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PROTECTION OF CULTURAL GOODS IN CROATIA AND SERBIA, WITH REFERENCE TO RESTRICTIONS OF OWNERSHIP RIGHTS**

*“Those who cannot remember the past
are condemned to repeat it.”*

*(George Santanaya, The Life of Reason, 1905,
from the series Great Ideas of Western Man)*

Abstract: *In the Article 52 of the Constitution of Croatia, cultural goods are declared as goods of special interest to the Republic of Croatia that enjoy the special protection of the state. Article 69 of the Constitution stipulates that, among other things, the state protects cultural goods as spiritual national values. Article 89 of the Constitution of Serbia determines the obligation of every person to preserve, among other things, cultural heritage as an asset of general interest. The authors believe that something similar exists in most modern legal systems. Various legal subjects own many cultural goods. Still, given their status and the special protection they enjoy, the owners of such goods are subject to certain ownership restrictions and have obligations that owners of most other things do not have. In this paper,*

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the authors will analyze Croatian and Serbian legal acts that regulate the protection of cultural goods with special reference to restrictions of ownership rights over cultural goods in these two countries. There are certain similarities but also some differences in how the protection of cultural goods is regulated in Croatia and Serbia. The types of cultural goods and their protection vary in certain ways, as well as the rights and obligations of owners of cultural goods.

Keywords: *cultural good, protection of cultural goods, ownership restrictions, owner's rights and obligations.*

1. Introduction

In most of the world, cultural goods are a special category of property. They are given enhanced protection precisely because of the characteristics that set them apart from all other things that can be objects of ownership. The reason for this is that such goods represent the identity of a country, its history and tradition. Still, they are also of exceptional importance for its future, directly referred to in the quote cited at the beginning of this paper. If a country were to allow the destruction or damage of cultural goods that form the core of its heritage, that country would surely deserve to go through all that happened to it in the past; by allowing the destruction of such goods, it loses something irreplaceable.

Cultural goods are destroyed and damaged in different situations and in different ways, but the person who owns these goods can perhaps harm them most. If the owners decide it is not in their interest to preserve and take care of a cultural good, they can destroy it in many ways. For example, the owners of a cultural good can stop taking care of it and allow its destruction, or can intentionally destroy or damage it. They can prohibit experts from studying cultural goods or the public from accessing and enjoying them. If allowed, all this could seriously damage that country's culture. It is precisely for this reason that numerous restrictions and obligations are imposed on the owners of cultural goods that do not exist for the owners of other things.

In this paper, the authors will discuss the legal acts related to the protection of such goods in Croatia and Serbia, by focusing on the provisions that regulate the rights and obligations of the owners of cultural goods in each of these countries. This comparison can be useful to everyone who is already an owner of such goods, but especially to those who will become owners, like collectors, investors or heirs of such things. In the first part of this paper, the authors consider the limitations imposed on the ownership of cultural assets, their purposes and the goals they are meant to achieve. In the second part of the paper, the authors pro-

vide an overview of the Croatian Act on Protection and Preservation of Cultural Goods, emphasizing the owner's duties and the limitations of their ownership. In the third part, the authors examine the Serbian Cultural Heritage Act to reveal the similarities and differences between these two acts.

2. Limitation of ownership in the context of cultural property protection

The concept of ownership is the basis not only of private (civil) law and law in general but also of the modern social and state order, which protects ownership and all its factors in the form of inviolability of (private) ownership with a wide range of instruments, measures and possibilities. In the Croatian constitutional order, the inviolability of property ownership is one of the highest values and the basis for the interpretation of the Constitution¹ (Art. 3 of the Constitution). Although exclusivity (Penner, 2021:277-292) is one of the fundamental characteristics of property rights, the constitution and the law precisely define the situations when ownership can be limited.

The Constitution of Croatia (hereinafter: Constitution Cro) stipulates that the right to property ownership is inviolable (Art. 3) and that it is a guaranteed right (Article 48). However, Article 48 of the Croatian Constitution specifies that property ownership entails obligations and that holders of proprietary rights and users are also bound thereby. The Constitution also determines that the right to property can be limited or taken away, if it is in the interest of the Republic of Croatia (Article 50 Constitution Cro). Thus, although ownership is an absolute right that occupies a central place in every legal order, it is always limited by the public interest. In Croatia, there are objects (things) that cannot be objects of ownership (*res extra commercium*), those that are owned by the state (public goods) and things of interest to the Republic of Croatia that enjoy special protection (Gavella, 2007:136-144; Gavella, 2019:183-184).

Things of interest to the Republic of Croatia may be common goods but also things that are objects of ownership (Gavella, 2007:136-144; Gavella, 2019, 183-184). They are primarily determined by the Constitution, which states that: "... real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection" (Article 52 para.1). The Constitution also specifies that restrictions, ways of exploitation and use of these things by their owners and holders are determined by law (Article 52 para.2 Constitution Cro).

1 Constitution of the Republic of Croatia, *Official Gazette* (Croatia), nos. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, and 05/14.

In the Act on Protection and Preservation of Cultural Goods² (hereinafter: PPCG Act), cultural goods are defined as things of interest to the Republic of Croatia which enjoy its special protection and which, along with all preventively protected goods, represent a national treasure (Article 2 PPCG Act). According to the provisions of Articles 2 and 4 of this Act, their owners are responsible for their protection and preservation. A similar provision is envisaged in the Constitution of Serbia³ (hereinafter: Constitution Srb), which states that cultural heritage is a good of general interest that everyone must protect and that the state takes special care of such things (Articles 89 and 97 of the Constitution Srb)⁴. In addition, Article 72 of the Serbian Cultural Heritage Act⁵ (hereinafter: CHA Srb) determines that the activity of cultural heritage protection is of general interest for the Republic of Serbia.

As far as the status of cultural property is concerned, similar legislation probably exists in most modern legal systems. States are interested in ensuring special protection of cultural goods and their preservation for future generations. Hence, the owners of cultural goods are subject to certain restrictions, the purpose of which is the protection and preservation of these goods in the public interest (Đukić, 2020:94; Ivanc, 2014:399). The owner's freedom should not endanger the interests of other members of the community, which would happen in case of damage and destruction of cultural property by the owner's will or carelessness (Čelić, 2021:546-547).

Thus, in the protection of cultural property, there is an evident conflict between the public and the private interest (Francioni, 2012:374-392; Gliha *et al.*, 2021:64; Ivanc, 2014:400). In certain ways, public interests violate the exclusive ownership of cultural goods, and they are reflected in numerous factors that stem from cultural rights as one of the fundamental human rights. For example, can the owner of a painting painted by Rembrandt deny a person to see it? If it can, is that not a violation of the cultural rights of that particular person?

2 Act on Protection and Preservation of Cultural Goods, *Official Gazette (Croatia)* 69/99, 151/03, 157/03, 100/04, 87/09, 88/10, 61/11, 25/12, 136/12, 157/13, 152/14, 98/15, 44/17, 90/18, 32/20, 62/20, 117/21, 114/22

3 Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia*, 98/2006 and 115/2021; <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution> (accessed on 15 August 2023).

4 "Everyone is obliged to protect natural rarities and scientific, cultural and historical heritage, as well as goods of public interest, in accordance with the law" (Article 89 of the Constitution Srb). Article 97 (10) stipulates that the Republic of Serbia shall organize and provides for "(10) system in the areas of health, social welfare, protection of war veterans and disabled persons, child care, education, culture and protection of cultural goods, sports, public information; and system of public services" (Article 97 of the Constitution Srb).

5 The Cultural Heritage Act, *Official Gazette (Serbia)* 129/2021

Or, can the owner deny the use of certain scientific tests that might be crucial for preserving a cultural good (Francioni, 2018:374-392)? For this reason, the protection of cultural property is guaranteed by numerous provisions of public law, constitutional law, criminal law⁶ and international law.⁷

In Croatia, there is often an assumption (based on the PPCG Act) that cultural goods are in public ownership (Ernst, Poljanec, 2017:201). In fact, many cultural goods are privately owned, which can be a potential danger to cultural goods. Of course, the danger comes not only from the owner or holder, but also from third parties (e.g. thieves and smugglers), from *force majeure*, extreme weather conditions, wars, riots, etc. However, most harm and damage to cultural property is probably caused by the owner or holder who is obliged to take care of it. Thus, in order to protect cultural property, legislations worldwide impose various restrictions on their owners (Đukić, 2020:85). It should be emphasized that, as a rule, many owners take extremely good care of cultural goods in their possession, which is often much better than the care provided by the state, particularly considering that the state is not omnipotent in taking care of things in its possession (Đukić, 2020:88). Yet, some owners may have no interest in providing such care

The reason for the limitation of ownership of such goods lies in the purpose of protecting such goods. Cultural goods must be protected and preserved in their original and unspoiled state and passed on to future generations.⁸ Efforts are also being made to create more favorable conditions for cultural goods' survival and take measures necessary for their regular maintenance. The protection of such goods also aims to prevent all actions that could directly or indirectly chan-

6 The Croatian Criminal Act (*Official Gazette*, no. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22) protects cultural property in several articles: Art. 212 (criminal act of illegal building on cultural property), Art. 319 (criminal offense of damage and illegal export of cultural property), Art. 320 (criminal offense of illegal research and misappropriation of cultural property)

7 e.g. the UN Convention for the Protection of Cultural Property in the event of Armed Conflict, 1954; the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970; the UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, 2003; the European Cultural Convention, Council of Europe, 1954.

8 Art 7 (on Cultural diversity and cultural heritage) of the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations (Paris, 1997) states: "With due respect for human rights and fundamental freedoms, the present generations should take care to preserve the cultural diversity of humankind. The present generations have the responsibility to identify, protect and safeguard the tangible and intangible cultural heritage and to transmit this common heritage to future generations." (See: <https://en.unesco.org/about-us/legal-affairs/declaration-responsibilities-present-generations-towards-future-generations>)

ge cultural goods' properties, form, meaning and appearance and, thus, endanger its value (Klasiček, 2008:107-139). Efforts are also being made to prevent illegal treatment and trafficking in these goods, and to establish supervision over their export and import. The protection ensures relevant conditions for the cultural property to serve the needs of the individual and the general interest, according to its purpose and meaning (Art. 5 PPCG Act).

When limiting the ownership of cultural goods, despite the public interest in preserving these goods for future generations, care should be taken that these restrictions do not become particularly difficult for the owner. For example, care and protection of cultural goods, especially real estate, requires significant financial resources, knowledge and equipment, which can become an insurmountable and disproportionate burden for its owner (Čelić, 2021:549). Cultural goods can be sold, but the pre-emptive purchase right in favor of the state limits their sale. So, one may pose a question: if the owner of a cultural good wants to sell it and offers it to the state, and the state refuses to buy it, should that thing still retain the status of a cultural good? If the state has no interest in acquiring the said item, should the status of cultural good continue to burden and limit the old or new owner in exercising their rights (Klasiček, 2008:136-138)? Thus, in the case of such assets, it should be taken into account that property restrictions should strike a fair balance between the general interest of the community and the interests of private owners, so that the ownership of cultural goods does not become meaningless (Nikolić, Midorović, 2021:82-83).

2.1. Examples of restrictions imposed on the ownership of cultural goods

Some authors believe that one of the most significant restrictions on the ownership of cultural goods is the rule that such goods can only be used in accordance with their title (Đukić, 2020:88). Such a restriction may seem unusual, considering that the obligation to use the thing exclusively in line with its intention exists, as a rule, only on the part of the person who uses another's thing (e.g. persons that lease, rent or loan other peoples' things (Klarić, Vedriš, 2014:517, 526, 535). The owners are usually free to use their things as they wish, even to destroy them if they want. From the previous part, it is obvious that this cannot apply to all objects of ownership because there are things that the state takes special care of. As the state has a special interest in protecting them, there are some common restrictions regarding their owners.

Moreover, if the owner generates income from cultural property, this income should be directed to its protection and maintenance. There can be restrictions on the disposal of such goods, sometimes even to the extent that some cultural goods are declared *res extra commercium*. Establishing a lien on such goods may

also be prohibited, and the owner is especially prohibited from destroying, processing and damaging cultural goods. Furthermore, given that cultural goods are goods that the public is interested in seeing and enjoying, there is often an obligation imposed on the owner to enable display, study (etc.) of such things. There are also restrictions regarding the acquisition of such things, both in the case of original and derivative acquisition. Acquisition by occupation or discovery is often not possible. At the same time, in the case of purchase and sale, the owner's ability to sell cultural goods is often limited by the pre-emptive purchase right in favor of the state (Đukić, 2020:85-86).

3. Protection and preservation of cultural goods in Croatia

In Croatia, the Act on Protection and Preservation of Cultural Goods (PPCG Act) was initially adopted in 1999 but, over time, there was a need to introduce numerous amendments and additions. The latest amendment entered into force in 2023, on the day when Euro was introduced as the official currency in Croatia. The main goal of the PPCG Act is protect and preserve cultural goods as valuable parts of Croatia's cultural heritage and national identity. It prescribes measures for the protection, supervision and management of cultural assets and the procedures for identifying and registering cultural assets in the Register of Cultural Assets (Articles 2-16 PPCG Act). In addition to the possibility of declaring individual cultural property protected, it prescribes special protection measures (Articles 44-61b PPCG Act) and regulates issues of cultural property protection in case of extraordinary events, such as natural disasters, war, etc. (Art. 75-76 PPCG Act). The PPCG Act enacts provisions on financing the protection and preservation of cultural goods (Articles 108-114c PPCG Act) and sanctions in cases of violation of these provisions (Articles 115-119 PPCG Act). It also envisages the procedure for expropriation of cultural property in case of necessity (Britvić Vetma, 2009:201-208).

In Croatia, cultural goods can be: movable, immovable and intangible (Art. 7, 8 and 9 PPCG Act). As for the protection over these goods, some of them enjoy preventive protection (things which are presumed to have the property of cultural goods, Art. 10-11 PPCG Act); some assets are designated as cultural goods (Art. 12 PPCG Act), and some cultural goods are declared goods of the most significant national importance (Art. 13 PPCG Act).⁹

⁹ Goods of local importance may be protected on the basis of Art. 17 PPCG Act, which refers to protection in cases where there are no elements for making a decision on the protection of cultural good but there are elements that may be considered important by the local community which may decide to protect such goods.

In Croatia, cultural assets are registered in the Register of Cultural Assets (Article 19 PPCG Act). Three lists of cultural assets are kept in this public register:

1. The List of protected cultural properties
2. The List of preventively protected cultural asset,
3. The List of cultural assets of national importance.¹⁰

3.1. Ownership and limitations of ownership of cultural goods in Croatia

In Croatia, ownership must be determined for all cultural goods. If this is not possible for some reason, the state will become the owner (Article 18, PPCG Act). It should be noted that slightly different rules apply in the case of cultural goods than those that apply to things that do not have that status. In case the good is originally nobody's property and abandoned asset, ownership of movable property can be acquired by any person who takes it into possession with intention to appropriate it (Article 131 of the Ownership Act (OA)¹¹, (Klasiček, 2008:111-112), while only immovable assets become the property of the state (Article 133 OA). In this regard, it is clear that the PPCG Act makes it impossible to acquire ownership of such goods by occupation or discovery, as is otherwise possible for movable things that are not cultural goods.

According to Article 20 of the PPCG Act, the owner of cultural goods is obliged to take special care of preserving and protecting cultural goods. Thus, for example, the owner must treat the cultural good with due care, protect and maintain it regularly. Each owner is obliged to implement the established protection measures and notify the competent authority immediately of any changes to the cultural good, damage or destruction, disappearance or theft.¹² When necessary, the owner must allow professional and scientific research, technical and other recordings, and implement technical protection measures over a cultural good. The owner is obliged to enable the availability of cultural goods to the public and also to take care to preserve the integrity of protected collections of movable cultural property (Article 20 PPCG Act). In case the owner does not implement the established protection measures, the competent authority will enforce those

10 See: Registar kulturnih dobara Republike Hrvatske (Register of Cultural Assets of the Republic Of Croatia), <https://registar.kulturnadobra.hr/#/> (accessed on 15 August 2023).

11 Art. 131 of the Ownership and Other Proprietary Rights Act, *Official Gazette* (Croatia) 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15, 94/17

12 Pursuant to Art. 6 (12) of the PPCG Act, the competent authority is the Conservation Department of the Ministry of Culture in whose area the cultural good is located; for the area of the City of Zagreb, the competent authority is the City Institute for the Protection of Cultural and Natural Monuments in Zagreb.

measures, at the owner's expense, considering that the owner is obliged to bear all the costs of preserving, maintaining and protecting the cultural goods in their possession (Articles 21 and 22 PPCG Act).

Sale, possession and use of cultural property may also be restricted for preservation and protection purposes, and these restrictions will apply to the owner and any other holder of rights over cultural goods (Articles 27 -29 PPCG Act). The expropriation procedure may be instituted: a) if there is a threat of damage or destruction of the cultural good, and the owner does not have the ability or interest to ensure the implementation of all specified protection and preservation measures; b) if it is not possible to ensure the performance of archaeological research and excavations or the implementation of measures in other ways; and c) if it is not possible to ensure the availability of the cultural property for the public in another way or to establish a lien (Articles 27 and 41 PPCG Act). Restrictions on ownership may also be imposed in order to document and research cultural goods, to implement protection and preservation measures, and to make cultural goods accessible to the public. The use of a cultural good may be limited if it is estimated that the change of its purpose would put the cultural good in direct danger (Article 28 PPCG Act). Regarding the sale of cultural goods, Article 28 of the PPCG Act envisages that the seller, the intermediary and the buyer has certain obligations (which will be discussed later). There is also the pre-emptive purchase right, the obligation to return budget funds before the sale (if they were invested in the restoration and/or preservation of cultural goods), and restrictions on the import and export of cultural goods.¹³

As for the restrictions on possession, owners are obliged to enable research, documentation, and the implementation of measures to protect and preserve cultural property, for which they will be entitled a remuneration only if they prove that these actions caused damage (Article 30 PPCG Act). Possession restrictions are also implemented in cases where the competent authority determines that the cultural good is not handled in accordance with the provisions of the PPCG Act, or not handled with due care. If, as a result, cultural good is in danger of being damaged or destroyed, a temporary guardian will be appointed for the cultural good under Article 31 PPCG Act. At the owner's expense, the guardian will take measures to protect and preserve the cultural good (Mihelčić, Marochini Zrinski, 2019:212-214).¹⁴ It should be noted that it is also possible to establish a legal lien

13 For more, see: E-Gradjani (2023): Izvoz i uvoz kulturnih dobara (Export and import of cultural goods), <https://gov.hr/en/export-and-import-of-cultural-goods/1536> (accessed on 15 August 2023).

14 For example, see: Grad Rijeka (2007): The City of Rijeka is the temporary guardian of the SFRY Navy training ship *Galeb*, <https://www.rijeka.hr/grad-rijeka-privremeni-skrbnik-broda-galeb/> (accessed on 15 August 2023); and

in favor of the city or municipality that paid the costs to ensure reimbursement of paid expenses (Article 31 PPCG Act), which applies to cases when the owner abandoned a cultural good. A cultural good is considered temporarily abandoned if the owner's residence is unknown and there is no authorized representative, so that the competent authority cannot notify them of their obligations within 6 months from the date of the first attempt to deliver the letter (Article 32 PPCG Act). A cultural good will be considered permanently abandoned under the same conditions if the owner could not be notified within 10 years (Article 32 PPCG Act). If the owner permanently abandons the cultural property, it becomes the property of the state (Mihelčić, Marochini Zrinski, 2019:213, footnote 65).

Another limitation refers to the owner's duty to temporarily hand over the possession of the movable cultural good for exhibition purposes. The exhibition organizer concludes a contract with the owner which regulates their obligations and the manner of handling the cultural good, provides guarantees in case of damage, destruction, theft or disappearance of the asset, as well as the obligation to insure it with the insurance company. As a rule, the organizer covers all exhibition-related costs unless the contracting parties determined otherwise (Art. 33 PPCG Act).

There are also restrictions on the use of cultural goods. The use is limited in such a way that the purpose and method of use is determined by the decision of the competent authority based on the previously obtained opinion of the mayor or head of the municipality. As a rule, use is determined for immovable cultural property but, in exceptional situations, when the competent authority determines that the purpose and method of use is necessary, it is possible to determine the use for movable cultural goods as well (Article 34 PPCG Act).

If the owner wants to change the purpose of a cultural good, he/she must obtain a prior approval from the competent authority (Article 34 PPCG Act). If the owner uses a cultural good contrary to its intended purpose and damages it, the competent authority can order the return to its previous state, if it is possible to eliminate the resulting damage in this way (Art. 35 PPCG Act). A prior approval of the competent authority is also required for any change in business conducted within the immovable cultural good or protected cultural-historical entity. The approval is also required for any change of purpose of business premises or change of business activity within the protected cultural good (Article 65 PPCG Act).

Grad Sisak (2020): Rješenja o imenovanju privremenog skrbnika 1421 i 1422)(Mayor Decisions on appointing the temporary guardians 1421 and 1422), *Službeni glasnik Sisačko-moslavačke županije*, br. 32, 28. listopada 2020, <https://sisak.hr/wp-content/uploads/2020/11/SGSMZ%CC%8C-32.pdf> (retrieved 15 August 2023).

In case of sale of cultural goods, there is a pre-emptive purchase right in favor of the state. This means that cultural good must be offered, at the same price and under the same conditions, first to the city or municipality, then to the county or the city of Zagreb in whose area the cultural good is located, and after all of them, to the state. These legal entities must declare themselves within 60 days of receiving the offer. If the entity with the pre-emptive purchase right does not intend to exercise its right, it is obliged to inform the other legal entities with the same right, and the owner within 30 days (Art. 37 PPCG Act; Josipović, 2011:389). If the cultural property is sold without first being offered to those who have the pre-emptive purchase right, those persons have the right to request the annulment of such a contract within 90 days of learning that a sales contract was concluded, and no later than 5 years from the conclusion of the contract (Article 39 PPCG Act).

The pre-emptive purchase right in favour of the state also exists if the cultural good is sold at an auction (Ernst, Poljanec, 2017:202-203). The auction organizer is obliged to inform the holders of pre-emptive purchase right, 30 days before the auction, about all the initial conditions for the sale of a cultural good, about the place and time of the auction sale (Article 37 a, PPCG Act). The pre-emptive purchase right also exists in case of a foreclosure sale of cultural property, according to the conditions of the offer in the foreclosure procedure, which is the most favorable for the owner of the cultural good. The person carrying out the foreclosure procedure is obliged to inform the holders of the pre-emptive purchase right that a sale has been ordered, and to submit the written conditions of the offer determined for the sale of a cultural good (Article 38 PPCG Act).

As already noted, during the sale of a cultural good, the seller, the intermediary and the buyer of cultural property have certain obligations. The seller and the intermediary are obliged to inform the buyer that the object of sale is a thing that is a cultural good, to present proof of ownership and documents on the waiver of the pre-emptive purchase right. The buyer is obliged to inform the competent authority of the area where the cultural property will be located (Art. 36 PPCG Act).

Under the PPCG Act, the owners of cultural property also have certain rights. The owners have the right to compensation due to the limitation of ownership, the right to tax and customs reliefs, and the right to professional assistance from the competent authority for the proper protection and preservation of the cultural property (Article 24 PPCG Act). They also have the right to exemptions and privileges prescribed by special law, if they act in accordance with the provisions of the PPCG Act and implement the protection measures (Article 25 PPCG Act). All owners and possessors also have the right to receive free advice from

the competent authority on the measures for the protection and preservation of cultural goods (Article 26 PPCG Act).

4. Protection and preservation of cultural assets in Serbia

In Serbia, the Cultural Heritage Act (CHA)¹⁵ has been in force since 6 January 2023. The CHA replaced the Cultural Goods Act¹⁶, which was adopted in 1994. Like the Croatian PPCG Act, the Serbian CHA refers to protecting and preserving cultural goods. According to Article 2 of the CHA, the goals of this act are to establish a legally regulated and organized system of protection and preservation of cultural heritage through discovery, collection, research, documentation, study, evaluation, protection, preservation, presentation, interpretation, use and management of cultural heritage. Cultural heritage is defined as a set of tangible and intangible resources, which have been inherited from the past, and are recognized as a reflection and expression of continuously evolving values, beliefs, knowledge and traditions that were created by the interaction of man and space over time (Article 3 CHA).

The CHA consists of several parts which refer to: the types of cultural heritage and objectives of protecting and preserving cultural heritage (Art. 1-12 CHA); provisions on tangible and intangible cultural goods (Art. 13-25 CHA); the method of valuing cultural goods (Art. 26-40 CHA); establishing of the status of different types of cultural goods (Art. 41-54 CHA); provisions on the registration of cultural goods (Art. 55-68 CHA) provisions on the protection and preservation of these goods and scientific research and educational activities related to the protection and preservation of cultural goods (Art. 69-98 CHA); provisions on the rights and obligations of owners and other possessors of cultural goods, the circulation, use and expropriation of these goods and the import, export and return of illegally removed cultural goods (Art. 99-129 CHA), and provisions related to criminal sanctions (Art. 130 CHA).

Similar to the division in Croatian law, the cultural heritage in Serbia is divided into tangible and intangible cultural goods. Pursuant to Article 13 of the CHA, tangible heritage is divided into: a) immovable; b) movable cultural goods; c) goods that enjoy prior protection (things and creations that are assumed to possess cultural values specified in the law and represent cultural heritage and enjoy the same protection as cultural goods (Art. 29-33 CHA); and d) goods

15 Zakon o kulturnom nasleđu (Cultural Heritage Act, Serbia), *Službeni glasnik RS*, 129/2021; <https://www.propisi.net/zakon-o-kulturnom-nasledju/> (accessed on 15 August 2023).

16 Zakon o kulturnim dobrima (Cultural Goods Act, Serbia), *Službeni glasnik RS*, br. 71/94, 52/2011- dr. zakoni, 99/2011- dr. zakon, 6/2020 - dr. zakon, 35/2021- dr. zakon i 129/2021- dr. zakon.

under prior protection (goods in respect of which legal actions have been taken to identify them as goods that are believed to possess the properties of tangible or intangible cultural heritage. This status ceases if it is established that they are cultural goods, if previous protection expires, or if it is determined that the thing has no cultural value (Art. 34-35 CHA)). Intangible heritage is embodied in oral traditions and expressions: language as a carrier of intangible cultural heritage; performing arts; social customs, rituals and festive events; knowledge and customs concerning nature and the universe; traditional crafts and skills (Art. 25 CHA). Cultural goods are, therefore, part of the tangible cultural heritage and are divided into cultural goods, cultural goods of great importance, and cultural goods of exceptional importance (Art. 36 CHA).¹⁷

Like in Croatia, when it comes to discovery of goods that enjoy prior protection as cultural heritage assets, such a discovery has to be reported to the competent authority and the goods have to be handled with special care (Article 31 CHA). If such a good is located in land or water, or has been removed from land or water, it is the ownership of the state (Article 33 CHA). It should certainly be mentioned that, according to the Serbian Public Ownership Act (PO Act), state-owned cultural property cannot be subject to enforcement, lien or be acquired by *usucapio* (Articles 16 and 17 PO Act). Also, if the procedure for prior protection of a privately owned asset has already been initiated, which will eventually be declared a cultural good, that ownership is not called into question; thus, the ownership right does not cease to exist, and the asset does not become the ownership of the state (Čelić, 2021:555; Judgment of the Court of Appeal in Novi Sad, Gž 2764/16).¹⁸

Notably, in Serbia, there was an idea of creating a special branch of law which would specifically deal with the protection and preservation of cultural goods (Čelić, 2021:548; Đukić, 2020:80-98). One of the main proponents of this idea was Vladimir Brguljan, who defined this new branch of law as a set of legal norms that regulate social relations regarding cultural monuments in a special way (Brguljan, 2006:15). The opponents of this idea stated that provisions related to cultural goods are scattered across all branches of law and that this area is too small (insignificant) to deserve its own special branch. However, it seems that these arguments no longer stand today (Đukić, 2020:84). The first argument in

17 The fourth category includes the cultural assets of exceptional value which are included in the UNESCO World Heritage List, because they meet the conditions prescribed by the UN Convention Concerning the Protection of the World Cultural and Natural Heritage (1972); See: <https://whc.unesco.org/archive/convention-en.pdf>. This fourth category is not mentioned in the CHA but exists in the legal order of the Republic of Serbia (and Croatia) because it ratified this convention (Čelić, 2021:552, Krstić, 2013:106-107).

18 Judgment of the Court of Appeal in Novi Sad (Serbia), Gž 2764/16 of 17.11.2016

favor of creating a special branch of law is certainly the need to bring together (in one place) all the provisions concerning the protection and preservation of cultural goods. The second argument is the growing awareness of the importance and need for stronger protection and preservation of cultural goods (Đukić, 2020:84). The authors have not come across similar initiatives in Croatia.

4.1. Ownership and limitations of ownership of cultural property in Serbia

In Serbia, like in Croatia, the owners of cultural goods are also limited in various ways. Some restrictions are valid for all types of cultural goods, while others are valid only for certain types of such property (Nikolić, Midorović, 2021:79-80). Similarly as in Croatia, the owner and holders of cultural property is obliged to preserve and maintain that property, and without delay notify the competent authority dealing with the protection of cultural goods about all legal and physical changes that have occurred in connection with the asset. The owner/holder is also obliged to allow scientific and professional research, technical and other recordings, to facilitate the implementation of technical protection measures on the cultural property, and to make the cultural property available to the public. The owner/holder is also obliged to bear the costs of fulfilling these obligations up to the amount of income generated from cultural goods and goods under prior protection (Art. 101 CHA).

In addition, the owner/holder is prohibited to use cultural goods for purposes that are not in accordance with their nature, purpose and significance, or in a way that can lead to damage to a cultural good. This is also similar to Croatian provisions. The owner/holder must not excavate, demolish, rebuild, modify or do any work that may impair or damage the specific features of a cultural good and property under prior protection without meeting certain conditions and without the consent of the competent authority. The owner/holder is also prohibited from dismembering collections and funds of cultural goods, without meeting certain conditions and without the consent of the competent authority (Art. 102 CHA).

The owner or holder of cultural property in Serbia is also entitled to certain rights. In addition to being able to use a cultural good in a manner that is in accordance with the law and protection measures, the owner/holder is entitled to a fair compensation in case of a ban on the use or restrictions of the use of a cultural good. The owner/holder also has the right to compensation for damage sustained during the implementation of technical protection measures on a cultural good or as a result of having to make a cultural good available to the public. The owner/holder is exempt from paying fees, taxes and other duties related to protection, use and disposition of the cultural asset in compliance with

tax legislation. The owner/holder is also entitled to seek reimbursement of paid customs duties and other import duties in case of permanent import of cultural goods into Serbia. If the owner/holder has donated a cultural good or artwork to the state or to an institution to protect cultural heritage, they have the right to be exempt from paying taxes. The tax and customs reliefs obtained by the owner/holder are regarded as the participation of the state in the protection of cultural goods (Art. 100 CHA).

The owner or holder is free to use the name and likeness of a cultural good for commercial purposes (to make a profit), while other persons can do that only with the consent of its owner and upon obtaining the approval of the competent protection institution in charge of protection and preservation of that cultural good, or the competent ministry in case of a cultural asset of exceptional importance. The CHA also stipulates that the cultural-historical value and identity of the asset must not be impaired or damaged due to its commercial use. The owner, holder and public institutions in charge of cultural heritage protection have the right to make reproductions, casts, copies, facsimiles and phototype editions of cultural goods of great and exceptional importance in accordance with the prescribed protection measures, always crediting the name of the cultural property, its location, period of creation and the name of the author (Art. 105 CHA).

As in Croatia, if the owner in Serbia wants to sell a cultural good, he/she must first offer it to the state, given that the state has the pre-emptive right to purchase the cultural good in private ownership before it is offered to others (Art. 103 CHA). Within 30 days of receiving the owner's notification of the intention to sell the property, the competent authority is obliged to inform the owner whether or not it will exercise this right. According to the provision of the former Cultural Goods Act, the deadline was 15 days which was certainly too short, particularly considering the fact that, due to the importance and value of the real estate or cultural good that is offered for sale, it might be necessary to engage significant funds from the public budget (Čelić, 2021: 560). If the state refuses to buy the cultural good, does not respond to the offer or waives the pre-emption right within the time limit, the owner is free to sell the property to another person under the conditions that cannot be more favorable than those offered to the state (Art. 103 CHA).

Unlike the Croatian PPCG Act, the Serbian CHA does not envisage the possibility of sequestration, i.e. appointing a temporary guardian for a cultural good whose owner does not take good care of the property or temporarily abandons it, and thus exposes the property to the risk of damage and destruction. This provision was prescribed in the former Cultural Goods Act (in Art. 33). The authors also believe that the provision on the possible expropriation of cultural goods was

much more detailed in the former Cultural Goods Act (Art. 121), which stipulated that there was a danger of destruction of the cultural good if the owner did not have the ability or interest to ensure the implementation of protection measures. Expropriation was also possible if archaeological excavations could not be carried out in any other way, or if the protection measures on the cultural goods could not be implemented. Expropriation was also possible if there was no other way to ensure the public availability of cultural goods of great or exceptional importance (Đukić, 2020:91). Article 106 of the CHA relating to expropriation only states that the expropriation of immovable cultural property will be carried out in accordance with the regulation governing expropriation.

5. Conclusion

In this paper, the authors endeavoured to investigate and explain the reasons for ownership restrictions in case the object of ownership is a cultural good. Due to the basic characteristics of cultural goods, every country needs to protect such goods in every possible way. Considering that their owners or holders can cause their damage and destruction, cultural goods need to be protected from them as well. At the same time, each country's legislators should take care that such restrictions are not too severe, so as not to put the owners/holders of such goods in a worse position when compared to the owners of other kinds of property.

The authors researched the Croatian and the Serbian legislative acts related to the protection of cultural goods. The research shows that the restrictions on the ownership of cultural goods and protected cultural assets are regulated in a similar way in two countries. There are many similarities in the legal provisions governing the restrictions on ownership, possession and sale of cultural goods, as well as the rights and obligations of owners/holders of cultural goods. Despite these similarities, the authors have to note that the former Cultural Goods Act which previously regulated this area in Serbia seems to have contained much more similar provisions to the ones envisaged in the Croatian PPCG Act than the new (current) Cultural Heritage Act of Serbia. The most obvious differences between the Croatian PPCG Act and the Serbian CHA refer to the fact that the Serbian legislation no longer provides for the possibility to appoint a temporary guardian for the cultural good when the owner refuses to take care of it or abandons it, and to the fact that the Serbian CHA no longer explicitly enlists the cases that will lead to the expropriation of cultural property, as was the case in the former Serbian legislation and is currently the case in the applicable Croatian law.

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ЗАШТИТА КУЛТУРНИХ ДОБАРА У ХРВАТскоЈ И СРБИЈИ, С НАГЛАСКОМ НА ОГРАНИЧЕЊА ВЛАСНИШТВА

Резиме

У члану. 52. Устава Хрватске културна добра проглашавају се добрима од посебног интереса за Републику Хрватску која уживају посебну заштиту државе. Чланом 69. Устава прописано је да држава штити, између осталог, и културна добра као духовне националне вредности. Устав Србије, у члану 89, утврђује обавезу сваког лица да чува, између осталог, и културну баштину као добро од општег интереса. Аутори сматрају да нешто слично постоји у већини савремених правних система. Јасно је да су многа културна добра у власништву разних правних субјеката, али с обзиром на њихов статус и посебну заштиту коју уживају, власници таквих добара подлежу одређеним ограничењима својине и имају обавезе које власници већине других ствари немају. У овом раду аутори ће анализирати хрватске и српске правне акте који регулишу заштиту културних добара (Закон о заштити и очувању културних добара Републике Хрватске и Закон о културном наслеђу Републике Србије), са посебним нагласком на ограничења власништва над културним добрима у ове две земље. Постоје одређене сличности, али и неке разлике у томе како је регулисана заштита културних добара у Хрватској и Србији. Врсте културних добара и њихова заштита се на одређене начине разликују, а такође се разликују и права и обавезе власника културних добара у неким аспектима.

Кључне речи: *културно добро, заштита културних добара, ограничење својине, права и обавезе власника.*