adr/cases-affaires/2-durer-paintings-2013-kunstsammlungen-zu-weimar-v-elicofon?searchterm=kunstsa#!prettyPhoto[pp_gal]/1/ (Last visited 21/01/2019), Art-Law Centre, University of Geneva.

[44] See Chechi, A. (2014), no.1 above, pp.51-53 on the involvement of indigenous peoples in requests for their cultural objects. Also Vadi, V. (2014), *Cultural Heritage in International Investment Law and Arbitration,* N.Y.: Cambridge University Press, pp.206-210 on the notion of indigenous cultural heritage that includes both tangible and intangible elements that have a continuity within a particular territory or group of people that have created them.

them on their own or use them as parts of some ritual, ceremony or everyday practice or, in some cases, even destroy them as demanded by their culture and rules. The protection of such objects can prove to be a challenge, if they are meant to serve one of the aforementioned purposes and the position of a museum is very difficult as to whether it should give the object in question away or insist on keeping it.

One characteristic case of this nature is the case of the Zuni War God that was requested by the Zuni Indian Tribe from the Denver Art Museum where it had been held for about 25 years. The tribe held that, according to their law, their gods could not be owned by the museum, as, in reality, they belonged to the tribe and only its members had the right to have access to them. Even though the museum trustees expressed their concern, due to the fact that the tribe would actually place the object in an outdoor space and intentionally destroy it after it has served its annual purpose of succeeding its predecessor, it was finally agreed that the object return to its tribe under proper conditions that would ensure its integrity.[45]

Another example is that of the Kennewick Man, a skeleton found in Columbia River in 1996, whose bones were considered sacred by the local tribes it belonged to and therefore, had to be buried, while at the same time, scientists wanted to keep it in a safe institution for study and research purposes. The case had to be brought before Court which, after having found no connection with the tribe, gave the scientific world the opportunity to study the remains.[46]

A big number of similar cases has led to the enactment of the Native American Graves Protection and Repatriation Act (NAGPRA) that provides for the return of human remains and sacred items from public American museums to the tribes they belong to.[47] Likewise, in the U.K. the Glasgow City Council returned the Lakota Ghost Dance Shirt to the Wounded Knee Survivors Association in 1998, based on the people's of the community involved rights, the continuity of the community, the acquisition background of the object, its cultural and religious significance and its fate and purpose after its return.[48] Also, in 2001 the Working Group of Human Remains, after examining the relevant legislation, prepared a Report that included the creation of a Human Remains Advisory Panel for the settling of claims related to the return of human remains from national museums and other institutions.[49]

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[45] DuBoff, L.D. and King, C.O. (2006), no.4 above, pp.11-12.

[46] *Ibid*, pp.12-13 and a detailed analysis of the Kennewick Man case in Thomas, D.H., "Finders Keepers and deep American History" in Merryman, J.H. ed. (2006), *Imperialism, Art and Restitution,* Cambridge - N.Y.: Cambridge University Press, *pp.221-226.*

[47] DuBoff, L.D. and King, C.O. (2006), no.4 above, p.12: NAGPRA (Pub.L.No. 101-601 (codified at 25 U.S.C. Chapter 32)). The Repatriation Act also renders the transactions concerning human remains or funerary items illegal and places limits on hunting such objects. See also Brown, M.F. and Bruchac, M.M., "NAGPRA from the Middle Distance: Legal Puzzles and Unintended Consequences", in Merryman, J.H. ed. (2006), no.46 above, pp.193-217.

[48] Stamatoudi, I. (2011), no.6 above, p.204.

[49] *Ibid*, p.206-207.

III. LITIGATION

When an international dispute arises, there are several legal issues that should be taken into account, in order for the Court to reach a final decision. Given the complexity of transactions that include cultural objects, special laws apply and a series of specific legal notions have occurred through the ages. State immunity, immunity from seizure, valid title, good faith purchase, time limitations, the doctrine of laches, due diligence and provenance research are a few of the issues that have bothered the Courts on a worldwide level and have provided the legal world with various solutions to a large number of cases.

1. State immunity

a. Absolute and restrictive immunity from jurisdiction

State immunity from the jurisdiction of foreign courts is an issue that has been a part of numerous disputes. It is based on the principle *par in parem non habet imperium* and it bears the meaning that, since states are considered equal to each other, then one cannot prevail over the other and exercise jurisdiction.[50] However, due to the fact that states, at a large extent, engage themselves in commercial activities, it would be unfair for transactors of the private sector, either individuals or enterprises, to be treated in a different way, as far as their commercial activities are concerned. Thus, what applies in practice is a model of restrictive immunity, in the sense that, when a state takes part in commercial activities, ones that private natural or legal persons could be parts of (acts *iure gestionis*), then it is not immune from foreign jurisdiction, if a dispute occurs; it is immune from foreign jurisdiction only with regard to conflicts that result from the exercise of their governmental activities (acts *iure imperii*).[51] The determination of the nature of the activity is, therefore, crucial to the granting of immunity to a state in a particular dispute.

In *Republic of Austria et al. v. Maria V. Altmann*[52] the U.S. Supreme Court ruled in favor of the restrictive immunity defining Austria's activities as commercial. Maria Altmann, the heir of Ferdinand Bloch-Bauer, who owned six paintings by Gustav Klimt before the 1938 Anschluss, sued Austria before a federal court in California stating that

[50] Woudenberg, N.V. (2012), no.13 above, pp.49-50 on the evolution of approach on the term of state immunity.

[51] See *ibid* pp.51-52 regarding the distinction between commercial and governmental activities of a state in relation to the nature and the purpose of the activity. It is pointed out that, even though the nature of the activity is what is taken into account, in order to establish the immunity of a state, nevertheless, it cannot be perceived outside its purpose. Also in Chechi, A. (2014), no.1 above, p.121-122.

[52] *Republic of Austria et al. v. Maria V. Altmann,* 541 U.S. 677 (U.S. 2004). Opinion of the Court and Dissident Opinions.

the paintings were expropriated by Austria after the war, in order to retrieve them, as they were exhibited at the time in the Austrian National Gallery (Belvedere). She made use of the provisions of the U.S. Foreign Sovereign Immunities Act of 1976 (FSIA)[53] to support her argument that the promotion of the exhibition and the publication and sale of books related to it, depicting the paintings in question, constitute a commercial activity by the Austrian National Gallery and, therefore, the Austrian Republic.[54] The Court held that, since the Republic and the Gallery make direct profit from the books sold in the U.S. and also attract American tourists to the country and the Gallery through advertising the exhibition, then the commercial character of the activity, as well as the necessary minimum contacts with the U.S.A. are established and the U.S. courts can exercise jurisdiction on the matter, according to the FSIA provisions that were applied retroactively in the case, regardless of the fact that the paintings were not situated in the U.S. territory at the time of the proceedings. This case showed the importance of how a state museum can have activities that, when considered commercial, might affect the position of the state in an international dispute.[55]

Likewise, in *Claude Cassirer v. Kingdom of Spain and Thyssen-Bornemisza Collection Foundation*[56], the plaintiff was the heir of Lilly Cassirer Neubauer, who had sold a painting by Pissaro to a Nazi under duress at a quite low price, in order to flee Germany during the war. When Cassirer discovered in 2000 the location of the painting, the Foundation's Thyssen-Bornemisza Museum in Madrid, he filed a suit in the U.S. District Court of California against Spain and the museum, in order to claim the painting. The Court stated that it could exercise its jurisdiction in the case and that the FSIA applies, because Spain and the Foundation were involved in numerous commercial activities in the U.S. territory, such as sales of books and museum material, various transactions with American citizens, advertising and attracting tourists to visit Spain and the museum where the painting was exhibited and also loan agreements with other U.S. museums that also had an element of commercial character.[57] Furthermore, the Court of Appeals held that the painting had indeed been taken in violation of international law during World War II, as the FSIA requires, regardless of the fact that it was Germany that had expropriated the painting and not Spain, based on the fact that the FSIA does not require the defendant to be the one that did the

[53] See Chechi, A. (2014), no.1 above, pp.124-126 on the distinction between the "commercial" and the "expropriation" exception.

[54] See *Maria V. Altmann v. Republic of Austria et al.*, 142 F. Supp. 2d 1187 (CD Cal. 2001) and also 317 F.3d 954 (9th Cir.2002) as amended 327 F. 3d 1246 (2003).

[55] See Chechi, A. (2014), no.1 above, pp.135-138 and Woudenberg, N.V. (2012), no.13 above, pp.117-120 and the detailed case analysis regarding state immunity from jurisdiction.

[56] *Claude Cassirer v. Kingdom of Spain and Thyssen-Bornemisza Collection Foundation,* 616 F.3d 1019 (9th Cir. 2010). See also on https://caselaw.findlaw.com/us-9th-circuit/1651764.html, https://www.leagle.com/decision/infco20170710124 and also https://www.lootedart.com /web_images/pdf2015/Cassirer-District-Court-Summary-Judgment-June-4-2015.pdf (all three last visited 25/01/2019) on the further evolution of the case by Cassirer's heirs.

[57] See further analysis in Woudenberg, N.V. (2012), no.13 above, pp.122-124.

action that violated international law, therefore it was decided that the Court did have subject matter jurisdiction against Spain and the Foundation. However, the U.S. Supreme Court, upon petition by Spain and the museum, found that, even if not required by the FSIA, the latter should not apply in the case, as the painting in question was not taken by Spain but by Germany.[58]

Germany, however, was actually sued in another relatively recent case. In *Gerald Stiebel and Alan Phillip v. the Federal Republic of Germany and the Stiftung Preussischer Kulturbesitz* (the SPK, which is responsible for the administration of the Berlin museums) the object of the claim is the Guelph Treasure (Welfenschatz in German), situated in the Kunstgewerbemuseum in Berlin. Part of the Treasure belonged to a consortium of art dealers in Germany during the 1930's and was forcefully sold to the Nazis at a low price, when the plaintiffs' ancestors had to leave Germany during the war. Germany claimed that the sale took place "at the owners' free disposal" and the Prussian Cultural Heritage Foundation has initiated procedures to designate the Welfenschatz as German national cultural heritage, in order to make its transfer more difficult. After the fruitless effort to resolve the matter through the German Advisory Committee, the plaintiffs turned to the United States District Court in Washington, DC, which held that the requirements of commercial activity and expropriation in violation of international law are fulfilled, and therefore it can exercise jurisdiction according to the FSIA. After Germany's appeal, the U.S. Court of Appeals for the D.C. Circuit stated that the plaintiffs are not obliged to exhaust all levels of judicial recourse in Germany, before they sue in the U.S., however, it also held that the SPK can be sued being an "instrumentality" and only has to perform minimal commercial acts, even irrelevant to the object in question, but Germany would have to have actually somehow used the Treasure in the U.S. in order to be sued.[59]

b. Immunity from measures of constraint

As opposed to what applies in the determination of immunity from jurisdiction, it is the purpose of the activity and not its nature that is examined, when it comes to immunity from measures of constraint. In order to determine whether property of a state, that is located in another state, is immune from enforcement measures, what has to be defined is whether this property serves governmental or commercial purposes. In the case that the purpose has a governmental character, such as a cultural object on loan destined for cultural exchange, then the property in question cannot be

[58] *Ibid*, p.125-126.

[59] See O'Donnell, N. "Court of Appeals upholds claims to renowned Guelph Treasure sold under duress to Nazi agents" in Sullivan & Worcester blog, on https://blog.sandw.com/artlawreport/court-of-appeals-upholds-claims-to-renowned-guelph-treasure-sold-under-duress-to-nazi-agents (Last visited 26/01/2019).

seized, except if the owner state has given its consent to the application of measures of constraint or to the satisfaction of a claim in a pending dispute.[60]

The term *immunity from seizure* refers to any act of attachment, execution, sequestration, forfeiture, requisition, foreclosure, replevin, detinue and other similar acts of a cultural object that is temporarily on loan in a country other than the one where it is normally located. This may happen mainly for two reasons: a) there is a pending dispute concerning the ownership of a specific cultural object and, if the hosting state's legislation is more favorable to the claim of such objects, then the claimant might attempt to take advantage of this and file a suit before this state's courts, in order to have more chances to win, and b) there is a court decision or arbitral award related to a debt resulting from a reason that has no relation with the cultural object on loan, and the claimant, wishing to ensure its enforcement, tries to seize the object as a measure of constraint, until the debt is paid.[61]

Many countries have already adopted legislation that protects cultural objects from seizure, while they are on loan, under certain conditions, as there have been various examples of such cases that led to disputes in other countries and raised several legal issues on the matter.[62] Immunity from seizure is granted either automatically, according to the borrowing state's laws, or upon request followed by an administrative procedure. Exceptions, limitations and specifications, regarding situations where the lender is a sovereign state, that has to be treated accordingly, might also apply.[63]

An example of immunity from seizure is the *Romanov v. The Florida International Museum Inc.* in 1995.[64] The museum hosted an exhibition of several items from the era of the Romanov czars and the U.S. had attributed the characterization of cultural significance to the items temporarily on loan to the museum that rendered them immune from seizure.[65] Consequently, when a self-declared Romanov heir asked for a Fabergé egg along with its temporary seizure, her request was not satisfied, as the U.S. had granted immunity to the objects on loan, in compliance with the Federal Immunity from Seizure Act of 1965 (IFSA).[66]

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[60] Woudenberg, N.V. (2012), no.13 above, pp.52-58 analysing the various opinions that converge towards the same direction regarding the purpose of the state's activity.

[61] See *ibid,* pp.2-7 on the analysis and definition of immunity from seizure.

[62] *Ibid,* p.8. Indicatively: U.S.A., Canada, Australia, France, Germany, Austria, Belgium, Switzerland, U.K. and the Netherlands.

[63] See further analysis of the subcategories of immunity and the way it is granted in *ibid* pp.7-8.

[64] *Romanov v. The Florida International Museum*, No.95-001285-Cl-008 (Cir. Ct. Pinellas County,Florida, 1995).

[65] Woudenberg, N.V. (2012), no.13 above, pp.163-164.

[66] The Act's full name is "Exemption from Judicial Seizure of Cultural Objects Imported for Temporary Exhibition", Public Law 89-259 (S.2273), 79 Stat.985, approved 19 October 1695, No.185, 22 U.S.C. Sec. 2459.

Likewise, in *Deutsch v. Metropolitan Museum of Art*,[67] an El Greco painting, *Mount Sinai*, was on loan for the purpose of a temporary exhibition hosted by the MET, when Joram Deutsch filed a request for a restraining order to freeze the export of the painting, because he wanted to sue Germany for a claim related to the painting. However, the New York State Supreme Court dismissed the case and ordered the return of the painting to the Historical Museum of Crete in Heraklion, according to the Federal Immunity from Seizure Act.[68]

A landmark case with regard to the subject of seizure is *United States of America v. Portrait of Wally, a painting by Egon Schiele, defendant in rem.*[69] This is the story of a painting that used to belong to Lea Bondi Jaray, a Jewish that owned a gallery in Austria. After the Anschluss, she had to sell her collection in 1938 and, along with it, she handed over the "Portrait of Wally" by Egon Schiele, a painting that was not part of her gallery collection that had to be "aryanized", but a part of her personal collection. She found refuge in England and made numerous attempts to get the painting back, but she passed away before initiating any legal procedure for the restitution of the painting. After a series of transactions, the painting ended up in the hands of Rudolph Leopold who sold it to the Leopold Museum, which in its turn, loaned the painting to the Museum of Modern Art (MoMA) in New York in 1997 for a temporary exhibition. Lea Bondi's heirs then, filed a lawsuit claiming the ownership of the painting along with a request for its seizure, which was dismissed by the New York Court of Appeal under the grounds of New York's Arts and Cultural Affairs Law that protected artworks on loan from seizure. However, the painting was seized by the U.S. Customs, based on the National Stolen Property Act (NSPA), which is a federal law. According to the NSPA, if an artwork is imported in the U.S. by a person that is aware of the fact that it is stolen property, then this person cannot export from the U.S. The main question here was whether Dr.Leopold actually knew that the painting had been stolen by Mrs. Bondi, so that the NSPA applies, as the court did not accept the Leopold Museum's claims that the portrait had been acquired by them through prescriptive possession, based on the laws of Austria. Finally, in 2010, the Estate of Lea Bondi Jaray reached an agreement with the U.S. Government and the Leopold Museum, according to which, the Estate was paid compensation for the painting, which was returned to

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[67] *Deutsch v. Sotheby's Holding Inc.; aka Sotheby's New York; aka Sotheby's London; Metropolitan Museum of Art, A. and M. Kalokairinos Foundation; Historical Museum of Crete of Crete Iraklion*, Index # 04100902, No. 04 Civ. 8587 (S.D.N.Y. 2004).

[68] See Woudenberg, N.V. (2012), no.13 above, pp.170-171 for further details on the background of the case.

[69] *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000) granting motion to dismiss. Also in 2000, U.S. Dist. LEXIS 18713 (S.D.N.Y. 2000) permitting amendment of complaint and in 2002 U.S. Dist. LEXIS 6445 (S.D.N.Y. 2002) denying motions to dismiss. Finally, the Opinion and Order, 663 F. Supp. 2d 232 (S.D.N.Y 2009) denying motions for summary judgment and ordering trial.

the Leopold Museum with the obligation of mentioning the true provenance of the painting for the visitors to read.[70]

A case that refers to measures of constraint serving the enforcement of a Court judgment or arbitral award, that is irrelevant to the cultural objects seized, took place in Switzerland, when the Swiss company NOGA attempted to seize 54 paintings, that belonged to the Russian Federation and the Pushkin Museum in Moscow, then on loan for an exhibition in the Fondation Pierre Gianadda in Martigny.[71] NOGA had an agreement with Russia for food supplies in exchange for petroleum products, and after a dispute related to this agreement, the company turned to arbitration and managed to get an award that recognized the debt that Russia owed. In execution of this arbitral award, NOGA tried to seize the paintings, while exhibited in Switzerland, and filed an application with the Cantonal Debt Enforcement Office in Geneva, which ordered the seizure. However, the Swiss Government intervened and sent the paintings back to Russia, stating that state-owned cultural property should be considered public property immune from seizure and other similar measures, while interpreting the international law.[72]

A combination of the FSIA and the IFSA was proposed by the Court in *Malewicz v. City of Amsterdam*.[73] The story began in 2003, when fourteen works by Kazimir Malewicz were on loan from the Stedelijk Museum of Amsterdam to the Solomon R. Guggenheim Museum in New York and the Menil Collection in Houston, for the purpose of a temporary exhibition. The artist's heirs brought an action before the District Court for the District of Columbia against the City of Amsterdam asking for the repossession of the artworks or a compensation for their value, arguing that the works had been expropriated by the Nazis and the Museum held them in violation of international law, without having compensated their rightful owners, in addition to the fact that the City of Amsterdam did exercise commercial activities in the U.S. by lending the artworks, therefore the FSIA was applicable. The Court held that, regardless of the fact that the pieces had been immunized from judicial seizure by the federal government, this did not mean that the FSIA could not apply, thus, the defendant could be sued in the U.S. The City of Amsterdam appealed before the Court of Appeals for the District of Columbia, but while the appeal was pending, the parties

[70] See Woudenberg, N.V. (2012), no.13 above, pp. 184-195 and also the case study: Contel, R., Soldan, G., Chechi, A. "Case Portrait of Wally – United States and Estate of Lea Bondi and Leopold Museum," no.40 above.

[71] See *Compagnie Noga d'importation et d'exportation S.A. v. The Russian Federation*, 361 F3d 676 (2nd Cir.2004)

[72] See Woudenberg, N.V. (2012), no.13 above, pp.310-314 for the detailed case analysis.

[73] *Malewicz v. City of Amsterdam*, 517 F.Supp. 2d 322 (D.D.C. 2007) and *Malewicz v. City of Amsterdam*, 362 F.Supp. 2d, 298 (D.D.C. 2005).

reached an agreement that awarded five of the paintings to the heirs and, in exchange, they withdrew the lawsuit.[74]

2. Valid title and good faith acquisition

Acquiring valid title of an object can prove to be quite important as to what rights and obligations an acquisition will bring to a museum. Asking for a warranty by the seller of an object along with a thorough research by a museum expert can lead to a safe purchase and render the museum a *bona fide* purchaser.[75] As a consequence, even if it is later proven that the item in question had been stolen or illegally converted and therefore, the museum shall be obliged to return it to its rightful owner, at least it will be entitled to the restitution of the amount of money it had paid to the seller who will be obliged to pay a refund.[76]

The same applies to donations as well, even if it can be harder for the museum to demand proof of validity of title. Still, an inquiry is deemed necessary for the determination of valid title. A characteristic example of such cases is *Redmond v. New Jersey Historical Society (1942),*[77] concerning a will that bequeathed a painting by Gilbert Stuart to the New Jersey Historical Society under the condition that the decedent's son would leave no heirs. When the will was executed, the son was underage and the painting was given to the Society, until fifty years later, his heirs claimed it back and the Court did award it to them, not accepting the Society's claim of adverse possession[78], as it had never acquired good title, according to the will's provisions.

There is another case in which good title acquisition was the main issue, *Goodman v. Searle*[79]*.* In this case the heirs of Holocaust victims Friedrich and Louise Gutmann, filed a suit against Daniel Searle as the owner of a Degas painting and Trustee of the

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[74] See Chechi,A., Velioglu,E., Renold,M.A. "Case 14 Artworks – Malewicz Heirs and City of Amsterdam," Platform ArThemis on https://plone.unige.ch/art-adr/cases-affaires/14-paintings-2013-malewicz-heirs-and-city-of-amsterdam (Last visited 27/01/2019) Art-Law Centre, University of Geneva. See also Woudenberg, N.V. (2012), no.13 above, pp.172-182 on a detailed analysis of the case and its legal issues related to state immunity and immunity from seizure.

[75] See Renold, M.A., "Stolen Art: The Ubiquitous Question of Good Faith" in The Permanent Court of Arbitration/Peace Palace Papers ed. (2004), *Resolution of Cultural Property Disputes*, The Hague: Kluwer Law International, pp.251-263 on a comparative presentation of good faith in different legislations.

[76] DuBoff, L.D. and King, C.O, (2006), no.4 above, pp.271-272 on the procedure a museum should follow in order to ensure valid title and the benefits of ensuring a good faith acquisition.

[77] *Redmond v. New Jersey Historical Society*, 132 N.J. Eq. 464 (N.J. 1942), 28A. 2d 189.

[78] See DuBoff, L.D. and King, C.O. (2006), no.4 above, p.272 where it is also highlighted how wills can cause such issues, if their demands are not met, like, for instance, the obligation of the donor's name reference or the demand for the donated object to remain in the museum's collection forever or for a specific time period or constantly on display.

[79] *Goodman v. Searle*, Complaint, No. 96-6459 (N.D. Ill. July 17, 1996).

Art Institute of Chicago, where the painting was on loan. The main question was whether a transaction that had taken place in Paris had transferred good title, as it was not clear enough whether Friedrich Gutmann had been compensated for the painting that he had left there for safekeeping during the war or not, as well as whether Searle was a good faith purchaser.[80] After years of litigation, a settlement was achieved and the parties split the ownership of the painting in half and the Art Institute of Chicago purchased the heirs' interest.

The same issue arised in the *Kunstsammlungen zu Weimar v. Elicofon.*[81] In 1945, two Albrecht Dürer paintings were stolen from the Staatliche Kunstsammlungen zu Weimar, while they were being kept for protection in the Schwarzburg Castle during the war. In 1966, it was discovered that Edward I. Elicofon was their possessor, who had purchased the paintings in 1946 from an American serviceman. After the discovery of their location, the Kunstsammlungen zu Weimar filed a lawsuit asking for the restitution of the paintings. Elicofon argued that he had acquired the paintings in good faith and pointed out his uninterrupted and open possession since 1946, along with the German doctrine of *Ersitzung*, which refers to the adverse possession. However, the Kunstsammlungen zu Weimar held that, given that the paintings had been stolen, Elicofon had not acquired good title, because the seller could not have transferred one. After thirteen years of litigation, the District Court of New York accepted the latter's arguments and the Court of Appeals upheld its decision and ordered Elicofon to return the portraits to the Kunstsammlungen zu Weimar that was recognised as their rightful owner.[82]

3. Time limitations

In a big number of cases, various limitations regarding the timeliness of a claim might apply. The law often requires a claim to be brought within a specific period of time or else, it is dismissed or assessed accordingly. Time limitations are either specifically determined in the law or, in some cases, subject to the Court's discretion, taking into account the special circumstances of the case.[83]

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[80] See Bandle, A.L., Chechi, A., Renold, M.A. "Case Landscape with Smokestacks – Friedrich Gutmann Heirs and Daniel Searle," Platform ArThemis on https://plone.unige.ch/art-adr/cases-affaires/landscape-with-smokestacks-2013-friedrich-gutmann-heirs-and-daniel-searle#section-6 (Last visited 27/01/2019) Art-Law Centre, University of Geneva.

[81] See *Kunstsammlungen zu Weimar v. Elicofon*, 478 F.2d 231 (2d Cir. 1973), also 536 F. Supp. 829 (E.D.N.Y. 1981) and 678 F.2d 1150 (2d Cir. 1982). See also *Federal Republic of Germany v. Elicofon*, 358 F. Supp. 747 (E.D.N.Y. 1972) and 536 F. Supp. 813 (E.D.N.Y. 1978).

[82] See Chechi, A., Bandle, A.L., Renold, M.A. "Case Two Dürer Paintings – Kunstsammlungen Zu Weimar v. Elicofon," Platform ArThemis, no.43 above.

[83] See Chechi, A. (2014), no.1 above, pp.88-89 about prescription and time limitations in different legal systems (civil law and common law countries). Also in Carl, M.H., "Legal Issues

In the *Portrait of Wally* case, the Leopold Museum attempted to make use of the doctrine of laches to support its claim. According to the Court, "generally, laches is applied where it is clear that a plaintiff unreasonably delayed in initiating an action and a defendant was unfairly prejudiced by the delay." The museum argued that, since Bondi knew the location of the painting, she or her heirs should have filed an action much earlier, when the people involved in the case were still alive and able to contribute to the case as witnesses. However, the Court did not accept the defense of laches, arguing that it cannot apply in the museum's claim against the civil forfeiture of the painting by the U.S., as the Government is immune from the laches defense. Moreover, the Court held that it cannot apply against the Estate of Bondi either, as according to both federal U.S. law and Austrian law, Bondi's ownership claim is considered timely.[84]

In *Solomon R. Guggenheim Foundation v. Jules Lubell*[85] the involved museum was in the opposite position. In 1967, the Lubells bought a Chagall painting from a gallery in New York, without knowing that it had been stolen from the Guggenheim Museum a few years earlier. When Mrs. Lubell had it estimated at Sotheby's, the location of the painting was revealed to the museum, which demanded the return of the painting. Upon Mrs.Lubell's refusal, the museum filed a replevin action before the Court, in which the previous owners, art dealers Elkon and Stein were attached as defendants by Mrs.Lubell. The latter claimed that the museum had unreasonably delayed in taking legal steps to repossess the painting, therefore the claim was time-barred. The Court accepted her motion and the museum appealed. The Appellate Division rejected the time limitations argument, applying the "demand and refusal" rule and held that the doctrine of laches could apply, only if Mrs.Lubell's interests were prejudiced by the museum's inaction.[86] The New York State Court of Appeals agreed and ordered the beginning of the trial, which never took place though, because the parties reached an out-of-court agreement, according to which, Mrs. Lubell kept the painting, but she, as well as the two art dealers involved, compensated the Guggenheim Museum for its loss. The significance of this case lies mostly on the fact that the museum did not lose its claim at Court, as this could have created a precedent and jeopardise other similar claims by other museums and cultural institutions seeking for their lost artworks.[87]

Associated with Restitution-Conflict of law Rules Concerning Ownership and Statutes of limitation" in *The PCA/Peace Place Papers ed*. (2004), no.75 above, pp.185-192

[84] See *United States of America v. Portrait of Wally, a painting by Egon Schiele, Defendant in Rem*, Opinion and Order, 663 F. Supp. 2d 232 (S.D.N.Y 2009), in chapter II.B.ii.5. "Laches".

[85] See *Solomon R. Guggenheim Found. v. Jules Lubell*, 550 N.Y.S. 2d 618 (App. Div. 1990) and 569 N.E.2d 426 (N.Y. 1991).

[86] See Prowda, J.B. "The Perils of Buying and Selling Art at the Fair: Legal Issues in Title" in Vadi, V.-Schneider, H. eds. (2014), no.33 above, pp.150-152.

[87] See Wallace, A., Chechi, A., Renold, M.A. "Case Chagall Gouache – Solomon R. Guggenheim Foundation and Lubell," Platform ArThemis, Art-Law Centre, University of Geneva on https://plone.unige.ch/art-adr/cases-affaires/case-chagall-gouache-2013-solomon-r-

Acquisitive prescription was an issue in *Malewicz v. City of Amsterdam*, given that, according to the Dutch law,[88] even if the purchase had not been based on a valid title, the City of Amsterdam had become the owner of the artworks through acquisitive prescription. This is the main reason why the plaintiffs decided to seek justice in the U.S., as there was no hope in the Netherlands and as the Court held, the plaintiffs were not obliged to sue in the Netherlands, except if the City of Amsterdam "waiv[ed] its statute of limitations defense and the Dutch court accept[ed] that waiver".[89]

This was also the case in *Kunstsammlungen zu Weimar v. Elicofon*, where the New York law applied. Had the German law applied, Elicofon would have won the case, as both his arguments of good faith purchase leading to acquisition of a good title and the doctrine of *Ersitzung* (adverse possession), would have been recognised.

4. Due diligence and provenance research

Before the acquisition of an artifact, it is absolutely necessary to exercise due diligence, in order to ensure that the object was lawfully imported or exported, that the seller has good title to transfer, that the object is not listed in any database of stolen or looted art, or it is the object of a pending dispute. In general, one that wishes to buy an artwork should first do a quite detailed provenance research to make sure that this item is not related to any unlawful actions and the chain of its previous owners is uninterrupted and without dubious signs, so that a legitimate acquisition is achieved and any future claims and involvement in legal proceedings are avoided.[90]

In *Goodman v. Searle*, as seen above, the ownership issue was the main question and it was examined whether Daniel Searle was a good faith purchaser based on a previous good title. The question remained unanswered since the parties reached a settlement, however, in case of litigation, Searle would have to prove that he had exercised due diligence and a thorough provenance research before the purchase of the painting. This case actually raised awareness then to numerous institutions, members of the Association of Art Museum Directors**,** that began provenance research for objects that might have been the victims of looting and highlighted the importance of due diligence in transactions related to cultural objects.[91]

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guggenheim-foundation-and-lubell?searchterm=lubell#!prettyPhoto[pp_gal]/0/ (Last visited 25/01/2019).

[88] Article 3:105 of the Dutch Civil Code.

[89] *Malewicz v. City of Amsterdam*, 362 F.Supp.2d, at 308.

[90] See Kaye, L.M. "Provenance Research: Litigation and the Responsibility of Museums", in Nafziger, J.A.R. and Nicgorski, A.M. eds. (2009), *Cultural Heritage Issues : The Legacy of Conquest, Colonization, and Commerce,* Leiden : Martinus Nijhoff Publishers, pp.405-420, where the duties of a museum before acquiring a cultural object and what matters should be taken into account are assessed.

[91] See Bandle, A.L., Chechi, A., Renold, M.A. "Case Landscape with Smokestacks – Friedrich Gutmann Heirs and Daniel Searle," Platform ArThemis, no.80 above.

Likewise, in *Kunstsammlungen zu Weimar v. Elicofon,* had Elicofon performed due diligence before the purchase of the paintings, in order to ensure the acquisition of valid title, he might have discovered that the paintings had been stolen from Germany and this knowledge could have prevented him from completing the transaction.

IV. ALTERNATIVE DISPUTE RESOLUTION

Nowadays, alternative dispute resolution becomes more popular every day and most of the cases end up being resolved through procedures other than the traditional recourse to courts that was examined above.[92] Arbitration, mediation and negotiation have gained momentum and the world has been more familiarized with the settlement of disputes through such procedures, as well as through specialized instruments, such as advisory panels, committees and organs of international organizations, with the aid of which such cases are being dealt with more effectively.[93]

1. Arbitration

Very close to court litigation lies the procedure of arbitration, as it applies strict legal doctrine, according to the legislation chosen by the parties. After an agreement between them, they resort to arbitration and they choose the applicable and procedural law. The arbitral award is binding and enforceable at an international level. International arbitration regards cases between states, whereas mixed arbitration involves also private parties.[94]

In the case of *Maria V. Altmann v. The Republic of Austria,* arbitration was agreed between the parties after the U.S. Supreme Court had held that Altmann could actually bring the claim before the U.S. courts. It was agreed that the award would be final without the right of any party to appeal. The first arbitral award recognized Altmann as the only heir of Adèle Bloch-Bauer who used to own the looted paintings, which were decided to be returned, but in the second arbitral award the sixth painting was not given to Altmann, because of its different ownership background.[95]

2. Mediation

A different kind of procedure of dispute resolution is the one of mediation, in which the parties, upon mutual consent, choose one or more mediators, in order to provide them assistance in reaching an agreement concerning their dispute. It is a flexible and

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[92] See Stamatoudi, I. (2016), no.26 above. The pros and cons of litigation and ADR are presented with regard to cultural matters.

[93] See Palmer, N. "Litigation: The Best Remedy?" in *The PCA/Peace Palace Papers ed*. (2004), no.75 above, pp.279-289 on a presentation of the basic ADR options.

[94] See Stamatoudi, I. (2011), no.6 above, p.196, where an example of international arbitration is given, the *Cambodia v. Thailand* case, in which the International Court of Justice awarded to Cambodia the return of objects removed from the Preah-Vihear temple when it was under Thai occupation.

[95] Arbitral Award, *Maria V. Altmann and others v. Republic of Austria*, January 15, 2004 and May 7, 2004.

confidential procedure that is not strictly based on law, but takes into account the special circumstances of the case and allows the parties to settle and sign a final agreement,[96] which is, legally speaking, a binding contract.

Apart from individual mediators, there are also good offices[97] that undertake to facilitate this kind of agreements, such as the ICOM-WIPO Mediation[98] that deals with disputes related to cultural objects claims and intellectual property issues[99] and the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation[100] that deals with claims in which the UNESCO Convention (1970) cannot apply.[101]

The Parthenon Sculptures case between the Greek and the British Governments is one of these cases that the Committee has undertaken to assist in. It is one of the most famous cases of a state's request for the return of cultural property and it has been pending before the Committee since 2001. In 2013, the U.K. was invited for mediation on the matter, but rejected the invitation in 2015. However, the case cannot be removed from the ICPRCP's agenda until it is resolved, therefore, a further evolution of the case is expected in the future.[102]

Other sets of rules on mediation that apply are the ICC ADR Rules, the European Code of Conduct for Mediators, the Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters and others.

3. Negotiation

A very flexible and quite popular way of dispute resolution is through negotiation directly between the involved parties. Negotiation is not as time and money-

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[96] See Stamatoudi, I. (2009), "Mediation and Cultural Diplomacy" in *Museum International-Return of Cultural Objects: The Athens Conference*, Vol LXI, n°1-2 / 241-242, May 2009, pp.116-120 on the benefits of mediation and the role of UNESCO ICPRCP, available at: https://unesdoc.unesco.org/ark:/48223/pf0000183091 (Last visited 31/01/2019).

[97] See Chechi, A. (2014), no.1 above, p.168-169 on good offices and their role in the settlement of disputes.

[98] See the "ICOM-WIPO Mediation Rules" that apply in the procedure.

[99] See Urbinati, S., "Alternative Dispute Resolution Mechanisms in Cultural Property Related disputes: UNESCO Mediation and Conciliation Procedures" in Vadi, V.-Schneider, H. eds.(2014), no.33 above, pp.93-114.

[100] The UNESCO ICPRCP applies the "Rules of Procedure for Mediation and Conciliation in Accordance with Article 4, Paragraph 1, of the Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation".

[101] See Stamatoudi, I. (2011), no.6 above, p.198-200 on mediation, where it is also pointed out that only UNESCO Member States and Associate Members of UNESCO can take part in the Committee's mediation procedure representing either themselves or a public or private institution in their territory. Moreover, a request for the involvement of the ICPRCP may be addressed to a public or private institution in the territory of a Member or Associate Member State, only if the latter is immediately informed and expresses no objection.

[102] See Stamatoudi, I. (2016), no.26 above.

consuming as other forms of dispute resolution and it is conducted in the way the parties see fit to their needs and interests, without excluding parallel judicial procedures, which, in many cases, function as a means of pressure for the parties to reach an agreement.[103]

Greece was involved in a dispute that ended up in a settlement through negotiations with the J.P.Getty Museum in Los Angeles, California. The museum had acquired the objects that were allegedly illegally exported from Greece without exercising due diligence prior to the purchase. Court litigation in the U.S. would have been costly and time-consuming, in addition to the fact that the judgment of a Greek Court would not have been easily enforceable in the U.S. Finally, due to Greece's persistent efforts, the two parties entered into negotiations, through which they reached an agreement of future co-operation, including an exchange of know-how and exhibitions. The museum regained its good reputation, changed its acquisition policy and returned four antiquities to Greece in 2007 and two more in 2012.[104]

The case of Italy and the Metropolitan Museum of New York, that ended up in an agreement of the return of the Euphronius Krater and other artifacts to Italy, in exchange of loans of other Italian treasures to the museum,[105] was an exquisite example of settlement between a museum and a state regarding a return of one or more cultural objects and long-term loans of a number of other significant cultural objects in return.[106] The same example was followed in various agreements that took place between museums and states that saved precious time and the litigation costs and promoted important collaborations in the culture field.

In *Goodman v. Searle,* negotiation would have played a very important role in avoiding the cost of litigation. After the fruitless first negotiations, the parties entered a period of litigation that cost them time and money, since finally, they reached a settlement that recognized co-ownership of the painting and the institute paid the heirs' half, both parties having born the high litigation costs.[107] Likewise, in *Malewicz v. City of Amsterdam*, when the case was pending, a settlement was reached, according to which, five of the fourteen paintings at issue were recognized as the Malewicz's heirs property, whereas the rest of the paintings were kept by the City of Amsterdam and the Stedelijk Museum and, in return, the heirs ended the lawsuit.[108]

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[103] See Stamatoudi, I. (2011), no.6 above, pp.202-204, about negotiation and a series of cases that were resolved through it.

[104] See Stamatoudi, I. (2016), no.26 above.

[105] Agreement between the Ministry for Cultural Heritage and Activities of the Italian Republic and the Metropolitan Museum of Art, New York, of 21 February 2006.

[106] See Contel, R., Soldan, G., Chechi, A. "Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art," Platform ArThemis, Art-Law Centre, University of Geneva, no.30 above.

[107] See Bandle, A.L., Chechi, A., Renold, M.A. "Case Landscape with Smokestacks – Friedrich Gutmann Heirs and Daniel Searle," Platform ArThemis, no.80 above.

[108] See Chechi, A., Velioglu, E., Renold, M.A. "Case 14 Artworks – Malewicz Heirs and City of Amsterdam," Platform ArThemis, no.74 above.

4. Advisory panels

Many countries have formed Advisory panels that handle cases of return and restitution claims. Very often they resolve cases or they provide recommendations as to how a case should be resolved. The solution they propose is not obligatory for the parties, as their involvement has not been mutually decided by the parties of the dispute.[109] One of these Panels is the Glasgow City Council Repatriation Committee that returned the Lakota Ghost Dance Shirt to the Wounded Knee Survivors Association, after taking into consideration certain aspects of the case.[110]

In an attempt to facilitate the return of human remains from U.K. public museums to their tribes, the idea of a Human Remains Advisory Panel occurred in 2003 and in 2000 the U.K. Spoliation Advisory Panel was created and has dealt with both legal and moral issues concerning cultural objects looted by the Nazis and their return or the payment of compensation.[111] Other Panels that have dealt with claims related to Nazi-looted art are: the Commission for the Compensation of Victims of Spoliation in France (1999), the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in the Netherlands (2001), the Beratende Kommission in Germany (2003) and the Kunstrückgabebeirat (Austrian Art Restitution Committee, 1998).

5. Cultural diplomacy

Cultural objects have quite often played the role of "good will ambassadors" with regard to the relations between states, museums and other organizations.[112] The exchange of cultural objects for exhibitions and studies has always been used as a good way of building good relations between states or museums and constructing their good image towards the public opinion.[113]

Through cultural exchange by way of loans and exhibitions, sharing expertise and research programs or forming common policies and practices, museums and states create a nice climate, in which, as a result, any occurring cultural property claims tend to be resolved in a much easier and more effective way.[114] Such co-operation can also

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[109] See Stamatoudi, I. (2011), no.6 above, pp.207.

[110] See *ibid,* p.204 and the analysis of the criteria that the Committee took into consideration in order to decide the return of the Lakota Ghost Dance Shirt.

[111] *Ibid*, pp.205-206.

[112] Woudenberg, N.V. (2012), no.13 above, pp.15-16. It is pointed out that cultural objects could really perform as ambassadors and the author also poses the question whether a cultural object of a foreign state could actually be considered a diplomatic envoy and enjoy the diplomatic immunity that the Vienna Convention on Diplomatic Relations provides for.

[113] See Chechi, A. (2014), no.1 above, pp.194-197 where it is underlined how cultural diplomacy can function to the benefit of the parties and solve pending disputes.

[114] Stamatoudi, I. (2011), no.6 above, p.208. The author also highlights that disputes related to cultural objects returning to their country of origin should be treated in the light of "mutual understanding and benefit to world culture."

have a positive impact on the general good relations between the participating parties, which might benefit other sectors of their common activities as well and gain good publicity towards a specific audience or even at a worldwide level.

V. AVOIDANCE OF DISPUTES

1. Legitimate acquisition

a. Due diligence and provenance research

When a museum is on the verge of acquiring an object, either through a purchase or by donation, it is of vital importance to investigate the object's past, whether its former possessors had acquired it in a lawful manner, whether it is accompanied by an export certificate whenever it is necessary and whether there is any other legal reason for which the acquisition should not take place, if there is any suspicion that it might lead to a dispute later. A very careful inquiry regarding the object's provenance is deemed necessary to establish whether it is authentic, with valid and authentic documents that have to accompany it or whether there is a pending lawsuit related to it or any other legal procedure. Unprovenanced objects or objects with unclear provenance should not be acquired, if it is impossible to ensure a legitimate acquisition, as it is more than likely that there is a flaw that might come to light later in the future and possibly cause a dispute.[115]

b. Databases of Cultural Objects

The creation of databases and registers that include various categories of cultural objects, which have been reported as looted, stolen, illicitly exported or have become victims of any other illegal action, has provided significant help to museums and all kinds of cultural institutions but also dealers, collectors and all art professionals dealing with the acquisition of artworks. The objects in question are listed and anyone who is on the verge of selling or acquiring an item, whose provenance history is not sufficient or clear enough, can consult these websites that include pictures, whenever available, or detailed descriptions and useful information.[116]

Such databases are indicatively the following: the Art Loss Register, the International Foundation for Art Research (IFAR) Stolen Art Alert, the LAPD Crime Alerts and Latest Stolen Art, the Carabinieri Database of illegally removed cultural artefacts, the ICOM Red Lists of cultural objects at risk, the ICOM Archives Object ID, the Central Registry of Information on Looted Cultural Property 1933-1945, the Interpol database, the FBI National Stolen Art File, the German Lost Art Foundation.[117]

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[115] See Yeide, N.H., "Provenance and Museums" in *The PCA/Peace Palace Papers ed.* (2004), no.75 above, pp.102-104. on the methodology of provenance research and its necessary steps.
[116] See Akinsha, K., "The Temptation of the "Total" Database" in *ibid*, pp.161-165 on the efforts for the creation of a single database that could combine all information from as many databases as possible.
[117] See respectively: www.lostart.com,

c. Valid title

Ensuring valid title is of vital importance for the position of the museum in a dispute that might arise even many years after the acquisition of an object. Should it be a purchase or an acceptance of a donation, warranty of title should be demanded at all times and a further inquiry by an expert should take place, in order to establish the validity of he transferred title. This procedure will result in a good faith acquisition and will secure the museum's interests in case of a future dispute.[118] The same process should be followed as far as objects on long-term loans are concerned, as in such cases the rightful owners should be aware of the item's status or the museum should take action to meet the requirements of adverse possession after the required by the law time limit has passed.[119]

2. Personnel

a. Art experts

It is quite important that a museum employs a number of art experts that will have the duty to examine the artworks and express an opinion on whether an object is original or not, whether it has been reported as stolen and listed in a register for lost or stolen art, or whether there are any gaps in the history of its provenance.[120] Stylistic and scientific evaluation can be combined, in order for more accurate conclusions to be drawn.[121] A characteristic example of the importance of such research in a museum is that after the use of scientific authentication procedures, it was found that two paintings that belonged to the Statens Museum for Kunst in Copenhagen were actually

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https://www.ifar.org/stolen_art_alert.php,
http://lapdonline.org/Crime_Alerts_and_Latest_Stolen_Art,
http://tpcweb.carabinieri.it/SitoPubblico/search,
https://icom.museum/en/resources/red-lists/,
http://archives.icom.museum/objectid/,
https://www.lootedart.com/search2.php,
https://www.interpol.int/notice/search/woa,
https://www.fbi.gov/investigate/violent-crime/art-theft/national-stolen-art-file,
http://www.lostart.de/Webs/EN/Datenbank/Index.html;jsessionid=E87D70D223FFB9675471A2F4F8C30ACF.m1

[118] DuBoff, L.D. and King, C.O. (2006), no.4 above, pp.271-272.

[119] *Ibid*, p.275.

[120] See Vrdoljak, A.F. (2008), no.3 above, pp.239-240, on museum personnel training with an emphasis on due diligence in acquisitions and loans.

[121] DuBoff, L.D. and King, C.O. (2006), no.4 above, pp.61-62. See also on p.63 the *Hahn v. Duveen* case in which, due to Duveen's false evaluation that Hahn's painting could not be attributed to Leonardo da Vinci, the Kansas City Art Museum ceased the progress of the proceedings to acquire the painting from Hahn, until the matter was settled.

original Rembrandts,[122] while they had not been attributed to the famous painter until then.

Thorough research should be done and serious attention must be given, when a museum is in a position of acquiring or giving away an object for any reason and all the above matters should be taken into consideration with the aid of the experts.

b. Legal department

The existence of a legal team, regardless of whether it concerns an in-house legal department or a group of legal advisors, plays a very significant role in determining the legal issues that might arise with regard to a cultural object. When the museum acquires, gives away or even lends an object to another museum or institution for exhibiting reasons, all the legal parameters should be taken into consideration, in order to avoid the unfortunate event of a later dispute. But even when the dispute has already arisen, the legal advisors are the ones to be consulted as to whether and how the issue can be resolved, the legal ways or procedures that should be followed, so that judicial recourse or out-of-court settlement can be achieved.

3. Member of Museum Associations

Most museums are members of various associations that preserve their interests, protect their rights against each other and against third parties, individuals or states and list their obligations and the rules they have to comply with. Associations such as the International Council of Museums (ICOM), the American Association of Museums (AAM), the Association of Art Museum Directors (AAMD) and many other similar to them[123] provide a series of benefits to their members and very often for a set of rules that regulate their function and their image towards the public. By adopting certain common policies, they exchange information, know-how and experiences and they co-operate in a constructive way towards the achievement of better outcomes in their activities related to the promotion and protection of culture.

[122] See *ibid* p.68 where it is explained how experts reached this conclusion through thorough research that lasted three years and included X-rays, infrared reflectography, dendrochronology and study of the canvas thread count, round and layers of paint.
[123] See Chapter I.4 supra.

Conclusions

Through the assessment of various different cases, it is obvious that each one of them has its own particularities and there are many different factors that play their role in defining the final outcome, according to the procedure that was followed, the legislation that applied, the nature of the parties involved in the dispute.

It is observed that, through the passage of time, legislation has taken into consideration several matters related to cultural property and has strengthened its protection through international conventions (Hague, UNESCO, Unidroit and others) that apply within the territory of their member states, national legislation on the protection of cultural property and its rightful owners (HEAR Act, NAGPRA and others) but also soft law, which, even though not binding, sets principles that are widely respected and applied in practice (i.e. Washington Principles, UNESCO Declarations, Codes of ethics). The International Organizations related to cultural matters have also taken significant initiatives for the promotion of culture and have raised awareness regarding its protection to professionals, states and institutions, as well as the public that has become more sensitized in the matter and has begun to bring relevant claims.

The way a case is resolved by the courts or through out-of-court procedures depends on the parties that take part in the dispute. States, individuals and groups of people use different means of pressure, in order to achieve the better result of their claims and the laws and principles that apply also differ. As a consequence, the outcome of a case can vary from time to time and from place to place, due to the various legal backgrounds and similar cases have been dealt with in a much different manner than they might have been at a different time or place. However, all adopted solutions create precedents that are taken into account in later disputes that resemble the settled ones or elements of them.

The judicial procedure has raised several issues and has introduced new notions with regard to cultural property claims, especially as far as the U.S. courts are concerned. The majority of the cases of return and restitution requests have been dealt with by the American courts, which are quite popular for those bringing a claim, as their legislation is more favorable to the rightful owners of such objects and there is an extended precedent that justifies the claimants' choice. However, attempts have been made in many other countries to deal with such cases in a more flexible and appropriate way, that takes into consideration the unique character of cultural property issues.

On the other hand, it is clear that such cases tend to be resolved more effectively through alternative dispute resolution. Arbitration, mediation, negotiation and advisory panels have even established their own rules of procedure, specially designed for cultural property disputes which are being handled by experts in the field assessing both legal and moral issues, in order to reach the most appropriate solution. A series

of cases that ended up in out-of-court settlements and even agreements for future collaboration and mutual understanding have proven that alternative dispute resolution and cultural diplomacy act only to the benefit of the preservation of culture and the protection of the relevant rights.[124]

Taking all aspects into consideration, the role of museums in international disputes related to cultural property is a quite active one, as they are involved in a large number of cases that were resolved either through litigation or through alternative dispute resolution and are also involved in cases that are still pending. Therefore, museums should be very cautious as to what measures they have to take, in order to protect both culture and their interests by consulting the most suitable experts on each issue and by promoting their collaboration and common guidelines and ethics concerning the way they handle similar situations, towards the same direction of adopting common policies and priorities based on their experience and their needs. More challenges are about to be faced in the future concerning the evolution of laws and policies in practice and the professionals and institutions in this field should be prepared to safeguard what is valuable, the world's culture.

[124] See the benefits of ADR in Bandle, A.L. and Theurich, S. (2011), no.20 above.

Bibliography

BOOKS

Akinsha, K., "The Temptation of the "Total" Database" in The Permanent Court of Arbitration/Peace Palace Papers ed. (2004), *Resolution of Cultural Property Disputes*, The Hague: Kluwer Law International, pp.161-165.

Bandle, A.L. and Contel, R., " Reparation Art: Finding Common Ground in the Resolution of Disputes on Russian War Spoils and Nazi-Looted Art" in Vadi, V. - Schneider, H. eds. (2014), *Art, Cultural Heritage and the Market - Ethical and Legal Issues,* Berlin-Heidelberg: Springer-Verlag, pp.27-56.

Brown, M.F. and Bruchac, M.M., "NAGPRA from the Middle Distance: Legal Puzzles and Unintended Consequences", in Merryman, J.H. ed. (2006), *Imperialism, Art and Restitution,* Cambridge - N.Y.: Cambridge University Press, pp.193-217.

Campfens, E., "Alternative Dispute Resolution Claims and the Binding Expert Opinion procedure of the Dutch Restitutions Committee" in Vadi, V. - Schneider, H. eds. (2014), *Art, Cultural Heritage and the Market - Ethical and Legal Issues,* Berlin-Heidelberg: Springer-Verlag, pp.61-89.

Carl, M.H., "Legal Issues Associated with Restitution-Conflict of Law Rules Concerning Ownership and Statutes of limitation" in The Permanent Court of Arbitration/Peace Palace Papers ed. (2004), *Resolution of Cultural Property Disputes*, The Hague: Kluwer Law International, pp.185-192.

Checchi, A. (2014), *The Settlement of International Cultural Heritage Disputes,* N.Y.: Oxford University Press.

DuBoff, L.D. and King, C.O. (2006), *Art Law in a nutshell*, 4th ed., St.Paul, MN: Thomson/West.

Kaye, L.M. "Provenance Research: Litigation and the Responsibility of Museums", in Nafziger, J.A.R. and Nicgorski, A.M. eds. (2009), *Cultural Heritage Issues : The Legacy of Conquest, Colonization, and Commerce,* Leiden : Martinus Nijhoff Publishers, pp.405-420.

O'Keefe, P.J. and Prott, L.V. eds. (2011), *Cultural Heritage Conventions and Other Instruments - A Compendium with Commentaries,* Builth Wells, U.K. : Institute of Art and Law Ltd.

Palmer, N. “Litigation: The Best Remedy?” in The Permanent Court of Arbitration/Peace Palace Papers ed. (2004), *Resolution of Cultural Property Disputes*, The Hague: Kluwer Law International, pp.279-289.

Prowda, J.B. “The Perils of Buying and Selling Art at the Fair: Legal Issues in Title” in Vadi, V.-Schneider, H. eds. (2014), *Art, Cultural Heritage and the Market - Ethical and Legal Issues,* Berlin-Heidelberg: Springer-Verlag, pp.150-152.

Renold, M.A., “Stolen Art:The Ubiquitous Question of Good Faith” in The Permanent Court of Arbitration/Peace Palace Papers ed. (2004), *Resolution of Cultural Property Disputes*, The Hague: Kluwer Law International, pp.251-263.

Stamatoudi, I. (2011), *Cultural Property Law and Restitution - A Commentary to International Conventions and European Union Law,* Cheltenam, U.K. – Northampton, MA: Edward Elgar Publishing.

Thomas, D.H., “Finders Keepers and deep American History” in Merryman, J.H. ed. (2006), *Imperialism, Art and Restitution,* Cambridge - N.Y.: Cambridge University Press, *pp.221-226.*

Toman, J., “The Control System under the 1954 Hague Convention and its 1999 Second Protocol” in Meerts, P. ed. (2008), *Culture and International Law,* The Hague: Hague Academic Press, pp.121-153.

Urbinati, S., “Alternative Dispute Resolution Mechanisms in Cultural Property Related disputes: UNESCO Mediation and Conciliation Procedures” in Vadi, V.-Schneider, H. eds. (2014), *Art, Cultural Heritage and the Market - Ethical and Legal Issues,* Berlin-Heidelberg: Springer-Verlag, pp.93-114.

Vadi, V. (2014), *Cultural Heritage in International Investment Law and Arbitration,* N.Y.: Cambridge University Press.

Vrdoljak, A.F. (2008), *International Law, Museums and the Return of Cultural Objects,* N.Y.: Cambridge University Press.

Woudenberg, N.V. (2012), *State Immunity and Cultural Objects on Loan,* Leiden - Boston: Martinus Nijhoff Publishers.

Yeide, N.H., “Provenance and Museums” in The Permanent Court of Arbitration/Peace Palace Papers ed. (2004), *Resolution of Cultural Property Disputes*, The Hague: Kluwer Law International, pp.102-104.

ARTICLES

Bandle, A.L. and Theurich, S. (2011), "Alternative Dispute Resolution and Art Law – A New Research project of the Geneva Art-Law Center", *Journal of International Commercial Law and Technology*, vol.6, issue 1, 2011, pp.28-41 available at: https://plone.unige.ch/art-adr/cases-affaires/case-4-old-master-drawings-2013-feldmann-heirs-and-the-british-museum/anne-laure-bandle-and-sarah-teurich-alternative-dispute-resolution-and-art-law-journal-of-international-commercial-law-and-technology/view?searchterm=alternative+dispute+resolution (Last visited 21/01/2019).

Bandle, A.L., Chechi, A., Renold, M.A. "Case Landscape with Smokestacks – Friedrich Gutmann Heirs and Daniel Searle," Platform ArThemis on https://plone.unige.ch/art-adr/cases-affaires/landscape-with-smokestacks-2013-friedrich-gutmann-heirs-and-daniel-searle#section-6 , Art-Law Centre, University of Geneva (Last visited 27/01/2019).

Chechi, A. (2008),"The return of cultural objects removed in times of colonial domination and International Law: The case of Venus of Cyrene" available at http://www.academia.edu/3426620/The_Return_of_Cultural_Objects_Removed_in_Times_of_Colonial_Domination_and_International_Law_The_Case_of_the_Venus_of_Cyrene (Academia platform) pp. 160-164 (Last visited 24/01/2019).

Chechi, A., Bandle, A.L., Renold, M.A. "Case Two Dürer Paintings – Kunstsammlungen Zu Weimar v. Elicofon," Platform ArThemis on https://plone.unige.ch/art-adr/cases-affaires/2-durer-paintings-2013-kunstsammlungen-zu-weimar-v-elicofon?searchterm=kunstsa#!prettyP hoto[pp_gal]/1/, Art-Law Centre, University of Geneva, (Last visited 21/01/2019).

Chechi, A., Bandle,A.L., Renold, M.A."Case Venus of Cyrene – Italy and Libya," Platform ArThemis, Art-Law Centre, University of Geneva on https://plone.unige.ch/art-adr/cases-affaires/venus-of-cyrene-2013-italy-and-libya?searchterm=venus+of+cyrene (Last visited 24/01/2019).

Chechi,A., Velioglu,E., Renold,M.A. "Case 14 Artworks – Malewicz Heirs and City of Amsterdam," Platform ArThemis on https://plone.unige.ch/art-adr/cases-affaires/14-paintings-2013-malewicz-heirs-and-city-of-amsterdam , Art-Law Centre, University of Geneva (Last visited 27/01/2019).

Contel, R., Soldan,G., Chechi, A. “Case Euphronios Krater and Other Archaeological Objects – Italy and Metropolitan Museum of Art,” Platform ArThemis, Art-Law Centre, University of Geneva on https://plone.unige.ch/art-adr/cases-affaires/euphronios-krater-and-other-archaeological-objects-2013-italy-and-metropolitan-museum-of-art?searchterm=italy+metropolitan (Last visited 24/01/2019).

Contel, R., Soldan, G., Chechi, A. “Case Portrait of Wally – United States and Estate of Lea Bondi and Leopold Museum,” Platform ArThemis on: https://plone.unige.ch/art-adr/cases-affaires/case-portrait-of-wally-2013-united-states-and-estate-of-lea-bondi-and-leopold-museum?searchterm=wally (Last visited 25/01/2019).

O’Donnell, N. “Court of Appeals upholds claims to renowned Guelph Treasure sold under duress to Nazi agents” in Sullivan & Worcester blog, on https://blog.sandw.com/artlawreport/court-of-appeals-upholds-claims-to-renowned-guelph-treasure-sold-under-duress-to-nazi-agents (Last visited 26/01/2019).

Stamatoudi, I. (2016), “Alternative Dispute Resolution and Insights on Cases of Greek Cultural Property: The J.P.Getty Case, the Leon Levy and Shelby White Case, and the Parthenon Marbles Case”, *International Journal Of Cultural Property,* vol.23, November 2016, pp.433-457.

Stamatoudi, I. (2009), “Mediation and Cultural Diplomacy” in *Museum International-Return of Cultural Objects: The Athens Conference*, Vol LXI, n°1-2 / 241-242, May 2009, pp.116-120 on the benefits of mediation and the role of UNESCO ICPRCP, available at: https://unesdoc.unesco.org/ark:/48223/pf0000183091 (Last visited 31/01/2019).

Wallace, A., Chechi, A., Renold, M.A. “Case Chagall Gouache – Solomon R. Guggenheim Foundation and Lubell,” Platform ArThemis, Art-Law Centre, University of Geneva on https://plone.unige.ch/art-adr/cases-affaires/case-chagall-gouache-2013-solomon-r-guggenheim-foundation-and-lubell?searchterm=lubell#!prettyPhoto[pp_gal]/0/ (Last visited 25/01/2019).