

# OCHRANA KULTÚRNYCH PAMIATOK A PRÁVO NA ÚCTU VOČI MAJETKU. UVAŽOVANIE V KONTEXTE ŠTRASBURSKEJ JURISDIKCIE

## PROTECTION OF CULTURAL GOODS AND THE RIGHT TO PEACEFUL ENJOYMENT OF POSSESSIONS. REFLECTIONS IN THE CONTEXT OF STRASBOURG JURISPRUDENCE

*Samanta Kowalska*

*Adam Mickiewicz University in Poznań, Faculty of Pedagogy and Fine Arts*

### ABSTRAKT

*Starostlivosť, ochrana a šírenie vedomosti o kultúrnom dedičstve sú prvky spoločenskej totožnosti a pamäti. Európsky systém ochrany ľudských práv sa sústreďuje na Európskom dohovore o ochrane ľudských práv a základných slobôd. Nakoľko sa v Dohovore nenachádzajú priame zápisy z tejto oblasti, no na základe analýzy práva na úctu voči majetku môžeme rekonštruovať a povzniesť pravidlá, ktoré nadväzujú na túto mimoriadne dôležitú a zložitú problematiku. V tomto článku bol podčiarknutý význam koncepcie „svetového dedičstva“, ktorá sa môže stať nápomocná pri určovaní a aplikovaní práva v tejto oblasti, ochrane a reštitúcii pamiatok lebo obsahuje poslanie aby sa nadväzovala a konala spolupráca medzi jednotlivcami a štátom s duchom tolerancie a úcty voči kultúrnemu pluralizmu.*

### ABSTRACT

*Nurturing, protection and dissemination of knowledge about cultural heritage constitute the components of social identity and public memory. The European human rights protection system concentrates around Convention for the Protection of Human Rights and Fundamental Freedoms. Despite the fact that there is no direct mention of cultural goods or protection of cultural heritage in the European Convention, a closer analysis of the right to peaceful enjoyment of possessions allows one to extract and reconstruct regulations regarding this uncommonly important and complex subject matter. This article elaborates on the concept of “world heritage” which may prove helpful in the establishment and enforcement of law, as well as the preservation and restitution of heritage. Initiation and continuation of cooperation between individuals and states in the spirit of tolerance and cultural pluralism lies at the centre of its meaning.*

### I. INTRODUCTION

Regional legislation, which takes into account social and cultural differences, has been drawn up in view of enforcing human rights protection. The basis for adjudication at the European Court of Human Rights in Strasbourg is the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: “European Convention on Human Rights”),

“European Convention” or “EC”) signed in Rome on 4 November 1950, ratified by Poland in 1993 (Journal of Laws No. 61, item 284).

The European Court of Human Rights (ECHR) examines individual and inter-state complaints. The former may be submitted by persons, non-governmental organisations or groups of individuals, who fell victim to infringement of norms of the European Convention on Human Right or Additional Protocols of the European Convention<sup>1</sup>, while inter-state applications may be lodged by a signatory state, which believes that another state-party breached the European Convention provisions<sup>2</sup>. This article will focus on selected applications in the context of the right to peaceful enjoyment of possessions.

## **II. THE RIGHT TO PEACEFUL ENJOYMENT OF POSSESSIONS IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

The above right was guaranteed basing on Article 1 of Protocol No. I to the European Convention on Human Rights<sup>3</sup>: “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 conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”. The term “possessions” received an autonomous status from formal classification by individual signatory-states (internal, national law). The applicant, however, is obliged to reveal their economic interest<sup>4</sup>.

The right to peaceful enjoyment of possessions usually pertains to movable property and real estate. One has to bear in mind, however, that apart from ownership rights, the term “possessions” also refers to other rights in property and financial interests. Strasburg jurisprudence shows that the term “possessions” as stipulated in Article 1 of Protocol No. I to EC, may also include e.g. a name of a company the headquarters of which is located in another signatory-state, therefore referring to the intangible assets of a legal person<sup>5</sup>. This regulation does not cover, however, using a family title, e.g. a royal title, for commercial ends (Pilar de la Cierva Osorio de Moscoso et al. v. Spain, 1999, application No. 41127/98<sup>6</sup>).

## **III. HISTORICAL OBJECTS AND CULTURAL GOODS PRESERVATION - REFLECTIONS IN THE CONTEXT OF THE PRINCIPLE OF A FAIR BALANCE AND PROPORTIONALITY**

Cultural heritage is crucial in shaping and developing identity and public history. The right of access to cultural goods, and the preservation and dissemination of knowledge about cultural heritage are counted among human rights. Despite the fact that there is no direct mention

<sup>1</sup> Legal basis: Article 34 European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>2</sup> Inter-state applications may be submitted to the European Court of Human Rights under Article 33 EC.

<sup>3</sup> Protocol No. I to the Convention for the Protection of Human Rights and Fundamental Freedoms has been signed on 20 March 1952 in Paris (Journal of Laws of 1995, No. 36, item 175).

<sup>4</sup> REDELBACH, A. *Natura praw człowieka*. Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa, 2001, p. 266. ISBN 83-7285-059-3.

<sup>5</sup> In Polish law personal interests of natural persons are protected under Articles 23-24 of the act of 23 April 1964 – Civil Code (Journal of Laws of 1964, No. 16, item 93 as amended). In accordance with Article 43 of the Civil Code currently in force, the regulations about the personal interests of natural persons also apply to legal persons.

<sup>6</sup> The parentheses include selected judgements of the European Court of Human Rights in Strasburg. The abbreviation „v.” stands for „versus” – against, e.g. the application of X against a Y signatory state of the European Convention.

of cultural goods or protection of cultural heritage in the European Convention<sup>7</sup>, one may extract regulations regarding this subject matter from Strasburg jurisprudence.

The Potomska and Potomski v. Poland application, 2011 (application No. 33949/05) may be used as an illustration of one of the facets of the issue. The couple bought a plot of land from the State Land Fund on 14 November 1974. It was granted agricultural land status. They intended to build a house and a locksmith's workshop on the purchased land. However, in May 1987 the Regional Inspector for Historic Monuments issued a decision to enter this property to the register of historical monuments, as it used to be an old Jewish cemetery. It was deemed to be one of the few relics of the Jewish community and their cultural heritage in the region. According to the applicant the authorities removed any marks which could suggest that it had been a cemetery. The Polish government claimed, however, that the applicants knew about the necropolis. To confirm that thesis, photographs were presented on which clear remains of the cemetery were visible. It was proven, however, that prior to that the authorities issued a decision about closing the cemetery and qualifying it as an agricultural property for development and put it up for sale. On 30 September 1988 a local development plan was adopted, according to which the applicants could build a house on their plot. At the end of January 1991 the Mayor of Darłowo Municipality submitted a motion for dispossession. The decision about entering the plot to the register of historical monuments indicated that the right of the applicants to use the property was limited and it became uncertain. In its judgement the ECHR demonstrated that the preservation of cultural heritage also means protecting historical, artistic and cultural roots of the inhabitants of a given region. When determining whether there was a breach of the right to peaceful enjoyment of possessions, one should consider whether communal interests were balanced out with "the requirements of the protection of the individual's fundamental rights". Moreover, ECHR investigates whether the actions/omissions of state authorities involved disproportionate or excessive interference. Signatory states of the EC should provide effective judicial mechanisms in disputes, which should be complaint with procedural and substantive guarantees of the convention. In case of the application under discussion these duties were not kept. The Strasburg Court stated in their statement that the applicants were not provided with appropriate compensation in the form of damages or an alternative plot of land. As a result the Polish authorities breeched Article 1 of Protocol No. I to the European Convention. The above judgement should be reflected in appropriate changes in national legislation.

Another matter to consider is the supervision over the use and management of the most valuable monuments. The Strasburg Court stated that state authorities may undertake and supervise actions in this field, however, they cannot take the form of arbitrary decisions. The case of Fürst von Thurn und Taxis v. Germany, 2013 (application No. 26367/10) may serve as an example. The applicant holds ownership rights to an archive and library, which is open for the public. Before World War II the supervision over the collection was in the hands of a trust fund belonging to the family of the applicant under fee tail - fideikommiss. However, in 1943 the supervision was taken over by German state authorities. At the moment the collection is in the care of the National Archives and one of the public libraries. The applicant, who is the heir, claimed that there was a breach of the right to peaceful enjoyment of possessions. The European Court of Human Rights did not share this stance, because his ownership rights to the collection were not taken from him. Moreover, the fact that the owner must obtain a per-

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<sup>7</sup> In international law there are numerous regulations devoted to the preservation of cultural goods, e.g. the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted on 16 November 1972 in Paris (Journal of Laws of 1976, No. 32, item 190); Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signed in Paris on 17 November 1970 (Journal of Laws of 1974, No. 20, item 106); Convention for the Protection of Cultural Property in the Event of Armed Conflict Together with the Regulations for the Execution of the Convention and the Protocol on the Protection of Cultural Property in the Event of Armed Conflict signed in the Hague on 14 May 1954 (Journal of Laws of 1957, No. 46, item 212).

mit of the supervising bodies to manage, sell or change the location of the collection was not considered excessive interference, as the library and the archives are of particular value for the German cultural heritage. The duty of keeping the collection in proper condition remains with the applicant. Therefore, in this case the rights of the heir (private interest) have been balanced out with the rights of the society (public interest). When considering the application, the Court reminded the essence and the importance of one of its competences - *ratione temporis* - which prevents the ECHR from adjudicating in cases which developed before the European Convention for Human Rights came into force in a given country<sup>8</sup>. Therefore, the Strasbourg Court did not refer to the takeover of the collection in 1943 by the state authorities, as it happened many years before Germany joined the European Convention on Human Rights.

The European Court of Human Rights took a different stance in *Nowakowski v. Poland*, 2012 (application No. 55167/11). The applicant, born in 1933, was a war veteran, a member of the resistance and a participant of the Warsaw Uprising. For over 50 years of his life, devoting his own time and means, he meticulously collected antique weapons. Over the years he created an impressive private weapon collection. He became an expert in this field, with many institutions, including the Warsaw Uprising Museum, benefiting from his experience. At the beginning of July 2008 the police searched his premises and confiscated a collection including 199 items, 24 of which were later returned to the applicant, as they did not require a permit. As regards the rest of the collection, the authorities' stance was different. On 20 July 2010 the man was charged with illegal possession of weapons. Despite the fact that the court discontinued legal proceedings due to the insignificant social noxiousness of the act, a decision was issued about the forfeiture of the collection, although the judge indicated to its historical value. According to the judge, some attributes of functionality may have been returned to the antique weaponry, including shooting with it. The Strasbourg Court stated this was a breach of Article 1 of Protocol No. I to the European Convention, as the applicant lost the possession of his collection. The analysis of this application shows that the state authorities and public officers should not enforce the law without consideration to proportionality and social justice.

Another aspect connected with cultural objects has been the subject of the *Ernst Beyeler v. Italy* application, 2000 (application No. 33202/96). In 1977 a Swiss collector bought a painting entitled *The Portrait of a Young Peasant* by Vincent van Gogh. The purchase took place through an intermediary who bought the painting from a certain collector from Rome. In 1988 the applicant put the painting up for sale for a higher price, because the value of the painting rose over time. Employing its right to pre-emption, the Italian Ministry of National Heritage bought the painting, however, not for the price as it was on the date of sale, but for a much lower price from 1977. According to the applicant, the Italian state was thus guilty of unjust enrichment<sup>9</sup>. In the judgement of this case the Strasbourg court pointed out that the ministerial officers, although they had known for five years (1983-1988) that the applicant had not submitted the full documentation after making the purchase, they did not summon him to supplement it. They used the fact of the outstanding documentation, when the collector announced the sale. ECHR pointed out that although the state may take actions to preserve cultural objects and regulate the art market, it should act arbitrarily, disproportionately, or causing damage to the national heritage. Public interest should be balanced out with the protection of individual interest. The Court stated in its conclusion that there was a breach of the right to peaceful enjoyment of possessions.

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<sup>8</sup> In reference to the Additional Protocols to the European Convention, *ratione temporis* will not cover events before the date of their ratification. For more on the *ratione personae*, *ratione temporis* and *ratione materiae* competences of the European Court of Human Rights, see: REDELBACH, A. *Prawa naturalne. Prawa człowieka. Wymiar sprawiedliwości*. Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa, 2000, p. 393-395. ISBN 83-7285-020-8.

<sup>9</sup> REDELBACH, A. *Natura praw człowieka*, op. cit., p. 270.

#### IV. RIGHT TO REASONABLE COMPENSATION AND PRINCIPLE OF LAW-FULNESS

Restitution of property which has been lost as a result of nationalisation, forced resettlement or post-treaty change of borders is a problem which raises many controversies to this day.

The case of Eparhija Budimljansko-Nikšićka et al. v. Montenegro, 2012 (application No. 26501/05) may serve as an illustration of this issue. The Serbian Orthodox Church applied for the return of property expropriated after the conclusion of World War II following the decisions of agricultural commissions or outside formal decisions. In contemporary times the act to which the applicants referred was considered unconstitutional, and the new regulations did not include stipulations regarding restitution of property lost by churches and religious groups. However, this right was awarded to natural and legal persons, which meant that the applicants were excluded from the group of entitled subjects. One must bear in mind that temples are not only places of prayer, but also belong to national heritage, bearing witness to the past and the life of local societies. The *ratione temporis* principle also applied in the context of this application, as the events referred to by the applicants pertained to a period in which Montenegro was not a signatory of the European Convention on Human Rights. The European Court of Human Rights judged that the applicants are not entitled to expectancy (“entitled expectation”)<sup>10</sup>. The problem was elaborated on by M.A. Nowicki: “One cannot regard the conviction that the regulations in force will be changed as a form of entitled expectation as stipulated in Article 1 of Protocol No.1. The Court regularly stresses the difference between hope for recovery of property – regardless if it is groundless or not – and entitled expectation, which has to be more concrete than hope and grounded in a legal stipulation or an act such as a court judgement. The applicants did not have (...) a claim, which could be considered sufficiently feasible and as a result, they could not claim that they possessed “property” as stipulated in Article 1 Protocol No.1. They also do not have such a claim under the rule of the regulations in force at present, which simply state that the situation of the applicants will be regulated separately in the future. The scope of these new regulations has never been set out, there were no instructions as regards the expected method of the return of the property, including procedures and appropriate bodies”<sup>11</sup>. The Strasbourg Court stated that the Article under discussion does not introduce competence limitations for signatory states as regards the power to establish the conditions for the restitution for property, neither does it impose duties of general nature, which would involve returning property taken during a period before a given country ratified European Convention on Human Rights<sup>12</sup>. The applicants did not raise the issue of “existing property”, as in the new reality they did not have the status of owners, therefore they acted only as persons who have a claim to ownership<sup>13</sup>. The situation presented in the application did not fit into *ratione materiae* of the European Court of Human Rights in Strasbourg. When analysing the application, the ECHR pointed out that individual States Parties of the European Convention should do everything in their power to enforce the right to peaceful enjoyment of possessions. National legislature in that matter should be marked by rationality, correlation, constitutionality and legality (principle of lawfulness).

The Broniowski v. Poland case, 2004 (application No. 31443/96) was a precedent at the European Court of Human Rights. The matter regarded property lost in the previous political

<sup>10</sup> More about temporary subjective rights in Polish law: RADWAŃSKI, Z. Prawo cywilne - część ogólna, Warsaw: „C.H. Beck” Publishing House, 1999, p. 98-99, 145-146. ISBN 83-7110-481-2.

<sup>11</sup> NOWICKI, M.A. ed. Europejski Trybunał Praw Człowieka. Warsaw: Wydawnictwo Wolters Kluwer, 2013, p. 349. ISBN 978-83-264-4253-7.

<sup>12</sup> Ibidem.

<sup>13</sup> Ibidem, p. 348-349.

system<sup>14</sup>. The grandmother of the applicant had to leave her estate in Lviv as a result of repatriation. Apart from real estate, cultural objects could often be found in houses abandoned in this way. On 19 December 2002 the Constitutional Court judged that “the regulations regarding the exercise of claims for properties to the East of the River Bug, by institutions such as the Military Property Agency are unconstitutional. The enforcement of the judgement, however, requires the amendment of regulations”<sup>15</sup>. However, no one was eager to take appropriate steps. The applicant found himself among the 80 thousand people, who were not paid damages, although many years have passed. The right to peaceful enjoyment of property of the applicant was in a state of uncertainty. He received only two percent from the assessed value. The Strasbourg Court highlighted that although establishing ownership may be difficult, complex and time-consuming, the regulations should be foreseeable and stable, and the legislator, as well as the state authorities should be consistent in their actions. It was indicated that the principle of lawfulness and the rule of law demand that the bodies of public authority provide legal and practical conditions for the law to be enforced. In this case this meant liquidating the discrepancy between the regulations and the practice of public authorities, which made the enforcement of the applicant’s right impossible. The statutory provision about resolving claims raised by Poles repatriated from the Eastern border lands of pre-war Poland was not met. Regulating this matter was dictated by crucially significant common interest. The national legislation should have mechanisms which would allow eliminating and, if possible, amending the consequences of the infringements. Human rights should not be illusory.

When determining the damages, one should set an amount reasonably proportionate to the value of the lost property. The Strasbourg Court highlighted this fact in its judgement in the case *Former King of Greece v. Greece*, 2000 (application No. 25701/94), in which the property of the former royal family was expropriated. The basis for the expropriation was an act of May 1994. The act did not stipulate any damages. A Special Supreme Court ruled that the act was compliant with the stipulations of the Greek Constitution, which meant that the applicants were deprived of any prospects of retrieving the property. It was a far-reaching interference, as the expropriation extended not only to public property, but also to movable property and real estate, which the ancestors of the former king bought with their own funds. Expropriation is always connected with burden and inconveniences for persons whose property is being taken. The Strasbourg Court highlighted that in cases for damages the Signatory States should reach a consensus and find legal measures which ensure that the standards in force do not create barriers<sup>16</sup>.

When analysing the application of *Sociedad Anónima del Ucieza v. Spain*, 2014 (application No. 38963/08) one may draw a conclusion that it is unacceptable for the state authorities, while allegedly having been guided by “general historical reasons”, to sanction ownership in an arbitrary and subjective manner and only for the benefit of one chosen subject. At the same time other subjects were deprived of it, moreover they were denied fair/reasonable compensation and the possibility of vindicating their rights.

The criterion of proportionality in the context of compensation regards not only historical matters, but also those which are implemented contemporarily. In the case *Vistiņš and Perepjolkins v. Latvia*, 2012 (application No. 71243/01), the real estate of the applicants on the island of Kundziņsala has been expropriated. These actions were taken in connection with

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<sup>14</sup> Cf. GROSS, A.M. Reinforcing the new democracies: the European Convention on Human Rights and the former communist countries - a study of the case law. In: “European Journal of International Law” 1996, Vol. 7, No. 1, p. 89-102. ISSN 1464-3596.

<sup>15</sup> A fragment of a communication which was issued by the Military Property Agency at the beginning of January 2003 in the context of the above judgement of the Constitutional Court.

<sup>16</sup> Cf. KOWALSKA, S. W poszukiwaniu ochrony przed bezprawnością i arbitralnością - strasburskie standardy praw człowieka. Poznań: Wydawnictwo „K&HP”, 2014, p. 122 et seq. ISBN 978-83-937600-0-8.

the construction of a seaport, i.e. for the public good. The Strasbourg Court stated that the Latvian authorities breached the right to peaceful enjoyment of property, as the difference between the market value (actual value) and the amount of compensation was too significant<sup>17</sup>.

Although national authorities have the right to set out the directions of domestic social, economic and cultural policies, they should not do it arbitrarily or in a way that would elevate the interests of the state to the position absolute importance, downgrading the interest of the citizen. The citizens should have a guaranteed right to an effective remedy in cases of expropriation. Moreover, the decisions and the actions of the state should not bear the attributes of discrimination.

## V. PREVENTIVE MEASURES AND CULTURAL GOODS

The conclusion of Article 1 of Protocol No. I states that the state has the right to “to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”. This means that the expropriation might be legitimate for example for preventive reasons, as it was the case with *Air Canada v. United Kingdom*, 1995 (application No. 18465/91). The police seized an aeroplane on the board of which 300 kg of narcotics were found. During the seizure, all procedures applicable in such circumstances were executed. Upon the payment of an appropriate sum, the plane was returned to the airlines. The European Court of Human Rights considered these actions compliant and adequate for the exercised purpose – combating international crime, in particular trade of narcotics and psychotropic substances.

The case of *Aboufadd v. France*, 2014 (application No. 28457/10) shed light on another aspect of this issue. The authorities in France ruled the forfeiture of a house, which was purchased by the applicants with funds obtained from crime (trade of narcotics). The employed means of punishment was justified and proportionate, as the authorities took these steps to combat money laundering and crime. The applicants were allowed to stay in the forfeited real estate for over 18 months, i.e. until they could move to another location. No infringement of Article 1 of Protocol No. 1 or Article 8 of the European Convention (the right to respect for private and family life – in this case the applicants tried unsuccessfully to refer to their household) was noted. Proceeds from illicit activity may be invested in, e.g. example legal purchase of historical real-estate, works of art, or illegal actions connected with monuments (e.g. ordered theft, trafficking).

The most profitable and spectacular art thefts are performed directly or commissioned by international crime syndicates. The data from the Association for Research into Crimes Against Art (ARCA) reveals that since the second half of the 20th century, art theft commissioned by private collectors has been in decline. However, the nature of crime against art was misunderstood for a long time because there were no casualties, therefore the victimological aspect was not considered. In reality, art theft is frequently related with organised crime and even terrorism. Stolen works are often used for 'protection', as pawn, cover or a means/instrument in another form of criminal activity, e.g. dealing weapons, drugs and other psychotropic substances. According to ARCA, crimes against art constitute the most profitable offences apart from illegal drug and weapons trade. It is necessary to seek and eliminate not only direct and indirect manifestations of crime against art, but also their financial sources.

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<sup>17</sup> Cf. *Valle Pierimpie Societa Agricola S.p.a v. Italy*, 2014, application No. 46154/11.

The European Union undertakes steps to ensure safety and international cooperation in combating crime<sup>18</sup>. On 3 April 2014, in view of increasing effectiveness, the European Parliament and the Council adopted Directive 2014/42/UE on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union (EU Journal of Laws L 127 of 29 April 2014). The directive states that “the effective prevention of and fight against organised crime should be achieved by neutralising the proceeds of crime and should be extended, in certain cases, to any property deriving from activities of a criminal nature” [item 1] (...). There is a need to clarify the existing concept of proceeds of crime to include the direct proceeds from criminal activity and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds” (item 11), this also refers to property which was bought legally and then incorporated it into property obtained illegally. In accordance with the directive the forfeiture could be enforced, when a final conviction for a criminal offence is passed, which may also result from proceedings in absentia (Article 4 item 1). The directive also makes it possible to confiscate the proceeds or other property obtained as a result of criminal activity, which “directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value” (Article 6 item 1). This legislation may be applied for combating various forms and manifestations of crime, e.g. child pornography, trafficking in human beings, terrorism, cybercrime, corruption of European Union and state officials and in the private sector, or money laundering<sup>19</sup>.

The directive is far-sighted, because it includes crimes which may be committed with the use of modern IT technologies. It often happens that cultural property is put up for sale on internet auctions or sites used for long-distance transactions. Works of art may also circulate in the underground, so that the passage of time may reduce the interest of authorities and the caution of the potential buyers in the verification of their origin. There are also recorded cases of experts who by passing false opinions allow works of art to be proclaimed counterfeit, despite them being genuine, valuable items (corruptogenic behaviour). Every country should have coordinated preventive and informative mechanisms in place. Moreover, it is also important to initiate and conduct trans-border cooperation in the area of protection, popularisation of culture, as well as law enforcement and justice systems. European Union member states have time to transpose the regulations of the directive until 4 October 2015<sup>20</sup>.

In connection with the above directive it bears pointing out that the European Court of Human Rights in Strasbourg maintains its own cognition in applications which are in between European law and protection of human rights resulting from European Convention on Human Rights. The Strasbourg Court does not enter into the competences of the European Court of Justice (e.g. *Iovițoni et al. v. Romania*, 2012, application No. 57583/10, 1245/11, 4189/11). The buildings of international court are extra-territorial, i.e. independent from the state on the territory of which they are located. This aspect was especially prominent in the *Longa v. Netherlands* case, 2012 (application No. 33917/12).

<sup>18</sup> Cf. TYRANOWSKI, J. *Prawo europejskie*. Poznań: Wydawnictwo „Proprium”, 2002, p. 193-202. ISBN 83-912492-0-4.

<sup>19</sup> Cf. KOWALSKA, S. *Prawa człowieka a terror i terroryzm*. Kalisz: Adam Mickiewicz University in Poznań, Kaliskie Towarzystwo Przyjaciół Nauk, 2008, p. 7 et seq. ISBN 978-83-85638-87-3.

<sup>20</sup> Legal basis: Article 12 item 1 of the Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union (EU Journal of Laws L 127 of 29 April 2014).



## VI. PROTECTION OF HERITAGE IN CONNECTION TO THE INTERNATIONAL LAW

There is a reference in Article 1 of Protocol No. I to the European Convention to “the general principles of international law”<sup>21</sup>. This points to objectivity and adherence to norms widely accepted by the international community. One of the major international laws which may be referred to this subject matter is the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted on 16 November 1972 in Paris<sup>22</sup>.

According to the Convention, protection of cultural and natural heritage should exist on two planes: in particular countries, and internationally. This legal act stresses the role of international cooperation in this area. There arises the question of control mechanisms and conservation and restoration work concerning the items from the World Heritage List. Another relevant issue is the implementation of the Convention's decisions, so that they do not remain merely declarative in character. On the national plane, it is necessary to develop and ensure appropriate organisational, infrastructural, financial and legal conditions for the protection of monuments.

Basing on Article 6 of this convention, one may derive the concept of “world heritage”. Following that document cultural goods, not only domestic ones, but also those belonging to other states or their citizens, should be preserved, as they are a part of the heritage of world heritage.

Being guided by “state interest” or the “raison d'état” may paralyse the process of reaching a consensus or render it impossible, in particular in cases of restitution or other aspects of preservation of cultural goods. The preservation should be undertaken in the spirit of the provisions of the Convention and with respect to the sovereignty of signatory states and their internal law. Being guided by the idea of “world heritage” may be helpful in matters of preservation, restitution and establishment of ownership of monuments, as it enables one to rise above individual or group interests, particularism for the common good and combating prejudice and stereotypes.

There is a need to intensify activities on behalf of the protection of cultural and natural heritage that we inherited from our ancestors. Being an inheritor is connected not only with prerogatives, but also with rationally justifiable duties. Identification with heritage should go in hand with an active attitude with respect to the protection of artefacts and documents of the past.

The World Heritage List includes things and phenomena created both by the human kind and nature that possess universal and unique significance for the human kind due to their anthropological, natural, artistic, historic, archaeological or scientific value. These sites are essentially a reflection of the creation, transformation, development and history of human civilisation. They allow a better understanding of the relation and the interdependence of the human being and nature as well as the relationships between various social groups and cultures.

## VII. CONCLUSIONS

The right to access cultural heritage, as well as its preservation and popularisation is one of the most important human rights. Appropriate attitude to cultural heritage significantly influences how human identity is shaped. The continental system of human rights protection oscillates around the European Convention on Human Rights. One has to bear in mind that the

<sup>21</sup> Cf. BIERZANEK, R., SYMONIDES, J. *Prawo międzynarodowe publiczne*, Warsaw: Wydawnictwa Prawnicze PWN, 2001, p. 77-119. ISBN 83-88296-46-9.

<sup>22</sup> Poland ratified the Convention Concerning the Protection of the World Cultural and Natural Heritage in 1976 (Journal of Laws No. 32, item 190).

European Convention on Human Rights was signed in November 1950, while Protocol No. I which includes the provision of the right to peaceful enjoyment of possessions – in 1952. Therefore, the social, economic and political conditions were different. In former communist states the issue of returning forfeited property remains an open problem. Political transformation should not constitute an excuse to transgress or evade human rights standards. Over time, the European Court of Human Rights is concretizing more and more elements and facets which comprise the right to peaceful enjoyment of possessions.

Despite the fact that this legislature usually refers to movable and non-movable property and property rights, one mustn't forget that a cultural object or a work of art may also be intangible due to the significance it carries. For persons who apply for the return of lost cultural goods, these objects may have sentimental or emotional value e.g. family heirlooms, old photographs, postcards and mementos.

European Court of Human Rights dealt with collections, which may be important not only for one individual (e.g. an heir), but for whole societies. Therefore, public and private interest has to be then balanced out. The Court stated that relevant state authorities can take action to eliminate pathological phenomena and situations, which could damage national cultural heritage (e.g. illegal transfer of cultural heritage abroad, black market, and forgery). These actions, however, should not be arbitrary, disproportionate or discriminating. In the context of the right to peaceful enjoyment, the ECHR also stressed the significance of the quality of the law, as well as its rationality, constitutionality and co-relation.

## **KLÚČOVÉ SLOVÁ**

kultúrne dedičstvo, reštitúcia pamiatok, právo na úctu voči majetku, ľudské práva, Európsky dvor pre ľudské práva v Štrasburgu, Európsky dohovor o ľudských právach

## **KEY WORDS**

national heritage, restitution of heritage, right to peaceful enjoyment of possessions, human rights, European Court of Human Rights in Strasbourg, European Convention on Human Rights

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#### **CONTACT DETAILS OF AUTHOR**

**Ph.Dr. Samanta Kowalska**, lawyer

Assistant Professor at the Department of Scientific Information

Adam Mickiewicz University in Poznań, Faculty of Pedagogy and Fine Arts in Kalisz

Nowy Świat 28-30, 62-800 Kalisz, Poland

E-mail: skowalska13@interia.pl