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**REPATRIATION OF CULTURAL ANTIQUITIES
FORMING A LEGAL AND
AN ARCHAEOLOGICAL PROCEDURE**

Return and restitution is a part of preventing the illicit trafficking of cultural objects. The process of return and restitution cases differs in accordance with the dynamics of the case. In some cases, when the requesting party has concrete proof, returning the artefact becomes a matter of time. But in order to have that concrete proof an expert needs to follow a basic check list and complete the pre- and post-process. In other cases, when the requesting country does not have concrete proof but secondary or scientifically interpreted proof, experts should seek alternative ways to complete the return and restitution process. In this article, practical ways to form arguments in challenging cases, alternative legal tools, and the most beneficial tools of the existing and main international legislation will be discussed.

The return and restitution of cultural objects has many different dynamics. In return or restitution cases, the existence of these dynamics helps to constitute an ideal case. I would like to refer to the missing pieces which, in their absence, can lead to a vicious circle. In order to do that, we have to remember the main components which make a case an ideal one.

At this point we have to consider that the dynamics of return and restitution cases differ from each other depending on whether the artefact is stolen or illicitly excavated.

In most origin countries, due to legal regulations, illicitly excavated cultural artefacts are defined as stolen and undiscovered objects and are thus defined as state property¹.

In order to better reveal the situation, we will start with stolen objects. What needs to be done if we realize a stolen artefact is in a collection and how do we form a return procedure?

The best way is to start before the artefact appears on the market or in a collection. After it has been reported as stolen, the first step should be to immediately notify the theft incident to relevant governmental organizations such as the Ministry of Interior Affairs, Ministry of Foreign Affairs, or Ministry of Customs and Trade. At the same time, all the museums and private collectors should be informed of the theft in order to keep them from acquiring a stolen artefact and also to use them as an outlook mechanism by encouraging them to warn the authorities in the case of being informed about the artefact. In addition, registering the details and a photograph of the artefact to the INTERPOL database is an essential step to be taken.

¹ For further reading on State Property of Cultural Artifacts: P.J. O'Keefe, *Trade in Antiquities Reducing Destruction and Theft*, Paris 1997; available online <<http://www.unesco.org/new/fileadmin/MULTIMEDIA/>>.

DID YOU	ARE YOU
Send photographs and related info to INTERPOL?	Keeping your eye on auction house catalogues?
Notify national authorities?	Incorporating scholars in the field?
Inform cultural representatives around the world?	Getting in touch with your counterparts from relevant countries?
Start a criminal investigation?	Research among publications?
Archive related documentation properly?	In proper coordination with the local police of the zone and keeping the case live?
Warn customs?	Narrowing the movement area of the thieves?

It is also very important to file a criminal complaint about the theft and constitute a public legal case.

If an origin country has done all of the above and couldn't find any information about the artefact, it should be considered that the artefact has been exported to abroad and will be kept for a while incognito. But when an expert continues to seek for an artefact, presumably it will show up in a catalogue, on a website or in a scientific article. The other option might be to get into contact with the "partners" of the smugglers, one of the common ways of gaining some information about the artefact.

If the artefact has been detected in a collection, then it is proper to inform the national INTERPOL bureau, the national police unit and the related prosecutor. After doing this, the return of the artefact is only a matter of time. If the origin country follows the check list (Table 1) properly, the possessor will not have an opportunity to demand a good faith title because the country of origin will have been registered the artefact to a global database like INTERPOL's stolen works of art database beforehand. In addition, the smuggler will not have time to launder the artefact, again because of the global notification done directly after the event.

The so-called Lydian hoard which the Metropolitan Museum of Arts returned to Turkey in 1993 can be referred to as a model². Three years after the return, the artefacts were transferred to Usak Museum from the Ankara Anatolian Civilizations Museum since Usak is the province from which these artefacts originate. In 2005, an archaeologist realized that the hippocampus brooch in the Usak Museum was a fake. After comparing all the records it was revealed that the brooch had been replaced after its transfer to Usak. An investigation started and as a result it was proved that the Director of the museum, who was an important figure within the organization, had planned and enacted the crime. However, it was impossible to gain any information about the place of the brooch from him.

During the post-process, all the notices received by the Ministry of Culture and Tourism, even the most senseless ones, were shared with national and international police units and also with the related prosecutor. Turkey evaluated all the possible opportunities to keep the event live in order to reduce the circle of the possible mediators and thus prevent them from selling the artefact.

At the same time the German prosecutor led a very detailed investigation and arrested the related people. After these arrests a lawyer of an unnamed person

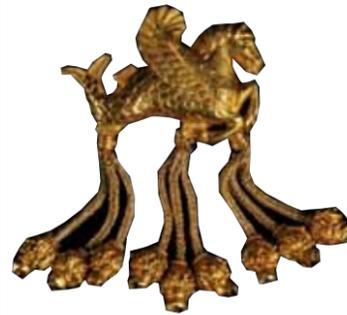


Fig. 1. Original Hippocampus Brooch.

² For further reading on Return of Lydian Hoard: S. Waxman, *Loot*, New-York 2008.

³ By November 2013.

⁴ Available online <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/INF2-SC1_StudyLVP_en_REV2.pdf> November 2013

IDEAL CASES	CHALLENGING CASES
IF...	IF...
The object is stolen (properly inventoried).	The object has been obtained by illicit excavations.
The related national institutions have been informed on time.	There is not notification existing among related institutions.
Strong legislation concerning state ownership exists.	The legislation is vague.
Archival documents can be provided.	No archival documents can be found.
The object is possessed or seized by a state.	The object is being sold in an auction house / via the Internet.
There is mutual consent to solve the problem.	There is an absence of consent from one side.

brought the brooch to the German police and used the right to remain silence on behalf of his client. The criminal court is still in the process but the brooch has been returned to Turkey (Fig. 1). Turkey part of the organization has been punished and also the extensions in Germany are being expected to be so.

Illicitly excavated artefacts are the most problematic cases while an origin country tries to fulfil a legal or diplomatic obligation. The main differences between an ideal case, in terms of return, and a challenging case have been stated in Table 2.

It is harder to put the facts in order for such a case. There are only some basic ones which may help an expert while working on a case. First of all, it is a good idea for a governmental institute to assign some of the experts only to do a market or collection search like a "research squad". Such a group of experts can study publications of collections or monitor auctions. In 2013, the Ministry of Culture and Tourism of Turkey sent a letter to its cultural attaches working all around the world in order to prepare a list of auction houses who arrange auctions of antiquities; however, the number of auction houses on the uncompleted list was really discouraging – approximately 500. The number of experts working for the anti-smuggling and intelligence division in the Ministry is only 9³. These experts are not only responsible for the return or restitution of artefacts illicitly exported abroad, they are also responsible for preventing illicit excavations and coordinating domestic cases. While discussing the handling situation, Prof. Prott's study – which she prepared for UNESCO for the draft operational guidelines of the Subsidiary Committee of the meeting of state parties to the 1970 Convention – inspired us. In that study, Prof. Prott discussed setting up a civil network to monitor auction houses and to use academics who are in related fields and volunteers⁴. We partially applied this suggestion and sent 41 university archaeology departments and non-governmental organizations a letter which encourages them to join us in monitoring these auction houses. Doubtless this is not a total solution, but at least this helped us to find the Anatolian-originated artefacts which are being sold in auction houses.

After finding the artefact, the next step depends on the place where the artefact is detected. If it has appeared in an auction house catalogue, the next steps need

to be taken rapidly. The best way to start is checking the INTERPOL database, and even if that artefact is a non-registered one, similar ones on the database may help us to narrow our research with regard to the probable origin. Since the legal process is already difficult, when we need to research retrospective evidence, making a pre-selection before starting the phase is important; for example, artefacts which do not have any significance or characteristic features will not be a good option to request when we consider the subject due to the legal framework.

After receiving positive opinions by archaeology experts, giving full information to all possibly related institutions is the best next step. If a country directly applies to the auction house and claims for the return of the artefact via their mediation, or if a country claims for withdrawal of the sale of the artefact, the answer will probably be negative and their respective lawyers will ask that country's authorities questions about their evidence. When the subject is undiscovered objects, unless the claiming country finds solid proofs, according to the auction house's policy, in all probability they will ignore the claim and one will not have an option to discuss the situation with them. However, starting by asking for the provenance information of the artefact is a good starting point.

In such a case, after determining the probable origin, applying to the local prosecutor for an investigation and also providing scientific reports from specialist academics of the period that the artefact belongs to, and then sending this gained information to the auction house, can save some time. If the scientific report does not work, this means that it is time to send a commission rogatoire demand to the related country's legal offices and to seek a temporary injunction decision under the European Convention on Mutual Assistance in Criminal Matters.

In any case under this legal framework, the need for solid proof would be raised by the opposite side. Even the requesting one doesn't have this proof which is hard to find out, showing the opposite side that the attention is sustainable and the catalogues or acquisitions are being followed, may be considered as another concrete way.

One may think that it is problematic to make a claim to an auction house as a negative result is predictable, but when discussing on this field none of the efforts can be considered as they are unnecessary.

In December 1999, an auction was held at Christie's auction house in New York. An Orpheus Mosaic was declared as on sale but the Turkish government asked to stop the sale as there was a query regarding the probable origin of the artefact. Scientifically there was no doubt that the mosaic was illicitly obtained by illicit excavators from Sanliurfa/Edessa and illicitly exported from Turkey, however, the auction house chose to keep this silent and not to assist Turkey while it sought provenance information. The artefact was subsequently sold and nobody was able to trace the new possessor. Time passed and in 2012 we came across an article in an archaeology magazine which deals with the subject of an Orpheus Mosaic in the Dallas Museum of Art. Since we were unaware that a claim was raised by Turkey more than a decade before when it was being sold at Christie's, we started to do some research in our archives and we found the old file which was like a moment of victory.

When one claims for an artefact to be returned, the institution might provide some papers which prove that this artefact had been bought by them from a public auction. This position legally is therefore not so beneficial for a claiming country. But when the opposite side provides such documents it doesn't matter whether or

Fig. 2. Orpheus Mosaic.



not they prove the artefact has been legally exported, in the event of applying to a court, these documents will probably help the possessor to gain a "good faith" title.

In addition, in some cases if a country applies to the civil court for the ownership of an artefact which has been bought by the possessor from a public auction, that country may be faced with a decision which defines it as "inactive" because of not trying to prevent the public sale without considering if the country was officially aware of the sale or not and this definition of "inactivity" may cause a decision as it "waived" its ownership on the artefact⁵.

This is why finding the old file in the archives which proved that Turkey had tried to prove its ownership and claimed for a withdrawal of the sale of the artefact was the most important part of the Orpheus Mosaic case which is now in Istanbul Archaeology Museum (Fig. 2).

The combination of illicitly excavated artefacts and auction houses is the worst model when looking to form a legal procedure. After finding an artefact in an auction, for an expert it is not an option to ignore it. On the other hand, if a state steps into action without concrete evidence, it will receive letters from auction house lawyers who are not satisfied and expect evidence from the requesting side, instead of sharing the full provenance information of the artefact.

Also, applying without evidence to a civil court in order to form a legal procedure cannot be beneficial. Evidence in this field is separated into two sections. A source country may have the evidence that the artefact has been obtained by illicit excavations, but the artefact might have been laundered by being sold on

⁵ Ozel, S. 2010. "Under the Turkish Blanket Legislation: The Recovery of Cultural Property Removed from Turkey", *International Journal of Legal Information* 38, 177-184.

paper to various mediators. This puts the requesting state in a position in which it needs to search for evidence to disprove the ownership claim of the opposite side or so-called possessor.

Nevertheless, seeking criminal jurisdiction is always more beneficial than through the civil courts which are quite unpredictable and expensive.

Although Article 7 of the 1970 UNESCO Convention refers to diplomatic channels, its full implementation in national legislation gives us the chance of fulfilling a judicial process. The 1970 Convention has been criticized for not covering illicitly excavated artefacts, however, when we evaluate the Preliminary, Article 3 and Article 9 together we can reach the opposite interpretation. Thus, let us to use the agreement as a tool more commonly on the international legal stage. Referring to the agreement during the legal procedure also helps to raise awareness among the legal authorities of the destination countries.

It would seem proper to recall the UNESCO 1970 Convention in every possible case, but the Convention should also be supported with national legislation. There are many important points which should be adapted to national legislation, but the most essential one is the “state ownership” statute of both inventoried and undiscovered artefacts, from the perspective of civil law and criminal law. The other essential point is defining illicit trade, illicit excavations, and illicit export and import as crimes.

In order to form a good legal case, acting precisely and archiving one single file with care, performing in-depth research, seeking eye-witnesses, and keeping the case live and fresh are quite important in terms of practical measures.

Technically, it is important to take into consideration the character of the laws and regulations of the state where the artefact appeared, to study the model case, to consult with lawyers and research a way to carry the matter to criminal courts rather than civil courts. It is not critical if there is no specific law on preventing the illicit trafficking of cultural artefacts in the destination country or if the law for some reason cannot be applied.

In such a case, looking into, for instance, custom laws and regulations or trade regulations might be helpful. According to the conditions, if it is more beneficial, claiming for competency and considering the opportunity to apply the origin country’s laws might be another option.

Returning the cultural artefacts to their place of origin is a very important point when we remember that it raises philosophical issues like breaking the supply-demand equilibrium. But states have to show the same effort in protecting their cultural heritage as they do for return or restitution cases since this is the starting point.

Ibn Khaldun who lived from 1332-1406 is being admitted as a prior to modern historiography. It is quite interesting that in his masterpiece manuscript called *The Muqaddimah*, he mentions tomb raiders and defines them as “week-minded”. In terms of this presentation what is outstanding is that he says “they (tomb raiders) do not realize that by trying to make a living in an improper manner, they plunge themselves into much greater trouble, hardship, and expenditure of energy than otherwise. In addition they expose themselves to the risk of punishment”⁶. So, even during those times clandestine excavations were something punishable.

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⁶ I. Khaldun, *The Muqaddimah*, translated from arabic to english by F. Rosenthal, Princeton University Press, 1967.

ΠΕΡΙΛΗΨΗ

ΕΠΑΝΑΠΑΤΡΙΣΜΟΣ ΠΟΛΙΤΙΣΤΙΚΩΝ ΑΓΑΘΩΝ ΔΙΑΜΟΡΦΩΣΗ ΝΟΜΙΚΗΣ ΚΑΙ ΑΡΧΑΙΟΛΟΓΙΚΗΣ ΔΙΑΔΙΚΑΣΙΑΣ

Η διαδικασία επιστροφής πολιτιστικών αγαθών στις χώρες προέλευσής τους περιλαμβάνει τρεις σημαντικές παραμέτρους: τα επιστημονικά στοιχεία, το νομικό πλαίσιο και τη διπλωματία. Θεωρούμε γενικά ότι η διπλωματική και η νομική οδός αποτελούν εναλλακτική η μία της άλλης και δεν ενδιαφερόμαστε ίσως αρκετά για τα επιστημονικά στοιχεία. Αλλά αν θέλουμε να διαμορφώσουμε ιδανικές συνθήκες για έναν επαναπατρισμό, τότε πρέπει να επανεξετάσουμε τα σημεία αυτά.

Εάν θεωρήσουμε όλα μας τα πολιτιστικά αγαθά ως εν δυνάμει κλεμμένα αντικείμενα, κάτι που ακούγεται λίγο παρανοϊκό, τότε πρέπει να αρχίσουμε με την καταγραφή όλων των κινητών μνημείων που διαθέτουμε. Κατά τη διαδικασία επαναπατριsmού, και με δεδομένο ότι η διαμόρφωση μιας αρχαιολογικής και νομικής διαδικασίας είναι ουσιώδης, η συγκρότηση καταλόγων απογραφής είναι προφανώς το πρώτο βήμα που πρέπει να γίνει. Πρόκειται για την πιο παλιά πρακτική που γνωρίζουν καλά όλοι όσοι εργάζονται σε μουσεία, οι αρχαιολόγοι και οι ιστορικοί τέχνης, καθώς και όλοι οι συνάδελφοι που διεξάγουν έρευνα στον τομέα. Είναι, όμως, και η πιο δύσκολη στην εφαρμογή της. Εάν υπάρχει κάποιο έγγραφο που αποδεικνύει ότι κινητά μνημεία έχουν κλαπεί από τη χώρα και εάν τα πολιτιστικά αγαθά θεωρούνται ιδιοκτησία του κράτους σύμφωνα με την εθνική νομοθεσία, επομένως και η κλοπή τους συνιστά έγκλημα, τότε όλα γίνονται πιο εύκολα. Σε αυτή την περίπτωση πρέπει να ενημερωθεί ο αρμόδιος δημόσιος κατηγορος της χώρας, ο οποίος, αφού διεξαγάγει τη σχετική έρευνα, με τη βοήθεια των εγγράφων καταγραφής που θα του παρασχεθούν, θα ετοιμάσει ένα αίτημα στο πλαίσιο της «Ευρωπαϊκής Σύμβασης Αμοιβαίας Δικαστικής Συνδρομής επί Ποινικών Υποθέσεων». Παρέχοντας ουσιαστική πληροφόρηση προς τις αρχές της χώρας στην οποία έχει μεταφερθεί το πολιτιστικό αγαθό ως προς τον τόπο προέλευσής του, ξεκινά μια αυτόματη διαδικασία. Μετά από αυτό το πρώτο βήμα, το μόνο που πρέπει να έχουμε κατά νου είναι να παρακολουθούμε στενά τις εξελίξεις ή τα στάδια της υπόθεσης.

Θα ήμασταν πολύ τυχεροί εάν μπορούσαμε να εφαρμόσουμε αυτό το μοντέλο σε όλες τις υποθέσεις μας, αλλά αυτό δεν συμβαίνει. Έτσι, σε αυτό το στάδιο ερχόμαστε αντιμέτωποι με μια άλλη νομική διατύπωση, που δεν ευνοεί τις χώρες προέλευσης: το «αστικό δίκαιο». Σε υποθέσεις αστικού δικαίου εξακολουθεί να είναι σημαντική η ύπαρξη τεκμηρίωσης ή αποδείξεων ιδιοκτησίας. Αλλά σε αυτή την περίπτωση ανακύπτουν ορισμοί όπως «καλόπιστος αγοραστής» και «χρονικές προθεσμίες».

Στο παρόν άρθρο αναλύονται τα πιο σημαντικά σημεία που πρέπει φροντίσουν οι εμπειρογνώμονες σε ζητήματα επιστροφής και επαναπατριsmού, τόσο σε υποθέσεις ποινικού όσο και αστικού δικαίου, με παραδείγματα και για τις δύο περιπτώσεις. Κατά την παρουσίαση, και προκειμένου να γίνει αναφορά στη σημασία της αρχαιολογικής διαδικασίας, υπογραμμίζεται η συμβολή των επιστημονικών αναφορών και των αποτελεσμάτων από αναλύσεις στις υποθέσεις επαναπατριsmού.