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ART EXPORT PRINCIPLES IN POLAND IN THE NEW EUROPEAN CONDITIONS

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Abstract

The paper discusses the issues related to the protection of the works of art against their export from Poland's territory. This matter is of vital significance, especially in the context of Poland's accession to the European Community – apart from national internal regulations, Community laws have become effective as well. The paper presents the legal regulations included in the new “Act on Historic Monument Protection and Care” of 2003, that replaced the previous “Act on cultural goods protection and museum protection” of 1962. European Community regulations serve as a point of reference. The author reviews the regulations on the protection of cultural goods adopted in the European Community as a whole. In addition, a comparison is drawn between the regulations applied in the particular member states. The paper also discusses the scope of protected objects as well as export control instruments.

Introduction

The works of art constitute the national cultural heritage and, as such, they are entitled to the state's legal protection. The protection of the works of art involves taking legal measures which, from the point of view of the public interest, aim to counteract such adverse phenomena as illicit excavations, the illicit export of the works of art, damage or loss resulting from natural disasters (flood, fire), criminal activities (theft, vandalism) as well military conflicts. One of the aspects of the protection of cultural property, significant from the perspective of this paper, includes counteracting its illicit export.

The paper discusses the protection of the works of art against their illicit export from the territory of the Polish state. It should be noted that the works of art enjoy a special status in the European Community, which excludes them from the free flow of goods within the single market. Therefore, member states may introduce export, import and transit restrictions to protect their cultural property². A review of the laws and regulations binding in other member states will be a point of reference for a comparative analysis.

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² Such restrictions may also result from the issues related to public morality principles, public order and security, the protection of human life and health, the protection of animals and plants, the protection of industrial or commercial property.

Regulations in force related to the protection of the works of art in Poland

The protection of historic monuments is regulated by “The Act on Historic Monument Protection and Care” of 23 July 2003, replacing the earlier “ The Act on Cultural Property Protection” of 1962. The new Act replaces the term “cultural property” with the term “historic monument”, which is understood as “immovable property, or movable property, a part or parts thereof, resulting from human activities, and testifying to the earlier eras or events, the retention of which should cause public concern due to its historic, artistic and scientific value”³.

According to the above Act, movable historic monuments are protected regardless of their state of repair. The Act on Historic Monuments Protection and Care provides that “historic monuments may be exported permanently if this is not detrimental to the country’s national heritage”⁴. Historic monuments may be temporarily exported if this is allowed by their state of repair, and if the natural person or organizational entity owning them may assure that no damage will be done to them, and that they will be brought back by the time the export licence expires. The export of historic monuments from Poland’s territory may occur on the basis of a one-time licence for permanent or temporary export; a many-time individual licence for temporary export; a many-time general licence for the temporary export of historic monuments (Table 1)⁵.

Table 1. The characteristics of licences for the export of historic monuments applied in Poland

Charakter	Type of licence	Issued by	Time of validity
one-time	permanent export	Minister in charge of culture and protection of national heritage following the consultations with a commission composed of specialists in the area of historic monument protection and care	12 months
	temporary export	Regional historic monument conservator at the request of a natural person or organizational entity which owns a historic monument, and which has the intention of the one-time export of the monument for exhibition or other purposes, or for conservation works	12 months
many-times	individual licence for temporary export	Regional historic monument conservator at the request of a natural person or organizational entity which owns a historic monument, and which has the intention of the many-time export of the monument for exhibition or other purposes, or for conservation works	3 years

³ The Act on Historic Monument Protection and Care of 23 July 2003, the Journal of Laws of 17 September 2003, Art. 3.

⁴ It should be noted that the previous Act of 1962 banned the export of cultural goods apart from several exceptional cases. See: the Act on cultural goods protection and museums protection of 15 February 1962, the Journal of Laws of 21 February 1962, with later amendments.

⁵ The manner of submitting applications and granting licences for the export of historic monuments is specified in the ordinance of the minister of Culture of 19 April 2004, concerning the export of historic monuments and objects possessing the characteristics of historic monuments, the Journal of Laws of 27 April 2004.

	general licence for temporary export	Regional historic monument conservator at the request of museum or other cultural institution, and which has the intention of the many-time export of the monument for exhibitions	5 years
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Source: Author's own research on the basis of "the Act of 23 July 2003 on Historic Monument Protection and Care", the Journal of Laws of 17 Sep 2003.

The Act specifies the groups of items which are not subject to the licence for the export from the Polish territory including, in particular, those which are not registered as monuments and less than 55 years old; monuments – technical objects, not included in the register and less than 25 years old; imported monuments, subject to temporary clearing procedures as specified by the Customs Code; items imported by individuals who enjoy diplomatic immunity, brought to the country as components of the interior design of diplomatic and consular offices; the works of art of the living artists; library materials issued after 31 December 1948, and other items having the features of monuments, however not regarded as such. The export of the above items is allowed on the basis of a certificate issued by the regional historic monument conservator stating that a given item is not included in the list of objects whose export is banned. Pursuant to the content of the Act, the illicit export of the works of art from Poland is punishable with imprisonment from 3 months to 5 years.

On 1 May 2004, upon Poland's accession to the EU, apart from the Act on Historic Monument Protection and Care, EU regulations became effective, which specify the conditions of the export of monuments from the EU's customs territory. The export from the territory of the EU is regulated by European Union Council Regulation No. 3911/92 of 9 December 1992⁶. The objective of the Regulation is to ensure implementing uniform principles of exporting cultural goods from EU territory. Export control is based on the requirement to possess an export licence. The Regulation specifies in detail the categories of items being subject to protection, giving freedom to member states to define their own cultural goods. The cultural goods which are subject to EU legal protection include 14 items. Additionally, the Regulation specifies the principles of cooperation between the Commission and the relevant administrative entities in charge of the protection of cultural goods in the particular member states. The respective member states determine the forms of punishment for violating the regulations in force. The implementation laws include the following documents: Commission Regulation No. 752/93 of 30 March 1993, Commission Regulation No. 1526/98 of 16 July 1998, and Commission Regulation No. 656/2004 of 7 April 2004.

The regulation of the EC member states concerning the protection of the works of art against illicit trafficking

In accordance with the provisions of the Treaty of Rome of 1957, establishing the European Economic Community, member states are entitled to implement their own regulation restricting the export of cultural goods (Art. 36). The respective countries

⁶ Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods, Official Journal L 395 of 31.12.1992, later supplemented by Council Regulation No 2469/96 of 16 December 1996, Official Journal L 335 of 24.12.1996; Council Regulation No 974/2001 of 14 May 2001, Official Journal L 137 of 19.05.2001; Council Regulation No 806/2003 of 14 April 2003, Official Journal L 122 of 16.05.2003.

may define the scope of cultural goods subject to protection and take appropriate measures to protect those goods. A review of the regulations in the particular member states leads to the formulation of several criteria of defining the scope of national cultural goods:

- significance – national cultural goods possess considerable significance (historical, artistic, cultural, scientific, symbolic, literary, genealogical) – Austria, Finland, the Netherlands, Ireland, Portugal;
- the national criterion – national cultural goods have to be protected because of their national identity, they have national significance, and their loss would be detrimental to the national heritage – for this reason they are worthy of public interest (Austria, Finland, France, the Netherlands, Ireland, Germany, Portugal, Sweden, the United Kingdom);
- the time of creation – national cultural goods are items characterized by their specific age (Denmark, Ireland);
- value – national cultural goods have a certain value (Denmark);
- place of creation – national cultural goods were created in the territory of a given country (Sweden, Portugal);
- creator's nationality – national cultural goods are items created by an artist having the national identity (Sweden, Portugal);
- individual character – national cultural goods are irreplaceable and indispensable (the Netherlands);
- ownership – items which belong to public collections constitute the national cultural property (Finland, France, Spain);
- recognition – an item is recognized as a piece of national cultural property on the basis of a decision of the relevant administrative entity, which is not necessarily dependent on clearly defined criteria (Denmark, France, Spain, Ireland, Italy)⁷.

Usually, the characteristics of the national cultural property which is protected against export are based on several criteria. For example, Sweden applies the criteria of place, time and value; Finland – the criteria of significance, time and value; Spain – the criteria of significance, time and recognition. Some member states apply export restrictions to specific categories of objects (Austria, Greece); other countries apply restrictions to individual items (e.g. goods classified in France and Belgium, items included in the lists of goods in Spain and the Netherlands). In many cases the ban on export is not applicable to the living artists, or those who died recently (20 years ago in Austria, 50 years ago in Italy). The basic principles of the export of cultural goods from the territories of the particular member states are presented in Table 2.

⁷ See: Białynicka-Birula J.: The Instruments Impacting the Flow of the Works of Art within the EU's Integrated Market, part of university statute research 47/KARiBM/2/04/s/157 in: The Modelling of Market Entity Behaviour in the Context of Poland's Accession to the EU, Cracow University of Economics, Krakow 2004.

Table 2. The binding principles of the export of cultural goods in the “15” European Community member states

Country	Principles of the export of cultural goods
Austria	A licence is required with certain exceptions. A licence is granted if the export of an item is not detrimental to public interest.
Belgium	Ban on the transportation and export of registered items without a licence granted by the Minister of Culture.
Denmark	Ban on export. A licence is granted by the Cultural Resource Committee exclusively to the owner of goods. The licence expires after 5 years.
Finland	Ban on export except when a licence is granted. A licence is not granted if the export of goods is significant for artistic, scientific, historical or other culture-related reasons. The goods which are subject to a licence have been classified.
France	Total ban on classified goods. National treasures may not leave the territory of France; in exceptional cases temporary export is allowed (conservation, scientific analyses, museum deposits). The export of nationally significant goods for historical, artistic or archeological reasons is subject to authorization.
Greece	The export of antique pieces requires a licence issued by the relevant ministry and payment of a fee (50%). The state may ban the export of antique pieces.
Spain	Ban on the export of registered goods. Temporary export is allowed when a licence is granted. Export is taxable (5%-30%, depending on the value) except the items imported over the last 10 years which have not been declared as the pieces of national heritage; temporary export, or the export of the works of the living artists.
The Netherlands	Ban on the export of specific items and collections (approx. 200 items and 30 collections) except the temporary export. Export requires a licence issued by the relevant ministry.
Ireland	Ban on the export of national monuments and export for commercial purposes. Ban on the export of goods without a licence issued by the ministry. Ban on the export of documents and paintings without a licence.
Luxembourg	Total ban on the export of registered goods. Ban on the export of movables above the age of 100 years, or the items created by an artist who died more than 50 years ago without a licence issued by the relevant ministry.
Germany	The export of registered goods may be temporary and requires a licence. Export is subject to authorization which is conditioned by the special interest of the German cultural heritage – the most significant argument.
Portugal	Ban on the registered goods except the temporary export and exceptional cases. The export of cultural goods, regardless of their value, requires a licence issued by the Portuguese Institute for National Heritage. Temporary export related to exhibitions is licensed by the Ministry of Culture. Cultural movable goods,

	temporarily imported, may be exported without a licence if it has not remained in the country's territory longer than 3 months after it was used for culture-related purposes in the public interest.
Sweden	Export licence for all the mentioned items, or part of them. A licence may be granted if exported goods are not of vital importance to Sweden's national heritage. An export licence is not required if the owner leaves Sweden and intends to settle down in another country; if an item has been inherited or obtained as a result of the division of an inheritance by a person who lives abroad; if goods are temporarily exported by a public organization; if goods are temporarily exported by an individual in the public interest; if goods have been temporarily imported.
The United Kingdom	Ban on export without a licence. The so called open general export licence allows the export of most of goods created or produced more than 50 years ago, having a certain value. Specific categories of items are excluded from exportation.
Italy	Ban on the export of registered goods. Temporary export is allowed if a deposit is paid, or an insurance policy is available. The goods which are not subject to total ban, but regarded as protected, may be exported on the basis of the certificate of free movement to other EU member states, or other countries on the basis of an export licence.

Source: Author's own research on the basis of O'Keefe P.J., Prott L.V., Handbook of National Regulations Concerning the Export of Cultural Property, UNESCO 1998, and EU countries website pages.

According to Table 2, it may be stated that the basic instrument of customs policies is the introduction of the total ban on the export of the works of art, or the ban on export without a relevant export licence. The total ban on export usually refers to selected categories of items, e.g. goods classified in France, Luxembourg, Finland and the Netherlands, goods possessing cultural significance in Spain, or national monuments in Ireland. Legal regulations usually allow the temporary export of cultural goods in justified cases: for purposes related to conservation, scientific analyses, depositing in museums, participation in significant cultural events. Failure to return such items in due time is regarded as the case of illicit export.

Conclusions

The Act on Historic Monument Protection and Care of 2003, abolished the previously binding ban on the export of cultural goods from Poland, stating that historic monuments may be permanently exported if it is not detrimental to the cultural heritage. Considering the presented principles of the export of cultural goods from European Community member states it should be stated that similar criteria are applied in other member states. Cultural goods are protected because of national significance and identity in Austria, Finland, France, the Netherlands, Ireland, Germany, Portugal, Sweden and the UK. Apart from legal acts in Poland and other EU member states, EU regulations, specifying the principles of the export of cultural goods from the single market, are binding in European Community territory.

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