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## Problems of art market legal regulation: Russian and foreign experience

Art market is one of product market types, which has its own specific features. If we were to rely on market definition by Kotler, who understood the totality of existing and potential purchasers of the goods as market, then art market items (goods) are cultural property and other items of artistic (cultural and historical) significance. This is a necessary clarification, because art market items may have a different legal status, on the basis of their species, and, most importantly, their implications for science, culture and art, which are made up of many factors (time of creation, authorship, memorability (connection with certain historical events and outstanding personalities), rarity and uniqueness, material, manufacturing technique, state of preservation, need for restoration, size, volume, etc.).

Cultural values as art market objects accompanied mankind since time immemorial. Each era leaves traces of its existence. Largely thanks to material objects which were basis of its culture, and because their significance gradually multiplies, cultural objects became not only objects of historical, aesthetic and artistic value, but also a commodity which has market value, a profitable investment.

Depending on qualities of items which are being sold on art market, they can be separated into following markets:

- antique and contemporary art market (definition of antiques is currently not in the Russian law, as it mentions only antique guns);
- cultural values market, with the inner gradation, and market of art objects, that don't have cultural value status;
- secular and religious objects market;
- movable and immovable objects market;
- art works market, arts and crafts, antique engraving, designer graphics, books (bibliopolical auction "Litfond" in Moscow sold lifetime edition of Alexander Pushkin works in "Herald of Europe" magazine from 1814 for 2.5 million rubles, "Dark Alleys" by I.A. Bunin, 1946 edition, signed by author - for 1 million rubles, a rich collection of N.S. Gumilev works with a few of his autographs - for 5.5 million rubles);
- photographs (Internet auction "RR Auction" put up for sale that scandalous picture of Princess Diana, showing her sitting on the lap of unknown man and reading a book, though by this time she was already officially engaged to Prince Charles; photo sales of such masters as Joseph-Philibert Girault de Prangey were held at Mac-

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Dougall auction, whose picture of Jupiter temple in Athens was sold in 2003 for nearly 1 million. euro, as well as Russian photographers A. Greenberg, M. Alpert, J. Baltermants, A. Khlebnikov and Rodchenko);

- archaeological (paleontological) items, jewelry made of precious metals and precious stones, furniture, weapons, film posters, historical documents, letters and manuscripts ("Litfond" auction has sold an M.A. Bulgakov letter, which he wrote to his wife under disguise of cat for 500 thousand rubles, and writing-book with handwritten poetic translations of different authors made by Anna Akhmatova - for 2.9 million rubles), geographical maps (at TEFAF there was a sale of most expensive geographic map to date - plan of New York harbor from XVI century, worth 10 million US dollars), items from the fields of bonistics, philocarty, philately, phillumeny, numismatics, faleristics, military items, ticket collectibles, old periodicals, autographs, cars (in autumn of 2016 at "Jewels in the Crown" auction a sale of car Audi Quattro is expected, which belonged to Princess Diana, one that Lady D has bought in London in 1994, and which is valued at 70 thousand US dollars) and other items of science and technology, garments, shoes, accessories and sports equipment items (famous American actor S. Stallone sold the gloves of legendary boxer Muhammad Ali at Heritage auction, autographed by boxing legend, and a helmet of three-time "Formula 1" world racing champion Ayrton Senna, for 47 500 and 43 750 US dollars respectively), wine, etc. Same collection may contain very different objects with varying type, cultural significance and value. For example, in November 2016 in London, at the famous Sotheby's there was an auction which sold a collection of musician and artist David Bowie - a total of 400 items (from paintings valued for more than 1 million euros, to the less costly items)<sup>2</sup>.

Currently, global art market turnover involves astronomical sums: if in 2002 its total volume amounted to 26.7 billion euros, then in 2006 this amount increased to 43.3 billion euros. From 2002 to 2006, sales in this market increased by 95% of the turnover in terms of value, and by 24% in number of deals. Today, the capital intensity of the art market is estimated at 30-40 billion Euro. Largest area in the structure of the global art market is the United States of America - they account for 46% of total turnover, which is estimated at 20 billion euros. Europe became second major area of art business, where United Kingdom is unequivocally dominating, the UK, and its nearest competitors are France and Germany.

According to other sources, three countries who dominate the global art market are the same United Kingdom, United States and China, together comprising 83 percent of the market. India, Brazil, Russia, Turkey, Mexico and many other countries from the "rest of the world" together provide only 1% of art works sales. Over the past 25 years, exports grew by 500%, and two-thirds of this amount correspond to two countries: United States and United Kingdom. From 3119 of most significant art works private collectors, using data from Larryslist.com, 63% live in North America or Europe, 24% - in Asia. Latin America and the Middle East is home to 8% and 5% of private collectors, and Africa only to 0.1%<sup>3</sup>.

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<sup>2</sup> S. Yankina. David Bowie collection will be sold // <http://www.theartnewspaper.ru/posts/3266/>

<sup>3</sup> O. Weltheis. There is no global art market. // <http://www.theartnewspaper.ru/posts/1974/>



Art market, like any other, is very sensitive to all external factors affecting it. In particular, its geography and participants are directly related to the overcoming of political and military tensions in a particular region and relations between different countries. For example, after reaching an agreement on the Iranian nuclear program and removal of UN sanctions on the country, major European museums began to show a keen interest in objects of Iran's cultural heritage. Victoria and Albert Museum is preparing a large-scale exhibition devoted to this heritage, and Berlin will host an exhibition of Tehran Museum of Contemporary Art, whose collection includes works by Picasso, M. Rothko, V. Kandinsky, J. Pollock, A. Warhol and F. Bacon, as well as works of Iranian painters.<sup>4</sup>

Contemporary art market is sufficiently capital intensive, and its items can be sold at a very high price. For example, the scandalous statue of kneeling Hitler, work of contemporary Italian artist M. Cattelan, made of rubber and wax, was sold at Christie's auction in New York for 17 million US dollars.<sup>5</sup> Canvas by American painter, a native of Russia, Mark Rothko (Marcus Rothkowitz) "Orange, Red, Yellow" (1956) was sold in 2012 at Christie's auction in New York for nearly 87 million US dollars, which set a record for the works of contemporary art<sup>6</sup>.

Studying the Russian art market is difficult, because in comparison with American and European it is very small and located mainly in the shadows, but nevertheless it is actively developing. 2004 and 2005 witnessed an increase in imports of cultural values to Russia. According to official figures, it was 6.6 million and 12.2 million Euros respectively, and many researchers have linked this fact with the abolition of 18 percent duty on cultural property import by private entities. Largest volume of exports was recorded in 2002 - 6.5 million Euros.<sup>7</sup> According to the contemporary art market report "InArt 2016", last three years saw roughly equal distribution of modern Russian art sales between the western auction houses (Sothebys, Christie's, Phillips, MacDougall's, Shapiro, Van Ham Kunstauktionen) and Russian (Vladey and "Sovkom"). During last ten years, auction houses bidding (major Western ones and two Russian) included work of only 240 contemporary Russian artists. Over the past year (July 2015 - June 2016), volume of sold works of Russian artists was around 2.5 million Euros (global contemporary art sells during this period were about 1.7 billion US dollars)<sup>8</sup>.

Objects of Russian art are valued pretty high at the largest auctions. In 2003, the "Sotheby's" auction sold Russian art and antiques items worth a total of 19.5 million US dollars, which is six times more than in 1993, and in 2008 - for a total value of 21.1 million British pounds. Vice-president of "Sotheby's" once mentioned: "Russian art is in demand once again. There are several reasons: recognition of new Russian masters in the West, their

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<sup>4</sup> G. Harris. After abolition of sanctions, Europe is interested in art of Iran // <http://www.theartnewspaper.ru/posts/3280/>

<sup>5</sup> Statue of kneeling Hitler went for 17 million US dollars // <https://news.mail.ru/society/25712495/?frommail=10>

<sup>6</sup> Mark Rothko canvas sold in USA for the record \$86,9 mln. // <http://news.mail.ru/society/8890876/frommail=1>

<sup>7</sup> Art-business without Russia

<sup>8</sup> T. Markina. Russian modernism flexed its muscles. // <http://www.theartnewspaper.ru/posts/3406/>



frequent exhibitions and, of course, the growing interest on the part of wealthy Russians to their native art"<sup>9</sup>.

Six main questions of art market: a) authenticity of art market items (goods) (no one is protected from the acquisition of "fake", even "powers that be". Russian billionaire Viktor Vekselberg has filed a lawsuit against the auction house Christie's, where he bought B. Kustodiev painting "Odalisque" for 2.9 million US dollars, which was proved to be forgery later.<sup>10</sup>); b) conveyance of these items (depending on their characteristics, they may be in limitless or limited circulation); c) origin (provenance, legal "purity") of these items; d) presence of real rights on the acquisition and disposal of these items on both buyers and sellers sides, or their representatives; e) origin (provenance, legal "purity") of funds, which will be used for purchase; e) balance of public and private interests, when, on the one hand it represents a successful and lucrative market turnover of such items, and on the other - the preservation of country's cultural heritage and unacceptability of its "squandering" and impoverishment.

As it is known, binding participants in the art market (as well as any other) will seller and buyer, and "main" legally significant effect on the art market is buying and selling items of such a market. However in reality, number of these participants (subjects) and legal actions will be much greater.

Subjects (participants) of art market can include a variety of natural and legal persons:

- creators (authors) of cultural values (for example, living painters, sculptors, etc.), whose works are in commercial demand. It is worth mentioning in this matter 13-year-old artist from the United Kingdom Kieron Williamson, who thanks to his talent (British press calls him "little Monet") has become a millionaire despite his young age (most expensive Kieron's painting was estimated at 45 thousand British pounds' sterling);<sup>11</sup>
- owners who wish to sell, with profit and often urgently, their legally owned cultural values that may be the only source of income in a very critical life situation (well-known collector David Yakobashvili, criticizing the Federal law draft "On Circulation of Cultural Property on the territory the Russian Federation", told about how was left without funds at 18 years old, and only selling of a few antique items allowed him to avoid hunger)<sup>12</sup>;
- collectors (natural persons), who enlarge their collections through legitimate acquisition of various art market objects (five Russians entered the top-200 of world's leading collectors: Roman Abramovich, Daria Zhukova, Vyacheslav Kantor, Leonid Mikhailson and Dmitry Rybolovlev. For example, total value of Abramovich and Zhuko-

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<sup>9</sup> V. Vasilyeva. Specified works.

<sup>10</sup> O. Samofalova. Viktor Vekselberg sues Christies for selling a forgery// <http://www.rb.ru/topstory/society/2010/07/19/134340.html>

<sup>11</sup> <https://deti.maik.ru/news/13-letnij-hudoznik-stal-millionerom/>

<sup>12</sup> M. Semendyaeva. Law drat «On Circulation of Cultural Property» wont be included in State Duma schedule // [www.theartnewspaper.ru/posts/2624/](http://www.theartnewspaper.ru/posts/2624/)



va art collections is estimated at 10.7 billion US dollars.<sup>13</sup> Some works from collection of businessman Vladimir Logvinenko are located at Tretyakov Gallery and Hermitage, including some works by Rubens<sup>14</sup>).

- experts who perform attribution presented for objects of the art market intended for sale or publishing, that indicates subject authenticity (for example, during transaction of purchase and sale of these items);
- appraisers, who determine the monetary value of art market objects (Federal law "On appraisal activity")
- art-dealers (natural persons);
- antique shops (in Russia antiques trade does not require licensing, as before);
- art galleries;
- auction houses (total turnover of Christie's auction house for the first six months of 2015 totaled \$ 4.5 billion, while its main rival, Sotheby's is at \$ 3,2 billion.)<sup>15</sup>;
- museums (Private museums are actively functioning today, including in Russia. Such as the International Numismatic Museum, the foundation of which is a collection of coins owned by President of OJSC "Lukoil" Vagit Alekperov<sup>16</sup>);
- corporative «museums»;
- corporate collectors (commercial organizations, including major banks, hotels who gather their corporate collections, often under curator leadership. German Deutsche Bank (its collection is about 60,000 works), Dutch bank Van Lanschot NV (its collection is established in 1850 and includes works by Rembrandt and Vincent Van Gogh), the Swiss bank of Credit Suisse (collection of modern art by young Swiss artists), Russian Gazprombank (collection set up in 2011 and has 600 works by contemporary Russian artists, with the curator of the collection of M. Sitnina noting that about 90% of corporate collections in the world focus on contemporary art)<sup>17</sup>;
- religious organizations (usually purchase religious cult objects);
- insurers;
- owners of shopping centers, who purchase items of art market to raise the prestige of their institutions, and to sell them within the centers (sometime in the late 80-s of

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<sup>13</sup> A. Novikova. Artnews included five Russians in top-200 of collectors// <http://style.rbc.ru/view/art/>

<sup>14</sup> Y. Malakhova. They fought for Rubens (interview with V. Logvinenko) // <http://www.rg.ru/2004/03/11/logvinenko.html>

<sup>15</sup> T. Markina. Christie's reported six months of records // <http://www.theartnewspaper.ru/posts/1900/>

<sup>16</sup> A. Fedorov. Vagit Alekperov coin collection will be for everyone to see, albeit after registration.// <http://www.theartnewspaper.ru/posts/2186/>

<sup>17</sup> T. Markina. The bigger the company, the more contemporary art it likes // [www.theartnewspaper.ru/posts/2115/](http://www.theartnewspaper.ru/posts/2115/); M. Kramer, Marina Sitnina: «In order to showcase entire collection, we would need at least Manezh // THE ART NEWSPAPER RUSSIA digest. 09.06.2015; A. Savitskaya. Only young and Swiss. // [www.theartnewspaper.ru/posts/2142/](http://www.theartnewspaper.ru/posts/2142/)



last century "museums" appeared in large department stores, which sold the works of famous artists, including Pablo Picasso and Bernard Buffet, and now the Chinese company K 11 operates in the same way, calling their stores "art malls" and promising to open 17 more similar malls<sup>18</sup>;

- hoteliers of a premium class, purchasing art market items for decorating rooms, including furniture and fine art;
- renovators;
- art market investors;
- other participants (private security company providing security during the exhibition, transport, storage; art detective, searching for the missing and stolen items; creators of the database of the missing, lost and stolen cultural objects, etc.).

State can also be participant, represented in its authorized bodies and having, for example, the right to pre-emptive purchase when exporting valuables overseas. States may be party to, even indirectly, the art market and due to inter-state relations on cultural valuables, which were moved from one country to the other and stored in museums in times of armed conflict, war, or as a result of other legally questionable or controversial action. This is a global problem that leads to a diplomatic conflict and the deterioration of bilateral relations.

For example, differences arose and still arise between Poland and Germany, between Italy and the US, between the US and Spain, etc.<sup>19</sup>.

Number of legally significant actions in the art market, made by its subjects (participants), is a market turnover of its objects. This turnover includes: production, storage, possession, transportation, transfer, sale, distribution, purchase, use, insurance, import into the territory of the country, export of art market objects from the country's territory, publication of such objects (this list is obviously not exhaustive). Functioning of any market, including the art market, is unthinkable without a proper legal regulation, since all its components (market products, market participants, market turnover as a whole and its separate stages) have their own legal status and legal regime. It is obvious that lack of a clear legal regulation of this market involves substantial negative consequences, and even more: even presence of well-developed legal framework for art market and balanced use of relevant rules by courts cannot completely overcome the legally bad conduct on it (global and regional "shadow" art market, where objects obtained by criminal means are sold and purchased, is just another proof).

Legal regulation of art market is made through norms of both private and public law:

- **constitutional** (Main Russian Law declares cultural rights as a variety of human rights, including the right of access to cultural values, freedom of entry and exit,

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<sup>18</sup> Georgina Adam. Art market: five predictions on 2016// [www.theartnewspaper.ru/posts/2612](http://www.theartnewspaper.ru/posts/2612)

<sup>19</sup> M.M. Boguslavsky. Cultural values in international turnover: legal aspects. M.: Jurist. 2005. page 34.; N. Paklin. Without time limits. Redistribution of cultural values becomes a cause of political conflicts between countries. // <http://www.rg.ru/2007/08/31/polska.html>



guarantees inviolability of property, freedom of enterprise and establishes possible limitations of certain rights. It is easy to notice that the observance and protection of above mentioned rights directly affect operations and profitability of art market. Albania, Venezuela, Vietnam, Italy, Spain, China, Germany, Cuba, Portugal, all the CIS member states<sup>20</sup> and other countries, which differ among themselves on political and economic grounds, secure the right to use cultural values and duty to protect them in their constitutions);

- **international public and international private** (Global, regional, national and any foreign art market is impossible without its regulation by rules of international law and provisions of international agreements, both bilateral and multilateral. Among the most important sources of international law on this subject there is Universal Declaration of Human Rights of 1948, International Covenant on Economic, Social and Cultural Rights of 1966, Hague Convention on protection of cultural property in the event of armed conflict of 1954 and its two Protocols, Convention of the World cultural and natural heritage of 1972, Convention on the Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property from 1970, and the UNIDROIT Convention on stolen or illegally exported cultural property, 1995 European Convention on Offences relating to cultural property, 1985 European Convention on the protection of archaeological heritage, 1992 Customs Code of the Customs Union, European Union Directive №3911/92 from 09.12.1 and many others);
- **civil** (Art market transactions, completed in a form of purchase, sale, exchange, donation, lease, mortgage, etc., and their notarization are governed by civil law. Conveyance of art market items and the restriction of such a circulation is also set primarily by the industry, depending on value of items, their species, features of the legal order, and other circumstances. Acquisition of ownership rights to art market object may occur, for example, during the discovery of treasure: once, in the attic of private house in the south-west of France, there was an accidental discovery of "Judith and Holofernes" painting, presumably by the hand of Caravaggio, which had lain in the attic for at least half a century, and that can cost up to 120 million euros. During examination of painting by Louvre specialists, French government banned export of paintings from the country. At the end of March 2012 in St. Petersburg, in reconstructed mansion of the XVIII century, a treasure was found, which contained more than 2000 items. It was related, most likely, to the year of 1917, and may have belonged to one of the branches of Naryshkin family line);<sup>21</sup> .);
- **intellectual property rights** (Creator's copyright on object (product) of the art market, its transfer to anyone under the existing legislation on copyright and related rights, as well as the proprietary rights of object creator);

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<sup>20</sup> Constitutions of CIS member States. – M.: NORMA publishing house, 2001.

<sup>21</sup> Three owners could claim Naryshkin treasure // [http://nwes.mail.ru/inregions/st\\_petersburg/91/society/8648914/?frommail=1](http://nwes.mail.ru/inregions/st_petersburg/91/society/8648914/?frommail=1)



- **family** (problems from the field of property, jointly acquired during marriage, including objects of art market or collection of objects, and ability or inability to use jointly acquired objects of art market without the consent of the spouse);
- **customs** (Most important problem of any art market, regardless of geography, is the possibility (or limited possibility) or the inability to export or import objects of the art market. For example, a new draft of the German Law on Cultural Property, published on 1st of October 2015, and designed to prevent the exports of national heritage from Germany, resulted in opposite effect: owners of cultural values begun selling or exporting the most important objects abroad en masse. According to the owner of the auction house "Lempertz" Henrik Hanstein, art valued at 100 million Euros have already moved from Germany to Belgium. Owner of other German auction house, Ketterer Kunst, Robert Ketterer adds: "authorities would have wept, if only they knew how many works of art have left the country". According this draft, export of any art piece over 70 years with cost more than 300 thousand Euro will require a special permit, even within the European Union. Permits for the exports of works recognized as a national treasure will not be issued, and the State does not intend to compensate for financial loss to owners of such property, by offering the amount that foreign buyer could pay for them.<sup>22</sup>).

Problems of customs duties payments for the import/export of art market objects, and their sums also have a direct impact on art market);

- **corporative** (Corporative collection or investment activities of corporations in the art market is impossible without compliance with corporate law, particularly in the case of decision-making on the acquisition or disposal of these items. Because conditions of the legitimacy of the transactions made by corporations must be upheld, depending on their organizational and legal form);
- **insurance** (In the Russian insurance market segment, that is serving the art market, in addition to the traditional insurance services to the art market objects related to impact of various negative factors (destruction, damage, theft, etc.), there appeared a new insurance service, related to attribution of works of art, i.e., expert insurance service from errors in determining the authenticity of an object, which is presented for attribution<sup>23</sup>);
- **business** (The art market involves proceeding with business activities, and legal status of its participants is reflected in the norms of business law);
- **banking** (Banks are not only involved in functioning of art market as corporate collectors, but also provide banking products, based on customer service investments in works of art and related services (consulting, information and analysis, etc.); such direction as art-banking is being developed by one of the leading domestic banks -

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<sup>22</sup> Y. Mikhalskaya. Art works are being urgently exported from Germany, while new law has not banned it yet// <http://www.theartnewspaper.ru/posts/2613/>

<sup>23</sup> I. Pulikova. No room for failure. // <http://www.theartnewspaper.ru/posts/2895/>



Gazprombank<sup>24</sup>; while providing the loan, holder of which is a bank, cultural values can be subject of pledge, but with some exceptions);

- **administrative** (Problems of administrative responsibility for offenses in respect of objects of the art market and its entities, licensing of certain types of collectibles, as well as issues of legal regulation of state bodies activities, who are authorized to monitor the art market and its participants.);
- **labor** (Failure or improper performance of art market participants' workers, as well as other illegal actions of such employees, directly influence the development of art market. Rights and obligations of such workers can be binded in a variety of sources of labor law, including local acts. For example, neglect of employees of seller organization to verify the authenticity of an object which sold by them, can have negative consequences for both seller and buyer, and for entire market as a whole).
- **tax** (US government intends to conduct an audit of private museums, which were opened by patrons and have the appropriate tax relief, but do not conduct an active museum activity. Italy and UK citizens can pay taxes not in the form of a cash payment, but by transferring their existing cultural values to the State, which undergone appropriate assessment<sup>25</sup>.);
- **information** (Important condition for successful functioning of art market is its proper information support, given the fact that interested actors of art market are obliged to trace the origins of transaction objects, funds, which will have used to pay for them, and the powers of its counterparties to use these funds. Art market actors must comply with the so-called due diligence process, that is a fair presentation of commodity, transaction parties, money paid and other risks on basis of obtaining and analyzing all possible information on the above objects before transaction.<sup>26</sup>. Naturally, this procedure must comply with the law. for example, Russian Constitution prohibits the collection, storage, use and distribution of information about private life of a person without his consent, and, at the same time, everyone has the right to seek and freely receive, transmit, produce and distribute information by any legal means. Today, there is a number of special databases (one of the most famous - Art Loss Register), use of which makes it possible to obtain information about art dealers, collectors, things that are listed for sale that could be stolen or lost, and avoid many of the risks, in particular, the acquisition of ill-gotten objects on the art market, which could entail legal responsibility, return of purchased items to the rightful owner, inability to export items from country where it was purchased, etc.<sup>27</sup> At the same time, it is discouraged to abuse the right to seek and receive in-

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<sup>24</sup> The Art Newspaper Russia magazine assessed Marina Sitnina success, who is responsible for art banking in Gazprombank // <http://www.gazprombank.ru/private-banking/info/news/533484>

<sup>25</sup> Italians begun to pay up taxes by cultural heritage objects // <http://tass.ru/kultura/1505275>

<sup>26</sup> Swiss act to limit traffic of illicit goods // [www.swissinfo.ch/eng/index.html?siteSect=105&sid=5826790](http://www.swissinfo.ch/eng/index.html?siteSect=105&sid=5826790)

<sup>27</sup> M. Gerlis. How do they make money on stolen art databases? // <http://www.theartnewspaper.ru/posts/2742/>; R. Corbet. New online service will help newcomers to the world



formation. Not so long ago, the Russian community of art market participants, majority of them at least, very negatively reacted to draft of Federal law "On Circulation of Cultural Property in the Russian Federation", which provided for mandatory certification of all cultural values, as a necessary condition of their legitimate conveyance, and entering data on them, as well as their owners in a special "Register of objects of cultural values". Criticizing the provisions of this bill, Mikhail Kamensky, former director of Sotheby's Russian branch, has said: "This project not only encroach on our professional sphere, but on the whole personal, intimate world of our country". He also suggested that a database with information about the collectors, if established, will be sold the next day at all intersections with other government stolen bases.<sup>28</sup>);

- **criminal** (Problems of criminal responsibility and punishment to those, who committed crimes against interests of art market, its products and participants, including the legalization of money or other property, knowingly obtained by illegal means. Questions of exemption from criminal liability due to legal uncertainty, and because of socially useful activities, even with formal signs of any acts prohibited by criminal law (like non-gratuitous acquisition abroad of cultural values, kidnapped in their original country, and their return to their homeland); problems of necessary defense for art objects from socially dangerous encroachments; problems of complicity in crimes, encroaching on art market, etc.).

Analysis of criminal legislation from 38 countries, excluding Russia, allowed to offer the following criminal system, where the cultural values, as art market objects, act as a mandatory feature of an offense: 1) Illegal export of cultural valuables abroad without special permission, or export of cultural valuables which was not registered (e.g., legislation of Bulgaria, Germany, United Kingdom, Italy, Poland, Mexico); 2) Theft of cultural valuables in various forms, including theft and fraud (for example, laws of Austria, Germany, Italy, Kazakhstan, China); 3) Destruction of or damage to cultural values, both deliberate and careless (Austria, Azerbaijan, Armenia, Belgium, Denmark, Spain, Lithuania, Uzbekistan); 4) Violation of special rules during production of various kinds of work (repair, construction, etc.), resulting in destruction or damage of cultural valuables, especially real estate (legislation of UK, Spain, Italy, Portugal); 5) Illegal archaeological excavations (e.g., the Bulgarian legislation, Italy, China, Estonia); 6) Violation of a special order of alienation of cultural values (for example, Bulgarian legislation, Italian, Chinese); 7) Smuggling of cultural values (e.g., the legislation of Armenia, China, Moldova); 8) Misappropriation of discovered cultural values or failing to report such values to the State (e.g., legislation of Bulgaria, Spain, Ukraine); 9) Failure to return temporarily exported cultural values to the territory of owner State, when their return is required (e.g., the legislation of

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of arts. // <http://www.theartnewspaper.ru/2787/>; INTERPOL creates online access to global stolen works of art database to reduce illicit trade // <http://www.interpol.int/Public/ICPO/PressReleases/PR2009/PR200978.asp>;

<sup>28</sup>T. Marina., I. Pulikova, N. Semendyaeva. Art market was pulled into the circulation. // <http://www.theartnewspaper.ru/posts/2617/>; M. Semendyaeva. draft of Federal law "On Circulation of Cultural Property" won't be presented to State Duma // <http://www.theartnewspaper.ru/posts/2624/>



Azerbaijan, Bulgaria, Georgia, Kyrgyzstan, Belarus, Tajikistan); 10) War crimes, when encroachment cultural property is a violation of the norms and rules of war and armed conflicts (e.g., legislation of Armenia, Bulgaria, Georgia, Spain, Lithuania, Poland); 11) Other crimes that infringe on the cultural values, for example, knowingly unlawful approval by the official of a project, which is aimed at demolition of buildings or structures that are considered as cultural values (the Spanish Penal Code);

- processual and other.

Thus, we can safely say that mechanism of legal regulation of the art market is comprehensive and integrates the standards of many branches of law. Hence the need for high-quality legal education (or, at worst, a thorough legal "literacy") for participants in the art market, level of requirements for which has significantly increased in modern period<sup>29</sup>. In particular, one of financial co-operation forms, affecting the movement on art markets, and requiring strict legal regulation, is the so-called crowdfunding - collective cooperation of people (donors) who voluntarily pooling their money or other resources together, usually via the Internet, to support the efforts of other people or organizations (recipients)<sup>30</sup>. Thus, eight thousand residents of United Kingdom have invested 1 million Euro in the purchase of a portrait of Elizabeth I, created around 1590, which in addition to involvement of other funds allowed keep the painting in UK at the Royal Museums of Greenwich.<sup>31</sup>

No less relevant is the issue of legal regulation of so-called free-ports, which are the storages, depositories of "infinite" resources, including objects of art market. Approximate cost of such objects, stored in the free-port, according to the European Salon of Fine Arts is about 100 billion US dollars. Largest free-ports are located in Singapore, Luxembourg and Switzerland. Just in Geneva, free-port stores a number of art works estimated at 1.2 million units. On free-port territory there are tax or customs duties. Owners of assets which are stored in these "depositories" do not need to pay any export or import payments, and trade transactions with art objects on the territory of free-port are not subject to taxation. Such value storages sometimes even called offshore companies at "home".<sup>32</sup>

In turn, sources of law which govern the art market (we are talking now primarily about its Russian segment) and its behavior are very diverse: universally recognized principles and norms of international law and international treaties of Russian Federation, as well as international customs, the Constitution of the Russian Federation, Federal constitutional laws, Federal laws (codified and uncodified), Federal regulations (President of Russian Federation acts and acts of Government of Russian Federation), interdepartmental and departmental regulations, local acts, laws of subjects of Russian Federation. Great im-

<sup>29</sup> «Level of requirements to art market specialists is increasing.». Interview with M. Kamensky. Recorded by E. Kuznetsova. // <https://www.hse.ru/news/48450241.html>

<sup>30</sup> <https://ru.wikipedia.org/краудфандинг>

<sup>31</sup> M. Bailey. British people helped to buy out Elizabeth I portrait for State// <http://www.theartnwnespaper.ru/posts/3299/>

<sup>32</sup> S. Bradley. Free port: personal treasury chest for rich people. // [http://www.swissinfo.ch/rus/business/Free\\_ports\\_-\\_modern\\_treasury\\_chests\\_for\\_keeping\\_valuables.](http://www.swissinfo.ch/rus/business/Free_ports_-_modern_treasury_chests_for_keeping_valuables.) // <https://wealthoffshore.net/freeports-worldwide/freeports-the-modern-treasure-for-value-storage/>



portance for regulation of art market lies within Russian higher courts orders on related issues<sup>33</sup>.

To means of legal regulation of global, regional, foreign and national art markets we can attribute, under certain conditions, the decisions of international judicial bodies, if they are binding. In some specific cases, on the territory of one State rules of law of another State may apply. Ethical codes, adopted by professional communities of participants of the art market, as well as international organizations, play their role in regulation of art market, despite the fact that such codes are not binding by their legal nature.<sup>34</sup>

Framework of one, even the most voluminous article, cannot cover all aspects related to the legal regulation of art market. That's why author invites all interested professionals to discussion. Civilized and legitimate art market plays an important role in the so-called system of "cultural diplomacy" and contributes to the cultural, political and economic cooperation of different nations and countries.

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<sup>33</sup> M.M. Boguslavsky. International private law. Textbook. 7-th edition, reworked and supplied with additions. M.: Norma: INFRA-M. 2016. C. 80-81.

<sup>34</sup> M.M. Boguslavsky. Cultural values in international circulation. Page 388.