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La libre circulation des collections d'objets d'art [The Free Circulation of Art Collections] (Studies in Art Law, Vol. 3); 240 pages, Schulthess Polygraphischer Verlag AG, Zürich 1993. 52 SFr; ISBN 3-7255-3134 X

In recent years the French part of Switzerland and, in particular, Geneva have developed into a widely renowned centre for the international art market. The public presence of high-quality collections of contemporary (Eschermann in Pully), ethnographic (Barbier-Müller) or archaeological (Ortiz) works of art and the economically increasing activities of auction sales houses clearly reflect this gain in reputation. Within the legal profession it was Geneva-based Professor Pierre Lalive who has substantially contributed to this development of the "Art Law Centre". Under the direction of two lawyers, Mr Quentin Byrne-Sutton and Mr Marc-André Renold, this private institution is specialised in practical legal consulting and theoretical research within all categories of art law. The centre's annual workshops are designated

to promote the discussion of a particular legal or socio-political issue within that matter. Speeches and round-table talks are usually recorded and published in the Centre's own "Studies in Art Law".¹

The latest volume, No. 3 "The Free Circulation of Art Collections", refers to a seminar which took place on 14 September 1992 in Lausanne with eight reports in English and French and two round-table discussions at which had participated art collectors, laymen, government agents and representatives of international organisations involved in the art trade.

Insofar as art collections as specific entities seem to be concerned, the title of the book is definitively misleading since it does not provide specific concepts applicable to collections as a whole. Instead, it reiterates, to a large extent, the traditional conflict between the freedom of art collectors and the efforts of countries to protect what they deem to be national treasures. The article by W Pommerehne and B Frey on the economic perspective of art trade restrictions is a nice exception thereto which merits a more careful reading.

Various participants have voiced their concern about the effects of the European Union's

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regulatory framework which might, on the long run, negatively affect the attractiveness of the European art market. P L Frier's interesting comment of the relevant directive and regulation – which, at the material time of the symposium, had not yet entered into force – and the additional clarifications submitted by European Union representatives have helped to recall motivation and intention of that framework. However, the organisers have failed to invite representative or legal professionals from such countries like the USA or Japan which are assumed to benefit from the alleged loss of importance of the European art market. This seems even more disappointing since the specialised public in the United States is observing these European developments very carefully but without yet having formed a prevailing opinion.² Similarly, European countries either, as a member of the Union, favouring community action or, as otherwise linked to the Union, requesting international assistance were not represented in the panel of the symposium. In a continuously extending Europe, one cannot neglect the need – both on practical and a standard setting level – of these countries for enforced action to counter the dismantling of their national heritage. The fact that the Council of Europe (for example with its symposium held in Prague on 9 November 1993) and UNESCO have accepted the predominant responsibility for international co-operation should

reasonably have been reflected in the workshop. Without any doubt the European Union cannot and will not remain unconcerned with the Central and Eastern European countries either applying for membership or at least requesting some sort of assistance.

To explain the reasons and the functioning of national systems for the protection of the artistic heritage could furthermore help finding commonly acceptable solutions within a growing Europe. The most concise report by C Maurice and R Turnor on the United Kingdom licensing system according to its Waverley criteria system is in fact one of the rare highlights of the book.³ One might have expected similar contributions for example from a selected East or South European country.

Switzerland's official declaration of intent to consider the ratification of the 1970 UNESCO Convention was eagerly commented on and attacked by several participants. However these mainly emotional statements did not go beyond general allegations of Switzerland being about to deter everybody willing to bring his art collection to one of the last "safe havens" left in Europe. Nevertheless the development in Switzerland will need further legal and political examination once the general outlines of the relevant legislation will have been disclosed.

The Art Law Centre does not confine itself to purely legal research and documentation but

has always intended to be a “melting pot” for interdisciplinary confrontation. It was therefore nothing but consequent to pay special attention to the private collectors’ point of view. Acknowledging this approach in general, the reader of the present study might find it peculiar that several participants tend to idealise the merits of art collectors for the protection and safeguarding of artistic treasures and, more globally, for promoting awareness for such issues among the public at large. Certainly it cannot be denied that their enthusiasm has often prevented the destruction of single works of art and that their specialised knowledge contributed to a better understanding of a culture, an artistic style or a period of history. Individual art collectors have been and will be indispensable for the protection of mankind’s cultural heritage. However, to consider an art collector as the personified good consciousness on the battlefield of a more and more scrupulous and short-term speculative art market whose taste and refinement would come close to original artistic creation as pronounced by different participants seems out-dated and nothing but a nostalgic reminiscence to a romantic past. Today, a tight network of contacts between museums, private col-

lections and the academic branch facilitates the exchange of works of art and enable a growing number of people to admire artistic treasures of all times and all cultures. This development should, however, in no way be hindered by new legal restrictions over the free flow of goods, expert services and practical assistance. The same applies for the undisputed need of art collectors for a more favourable treatment in matters of taxation and financial support. The present study failed to disclose political or legal indications to that end.

Notes

- 1 The other studies published by the Art Law Centre are: *L’expertise dans la vente d’objets d’art, Aspect juridiques et pratiques*, Zürich 1992; Marc Reutter, *Exklusivverträge zwischen Künstler und Händler*, Zürich 1993.
- 2 Cf. as examples: Elizabeth Lee Roberts, *Cultural Policy in the European Community: A Case Against Extensive National Retention*, *Texas International Law Journal* 28 (1993), p. 191; Kimberley A Short, *Preventing the Theft and Illegal Export of Art in a Europe Without Borders*, *Vanderbilt Journal of Transnational Law* 26 (1993) p. 633.
- 3 Maurice and Turnor “The Export Licensing Rules in the United Kingdom and the Waverley Criteria” (1992) 1 *IJCP* 273–295.