

JURISDICTION OVER ACTIONS FOR THE RECOVERY OF CULTURAL OBJECTS UNDER ARTICLE 7(4) OF THE REGULATION (EU) 1215/2012

Ivana KUNDA*
University of Rijeka, Faculty of Law

SUMMARY: I. INTRODUCTION.— II. INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK: 1. General overview; 2. Rules on cross-border jurisdiction.—III. FEATURES OF SPECIAL JURISDICTION FOR CROSS-BORDER RECOVERY OF CULTURAL OBJECTS IN EU LAW: 1. Scope of application; 2. Place in the system.— IV. ASSESSMENT AND AMENDMENT PROPOSAL.

I. INTRODUCTION

The legal protection of cultural objects is crucial for several reasons, including preservation of community's heritage and identity for future study and enjoyment, prevention of illicit trade and trafficking of cultural artifacts and return of national treasures, promotion of cultural diversity and fostering mutual understanding and appreciation among different cultures, and contribution to the local and national economy through tourism and related activities. There is also a moral responsibility to safeguard the cultural heritage of humanity. This responsibility

* Professor at the University of Rijeka, Faculty of Law (ivana.kunda@uniri.hr). This study has been conducted in the framework of the research Project I+D+i PID2020-112609GB-I00 «Property rights system over tangible goods in the field of European Private International Law: aspects of international jurisdiction and applicable law» funded by the Spanish Ministry of Science and Innovation (MICIU/AEI/10.13039/501100011033). All the websites mentioned in this study were visited on 1 June 2024.

extends beyond national borders, recognising that cultural objects hold significance for all of humanity, not just for the communities or countries from where they originate.

II. INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

1. General overview

Legal framework for protection may have international or national origin. While national rules on protection of cultural objects are predominantly administrative, international ones are war-related as such objects were commonly targeted, looted or destroyed during armed conflicts. After the Second World War, the international community gathered around the idea that preservation of cultural heritage is of great importance for all peoples of the world, that it belongs to the mankind, and that it needs universal protection.¹ The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocol Relating to the Prohibition on Exports of Cultural Property from Occupied Territories are up until today the most extensive multilateral treaty devoted solely to safeguarding cultural heritage in both peacetime and periods of armed conflict. However, the first time the 1954 Hague Convention was put at test in Europe in an actual armed conflict in the context of the Croatian Homeland War 1991-1995,² it failed and as observed by one of the international experts «wars in Croatia and Bosnia and Herzegovina produced European cultural catastrophe of terrible proportions».³ The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property has been devised to set minimum common rules to assure uniform protection against illicit trafficking of cultural property. Despite its developed scheme, its provisions never attained much efficiency since they were not self-executing, but required national transposition instead. Such issue does not arise under the 1995 UNDRIO Convention on Stolen or Illegally Exported Cultural Objects, whose rules are intended to supplement the

¹ How this idea of cultural heritage as a global public good can be reconciled with the effective enforcement of protection norms see in F. FRANCIONI, F. and J. GORDLEY, J. (eds.), *Enforcing International Cultural Heritage Law*, Edward Elgar, 2013.

² V. BRADAMANTE, «Zaštita kulturne baštine po nacionalnom i međunarodnom pravu s posebnim osvrtom na hrvatsku kulturnu baštinu stradalu tijekom rata 1991.-1995.», *Pravnik*, vol. 37, no. 1, 2003, p. 76.

³ C. KAISER, «Appendix C: War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina» (19 January 1993), attached to the BAUMEL, J., «The destruction by war of the cultural heritage in Croatia and Bosnia-Herzegovina presented by the Committee on Culture and Education – Information Report» (Council of Europe, 2 February 1993), <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=6787&lang=en>

1970 Convention in terms of private law and enforcement. It includes self-executing common unified rules for restitution of stolen and return of illegally exported cultural objects, but has not been as widely ratified as the previous ones.

The European Union plays a crucial role in preserving and promoting Europe's cultural heritage. While it assists and complements the efforts of Member States by developing relevant policies and programs and fosters policy collaboration among Member States and stakeholders to safeguard and enhance cultural heritage, its competences to regulate this area are quite limited. The Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods⁴ was replaced by the Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods.⁵ The Regulation ensures uniform checks on exports of certain categories of cultural goods by providing rules on export licence and administrative cooperation between Member States and with the Commission. Regrettably, these measures have had a limited impact on preventing and stopping illegal trade in cultural goods. This instrument is complemented by the Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods,⁶ by introducing common rules regarding the import of cultural goods from third countries. The latter Regulation also introduces ICG, a centralised electronic system to store and exchange information between Member States and to accomplish import formalities by operators, which is to become operational by middle of 2025. The Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State⁷ was repealed and replaced by the 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).⁸

Despite all these legal instruments, many cultural objects are being stolen or looted and tend to escape scrutiny and control of trade in cultural goods. On the basis of statistical data from 72 countries, Interpol reported about more than 850.000 artefacts seized globally in 2020, with more than half of these in Europe.⁹ These are believed to be incomplete data, because it is quite likely that many cases remain

⁴ OJ L 395, 31.12.1992, p. 1–5.

⁵ (Codified version) OJ L 39, 10/02/2009, p. 1–7.

⁶ OJ L 151, 7.6.2019, p. 1–14.

⁷ OJ L 74, 27.3.1993, p. 74–79.

⁸ OJ L 159, 28/05/2014, p. 1–10.

⁹ Interpol, *Assessing Crimes Against Cultural Property 2020*, (September 2021), <https://www.interpol.int/News-and-Events/News/2021/Cultural-property-crime-thrives-throughout-pandemic-says-new-INTERPOL-survey>.

undetected.¹⁰ These figures call for constant review of the existing legal framework in addition to advancing criminalistics approaches and strengthening international cooperation. As is the case in many other areas, the public enforcement has proven insufficient, hence the countries have decided to open an additional path to private enforcement by introducing a special head of jurisdiction for certain cross-border cases related to cultural objects.

2. Rules on cross-border jurisdiction

Although some authors are not so convinced, the role of private international law in protecting cultural goods should not be underestimated.¹¹ Given that cultural goods trafficking is typically a cross-border crime, the issues of private international law play an important role in effective enforcement against stealing and illegal exportation of cultural objects.

The 1995 UNIDROIT Convention rules shape a private international law scheme to facilitate restitution of stolen or return of illegally exported cultural objects. According to art. 8 of the Convention, a claim for restitution or a request for return may be brought before the court or other competent authority, or to arbitration, if thus agreed by the parties to the dispute. If no agreement is reached, courts or other competent authorities of the 1995 UNIDROIT Convention Contracting State in which the cultural object is located will have jurisdiction to hear the case. This head of jurisdiction applies in parallel to the jurisdiction of the courts or other competent authorities under the rules in force in the respective Contracting States. Thus, the dispossessed owners are able to institute the proceedings in the Contracting State in which the object is located regardless of the State in which the other party has their domicile. In addition, enforcement will concern the forum judgment, decreasing the risk of refusal. Such provision actually invites not only application of national laws, but also of the 2005 Hague Convention on Choice of Court Agreements which may find its own operating area in accordance with its rules.¹² Under the 1995 UNIDROIT Convention, the parties may resort to the provisional, including protective, measures available under the law of the Contracting State where the object is located even when the claim for restitution or request for return of

¹⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Action Plan against Trafficking in Cultural Goods, Brussels, 13.12.2022, COM/2022/800 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0800&qid=1717978795050>.

¹¹ Ch. ROODT, *Private International Law, Art and Cultural Heritage*, Edward Elgar, 2015, pp. 34-36.

¹² See art. 26(2) of the 2005 Hague Convention.

the object is brought before the courts or other competent authorities of another Contracting State.

Inspired by this model, the European Union has introduced the provisions in art. 7(4) of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast).¹³ According to this provision, a person domiciled in one EU Member State may be sued in another as regards a civil claim for the recovery, based on ownership, of a cultural object (as defined in Directive 2014/60/EU) initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised. This provision was introduced against the background of the rejection of broad provision on rights *in rem* or possession in moveable property proposed initially by the European Commission,¹⁴ and illustrative example of a stolen painting in the Heidelberg Report¹⁵ preceding the Recast.¹⁶

III. FEATURES OF SPECIAL JURISDICTION FOR CROSS-BORDER RECOVERY OF CULTURAL OBJECTS IN EU LAW

1. Scope of application

The provisions in art. 7(4) of the Regulation 1215/2012 has particular scope *ratione personae* and *ratione materiae*.

As regards the former, only a person domiciled in an EU Member State may be sued under this provision. This means that all defendants domiciled in third States are outside its reach. There is no such limitation regarding plaintiffs, which may be from anywhere in the world. The State may also feature as a plaintiff provided that the other requirements are met so that the State is in no different position as any other private law possessor of the cultural object against whom a civil claim is raised, as explained below.¹⁷ Such may be the case when the State

¹³ OJ L 351, 20.12.2012, p. 1–32.

¹⁴ Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM/2010/0748 final - COD 2010/0383), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010PC0748>.

¹⁵ B. HESS, Th. PFEIFFER, and P. SCHLOSSER, Report on the Application of Regulation Brussels in the Member States, Study JLS/C4/2005/03 (Final version, September 2007), http://courtesa.eu/wp-content/uploads/2019/03/study_application_brussels_1_en.pdf, p. 152–154.

¹⁶ M. WELLER, *Rethinking EU Cultural Property Law; Towards Private Enforcement*, Nomos and Dike, 2018, p. 38.

¹⁷ K. SEIHR, «Das Forum rei sitae in der neuen EuGVO (Art 7 Nr 4 EuGVO nF) und der internationale Kulturgüterschutz», in: Witzleb, N. *et al.* (eds.), *Festschrift für Dieter Martiny*

assumes private ownership over a category of cultural goods under the so-called umbrella legislation.¹⁸

As regards the subject-matter, this provision is limited to civil claim for the recovery, based on ownership, of a cultural object. The notion of cultural object is defined in art. 2(1) of the Directive 2014/60/EU as an object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of art. 36 of the TFEU. While the reference in art. 7(4) to this definition helps maintain coherence among various EU legal instruments dealing with protection of cultural objects, it also creates certain doubts. One of the important issues discussed in the scholarship is the extent to which the definition in the Directive should be understood *stricto sensu* also for the purpose of the Regulation 1215/2012. In a view of all stated, the interpretation most logical seems to be that it is only the definition in subparagraph 1 of art. 2 of the Directive which matters, whereas the other elements which pertain to the activation of the Directive mechanisms should be disregarded, including whether the object was unlawfully removed from the territory of a Member State.¹⁹ Thus, art. 7(4) should also be applicable if the object was unlawfully removed from the territory of a third State. In addition, it is important to note that other requirements under the Directive 2014/60/EU (such as obligation to obtain export licence) are irrelevant for the purpose of defining the cultural object under art. 7(4) of the Regulation 1215/2012.²⁰ This is confirmed also in the preamble where it is stated that the proceedings under art. 7(4) of the Regulation 1215/2012, should be without prejudice to the proceedings initiated under Directive 2014/60/EU (formerly, Directive 93/7/EEC).²¹

Further requirement is that the claim for return of the cultural object has to be civil in nature. Thus, no administrative or criminal claims qualify which is in line with the overall scope of application of the Regulation.²² The claim for recovery in art. 7(4) should not be

zum 70. Geburtstag, Mohr Siebeck, 2014, pp. 837-850, especially p. 842; M. GEBAUER, «A New Head of Jurisdiction in relation to the Recovery of Cultural Objects», in: FERRARI, F. and RAGNO, F. (eds.), *Cross-Border Litigation in Europe: The Brussels I Recast as a Panacea?*, Walter Kluwer/Cedam, 2015, p. 31; P. MANKOWSKI, in: MAGNUS, U. and MANKOWSKI, P., *Brussels I bis Regulation*, 2nd ed., Otto Schmidt, 2023, p. 338.

¹⁸ P. MANKOWSKI, *op. cit.*, p. 335.

¹⁹ H. GAUDEMET-TALLON and C. KESSÉDIAN, «La refonte du règlement Bruxelles I», *Revue trimestrielle de droit européen*, vol. 49, no. 3, 2013, p. 443; K. SEIHR, *op. cit.*, p. 841; E. WAGNER, «Claims for the Recovery of a Cultural Objects», in: REQUEJO ISIDRO, M. (ed.), *Brussels I bis*, Edward Elgar, 2022, pp. 142-143; P. MANKOWSKI, *op. cit.*, p. 336.

²⁰ K. SEIHR, *op. cit.*, p. 841.

²¹ Rec. 17 of the Regulation 1215/2012.

²² See art. 1 of the Regulation 1215/2012.

mistaken for the claim for return under art. 6 of the Directive 2014/60/EU which is of entirely different legal nature. The private-public difference in their legal natures derives from the diverse purposes these legal instruments serve and is reflected also in *Aktivlegitimation* which under the Directive 2014/60/EU belongs to the State, and not to a private person – the owner, as under the Regulation 1215/2012.²³ This having been said, the two proceedings may run in parallel. While the claim needs to be civil in nature, it need not be the limited only to an ownership claim (*rei vindicatio*). With minor exceptions, scholarship agrees that the wording of the provision “a civil claim for the recovery, based on ownership” is a flexible and functional concept which allows for the interpretation covering also claims such as tort-based claims for restitution deriving from the violation of property rights.²⁴ This is an extension of the otherwise available *forum delicti commissi* for the tort cases, as explained below.

To be captured by the provision of art. 7(4), the claim has to be based on the right of ownership over a cultural object aimed to be recovered and has to be initiated by the person claiming the right to recover such an object. The question begs an answer whether such a person needs to be the owner or this may be another person. It appears that the role of the plaintiff should be limited to those who allege to be the owners of the requested cultural object,²⁵ especially given the wording of the provisions that the claim should be “based on ownership”. It has been stated that the ownership has to exist based on the law of the Member State which classified the requested cultural object as its national treasure pursuant to the EU law.²⁶ The question of possible defendant (*Passivlegitimation*) is important as well because the cultural objects my frequently change possessors. The provision of art. 7(4) accommodates this reality by requiring that the defendant is the possessor of the requested cultural object at the time when the claim is initiated, regardless of who was its possessor previously including at the initial unlawful removal.²⁷ This equally encompasses thieves and looters as well as innocent buyers and custodians.²⁸ In fact, it may be advantageous for the owner to direct the claim against the custodian such as a museum, gallery, auction house or conservation entity.²⁹

²³ P. MANKOWSKI, *op. cit.*, p. 336.

²⁴ K. SEIHR, *op. cit.*, pp. 843-844; M. GEBAUER, *op. cit.*, pp. 36-37; P. MANKOWSKI, *op. cit.*, p. 337.

²⁵ E. WAGNER, *op. cit.*, p. 145; P. MANKOWSKI, *op. cit.*, p. 338.

²⁶ L. E. GILLIES «The contribution of jurisdiction as a technique of demand side regulation in claims for the recovery of cultural objects», *Journal of Private International Law*, vol.11, 2015, p. 308; Ch. ROODT, *op. cit.*, p. 177.

²⁷ P. MANKOWSKI, *op. cit.*, p. 336.

²⁸ L. E. GILLIES, *op. cit.*, p. 308.

²⁹ E. WAGNER, *op. cit.*, p. 145.

On top of all mentioned, art. 7(4) requires that the requested cultural object is situated in a Member State at the time the claim is initiated, since that is a defined element of the criterion for jurisdiction. The *locus rei sitae* has been described as a weak link between the matter and the court having jurisdiction given that the cultural object as a moveable can easily be displaced.³⁰ Difficulties are linked to this jurisdiction criterion, because the possessor may quite easily change the location of the cultural object, especially within the EU where there are no border controls. However, if viewed from the enforcement perspective, *locus rei sitae* may be seen as a strong connection between the court proceedings resulting in an enforcement title and the enforcement itself as the ultimate goal of these proceedings.³¹ The means to overcome the issue related to object relocation are the preliminary measures. While this option is mentioned in scholarship and reference is made to art. 35 of the Regulation 1215/2012,³² few additional notes seem necessary.

Art. 35 of the Regulation provides legal basis for jurisdiction of only those courts which do not have jurisdiction on the merits, while other provisions allocating jurisdiction on the merits also allocate jurisdiction for preliminary, including provisional measures. The main difference is the effect of the ordered measure: while the effects of the measures ordered under art. 35 are limited to the territory of the Member State whose court has ordered them, the effects of the measures under the heads of jurisdiction for merits are pan-European. It is unlikely that there are Member State national laws offering a possibility to order the seizure of an item of property located outside the territory of the Member State whose court is asked to order the seizure. Therefore, jurisdiction under art. 35 seems of little use in cases in which the owner of a cultural object is aiming at the court having jurisdiction on the merits under art. 7(4) because those will in principle be the same courts. This is not only of theoretical relevance, because pan-European effect might be important if the object is later removed to another Member State, both for replacing the cultural object to the Member State where it was located when the order for seizure was issued and for establishing the jurisdiction on merits which is dependent on the location of the cultural object at the time of the commencement of the proceedings. The availability of the preliminary, including protective measures in the Member States where the cultural object is located also provide opportunity for owner to gain strategic advantage if the order is asked for ahead of the commencement of the proceedings on the merits, or at least simultaneously with it (which depends on the type of the measure and how fast and efficient the court regularly acts). Under the laws of some Member States, it is possible to ask for the preliminary, including protective

³⁰ *Ibid.*, p. 146.

³¹ P. MANKOWSKI, *op. cit.*, p. 338.

³² *Ibid.*, p. 338.

measure couple of weeks previous to submitting the claim on the merits, and this measure may last until the final judgment on the merits. This could be the way to deal with the risk of relocation of the cultural object and to prevent missing the crucial requirement for establishing jurisdiction under art. 7(4) —that the object is located in the forum Member State at the time when the court is seised. It is also means to ensure that the object remains within the territory of the forum Member State until the final judgment on the merits is rendered so that, in case the claim is upheld, the cultural object will be handed over to the owner.

It is worth mentioning in the end that the Lugano Convention,³³ parallel to the Regulation 1215/2012, does not contain a provision corresponding to the one in art. 7(4) of the Regulation. This means that an object which is located in Switzerland, as one of the largest art markets in the world that unavoidably cultural objects of dubious origin,³⁴ cannot be claimed there under the Brussels/Lugano regime against the defendant domiciled in any EU or EFTA Member State. It is nevertheless possible under the Swiss national laws.³⁵

2. Place in the system

Elective by nature, the head of jurisdiction in art. 7(4) of the Regulation 1215/2012 applies in competition with other heads of jurisdiction under the Regulation. Pursuant to the principle *actor sequitur forum rei* embodied in art. 4(1), the general jurisdiction in the courts of the defendant's domicile is at the plaintiff's disposal as well. Several other special heads jurisdiction compete as well. If the owner's claim for recovery of an unlawfully removal of a cultural object from the territory of an EU Member State can be qualified as relating to a contract concluded between the parties, the court of the place of the performance of the obligation in question (*locus solutionis*) have jurisdiction under art. 7(1). If it is a sales contract, the special rule leads to the courts of the place in which the goods were delivered or should have been delivered, under the contract. On the other hand, if the matter is characterised as related to tort, delict or quasi-delict under art. 7(2), jurisdiction is vested in the courts for the place where the harmful event occurred or may occur. According to the long-established CJEU interpretation favouring the ubiquity theory, this includes both the place where the

³³ Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 339, 21.12.2007, p. 3–41.

³⁴ E. WAGNER, *op. cit.*, p. 140. The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 339, 21.12.2007, p. 3–41, does not contain a provision corresponding to the one in art. 7(4) of the Regulation (EU) No 1215/2012.

³⁵ This is possible under the Swiss Federal Private International Law Act, which is art. 98.a provides that the court at the domicile or at the seat of the defendant or the court at the place where the cultural property is located has jurisdiction to hear actions for repatriation.

event giving rise to damage occurred (*locus actus*) and place where the damage or other consequence thereof occurred (*locus damni*).

This, however, does not close the list of available elective fora. There is also an option, pursuant to art. 7(4), to sue as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain such ancillary civil proceedings (*Adhäsionsverfahren*). There also seems to be no reason not to rely on the special head of jurisdiction in art. 7(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, which grants jurisdiction to the courts for the place where the branch, agency or other establishment is situated. This head actually enables lawsuits against persons who are not domiciled in an EU Member State, if they operate by means of an establishment there. Although there is also an option of prorogation of jurisdiction, this seems as an improbable course of events in the types of cases which would otherwise be covered by art. 7(4). If, however, the parties agree on jurisdiction pursuant to art 25 of the Regulation 1215/2012 of a court in a Member State this may be even beyond the scope of application of art. 7(4). The same is true for the tacit prorogation under art. 26 of the Regulation.

IV. ASSESSMENT AND AMENDMENT PROPOSAL

Against the background of strengthening the international regulatory framework for protection of cultural objects in the last half of the century, the provision of art. 7(4) was surely a positive development. It is described as means of private enforcement of cultural property legislation, complementing the public enforcement efforts in this area.³⁶ It was also said to advance access to justice in cases concerned with cultural objects.³⁷ Moreover, its potential to contribute to goals of the regulation on the demand side of the cultural objects market was recognised in the scholarship.³⁸ Based on projected increased litigation, it is believed that this provision may foster adoption of self-regulatory instruments, such as codes of conduct, whereby the entities involved in exhibiting, auctioning, conservation, transport, storage, insurance etc. would autonomously commit to refrain from dealing with disputed cultural objects.³⁹

Little has actually materialised and the success of the provision remains inadequate. Various reasons have been put on the list of com-

³⁶ M. WELLER, *op. cit.*, p. 38.

³⁷ Ch. ROODT, *op. cit.*, p. 220.

³⁸ L. E. GILLIES, *op. cit.*, p. 309.

³⁹ E. WAGNER, *op. cit.*, p. 146.

plaints against art. 7(4): its narrow scope,⁴⁰ high costs of litigation,⁴¹ parties' reluctance to publicly disclose their identity,⁴² preference for alternative dispute resolution mechanisms,⁴³ or diplomatic avenues leading to a settlement.⁴⁴ While majority of the reasons cannot be tackled within the framework of the Regulation 1215/2012 itself, the scope of the provision can.

One of the main disadvantages of art. 7(4) lays in its limitation only to defendants domiciled in EU Member States, leaving the defendants domiciled in non-EU to parallel national laws. This limitation *ratione personae* derives directly from the system of the Regulation⁴⁵ and does not result from an individual choice for specific types of legal matters. The objection to this limitation is by no means new and, following the 2010 Commission proposal to abolish this limitation,⁴⁶ it has been intensely debated and strongly rejected on political grounds.⁴⁷ The debates still resonate in art. 79 of the Regulation 1215/2012, which provides that the Commission has to present a report on the application of this Regulation, including an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a Member State, taking into account the operation of the Regulation and possible developments at international level, and where appropriate, a proposal for amendment of this Regulation. Although this was supposed to have been completed in January 2022, it has not seen the light of the day. In the meantime, some countries have found the solution outside the Regulation 1215/2012, by resorting to the technique of extending the scope of the Regulation's provisions to cover also defendants not domiciled in EU.⁴⁸ This has been done by the provision of art. 3(2) of

⁴⁰ K. SEIHR, *op. cit.*, p. 848.

⁴¹ E. WAGNER, *op. cit.*, pp. 146-147.

⁴² *Ibid.*, p. 147.

⁴³ *Ibid.*, p. 147; A. CHECHI, *The Settlement of International Cultural Heritage Disputes*, OUP, 2014, chapter 3.B. For the warnings about declining advantages of the arbitration see Ch. ROODT, *op. cit.*, pp. 220-223.

⁴⁴ A. M. TANZI, «The Means for the Settlement of International Cultural Property Disputes: An Introduction». Lecture delivered on 25 October 2019 in Florence at the conference «Cultural Property: What Means for the Settlement of International Disputes?» organized by the Florence Chamber of Commerce and the Permanent Court of Arbitration, <https://docs.pca-cpa.org/2019/12/A.-Tanzi-Lecture-of-25-October-2019.pdf>

⁴⁵ There are exceptions to this limitation in the Regulation 1215/2012, such as for the exclusive jurisdiction, choice-of-court, consumer disputes initiated by consumer and labour disputes initiated by employee.

⁴⁶ Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM/2010/0748 final - COD 2010/0383.

⁴⁷ P. MANKOWSKI, *op. cit.*, pp. 136-137.

⁴⁸ See I. KUNDA, «Upućivanje na propise EU u Zakonu o međunarodnom privatnom pravu», in: BARBIĆ, J. and ŠIKIRIĆ, H. (eds.), *Međunarodno privatno pravo – interakcija međunarodnih, europskih i domaćih propisa*, Hrvatska akademija znanosti i umjetnosti (HAZU), 2020, pp. 21-48, especially pp. 30-35.

the Italian Private International Law Act,⁴⁹ extending the scope of the chapters 2, 3 and 4 of the then Brussels Convention to the persons not domiciled in EU Member States. The same approach has been more recently adopted in the Croatian Private International Law Act⁵⁰ which by virtue of its art. 46(2) extends provisions contained in chapters 2 and 3 of the Regulation 1215/2012 to the defendants domiciled outside EU, including for the claims for recovery of the cultural objects.

The recent collective academic proposals for reform of the Regulation, however, fail to specifically address the jurisdiction for recovery of cultural objects.⁵¹ It is submitted here that the provision on jurisdiction for claims of recovery of cultural objects in art. 7(4) should be amended to apply to all defendants irrespective of their domicile. In addition to the general arguments mentioned in favour of abolishing the divide between EU-domiciled defendants and non-EU-domiciled defendants for all special heads of jurisdiction in art. 7,⁵² there are particular reasons why this would be all the more so appropriate for the cases concerned with recovery of cultural objects. While cultural objects are subject to private rights, most notably ownership, they make part of the cultural heritage and thus belongs not only to a particular persons or people or place but also to all humankind. Common heritage principle of international law is echoed in the treaties and other instruments, including the 1972 Convention for the Protection of the World Cultural and Natural Heritage whose preamble is referring to parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole. The 1970 UNESCO Convention on the Restitution of Stolen Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property should also be made reference to. The preamble of the latter confirms fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation. EU is committed to advance cooperation on cultural heritage and participate in its safeguarding, working together with international actors.⁵³ In the

⁴⁹ Legge di 31 maggio 1995, n. 2018, Riforma del Sistema italiano di diritto internazionale privato, Gazz. Uff. 3 giugno 1995, n. 128.

⁵⁰ *Zakon o međunarodnom privatnom pravu*, NN 101/2017, 67/2023.

⁵¹ See, e.g., Max Planck Institute Luxembourg for Procedural Law, Research Paper Series, No. 2021 (4), https://www.mpi.lu/fileadmin/user_upload/MPILux_WP_2021_4_Reforming_Brussels_Ibis_BH.pdf; X. KRAMER, A. ONTANU and M. DE ROOIJ, The application of Brussels I (Recast) in the legal practice of EU Member States: Synthesis Report, <https://www.asser.nl/media/5018/m-5797-ec-justice-the-application-of-brussels-i-09-outputs-synthesis-report.pdf>; B. HESS, D. ALTHOFF, T. BENS, and N. ELSNER, The Reform of the Brussels Ibis Regulation - Academic Position Paper (May 22, 2024), <https://ssrn.com/abstract=4853421>

⁵² See, e.g., references in P. MANKOWSKI, *op. cit.*, pp. 136-137.

⁵³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards an

EU context, cultural heritage is seen as a “resource for the future, to be safeguarded, enhanced, and promoted”.⁵⁴ Protection of cultural heritage is not only a national competence of the EU Member States; it is also an EU responsibility, as determined in the primary EU law. According to art. 3(3) of the TEU, the EU has to ensure that its cultural heritage is safeguarded and enhanced, while according to art. 167 of the TFEU, EU also has the role of encouraging cooperation between Member States to support the safeguarding of cultural heritage of European significance. It is beyond doubt that all these goals should be promoted at the EU level against all possible defendants under the same terms, and not just those domiciled in EU. These reasons call for reassessment of the provision in art. 7(4) under the broader discussion on liberalism versus communitarianism and nationalism versus universalism, which could inform policies and laws on cultural heritage.⁵⁵

integrated approach to cultural heritage for Europe, COM/2014/0477 final.

⁵⁴ European Commission —Directorate—General for Education, Youth, Sport and Culture, European framework for action on cultural heritage, 2019, <https://op.europa.eu/en/publication-detail/-/publication/5a9c3144-80f1-11e9-9f05-01aa75ed71a1>

⁵⁵ K. ZEIDLER and A. GUSS, «The Two Most Important Twenty-First Century Disputes in Cultural Heritage Law», in: MASTANDREA BONAVIRI, G. and SADOWSKI, M. M. (eds.), *Heritage in War and Peace: Legal and Political Perspectives for Future Protection*, Springer, 2024, pp. 165-175.

