

COMMENTARIES

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Circulation of Cultural Objects in Russian Law – An Overview**

Abstract: The aim of this article is to offer an introduction to the Russian Federation’s cultural property legislation. More precisely, this article focuses on the civil and criminal law provisions for cultural property acquisition, commerce, and protection. First it offers an overview of the definition of cultural valuables, its status under Russia’s legislation, and its commercial turnover. It explains that cultural valuables constitute “res commercium”, with free commercial circulation within the territory of the State, i.e. it is not “res extra commercium”, albeit its legal status demonstrates it is subject to certain restrictions concerning the import and export of cultural property. It further outlines recent amendments to the Law on the export and import of cultural goods and explores the construction of inheritance funds as a potential option for managing cultural property and art collections. This article also argues that problems

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presented by the illegal circulation of cultural property are often resolved at the national level and courts play a major role either favouring bona fide purchasers or true owners. Hence the status of bona fide purchaser is addressed herein by way of interpretation of the court practice. Finally, from perspective of criminal law this article explains that Russia – in order to offer a better system for protecting cultural property against destruction and theft – is currently considering ratification of the 2017 Council of Europe’s Convention on Offences relating to Cultural Property. The article is based on laws of the Russian Federation as of March 2019.

Keywords: cultural heritage, civil law, ownership, private property rights, criminal law

Introduction

[...] No greater test of the genuineness of both individual and communal culture can be applied than the attitude adopted toward the past, its institutions, its treasures of art and thought. The genuinely cultured individual or society does not contemptuously reject the past. They honour the works of the past, but not because they are gems of historical chance, not because, being out of our reach, they must needs be looked at through the enshrining glass of museum cases. These works of the past still excite our heartfelt interest and sympathy because, and only in so far as, they may be recognized as the expression of a human spirit warmly akin, despite all differences of outward garb, to our own. This is very nearly equivalent to saying that the past is of cultural interest only when it is still the present or may yet become the future.¹

Cultural heritage has specific significance and cultural valuables become the foundation for creating a solid platform for both high moral and ethical principles of human evolution as well as the formation of civil society and the rule of law. The preservation of cultural heritage and the protection of cultural property cannot be considered exclusively as a duty of the State (by way of legislative initiative and law enforcement practices), but really are a matter of concern for each person living in today’s world. Along with such flagrant disasters as wars, armed conflicts, illegal archaeological excavations, as well as acts of nature, damage to goods of cultural value and art is directly caused by man, either by way of theft, plundering, looting, the deliberate damaging of historical and cultural monuments, and the illegal export and import of cultural property; all of which negatively affect the preservation of national and world cultural heritage. Supporting and strengthening Russian civic identity based on spiritual, moral, and cultural values of the peoples of the Russian Federation are one of the major state goals under the Presidential

¹ E. Sapir, *Culture, Genuine and Spurious*, “American Journal of Sociology” 1924, Vol. 29(4), p. 422.

Decree No. 204 “On the national goals and strategic objectives of the development of the Russian Federation for the period up to 2024”.²

Culture and the preservation of cultural heritage are, along with political and economic stability, among the most important tasks of any State. In regulating the legal status of cultural property, its internal movement, and transfer from one country to another, the right balance must be preserved between settling private law disputes between bona fide purchasers and true owners of acquired property, as well as giving priority to the national interest in cultural heritage preservation. This is particularly evident in the regulation of the export of cultural property (prohibition or restrictions on export; export with mandatory return of certain property; application of the *lex situs* rule and, depending on the case, the rejection by courts of general time bars for actions involving disputes over the international transfers of cultural valuables).

In Russia, as in most of the national private law systems in Europe, there is no distinct treatment of cultural property in the commercial laws governing the sale of cultural property, hence commerce is carried out in accordance with the general requirements of the civil law on property rights and other real rights with some restrictions. The same applies to inheritance matters, since the inheritance chapter of the Civil Code of the Russian Federation³ does not contain special provisions for cultural property. The “inheritance funds” concept has been recently introduced, and is further addressed under the Acquisition and Inheritance section, which explains the aim of the fund as an option for the testator’s cultural estate management and the preservation of art collections as a single item.

Another civil law aspect concerns the acquisition of cultural property in good faith. Accordingly, the Russian civil law provides for the protection of a bona fide purchaser. In order to balance the interests of the original (legitimate) owner and subsequent purchasers in the case of alienation of cultural goods against the will of the person entitled to their possession, in accordance with Article 302 of the Civil Code if the property is purchased from a person who did not have the right to alienate it, about which the acquirer did not know and could not know (i.e. a bona fide purchaser), then the owner has the right to reclaim this property from the acquirer in the event that the property was lost by the owner or the person to whom possession of the property was transferred by the owner, or stolen from one or the other, or the owner was deprived of possession by any other means outside their will.

² Указ Президента Российской Федерации № 204 «О национальных целях и стратегических задачах развития Российской Федерации на период до 2024 года» [Decree No. 204 of the President of the Russian Federation “On the national goals and strategic objectives of the development of the Russian Federation for the period up to 2024”], 7 May 2018, <http://kremlin.ru/acts/bank/43027> [accessed: 10.04.2019].

³ Гражданский кодекс Российской Федерации [Civil Code of the Russian Federation], part one dated 30 November 1994, No. 51-FZ; part two dated 26 January 1996, No. 14-FZ; part three dated 26 November 2001, No. 146-FZ; part four dated 18 December 2006, No. 230-FZ. FZ stands for Federal Law.

If the property is acquired free of charge from a person who did not have the right to alienate it, the owner shall have the right to reclaim the property in all cases. Conscientiousness is an internal criterion that reflects a person's lack of awareness of the illegality of their action in acquiring the property. However, court practice shows that cultural objects can be still returned if the plaintiff can prove the source and their original title.

Apart from private law difficulties surrounding the acquisition and protection of cultural property, legal problems still need to be resolved in order to provide effective protection against unlawful removal, trafficking, theft, and illegal trade in cultural objects. Concerned that offences related to cultural property are growing on global scale and that such offences are leading – to an increasing extent – to the destruction of the world's cultural heritage, Russia has reinforced its proactive approach to combating the illegal export and import of cultural property and other art market crimes by having joined last year the Council of Europe Convention on Offences relating to Cultural Property of 19 May 2017 (“Nicosia Convention”).⁴ This article offers an overview of the provisions of the Criminal Code of the Russian Federation aimed at combating cultural property crimes.

The Notion of Cultural Objects as Transferable Goods in Russian Law

The commercial turnover of cultural property is regulated on the interstate and national level. Circulation of cultural property is majorly governed by private law provisions and law instruments on export and import (either for the purpose of retention of cultural objects within the country or monitoring their movement in or out of the country). While currently there are regulations, requirements, and some restrictions on the import and export of cultural property, nevertheless cultural property represents “*res commercium*” and is subject to free commercial circulation within the territory of the Russian Federation, i.e. it is not “*res extra commercium*”.

In accordance with Article 74(2) of the Constitution of the Russian Federation,⁵ restrictions on the movement of goods and services may be imposed in accordance with federal law if it is necessary to ensure safety, protect human life and health, or protect nature and cultural valuables; and the same is restated under Ar-

⁴ CETS 221.

⁵ Конституция Российской Федерации принята всенародным голосованием 12 декабря 1993 г. (с учетом поправок, внесенных Законами Российской Федерации о поправках к Конституции Российской Федерации от 30.12.2008 № 6-ФКЗ, от 30.12.2008 № 7-ФКЗ, от 5.02.2014 № 2-ФКЗ, от 21.07.2014 № 11-ФКЗ) [The Constitution of the Russian Federation, adopted by national referendum on 12 December 1993 (as amended by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation dated 30 December 2008, No. 6-FKZ; dated 30 December 2008, No. 7-FKZ; dated 5 February 2014, No. 2-FKZ; dated 21 July 2014, No. 11-FKZ)]. FKZ stands for Federal Constitutional Law.

article 1 of the Civil Code which allows goods, services, and financial assets to move freely throughout the Russian Federation. Restrictions on the movement of goods and services may be imposed in accordance with federal law, if they are necessary to ensure safety, to protect people's life and health, and to protect nature and cultural valuables.

On the interstate level, the Russian Federation participates in conventions devoted to the legal regulation of the circulation of cultural objects and protection of cultural heritage; such as the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970 ("1970 UNESCO Convention"; signed and ratified by the USSR),⁶ the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995, complementing the 1970 UNESCO Convention (signed but not yet ratified by Russia),⁷ among others. Specific measures to implement these obligations on the national level were proposed in the UNESCO Recommendation for the Protection of Movable Cultural Property of 28 November 1978.⁸ For the Russian Federation, being the legal successor of the international obligations of the Soviet Union, implementation of the main provisions of the 1970 UNESCO Convention became possible via the adoption of the Federal Law No. 4804-I "On the export and import of cultural goods" in April 1993 ("Law on export and import"),⁹ which is based on universally recognized principles and norms of international law which are an integral part of the legal system of the Russian Federation.

On national level, the basic legislation comprises the Constitution of the Russian Federation; the Federal Law No. 3612-I "Fundamentals of the law of the Russian Federation on culture" of 9 October 1992 (as amended) ("Law on culture");¹⁰ the Law on export and import of 15 April 1993 (as amended on 28 December 2017); and protection as set out under the Criminal Code of the Russian Federation of 13 June 1996,¹¹ and others, as well as by-laws and instructions of the relevant competent authorities introducing the regulation and protection of cultural property, containing certain restrictions on the circulation of cultural property.

Under Article 44 of the Constitution of the Russian Federation, every person is guaranteed freedom of literary, artistic, scientific, technical, and other forms of creativity and teaching. Intellectual property is protected by law; every person has

⁶ 823 UNTS 231.

⁷ 34 ILM 1322.

⁸ http://portal.unesco.org/en/ev.php-URL_ID=13137&URL_DO=DO_TOPIC&URL_SECTION=201.html [accessed: 15.04.2019].

⁹ Закон Российской Федерации «О вывозе и ввозе культурных ценностей» (с изменениями и дополнениями), 15 April 1993, as amended.

¹⁰ Закон Российской Федерации «Основы законодательства Российской Федерации о культуре» (с изменениями и дополнениями), 9 October 1992, as amended.

¹¹ Уголовный кодекс Российской Федерации, 13 June 1996, No. 63-FZ.

the right to participate in cultural life, to make use of cultural institutions, and to access cultural valuables.¹² Everyone is obliged to take care of the preservation of historical and cultural heritage, and to preserve monuments of history and culture.

International conventions provide the notions of both “cultural heritage” (a broader term referring to the great variety of cultural manifestations) and “cultural property”, valuables or “cultural objects” (relating to tangible heritage). Based on the history, traditions, and particular specific features of the nation and country each State selects its own means to provide a national definition of the concept of “cultural valuables”. In fact, in most cases these notions resemble those under international conventions and treaties. It is worth mentioning that in the same country different or similarly close definitions or concepts may apply in different branches of law, as is the case for Russia. The Constitution of the Russian Federation introduces the concepts of “cultural valuables” as well as “historical and cultural heritage”, but provides no definitions thereof.

Moreover, although Russia’s Civil Code sets out some provisions for cultural valuables and objects of art and cultural heritage, it provides no specific definitions in this regard. Accordingly, the Civil Code covers movable and immovable property, including cash and documentary securities, and other property, including non-cash assets, non-documentary securities, and other property rights. It also covers results of work and of services, protected results of intellectual activity and means of individualization (intellectual property) equated to them, as well as intangible benefits.¹³ Hence wherever the Civil Code refers to cultural valuables or objects of cultural heritage one should consult other legislative acts dealing with the specific subject matter. In other words, Russian legislation offers no uniform regulatory criteria and classifications of cultural valuables and their categories. Each particular piece of legislation provides its definition.¹⁴

Importantly, the Law on culture covers moral and aesthetic ideals, norms and patterns of behaviour, languages, dialects, national traditions and customs, historical toponyms, folklore, arts and crafts, cultural works and arts, the results and methods of scientific research into cultural activities, buildings, structures that have historical and cultural significance, objects and technologies, and ter-

¹² This correlates to the universally recognized principle and rule of international law enshrined in Article 27(1) of the Universal Declaration of Human Rights, 10 December 1948, UNGA Res. 217 A(III), specifying that everyone has the right to freely participate in the cultural life of society, enjoy art, and participate in scientific progress and enjoy its benefits.

¹³ Article 128 Civil Code.

¹⁴ See also Article 3 Закон Российской Федерации «О Музейном фонде Российской Федерации и музеях в Российской Федерации» (с изменениями и дополнениями) [Federal law of the Russian Federation “On the Museum Fund of the Russian Federation and museums in the Russian Federation”], 26 May 1996, No. 54-FZ, as amended, where cultural values are defined as movable objects of the material world, regardless of the time of their creation, of historical, artistic, scientific, or cultural value.

ritories and unique objects in terms of historical-cultural relations.¹⁵ In turn, the Law on export and import covers movable material (tangible) of historical, artistic, scientific, or cultural value, regardless of the time of their creation. Cultural valuables of particular importance are classified,¹⁶ in accordance with the criteria established by the Government of the Russian Federation, as cultural objects of particular historical, artistic, scientific, or cultural importance.¹⁷ They can be classified as such due to their specific value and cultural significance regardless of the time of their creation.

The above-mentioned legislation meets the following objectives: to foster international cultural cooperation; to develop mutual understanding among multi-ethnic peoples of the Russian Federation; to facilitate cultural exchange and dialogue between the peoples of the Russian Federation and other peoples and countries; to prevent the illegal export and import of cultural property; and to facilitate the return of illegally exported and smuggled cultural property. Moreover, Russian cultural heritage legislation fosters more specific goals. Accordingly, while the Law on culture regulates the return of cultural property illegally exported from Russia's territory, the Federal Law No. 64-FZ "On cultural valuables displaced to the USSR as a result of the Second World War and located on the territory of the Russian Federation"¹⁸ was enacted to regulate the complex status of certain cultural objects, displaced in connection to the war. This piece of legislation provides for the protection of such cultural valuables from plunder, illegal export from Russia, and unlawful transfer. It creates a regulatory framework to accede and appreciate these cultural valuables, available to citizens of the Federation and to foreigners, including specialists in the field of education, science, and culture. It also creates favourable conditions for the further development of international cooperation in the field of education, science, and culture. All cultural valuables displaced into the USSR under the exercise of its right to compensatory restitution and located on the territory of the Russian Federation, with a few exceptions as defined

¹⁵ Article 3 of the Law on culture.

¹⁶ See: Постановление Правительства Российской Федерации «О порядке проведения экспертизы культурных ценностей, критериях отнесения предметов к культурным ценностям и критериях отнесения культурных ценностей к культурным ценностям, имеющим особое историческое, художественное, научное или культурное значение» [Decree of the Government of the Russian Federation on the procedure for examination of cultural valuables, the criteria for classifying objects as cultural valuables and the criteria for classifying cultural valuables as cultural valuables of particular historical, artistic, scientific, or cultural importance], not yet in force, the draft is available in Russian at: <https://regulation.gov.ru> [accessed: 20.04.2019]. Pending to this Decree Article 5(3) of the Law No. 435 shall apply.

¹⁷ Article 5 of the Law on export and import.

¹⁸ Закон Российской Федерации «О культурных ценностях, перемещенных в Союз ССР в результате Второй мировой войны и находящихся на территории Российской Федерации» (с изменениями и дополнениями), 15 April 1998, No. 64-FZ, as amended.

by this law, constitute federal property.¹⁹ However, thorough analysis of this piece of legislation falls outside the scope of this article.

In turn, the Law on export and import regulates relations concerning the transfer and movement of cultural property from the Russian Federation to foreign States that are not Member States of the Eurasian Economic Union (EAEU),²⁰ as well as to the Russian Federation from foreign States that are not Member States of the EAEU. In connection with the creation of the EAEU, the free circulation of cultural property was established on the territory of the customs union within the EAEU and a unified list of goods was approved, including cultural valuables, which are subject to prohibitions or restrictions on the import or export thereof in trading with non-Union countries. The procedures governing the movement of cultural valuables between the Member States of the EAEU, and the list of cultural valuables in respect of which an export authorization-based procedure has been established, is determined in accordance with the law of the Union. In addition, some amendments were introduced to Law on export and import by the Federal Law No. 435-FZ “On amending certain legislative acts of the Russian Federation in connection with the improvement of public administration concerning the export and import of cultural property and archival affairs” (“Law No. 435”).²¹ It stipulates the possibility of exporting objects of cultural value from the Russian Federation subject to certain requirements, including a list of cultural valuables whose export is not possible without the obligation of mandatory re-import. The following objects of cultural value fall under this list:²²

- cultural valuables of particular importance,²³ with the exception of the export of such cultural valuables by an author;
- cultural valuables permanently stored in state and municipal museums, archives, libraries, other state and municipal organizations of the Russian Federation engaged in the permanent storage of cultural property;
- cultural valuables included in the Archival Fund of the Russian Federation, Museum Fund of the Russian Federation, or in the National Library Fund, including those privately owned; and
- archaeological objects.

¹⁹ Article 6 of the Law on restitution.

²⁰ Treaty on the Eurasian Economic Union, 29 May 2014, https://www.un.org/en/ga/sixth/70/docs/treaty_on_eeu.pdf [accessed: 20.04.2019]. Current States Parties to this treaty: Russia, Belarus, Kazakhstan, Armenia, and Kyrgyzstan; see: <http://www.eaeunion.org/?lang=en%23about> [accessed: 20.04.2019].

²¹ Закон Российской Федерации «О внесении изменений в отдельные законодательные акты Российской Федерации в связи с совершенствованием государственного управления в сферах вывоза и ввоза культурных ценностей и архивного дела», 28 December 2017, No. 435-FZ.

²² Article 35(1) of the Law on export and import.

²³ Decree of the Government of the Russian Federation on the procedure for examination of cultural valuables, op. cit.

Under the said piece of legislation as amended there is no longer a pre-emptive right of the State to purchase cultural property to be exported. Previously, there was a pre-emptive right of the State to buy out such exported cultural property, with one exemption: that in the case of export of cultural property directly by an author, the pre-emptive right of the State to purchase such exported cultural property was not applied.²⁴ The threshold of “more than 100 years old” previously interpreted as constituting a complete ban on export of cultural property, was removed. Next, the former Law on export and import allowed for the export of such cultural property being more than 100 years old only if it was previously imported into the Russian Federation by an individual or legal entity.²⁵ As of now cultural valuables can be exported, save for those falling under the category of cultural valuables that are subject to mandatory re-import.

In principle, cultural valuables that do not fall within the above list are allowed to be exported. However, the law formulates the obligation to obtain a special statement (a permit for individuals; or a license for legal entities and individual entrepreneurs) granted by an authorized body (as of now the Ministry of Culture of the Russian Federation) for the cases where, in accordance with laws of the EAEU an authorization-based procedure for cultural valuables is prescribed. Under this authorization-based procedure, a permit/license is granted by the Ministry of Culture of the Russian Federation on the basis of documents submitted by the applicant and payment of the state duty. Cultural valuables that are subject to authorization-based procedure are itemized in the list in the Decision of the Board of the Eurasian Economic Commission.²⁶ Hence, objects of cultural value that do not fall within the above list, being not subject to the authorization-based procedure, can be exported from Russian territory without any special permit and without payment of the state duty.

Tax Benefits

In the package containing Law No. 435, the Federal Law No. 430-FZ “On amendments to Part Two of the Tax Code of the Russian Federation”²⁷ was adopted by the State Duma on 28 December 2017 and came into force. This law supplemented Article 150 introducing tax benefits on the import of cultural property into the Russian Federation, provided that it is classified as such in accordance with the legislation of Russia regardless of the status of the owner of cultural property. Anti-

²⁴ Article 38 (Acquisition by the State of cultural property declared for export) of the previous version of the Law on export and import.

²⁵ Article 9(1) of the previous version of the Law on export and import.

²⁶ Решение Коллегии Евразийской экономической комиссии № 30 «О мерах нетарифного регулирования» [Decision No. 30 of the Board of the Eurasian Economic Commission on “Measures of non-tariff regulation”], 21 April 2015, Appendix 2, Section 2.20.

²⁷ Закон Российской Федерации «О внесении изменений в часть вторую Налогового кодекса Российской Федерации», 28 December 2017.

cle 150 of the Tax Code itself waives the import tax for goods that are brought into the territory of the Russian Federation and other territories under its jurisdiction, including cultural property acquired by state or municipal institutions, cultural property received as a gift by state and municipal cultural institutions or by state and municipal archives, as well as cultural property classified in accordance with the legislation of the Russian Federation as especially valuable objects of cultural heritage for the peoples of the Russian Federation and that are gifted to an institution in the country. The exemption will be granted subject to the submission to the customs authorities of confirmation by the federal executive body that performs the functions of developing and implementing state policy and legal regulation in the field of culture, art and cultural heritage (including archaeological heritage), and cinematography. If the Archival Fund of the Russian Federation acquires the cultural property, a confirmation is required from the federal executive body that is responsible for the development and implementation of the state policy and normative legal regulation in the field of archives and records management.

Regulation on Acquisition and Inheritance

As long as people exist there will be always a dilemma: acquisition of cultural goods for personal “needs” (which sometimes occurs under circumstances one would prefer to deny, such as theft, art looted by the Nazis, etc.), versus the preservation of the cultural heritage of one’s country and world heritage globally. So the basic concern is finding the right and fair balance between the interests of true owners and bona fide purchasers. The art market has recently witnessed numerous lawsuits filed regarding unfair acquisitions, restitution, and vindication, i.e. claims related to the return of objects of art, cultural valuables, and the restoration of property rights by owners. It is true that the interests of the market are always aimed at preserving the stability and predictability of commercial relations, and if the law protects the buyer – even in cases of potential art theft – the buyer does not need to engage in deep due diligence and investigate the status of the seller; he/she can be sure that the transaction is legal. This is a question purely of civil law relations, not constitutionally-proclaimed public guarantees.

The Constitution of the Russian Federation enshrines the right of everyone to own property; to use and to dispose of it both individually and jointly with other persons; as well as the right to participate in cultural life and to use cultural institutions to access cultural valuables. Such a right corresponds to the above-mentioned obligation to take care to preserve the historical and cultural heritage and to preserve historical and cultural monuments.

In accordance with Article 212 of the Civil Code, property may be owned by citizens and legal entities, as well as the Russian Federation and constituent entities of the Russian Federation and municipalities. The rights of all owners are subject to judicial protection equally. The Civil Code does not stipulate any definition

of what cultural valuables or cultural property are, and the specific title of cultural property has not been directly addressed. The Law on culture enshrines the right of everyone to own property in the field of culture. This right of ownership extends to objects of historical and cultural importance, collections, buildings and structures, organizations, institutions, enterprises and other objects. The procedure of acquisition, conditions of ownership, and use and disposal of property in the field of culture is governed by the legislation of the Russian Federation.²⁸

In accordance with the Constitution and Civil Code, some restrictions may be imposed by federal law on rights to own, use, and dispose of property; however, such restrictions must also meet the requirements of justice, be adequate, reasonable, proportionate, not have retroactive force, and do not affect the essence or the main content of these constitutional rights; in addition the very possibility of any restrictions and their nature must be necessitated to protect constitutionally significant values. The Law on culture enables citizens to export the results of their creative activity for the purpose of exhibiting, other forms of public presentation, and also for the purpose of selling them in the manner determined by the legislation of the Russian Federation.²⁹ It is clear that there are certain peculiarities in the regulation of the rights and obligations of owners of works of art and of parties to such relevant transactions and contracts. These concern, for example, criminal liability in the case of loss and damage for cultural heritage objects³⁰ under Criminal Code of the Russian Federation,³¹ or in cases where the owner of property – classified in accordance with the law as particularly valuable cultural property and protected by the State – maintains such property without proper care, thus endangering the cultural property to loss of its nature, the ownership of such property may be withdrawn from the owner, via a court decision, by means of state redemption or sale by public auction.³² In the absence of a special legislative regulation regarding the acquisition and transfer of property rights with respect to cultural valuables, the general provisions of the Civil Code are to apply.³³

²⁸ Article 14 of the Law on culture – Ownership in the field of culture.

²⁹ Article 17 of the Law on culture – The right to export abroad the results of creative work.

³⁰ Федеральный закон № 73-ФЗ “Об объектах культурного наследия (памятника истории и культуры) народов Российской Федерации” от 25.06.2002 г. [Federal Law “On the objects of cultural heritage (historical and cultural monuments) of the peoples of the Russian Federation” No. 73-FZ dated 25 June 2002]; see Article 3. The thorough analysis of this piece of legislation falls outside the scope of this article.

³¹ Article 243 Criminal Code “Destruction or damage to cultural heritage objects (historical and cultural monuments) of the peoples of the Russian Federation included in the unified state register of cultural heritage objects (historical and cultural monuments) of the peoples of the Russian Federation, identified cultural heritage objects, natural complexes, objects taken under the protection of the State, or cultural property”.

³² Article 240 of the Civil Code.

³³ Section II of the Civil Code.

The new Law on export and import cancelled the requirement that a transaction to transfer of cultural property must be in writing. Previously, the Law on import and export, under Article 45 (Form of transactions in relation to cultural property), specified that such a requirement applied to all transactions (including donation). Currently, a written confirmation of the transaction is necessary to obtain an export license by legal entities and individual entrepreneurs.³⁴ This would equally apply to a copy of the foreign trade agreement (contract) or, in its absence, to a copy of another document confirming the applicant's intentions regarding exported cultural valuables, signed by the applicant, and to copies of documents confirming legal title to cultural valuables in question.

General provisions regarding the form of the transaction are set out in the Civil Code (Articles 159, 161). They are general in nature and apply to all transactions, including transactions for the sale and purchase of goods qualified as cultural valuables. In accordance with Article 454(3) of the Civil Code, in cases provided for by the Civil Code or other law the requirements regarding the purchase or sale of goods or "products of a specific type" are determined by the law and other legal acts. Further to these provisions cultural property may be presumed as being a "product of a specific type", possessing not only economic value but also great cultural and historical significance subject to some requirements. For instance, under the already cited Federal law No. 54 a person may apply to have his/her pieces of art, art collection be registered in the non-state part of the Museum Fund of the Russian Federation for the purposes of conservation and control. Moreover, under Article 25 of this law (along with other provisions), the owner of museum items and museum collections included in the non-state part of the Museum Fund is obliged to register every transaction concerning such property to the federal executive body in the field of culture. The register of such transactions shall not be published and disclosed, unless the parties to a given transaction decide otherwise, or when the disclosure is required by law.³⁵

Pending to specific regulation as an object of law cultural property/goods may potentially fall under the category of "other property" under Article 128 of the Civil Code – Civil rights objects. Under Article 129 of the Civil Code "civil rights objects" may be freely alienated or transferred from one person to another by way of universal succession (inheritance, re-organization of a legal entity) or by other means, "if they are not limited in circulation". As mentioned above, currently there are no general restrictions on commercial trade for cultural valuables except for the restrictions imposed by aforementioned provisions under the Con-

³⁴ Article 35(4)(2) of the Law on export and import.

³⁵ For the detailed regulations in this respect see: Приказ Министерства Культуры Российской Федерации от 1 декабря 2017 г. № 2012 Об утверждении положения о государственном каталоге музейного фонда Российской Федерации [Order No. 2012 of the Ministry of Culture of the Russian Federation on approval of regulation on state catalogues of the museum fund of the Russian Federation], 1 December 2017.

stitution, Civil Code including reference to specific laws and import and export regulations.³⁶ So in fact cultural property, e.g. a piece of art, may easily end up in the hands of a good faith purchaser via traditional channels, including flea markets, galleries, dealers and auction houses, as well as through Internet markets and social networks.³⁷

For the purpose of this article some grounds concerning the acquisition of title to cultural goods, good faith purchases, and usucupane (acquisitive prescription) are further developed.

Status of a Bona Fide Purchaser

Under Russian civil law good faith and reasonableness of the parties are presumed.³⁸ The reality however is that art market is often seen as having excessive secrecy and lack of transparency, where an unscrupulous person can profit. One can hear that this or that cultural good derives from an “old family” collection, has a noble pedigree, and that some details cannot be disclosed for certain personal reasons, as a matter of time, or for some other reason. As a result no one thoroughly examines the process of acquiring or receiving cultural goods and there is usually no list of previous owners (to be fair, the trends are being changed now). At the same time, sometimes the list of owners and transactions made can really be too long, which makes it impossible to track down the change of ownership at each stage. The relationship between the seller and the buyer in the art and antiques market, where works of cultural value are in demand, is built on the *caveat emptor* principle, i.e. the legal and financial risks associated with the acquisition of the object are borne by the buyer.

Within the framework of civil proceedings, claims for returning illegally possessed works are not uncommon, and when resolving the issues the courts play a great role in establishing with whom the cultural goods will remain – either the legal owner or a bona fide purchaser.

According to Article 46(1) of the Constitution of the Russian Federation property rights and other real rights are guaranteed by the right to judicial protection, and by virtue of law must be overwhelming and effective, as well as meet the criteria of proportionality and adequacy so as to ensure a balance between the rights and legitimate interests of all participants in civil proceedings.

³⁶ Under Article 74(2) of the Constitution of the Russian Federation, restrictions on the movement of goods and services may be imposed in accordance with federal law if this is necessary to ensure safety, protect human life and health, and protect goods of a natural and/or cultural value.

³⁷ G. Nelson, V. Karkov, “Genuine” Leonardo “sold” for €72m on classified ads site Avito, “The Art Newspaper”, 11 September 2018, <https://www.theartnewspaper.com/news/genuine-da-vinci-sold-for-eur72m-on-classified-ads-site-avito> [accessed: 10.04.2019].

³⁸ Article 10(5) of the Civil Code.

Taking into account the constitutional guarantees for the protection of property rights, guarantees of judicial protection, and guarantees of access to cultural property, the purpose of the institution of a bona fide purchaser is to balance the interests of the original (legitimate) owner and subsequent purchasers in the case of alienation of cultural goods against the will of the person entitled to their possession. In accordance with Article 302 of the Civil Code, if the property is purchased from a person who did not have the right to alienate it, about which the acquirer did not know and could not know (i.e. a bona fide purchaser), then the owner has the right to reclaim this property from the acquirer in the event that the property was lost by the owner or by the person to whom possession of the property was transferred by the owner, or stolen from one or the other, or the owner was deprived of possession by any other means outside their will. If the property is acquired free of charge from a person who did not have the right to alienate it, the owner shall have the right to reclaim the property in all cases. Conscientiousness is an internal criterion that reflects a person's lack of awareness of the illegality of their action in acquiring the property.

But taking into account the evolving practice and stringent legislative initiatives, it will no longer be so easy for a buyer to say: "I did not know".

The payment of consideration does not automatically constitute good faith. The buyer must show the degree of care and diligence required from her/him by the nature of the obligation and the terms of the commercial turnover, including taking the necessary measures to verify the legality of the transaction (including determining the seller's powers to alienate the property). The courts refer to a lack of good faith if reasonable measures have not been taken by the defendant when purchasing property from an unauthorized seller. The burden of proof lies with the defendant to show he/she was a good faith purchaser. This correlates to a certain degree with the 2017 Art Market Principles and Best Practices, which state that exhibitors shall exercise appropriate due diligence in establishing the origin and authenticity of works they offer for sale, and neither accept for consignment nor sell any artwork which they know to be, or have reasonable suspicion to believe may be, stolen, looted, illegally exported, or inauthentic (including forgeries and misattributions), or the product of some other criminal activity, or subject to any current legal claim. Exhibitors shall only sell works when, to the best of their knowledge, the artist and consignor have clear title to the works, free of all encumbrances and possible ownership claims. Whenever possible, exhibitors shall obtain written confirmation to this effect from consignors.³⁹

In cases where the law makes the protection of civil rights dependent on whether these rights are exercised reasonably and in good faith, the reasonableness of the actions and the good faith of the participants in civil legal relations are

³⁹ Art Basel, *Art Market Principles and Best Practices*, https://d2u3kfw92fzu7.cloudfront.net/AB_Art_Market_Principles_and_Best_Practices.pdf [accessed: 10.04.2019].

assumed.⁴⁰ The obligation of the buyer of property to prove that it was impossible for him/her to obtain information that the person from whom he/she acquired the property did not have the right to alienate this property must be due to the fact that, in a given case, the ignorance of and inability to learn about the rights of the counterparty to the property is proven, and the acquirer cannot rely on the rationality and integrity of his/her actions in the exercise of his/her rights.⁴¹

The owner, regardless of the objection of the good faith defendant, also needs to prove the fact that property was outside of his/her possession or the possession of the person to whom it was transferred, against his/her/their will. Thus, the right of the owner (claimant) to submit evidence to rebut the good faith of the defendant is based on the general provisions of law requiring proof of a party's behaviour in the adversarial court process,⁴² i.e. each party must prove the circumstances to which it refers as a basis for its claims and objections, unless otherwise provided by federal law. The evidence must meet the requirements of admissibility, reliability, and sufficiency, whereby under Article 67 of the Code of Civil Procedure of the Russian Federation a court assesses the relevance, admissibility, reliability of each piece of evidence separately, as well as the sufficiency and mutual connection of the evidence in its totality.

In cases where there are no contractual relations between persons or relations connected with the consequences of the invalidity of a deal (contract), the dispute on the return of property to the owner is subject to resolution according to the rules of Article 301 – Recovery of property from unlawful possession and Article 302 – Reclamation of property from a bona fide purchaser of the Civil Code. In accordance with Article 38 of the Law on import and export in cases of theft and illicit export of cultural valuables, the authorized body assists the owners in filing claims before foreign courts for the recovery of cultural valuables. It also facilitates the return of cultural valuables (Article 37). It also needs to be mentioned that the Russian law with respect to the status of a bona fide purchaser is similar to some European civil laws that uphold the rights of bona fide purchaser to a certain extent – so the true owner may or may not be successful in recovering his/her property.

⁴⁰ Article 10(5) of the Civil Code.

⁴¹ Постановление Пленума Верховного Суда Российской Федерации и Пленума Высшего Арбитражного Суда Российской Федерации № 10/22 «О некоторых вопросах, возникающих в судебной практике при разрешении споров, связанных с защитой права собственности и других вещных прав» (с изменениями и дополнениями) [Resolution No. 10/22 of the Plenum of the Supreme Court of the Russian Federation and the Plenum of the Supreme Arbitration Court of the Russian Federation “On certain issues arising in court practice in resolving disputes relating to the protection of property rights and other real rights”], 29 April 2010 (“Resolution No. 10/22”).

⁴² Гражданский процессуальный кодекс Российской Федерации [Code of Civil Procedure of the Russian Federation], 14 November 2002, No. 138-FZ, as amended, Article 56 – Duty of proof.

Usucupane (Acquisitive Prescription)

The acquisition of property rights and other rights to property due to acquisitive prescription (usucupane) is determined by the law of the country where the property was at the time of the expiration of the acquisitive prescription.⁴³ By virtue of Article 234(1) of the Civil Code, a person – i.e. a citizen or legal entity – who is not the owner of the property, but conscientiously, openly, and continuously possessing it as his own real estate for 15 years, or other property for 5 years, acquires the property by acquisitive prescription (usucupane). The law is silent on the criteria for good faith and openness for the purpose of usucupane, hence their content and nature remain at the discretion of the court. Under Resolution No. 10/22 such criteria of integrity and openness are explained, as described below.

When resolving disputes relating to the origin of property rights due to usucupane, the courts should take into account the following elements: First, the long-term possession must be *bona fide*, i.e. the person receiving possession did not know and could/should not have known about the absence of a basis for his/her right of ownership. Second, long-term possession is recognized as open if the person does not hide the fact that the property is in his/her possession, although taking ordinary measures to ensure the safety of property does not indicate its concealment. Third, long-term possession is recognized as continuous if it has not ceased during the entire period of usucupane. If an owner's claim for the recovery of property from another's illegal possession is time barred, the previous temporary loss of possession of the disputed property by the owner does not count as an interruption of the time bar. The transfer of property by a holder to the temporary possession of another person does not interrupt usucupane. Nor is there a break in the time of ownership if the new owner of the property is a singular or general assignee of the previous owner.⁴⁴

The previous version of the Law on export and import stated that a physical person or legal entity not being owner of the cultural goods, but holding it in good faith and openly possessing it as its own for at least 20 years, acquires ownership of the cultural items. This article is no longer in the current version of Law on export and import, and thus the general rule of the Civil Code should apply, whereby ownership of a cultural property which is movable property, recognized as the result of fair and open ownership by a natural or legal person for at least five years.⁴⁵

⁴³ Article 1206 of the Civil Code.

⁴⁴ Article 234(3) of the Civil Code.

⁴⁵ Article 234 of the Civil Code.

Inheritance Funds

Some words should be said about inheritance funds which are aimed at the proper handling of interests in art collections, i.e. cultural property, since previously the law did not specify anything in this regard. Natural and legal persons are the owners of the property created by them for themselves or acquired from other persons on the basis of transactions for the alienation of such property, and also transferred by inheritance or in an order of reorganization.⁴⁶ Under the provisions of the Civil Code, a person may dispose of his or her estate by means of a will,⁴⁷ but if there is no will inheritance occurs by virtue of law. Furthermore, as of 1 September 2018, a provision on inheritance funds was implemented into the Russian Civil Code, allowing for setting up an inheritance fund after the death of a testator. According to Article 123.20-1, an inheritance fund is recognized as a fund to honour the will of a testator for property management after death. The fund is aimed to manage the testator's estate received by way of inheritance either on a perpetual basis or for a limited period in accordance with the conditions specified for inheritance fund management requirements.

An inheritance fund is formed as a legal entity in the form of a non-commercial organization. For its incorporation, the testator provides a draft resolution with the will, including the decision to incorporate the fund and draft articles of association. After his or her death, the incorporation and registration of the fund shall be handled by the public notary handling the will.

The aim of such type of fund is to ensure and to allow for the continuous and uninterrupted management of the testator's business and assets of whatever type and to preserve the estate, which may cover any belongings, including money and securities, property rights (including rights arising from contracts entered into by the testator; exclusive intellectual property rights, and the right to receive monetary sums awarded to the testator, but not received by him/her); property obligations, including debts up to the limit of the value transferred to the heirs of the estate.

Furthermore, inheritance funds are aimed at becoming an important component of international estate planning to ensure the best distribution of personal property between different countries and future owners in order to simplify the regulation of a testator's assets. With respect to items of cultural value, such a fund can constitute a good basis to split the business and art assets of a testator, to preserve art collections as a whole once created by a person, as well as to avoid the risk of art assets' division and sale by the heirs.

The property of an inheritance fund is formed when the fund is incorporated for the bequeathed property as well as the funds are received in the course of carrying out its activities, and the income from the management of the property of the fund.

⁴⁶ Article 218 of the Civil Code.

⁴⁷ Article 1118 of the Civil Code.

An inheritance fund is not equal to an Anglo-Saxon trust, since a trust can be set up during one's lifetime. Trust funds cannot be used to settle debts of the testator, whereas claims by creditors of the testator may be made directly against an inheritance fund. A trust is a contractual institution, while an inheritance fund is an institution of inheritance and testamentary law and is a legal entity. An inheritance fund should not be considered as an endowment. The transfer of property by any third parties to an inheritance fund is not allowed. Therefore, any contributions or fees to the fund shall be void, in contrast to an endowment, which is a trust fund formed through donations and intended for use for non-commercial purposes, i.e. financing educational, medical, and cultural institutions.

However, in accordance with Article 123.20-1(4) of the Civil Code, an inheritance fund must include provisions for transferring the entire property of the fund, or its part, to certain third parties (beneficiaries) or certain categories of persons from an indefinite number of persons, including provisions subject to the occurrence of circumstances which may or may not occur. The conditions of inheritance fund management may stipulate that the beneficiaries of the fund, or certain categories of persons to whom the property of the fund is to be transferred, are determined by the management bodies of the fund in accordance with the management requirements. Certain categories of persons not explicitly defined can be selected at the discretion of either the testator or the corporate bodies of the fund to support art and grants in the field of culture, including heritage preservation.

In the future, it will be interesting to see how inheritance funds will be used to develop the management of art estates, since they may enable professional control and management in line with the testator's will after his/her death and support art initiatives. Recognition of the cohesiveness of the most significant collections, including their cultural values, is especially important in cases of the inheritance of a collection by several heirs. The history of art shows that art collections play a significant role in cultural life. A collector may, by will and during his/her lifetime, wish to include his/her collection into the non-state part of the Museum Fund of Russia, which would lead to cohesiveness of the museum collection as a single object and state control.⁴⁸ Being a collection formed during an owner's lifetime facilitates its proper recording by a public notary while endorsing a will, and further facilitates maintaining the cultural heritage estate afterwards. However, not all private owners wish to disclose their collections and especially register them into the non-state part of the Museum Fund of Russia.

⁴⁸ Chapter IV Non-state part of the Museum Fund of the Russian Federation. Закон Российской Федерации «О Музейном фонде Российской Федерации и музеях в Российской Федерации» (с изменениями и дополнениями) [Federal law of the Russian Federation "On the Museum Fund of the Russian Federation and museums in the Russian Federation"], 26 May 1996, No. 54-FZ, as amended.

Private International Law Aspects: *Lex Rei Sitae*

Whenever the protection of cultural property rights is at stake, and whenever claims for the return of cultural property are brought to court, it is necessary to decide which country's law shall be applied. The law of the location of the goods (*lex rei sitae*) is usually recognized as the basis for determining the law to be applied with respect to the right of ownership and other property rights in connection to the goods. Under Article 1205 of the Civil Code, the law applicable to real rights, the right of ownership and other real rights to immovable and movable property are determined by the law of the country where the property is located.

According to Article 1206 of the Civil Code on the law applicable to the acquisition and termination of property rights, the origin and termination of property rights and other rights to property shall be determined by the law of the country where the property was located at the time when an action or other circumstance took place that served as the basis for the origin or termination of property rights, unless otherwise provided by law, e.g. whether title to a stolen movable object can be acquired through a bona fide purchase is governed by the law of the state in which the movable was located at the time of the alleged bona fide purchase. Transferring goods from one country to another does not entail an automatic termination of a real right already having arisen with respect to such goods. The acquisition and termination of property rights and other real rights in a transaction made in respect of movable property in transit shall be determined by the law of the country from which the property was sent, unless otherwise provided by law.

A dispute regarding the return of property arising from contractual relations, or relations involving the application of the consequences of the invalidity of a transaction, is subject to resolution in accordance with the legislation governing these relations. But the problem is that in many, if not most, of the cases there are no contractual relations between the original owner and the bona fide purchaser, as well as the thief and the owner, and once a vindication suit is filed in, for example, Russia, the question becomes which *lex rei sitae* should apply: the law of the State of the owner (where cultural property ceases to be in his/her possession), or the law of the State at the time of the sale transaction with a bona fide purchaser. There is much discussion on this issue among the legal community dealing with cultural heritage return issues, since the provisions of the law for the protection of a bona fide purchaser vary from country to country. Legal scholars posit that preference should be given to the law of the country where the cultural property was at the time when it went out of the owner's control, or otherwise out of his/her possession against his/her will. In the event such law applies, the parties to the dispute shall no longer be able to change the territory and the applicable law to suit their own interests in order to clear a title, e.g. by choosing the place of sale to a third party specially to make it difficult for the owner to protect his/her rights, a situa-

tion which would favour illegal dealing. A common approach applied by all States would bring about some kind of stability to the resolution of such disputes.

Criminal Law Aspects

The international protection of cultural valuables has been achieved through two means. First, civil laws mandate the restitution of cultural property to its rightful owners, who may be either individuals, legal entities, or States. Second, criminal laws provide protection by prohibiting, prosecuting, and punishing the destruction and theft of cultural property.

Theft of works of art or other cultural property, e.g. plundering and looting, are rarely done out of pure interests on the part of the wrongdoers. Art theft has become a perpetual plague on the art market and increasingly has become one of the most profitable forms of illicit trade.⁴⁹ Although States repeatedly admit the real nature of the threat to cultural heritage, the fight against these types of crime is still not satisfactory. In particular, one of the most serious problems is the various interpretations and norms of criminal offenses in this area under the national legislations of those countries where loopholes allow wrongdoers to move goods from one territory to another in search of a better market, in order to clear the title and make further sales.

Russia is a member of the Council of Europe. In August 2018, the President of Russia formally instructed the Ministry of Foreign Affairs to sign the Nicosia Convention that was signed on 8 November 2018 (not yet ratified).⁵⁰ This European Convention aims to prevent and combat the illicit trafficking and destruction of cultural property and to foster international co-operation to fight terrorism and organized crime. It strengthens crime prevention and criminal justice responses to all criminal offences relating to cultural property by introducing offences such as theft and other forms of unlawful appropriation, unlawful excavation and removal, illegal importation, illegal exportation, and the acquisition of such cultural property. Russia is also a signatory party to both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, both of which seek to protect cultural property through the prevention of and the fight against criminal offences relating to cultural property.

The current criminal legislation of the Russian Federation (the Criminal Code) identifies the following types of criminal acts against “cultural property”, “items of particular historic value”, etc.:

⁴⁹ A. Hawkins, R.A. Rothman, D.B. Goldstein, *A Tale of Two Innocents: Creating an Equitable Balance Between the Rights of Former Owners and Good Faith Purchasers of Stolen Art*, “Fordham Law Review” 1995, Vol. 64(1).

⁵⁰ Распоряжение Президента Российской Федерации «О подписании Конвенции Совета Европы о борьбе с преступлениями в отношении культурных ценностей» [Instruction of the President of the Russian Federation on signing the Council of Europe Convention on Offences relating to Cultural Property], 9 August 2018, <http://en.kremlin.ru/acts/news/58278> [accessed: 10.04.2019].

- Article 164 – Theft of goods of special value, which covers items or documents of particular historical, scientific, artistic, or cultural value;
- Article 190 – Non-return to the territory of the Russian Federation of items of artistic, historical, and archaeological heritage of the peoples of the Russian Federation and foreign countries, which covers items of artistic, historical, and archaeological heritage of the peoples of the Russian Federation and foreign countries;
- Article 226.1 – Trafficking, including cultural items of large value, where the total value of cultural property amounts to an excess of one hundred thousand rubles (i.e. or the equivalent in another currency);⁵¹
- Article 243 – Destruction of or damage to monuments of history and culture covering monuments of history and culture, natural complexes, objects under state protection, objects and documents of historical, scientific, or cultural value, as well as especially valuable objects or monuments of national importance;
- Article 243.1 – Violation of the requirements for the preservation or use of cultural heritage objects (historical and cultural monuments) of the peoples of the Russian Federation included in the unified state register of cultural heritage objects (historical and cultural monuments) of the peoples of the Russian Federation or identified cultural heritage objects;
- Article 243.2 – Illegal search for, or removal of, archaeological objects from sites;
- Article 243.3 – Circumvention by a contractor undertaking earthworks, construction, ameliorative, general labour, or other work, or archaeological fieldwork carried out on the basis of a permit (open list), from compulsory transfer to the State of objects of special cultural value or cultural valuables found during such works;
- Article 175 – Purchase or sale of property knowingly obtained by criminal means.

The Criminal Code also sets out the primary money laundering offences, i.e. “legalization (laundering) of monetary funds and other assets acquired by a person as a result of a crime” and “participation in legalization (laundering) of monetary funds and other assets acquired by other persons as a result of a crime” – which

⁵¹ One headline-making case should be mentioned here – the case of Mr. Pevzner and the *Christ in the Tomb* painting by Karl Bryullov. In 2003, Pevzner brought Bryullov’s work from Germany for examination in the Russian Museum (Saint Petersburg) in order to confirm the authorship and authenticity of the work of art. Mr. Pevzner was prosecuted under Article 188(2) of the Criminal Code in its previous revision for the act of smuggling the painting in question (Mr. Pevzner crossed the customs border of the Russian Federation without having declared the painting, being of cultural value and with a cost at the time of the transfer of at least 9,416,160 rubles). The painting, as material evidence in a criminal case, was subject to confiscation and was placed in storage in the Russian State Museum.

may include the purchase or sale of property (assets), including art.⁵² Once placed back into the stream of commerce the true owner encounters many problems in tracing his/her piece of cultural property, which again brings us back to the conflict between an owner and a good faith purchaser. The Criminal Code thus provides a good platform against criminal offences relating to cultural property. Subsequent amendments should promote further protection and strengthen crime prevention, as well as the response of the criminal justice system to all criminal offences relating to items of cultural value, taking into account the transnational phenomenon of trafficking, the rapid development of cultural works being sold online through social media and the Deep Web, the falsification of documents, and the liability of those persons with fiduciary duties (art dealers).

The concepts of “cultural object”, cultural valuable, and objects of special value have significant differences that are not yet clarified or unified under the current Criminal Code, while the Nicosia Convention has a clear definition of cultural property that should be considered by law makers. In addition, the specificity of such property – its cultural value – should be taken into account while assessing and qualifying crimes against cultural valuables under the existing regime of the Criminal Code.

The concept of *res judicata* is set out in the Criminal Procedural Code, whereby facts established by a verdict or ruling that has entered into legal force (with some exceptions) by another court decision under civil, arbitration, or administrative proceedings shall be recognized by the court, the prosecutor, and/or investigator without the need for additional verification. At the same time, such a decision cannot prejudice the guilt of persons who had not previously participated in the criminal case under consideration.⁵³ Provisions on *res judicata* are of importance when initiating a criminal investigation into the commercial interest of an owner versus good faith purchaser and the public interests of the State in the preservation of cultural property.

The Nicosia Convention specifies the liability of legal persons/entities under Article 13, whereby each party to Convention shall ensure that legal persons can be held liable for criminal offences referred to in the Convention, when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal entity and who has a leading position within that legal person/entity.

⁵² Council of Europe, *Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property, Nicosia, 19.05.2017*, <https://rm.coe.int/1680710437> [accessed: 10.04.2019], para. 32. On the other hand, the use of cultural property for the purposes of laundering the proceeds of crime and money laundering has not been included within the scope of these substantive criminal law provisions, because there are other conventions dealing with these issues, such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (16 May 2005, CETS 198) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (8 November 1990, ETS 141).

⁵³ Article 90 of the Criminal Procedural Code.

Such liability shall be without prejudice to the criminal liability of a natural person who has committed the offence. The idea of implementing the criminal liability of legal entities into Russian legislation appeared quite some time ago. Russia ratified the Council of Europe Criminal Law Convention on Corruption;⁵⁴ however, currently the liability of legal entities is set out mainly in the Civil Code and the Code of Administrative Offenses of the Russian Federation.⁵⁵

The signing of the Nicosia Convention by the Russian Federation constitutes an important message concerning Russia's participation in the global fight against cultural property crimes and its readiness and openness for further improvements in both the law and law enforcement practices concerning such crimes.

Conclusions

Universally-recognized principles and norms of international law on cultural heritage have been and are being integrated into the legal system of the Russian Federation. There is a developed system of measures aimed at preserving and protecting cultural valuables; combining various legal, administrative, and organizational aspects that are continuously being improved in the light of international experience. The elaboration of a unique concept of cultural valuables as a notion generally adopted in all branches of law remains to be further developed, along with recognition of the treatment of objects of cultural value as separate objects of law, subject to specific regulation.

The difficulties in regulating the issue of objects of cultural value are associated with, *inter alia*, the dual nature of objects of cultural value as being objects of one's specific satisfaction of personal spiritual or cultural needs, and at the same time as goods/objects subject to civil regulation allowing for placing limitations and restrictions on private ownership, which in turn depends on the nature of the cultural property in question and the necessity for its preservation and protection by the State. While new legislation on the export and import of cultural objects may have not substantially changed the nature of this regulation, it has however imposed some further limits to prevent the unlawful export of goods of cultural value from the territory of the Russian Federation, and still requires the adoption of a number of laws, regulations, and by-laws.

The law enshrines the right of everyone to own property in the field of culture. The right of ownership extends to objects of historical and cultural importance, collections, buildings, and even natural landscapes. The procedure for acquisition, conditions of ownership, use, and disposal of property in the field of cultural heritage is governed by the legislation of the Russian Federation, where the right to own

⁵⁴ 27 January 1999, ETS 173.

⁵⁵ Кодекс Российской Федерации об административных правонарушениях, 30 December 2001, No. 195-FZ.

corresponds to the obligation of proper conservation, preservation, and protection by way of both civil or criminal means.

The participation of the Russian Federation in international and regional (European) treaties, as well as in the development of new conventions, allows Russia to cooperate in the creation of a common European legal space. Culture is one of the essential pillars of European Union–Russia relations, promoting a structured approach to cultural cooperation and cooperation in combating criminal offences relating to cultural property. National legislators strive to meet the new demands and tendencies of the market in order to reduce and eliminate risks and to contribute to market dynamics and development, including the ongoing issues faced by culture and art.

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