

# EDITORIAL

*Dear Reader,*

We are pleased to present you with the latest, eighteenth already issue of the biannual “Santander Art and Culture Law Review” (SAACLR) (2023). This issue, being the fruit of cooperation between Antoinette Maget Dominicé, Professor of Art Law at the University of Geneva, and SAACLR editors (Andrzej Jakubowski, Alicja Jagielska-Burduk, and Piotr Stec), is particularly devoted to the questions surrounding the actions of the European Union (EU) in respect of culture and cultural heritage. Special focus is on the EU’s initiatives designed to curb the trafficking in cultural property. Indeed, the prohibition and prevention of trafficking in cultural objects has become a priority issue in the current cultural agenda of the EU. In recent years, marked by armed conflicts in Iraq, Syria, Ukraine, and Yemen, the Union has taken a number of measures to counter the illicit trade in such goods, at both the legislative and political levels. The system of protection of the cultural heritage of EU Member States against illegal export, which had been in place for almost 30 years, was supplemented in 2019 with provisions on the entry of cultural objects from illegal sources into the EU: Regulation (EU) 2019/880 on the introduction and the import of cultural goods.<sup>1</sup> Moreover, the EU adopted robust legislation to fight against money laundering and terrorist financing.

Several developments have also occurred at the policy level. Many of the current efforts are based on close cooperation with other international organizations and agencies, particularly with UNESCO, UNIDROIT, and the Council of Europe.

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<sup>1</sup> See Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods, OJ L 151, 7.06.2019, p. 1.

Significantly, the need for reinforced EU action with respect to trafficking in cultural goods was identified in EU Security Union Strategy (2020)<sup>2</sup> and the EU Strategy to Tackle Organised Crime for 2021-2025 (adopted in 2021).<sup>3</sup>

In this regard, the Action Plan against Trafficking in Cultural Goods, launched in December 2022,<sup>4</sup> supplemented by the Council Conclusions on the fight against trafficking in cultural goods, adopted in June 2023,<sup>5</sup> are considered as milestones on the way to a new approach by the EU. These steps are part of a more general framework, which seeks to deal with the circulation of cultural goods in a more holistic way. It has become a recognized truism that armed conflict endangers cultural heritage to a significant extent. Whether it be the destruction of monuments, theft from collections, or illicit excavations, cultural property is the target of numerous illegal activities. These events, which have been repeated throughout the world's history, have grim consequences for the integrity of cultural property. Moreover, the attacks are not limited to the material structure of these objects, but have a wider impact on their meaning and reception in society. The polysemy of damages therefore calls for political, legal, and practical responses, while also becoming a field of study for the humanities and social sciences and a source of inspiration for artistic creation.

Today the development of local initiatives can be observed, both national and international in scope, as well as bilateral agreements that indirectly reinforce cultural multilateralism and result in the publication of numerous reports on contemporary situations. In this context one may point out new training programs launched at various universities; the development of various digital applications aiming to identify illegally excavated objects; or the 2023 report to the European Parliament's Committee on Culture and Education on "Protecting cultural heritage from armed conflicts in Ukraine and beyond".<sup>6</sup> Most recently, a study on "Cross-border claims to looted art" has been presented to the European Parliament's

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<sup>2</sup> See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy*, 24 July 2020, COM(2020) 605 final, p. 20.

<sup>3</sup> See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to Tackle Organised Crime*, 14 April 2021, COM(2021) 170 final, p. 17.

<sup>4</sup> See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods*, 13 December 2022, COM(2022) 800 final.

<sup>5</sup> General Secretariat of the Council of the European Union, *Council Conclusions on the fight against trafficking in cultural goods*, 8 June 2023, 10249/23.

<sup>6</sup> E. Campfens et al., *Research for CULT Committee - Protecting Cultural Heritage from Armed Conflicts in Ukraine and Beyond*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels 2023, [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2023\)733120](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)733120) [accessed: 30.10.2023].

Committee on Legal Affairs.<sup>7</sup> These different projects and studies address the injustices of the past, while at the same time seeking to act proactively on the conflicts of the present and on their consequences, building on recognized good practices and further enhancing them.

In relation to these developments an international symposium, “Combating the Illicit Trade in Cultural Objects: Interdisciplinary Challenges and New Perspectives of EU Law and Policy”, was held on 13 May 2022 in Opole (Poland). The event was organized in cooperation between the Institute of Law Studies and UNESCO Chair in Cultural Property Law of the University of Opole; the Institute for Art History of the Ludwig Maximilian University of Munich; the 1995 UNIDROIT Convention Academic Project; the SAACLR Editorial Board; and the International Society for Research on Art and Cultural Heritage Law (ISCHAL), and was supported by the BAYHOST Programme and by the National Science Centre (Poland; No. UMO-2019/35/B/HS5/02084).<sup>8</sup>

The contributions presented and debated in Opole are published in the present issue and included in the sections: General Articles and Short Commentaries (a special section that replaces our usual one of “Legal Commentaries”).

In the opening article of the General Articles section, “Squaring the Triangle of Cultural Property Law. Seventy Years of UNIDROIT’s Work”, Giuditta Giardini demonstrates how the almost 70 years of the work of this organization in the field of unification of private law have shaped the principles regulating *a non domino* sales of stolen cultural objects. While offering such a historical perspective, she also examines the impact of UNIDROIT’s standard-setting activities on domestic legislation and case law. The second article in this section, “Combating Illicit Trade in Cultural Objects in the Staatliche Museen zu Berlin (State Museums in Berlin): Policies in Acquisitions and Loans and Research of Provenance”, authored by Petra Winter and Florentine Dietrich, identifies and analyses the legal and moral questions which arise in museum practice. In particular, it focuses on the provenance issues associated with the implementation of the 1998 Washington Conference Principles on Nazi-Confiscated Art.

The tasks and responsibilities of museums are also addressed by Irini Stamatoudi and Konstantinos Roussos in their article, “Dealing with Illicit Trade in Cultural Objects in the Context of Cultural Heritage Management for Museums”. They particularly focus on the benefits of Cultural Heritage Management (CHM) in supporting museums in their efforts to play a vital role in fighting the illicit trafficking of cultural property.

<sup>7</sup> E. Campfens, *Cross-border Claims to Looted Art. Study Commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the Request of the JURI Committee*, October 2023, [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2023\)754126](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)754126) [accessed: 30.10.2023].

<sup>8</sup> See the programme of the symposium at: <https://dpc.hypotheses.org/4834> [accessed: 20.10.2023].

In turn the next article, “Blockchain and Illicit Trafficking in Cultural Goods”, authored by Vissarion Giannoulis and Galateia Kapellakou, explores how blockchain could be used as a mechanism to certify the provenance and movements of cultural goods and contribute to the fight against the illicit trafficking in cultural property. While providing an overview of the relevant international and European norms, highlighted using examples from national law, they argue that the role of blockchain in curbing the illicit art trade can be seen not only in terms of best practices, but also in terms of an increased visibility for cultural goods and their international movement.

The series of contributions presented at the international symposium, “Combating the Illicit Trade in Cultural Objects: Interdisciplinary Challenges and New Perspectives of EU Law and Policy” are examined in two articles included in the special section: Short Commentaries. In “Illicit Trade in Cultural Objects under the Spanish Law: The *Cabeza de mujer joven* Case”, Luis Javier Capote Pérez discusses the legal complexities of art market regulation in Spain. The focus is on the case of Pablo Picasso’s famous painting, *Head of a young woman*, illicitly traded and exported from Spain, and the subsequent legal vicissitudes arising therefrom. In turn, Kamil Zeidler and Paula Chmielowska, in their commentary “Trade and Export of Archaeological Cultural Goods: A Conflict of Ideas”, discuss restrictions on the circulation of archaeological objects versus the development of a black market for such objects. While referring to the practice of Polish cultural heritage legislation, the authors advocate the need for a renewed discussion on the most effective ways to protect archaeological heritage.

The general theme of combating the illicit trade in cultural objects is also addressed in two interviews. In the first one, Céline Chazelas-Baur, a policy officer in the unit “Organised Crime and Drugs” at the European Commission, Directorate-General Migration and Home Affairs, explains the scope of the 2022 Action Plan against Trafficking in Cultural Goods. She also addresses the ways of its implementation, considering current challenges such as Russia’s war of aggression against Ukraine. In the next interview Julie Sissia, scientific coordinator of the French-German Research Funding for Provenance Research, comments on the practices surrounding the implementation of this newly launched bilateral cooperation in the museum sectors of the two countries, and reviews its scientific and practical implications for both Europe and the world globally.

The present SAACLR issue also features other important contributions on current topics related to the intersection between law, culture, cultural diversity, and cultural heritage. In this regard, the issue of colonial loot and its redress is debated in the third interview and in the concluding article of the General Articles section. The interviewee, Joacine Katar Moreira – founder of the Institute of Black Women in Portugal (INMUNE) in 2018 and now Director and Founder of ANASTACIA – Decolonial Center of Studies and Intervention – discusses her work aimed at the decolonization of Portuguese museums. She explains that while the restitution de-

bate has already been started, much still has to be done in terms of provenance research and adequate inventorying of cultural materials obtained from Portugal's former colonies.

In turn, Afolasade A. Adewumi and Victor O. Adenekan, in their article "Making the Case for the Restitution of Illicitly Acquired Cultural Objects under the Rules of *Jus Cogens*", argue that the prohibition of plunder and pillage of cultural property constitutes a *jus cogens* rule of international law. Its violation therefore gives rise to an unconditional obligation to return such property to their countries and communities of origin.

As in the former issues of the SAACLR, this one also features a Debut Section, which in this issue includes one article; and a Varia section, which offers five contributions. Accordingly, Ding Guangyu debuts with the article, "Cultural Heritage Rights and Rights Related to Cultural Heritage: A Review of the Cultural Heritage Rights System". The author critically engages with the theoretical debate on the relationship between the "right to cultural heritage" and "rights related to cultural heritage".

The Varia section opens with "State Aid to Promote Culture and Heritage Conservation: Museums and Other Cultural Institutions as Recipients of EU State Aid", authored by Łukasz Stępkowski. This article addresses the issue of whether European Union state aid granted for the purposes of promoting culture and heritage conservation is subject to the prohibition of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) and its derogations. The author offers a critical assessment of the Commission's approach in light of the jurisprudence of the European Court of Justice. The second article in this section, by Gábor János Dudás, András Kovács, and Márton Schultz, is entitled "Personal Data as Consideration". The authors argue that personal data may have a commercial value in the European legal systems, and as such it can function as consideration and has a *quid pro quo* character. They explain that this affects cultural heritage in many aspects – from the sending of newsletters to selling merchandise products in museums. The European law dimension of cultural activities is also examined by Edit Sápi in "A European Panorama on the Copyright Status of Stage Directors". This article presents the theoretical, legislative, and jurisprudential positions on the copyright situation of a theatre director from a comparative law perspective, and offers a set of analytical recommendations.

The next contribution in the Varia section, "From the Ashes: Guarantees of Non-Recurrence for Destruction of Cultural Heritage", authored by Pádraig McAuliffe, deals with the integrity of cultural heritage as a matter of concern for transitional justice. The author argues that the World Heritage Convention, notwithstanding its circumscribed emphasis on material and places of outstanding universal value, is nevertheless applicable to all heritage to which guarantees of non-recurrence might be attached, and provides an achievable "good enough" practice model, provided there is a threshold level of domestic political will. In this

respect, the World Heritage Convention circumvents time-consuming debates about best models at a time of maximum jeopardy by providing a plan of action, and the Convention enjoys sufficient status and authority to galvanize policy. The Varia section concludes with the contribution by Terngu Sylvanus Nomishan and Abubakar Sule Sani, “Intangible Cultural Heritage Protection and Nigeria’s Heritage Legislation”. This article focuses on the legal and technical challenges of protecting intangible cultural heritage in Nigeria. It demonstrates that numerous intangible cultural heritage resources in Nigeria are negatively impacted by political and societal instability, the increasing demand for antiquities and artworks, and socio-economic challenges, amongst other human-induced factors. The authors argue that the existing national heritage legislation in Nigeria is insufficient, both in terms of addressing current events and its lack of enforcement and efficiency, rendering its provisions ineffective.

Finally, this issue includes a series of notes on the most pertinent new books on cultural heritage law published in English in 2023. It also features a Call for Papers “Safeguarding Cultural Property in Armed Conflict: Revisiting the Implementation of the 1954 Hague Convention on the Occasion of Its 70th Anniversary”. The issue closes with the note on launching the Committee on Art and Cultural Heritage Crimes within the framework of the activities of the Jean Monnet Centre of Excellence, “The EPPO (European Public Prosecutor’s Office) and EU Law: A Step Forward in Integration” (EPPONFI), established at the University of Milan-Bicocca (Italy).

We hope that you will enjoy this new issue of the “Santander Art and Culture Law Review” and find its content relevant and enlightening. We encourage you to contact us (at: [saacreditors@gmail.com](mailto:saacreditors@gmail.com)) if you wish to reply to the call for papers, or just to express your opinion regarding the content of our volumes. We would also like to remind you that the journal is available both in print and online in Open Access ([www.ejournals.eu/SAACLR](http://www.ejournals.eu/SAACLR)). We are also pleased to inform you that the journal is currently indexed in Scopus; the European Reference Index for the Humanities and the Social Sciences (ERIH PLUS); the Central and Eastern European Online Library (CEEOL); and the Central European Journal of Social Sciences and Humanities (CEJSH). SAACLR is also among the research journals supported by Poland’s Ministry of Science and Higher Education, and is indexed in its official index.

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