

SELLING CULTURE LEGAL CHALLENGES ON ONLINE AUCTIONS

Abstract: Why is important to research the legal challenges on online auctions with artifacts?

The evolution of online commerce with artifacts is a booming phenomenon that has apparently a set of rules established specific nationally and internationally. Today online auctions have an exponential growth trend generating important commercial benefits such as: the rate, the opportunity to participate in several auctions at the same time or in a very short time, the ability to communicate effectively and quickly with bidders; products can be up-to-date on over-stock or fluctuating stocks with significant value for specialized collectors, products sold can be unique art objects of immeasurable value. The question is whether globally online sale of artifacts is regulated in accordance with international law on the protection of cultural heritage and national law? The inconsistencies of legislation can cause serious damages related to: the existence of a grey market for stolen or illegally exported assets which come to the property of unknown private individuals and an abetment for criminal bands to steal and extract illegally valuable artifacts. Under these circumstances, many important historical sites are destroyed, devastated and the artifacts get illegally into criminal hands, and the loss cannot be undone in the future.

Keywords: *auctions, online commerce, grey market, criminal bands, illegally extract inconsistencies of legislation.*

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INTRODUCTION

The auction has become the most widely used form of trading of cultural heritage assets worldwide as it provides exposure to a large public interested in the potential acquisition and obtaining the sale at the most advantageous price for the owner.

Currently most auctions are online, even auctions organized by auction houses have an online component, being advertised on the Internet on their own site with the display of the catalogue and the presentation of the features, with the possibility to participate online in auctions, which are transmitted live by the houses auctions. Exclusively online auctions have seen a steady upward trend.

The trend is the exponential growth of online auctions, including the sale of cultural heritage assets. In this context, from the point of view of protecting the cultural heritage, the highest risk is represented by the lack of control of the licit nature of the sale of artifacts by ensuring the international observance of the provisions of the 1970 UNESCO "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" and, at national level, the origin of cultural heritage assets.

This paper contains three recent relevant cases which show the

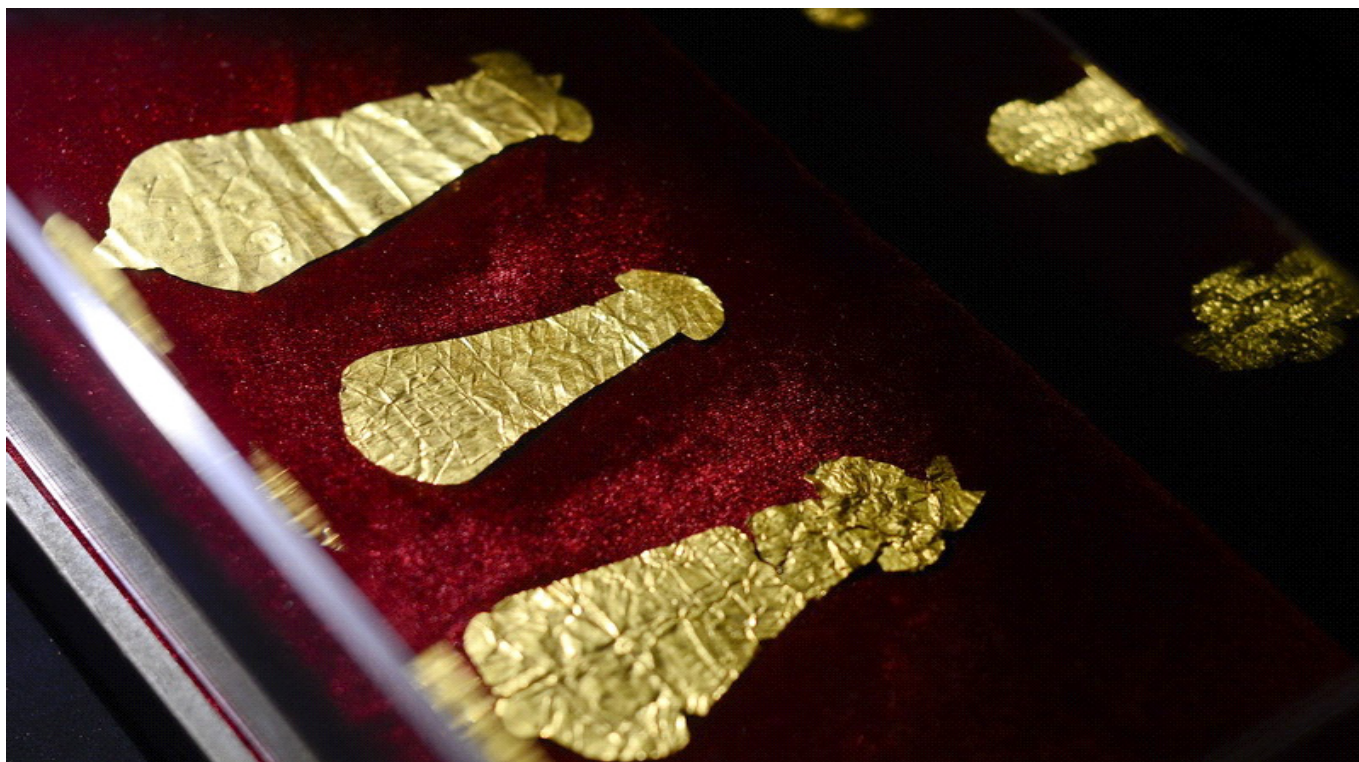


Fig. 1. The three Dacian artifacts Bitus¹

inconsistencies of legislation regarding very valuable artifacts from cultural heritage.

THE DACIAN VOTIVE PLATES BITUS - AUCTIONED BY ARTMARK IN 2014

The Dacian votive plates Bitus: a set of three pure gold votive artifacts dating back to the 2nd and 3rd centuries BC were auctioned on 24 November 2014 by the Artmark auction house with a starting price of 85,000 euros after The Ministry of Culture (MC) did not exercise its right of pre-emption.

Auction House Artmark complied with the provisions of the “Law no. 182 of October 25, 2000 regarding the protection of the movable national heritage” and announced the Ministry of Culture regarding the intention to withdraw the set of votive plates for the exercise of the pre-emption right and the acquisition.²

Article 36 of the Law no. 182/2000

§1. Movable cultural property owned by private individuals or legal entities classified in the treasury may be the subject of public sale only under the conditions of the exercise of the pre-emptive right by the Romanian State through the Ministry of Culture and Religious Affairs, in compliance with Article 35 7.³

§3. The term of exercising the pre-emption right of the state is no more than 30 days, calculated from the date of registration of the communication provided in par. (2), and

¹ <http://www.artsjournal.com/worth/wp-content/uploads/2014/02/auction.jpg> accessed on 7.02.2018

² <https://www.artmark.ro/stiri/tag/placute-votive-din-aur-dacic/> accessed on 7.02.2018

³ http://www.dreptonline.ro/legislatie/lege_protejarea_patrimoniului_cultural_national_mobil_182_2000.php accessed on 7.02.2018

the purchase value is the one negotiated with the seller or the authorized economic operator or that resulting from the public auction.⁴

Article 35

§7. “The economic operators authorized to market movable cultural goods are obliged, within 3 days from the date of registration in the register of the assets classified in the treasury, to communicate in writing to the deconcentrated public service of the Ministry of Culture in whose territorial jurisdiction, making them available for sale and, where appropriate, transmitting a copy of the catalogue published for the purpose of organizing a public auction, whether or not the goods auctioned are classified in the national mobile cultural heritage.”⁵

Since the Ministry of Culture did not respond after 4 months have elapsed since the official notification, although the legal response time is 30 days, the auction house decided to sell the artifacts.

Subsequently, the auction house, Artmark, withdrew the Bitus votive plates from the Christmas auction on December 9, 2014, and postponed the sale until “clearing the legal status of the owner”. Given that Artmark has complied with the legal procedure for the sale of a national cultural heritage by prior notification, the question arises: What legal impediment caused the sale to be stopped?

In this case, the illegal character is due to the lack of certification of the legal origin of the artifacts. In fact, the private owners of Bitus votive plaque set did not observe the legal provisions regarding the declaration of possession or

⁴ http://www.dreptonline.ro/legislatie/lege_protejarea_patrimoniului_cultural_national_mobil_182_2000.php accessed on 7.02.2018

⁵ http://www.dreptonline.ro/legislatie/lege_protejarea_patrimoniului_cultural_national_mobil_182_2000.php accessed on 7.02.2018

acquisition of susceptible goods being part of the national cultural patrimony.

In this situation, a number of violations of the law were recorded:

The owners did not comply with the provisions of art. 49 of Law no. 182/2000 on the protection of the national mobile cultural heritage, having the obligation to declare the discovery or the possession.

Article 49

Private individuals who have accidentally discovered goods of the kind referred to in art. 46 par. (1) are obliged to hand over, within 72 hours of their discovery, to the mayor of the territorial-administrative unit in whose radius is the discovery.⁶

The owners of the Bitus Plaque set do not have legal documents on the origin and mode of transmission of national cultural heritage assets.

The Artmark auction house misrepresented the set of votive plaques as "currently classified as cultural property belonging to the national heritage in the Thesaurus category", unreal aspect for several reasons: the owner did not apply to initiate the registration procedure of classification, the plates have become public with the announcement for sale, they are not listed on the list of national cultural heritage assets of Thesaurus or Fund, so they do not have assigned a specific code. The Artmark representatives were required to verify the registration of the classification as a cultural heritage asset.

The Artmark Auction House did not comply with the provisions of Art. 35 al. 5 and 6 of Law no. 182/2000 to inform the owner about the possibility of initiating the classification procedure, and to send to the Ministry of Culture the notification of the existence of goods susceptible to be classified in order to trigger the legal classification procedure.

Article 35

§5. The economic operators authorized to market movable cultural goods have the obligation to notify in writing, within 5 days from the date of the offer, the deconcentrated public services of the Ministry of Culture and Religious Affairs about the existence of goods susceptible of being classified.⁷

§6. The economic operators authorized to market movable cultural goods have the obligation within 5 days to inform in writing the owner of the property about the possibility of starting the classification procedure.⁸

The inability of the owners to prove the legal origin of the set of votive plates and the failure of the auction house Artmark to observe the legal provisions regarding the verification and requesting the start of the classification procedure led to the cessation of the sale of national cultural heritage assets of historical, scientific and material inestimable value.

⁶ http://www.dreptonline.ro/legislatie/lege_protejarea_patrimoniului_cultural_national_mobil_182_2000.php accessed on 7.02.2018

⁷ http://www.dreptonline.ro/legislatie/lege_protejarea_patrimoniului_cultural_national_mobil_182_2000.php accessed on 7.02.2018

⁸ http://www.dreptonline.ro/legislatie/lege_protejarea_patrimoniului_cultural_national_mobil_182_2000.php accessed on 7.02.2018

THE STATUETTE OF SEKHEMKA SCRIBE - AUCTIONED BY CHRISTIE'S IN 2014

The statuette of the Sekhemka scribe of over 4,300 years, owned by the Northampton Museum, was put on sale on July 10, 2014 by Christie's auction house and sold for £ 15.8 million, although the Egyptian government requested to cancel the auction and the refund of the artifact.⁹

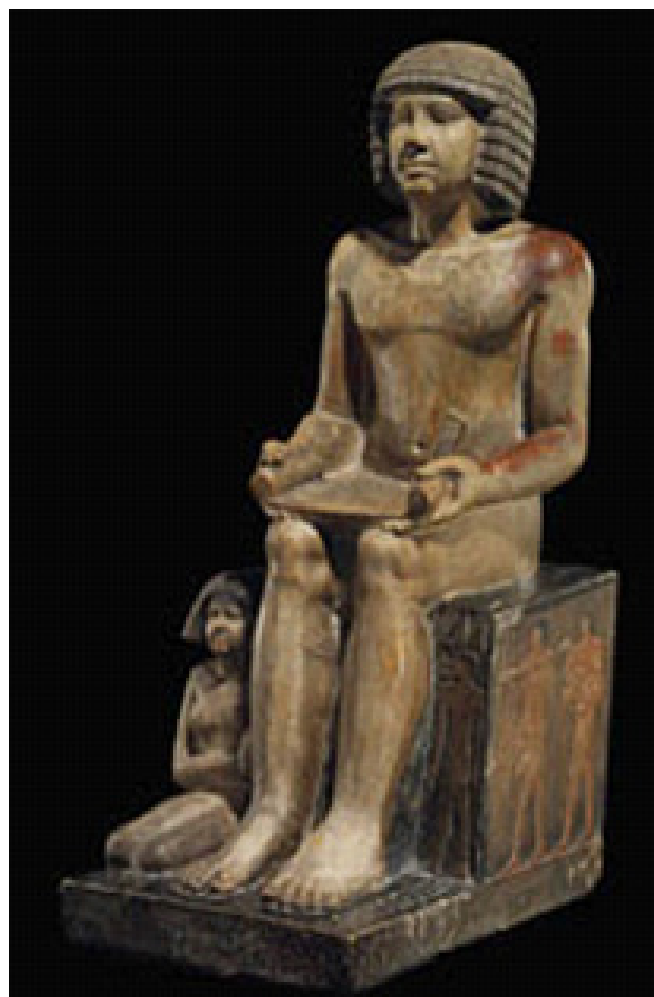


Fig 2. The statuette of Sekhemka¹⁰

In this case, however, the origin of the artifact is clearly documented, originated in an old-fashioned collection - belonging to the nineteenth century Northampton Museum, respecting international law and the UK.

The Egyptian authorities objected to the auction under the blurring status of the statue in the possession of the museum, corroborated with the impact of the sale price, which would lead to increased illicit trafficking in artifacts of Egyptian civilization. The Egyptian government has invoked Egyptian legislation on the protection of antiquities as well as the need to return to its home country sites under the **UNESCO Convention**.

⁹ <https://www.madamasr.com/en/2014/07/11/news/u/london-auction-house-goes-ahead-with-sale-of-contested-egyptian-artifact/> accessed on 7.02.2018

¹⁰ https://www.google.ro/search?q=altair+8800&hl=en&source=lnms&tbm=isch&sa=X&ved=0ahUKewjkw6KssrfZAhYUiaYKHeF8CBEQ_AUICigB&biw=1366&bih=637#imgsrc=XaevMjT50-kUhM accessed 7.02.2018



Fig. 3. Egyptian Artifacts in auction¹⁰

According to Article 8 of "Law no. 117/1983 on the protection of Egyptian antiquities, modified by Law no. 3/2010": "the trade or sale of antiques, including those from private property, is prohibited. The owner or possessor of any antiquity may not dispose of, allow deterioration of or leave such except after getting a written consent from the Council within 60 days at least in accordance with the procedures, terms and conditions, of which a resolution from the Minister is issued, otherwise such act shall be illegal." Also "any one owns any archaeological object in accordance with the provisions of this Law must notify the Council of such object within six months starting from the beginning of March 2010 provided that such persons are required to preserve such objects until the Council registers it"¹². Moreover, it can be taken from the owner by the director of the Council on the basis of national interest.

Under this article, the representatives of the Egyptian government demanded the return of the statue, as the act of selling, in their opinion, was an illegality based on the lack of clear documentation of the origin of the artifact.

In response, Christie's auction house relied on the 1970 UNESCO Convention on the Prohibition and Prevention of the Import, Export and Transfer of Property Rights on Cultural Heritage, which provides: in accordance with

Article 7 (b) (ii)¹³

The States Parties to this Convention undertake:

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar

¹¹ https://www.google.ro/search?q=apple+I&hl=en&source=lnms&tbm=isch&sa=X&ved=0ahUKEwjLqanngYzZAhXJLVAKHX2BCMOQ_AUICjgB&biw=1366&bih=637#imgrc=633SYPSMLY3hHM:accessed 7.02.2018

¹² http://www.unesco.org/culture/natlaws/media/pdf/egypt/egypt_law3_2010_entof.pdf accessed on 7.02.2018

¹³ http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TO PIC&URL_SECTION=201.html accessed on 7.02.2018

institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

Indirectly and subject to domestic law, Article 13 of the Convention also provides for restitution and cooperation provisions.

Article 13¹⁴

The States Parties to this Convention also undertake, consistent with the laws of each State:

¹⁴ http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TO PIC&URL_SECTION=201.html accessed on 7.02.2018

(a) to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;

(b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;

(c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;

(d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported. States Parties to this Convention undertake, in accordance with the laws of each state.

On the strength of this convention, Christie's auction house and the British authorities invoked: clear documentation of the legal provenance of the artifact, possession of the statue in an old registered collection, introduction in the UK legally before 1970, in fact in the nineteenth century, and the acquisition was legally binding by donation without being stolen, so the auction continued.

76 EGYPTIAN ARTIFACTS - AUCTIONED BY CHRISTIE'S IN 2015

Seventy-six Egyptian artifacts from the 4th millennium BC were put on sale on October 1, 2015 in a batch of 189 ancient Egyptian artifacts by the Christie's auction house, out of which 126 artifacts were sold at auction with a total price of £ 2,859,375¹⁵

The Egyptian authorities opposed the sale demanding the cancellation and restitution of the goods by invoking the illegal withdrawal from Egypt during the 2011 revolution. The auction house Christie's presented in its catalogue the documents of origin of the artifacts from the moment of excavation to the transmission to the current owner, but which were disputed by the Egyptian government under the argument of the theft during the political turmoil in Egypt from January 25 2011 revolution. The Egyptian authorities argue that the loss of security on cultural heritage has led to the increase of looting in the cultural heritage of the country, so there is no evidence of the number of antiquities that have been lost because many of them have been taken through illegal excavations. In this respect, the Ministry of Antiquities has taken all the necessary steps to obtain the entire batch auctioned under Article 8 of Law no. 117/1983 on the protection of Egyptian antiquities, modified by Law no. 3/2010. According to the Egyptian legal provision: "The owner or possessor of any antiquity may not dispose of, allow deterioration of or leave such except after getting a written consent from the Council within 60 days at least in accordance with the procedures, terms and conditions, of which a resolution from the Minister is issued, otherwise such act shall be illegal."¹⁶

In this case, the Christie's auction house has

documented the provenance of the artifacts by the owners, as well as the 1970 UNESCO Convention by expulsion from Egypt prior to 1970, while the Egyptian government has claimed the need to return to the country of origin on the same Convention on the grounds of illegal removal from the country during the domestic revolution of 2011, which, however, could not be proved.

Having ensured the licit nature of Christie's artifacts, the Auction of October 1, 2015 continued, which led to the sale of 126 artifacts to private owners at prices ranging from £ 1,250 to £ 182,500.

CONCLUSIONS

Global online auctions are not regulated in accordance with international copyright law and national laws, except for auction houses, other online auction sites are under no obligation and do not verify the source of mobile cultural heritage. The lack of regulation of online auctions allows the illicit sale of artifacts and the loss for the universal cultural patrimony of goods of high historical, cultural, scientific and material value.

In these circumstances, is very important to research the impact of online auctions in connection with the illegal export which is hard to control.

¹⁵ <https://www.christies.com/Results/PrintAuctionResults.aspx?saleid=25123&lid=1> accessed on 7.02.2018

¹⁶ http://www.unesco.org/culture/natlaws/media/pdf/egypt/egypt_law3_2010_entof.pdf accessed on 7.02.2018