

Summary of the dissertation

"The Cultural Property Protection Act and the art trade - A theoretical economic analysis of the effects of the amendment of the Cultural Property Protection Act on the stakeholders on the German secondary market for art"

The dissertation analyzes the Cultural Property Protection Act (CPPA) as of August 6th 2016 from an economic perspective. The dissertation primarily focuses on the intermediaries of the secondary market for art; this includes the auction houses and art dealers.

Basis for the economic analysis of the CPPA is the telos of the law. The legislator's main goals are in part to restrict illegal trade, to improve protection against the export of art, and to strengthen legal security. In particular cultural property of national importance, i.e. according to § 6 CPPA those that are listed in a directory of nationally valuable cultural property were target for increased protection by the CPPA.

A purely quantitative research approach, for example by evaluating auction results, was not suitable due to insufficient data availability. Therefore a survey was sent to art intermediaries on the secondary market. In total, 56 art dealers and 29 auction houses participated; this created a holistic overview of the economic impact of the CPPA.

The secondary market for art generally generates pareto-optimal distributions, since the cultural goods are assigned to those with the highest willingness to pay. The CPPA disrupts this functioning market mechanism since the freedom of disposal of market participants is possibly severely restricted. Under certain circumstances it may be prohibited to sell a cultural property abroad. This means that the owner may not take full advantage of the international market price. Since 1992 an export license had been mandatory for the export of certain cultural property to countries outside the EU; the criteria for this are the age and value of the specific cultural property; both are always to be applied cumulatively. However, the previous legal framework allowed exports within the EU without any permits. Provided that certain age and value limits are exceeded, the newly applicable CPPA now requests that an export license is also mandatory within the EU. This is a paradigm shift with far-reaching implications.

The aim of the export restrictions is to preserve important cultural property for the general public in Germany. It should be emphasized in the context of the export restrictions that the export of cultural property from Germany does not directly prevents general access, but, if the purchaser is for example a museum abroad, the accessibility can even be increased. The economic analysis also revealed that there is a risk that the market price of culturally valuable and high-priced cultural property may decrease the closer the age of the cultural property comes to the lower age limit linked to the export license requirement. The survey confirmed the results of the literature review; 83% of art intermediaries consider it realistic that there is a risk of export if the age of the specific cultural property approaches the minimum age relevant for the export licence requirement. Despite this negative effect, which is to be expected from an economic point of view, the evaluation of the administrative burden of the CPPA made it clear that only very few cultural properties were restricted to be exported; only five entries in a directory of nationally valuable cultural property were made in the first two years after the CPPA came into force.

A central component of the economic analysis of law is the analysis of transaction costs. The CPPA obliges art intermediaries to comply with extensive due diligence requirements when placing cultural property on the market. This increases transaction costs and it leads to efficiency losses, so that cooperation gains decrease. However, most of the due diligence is mitigated by the limitation that reasonable effort is sufficient, so that the transaction costs are not prohibitively high. The due diligence duties also fulfill an economic function: they overcome the asymmetrical distribution of information and the uncertainty regarding the quality of the cultural property on the secondary market, which otherwise could even lead to market failures, since due to a lack of market knowledge, consumers tend to base their prices on average prices and force suppliers to offer inferior goods. The art intermediaries act as gatekeepers by contributing to increased transparency by fulfilling their due diligence tasks. This reduces information asymmetries and strengthens legal certainty. If collectors of cultural property were willing to pay a correspondingly higher price for increased security and the price increases to be assumed do not exceed the fictitious value of increased security, the new regulations would be pareto-superior and generate welfare gains. However, this is not the case, as evidenced by the results of the survey, according to which only 19% of art dealers and even only 8% of auction houses allocate or at least consider to allocate the additional financial burden on the retail price payable by the collectors.

Overall, it can be stated that the goals of the legislator are largely achieved with the statutory provisions of the CPPA. It can be assumed that the illegal trade in cultural property is restricted, that public collections are better protected, that legal loopholes have been closed and, above all, that the export restrictions have also been improved within the EU due to the license requirement. However, tendencies towards over-regulation exist and the theoretical economic analysis and the survey have highlighted that negative effects are expected which are inconsistent with the goals of the legislator.