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GENERAL ARTICLES

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Defining "National Treasures" in the European Union. Is the Sky Really the Limit?

Abstract: The main objective of this article is to analyse the scope of EU Member States' right to determine national treasures for the purpose of Directive 2014/60/EU on the return of cultural objects. While investigating the issue at the EU, human rights, and constitutional levels, the authors argue that the right to define what constitutes national treasures is not an absolute right. The definition of this particular category of cultural objects cannot be used to circumvent the rules on the free movement of goods and to hamper this freedom in an unjustifiable and arbitrary manner. On the human rights and constitutional levels, Member States' right cannot interfere with the right to enjoy one's possessions. In particular, it cannot be used as a means of *de facto* expropriation without indemnity. There may, however, be some conflicts between the European Convention on

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Human Rights and national constitutional rules. For instance, in the practice of the Polish Constitutional Court, limitations on ownership arising from the classification of personal property as a national treasure will not be considered as *de facto* expropriation and do not require indemnification. These differences make the position of an owner of a cultural good difficult. With ownership of cultural goods regulated by EU law, international treaties and national public law his or her situation may differ depending on which court decides the case, and on a law applied by that court.

Keywords: cultural heritage, European Union, national treasures, human rights, constitutional rights

Introduction

The original cultural goods directive – Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State[1] – was largely considered to be a necessary, though not very effective, tool for the protection of national treasures of Member States of the European Union (EU).[2] Hence its new version was more than expected. With the recast of the cultural goods directive – Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012[3] – some old problems disappeared, but some new ones emerged.[4] The new directive is more flexible to use than its predecessor and gives Member States a great deal of freedom in defining what constitutes their national treasures. Some may wonder if it has not gone too far in this respect, and whether the new rules on return of cultural goods give Member States practically *carte blanche* in restricting free movement of cultural goods. In such case, Directive 2014/60/EU could be contravening one of the fundamental principles of the EU. This position is justified if we take into account that the former cultural goods directive limited its scope to certain categories of goods, listed in its annex. This list was identical with the list of cultural objects subjected to the EU export regulations.[5]

1 OJ L 74, 27.03.1993, p. 74.

2 P. Stec, *Dyrektywa 93/7/EWG z perspektywy dwóch dekad funkcjonowania* [Directive 93/7/EEC: A Twenty-Year Retrospective], "Santander Art and Culture Law Review" 2015, Vol. 1(1), p. 103.

3 OJ L 159, 28.05.2014, p. 1.

4 P. Stec, *The Lady or the Tiger? Legal Pitfalls of Implementing the Return of Cultural Goods Directive*, "Santander Art and Culture Law Review" 2016, Vol. 2(2), pp. 135-148.

5 See Council Regulation (EEC) No. 3911/92 of 9 December 1992 on the export of cultural goods, OJ L 395, 31.12.1992, p. 1, as amended; Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods (Codified version), OJ L 39, 10.02.2009, p. 1.

In this article, we attempt to define the scope of the Member States' right to define national treasures at three different levels. First, we scrutinize the concept of the cultural goods exception under EU law. Next, we refer to the freedom of every natural or legal person to enjoy one's possessions, under the regimes of the European Convention on Human Rights (ECHR)[6] and that of the Charter of Fundamental Rights of the European Union (CFR).[7] Finally, we will look at a *Stichprobe* of constitutional rules on ownership. This analysis should allow us to identify the main limitations on EU Member States' freedom to define cultural goods at each of these levels.

The EU Law Perspective

Cultural heritage plays a specific, and one may say ambiguous, role in the law and policy of the EU. Technically, it is an important part of European actions and is covered by the free movement of goods. On the other hand, Article 167(5) of the Treaty on the Functioning of the European Union (TFEU),[8] which deals with cultural policy, limits the powers of both the Parliament and the Council in this respect. Accordingly, the two EU law-making institutions, "acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States". The Council, on a proposal from the Commission, is also authorized to adopt recommendations. Furthermore, these incentive measures and recommendations in relation to heritage may only deal with the conservation and safeguarding of cultural heritage of European significance. That means that even these limited measures are additionally limited to one type of heritage only, that is to heritage deemed to have a "European" value. We will not discuss here in detail what constitutes "cultural heritage of European significance" as opposed to the "European cultural heritage" or "cultural heritage of the Member States",[9] although the delimitation between various types of European cultural goods will be an important part of this article. For our purposes it is enough to say that Article 167(5) TFEU deals only with cultural goods forming a sort of "common heritage of Europe" and being of importance both to all European countries and to the EU

[6] 4 November 1950, 213 UNTS 221, as amended.

[7] (Consolidated version) OJ C 202, 7.06.2016, p. 389.

[8] (Consolidated version) OJ C 202, 7.06.2016, p. 1.

[9] For more on the notion of "cultural heritage of European significance" under EU law, see: V.L.A. Čeginskas, *The Added European Value of Cultural Heritage. The European Heritage Label*, "Santander Art and Culture Law Review" 2018, Vol. 4(2), pp. 29-50; A. Jakubowski, *Common Cultural Heritage, the European Union, and International Law*, in: A. Jakubowski, K. Hausler, F. Fiorentini (eds.), *Cultural Heritage in the European Union: A Critical Inquiry into Law and Policy*, Brill, Leiden–Boston 2019, pp. 33-56. For the purpose of this article we adopt the widest possible meaning of the notion "European heritage".

as a whole.[10] This limited and Euro-centric approach contrasts with the legislative activities of the Council of Europe (CoE), which focus more on the effective protection of heritage and creation of rules of universal application. Nevertheless, the activities of both the EU and the CoE are two sides of the same coin, forming a complete and functional European system of heritage protection.

It would be "reinventing the wheel" to state that the EU has emerged as a tool for economic, not cultural, cooperation between Member States. This "original sin" of the EU has influenced the way both the treaty law and secondary legislation look at cultural heritage from the commercial perspective. This is why cultural goods are regulated by the EU in the context of trade restrictions, rather than in the context of safeguarding them for future generations. The provisions of Articles 34 and 35 TFEU prohibit quantitative restrictions on export, import, and prohibit restrictions having an equivalent effect. Article 36 however provides that the provisions of Articles 34 and 35 "shall not preclude prohibitions or restrictions on imports, exports, or goods in transit justified on grounds of public morality, public policy, or public security, the protection of health and life of humans, animals, or plants, *the protection of national treasures possessing artistic, historic, or archaeological value*, or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States" (Article 36 TFEU, emphasis added).

It has been noted by learned men and women that the notion "national treasure" does not translate easily into the various languages of the EU Member States. Definitions differ from "national treasures" through to "cultural goods of the state" and up to "goods of cultural significance" (*sci licet* – "all goods").[11] Additionally, in some languages the term "national" in the context used can be translated as either "cultural goods of national importance" or "goods pertinent to culture of one nation" (e.g. British Crown Jewels are "national" in this respect, while Elgin's marbles are not). If we take into account yet another meaning of the word "national", "national treasures" may also have a nationalist flair.[12] And if we try to find the least common denominator for this subject, we will end up with a conclusion that national treasures are what Member States define as National Treasures. Nothing in the treaty authorizes the EU to define national treasures, so it is sole competence of the Member States. This is also reflected in the EU secondary law – the current cultural goods directive (Directive 2014/60/EU), codified export regulation (Regulation

[10] Compare: R. Craufurd Smith, *Article 151 EC and European Identity*, in: eadem (ed.), *Culture and European Union Law*, Oxford University Press, Oxford 2004, pp. 277-297.

[11] For more on the issue of the terminology used in this regard, see M. Graziadei, B. Pasa, *The Single European Market and Cultural Heritage: The Protection of National Treasures in Europe*, in: A. Jakubowski, K. Hausler, F. Fiorentini (eds.), op. cit., pp. 79-112.

[12] H. Nieć, *Ojczyzna dzieła sztuki. Międzynarodowa ochrona integralności narodowej spuścizny kulturalnej* [Homeland of a Work of Art: International Protection of the Integrity of National Cultural Heritage], Państwowe Wydawnictwo Naukowe, Warszawa–Kraków 1980, *passim*; M. Niedźwiedź, *Obrót dobrami kultury w Unii Europejskiej* [Circulation of Cultural Goods in the European Union], Zakamycze, Kraków 2000, *passim*.

No. 116/2009) and the most recent import regulation (Regulation No. 2019/880)[13] do not define "national treasures", but use the notion "cultural goods" or "cultural objects" instead, even if, as in the case of the cultural goods directive, these "cultural goods" are an umbrella term for national treasures of the Member States. In other words, the EU law offers no clear-cut guidelines on what can constitute "national treasures" as referred to in Article 36 TFEU. Hence it may seem that it is up to the Member States to define the content of this notion.

At the same time however, the original version of the cultural goods directive (Directive 93/7 EEC) can be seen as a European attempt to define national treasures (establishing age and monetary thresholds), thus limiting the capacity of Member States to define what constitutes their national treasures. This definition was considered to be not in conformity with Article 35 TFEU, because the national treasures it had dealt with were classified, with the exception of archaeological treasures and archives, according to their commercial, not artistic, historic, or archaeological value.

Interestingly, both the EU export regulation (Regulation No. 116/2009) and the new import regulation (Regulation No. 2019/880) use the same method of defining cultural goods as the original version of the directive, i.e. by referring to an annex with a list of cultural objects which fall within the scope of the regulation. While the former regulation uses protection of national treasures as the rationale for its introduction, the latter one directly points out security reasons.

From the EU law perspective, the national treasures exception heavily affects cultural goods legislation at the European level. As mentioned above, the EU deals with national treasures primarily in the commercial context of free movement of goods. Protection of national treasures is thus nothing more than a most welcome side effect. This approach changes the way both regulations are interpreted. Their principal, although surprisingly less visible in the public debate, rationale is protection of public morality, policy, and security. Whether intentionally (as in the case of the import regulation) or not (as in the case of the export regulation and of the first version of the cultural goods directive – Directive 93/7/EEC) both regulations are aimed at controlling goods that can be potentially used for terrorist financing and money laundering or other transnational criminal activity. If we ignore national heritage and switch to public policy and security protection, the rationale for the European system of art trade controls is quite convincing. And there is no conflict between the scope of protection guaranteed by Directive 2014/60/EU and the regulations. The former is aimed at facilitating the application of the national treasures exception on European level within the free movement of goods framework (return proceedings, information exchange, etc.), while the latter deal with controlling trade in valuable goods that can be used to finance various forms of criminal activity. Of course it is a good idea to have national treasures covered

[13] 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.

by the export regulation, however it is not an absolute necessity. Having presented the legal and policy framework for EU legislation concerning national treasures, we may now proceed to a more important set of questions: Are Member States completely free to define their national treasures and is the sky really the limit?

Before we attempt to answer these questions, we should note that Article 36 TFEU contains guidelines as to what can constitute a national treasure of any given Member State. These are goods of "artistic, historic or archaeological value", regardless of their commercial value.[14] These goods need not be antiquities. They may, surprisingly, belong to modern history or even, although this can be contested, be material witnesses of current events. "National" in this particular sense does not mean that we have to look for a specific connection between an object and the history or culture of a particular State or nation. So we are not interested in establishing what Halina Nieć has called "artwork's homeland".[15] What matters is that the goods in question are important from the perspective of a Member State[16] and that these objects should not permanently leave its territory. It is generally the competence of Member States to define what is "important", as long as they give this label to objects that are of historic, artistic, or archaeological value.[17] What matters, if we look at national treasures through the lens of the free movement of goods, is the way national laws restrict their export (or, as the case may be, their import). In this respect national regulations cannot constitute a means of arbitrary discrimination or disguised restriction on trade between Member States.

An analysis of the relevant national legislation[18] and Directive 2014/60/EU allows us to distinguish three types of national treasures, based on their ownership and "trade destination":

1) National Treasures owned by the State and other public entities (public collections) which, generally, are not *in commercium*. They form a public patrimony, are rarely if ever sold or exported by the State, and are not subject to the same principles as commercial goods; in many cases they form *res extra commercium* or a commodity that can be owned only by public bodies;
2) Cultural objects forming part of the patrimony of churches and religious communities, which are not goods in commerce, but are sometimes ex-

[14] Once again – relying solely on commercial value was the original sin of Directive 93/7/EEC.

[15] H. Nieć, op. cit., pp. 140-142.

[16] We leave aside here the problem of conflicting interests if two or more Member States declare that a given object is their national treasure.

[17] See T. Kyriakou, *The Protection of National Treasures in the EU Single Market*, in: E. Psychogiopoulou (ed.), *Cultural Governance and the European Union. Protecting and Promoting Cultural Diversity in Europe*, Palgrave Macmillan, London–New York 2015, pp. 63-74; A. Biondi, *The Merchant, the Thief & the Citizen: The Circulation of Works of Art Within the European Union*, "Common Market Law Review" 1997, Vol. 34(5), pp. 1177-1182.

[18] P. Stec et al., *Ochrona zabytków ruchomych w wybranych obcych systemach prawnych* [Preservation of Movable Cultural Property in Selected National Legal Systems], Opole 2015 (unpublished report prepared for the National Institute for Museums and Public Collections).

ported and imported (e.g. shrine/reliquary moved from a monastery in one Member State to a monastery in another one);

3) Other cultural objects of national importance owned by non-public entities.

This classification shows that objects belonging to groups 1 and 2 are not generally destined to be commercial goods, and due to their cultural importance their permanent export is generally prohibited. This is in conformance with the wording of Article 36 TFEU, because it restricts exports in a non-arbitrary fashion and the measures are aimed at non-commercial goods. The same goes for the cultural property of churches and religious communities, at least as long as the goods in question are not destined for sale. Restrictions placed on these goods may collide not only with free movement of goods but also with religious freedoms, since in many religions holy objects are exhibited internationally. This is similar to exhibiting a state-owned national treasure abroad. If however the church decides to put its cultural treasures on the market, they will be treated as private commercial goods. From the perspective of the treaty the crucial element is to determine whether the definition of "national treasures" adopted by Member States is neither arbitrary nor constitutes a measure equivalent to a tariff. For example, an attempt to declare all national cultural goods as national treasures would be in contravention of both the letter and principles of the treaty. The rules for declaring cultural heritage items as national treasures adopted by the Member States should be clear and precise in order to avoid the risk that a decision of a competent authority to classify an item as a national treasure will be arbitrary. The principal qualifier should be the heritage value of an item, either for the Member State or one of its ethnic or religious groups, or for the European/world heritage. Another factor to be considered is the way a Member State controls art exports. In this respect we have to again take into account the means adopted by Member State's legislation. In the *Commission v. Italy*[19] case, a progressive tax on exported cultural goods was declared inadmissible, while a buy-in procedure (*de facto* expropriation) was considered a legitimate means of export control. So it seems that a measure having an equivalent effect should be interpreted narrowly as a financial measure aimed at hampering the free movement of goods or a measure of equivalent character, like a general prohibition on the export of cultural goods. At the same time these rules also apply to art imports – but this issue exceeds the scope of this article.

Presently, EU Member States are free to choose the way they define and protect their national treasures, but it must be taken into account that at some point the Court of Justice of the European Union may attempt to set a common standard; as it did for length of copyright protection in the *Phil Collins* case[20] or for the profes-

[19] Case 7/68, ECR, 1968, 617.

[20] Joint cases C-92/92 and C-326/92, *Phil Collins v. Imtrat Handelsgesellschaft mbH and Patricia Im- und Export Verwaltungsgesellschaft mbH and Leif Emanuel Kraul v. EMI Electrola GmbH*, ECR, 1993, I-5145. This case has led to a *de facto* extension of copyright protection to the longest possible period existing in a Member State.

sional secrecy of in-house lawyers in *AKZO-NOBEL* case.[21] In the former the Court *de facto* extended length of protection up to 70 years (the longest possible time in national legislation), while in the latter the Court searched for the least common denominator, *de facto* limiting the professional secrecy of in-house lawyers.

National Treasures and the Enjoyment of Possessions: The ECHR Perspective

Although there is no general "right to protection of heritage",[22] the right of Member States to define their national treasures can be confronted with the personal right to enjoy possession of an object. By declaring that a given cultural object is a national treasure, the Member State may limit the owner's rights by imposing additional burdens on him/her, or even by expropriation of a cultural object justified by policy reasons or the need to safeguard said object. In this part of our article we attempt to show how far a Member State can go when limiting the rights of an owner of a national treasure.

Both the ECHR and CFR safeguard an owner's right to enjoy his or her possessions and they do so in a similar manner. The only difference is Article 17(2) CFR, which explicitly defines intellectual property as one of the protected types of possessions.[23] This particular provision simply acknowledges the property-like status of intellectual property, i.e. something that was in fact a long term practice of the European Court of Human Rights (ECtHR)[24] and is not directly connected with ownership of national treasures.[25]

According to Article 1 of Protocol No. 1 to the ECHR: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the condi-

[21] Case C-550/07 P, *Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v. European Commission*, ECR, 2010, I-8301. This case has interfered with national rules on legal professions, limiting the right to professional secrecy only to lawyers who are independent contractors. As a consequence, in all the legal systems that allow professional lawyers to be employed as in-house lawyers, the rules on professional secrecy do not apply to these lawyers, even if national law provides otherwise.

[22] *Cultural Rights in the Case-law of the European Court of Human Rights*, Council of Europe 2011 (updated 17 January 2017), pp. 12-13, https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf [accessed: 02.08.2019].

[23] This provision does it in a very peculiar way, suggesting that IP is the only type of property enjoying unlimited protection. Cf. P. Stec, *Wpływ Karty Praw Podstawowych na prawo własności intelektualnej* [The Impact of the Charter of Fundamental Rights on Intellectual Property Rights], in: M. Thorz (ed.), *Karta Praw Podstawowych Unii Europejskiej. Polityka – etyka – prawo* [Charter of Fundamental Rights of the European Union. Politics – Ethics – Law], Wydawnictwo Akademii Polonijnej "Educator", Częstochowa 2009, pp. 49-62.

[24] Possession has an autonomous meaning under ECHR. Cf. e.g. T. Allen, *The Autonomous Meaning of 'Possessions' under the European Convention of Human Rights*, in: E. Cooke (ed.), *Modern Studies in Property Law*, Vol. II: *Property 2002*, Hart Publishing, Oxford 2003, pp. 57-80.

[25] Since positions of the ECHR and CFR are basically identical in this area we focus only on the former. What is said here about the right to enjoy possessions under ECHR will apply also to CFR.

tions provided for by law and by the general principles of international law".[26] This appears to be a negative right, aimed at protecting an individual against any arbitrary action on the part of a State and its agents. The ECHR however also sees a "positive" side of this right, understood as an obligation on the part of a State to undertake certain legislative actions in order to safeguard the right to possession. The State should: 1) introduce laws protecting the peaceful enjoyment of possession; 2) set forth rule regarding expropriation or limitations on ownership only in conformance with the Article 1 of Protocol No. 1 to the ECHR; 3) set forth rules for control of the enjoyment of possession in conformity with the public interest.[27] Hence the owner's right can be limited only in public interest, and these limitations cannot be excessive (the proportionality principle).[28] Public interest is a general clause that should be interpreted *de casu ad casum*, taking into account the political, cultural, social, and economic situation of any given country.[29]

Expropriation cannot therefore be effectuated for private purposes. However it is possible to transfer expropriated property rights to another person, provided that this or other means of limiting the right to enjoy possessions "serves strengthening of social justice, serving as a means to achieve a rightful objective".[30] The ECtHR considers the protection of cultural heritage as a justifiable public interest limiting not only the right of possessions, but also other rights, such as for instance freedom of expression.

This conclusion results from the judgment in the *Ehrmann and SCI VHI v. France* case.[31] In this particular case the Court had to decide if planning and heritage protection rules unlawfully limited artistic freedom. The applicant in this case was

[26] Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, 213 UNTS 262.

[27] S. Jarosz-Żukowska, *Wywłaszczenie faktyczne w orzecznictwie Europejskiego Trybunału Praw Człowieka* [Expropriation *de facto* in the Case Law of the European Court of Human Rights], in: A. Bator et al. (eds.), *Współczesne koncepcje ochrony wolności i praw podstawowych* [Modern Concepts for the Protection of Freedoms and Fundamental Rights], Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wrocław 2013, p. 84.

[28] European Court of Human Rights, *Adriana C. Goudswaard-van der Lans v. the Netherlands*, Application No. 75255/01, Judgment of 22 September 2005; European Court of Human Rights, *Kjartan Ásmundsson v. Iceland*, Application No. 60669/00, Judgment of 12 October 2004; European Court of Human Rights, *Sporrong and Lönnroth v. Sweden*, Application Nos. 7151/75, 7152/75, Judgment of 23 September 1982.

[29] J. Czepek, *Zobowiązania pozytywne państwa w sferze praw człowieka pierwszej generacji na tle Europejskiej Konwencji Praw Człowieka* [State's Positive Obligations in the Sphere of First Generation Human Rights under the European Convention on Human Rights], Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego, Olsztyn 2014, pp. 232-234; Ł. Duda, J. Kociubiński, *Realizacja ochrony własności w Europejskiej Konwencji Praw Człowieka na podstawie orzeczenia Lithgow i inni* [Implementation of the Protection of Property in the European Convention on Human Rights on the Basis of the Lithgow and Others Ruling], in: M. Sadowski, P. Szymaniec (eds.), *Własność – idea, instytucje, ochrona* [Property – Idea, Institutions, Security], Koło Naukowe Doktryn Politycznych i Prawnych; Katedra Doktryn Politycznych Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2009, p. 236.

[30] European Court of Human Rights, *Dokić v. Bosnia and Herzegovina*, Application No. 6518/04, Judgment of 27 May 2010. See also S. Jarosz-Żukowska, *Wywłaszczenie faktyczne…*, p. 85.

[31] Application No. 2777/10, Judgment of 7 June 2011.

a visual artist who was fined for having carried out work on the facade of a public access building within sight of a church and a manor classed as historic monuments. Such works required a prior permit. The Court stated that planning rules aimed at heritage protection have priority over artistic freedom. This case is important to the issue of national treasures in that it shows the Court is somewhat sympathetic to the idea that protection of cultural heritage as a value that has priority over some other values protected by the ECHR. In this judgment the Court had stated that in this particular case the limitation placed on the right of expression was in the general interest and "necessary in a democratic society". In other judgments the Court decided that limiting freedom of enjoyment of possession (e.g. granting a State pre-emption rights) can be justified by the need to safeguard the access of the general public to objects constituting part of the universal culture and cultural heritage of mankind (*Beyeler v. Italy* case),[32] or by the need to protect national cultural heritage (e.g. restricting use of a historical real property; the *Potomska and Potomski v. Poland* case).[33] According to the Court these restrictions applied both to antiquities and modern cultural heritage.[34]

It is however hard to predict what position the Court will take when analysing the validity of laws restricting enjoyment of possession of cultural objects considered "national treasures" by a particular State. An analysis of the cultural property judgments conducted by Fabian Michl led to the conclusion that the Court's judgments tend to be biased either toward a State or towards an owner of a cultural object.[35] This however does not mean that any attempt to predict what the Court will do is equivalent to playing "heads or tails".

While European Member States are authorized to define what constitutes their national treasures, nevertheless in doing so they are limited by previously undertaken obligations, including the ECHR, which is now clearly an element of the EU legal system. Thus, the way in which EU Member States approach this problem must take into account limitations imposed by Protocol No. 1 to the ECHR. Just as in the case of the free movement of goods, adopted measures cannot be arbitrary and disproportional, and any limitation of ownership rights has to be compensated by the State (cf. *Debelianovi v. Bulgaria*[36] and *Kozacioğlu v. Turkey*[37]). The above rules apply to both express and implied (*de facto*) expropriations (e.g. expropriation by excessive taxation).[38]

[32] Application No. 33202/96, Judgment of 5 January 2000.

[33] Application No. 33949/05, Judgment of 29 March 2001; Final judgment of 4 November 2001.

[34] A. Młynarska-Sobaczewska, *Right to Culture*, Scholar Publishing House, Warsaw 2018, p. 110.

[35] F. Michl, *The Protection of Cultural Goods and the Right to Property under the ECHR*, in: E. Lagrange, S. Oeter, R. Uerpmann-Wittzack (eds.), *Cultural Heritage and International Law*, Springer, Berlin–New York–Heidelberg 2018, pp. 109-127.

[36] Application No. 61951/00, Judgment of 29 March 2007.

[37] Application No. 2334/03, Judgment of 19 February 2009; A. Młynarska-Sobaczewska, op. cit., pp. 103-104.

[38] S. Jarosz-Żukowska, *Wywłaszczenie faktyczne…*, p. 87.

National Treasures and Constitutional Law

The third level of our analysis is connected with the constitutional limits of defining or classifying cultural objects as national treasures (and also thus limiting the free movement thereof). From the constitutional standpoint, cultural goods fall within the scope of constitutionally protected "property" or "possessions"; thus general constitutional rules on limits on ownership will apply.

John H. Merryman spoke about "art importing" and "art exporting" countries,[39] and for the purposes of this article another distinction – namely between "heritage rich" and "heritage deprived" countries – may also prove useful. Indeed, attitudes towards art exports differ from country to country, depending on where they lie on the "exporter-importer" and "rich-deprived" scales. Belgium, for instance, limits itself to protection of selected heritage items deemed most crucial for the country's culture and history,[40] while Poland, with its history of plunder and deliberate destruction of cultural heritage over the course of its stormy past, is ready to protect even items of relatively modest market value, provided that they are old enough and culturally important. Thus in Poland it is assumed that each time a cultural object is exported permanently the country's heritage assets diminish.[41] Another policy reason for limiting not only export, but also art loans and museum exchanges, is the need to safeguard access to cultural property both for locals and foreign tourists lured by the opportunity to see things they cannot see at home.[42]

For the purposes of this article we take a brief look at four different constitutional systems: Germany, France, Italy, and Poland. France and Italy were chosen as a *Stichprobe* (*spot check*), as being two countries with robust and very old systems of protection of cultural property. Germany and Poland were chosen as countries that have had to deal with the aftermath of a totalitarian past (albeit from different standpoints). Moreover, the first two countries belong to the Romanic legal family, while the latter belong to the Germanic legal family, so the chosen sample covers both principal branches of civil law.[43]

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[39] J.H. Merryman, *Thinking About Elgin Marbles. Critical Essays on Cultural Property, Art and Law*, Wolters Kluwer, Austin–Boston–Chicago–New York–The Netherlands 2009, p. 32.

[40] According to the so-called "Topstukkendecreet" only the exportation of goods listed verbatim as constituting movable heritage of the Flemish Community requires a license. Cf. Article 3 of the *Decreet houdende bescherming van het roerend cultureel erfgoed van uitzonderlijk belang/Décret portant protection du patrimoine culturel mobilier présentant un intérêt exceptionnel*, 24 January 2003 (with amendments). Both language versions (Flemish and French) are available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2003012440&table_name=wet [accessed: 02.10.2019].

[41] S.M. Buczyński, *Regulacje wywozowe jako szczególne ograniczenie prawa własności* [Export Regulations as a Specific Restriction on Property Rights], in: W. Pływaczewski, B. Gadecki (eds.), *Ochrona dziedzictwa kulturowego i naturalnego. Perspektywa prawna i kryminologiczna* [Protection of Cultural and Natural Heritage. Legal and Criminological Perspective], C.H. Beck, Warszawa 2015, p. 117.

[42] Ibidem, p. 113.

[43] It should be noted that although Poland does not fit easily into this classical Romanic – Germanic division, its public law, and in particular its Constitution, has always been strongly influenced by German and Austrian

The French Constitution states in its preamble that the French People's attachment to the idea of human rights is proclaimed in the Declaration of Human and Civic Rights of 1789, as confirmed and complemented by the preamble to the 1946 French Constitution.[44] The Declaration proclaimed the triad of equality, fraternity, and liberty as fundamentals of the human rights system.[45] In consequence, any restrictions of the above liberties need to be statutory. Property rights are deemed "sacred and inviolable", and expropriation is allowed only for public purposes and in exchange for just compensation. The Preamble to the 1946 Constitution states that the Nation safeguards equal access to education and culture. This justifies restricting the property rights of owners of cultural goods in order to allow the general public to access privately-owned cultural goods.

The Italian Constitution of 1947[46] protects inviolable human rights, but also requires the people to discharge their duties of political, social, and economic solidarity (Article 2). At the same time, the Republic preserves and enhances the historical and artistic heritage of the Nation (Article 9).[47] The above values are often contradictory, and the constitution has to balance the rights of the individual and the duty to protect heritage. This is quite clearly visible in the case of property rights. Private property is protected, but the law can set limits on the free enjoyment of property in order to safeguard the social functions of property. Cultural property ownership can be restricted, but only to the limits proportional to its heritage value. The same goes for expropriation.[48] This priority of the public interest over the rights of an owner was clearly stated by the members of the Constitutional Assembly.[49]

law. This justifies classifying it as "Germanic". It is also a post-Socialist legal system, although we doubt if the maintenance of a (post)socialist legal system is still relevant in contemporary comparative legal research.

44 *Constitution du 4 octobre 1958*, Journal officiel de la République française, 5 October 1958, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071194 [accessed: 02.10.2019].

45 M. Maciejewski, *Początki koncepcji oraz regulacji praw i wolności człowieka do czasów Oświecenia* [The Beginnings of the Concept and Regulation of Human Rights and Freedoms up to the Time of the Enlightenment], in: A. Bator et al., op. cit., p. 16.

46 *Costituzione della Republica Italiana*, Gazzetta Ufficiale No. 298, 27 December 1947, https://www.senato.it/documenti/repository/istituzione/costituzione.pdf [accessed: 20.10.2019].

47 S. Calò, M. Malè, E. Tamburrino (eds.), *Developed Legal and Regulatory Framework for Protection of Medieval Ruins*, May 2018, p. 8, https://www.interreg-central.eu/Content.Node/Deliverable-D.-T3.3.1-Rev-2.1-(1)-1.pdf [accessed: 01.11.2019].

48 *Decreto Legislativo 22 gennaio 2004, n. 42 "Codice dei beni culturali e del paesaggio"* [Legislative Decree No. 42 of 22 January 2004 "Cultural Heritage Code"], Gazzetta Ufficiale No. 45, 24 February 2004, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2004;42~art182 [accessed: 20.10.2019].

49 A. Ragusa, *Costituzione e cultura. Il dibattito in tema di Beni culturali nei lavori dell'Assemblea costituente* [Constitution and Culture. A Debate on Cultural Goods in the Works of the Constitutional Assembly], "Storia e Futuro. Rivista di storia e storiografia online" 2010, Vol. 22, http://storiaefuturo.eu/costituzione-cultura-dibattito-in-tema-beni-culturali-lavori-dellassemblea-costituente/ [accessed: 20.10.2019].

The German Constitution ("Basic Law"; *Grundgesetz für die Bundesrepublik Deutschland*) of 1949[50] safeguards the right to own property, but within statutory limits. According to Article 14(2) "ownership is an obligation" and its use shall also serve the public good. This fits in well with the concept of restricting ownership rights of national treasures due to their intrinsic heritage value. Such restrictions have to be introduced by a statute and be proportional, i.e. adequate to the declared purpose.[51] The same goes for expropriation, which is permissible only for common goods.[52] It should also be noted that the German Constitution allows for placing limitations on fundamental rights, including property ownership, if they are used and abused to combat the democratic political order (Article 18).

The Polish Constitution of 1997[53] does not differ significantly from the three mentioned above. The right to property is one of the constitutional and fundamental rights.[54] The constitutional principle of protection of property is contained in Article 21(1), enabling expropriation only for a public purpose and for just compensation. The Constitutional Tribunal has ruled that just compensation must be equivalent to the deprivation of ownership and cannot be paid in instalments. For a long period of time any attempt to restrict a person's right to enjoy possessions was treated by the Constitutional Tribunal as one of the forms of expropriation. However, a few years ago, in a somewhat surprising move, the Tribunal changed its position on the subject, stating that restricting the rights associated with possession is not an expropriation, and that owners do not enjoy constitutional protection in this respect.[55]

Constitutional rights can be limited only by a statute and only if they are necessary in a democratic State for safeguarding its safety and public order, or to protect the environment, health, or public morality. These restrictions must be necessary, useful, and proportional.[56] Limitations of property rights also constitute a *lex specialis*. While this is a closed list of reasons for limiting constitutional rights, it has been noted in the literature that the Constitutional Tribunal tends to extend the scope of such notions as "public safety" or "state security".[57] It should also be

[50] *Grundgesetz für die Bundesrepublik Deutschland*, Bundesgesetzblatt Part I, p. 404, http://www.gesetze-im-internet.de/gg/index.html [accessed: 02.10.2019]. English translation available in *Basic Law for the Federal Republic of Germany*, last amended on 28 March 2019, translated by C. Tomuschat et al., Deutscher Bundestag, Berlin 2019, https://www.btg-bestellservice.de/pdf/80201000.pdf [accessed: 01.11.2019].

[51] M. Bożek, *System konstytucyjny Republiki Federalnej Niemiec* [The Constitutional System of the Federal Republic of Germany], Wydawnictwo Sejmowe, Warszawa 2017, p. 23.

[52] Ibidem, p. 43.

[53] *Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Dziennik Ustaw 1997 No. 78 item 483.

[54] A. Frankiewicz, *Konstytucyjna regulacja własności w Rzeczypospolitej Polskiej* [Constitutional Regulation of Ownership in the Republic of Poland], in: M. Sadowski, P. Szymaniec, op. cit., pp. 178-193.

[55] Just for the record – this judgment was delivered before the 2015 constitutional stalemate.

[56] Polish Constitutional Tribunal, Judgment of 22 September 2005, KP 1/05, at IV.3.

[57] S. Jarosz-Żukowska, *Przesłanki dopuszczalności ograniczeń prawa własności w praktyce orzeczniczej polskiego Trybunału Konstytucyjnego* [Prerequisites for Limiting Ownership Rights in the Judgments of the Polish Constitutional Tribunal], in: K. Skotnicki (ed.), *Własność: zagadnienia ustrojowo-prawne. Porównanie rozwią-*

noted that the protection of national heritage or cultural objects is not, surprisingly, a constitutional prerequisite for limiting rights and freedoms. This means that justifying any restrictions in this area requires more advanced legal engineering in light of the above-mentioned position of the Constitutional Tribunal.

All the national constitutions briefly described above have a rather high level of protection of property, albeit with the possibility to limit ownership rights for public purposes. These limitations, including in the field of heritage protection, must balance public and private interests and provide for just compensation.[58] These actions cannot be arbitrary or unpredictable, which makes it difficult to define or classify an object as a national treasure following its removal from the nation's territory.

Conclusions

The EU Member States' right to define and to protect national treasures is one of those rights arising under both the constitutional law of the EU as well as that of its Member States. This right is limited not only by Article 36 TFEU, but also by domestic constitutions and the ECHR. Somewhat surprisingly other EU legislation, and in particular cultural goods import and export regulations, are only remotely connected with the "national treasures" exception, because their *ratio* is security rather than heritage protection. Although Member States are free to define their national treasures, the way they do so and the ways in which they control their exportation cannot be used to circumvent the rules on the free movement of goods. On the constitutional and human rights planes, the principal factor limiting the lawmakers' creativity in creating a framework for protection of national treasures is the right of every natural or legal person to the peaceful use and enjoyment of one's possessions. Hence any attempt to limit the export of cultural goods cannot infringe this particular right.

Basing on the existing case law, we can extrapolate a set of principles that can be used as guidelines for almost failsafe legislations with respect to national treasures. First, there should be clear rules as to what constitutes national treasure and how are they defined or classified, so as to avoid arbitrary and unjustified expropriations. Second, when determining which goods constitute national treasures, the Member States should take into account the rule that such classification cannot constitute a disguised custom or tariff, nor interfere too deeply with ownership rights. Thus it would be inadmissible, for example, to create a definition of national treasures that covers practically all cultural property on the territory of a Member State. A total export prohibition would also be inadmissible. Third, classification of a privately-owned cultural object as a national treasure requires payment of just compensation. Fourth, classification *ex post*[59] can only be applied in extraordinary circumstances, e.g. in the

zań w państwach Europy Środkowo-Wschodniej [Ownership: Constitutional Aspects. A Comparison of Models Adopted in East-Central European Countries], Łódzkie Towarzystwo Naukowe, Łódź 2006, pp. 218-219.

[58] Polish Constitutional Tribunal, Judgment of 8 May 1990, K 1/90.

[59] By an *ex post* classification we mean a classification occurring after the exportation of a cultural object, admissible under the directive. Such would be an extraordinary measure and should be applied with caution.

case of illegally exported objects or objects exported before classification rules came into force. Fifth, since on all three levels only non-state property is protected against arbitrary actions of the State, more severe trade limitations may be placed on publicly-owned national treasures than on privately-owned ones. Sixth, both export and constitutional rules make it difficult for Member States to widen the scope of national treasures and diversify measures prohibiting their export. It seems that two "safe" options are the prohibition of permanent export (while granting a temporary license) and a State's statutory buy-out right. Finally, export prohibitions of national treasures should be balanced by the right of individuals to invest in cultural property, even if it cannot leave the territory of a Member State. Limitations on the free movement of goods will hence be compensated by the free movement of capital. This leads us to the conclusion that national treasures should be treated in this respect as a special type of property, closer to immovable rather than to personal property.

Regardless of the potentially *failsafe* nature of the above guidelines, we should bear in mind that there is a high level of uncertainty regarding the approaches of the various courts to the definition of national treasures and the means of their protection, both at the European and domestic levels. For instance, it is possible that the Court of Justice of the European Union will assume the right to assess whether the definition of a national treasure is compatible with the TFEU, or may try to find a common denominator for admissible ways of controlling the exportation of cultural objects.

It is also possible that the domestic constitutional courts and the European Court of Human Rights will eventually be biased either towards the protection of the national heritage of Member States at the expense of ownership rights, or will go in the other direction and will protect owners' rights at the expense of the integrity of Member States' national heritage. At this point in time, despite the existence of much guess work disguised as scholarly legal analysis, we can only adopt a "wait and see" approach. Time will tell if the new approaches towards national treasures are fit for the intended purposes.

References

Allen T., *The Autonomous Meaning of 'Possessions' under the European Convention of Human Rights*, in: E. Cooke (ed.), *Modern Studies in Property Law*, Vol. II: *Property 2002*, Hart Publishing, Oxford 2003.

Biondi A., *The Merchant, the Thief & the Citizen: The Circulation of Works of Art Within the European Union*, "Common Market Law Review" 1997, Vol. 34(5).

Bożek M., *System konstytucyjny Republiki Federalnej Niemiec* [The Constitutional System of the Federal Republic of Germany], Wydawnictwo Sejmowe, Warszawa 2017.

Buczyński S.M., *Regulacje wywozowe jako szczególne ograniczenie prawa własności* [Export Regulations as a Specific Restriction on Property Rights], in: W. Pływaczewski, B. Gadecki (eds.), *Ochrona dziedzictwa kulturowego i naturalnego. Perspektywa prawna i kryminologiczna* [Protection of Cultural and Natural Heritage. Legal and Criminological Perspective], C.H. Beck, Warszawa 2015.

Calò S., Malè M., Tamburrino E. (eds.), *Developed Legal and Regulatory Framework for Protection of Medieval Ruins*, May 2018, https://www.interreg-central.eu/Content.Node/Deliverable-D.-T3.3.1-Rev-2.1-(1)-1.pdf [accessed: 01.11.2019].

Case 7/68, *Commission of the European Communities v. Italian Republic*, ECR, 1968, 617.

Case C-550/07 P, *Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v. European Commission*, ECR, 2010, I-8301.

Čeginskas V.L.A., *The Added European Value of Cultural Heritage. The European Heritage Label*, "Santander Art and Culture Law Review" 2018, Vol. 4(2).

Charter of Fundamental Rights of the European Union (consolidated version), OJ C 202, 7.06.2016, p. 389.

Constitution du 4 octobre 1958 [Constitution of 4 October 1958], Journal officiel de la République française, 5 October 1958, https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006071194 [accessed: 02.10.2019].

Costituzione della Republica Italiana [Constitution of the Italian Republic], Gazzetta Ufficiale No. 298, 27 December 1947, https://www.senato.it/documenti/repository/istituzione/costituzione.pdf [accessed: 20.10.2019].

Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, OJ L 74, 27.03.1993, p. 74.

Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods (Codified version), OJ L 39, 10.02.2009, p. 1.

Council Regulation (EEC) No. 3911/92 of 9 December 1992 on the export of cultural goods, OJ L 395, 31.12.1992, p. 1.

Craufurd Smith R., *Article 151 EC and European Identity*, in: R. Craufurd Smith (ed.), *Culture and European Union Law*, Oxford University Press, Oxford 2004.

Cultural Rights in the Case-law of the European Court of Human Rights, Council of Europe 2011 (updated 17 January 2017), https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf [accessed: 02.11.2019].

Czepek J., *Zobowiązania pozytywne państwa w sferze praw człowieka pierwszej generacji na tle Europejskiej Konwencji Praw Człowieka* [State's Positive Obligations in the Sphere of First Generation Human Rights under the European Convention on Human Rights], Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego, Olsztyn 2014.

Decreet houdende bescherming van het roerend cultureel erfgoed van uitzonderlijk belang/Décret portant protection du patrimoine culturel mobilier présentant un intérêt exceptionnel, 24 January 2003 (with amendments), http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2003012440&table_name=wet [accessed: 02.10.2019].

Decreto Legislativo 22 gennaio 2004, n. 42 "Codice dei beni culturali e del paesaggio" [Legislative Decree No. 42 of 22 January 2004 "Cultural Heritage Code"], Gazzetta Ufficiale No. 45, 24 February 2004, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2004;42~art182 [accessed: 20.10.2019].

Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012 [Recast], OJ L 159, 28.05.2014, p. 1.

Duda Ł., Kociubiński J., *Realizacja ochrony własności w Europejskiej Konwencji Praw Człowieka na podstawie orzeczenia Lithgow i inni* [Implementation of the Protection of Property in the European Convention on Human Rights on the Basis of the Lithgow and Others Ruling], in: M. Sadowski, P. Szymaniec (eds.), *Własność – idea, instytucje, ochrona* [Property – Idea, Institutions, Security], Koło Naukowe Doktryn Politycznych i Prawnych;

Katedra Doktryn Politycznych Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2009.

European Convention on Human Rights, 4 November 1950, 213 UNTS 221.

European Court of Human Rights, *Adriana C. Goudswaard-van der Lans v. the Netherlands*, Application No. 75255/01, Judgment of 22 September 2005.

European Court of Human Rights, *Beyeler v. Italy*, Application No. 33202/96, Judgment of 5 January 2000.

European Court of Human Rights, *Debelianovi v. Bulgaria*, Application No. 61951/00, Judgment of 29 March 2007.

European Court of Human Rights, *Dokić v. Bosnia and Herzegovina*, Application No. 6518/04, Judgment of 27 May 2010.

European Court of Human Rights, *Ehrmann and SCI VHI v. France*, Application No. 2777/10, Judgment of 7 June 2011.

European Court of Human Rights, *Kjartan Ásmundsson v. Iceland*, Application No. 60669/00, Judgment of 12 October 2004.

European Court of Human Rights, *Kozacioğlu v. Turkey*, Application No. 2334/03, Judgment of 19 February 2009.

European Court of Human Rights, *Potomska and Potomski v. Poland*, Application No. 33949/05, Judgment of 29 March 2001; Final judgment of 4 November 2001.

European Court of Human Rights, *Sporrong and Lönnroth v. Sweden*, Application No. 7151/75, 7152/75, Judgment of 23 September 1982.

Frankiewicz A., *Konstytucyjna regulacja własności w Rzeczypospolitej Polskiej* [Constitutional Regulation of Ownership in the Republic of Poland], in: M. Sadowski, P. Szymaniec (eds.), *Własność – idea*, *instytucje*, *ochrona* [Property – Idea, Institutions, Security], Koło Naukowe Doktryn Politycznych i Prawnych; Katedra Doktryn Politycznych Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2009.

Graziadei M., Pasa B., *The Single European Market and Cultural Heritage: The Protection of National Treasures in Europe*, in: A. Jakubowski, K. Hausler, F. Fiorentini (eds.), *Cultural Heritage in the European Union: A Critical Inquiry into Law and Policy*, Brill, Leiden–Boston 2019.

Grundgesetz für die Bundesrepublik Deutschland [Basic law for the Federal Republic of Germany], Bundesgesetzblatt Part I, p. 404, http://www.gesetze-im-internet.de/gg/index.html [accessed: 02.10.2019].

Jakubowski A., *Common Cultural Heritage*, *the European Union*, *and International Law*, in: A. Jakubowski, K. Hausler, F. Fiorentini (eds.), *Cultural Heritage in the European Union: A Critical Inquiry into Law and Policy*, Brill, Leiden–Boston 2019.

Jarosz-Żukowska S., *Przesłanki dopuszczalności ograniczeń prawa własności w praktyce orzeczniczej polskiego Trybunału Konstytucyjnego* [Prerequisites for Limiting Ownership Rights in the Judgments of the Polish Constitutional Tribunal], in: K. Skotnicki (ed.), *Własność: zagadnienia ustrojowo-prawne. Porównanie rozwiązań w państwach Europy Środkowo-Wschodniej* [Ownership: Constitutional Aspects. A Comparison of Models Adopted in East-Central European Countries], Łódzkie Towarzystwo Naukowe, Łódź 2006.

Jarosz-Żukowska S., *Wywłaszczenie faktyczne w orzecznictwie Europejskiego Trybunału Praw Człowieka* [Expropriation *de facto* in the Case Law of the European Court of Human Rights], in: A. Bator et al. (eds.), *Współczesne koncepcje ochrony wolności i praw podstawowych* [Modern Concepts for the Protection of Freedoms and Fundamental Rights], Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wrocław 2013.

Joint cases C-92/92 and C-326/92, *Phil Collins v. Imtrat Handelsgesellschaft mbH and Patricia Im- und Export Verwaltungsgesellschaft mbH and Leif Emanuel Kraul v EMI Electrola GmbH*, ECR, 1993, I-5145.

Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [Constitution of the Republic of Poland of 2 April 1997], Dziennik Ustaw 1997 No. 78 item 483.

Kyriakou T., *The Protection of National Treasures in the EU Single Market*, in: E. Psychogiopoulou (ed.), *Cultural Governance and the European Union. Protecting and Promoting Cultural Diversity in Europe*, Palgrave Macmillan, London–New York 2015.

Maciejewski M., *Początki koncepcji oraz regulacji praw i wolności człowieka do czasów Oświecenia* [The Beginnings of the Concept and Regulation of Human Rights and Freedoms up to the Time of the Enlightenment], in: A. Bator et al. (eds.), *Współczesne koncepcje ochrony wolności i praw podstawowych* [Modern Concepts for the Protection of Freedoms and Fundamental Rights], Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wrocław 2013.

Merryman J.H., *Thinking About Elgin Marbles. Critical Essays on Cultural Property, Art and Law*, Wolters Kluwer, Austin–Boston–Chicago–New York–The Netherlands 2009.

Michl F., *The Protection of Cultural Goods and the Right to Property under the ECHR*, in: E. Lagrange, S. Oeter, R. Uerpmann-Wittzack (eds.), *Cultural Heritage and International Law*, Springer, Berlin–New York–Heidelberg 2018.

Młynarska-Sobaczewska A., *Right to Culture*, Scholar Publishing House, Warsaw 2018.

Nieć H., *Ojczyzna dzieła sztuki. Międzynarodowa ochrona integralności narodowej spuścizny kulturalnej* [Homeland of a Work of Art: International Protection of the Integrity of National Cultural Heritage], Państwowe Wydawnictwo Naukowe, Warszawa–Kraków 1980.

Niedźwiedź M., *Obrót dobrami kultury w Unii Europejskiej* [Circulation of Cultural Goods in the European Union], Zakamycze, Kraków 2000.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, 213 UNTS 262.

Ragusa A., *Costituzione e cultura. Il dibattito in tema di Beni culturali nei lavori dell'Assemblea costituente* [Constitution and Culture. A Debate on Cultural Goods in the Works of the Constitutional Assembly], "Storia e Futuro. Rivista di storia e storiografia online" 2010, Vol. 22, http://storiaefuturo.eu/costituzione-cultura-dibattito-in-tema-beni-culturali-lavori-dellassemblea-costituente/ [accessed: 20.10.2019].

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.

Stec P., *Dyrektywa 93/7/EWG z perspektywy dwóch dekad funkcjonowania* [Directive 93/7/EEC: A Twenty-Year Retrospective], "Santander Art and Culture Law Review" 2015, Vol. 1(1).

Stec P., *The Lady or the Tiger? Legal Pitfalls of Implementing the Return of Cultural Goods Directive*, "Santander Art and Culture Law Review" 2016, Vol. 2(2).

Stec P., *Wpływ Karty Praw Podstawowych na prawo własności intelektualnej* [The Impact of the Charter of Fundamental Rights on Intellectual Property Rights], in: M. Thorz (ed.), *Karta Praw Podstawowych Unii Europejskiej. Polityka – etyka – prawo* [Charter of Fundamental Rights of the European Union. Politics – Ethics – Law], Wydawnictwo Akademii Polonijnej "Educator", Częstochowa 2009.

Stec P. et al., *Ochrona zabytków ruchomych w wybranych obcych systemach prawnych* [Preservation of Movable Cultural Property in Selected National Legal Systems], Opole 2015 (unpublished report prepared for the National Institute for Museums and Public Collections).

Treaty on the Functioning of the European Union (consolidated version), OJ C 202, 7.06.2016, p. 47.