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Summary

THE VALUE OF CULTURAL PROPERTY THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS AS AN EXAMPLE OF A VALUE-BASED APPROACH TO CULTURAL PROPERTY RESTITUTION

Restitution of cultural property is perceived as a “hard case” in law. The question of where an item should be placed and by whom it should be owned is often not answered when looking at property rights. The resolution of restitution disputes often lies in the values attributed to a given object, which is why going beyond positive law is a necessary element of the analysis of restitution disputes.

The thesis of the dissertation is as follows: each restitution argument is a reflection of the values attributed to a given object, and these values refer to both collective and individual interests. The 1995 UNIDROIT Convention is a relatively new instrument of international law, and its provisions that take the values of cultural property into account, regardless of who it belongs to and whether it is classified as "cultural heritage." Due to its comprehensive nature and the impact on raising the level of international cooperation in the field of counteracting the illegal trade in cultural goods and creating standards on the art market, the 1995 UNIDROIT Convention was chosen as a reference point for creating a value-based restitution model.

The first level on which the values of cultural goods are analysed in this work is the linguistic layer of legal provisions, both in the area of cultural heritage law and, *inter alia*, intellectual property law. The definition and tone of terms used in different languages and sources vary by country and legal area. Therefore, in the first place, I set myself the goal of presenting the diversity of language choices in order to narrow the scope to one term, also used in the 1995 UNIDROIT Convention, and then analyse the provisions using this term. As a result of the analysis of the terms used in the translated texts, it can be concluded that even direct equivalents do not guarantee the same scope of application, and the term used should reflect the values to be protected, because individual terms do not always cover their full scope. For this purpose, the meanings of such terms as: cultural heritage, cultural goods, monuments, national treasures,

and even antiques were analysed and compared in order to indicate the diversity of values attributed to each of them. For simplicity and to avoid repetition, the terms: cultural goods, objects, and items were used interchangeably, if the context allowed it.

Secondly, the scope of the 1995 UNIDROIT Convention was analysed. The Convention is a comprehensive instrument focusing, firstly, on the importance of protecting cultural property, regardless of ownership, and secondly, listing due diligence measures, which are among the main elements of its impact on both cultural heritage law and the art market. This Convention, due to its comprehensive nature, was chosen as a point of reference for the analysis of individual provisions illustrating the value of cultural property as a basis for further implementation of restitution and/or return activities.

Drawing on the provisions of the Convention, a broader model of restitution was proposed, based on values, principles and arguments, in order to classify and organize ways of reasoning in the context of the restitution of cultural property. The model aims to create a catalog of values and the corresponding principles and arguments that facilitates the categorisation not only of restitution arguments, but also of the very values attributed to cultural goods. Since various examples of restitution and return require individual analysis, the model is a clear simplification of values, principles and arguments, but thanks to its structure, it allows readers and researchers to select and combine adequate elements of the model to build further argumentation and analysis of the value of cultural goods in the context of, among others, cultural heritage and other disputes.

Furthermore, selected case studies illustrating the different values followed by the parties to restitution disputes are presented. The cases included disputes originating not only in the 19th and 20th centuries, but also in more recent developments. They concern not only settled and pending lawsuits, but also hypothetical disputes. Thanks to this approach, it was possible to go beyond historical events and propose solutions that may be beneficial to both parties, e.g. in the case of property displaced as a result of territorial changes. Selected disputes concern not only cultural heritage classified as “cultural heritage” within the meaning of international law, but also contemporary art with an unclear status, e.g. murals. The choice of this approach was dictated by the fact that the restitution and/or return of cultural goods is often associated with items of a specific historical status, which limits the way of perceiving the values attributed to cultural goods.

The 1995 UNIDROIT Convention not only addresses the problem of legal gaps between different systems, but also encourages international cooperation to find balanced solutions to restitution and/or return disputes. This thesis sets out the grounds for the creation of a value-based model of cultural property restitution. Cultural property, viewed as a unique set of elements, of both tangible and intangible value, is constantly being looted and destroyed. The cases of spoils of war or other items being illicitly trafficked regardless of the context of their removal from the original location, are not only linked to ownership issues, but also irreversible emotional damage caused to individuals and the society as a whole.

Cultural property restitution may be defined in many ways but, primarily, its goal is to limit the size of this damage. As hard as it may be, restitution of cultural property performed in respect of the value of the objects in question, for all parties involved in a dispute, may serve as a way of balancing the arguments on both sides. As a result of case study analysis, the main conclusion of the thesis is that when the same values and principles are applied to the object on both ends, the arguments may, respectively, lead to a balanced solution, regardless of the form of the process leading to its return.

The value-based model is a simplified, bullet-point collection of restitution arguments, cultural heritage law principles, and values assigned to cultural property that allows readers and researchers to select and combine adequate elements to develop further argumentation and analysis of the overall value of cultural property, not only in the context of cultural property restitution.

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