EU PRIVATE LAW AS A LAST RESORT AGAINST (EUROPEAN) CULTURAL PROPERTY FRAGMENTATION?

Matthias Weller, *Rethinking EU Cultural Property Law – Towards Private Enforcement*, Nomos Verlag, Germany (Baden-Baden), pp. 174, 2018.

Cultural Property Law, with its distinguished cross-border dimension, represents a complex legal amalgam containing both public and private international law questions, and along with the separate legal regime of the European Union, it often leads to fragmented and unsatisfying solutions. Professor Matthias Weller took a brave and successful step towards illuminating numerous private international law issues in this legal mosaic, which often includes various national jurisdictions and substantive laws.

This book[1] emphasizes the significance and complementary function of private enforcement, as a crucial 'supplement' for the effective restitution of looted cultural property under Public International Law. In that regard, numerous innovative solutions were suggested by this renowned scholar. He considers, *inter alia*, that the establishment of general EU jurisdiction *in rem* (not limited to cultural goods only), together with harmonization of EU anti-seizure statues (either by revising the Directive 2014/60[2] or adopting a new EU instrument), could lead to greater clarification, while acknowledging anti-seizure customary public international law rules would contribute to legal certainty. Article 90 of the Belgian Code of Private International Law[3] was referred to as a good example for the EU in harmonizing the choice of law rule. Additionally, having in mind that the UNIDROIT 1995 Convention on stolen or illegally exported cultural

[1] This book is based on a Study commissioned by the European Parliament in the context of its European Added Value Assessment of possible future legislative action.

[2] 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), Official Journal of the European Union, L 159/1.

[3] Art. 90. of the Belgian Code of Private International Law: Law applicable to cultural property - If an item, which a State considers as being included in its cultural heritage, has left the territory of that State in a way, which is considered to be illegitimate at the time of the exportation by the law of that State, the revindication by the State is governed by the law of that State, as it is applicable at that time, or at the choice of the latter, by the law of the State on the territory of which the item is located at the time of revindication. Nevertheless, if the law of the State that considers the item part of its cultural heritage does not grant any protection to the possessor in good faith, the latter may invoke the protection, that is attributed to him by the law of the State on the territory of which the item is located at the time of revindication.

objects, which represents a very important legal instrument, allows only for states to be signatories, the author urges that the EU motivate (since it cannot be one of them) all remaining Member States to approach, in order to gain a greater harmonization. Hence, he suggests that the second chapter of the UNIDROIT Convention, which deals with restitution of stolen cultural objects, could be incorporated into the EU secondary law, i.e. the Directive 2014/60, (which in that case should be renamed,) or in a self-standing EU instrument.

Prof. Weller thoroughly examines the controversial subject of Nazi-looted art and the (potential) retroactive legislation, correctly noting that the retroactive solutions would not be in line with guarantees under the European Convention on Human Rights, the EU Charter of Human rights, and national constitutional guarantees. Therefore, he is calling for the further support and consistency of the Washington restitution principles in a restatement form that would collect and analyze the Spoliation Advisory Panel's recommendations in the Member States.[4]

The author comprehensively analyzes the concept of immunity from a seizure while the cultural object is on temporary loan in a foreign state, considering it widely accepted and well justified. However, he underlines the importance of achieving a balance, thus not allowing for the denial of justice, embodied in a potentially unconditional immunity for Nazi-looted art. In that regard, he calls for the clarification of the Directive 2014/60, in order not to affect national anti-seizure laws or a future EU instrument.

The author does not neglect complementary measures, on the contrary - he pays special attention to them and suggests the cross-linking of the existing provenance research, while at the same time highlights the need for additional research on data protection law, funded by the EU, in respect to the limits of exchange and/or central collecting of provenance data. Guiding us through diverse and interesting case-law, prof. Weller shows us the frequent inadequacy of Public International Cultural Property Law in dealing with restitution claims, therefore, he underlines the need to improve private enforcement for creating an effective regulatory framework.

This book contains an elaborative section dedicated to dispute resolutions. Namely, prof. Weller suggests that the EU could support the general mechanisms for alternative dispute resolution and maybe even establish a specific institution for dealing with contested cultural property – for example, an EU Agency on Cultural Property, while correctly pointing a visible lack of experts in the field within leading arbitration institutions.

[4] On 3 December 1998, 44 governments participating in the Washington Conference on Holocaust-Era Assets endorsed non-binding principles to assist in resolving issues relating to Nazi-looted art, known as the Washington principles.

When it comes to Cultural Property Law, scholars seldom go beyond a plain discussion of noting all the shortcomings of this area which is very much pervaded by different branches of law, jurisdictions, regimes, and interests, thus, simply calling for the 'international community' or the 'lawmaker' to respond and find an acceptable solution. What distinguishes this book from other works on the topic is the ability of the author to describe the complex legal framework in a very effective and concise fashion, hence to offer applicable and innovative rules which could overcome the above-mentioned problems.

Finally, by calling for the *understanding of Europe's history, in particular from 1933 to 1945, by creating a legal framework that supports awareness about the history and provenance, as well as each individual's historical responsibility and thereby steps towards just and fair solutions,* this book contributes greatly to the understanding of the existing and potential problems related to Cultural Property Law, but also makes a unique legal and ethical contribution from the private perspective of EU law.

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