

THE ART LAW
REVIEW

THIRD EDITION

Editors

Lawrence M Kaye and Howard N Spiegel

THE LAWREVIEWS

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REVIEW

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Editors

Lawrence M Kaye and Howard N Spiegler

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CONTENTS

PREFACE.....	vii
<i>Lawrence M Kaye and Howard N Spiegler</i>	

Part I General Papers

Chapter 1	RECENT DEVELOPMENTS IN THE ART MARKET	3
	<i>Pierre Valentin and Mona Yapova</i>	
Chapter 2	ASSIGNING BURDENS OF DILIGENCE IN AUTHENTICITY DISPUTES	14
	<i>William L Charron</i>	
Chapter 3	ART DISRUPTION: ART AND TECHNOLOGY IN THE TWENTY-FIRST CENTURY	24
	<i>Massimo Sterpi</i>	
Chapter 4	APPLICATION OF COPYRIGHT TO ART	37
	<i>Barry Werbin</i>	
Chapter 5	MORAL RIGHTS OF THE ARTIST (WHEN PRESENT): AN UPDATED US PERSPECTIVE.....	47
	<i>Irina Tarsis</i>	
Chapter 6	CULTURAL HERITAGE DISPUTES AND RESTITUTION	64
	<i>Leila A Amineddoleh</i>	

Part II Jurisdictions

Chapter 7	AUSTRALIA.....	81
	<i>Janine Lapworth</i>	
Chapter 8	AUSTRIA.....	94
	<i>Peter M Polak, Peter Pichlmayr and Thomas Mühlböck</i>	

Chapter 9	BELGIUM	104
	<i>Lucie Lambrecht and Lucy Ryan</i>	
Chapter 10	BRAZIL.....	119
	<i>Marcilio Toscano Franca Filho and Gustavo Tanouss de Miranda Moreira</i>	
Chapter 11	CANADA.....	131
	<i>Alexander Herman</i>	
Chapter 12	CZECH REPUBLIC	141
	<i>Daniela Kozáková</i>	
Chapter 13	FRANCE.....	154
	<i>Jean-François Canat, Philippe Hansen, Line-Alexa Glotin and Laure Assumpção</i>	
Chapter 14	GERMANY.....	168
	<i>Katharina Garbers-von Boehm</i>	
Chapter 15	GREECE.....	182
	<i>Dimitris E Paraskevas</i>	
Chapter 16	HONG KONG	188
	<i>Angus Forsyth</i>	
Chapter 17	INDIA	204
	<i>Kamala Naganand, Spandana Ashwath and Anusha Madhusudhan</i>	
Chapter 18	ITALY	216
	<i>Giuseppe Calabi</i>	
Chapter 19	JAPAN	228
	<i>Makoto Shimada and Taku Tomita</i>	
Chapter 20	NETHERLANDS	238
	<i>Gert Jan van den Bergh, Martha Visser and Auke van Hoek</i>	
Chapter 21	SPAIN.....	258
	<i>Rafael Mateu de Ros and Patricia Fernández Lorenzo</i>	
Chapter 22	SWITZERLAND	268
	<i>Marc-André Renold and Peter Mosimann</i>	

Contents

Chapter 23	TURKEY.....	280
	<i>Zeynep Hekim Bülbül and Zeynep Ökke</i>	
Chapter 24	UNITED KINGDOM.....	289
	<i>Mark Stiebel and Anastassia Dimmek</i>	
Chapter 25	UNITED STATES.....	307
	<i>Lawrence M Kaye, Howard N Spiegler, Yaél M Weitz and Gabrielle C Wilson</i>	
Appendix 1	ABOUT THE AUTHORS.....	329
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	345

PREFACE

We are delighted to present the third edition of *The Art Law Review*. Our prior two editions have elicited very positive responses from readers from around the world, for which we are very grateful. We once again present to you leading art law practitioners from many jurisdictions who share their knowledge about the latest developments in this area of the law. We trust that you will find this edition to be as interesting and important as our prior volumes.

We begin this volume, however, with some thoughts about the significance of art in these troubling times:

We are in a time once again where our need for the arts is growing more and more apparent. Controversy and anger and fear seem to swirl around us these days in large supply. This has happened plenty of times in our history. We have needed and sought the healing and teaching power of the arts for a long time, perhaps forever.¹

In addition to the tragedies wrought by natural disasters brought on by climate change and the civil strife affecting peoples in so many countries, as art lawyers we are particularly distressed by the threats to cultural identity caused by the destruction of cultural property in war. It is important to acknowledge that the onslaught in Ukraine is not only about the appalling carnage but also the systematic attack on its works of art and other cultural property. As the *New York Times* art critic Jason Farago recently asked, ‘Why should anyone care about a painting when cruise missiles are overhead?’ The answer he gave, quoting a Ukrainian art curator, is because ‘this is a war about cultural identity, as Russia actively tries to erase Ukraine’s national identity’.²

Even while oppression haunts targeted peoples, the creation and preservation of cultural heritage has remained an important mechanism of survival as it has in past struggles going back to the past century and before. For example, Picasso’s *Guernica* (1937), his poignant, universally known work that illustrates the horrific devastation of the Spanish Civil War, demonstrates vividly the struggle and chaos exemplified by one piece of art. It has transcended

-
- 1 Robert Lynch, president and CEO, Americans for the Arts, ‘The Arts Don’t Just Heal, They Also Unify and Inspire Action’, <https://blog.americansforthearts.org/2019/05/15/the-arts-don't-just-heal-they-also-unify-and-inspire-action>.
 - 2 Jason Farago, ‘The Role of Art in a Time of War’, *New York Times* (28 July 2022), www.nytimes.com/2022/07/28/arts/design/ukraine-war-art-culture.html.

its depiction of one conflict to represent other periods of suffering caused by war throughout the world. During eras of conflict and disruption, art has provided tangible forms of solace and expression.

Let us keep this mind as we examine the many issues of art law examined in this volume, as follows:

- a* recent developments in the art market;
- b* art authentication;
- c* art and technology;
- d* moral rights; and
- e* cultural heritage disputes.

We then present chapters on recent art law developments in 19 key countries. Each country's chapter gives a review of hot topics, trends and noteworthy cases and transactions during the past year, then examines in greater depth specific developments in the following areas: art disputes, fakes, forgeries and authentication, art transactions, artists' rights, and trusts and foundations, and finally offers insights for the future.

We hope that you enjoy reading all of these excellent contributions.

Lawrence M Kaye and Howard N Spiegler

Kaye Spiegler PLLC

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Part II

JURISDICTIONS

CZECH REPUBLIC

*Daniela Kozáková*¹

I INTRODUCTION

Although more of a local market, the art market in the Czech Republic is rapidly developing.²

In 2021, participants at Czech auctions spent a record sum of almost 1.5 billion Czech crowns, starting prices rose by 77 per cent and the percentage of unsold items dropped from 55 per cent to 52 per cent. Total auction turnover was 45 per cent higher than the previous year.³

Oil paintings dominate the market, although younger collectors are also interested in the Czech contemporary market. Traditionally, the market is driven by the most expensive items: in 2021, the most expensive 5 per cent of items sold at auction comprised 76 per cent of total auction turnover.⁴

The key players in the Czech art market are auction houses, private and public museums and galleries (e.g., the National Gallery in Prague), collectors, art dealers and the artists themselves.

Since 1989, the Czech Republic has undergone rapid development from communism and a centrally planned economy to democracy and a free market; the art market as such basically did not exist in the country until the 1990s.

Therefore, it has developed and is developing rather naturally, and only in the past decade has it begun to experience the professional parameters common on the global market. However, the legacy of the past remains in the form of certain legal norms that do not necessarily suit the current state of the art market, society and trends.⁵

Although the situation has changed, some purchasers are still unaware of the applicable rules and the legal aspects of buying works of art, making them vulnerable to dishonesty within the market. Cases of dishonesty and fraud happen from time to time in the art market and have caused some potential purchasers to lose confidence in sellers as well as in the art market as a whole; therefore, it is advisable to purchase art from reputable entities.

1 Daniela Kozáková is of counsel at Široký Zrzavecký Attorneys-at-Law.

2 The information available on Czech art market transactions relate to public auction sales, and is sourced by Artplus, www.artplus.cz.

3 *Art Market Yearbook*, 13th Edition (Artplus, 2021).

4 *ibid.*

5 For example, the Act on State Monument Care, which concerns, for example, the obligations of the owner of a cultural monument, is based on the original standard from the late 1980s though it has been amended several times.

II THE YEAR IN REVIEW

During the first half of 2021, the art market was affected by the covid-19 pandemic; therefore, during this period, auctions were mainly held online. The market needed to react to the situation quickly and flexibly, and online and digital tools had been rather exceptional prior to the pandemic. Due to the move online, the art market attracted new, mainly younger consumers. These new consumers are also interested in art-related education and tend to live with the art or create collections of art, rather than being purely art investors.

Sales were also driven by the general fear of inflation and by the fact that the majority of households were able to increase their savings during the pandemic (17 per cent growth in household current accounts).⁶ A fear of inflation has become a strong motivator for acquiring art in recent months.

In 2021, the market began to discover digital art, and several non-fungible token (NFT) projects appeared that attracted new collectors, whereas traditional collectors were rather reluctant to buy them.

Another trend is an increase in the interest in female artists' work. *Circus*, a painting by Czech female artist Toyen, was sold in 2021 for a record price of 79.56 million crowns and became the most expensive work sold at Czech auction in 2021.⁷ Five of Toyen's paintings (including *Circus*) were among the 10 highest grossing paintings at Czech auctions in 2021. Internationally, *Le Jaillissement II* by Czech artist František Kupka, was sold at a Sotheby's auction in London for 247 million crowns, making it the first Czech work of art to be sold at auction for more than 100 million crowns.

During the pandemic, it also became clear that the Czech legal system lacks clarity on the status of artists, as well as their rights and obligations towards the state (e.g., tax payments). This resulted in uncertainty regarding the compensation available to artists during lockdown when they could not work. The status of artists includes rules and norms, which are yet to be implemented in Czech law, that govern the rights and obligations of cultural and artistic professionals. These aim to improve and clarify the status of artistic professions, including:

- a* a definition of artistic professions;
- b* labour law norms preventing disadvantages to those in artistic professions; and
- c* rules concerning tax, social security and copyright.

Therefore, the improvement of the status of artists, their career development and the support of a second career became the priority of the 2022–2025 State Cultural Policy.⁸

III ART DISPUTES

i Title in art

Most works of art are individual movable assets. Title to these works is transferred from the seller to the buyer, if the parties do not agree otherwise, once the purchase agreement is effective (usually once all the parties enter into the agreement, or at a later date agreed

6 Czech Ministry of Finance, 'Report on financial market developments in 2020', published on 2 July 2021.

7 Toyen, *Circus*, 1925, oil on canvas, 90 x 90cm, hammer price including purchaser's premium of 79,557,500 Czech crowns, sold by Adolf Loos Apartment and Gallery on 18 April 2021.

8 www.idu.cz/cs/o-nas/veda-a-vyzkum/vedeckovyzkumne-projekty/1906-status-umelce.

between the parties in the agreement).⁹ If the parties deviate from this general principle, they usually agree that the title is transferred on the handover of the work or the ‘ownership title reservation’ applies, in which case the purchaser acquires the title only after the full purchase price has been paid to the seller.

The above transfer of title applies to most the cases in which the art is sold in private sale, from the artist, gallery or art dealer.

If the work is sold at auction, there are several models that may be applicable; in each of these, the ownership title is (or may be) acquired differently.

The law regulates public auctions more strictly under the Act on Public Auctions.¹⁰ A concession trade licence is required for their operation.¹¹ In public auctions, the contractual freedom of the parties does not apply; the conclusion of the contract and the transfer of the ownership title to the auctioned artwork are governed by law and occur by the fall of the hammer.¹² Public auctions are primarily used in forced sales.

For many auctioneers the use of the public auction model might not be convenient for voluntary auctions, and they may therefore opt for a private law auction, called either a ‘private auction’ or ‘auction’, to distinguish them from public auction. For this type of auction, a free trade licence is sufficient. Private auctions are not regulated in great detail in the Civil Code, which only states that contracts are concluded by the fall of the hammer and that a previous bid is cancelled if a higher bid is submitted, or if the auction ends other than by the fall of the hammer.¹³ As regards other rights and obligations of the parties, the general provisions of the Civil Code shall apply, whereas the dispositive provisions of the Civil Code may be modified in the auction regulations issued by the auctioneer.

In addition, auctioneers may organise competitive auctions, which are also governed by the Civil Code.¹⁴ Under this model, the announcement of the sale and an invitation to submit proposals for the conclusion of a contract are sent to an unspecified number of people, and the best offer rules generally apply (i.e., ownership of the work is acquired and the purchase contract is concluded by offering the highest price that is accepted by the seller).

As regards the transfer of title by the purchase contract, in general, one of the main principles of the Civil Code (effective since 1 January 2014) is that ‘who acted in a certain way is considered to have acted honestly and in good faith’. By this principle, good faith is presumed but is rebuttable.¹⁵ In addition, if a certain consequence is dependent on a person’s

9 Section 1099 of Act No. 89/2012 Coll, as amended (the Civil Code).

10 In the public law regime, auctions are regulated by Act No. 26/2000 Coll, on public auctions (the Public Auctions Act). The Ministry of Regional Development is entitled to control the activities of auctioneers and their compliance with the Act on Public Auctions.

11 The Ministry for Regional Development recently prepared a new law on public auctions that shall unify the rules for public auctions as well as private auctions, which, until now, have been carried out without clear rules outside of the statutory regulation of public auctions.

12 Section 23, Paragraph 13 of the Act on Public Auctions.

13 Section 1771 of the Civil Code.

14 *id.*, Section 1772 *et seq.*

15 ‘A fact for which the law provides for a presumption that allows evidence to the contrary is considered proven by the court unless the contrary was revealed in the proceedings. If the contrary is not proven, a mere, even serious, doubt as to whether the fact established in the legal presumption exists is not sufficient for it not to be considered proven. A fact evidenced by a rebuttable legal presumption is not the subject of procedural evidence, and if the presumption of the existence of a recognised obligation was not disproved in the proceedings, the court must consider the fact proven.’ Supreme Court Decision No. 32 Odo 1160/2003 dated 26 August 2004.

knowledge, it means the 'knowledge that a person who knows the case reasonably acquires when considering the circumstances that must have been obvious to him in his position'.¹⁶

As a rule, the possession is presumed to be proper, faithful and true.¹⁷ Based on the basic principles of legal certainty and protection of acquired rights, the good-faith purchaser shall enjoy the same constitutional protection as the original owner.¹⁸ Whether the possessor is in good faith must always be evaluated objectively, not from the subjective point of view (personal conviction) of the purchaser,¹⁹ and consideration must be given to whether the purchaser should not have, or could not have, reasonable doubts that the asset or the right belonged to them during the entire prescription period.²⁰

The good-faith purchaser who believes that they are the owner of the work may acquire title to the work by prescription; for 'ordinary prescription' good-faith purchasers may acquire title to work after three years of uninterrupted good-faith possession. In addition, even if the good-faith possessor cannot prove the legal title based on which they possess the work, they may acquire the work after six years of uninterrupted good-faith possession.

However, good faith ceases once the purchaser becomes acquainted with the fact or circumstance that objectively must have caused doubt that the work rightfully belongs to them.

In addition to the above, an artwork is an asset that is not registered in a public register in the Czech Republic. The law provides additional protection for good-faith possessors with respect to these assets.²¹ Good-faith acquirers who acquired the artwork: in a public auction; from an entrepreneur carrying out business activities as part of their ordinary course of business; for a reward from someone to whom the work was entrusted by the owner; or from an illegitimate heir to whom the inheritance was confirmed,²² become the owner of the work immediately by law (this differs from the above possibility to acquire the ownership by prescription). The good faith of the acquirer is presumed.

There is no explicit obligation on the acquirer to perform due diligence into the work's title. For good faith, it is important to have the confidence of being the lawful owner of the work. Also, the seller shall provide the warranty of good title to the work in the contract provided that the scope of the warranty is not limited by the seller in advance. The seller is obliged to notify the purchaser of any title defects of which they are aware.

However, as artwork cannot be acquired if the owner proves that they lost ownership to the asset by a loss or intentional crime, it is feasible for a purchaser to conduct an inquiry into the title, including a review of stolen artwork registers, prior to purchasing the work.

16 Section 4(2) of the Civil Code.

17 *id.*, Section 994.

18 Constitutional Court, IV. ÚS 2000/18.

19 Supreme Court, No. 22 Cdo 1253/99 dated 11 October 2000.

20 Supreme Court, No. 22 Cdo 1843/2000 dated 7 May 2002.

21 As specified in Section 1109 of the Civil Code.

22 This provision also applies to dealings with an investment instrument, security or deed issued to a bearer or when trading on a commodity exchange.

ii Nazi-looted art and cultural property

Nazi-looted art

Works of art that were dispossessed between 29 September 1938 and 4 May 1945 whose transfer was later declared invalid by Presidential Decree No. 5/1945 Coll or Act No. 128/1946 Coll that were in the ownership of the Czech Republic as of the effective date of the Act shall be subject to restitution according to the Act on the Alleviation of Certain Property Injustices caused by the Holocaust.²³ Claims for the restitution are to be made with the relevant organisation by the natural person who owned the work, or by their spouse or descendants if they are deceased.

Cultural property

Czech law recognises cultural treasures that may be either movable or immovable individual items or sets thereof. Cultural treasures that possess the highest degree of protection are 'national treasures',²⁴ declared by a Czech government decree.

Cultural treasures²⁵ must fulfil the following characteristics, and be:

- a important documents of the historical development, way of life and environment of society from the earliest times to the present, as manifestations of the creative abilities and work of people from various fields of human activity, for their revolutionary, historical, artistic, scientific and technical values; and
- b directly related to important personalities and historical events, provided that they were declared by the Ministry of Culture of the Czech Republic as cultural treasures.²⁶

Artwork may be declared as cultural treasures independently as a movable cultural treasure or as part of a set of items declared as cultural treasure; for instance, when the items form part of a castle's or other historical building's inventory.

The owner of a cultural treasure is obliged to keep it in good condition, protect it against damage or theft at their own cost and notify the state cultural protection organisation of any intended or realised change in its ownership, its replacement or management, or its use (and must inform the acquirer of its character as a cultural treasure).

The Czech Republic has a pre-emption right to national treasures as well as movable cultural treasures if the protected asset is to be sold to a third person (an exception applies to sales between relatives and co-owners). The owner of a protected cultural treasure is obliged to offer the object to the Ministry of Culture for purchase if they intend to sell it, otherwise the transfer may be declared invalid within the three years following the sale if the Ministry of Culture raises an objection. For artwork (movable assets), the Ministry of Culture has three months from delivery of the notice to decide whether it will purchase the work. The pre-emption right cannot be executed towards the sale in question after this time, but it is still applicable for consequent sales of the work.

23 Act. No. 212/2000 Coll on the Alleviation of Certain Property Injustices caused by the Holocaust.

24 Act No. 20/1987 Coll on State Monument Care.

25 *ibid.*

26 *ibid.*

Prior to the acquisition of an artwork, it is necessary to verify that it is not a cultural treasure. Although the law requires that the cultural treasure is included in the Central List of Cultural Monuments, available online, it is advisable to additionally verify this information with the Ministry of Culture to avoid any misunderstanding.

iii Limitation periods

A general limitation period of three years applies to most claims arising from a purchase contract, unless the parties have agreed otherwise.²⁷ Any defects to the work, including title defects, shall be claimed as soon as the purchaser becomes aware of, or could have become aware of, their existence with due care; however, this can be no later than two years after the handover of the work, unless the seller knew about the defect at the time of the handover.

There is no specific limitation period for raising claims for restitution of art seized during the Nazi era, according to the Act on the Alleviation of Certain Property Injustices caused by the Holocaust as the original limitation for filing the applications by 31 December 2006 was cancelled in 2006.

iv Alternative dispute resolution

Arbitration proceedings in the Czech Republic are governed by Act No. 216/1994 Coll on Arbitration Proceedings and the Enforcement of Arbitration Awards, as amended, under which the Court of Arbitration at the Chamber of Commerce of the Czech Republic and the Agrarian Chamber of the Czech Republic was established. This Court is mostly used for arbitration clauses in commercial contracts between two Czech parties.

Instead of arbitration, parties to art contracts generally prefer to have matters decided by Czech courts, which means that their right to appeal is retained, whereas this is rather limited in arbitration. There are no specific specialised alternative dispute resolution organisations or other institutions dealing specifically in art matters in the Czech Republic.

If a dispute arises between a consumer²⁸ and another party, the consumer may submit a proposal for an out-of-court settlement to the Czech Trade Inspection via its website.²⁹ Submission of a proposal and subsequent participation in an out-of-court settlement of the dispute is free of charge, and the related costs incurred are borne separately by each party.

IV FAKES, FORGERIES AND AUTHENTICATION

Under Czech law, 'fakes' are not legally defined. For the purposes of this chapter, a fake shall be understood as an intentionally illegally created imitation of another work of art that is not the work of the relevant author. From a civil law perspective, if a fake is delivered instead of the original authentic work, the performance is different to that agreed in the purchase

27 Section 630 of the Civil Code. The parties may agree on a shorter or longer limitation period than that stipulated by law, calculated from the date on which the right could be exercised for the first time, but this must be at least one year and at most 15 years.

28 Section 419 of the Civil Code: 'A consumer is any person who, outside the scope of his business activity or independent performance of his profession, concludes a contract with an entrepreneur or deals with him in any other way.'

29 www.coi.cz.

contract. The originality and authenticity of the work are necessities of the purchase contract, as well as the purchase price. As part of the warranty, the seller is obliged to sell and transfer to the purchaser a work of the quality, implementation and dimensions agreed in the contract.

The purchase of a fake is, in principle, the seller's defective performance of the contract. However, the purchaser must examine the sold object's quality and quantity promptly upon receipt. In principle, the seller is not liable for defects that the purchaser could have observed with due care at the time the purchase contract was concluded, or that were not claimed immediately after the purchaser became aware of, or could have become aware of, their existence with due care; this can be no later than two years after the handover of the work, unless the seller knew about the defect at the time of the handover. In addition, if the contract includes the seller's expressed warranty of authenticity of the work, the seller remains liable. If the seller is liable for the defect, the purchaser shall be entitled to claim (based on their sole discretion):

- a* delivery of a new asset without defects;
- b* removal of the defect by repair;
- c* an appropriate discount on the price; or
- d* immediate termination of the contract.

Buyers may freely choose between the options but must declare their choice without undue delay following notification of the defect to the seller (this is usually made simultaneously). Because in most cases sellers of fake artwork will not have the original artwork at their disposal, they will be unable to remedy the situation under options (a) or (b). Additionally, because an authentic work cannot be delivered and the purchaser would be unlikely to wish to keep the fake object, a discount would also be unlikely to be chosen. Therefore, the only claim that would be practical under the given circumstances would be the immediate termination of the contract (and the return of the full purchase price).

In addition, damages that would not be covered by claims for the seller's liability for defects are also available to the purchaser. The purchaser may also suggest the commencement of criminal proceedings against the seller.

The role of experts in establishing forgeries is significant. As more stringent regulation of experts' activities has become necessary, a new law (effective since 1 January 2021) has been introduced, which brings significant changes to the rules surrounding their business activities.³⁰ This includes the following amendments:

- a* expert opinions must contain, inter alia, a specific professional enquiry assigned by the client, a list of selected sources and details of the expert's data collection procedure;
- b* experts must hold liability insurance for the performance of their activities of at least 1 million crowns for individuals and 5 million crowns for expert institutes and offices; this must be proved to the Ministry of Justice (state organisational units are exempt from this requirement); and
- c* new offences, including incorrect billing and non-compliance with the law's formal requirements or with recording obligations, have been introduced.

For errors in the assessment of works of art, the Ministry of Justice may impose a fine of up to 500,000 crowns, and, in serious cases, if the expert has seriously violated or repeatedly

30 Act No. 254/2019 Coll on Experts, Expert Offices and Expert Institutes, replaces Act No. 36/1967 Coll on Experts and Interpreters.

violates the obligation imposed by the Act, cancellation of the expert's authorisation. Within the proceedings, the Ministry is entitled to review whether the expert examines the opinion *lege artis* and with due care. The most serious cases of misconduct may result in criminal liability (if the expert commits the criminal offence of 'false testimony and false expert opinion'), for which, at the elementary rate, two years imprisonment, a ban on activity or a financial penalty may be imposed.

In recent years, the importance of artists' archives and their catalogue raisonnés has increased, as a catalogue raisonné, carefully and continuously prepared by the artist during their lifetime, together with a confirmation of authenticity, can make it easier for collectors, art dealers and art institutions to verify the authenticity of work. In addition, this also reduces the risk of the existence of conflicting catalogues raisonnés produced by different editors, which can cause issues during authentication. By continuously processing their list of work, artists could avoid later problems of time-consuming processing or searching for information that may no longer be found.

V ART TRANSACTIONS

i Private sales and auctions

Public auctions of art conducted in an auction house are subject to the Act on Public Auctions; persons involved must be physically present or use audiovisual means to attend the auction. Ownership is acquired by the fall of the hammer. In this case, the law limits the possibility of the buyer-consumer withdrawing from the contract, but buyers can benefit from the original way of acquiring the ownership right.

In online auctions that usually allow an unspecified number of people who are not physically present to bid and for the price to increase within a certain time limit, the auctioneer is replaced by electronic means and the Act on Public Auctions is not generally applicable. Ownership of the work is acquired by offering the highest price accepted by the seller, and by conclusion of the contract, which may take the form of a consumer contract.

If artwork is offered and sold by the platform itself, in general legal regulation on distance selling shall apply. This enables the purchaser (if consumer) to withdraw from the contract within 14 days of delivery of the product. The platform is also responsible for defects during the two-year warranty period; this is shorter (one year) if used goods are sold. The final auction price displayed to consumers should also include all seller fees and commissions except for delivery and payment costs.

ii Art loans

In 2015, the Czech Republic ratified the United Nations Convention on Jurisdictional Immunities of States and their Property, and the relevant implementing national legislation was included in Section 20 of Act No. 20/1987 Coll on State Monument Care.³¹ Under this legislation, a cultural treasure (e.g., all artwork of artistic value) that has been loaned to the Czech Republic by a foreign state declaring that the object is under its ownership is immune from seizure (including enforcement or preliminary ruling).

31 Section 20(2): 'An object having characteristics of a cultural monument pursuant to Section 2(1) may be permanently imported from a foreign country to the Czech Republic only with the prior consent of the competent authority of the country from which it is to be imported if the reciprocity is guaranteed.'

iii Cross-border transactions

The Czech Republic has ratified several international treaties that concern cross-border art transactions. The 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, under which the Czech Republic, by its ratification, undertook the obligation to establish an appropriate certificate that certifies that the intended export of cultural goods is allowed. This certificate must be attached to all cultural goods exported from their territory. Cultural goods that are not accompanied by this certificate are prohibited from being exported. The Convention also obligates the appropriate authority to ensure that the public are familiarised with this prohibition 'by appropriate means, particularly among persons likely to export or import cultural property'. The Convention's Operational Guidelines were adopted by UNESCO in 2015.

In addition, the UNESCO Convention for the Protection of Cultural Heritage in the Event of Armed Conflict (the Hague Convention) and its two Protocols are binding on the Czech Republic. Under Article 10 of the Hague Convention's Second Protocol, increased protection for the Tugendhat Villa in Brno (Czech Republic) was approved in 2018.³²

The Czech Republic is also a party to, inter alia, the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the CITES Convention).³³

These international obligations and obligations arising from EU law³⁴ are reflected in Czech law by the requirement that the export of certain categories of art is subject to a permit issued by the relevant art institution or the Ministry of Culture.

If the artwork is a cultural treasure (including national treasures), approval from the Ministry of Culture is required prior to its export. The export is possible for a limited (definite) period only.

If the work is an object of cultural value, an export permit is needed. Objects of cultural value are defined in the Act on the Sale and Export of Objects of Cultural Value,³⁵ whose Annex 1 establishes several categories of cultural objects.³⁶ Original artworks by living authors, as well as items imported temporarily into the Czech Republic, are not subject to a permit. The owner of the artwork (who may be represented upon power of attorney by a gallery, auction house or art dealer) must apply for the permit, which may be for permanent or temporary export. Artworks that are cultural treasures, are included in museum collections

32 www.tugendhat.eu/en/.

33 Enforced on 1 January 1993 (adopted for the Czech and Slovak Federative Republic on 28 May 1992).

34 Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods; 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; Commission Implementing Regulation (EU) No. 1081/2012 of 9 November 2012 for the purposes of Council Regulation (EC) No. 116/2009 on the export of cultural goods; 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.

35 Act No. 71/1994 Coll.

36 For example, any painting other than a sacral object older than 50 years and worth more than 30,000 crowns; any drawing other than a sacral object older than 50 years and worth more than 10,000 crowns; sacral cultural objects older than 50 years, collages and assemblages older than 50 years and worth more than 30,000 crowns; or sculptures older than 50 years and worth more than 30,000 crowns.

or that fall within the category of archives are unable to be exported permanently. If the artwork is exported outside the European Union, an additional permit must be obtained from the Ministry of Culture.

Without a permit, the above artwork cannot be exported; violation of this rule may result in a fine of up to 5 million crowns and seizure of the work by customs. It could also be considered a criminal offence.

Cultural goods that are listed in Annex A of EU Regulation 2019/880 that were unlawfully removed from the territory of the country in which they were created or discovered are prohibited from being imported into EU Member States.

The Ministry of the Environment is responsible for issuing the relevant CITES permits and enforcing the EU Wildlife Trade Regulations.

iv Art finance

In the Czech Republic, the purchase of art is usually financed by buyers' own resources; financing from external financial sources is rare. Czech banks are rather reluctant in the field of art acquisition loans or loans secured by art; therefore, financing from external sources would be more of a non-banking nature. Under Czech law, art may serve as security for a loan, usually in a form of a pledge over a movable asset, which must be registered in the Czech Chamber of Notaries' Pledges Registry.

The possibility of purchasing art with interest-free loans was recently introduced as a new product by a consumer loans provider in cooperation with an art dealer. However, the practical use of this financing must be verified in practice.

An amendment to the Anti-Money Laundering Act³⁷ (effective since 1 January 2021)³⁸ introduced several new obligations applicable to art entrepreneurs, and it expanded the range of persons in the art business who are obliged to fulfil the relevant obligations under the Act. The list of obliged persons initially included dealers authorised to trade in cultural treasures or objects of cultural value, and those commissioning trades in these areas, and now also includes persons trading in, and those authorised to store in free zones, objects (of at least €10,000 in value) as defined in Annex 3 to the Act. Obligated persons must perform know-your-customer checks on clients upon conclusion of long-term business relationships or where transactions involved cultural monuments or objects of cultural value. These checks must also be carried out for all remaining transactions exceeding €1,000 in value.

The Act on Consumer Loans applies to loans provided to consumers as borrowers; irrespective of how the loan is designated in the contract, any loan under which the borrowed finances are not used for the borrower's business activities shall be deemed a consumer loan.

37 Act No. 253/2008 Coll.

38 Act No. 527/2020 Coll.

VI ARTIST RIGHTS

i Moral rights

Artists (authors) have the following moral rights under Czech law, which cannot be waived, transferred or assigned to a third person:

- a* the right to decide to make their copyrighted work public;
- b* the right to claim authorship, including the right to decide whether and in what way the authorship is to be indicated when the copyrighted work is made public and further used provided that indication of authorship is normal for this form of usage;
- c* the right to the inviolability of the copyrighted work, in particular the right to grant consent to any alteration or other intervention in the copyrighted work, unless otherwise stipulated in the Copyright Act; and
- d* the right of supervision over another person's right to use the copyrighted work (i.e., the author's supervision), unless its nature or its use implies otherwise, or unless it is not possible to fairly require the user to enable the author to exercise their right to supervision.

ii Resale rights

Based on Section 24 of the Czech Copyright Act,³⁹ authors (or their heirs if the rights transfer) are entitled to royalties from a resale of their artwork (resale right), subject to conditions specified in the Act. Resale rights arise only where art is sold by an 'entrepreneur', defined as 'a gallery operator, auctioneer or any other person who consistently deals in works of art and takes part in the sale as a seller, purchaser or intermediary', and for at least €1,500 (exclusive of VAT). The royalty differs based on the value of the work and cannot be higher than €12,500. The royalties are to be paid to the relevant collective administrator (GESTOR). If the seller acquired the work directly from the author less than three years before the resale, for a price of €10,000 or lower, the first resale is excluded from the resale right.

iii Economic rights

Whereas moral rights last until the author's death, economic rights last until 70 years after their death;⁴⁰ the author may not waive these rights, which are subject to heirship and are not transferable.

The economic right of the author is namely the right to use the work in its original or otherwise processed or changed form, separately or in a set, or in connection with another work or elements, and the right to grant another person, by contract, authorisation to exercise the right to use the work. The following contains a demonstrative list of ways of using the work:

- a* the right to reproduce the work;
- b* the right to distribute the original or reproduction of the work;
- c* the right to rent the original or reproduction of the work;
- d* the right to lend the original or reproduction of the work;
- e* the right to exhibit the original or reproduction of the work; and
- f* the right to communicate the work to the public.

³⁹ Act No. 121/2000 Coll.

⁴⁰ There is an exception in the case of anonymous or pseudonymous copyrighted work, where the proprietary rights last 70 years from the time the work was lawfully made public.

VII TRUSTS, FOUNDATIONS AND ESTATES

In the Czech Republic, smaller collections are mainly built by private individuals as part of their personal property. To protect the assets of these persons, a trust can be used. Larger collections often use the form of a foundation or a foundation fund. When considering the relevant form of the collection management, from the personal ownership, through trust or the foundation, it is always necessary to consider the aim of the collector, how the collection shall operate and the complexity of tax issues.

Czech trusts are a purpose-separated property without legal personality (i.e., without an owner). The founder shall appoint a trustee who takes care of the property; however, only the beneficiary is entitled to benefit from the allocated property. In accordance with the specific conditions of the trust (statute), the beneficiary receives benefits (income or other proceeds). The beneficiary cannot dispose of the assets. For this reason, the creditors cannot easily access the property in trust, which allows the founder to ensure the prosperity and integrity of the collection.

The amendment to the Act on Income Taxes introduces a family foundation that is a foundation or endowment fund that, according to their founding act (e.g., statute), serves to support the founder or persons close to the founder or whose activity is aimed at supporting the founder or persons close to the founder. Therefore, family foundations also explicitly include endowment funds, and the support of a family foundation towards the founder (or their relatives) means the loss of public benefit status.

Foundations are established with a socially or economically useful purpose.⁴¹ They are a legal entity of permanent operation. Foundations represent a special purpose property association. The specific purpose can be set in general or in detail. At the same time, it is necessary that the word 'foundation' be preserved in the name.

VIII OUTLOOK AND CONCLUSIONS

The Czech art market faces several challenges. The first is the considerable occurrence of fakes of works of Czech modern artists, as well as of less known artists. Despite the success of developing new tools to detect fakes in the past decade, this topic is still pertinent. The new legal regulation of experts' activities should contribute to reducing this issue. The results of these measures will become clear in the future.

Another topic is legislation of cultural goods and the export of objects of cultural value. The values of objects that require an export permit correspond to prices from the late 1990s and do not consider the development of the art market in recent years.

The informality of legal proceedings is also very common, and it is not unusual for private sales to have no written purchase contract, not even for high-priced works of art. In this case, it may be difficult to prove the ownership of the work in a later sale. Some collectors are still not aware of the legal aspects of buying works of art, and therefore market participants will need to be better educated in the future.

41 Section 306 of the Civil Code.

Artists are also often uncertain about their rights, and only in recent years have they realised the need to issue certificates and create their own archive during their lifetime, even though it is common to purchase works of art directly from the artist in the Czech Republic. Similarly, the position of artistic professions is not sufficiently clear within the Czech legal system and, therefore, there is a need for the legislation to be clarified.

ABOUT THE AUTHORS

DANIELA KOZÁKOVÁ

Široký Zrzavecký Attorneys-at-Law

Daniela Kozáková is an experienced attorney-at-law with outstanding expertise in art law and law of cultural patrimony and real estate. Daniela provides complex art law services under Czech law for private collectors, private galleries and other art professionals, institutions and museums. She advises on all aspects of acquisition and sale of art, including authenticity and provenance issues, art law issues related to management of art collections for family businesses and high net worth individuals, structuring art transactions, advising galleries and art dealers on consignment agreements, dealing with issues related to transport and insurance of art, and advising on private or institutional loans of art and on Czech cultural patrimony issues with respect to movable and immovable cultural monuments.

Daniela is a member of Professional Advisors to the International Art Market, a multi-disciplinary networking platform for professionals advising the global art market.

ŠIROKÝ ZRZAVECKÝ ATTORNEYS-AT-LAW

Myšák Gallery

Vodičkova 710/31

110 00 Prague 1

Czech Republic

Tel: +420 226 216 790

kozakova@sirokyzrzavecky.cz

www.sirokyzrzavecky.cz

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