Conflict of Laws of Cultural Property: In Search of the Holy Grail…

by Tamás Szabados, ELTE Eötvös Loránd Universität Budapest

In disputes related to stolen or illegally exported cultural property, conflict of laws provisions often play a significant role due to the absence of universally accepted substantive private law rules. This has been analysed in a recent post shared on this blog.

In most private international laws, cultural goods are treated in the same way as any other object, and accordingly the law applicable to issues of property law is determined in accordance with the *lex rei sitae* principle. If cultural goods are stolen or illegally exported from a country and brought to another state, where a good faith buyer acquires ownership over the goods, the application of the *lex rei sitae* principle often results in the recognition of the title of the *bona fide* purchaser over that of the original owner. In order to promote the restitution of stolen and illegally exported cultural property, several authors argued that the *lex rei sitae* principle should be replaced by other connecting factors.

In the legal literature, much effort has been made to find a more suitable connecting factor. The application of the *lex originis* principle was widely proposed as an alternative. Nevertheless, the *lex originis* principle also has some flaws. Sometimes it may be difficult or impossible the geographical or cultural origin of the cultural goods. The place from which the cultural goods were stolen is not necessarily demonstrate a closer connection to the case than the *lex rei sitae* if the goods are only temporarily located on the territory of the state concerned.

It seems that there is a discernible trend in private international law codifications to address specifically stolen and illegally exported cultural property. They are typically based on a combination of the *lex rei sitae* and the *lex originis* principles and provide room for the parties' autonomy. Such legislation has been enacted, among others, in Belgium (Belgian Private International Law Act, articles 90 and 92) and Hungary (Hungarian Private International Law Act, articles 46-47). It is

also noteworthy that in a study the European Parliament also examined the possibility of the adoption of distinct conflict of laws rules for cultural goods and proposed a similar solution.

This current legislative trend is analysed in a recent article written by Tamás Szabados that has been published in the International Journal of Cultural Property. The author poses the question whether the recent private international law codifications have found the Holy Grail of the conflict of laws of cultural property.

The article is available through the website of the International Journal of Cultural Property here.