

# CULTURAL PROPERTY PROTECTION IN CHINESE LAW

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## 1. INTRODUCTION

China is one of the biggest states that are a source of cultural property in the world and a repository of a big number of unrevealed relics, the historic continuity of which lets one understand the process of development of humanity and civilisation from prehistoric to contemporary times. However, since the middle of the 19th century until now, China has been systematically losing this priceless heritage, either due to plunder or illegal sale or purposeful or accidental damage.

A big part of Chinese cultural property has been dispersed all over the world. Altogether, outside China, inter alia in the United States, Europe and the region of South-East Asia, over ten million relics, including ca. one million first- and second-class items of cultural property can be found.<sup>1</sup> The British Museum alone possesses 23,000 Chinese exhibits. Despite a series of amendments to law that the People's Republic of China has introduced in the field of the protection of cultural property in recent years, the threat of losing the Chinese cultural property is still real.

With the acceleration of reforms and the departure from planned economy, a multi-century tradition of the Chinese market for antiquities showing the Confucian cult and respect for the past has revived.<sup>2</sup> As early as in the period of the Song dynasty (960–1279) it was fashionable to collect ancient bronzes, which was

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<sup>1</sup> Z. Liu, *Repatriation of Cultural Objects: The Case of China*, University of Amsterdam, 2015, p. 25.

<sup>2</sup> In the Chinese language, antiques are called *guwan* 古玩, which means an object that is old and significant; and particularly a word *wan* means something good for fun. But there are also antiques that are museum exhibits, which are called *wenwu* 文物. The word symbolises cultural heritage in a broader meaning.

described in specialist literature, and with the growth of prosperity in the late 16th century, collecting antiques stopped being higher classes' entertainment and involved a wide range of consumers.<sup>3</sup>

Today, thanks to dynamic economic growth, demand for both ancient and contemporary Chinese art is systematically increasing and more and more Chinese people can develop their interest in antiques. Ceramics, paintings, bronzes, coins, fossils or old books are offered on bazaars, in antique shops and auction houses.

At present, a series of over 300 statutory provisions and regulations and over 130 national standards constitute the basis of the authorities' policy on cultural property protection.<sup>4</sup> In accordance with the guidelines issued by the Communist Party of China Central Committee and the State Council, plans for further reforms are developed.

## 2. LEGAL SYSTEM

The most powerful legal act in the Chinese system of sources of law, which introduces fundamental provisions concerning the protection of relics, is the Constitution of the People's Republic of China and the most important statute that comprehensively regulates the protection of cultural property is the Law of the People's Republic of China on the protection of cultural relics.<sup>5</sup> Moreover, in the Chinese legal system there are series of more detailed norms developed by government agencies at different levels aimed at satisfying current needs connected with the protection of particular types of relics or introduction of particular protective measures.

The protection of cultural property in China uses instruments from various branches of law as well as has guarantees in the form of criminal law provisions; thus, reference to protection of cultural relics can be found in property law, criminal law, law on administrative penalties and administrative procedure law. Some provisions concerning relics can also be found in auction law, contract law and forestry law, and they are of considerable importance for their protection.<sup>6</sup>

In the context of dynamic social changes and new threats to cultural property resulting from them, the Chinese government undertakes necessary steps, which results in local and departmental administrative regulations. Administrative provisions concerning the protection of relics include the following acts: the Regulations for the implementation of the law of the People's Republic of China on the protection of cultural relics of 2003, the Regulation on the protection of the Great Wall

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<sup>3</sup> M.L. Dutra, *Sir, How Much is that Ming Vase in the Window?: Protecting Cultural Relics in the People's Republic of China*, *Asian-Pacific Law & Policy Journal* Vol. 5, 2004, p. 69.

<sup>4</sup> [http://www.china.org.cn/china/Off\\_the\\_Wire/2020-01/10/content\\_75600657.htm](http://www.china.org.cn/china/Off_the_Wire/2020-01/10/content_75600657.htm).

<sup>5</sup> [http://www.npc.gov.cn/wxzl/gongbao/2015-08/10/content\\_1942927.htm](http://www.npc.gov.cn/wxzl/gongbao/2015-08/10/content_1942927.htm); [http://www.gov.cn/guoqing/2018-03/22/content\\_5276318.htm](http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm).

<sup>6</sup> Auction Law of the People's Republic of China: [http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content\\_4664.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4664.htm); Forestry Law of the People's Republic of China: [http://www.gov.cn/banshi/2005-09/13/content\\_68753.htm](http://www.gov.cn/banshi/2005-09/13/content_68753.htm); Contract Law of the People's Republic of China: [http://www.gov.cn/banshi/2005-07/11/content\\_13695.htm](http://www.gov.cn/banshi/2005-07/11/content_13695.htm).

of 2006 and the Regulation on the protection of famous historic cities, towns and villages of 2008.<sup>7</sup>

Departmental provisions concerning the protection of relics are developed in accordance with administrative regulations and directives of the State Council mainly by the departments of the Ministry of Culture, the Ministry of Development and other institutions of the State Council based on their powers and in order to protect real property connected with culture and to manage it. These include interim regulations concerning administrative penal procedure in cases connected with relics formulated by the National Cultural Heritage Administration (2005), the Interim Administrative Measures for Recognition of Cultural Relics (2009)<sup>8</sup> and the Rules on the Administration of Archaeological Excavations (1998)<sup>9</sup> as well as the Administrative measures for the protection of world cultural heritage (2006).<sup>10</sup> In 1994 the Ministry of Development and the National Cultural Heritage Administration adopted 'preliminary requirements' concerning historic cities. In addition, there are also regulations concerning the administration of 'purple lines' aimed at protecting historic architecture, introduced by the Ministry of Development in 2003 and rules on protecting historic cities introduced in 2005.<sup>11</sup>

Local regulations include legal documents developed by the Local People's Congresses and their standing committees in provinces, autonomous regions and counties, which are subordinate directly to central authorities. Those documents, issued in accordance with legislative jurisdiction, constitute a response to the economic situation and practical regional needs. It should be added that the number of local regulations concerning the protection of relics is enormous.<sup>12</sup>

People's Congresses and their standing committees as well as big cities also established legal norms in order to protect relics on their territory.

Local regulations concerning the protection of relics are divided into three categories:

- 1) Regulations concerning comprehensive protection of all immovable relics, inter alia regional ones, that include the regulations of the provinces of Fujian and Shaanxi and the autonomous region of Guangxi Zhuang,<sup>13</sup>
- 2) Regulations concerning specific categories of relics, including the regulations of the province of Sichuan concerning the protection of facilities listed as world heritage,<sup>14</sup> measures of protection of historic and cultural elements of the landscape of the city of Beijing and the province of Shandong,<sup>15</sup> the regulations of the autonomous region of Ningxia Hui concerning rock art,<sup>16</sup> measures of

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<sup>7</sup> R. Chai, H. Li, *A Study on Legislation for Protection of Cultural Relics in China: Origin, Content and Model*, Chinese Studies 8, 2019, p. 133.

<sup>8</sup> <http://www.lawinfochina.com/display.aspx?lib=law&id=8207&CGid=>

<sup>9</sup> <http://www.waizi.org.cn/doc/61038.html>.

<sup>10</sup> [http://www.gov.cn/flfg/2006-11/23/content\\_451783.htm](http://www.gov.cn/flfg/2006-11/23/content_451783.htm).

<sup>11</sup> R. Chai, H. Li, *supra* n. 7, p. 134.

<sup>12</sup> *Ibid.*

<sup>13</sup> [http://www.npc.gov.cn/zgrdw/npc/zfjc/wwbhfzfc/2012-05/30/content\\_1723724.htm](http://www.npc.gov.cn/zgrdw/npc/zfjc/wwbhfzfc/2012-05/30/content_1723724.htm).

<sup>14</sup> [http://www.china-npa.org/uploads/1/file/public/201804/20180425155032\\_tmg4eo0ff1.pdf](http://www.china-npa.org/uploads/1/file/public/201804/20180425155032_tmg4eo0ff1.pdf).

<sup>15</sup> [https://www.mct.gov.cn/whzx/qgwhxxlb/sd/202001/t20200108\\_850155.htm](https://www.mct.gov.cn/whzx/qgwhxxlb/sd/202001/t20200108_850155.htm).

<sup>16</sup> [http://whhlyt.nx.gov.cn/content\\_t.jsp?id=15903](http://whhlyt.nx.gov.cn/content_t.jsp?id=15903).

protection of historic and cultural elements of the landscape of the province of Guangzhou and the regulations of the city of Nanjing concerning the protection of underground cultural relics,<sup>17</sup>

- 3) Regulations concerning particular relics include the regulations of the province of Fujian protecting Fujian Tulou,<sup>18</sup> the regulations of the province of Gansu concerning the protection of the caves of Mogao in Dunhuang<sup>19</sup> and the rules on the protection of the area of Liangzhu of the city of Hangzhou.<sup>20</sup>

Apart from that, there is a series of regulations, e.g. those concerning the use of historic sites for the purpose of filming or television productions or monitoring construction works on protected cultural heritage sites in the city of Beijing or the regulations of the province of Shanxi concerning the procedure in case of danger posed to the security of cultural heritage sites. It should be added that some of the above-mentioned regulations were developed in cooperation with foreign institutions such as, e.g. the Getty Conservation Institute or the Australian Heritage Commission.<sup>21</sup>

China signed and implemented some international conventions for the protection of relics: the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (The Hague Convention), the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995, and the UNESCO Convention on the Protection of the Underwater Cultural Heritage of 2001, which concerns such cultural heritage objects as cities and ports flooded and remaining under water as well as vessels and their cargo.<sup>22</sup>

### 3. INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF CULTURAL PROPERTY

In accordance with the Law on the protection of cultural relics, the Chinese National Cultural Heritage Administration is an agency responsible for the protection of cultural heritage in China at the national level, and local cultural heritage offices subordinated to local authorities at the county or higher level are agencies involved in the protection of cultural heritage within their administrative territories. The Chinese National Cultural Heritage Administration is not subordinated to the Ministry of Culture and both institutions fulfil their functions independently,

<sup>17</sup> [http://www.jsrd.gov.cn/zyfb/dfg1/201811/t20181128\\_508757.shtml](http://www.jsrd.gov.cn/zyfb/dfg1/201811/t20181128_508757.shtml).

<sup>18</sup> [http://www.gov.cn/gzdt/2008-08/14/content\\_1071876.htm](http://www.gov.cn/gzdt/2008-08/14/content_1071876.htm).

<sup>19</sup> [http://www.gansucrcp.com.cn/content/whfg/201906/06/content\\_291496.html](http://www.gansucrcp.com.cn/content/whfg/201906/06/content_291496.html).

<sup>20</sup> [http://www.nbw.net/pd\\_wwbh/info.aspx?id=1129&type=2](http://www.nbw.net/pd_wwbh/info.aspx?id=1129&type=2).

<sup>21</sup> S. Gruber, *Protecting China's Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law*, Legal Studies Research Paper No. 08/93, the University of Sydney, Sydney Law School, August 2008, p. 275.

<sup>22</sup> *Ibid.*, pp. 256–257.

although the Director of the Chinese National Cultural Heritage Administration at the same time usually holds a position of the Deputy Minister of Culture.<sup>23</sup> The two institutions share competences within the scope of the protection of relics and the Chinese National Cultural Heritage Administration is responsible for the protection of tangible and the Ministry of Culture for intangible cultural heritage. It should be added that at present there are 767,000 immovable relics, 108 million movable relics in national collections and over 5,000 museums in China.<sup>24</sup> Theoretically, the Chinese National Cultural Heritage Administration is a sub-ministry; however, in practice, thanks to its level of independence, it can operate like a ministry.

The system of administrative protection of relics in China is characterised by a high level of decentralisation. In accordance with the statute, historic facilities of various categories are protected at various levels. The Chinese National Cultural Heritage Administration as a national agency of cultural heritage protection is responsible only for cultural heritage facilities that are real property and are under the protection of the state, and movable relics classified as first-class ones. Local authorities at a given level are responsible for other movable and immovable relics depending on their value and class, which means that most cultural heritage objects in China are under the control of local authorities.<sup>25</sup> Customs offices are responsible for the control over import and export of cultural property and in case of violation of customs regulations, they impose penalties. On the other hand, agencies responsible for trade and industry monitor the market for antiques and manage it, and they can impose penalties on legal antique shops and auction houses. Prevention, detection and fight against the smuggling of cultural property are the duties of a special force of the Chinese customs police subordinated to the Smuggling Prevention Authority.<sup>26</sup> The status of the customs police is laid down in the amendment to the Law of the People's Republic of China on Customs of July 2006. On the other hand, the Criminal Code of the People's Republic of China, the Code of Criminal Procedure of the People's Republic of China and the Customs Law constitute the legal basis for its operations.<sup>27</sup> In accordance with Article 47 Chapter VI Customs Law, activities aimed at avoiding customs control, transport and transfer of cultural property abroad is classified as criminal activity.<sup>28</sup> In case of taking abroad items of contemporary art, artistic craft, paintings and calligraphy, and items made from semi-precious stones, a receipt from a shop or a gallery confirming their legal purchase, but sometimes also an opinion issued by the agency for the export of relics, is required. In the case of antiques, it is necessary to obtain permission to take them abroad issued by the agency for export of antiques of the Chinese National

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<sup>23</sup> Z. Huo, *Legal Protection of Cultural Heritage in China: a Challenge to Keep History Alive*, International Journal of Cultural Policy, 2015, pp. 12–13.

<sup>24</sup> [http://www.gov.cn/zhengce/2018-10/10/content\\_5329128.htm](http://www.gov.cn/zhengce/2018-10/10/content_5329128.htm).

<sup>25</sup> Z. Huo, *supra* n. 23, p. 13.

<sup>26</sup> С.Н. Ляпустин, Н.С. Барей, *Антикварный рынок Китая и роль таможенных органов Китая в борьбе с контрабандой культурных ценностей*, Таможенная политика России на Дальнем Востоке № 3(80), 2017, p. 95.

<sup>27</sup> А.М. Николаев, *Борьба таможенных органов КНР с контрабандой*, Таможенная политика России на Дальнем Востоке № 3(68), 2014, p. 110.

<sup>28</sup> С.Н. Ляпустин, Н.С. Барей, *supra* n. 26, p. 94.

Cultural Heritage Administration. Agencies authorised to approve export of relics from China are present in fourteen towns and provinces: Anhui, Beijing, Fujian, Gungdong, Hebei, Henan, Hubei, Jiangsu, Shaanxi, Shandong, Shanghai, Tianjin, Yunan and Zheijiang. In order to obtain permission to take an object abroad, one of those agencies or an authorised expert must examine it. A copy of the permission is a confirmation that an object has been legally taken away from China.<sup>29</sup>

In August 2009, the Ministry of Culture and the Customs Office issued common interim regulations aimed at strengthening operations concerning import and export of art, holding exhibitions of commercial artistic products, promotion of cultural exchange between China and foreign countries, and enriching cultural activity of the people.<sup>30</sup> The regulations extend the scope of control over export and import of paintings, calligraphy, sculptures, textiles, and mass products the number of which does not exceed two hundred items, but with the exception of antiques and artistic craft. In accordance with the regulations that concern also import of art from Hong Kong, Macao and Taiwan, all entities importing or exporting the above-mentioned goods must have a licence issued by the Ministry of Trade, submit to control of cultural authorities and ensure that imported and exported pieces of art originate from legal sources. Applications for permission to do business in the field must be submitted to relevant departments of culture administration at the level of a province, including the departments in autonomous regions and centrally administered cities. Decisions are issued within 15 days from the submission of an application.<sup>31</sup> Foreign commercial organisations that want to organise an exhibition in China must submit an application for permission to the department of culture at the level of a province forty-five days before the scheduled opening of the exhibition but when an exhibition is planned for a period of a hundred and twenty-nine days, it is necessary to obtain permission from the Ministry of Culture.<sup>32</sup>

#### 4. RELIC CLASSIFICATION SYSTEM

China, like some other states (including Japan and South Korea) base the protection of relics on the system of classification.<sup>33</sup> The Law on the protection of relics introduces the system of classification in which all relics are divided into: valuable relics of culture of first-, second- and third-class, and ordinary relics of culture. Their evaluation is conducted based on the Standards of Evaluation of Cultural Relics Collections, which are norms that explain in general terms how the system of classification corresponds to various categories of relics. Objects categorised as first-class are representative relics of culture that have extraordinary historic, artistic or

<sup>29</sup> <https://www.chinabusinessreview.com/the-art-of-importing-chinese-objects/>.

<sup>30</sup> P. Potter, *People's Republic of China Provisional Regulations on Art Import and Export Administration*, *International Journal of Cultural Property* Vol. 18(1), 2011, p. 132.

<sup>31</sup> *Ibid.*, p. 132.

<sup>32</sup> *Ibid.*

<sup>33</sup> [http://english.cha.go.kr/html/HtmlPage.do?pg=/classification/classification.jsp&mn=EN\\_02\\_01](http://english.cha.go.kr/html/HtmlPage.do?pg=/classification/classification.jsp&mn=EN_02_01).

scientific value. The second- and third-class relics and ordinary relics of culture are characterised by 'big', 'relatively big' or 'certain' historic, artistic or scientific value; e.g. ancient legal tenders categorised as first-class relics are of special importance for the history of money in China. In order to take photographs of first-class relics that are owned by cultural institutions for the purpose of publication, the central authorities' permission is required. On the other hand, taking photographs of second- and third-class objects requires that the authorities at the local level approve that.<sup>34</sup>

The above system of classification is also used in criminal law. Export of any relics of culture that were made before 1911 is forbidden. If circumstances of smuggling relics are considerably serious, the offence can be classified in accordance with Article 151 Criminal Code.<sup>35</sup> The system of classification of relics is laid down in the definition of the term 'smuggling of the relics of culture', which can be found in Article 3 of the Explanation of the People's Supreme Court entitled Explanation of some issues concerning the application of law in case of attempted smuggling.<sup>36</sup> The smuggling of up to two third-class relics of culture is treated as the offence of smuggling when the circumstances 'are not serious' and carries a penalty of imprisonment for a period not exceeding five years and a fine.<sup>37</sup> The smuggling of up to two second-class relics or up to eight third-class relics carries a penalty of imprisonment for a period from five to ten years and a fine. The smuggling of one first-class relic or more than three second-class relics, or more than nine third-class relics is treated as the offence of smuggling 'when the circumstances are especially serious' and carries a penalty of life imprisonment, death sentence and forfeiture of property; and after the amendment: a penalty of imprisonment for a period not shorter than ten years or life imprisonment and forfeiture of property.

## 5. HISTORICAL OUTLINE

The first attempts to regulate the issue of protecting cultural property in China are connected with the reign of the Qing dynasty (1644–1912). The decrees issued then protected the sites of historic and artistic importance but the authorities limited their interventions to situations when it was absolutely necessary. At the end of the Manchu dynasty's reign, the then Ministry of Internal Affairs undertook steps to control cultural property in the whole territory of China, and the protection covered such objects as stelas, statues, bas-reliefs, wall paintings, pagodas, temples, emperors' graves, etc. It also ordered an inspection of the existing historic objects, which was connected with the commission of numerous thefts and smuggling of relics by foreigners. However, only after the establishment of the Republic (1911), did specialist legislation treat the protection of cultural property in a comprehensive way. The regulations introduced in 1916 protected antiques classified into five categories:

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<sup>34</sup> T. Lau, *The Grading of Cultural Relics in Chinese Law*, International Journal of Cultural Property Vol. 18(1), 2011, p. 3.

<sup>35</sup> [http://www.npc.gov.cn/wxzl/wxzl/2000-12/17/content\\_4680.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/17/content_4680.htm).

<sup>36</sup> <http://www.people.com.cn/GB/channel1/10/20001009/263204.html>.

<sup>37</sup> *Ibid.*

(1) graves of emperors and famous people; (2) defensive walls, fortifications, temples and pagodas, caves, old bridges, wells, etc.; (3) stelae, statues, and bas-reliefs; (4) old trees such as pines from the time of the Han dynasty and plum trees from the Tang period; (5) paintings, calligraphy, objects made of bronze, gems, bamboo, porcelain, silk, etc. In 1928 the National Government appointed the Central Committee for Cultural Property Protection, which was the first specialist agency for managing the cultural heritage of China.

The first Chinese statute regulating the protection of relics was passed on 2 June 1930.<sup>38</sup> A dispute over the right to artefacts found during archaeological excavations was a background of its adoption and was an impulse to take steps aimed at creating the legal framework enabling the state to have control over objects that constitute national cultural heritage. The provisions of the statute, slightly amended and revised over the next years, defined 12 categories of ancient objects of culture, including eight types of movable relics of culture such as paintings, sculptures, drawings, books, legal tenders, clothes, weapons, kitchenware, and primeval creatures, prehistoric remains, buildings and miscellanea.<sup>39</sup> The statute also determined the importance of age, rarity, and historic or artistic value of cultural relics as factors decisive for their position in the system of classification. Although the provisions of the statute recognised private ownership of relics that had already been discovered, they imposed a ban on passing them to foreigners, which carried a penalty of forfeiture or a fine. Antiques in private possession that were classified in accordance with the standards established by the government had to be registered. Failure to fulfil the obligation of registration carried a statutory penalty of a fine. All other relics remaining underground or discovered then were the property of the state. The violation of the rule was treated as theft. Moreover, the provisions also limited the sale of both private and public antiques within the state borders. Taking those objects abroad was only admissible for the purpose of scientific research.

Among some legal acts passed in the period of 1928–1938,<sup>40</sup> i.e. before the Second Sino-Japanese War, apart from the Law on the protection of objects of historic, cultural and artistic value, there were also preliminary provisions concerning fundamental forms and types of objects of historic, cultural and artistic value, a directive banning export of those objects, and regulations concerning the protection of beautiful scenery, historic sites and objects of historic, cultural and artistic value, which also introduced, inter alia, disciplinary penalties for clerks who failed to introduce proper protective measures what resulted in damage to or destruction of historic objects subject to legal protection.<sup>41</sup>

In 1932, in the territory under the control of the Communist Party, regulations were issued in order to protect the Chinese Communist Revolution-related materials

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<sup>38</sup> [http://www.unesco.org/culture/natlaws/media/pdf/china/china\\_law\\_10\\_11\\_1935\\_eng\\_orof.pdf](http://www.unesco.org/culture/natlaws/media/pdf/china/china_law_10_11_1935_eng_orof.pdf) (accessed 17.04.2017).

<sup>39</sup> *Ibid.*

<sup>40</sup> The period 1927–1937 marks the end of the second part of the revolutionary Chinese Civil War, which broke out after the revolutionary movement divided as a result of Chiang Kai-shek's coup and formation of a new government in Nanjing.

<sup>41</sup> S. Gruber, *supra* n. 21, p. 272.



and ancient relics. The Constitution of the Republic of China that was in force until 1949 contained a provision (Article 108 § 20)<sup>42</sup> stipulating the authorities' duty to protect ancient books, artefacts and relics that are significant for culture. In 1937 Japan invaded China, which stopped the second civil war started in 1927 and made Kuomintang unite with the communists in order to organise a joint anti-Japanese front. Once the Japanese surrendered in 1945, the third revolutionary civil war started (in 1946) and lasted until 1949 when Chiang Kai-shek's army was defeated and the People's Republic of China was founded.

In 1946, with the aim to abolish feudal ownership of land, under the banner of passing the land to those who cultivate it, the Central Committee of the Communist Party of China passed a resolution of land reform.<sup>43</sup> In the period of 1950–1952, in the territory under the control of the People's Liberation Army since 1946, a land reform was implemented during which 47 million hectares of land were distributed among 300 million peasants. The land reform involved repression of many wealthy landowners and squires (*kulaks*). In 1947, at a special conference held for the purpose of reaching agreement on the implementation of the land reform, an outline of land law was announced, which stipulated that valuable books, ancient objects and works of historic or scientific value confiscated from their owners should be transferred to local authorities. Soon after the foundation of the People's Republic of China was proclaimed in 1949, in order to prevent export of historic objects and books from the country, the Chief Administrative Authority introduced interim measures and published the list of objects subject to a ban, which included, apart from ten categories listed in the statute of 2 June 1930 (weapons and miscellanea were excluded), a new category of relics: Revolution-related documents and artefacts.<sup>44</sup> The movement of objects to foreign exhibitions, for exchange, as presents or for developmental purposes required approval by a special commission and was only possible in case the objects did not have Revolution-related, historic and cultural value or were copies. In accordance with the Standards of Evaluation published in 1960, mainly based on the date of an object's origin, the ban on exportation covered all relics of historic, artistic or scientific value that were created or published before the victory of the Revolution in 1949, all Revolution-related relics of culture regardless of their age, and all those relics of culture that reveal state secrets, present a false or negative view of the nation or can cause negative political consequences.<sup>45</sup> In addition, the ban concerned national minorities' relics of culture created before 1949, artistic works, original manuscripts, etc. connected with the Revolution and the introduction of socialism, having considerable political significance or artistic value. In relation to some categories of relics, two border dates were introduced and the ban covered all objects created before 1795 and all objects created before 1911. In case of objects that were not subject to the above age thresholds, the historic,

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<sup>42</sup> [https://www.constituteproject.org/constitution/Taiwan\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Taiwan_2005.pdf?lang=en).

<sup>43</sup> G. Jefimow, *Zarys nowożytnej i współczesnej historii Chin*, KiW, Warszawa 1953, p. 447.

<sup>44</sup> State Administration of Cultural Heritage, *Compendium of Laws and Documents Concerning Affairs of Chinese Cultural Property (1949–2009)*, Cultural Relics Publishing House, Beijing 2009, p. 1.

<sup>45</sup> *Ibid.*, p. 17.

artistic or scientific value played a decisive role in approving exportation. Thus, objects subject to the ban found in passengers' (also foreigners') luggage had to be confiscated or taken from them for compensation. However, when seized relics were recognised as ordinary, they had to be registered and returned to the owners. All foreign and common relics of culture, including books, with the exception of rare objects of relatively high scientific, historic and artistic value, could be treated of people's own volition. Moreover, in order to thoroughly determine the ban on exportation, the regulations stipulated additional division of objects into categories based on the date of their creation. In 1961, the authorities approached the issue of the protection of cultural property in a new way, which resulted in the adoption of new regulations in accordance with which the protection covered more general categories, including buildings, remains of buildings, sites of remembrance, etc.<sup>46</sup> connected with historic events, revolutionary activities and important officials, having significance for remembrance and historic value; remains of ancient cultures, ancient tombs, ancient constructions, temples, caves and engravings of historic, artistic and scientific value; valuable works of art, including artistic craft, originating from all periods; Revolution-related documents, ancient texts of historic, artistic or scientific value, and representative objects depicting social systems, manufacturing and social life in all periods. In accordance with the new regulations, all relics of historic, artistic and scientific value were protected by the state, and all relics still undiscovered and remaining underground constituted the property of the state. There were a few state-owned antique shops called *wenwushangdian* at the time and their employees were seconded to rural areas to look for merchandise.<sup>47</sup> The exportation of important objects of historic, artistic and scientific value outside China was allowed only for the purposes of exhibitions and exchange with the state's consent. In case of other relics, the law admitted exportation after evaluation. The violation of the above regulations, depending on the seriousness of circumstances, carried a penalty of imprisonment for a period of three to ten years and a fine in cases of lesser significance. In the circumstances indicating a more serious offence, the penalty prescribed was imprisonment for at least ten years or a life sentence and forfeiture of property, which was stipulated in the criminal law codification of 1979. It should be added that during the Cultural Revolution ideological factors played a decisive role in selecting objects worth protecting and, that is why, many relics recognised as ones representing feudal times were simply destroyed.

In 1978, the National Cultural Heritage Administration issued a directive in accordance with which objects in museum collections that had historic, artistic and scientific value should be divided into three classes, and the following year the State Council approved the report concerning special permission for the exportation of relics and took a stand that controlled export of ordinary relics of culture can be profitable for the country due to the growth in earnings in foreign currencies.<sup>48</sup> In

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<sup>46</sup> T. Lau, *supra* n. 34, p. 23.

<sup>47</sup> S.C.H. Cheung, *Observations on the Antiquities Trade in China: A Case Study of Xiamen Antique Arcade*, Occasional Paper Series 128, Institute of Asia-Pacific Studies, the Chinese University of Hong Kong 2002, p. 7.

<sup>48</sup> State Administration of Cultural Heritage, *Compendium*, *supra* n. 44, p. 94.

the report, ordinary relics referred to in the Standards of Evaluation of 1960 were identical to relics classified below the third-class ones within the new system of classification for museum collections.

In 1982, the fourth Constitution was adopted, which obliged the state to protect famous historic remains, valuable relics of culture and significant historic and cultural heritage (Article 22).<sup>49</sup> In the same year, the rank of illegal exportation of valuable relics was raised to offences carrying a death sentence, which was done by means of amendment to a respective provision of criminal law that laid down that: in cases where circumstances are especially serious, an offence carries a penalty of imprisonment for at least ten years, a life sentence or capital punishment. Also in 1982, a new statute concerning the protection of relics was adopted and replaced all the previous statutes. The scope of relics protected in the new statute, except the introduction of the protection of the fossils of primeval vertebrates and prehistoric people, did not fundamentally differ from former regulations. However, the statute introduced a series of significant changes, e.g. that not only relics remaining below the surface of the earth but also those in the inland waters and territorial seas of the People's Republic of China are the state's property. In accordance with the statute, the state also owns, unless the national law stipulates otherwise, the remains of ancient cultures, ancient tombs and temples, caves, mausoleums, ancient constructions, engravings and relics indicated for protection that can be found in the collections of state agencies, armed forces, state-owned enterprises and trade organisations. Another important provision of the new statute (like in the law of 1930) was the recognition of private ownership of relics and an announcement that the right to ownership of all ancient constructions and relics of culture is subject to protection by national law. In addition, the statute stipulated that an executive body responsible for all matters connected with the protection of relics of culture must determine standards and methodology for their evaluation. As a result, in 1987 the Ministry of Culture developed the system of classification of relics together with the Standards of Evaluation of Collections. Relics were divided into three classes in the new system. The first one contained representative relics of culture of 'special' value; the second and third classes contained objects of 'considerable' and 'certain' value, respectively. Although only the first-class objects were treated as valuable cultural property within the meaning of the statute, some other third-class objects could also be raised to the same category in some circumstances. In the same year, the People's Supreme Court and the People's Chief Prosecution Office redefined the offence of illegal transportation of relics based on the new system of classification.<sup>50</sup> The Court's explanation contains the first definition of the smuggling of relics identified with illegal transportation of valuable relics of culture referred to in criminal law. In accordance with the Court's explanation, illegal transportation of a single relic categorised as third-class one carries a penalty of imprisonment for a period of at least three years and up to five years. In the case of illegal transportation of a single

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<sup>49</sup> [http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4421.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4421.htm).

<sup>50</sup> [https://baike.baidu.com/reference/4797088/96156jatbqz6CoKi81RUc2Auvj6dLB8Bl\\_fqUkZbC3S-ey9-N3p1FFzAPE8EA4EuB9C22233mqtw\\_0xNIXjzJoLMlbc7UqHoFwvsCg](https://baike.baidu.com/reference/4797088/96156jatbqz6CoKi81RUc2Auvj6dLB8Bl_fqUkZbC3S-ey9-N3p1FFzAPE8EA4EuB9C22233mqtw_0xNIXjzJoLMlbc7UqHoFwvsCg).

second-class object, a penalty prescribed is imprisonment for a period of at least five years and up to ten years. On the other hand, offences of smuggling first-class relics of culture were defined as offences of illegal transportation of valuable relics of culture the circumstances of which are especially serious, thus, in accordance with criminal law, ones that carry a penalty of imprisonment for at least ten years, a life sentence or capital punishment. Depending on the number of transported relics, the penalty can be higher.<sup>51</sup> Transportation of historic objects of no special value was treated as an ordinary smuggling-related offence the classification of which depended on the monetary value of a transported object. In 1992 the authorities published the 'explanation concerning the implementation of the Law on the protection of relics' with the use of the new classification of movable and immovable relics. The new criminal law of 1997 codifies the Court's explanation of 1987 and defines offences involving the smuggling of relics. On the other hand, the definitions of the levels of an offence originate from 2000 and contain answers to questions concerning the application of law in criminal procedure against smugglers. In 2001 the authorities published a new set of standards of evaluation in order to harmonise various systems of classification defined in the explanation concerning the implementation of the Law on the protection of relics and the Standards of Evaluation published in 1987. The 26 newly defined categories are as follows: (1) Products made from jadeite and gem artefacts; (2) Ceramics; (3) Porcelain; (4) Products made of bronze; (5) Products made of iron; (6) Products made of gold and silver; (7) Products made of lacquer; (8) Sculptures; (9) Engravings and tiles; (10) Calligraphy and paintings; (11) Stones for grinding ink; (12) Skeletons and bones; (13) Stamps; (14) Legal tenders; (15) Products made of ivory, bones and horns; (16) Bamboo and wooden sculptures; (17) Furniture; (18) Enamelled products; (19) Fabrics and embroidery; (20) Fine copies of ancient texts; (21) Estampage; (22) Weapons; (23) Post products; (24) Documents and media articles; (25) Archives; and (26) Famous people's possessions. In 2008 the authorities published new rules on evaluating relics for the need of exportation, which replaced the old ones after 47 years of application. In accordance with those rules, export of all relics of culture created before 1911 is banned, which moves the border date in relation to 1795 and, thus, extends the scope of the relics of culture protected against export by ca. 44%.<sup>52</sup> In May 2011, an amendment to criminal law entered into force, which abolished the capital punishment for 13 offences, including the smuggling of relics.<sup>53</sup>

The restructuring of the Chinese economy posed new challenges for the protection of cultural heritage. That is why, the statute of 1982 was repeatedly amended (in 1991, 2002, 2007 and 2013) in order to meet the requirements of the new situation. However, the most important amendments were introduced in 2002. They resulted in the change in the size of the statute from 33 to 80 articles and organised chapters in the following order: Chapter 1 General provisions (Articles 1–12); Chapter 2 Immovable relics of culture (Articles 13–26); Chapter 3 Archaeological excavations

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<sup>51</sup> *Ibid.*

<sup>52</sup> T. Lau, *supra* n. 34, p. 26.

<sup>53</sup> <https://gbtimes.com/history-death-penalty-china>.

(Articles 27–35); Chapter 4 Objects of culture in public institutions (Articles 36–49); Chapter 5 Objects of culture in private collections (Articles 50–59); Chapter 6 Import and export of objects of culture (Articles 60–63); Chapter 7 Legal liability (Articles 64–79); Chapter 8 Supplementary provisions (Article 80).<sup>54</sup> The government clearly and fully realised the serious threat posed to relics by inappropriate commercialisation and excessive exploitation. That is why, the amendments of 2002 assumed that protection is the authorities' top priority within the field of cultural heritage management instead of what was before, i.e. the use of relics taking into account tasks connected with cultural heritage in the plans of economic and social development, and costs incurred in relation to them included in the budget. Another novelty of the amendment of 2002 was the sanctioning of the activities of official antique shops and auction houses, which was aimed at registering and collecting information about cultural property.<sup>55</sup> Keeping an auction house or an antique shop requires an official certificate and licence, and goods prepared for sale must undergo special control. All auction houses operating in China, both the big and small ones, are either co-owned by the state or subject to strict control.<sup>56</sup>

The law of 1982 totally banned sale of relics and the amendment partially legitimises it, but no individual or organisation other than authorised antique shops or auction houses can deal in cultural property.<sup>57</sup> Nevertheless, the statute allows natural persons, legal persons and organisations to collect cultural property in various ways: by means of inheritance or acceptance of gifts in compliance with law, purchase in antique shops, purchase from an auction house, transfer or exchange of relics that are legally owned by individuals, and other legal methods determined by the state.<sup>58</sup>

## 6. REGULATIONS BINDING IN PRACTICE

Over the last three decades there has been considerable progress in the quality of legislation in the People's Republic of China. Since 2003, i.e. the moment when the market for antiques started fully legal operations, the demand for works of art from this country has been systematically increasing in the European Union and the USA as well as in Russia. Such huge demand results in the growing number of auction houses in both continental China and Hong Kong. In the period 2003–2010 there was a hundredfold increase in turnover on this market and antiques became largely smuggled goods.<sup>59</sup> The number of offences committed against the Chinese relics of culture also grew considerably.<sup>60</sup>

<sup>54</sup> [http://www.npc.gov.cn/wxzl/gongbao/2015-08/10/content\\_1942927.htm](http://www.npc.gov.cn/wxzl/gongbao/2015-08/10/content_1942927.htm).

<sup>55</sup> Z. Huo, *supra* n. 23, p. 4.

<sup>56</sup> J.M. Taylor, *The Rape and Return of China's Cultural Property: How Can Bilateral Agreements Stem the Bleeding of China's Cultural Heritage in a Flawed System?*, Loyola University Chicago International Law Review Vol. 3(2), Spring/Summer 2006, p. 252.

<sup>57</sup> Z. Huo, *supra* n. 23, p. 5.

<sup>58</sup> [http://www.npc.gov.cn/wxzl/gongbao/2015-08/10/content\\_1942927.htm](http://www.npc.gov.cn/wxzl/gongbao/2015-08/10/content_1942927.htm).

<sup>59</sup> С.Н. Ляпустин, Н.С. Барей, *supra* n. 26, p. 90.

<sup>60</sup> J.M. Taylor, *supra* n. 56, p. 233.

Only in 2016, in Beijing, customs officers foiled the smuggling of 17,000 contraband relics, including porcelain, ancient coins, paintings and calligraphy, books and objects originating from the Neolithic Age.<sup>61</sup> Regardless of unquestionable success, the fight against smuggling in China is a serious problem. There are huge amounts of treasures of culture buried around the impoverished villages in the province of Henan and every year local farmers dig their fields in search of objects valuable for collectors. The temptation to plunder emperors' graves is often too strong to resist because a single big discovery gives the profit equal to an annual income from work in agriculture.<sup>62</sup> With the beginning of fashion and growth in international demand for Chinese classical wooden furniture, since the mid-1980s the trade in antiques, including ancient stone sculptures, has become a common activity of villagers in the region of Minzhong, who did not hesitate to openly admit that they were involved in the prohibited export of objects because mass involvement of local inhabitants in the business seemed to exclude the possibility of holding anybody liable.<sup>63</sup> Also in the province of Fujien earning a living by farmers was strictly connected with trade in antiques, which contributed, inter alia, to fast development of the city of Xiamen, one of the most modern special economic zones on the southern coast of China. The advantages of the region, apart from easy maritime transport and a network of international connections, include a considerable inflow of workforce migrating from rural areas. At the beginning of the 21st century trade in cultural property was a common activity in Xiamen. It was possible to buy antiques from ordinary street sellers as well as elegant shops in shopping precincts of luxurious hotels.<sup>64</sup> However, the biggest antique marketplace was a gigantic shopping centre Bailuzhou Antique Arcade situated in the former fishing village of Bailuzhou, which is now a part of the centre of Xiamen, housing over a hundred antique shops offering cultural property that originate from graves mainly in the rural areas.<sup>65</sup> When in Qixing and Xiangxiang in the province of Hunan, the flood uncovered a big archaeological site, diggers appeared immediately and local farmers started digging the area on dealers' request. The authorities of Qixing and Xiangxiang were informed about the illegal excavations but refused to take any steps; and the participants of the search expressed their admiration for the authorities' passive reaction in the Chinese television coverage of the event.<sup>66</sup>

According to the statistics of the Chinese National Bureau of Cultural Relics, in the period 1998–2003 alone over 220,000 graves were plundered, and relics originating from them reached the international market for works of art.<sup>67</sup> In 2004 the head of security of the museum in Chengde in the province of Hebei was sentenced to death for the theft of 250 objects, one of which was an effigy of Buddha sold at an auction in Hong Kong for 295,000 dollars.<sup>68</sup> The convicted employee kept doing this

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<sup>61</sup> С.Н. Ляпустин, Н.С. Барей, *supra* n. 26, p. 95.

<sup>62</sup> J.M. Taylor, *supra* n. 56, p. 233.

<sup>63</sup> S.C.H. Cheung, *supra* n. 47, pp. 3–4.

<sup>64</sup> *Ibid.*, pp. 12–15.

<sup>65</sup> *Ibid.*

<sup>66</sup> S. Gruber, *supra* n. 21, pp. 293–294.

<sup>67</sup> J.M. Taylor, *supra* n. 56, p. 233.

<sup>68</sup> S. Gruber, *supra* n. 21, p. 296.

dirty business for ten years substituting copies for the stolen relics. When demand for stone sculptures on the international auction market increased, 500 thefts of such objects from Buddhist temples and monasteries were reported.<sup>69</sup>

Although Amendment VII to the Criminal Code, considerably mitigating penalties for offences connected with cultural heritage, was highly assessed by lawyers in China and abroad, many Chinese clerks and experts involved in the protection of relics expressed their fears concerning the possible escalation of this kind of offences. However, contrary to the opinions, the court practice after the implementation of the amended Criminal Code of 1997 showed that the deterring nature of death penalty in the case of offences connected with cultural heritage was meagre, which was confirmed by constant inflow of illegally obtained Chinese relics to the international market for works of art.<sup>70</sup> It should be added that the classification of cultural property in China is extremely complicated. In order to improve the management of relics possessed by the public, the authorities published 25 volumes of illustrated Standards for evaluation of cultural property. Those volumes available only in the Chinese language provide information divided into topics, e.g. bronzes, coins (one volume per category), and contain photographs and descriptions justifying the classification of a given object within a particular class.<sup>71</sup> This monumental work is well-known neither among foreign tourists nor the Chinese, and at the same time, ancient coins can be found lying in bowls or in piles in open-air marketplaces and are sold by weight. In 2008 a pensioner from Henan who sent coins in parcels to the USA was accused of smuggling 31 third-class relics of culture, which meant a death sentence.<sup>72</sup> Then his son offered the coins on numismatic websites and became famous for selling big amounts at a low price. The authorities of Henan managed to recover a total of 2,734 numismatic coins.<sup>73</sup>

The failure of international and national mechanisms of preventing illegal export of cultural property made the Chinese authorities ask the United States for assistance. In December 2004, in accordance with Article 9 UNESCO Convention of 1970, China filed a relevant motion, and on 17 February 2005, it was publicly heard before the Cultural Property Advisory Committee of the United States Department of State in order to determine whether the limitation of import of some objects of culture can be accepted by the USA.<sup>74</sup> Indeed, when in 1983 the United States joined the UNESCO Convention of 1970, it adopted the Act on the Implementation of the Convention in accordance with which the states that are parties to it can file motions to the United States Department of State to control import of some categories of archaeological or ethnological materials.

During the debate that took place in February 2005 in the course of public hearing of the Chinese motion, there were attempts to answer the question whether the state fulfils four conditions for positive recommendation, i.e.:

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<sup>69</sup> J.M. Taylor, *supra* n. 56, p. 233.

<sup>70</sup> Z. Huo, *supra* n. 23, p. 10.

<sup>71</sup> <https://item.jd.com/10683961.html>.

<sup>72</sup> T. Lau, *supra* n. 34, p. 4

<sup>73</sup> *Ibid.*

<sup>74</sup> J.M. Taylor, *supra* n. 56, pp. 250–251.

- 1) Whether the cultural heritage of China is endangered as a result of plunder of archaeological or ethnological material,
- 2) Whether China undertook relevant steps in accordance with the UNESCO Convention, i.e. whether it has efficient regulations and gets involved in law enforcement in order to protect its cultural heritage in various ways,
- 3) Whether other countries that import considerable amounts of Chinese archaeological materials participate in coordinated efforts to tackle import of objects originating from theft,
- 4) Whether the introduction of import limitation will help to develop legal exchange of cultural material in the way that will not pose threat to the cultural heritage of China.<sup>75</sup>

Among the supporters and opponents of the Chinese motion who took part in the discussion before the Advisory Committee on 17 February 2005, there were employees of auction houses, museum curators, professors, sellers of works of art, lawyers representing dealers and associations of collectors. The opponents argued that China should strengthen its law, which does not protect relics in a sufficient way and that the growth in the Chinese domestic illegal market is a bigger threat to the Chinese cultural heritage than the small illegal market for Chinese antiques in the USA; moreover, the limitation of the export of Chinese cultural property will deprive scientists and international society of the possibility of studying it. On the other hand, the supporters of the Chinese motion emphasised the value of cultural property for archaeological research and demanded the introduction of any limits that could improve the protection of archaeological material because thefts of antiques cause irreversible damage to archaeological sites as removing artefacts from them before a scientific analysis influences the scientific evaluation of those sites and possible new scientific findings at a later stage.<sup>76</sup> In January 2009 China and the United States entered into a bilateral agreement imposing import limitations on some Chinese archaeological materials, and in January 2014 both countries agreed to extend the agreement for the next five years. The significance of the agreement results from the fact that the United States is a destination for ca. half of all Chinese cultural property items sold in the world.<sup>77</sup> However, in spite of the fact that the Standards for Evaluation of 2009 prohibit export of all relics of culture made before 1911, import limitations laid down in the protocol signed by China and the United States had a much smaller scope and allowed import of objects made before 907 (the end of the reign of the Tang dynasty in 618–907).<sup>78</sup> Also, the conclusion of the agreement did not influence the legal status of Chinese works of art that had already been brought to the United States.

The Chinese authorities' intensified attempts to protect cultural property face fast economic and social development of the country resulting in substituting new residential districts for old parts of cities, removing cultural landscape and damaging many relics due to construction projects. The construction of the Three Gorges

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<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, p. 252

<sup>77</sup> Z. Huo, *supra* n. 23, pp. 10–11.

<sup>78</sup> T. Lau, *supra* n. 34, p. 26.



Dam, the most expensive construction in the world and the largest power station in history, annihilated 17 big cities, 140 smaller towns, over 3,000 villages and 1,300 archaeological sites.<sup>79</sup>

## 7. CONCLUSIONS

Since the end of the Cultural Revolution, the Chinese authorities have made consistent efforts to protect cultural heritage, which resulted in considerable improvement to the legal system. However, the heritage of the multi-century civilisation is still endangered and the threat of losing a significant part of the Chinese cultural property is as real as never before. The reason is, inter alia, the lack of possibility of enforcing the existing regulations, which are ignored by local governments. In comparison to the efforts to improve legislation in order to ensure efficient protection of cultural property, it is more difficult to implement an administrative system reform the success of which depends on comprehensive reforms in the political, economic and social fields. Undoubtedly, education of cultural institutions personnel, collectors or sellers as well as farmers is a significant factor influencing the improvement to the protection of relics. The Chinese authorities made a huge leap in the area. The Chinese television offers over 20 programmes on such issues as, e.g. identification of cultural property and its relics kept at home or found during a trip to the country, participation in an auction etc., and since 2006 a special holiday Chinese Cultural Heritage Day has been celebrated every second Saturday of June, which is to remind local authorities about the importance of the protection of cultural heritage in China, and raise people's interest in various types of relics.<sup>80</sup> However, education will not be effective if illegal trade in antiques constitutes the main source of maintenance as it is the case in many Chinese farmers earning huge sums on the black market in comparison to their regular income. The ban on commercial activity in the sector of cultural property is in conflict with cultural tradition and social reality of China, which makes its enforcement unfeasible. Although the authorities realise that private cultural property transactions are common phenomena in China, they are not able to control it due to the size of the illegal market for antiques. The regulations in force undoubtedly need to be improved. The introduction of relevant amendments to the law on the protection of relics, in particular more precise definitions of concepts used therein, will solve many doubts and eliminate difficulties with more efficient application of the Criminal Code provisions, and accurate development of the standards for evaluation of relics of culture will make it possible to unambiguously determine the jurisdiction for their protection. However, the biggest threat to the protection of relics in China does not consist in the lack of relevant regulations but in the problem with their enforcement. The above-presented findings seem to

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<sup>79</sup> J. Wiech, *Miliony przesiedleń, miliardowe koszty, zmiana osi Ziemi. 15 lat Zapory Trzech Przełomów*, *Energetyka* 24, 03.08.2018, <https://www.energetyka24.com/miliony-przesiedlen-miliardowe-koszty-zmiana-osi-ziemi-15-lat-zapory-trzech-przelomow-komentarz>.

<sup>80</sup> С.Н. Ляпустин, Н.С. Барей, *supra* n. 26, pp. 90–91.

indicate the necessity of strengthening local authorities' control, in particular in remote borderland regions where smuggling is most intensive. In order to secure protected areas such as archaeological sites, it would be advisable to enforce the existing regulations in a more decisive way and to strengthen security measures. Many Chinese museums do not have sufficient funds to buy appropriate security devices such as alarm systems, smoke detectors, hygrometers, etc.

The completion of full documentation (including photographic one) of all exhibits in state-owned collections, registering relics that are private property and the publication of a detailed catalogue of losses will undoubtedly be very helpful in the restitution process. Moreover, introduction of obligatory certificates for historic objects introduced for sale should be considered.

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**CULTURAL PROPERTY PROTECTION IN CHINESE LAW****Summary**

China is one of the biggest states that are a source of cultural property in the world, which has been losing part of its priceless heritage since the middle of the 19th century due to plunder, illegal trade and intentional or accidental damage. Due to multi-century history and ethnic diversity, China adopted a hierarchical system of the protection of relics and a model of legislation based on co-existence of comprehensive and specialist legislation taking into account a special nature of some objects. The People's Republic of China is a country with rich culture and long history which, thanks to the consistent improvement of legislation and integration with the international system of cultural property management, holds an important position in the global movement for the protection of relics. The article aims to present the most important issues concerning legal protection of cultural property in China.

**Keywords:** protection of relics in China, Chinese art, Chinese law, market for antiques, market for works of art, Chinese culture, history of China, smuggling of cultural property, capital punishment in China, Chinese National Cultural Heritage Administration

## ZAGADNIENIA OCHRONY DÓBR KULTURY W PRAWIE CHIŃSKIM

### Streszczenie

Chiny są jednym z największych państw źródłowych dóbr kultury na świecie, które od połowy XIX w. traci część bezcennego dziedzictwa na skutek grabieży, nielegalnej sprzedaży oraz celowego lub przypadkowego niszczenia. Ze względu na wielowiekową historię oraz bogactwo grup etnicznych Chiny przyjęły hierarchiczny system ochrony zabytków oraz model legislacji oparty na koegzystencji ustawodawstwa kompleksowego i specjalistycznego, uwzględniającego szczególnie charakter niektórych obiektów. Chińska Republika Ludowa jest krajem o bogatej kulturze i długiej historii, który dzięki konsekwentnemu ulepszaniu legislacji oraz integracji z międzynarodowym systemem zarządzania dobrami kultury zajmuje ważne miejsce w globalnym ruchu na rzecz ochrony zabytków. Celem artykułu jest przedstawienie najważniejszych zagadnień związanych z prawną ochroną dóbr kultury w Chinach.

Słowa kluczowe: ochrona zabytków w Chinach, sztuka chińska, prawo chińskie, rynek antykwaryczny, rynek dzieł sztuki, kultura chińska, historia Chin, przemyt dóbr kultury, kara śmierci w Chinach, Chińska Państwowa Administracja Dziedzictwa Kultury

## ALGUNAS CUESTIONES SOBRE PROTECCIÓN DE BIENES CULTURALES EN EL DERECHO CHINO

### Resumen

China es uno de los mayores países con bienes culturales en el mundo que a partir de la mitad del siglo XIX pierde parte de patrimonio de incalculable valor bien por razones de robo, venta ilegal, destrucción accidental o deliberada. Dado su historia y la riqueza de grupos étnicos, China ha adoptado sistema jerárquico de protección de monumentos y el modelo legislativo basado en la coexistencia de la legislación compleja y especial, que tiene en cuenta el carácter particular de algunos monumentos. La República Popular China es un país con rica cultura y larga historia que gracias a la consecuente mejora de legalización e integración con el sistema internacional de gestión de patrimonio cultural ocupa puesto importante en el movimiento global de protección de monumentos. El artículo presenta las cuestiones más importantes relacionados con la protección legal de bienes culturales en China.

Palabras claves: protección de monumentos en China, arte chino, derecho chino, mercado de antigüedades, mercado de obras de arte, cultura china, historia de China, trafico, contrabando de bienes culturales, pena de muerte en China, Administración China Estatal de Patrimonio de la Humanidad

## ВОПРОСЫ ОХРАНЫ КУЛЬТУРНЫХ ЦЕННОСТЕЙ В КИТАЙСКОМ ЗАКОНОДАТЕЛЬСТВЕ

### Аннотация

Китай, будучи одним из крупнейших центров культурных ценностей в мире, с середины XIX века постоянно теряет часть своего бесценного наследия как в результате грабежей и незаконной

продажи, так и вследствие преднамеренного либо случайного уничтожения. Принимая во внимание многовековую историю страны и разнообразие этнических групп, Китай создал иерархическую систему охраны памятников культуры. Модель правового регулирования в этой области основана на параллельном действии комплексного и специализированного законодательства, учитывающего специфику отдельных объектов. Китайская Народная Республика – страна с богатой культурой и многовековой историей, которая благодаря последовательному совершенствованию законодательства и включению в международную систему охраны культурных ценностей занимает важное место в мировом движении по охране памятников культуры. В статье рассмотрены основные вопросы, связанные с правовой защитой культурных ценностей в Китае.

Ключевые слова: охрана памятников культуры в Китае, китайское искусство, китайское право, рынок антиквариата, рынок предметов искусства, китайская культура, история Китая, контрабанда культурных ценностей, смертная казнь в Китае, Государственного управления КНР по охране культурного наследия

## DIE FRAGE DES SCHUTZES VON KULTURGÜTERN IM CHINESISCHEN RECHT

### Zusammenfassung

China ist eines der größten Ursprungsländer von Kulturgütern auf der Welt, das seit Mitte des 19. Jahrhunderts einen Teil seines unschätzbaren Erbes eingebüßt hat – sei es aufgrund von Plünderungen, infolge des illegalen Handels oder vorsätzlicher bzw. versehentlicher Zerstörung. Mit Blick auf die jahrhundertelange Geschichte und die immense Fülle an ethnischen Gruppen hat China ein hierarchisch strukturiertes System zum Schutz seiner Kulturdenkmale eingeführt und sich für ein Gesetzgebungsmodell entschieden, das sich auf die Koexistenz von umfassenden Regelungen und spezifischen Rechtsvorschriften gründet und den Besonderheiten bestimmter Objekte Rechnung trägt. Die Volksrepublik China ist ein Land mit einer langen, ereignisreichen Geschichte und eindrucksvollen Kultur, das dank einer konsequenten Verbesserung der Rechtssetzung und Integration in das internationale System zur Verwaltung von Kulturgütern einen wichtigen Platz in der weltweiten Denkmalschutzbewegung einnimmt. Ziel des Artikels ist es, die wichtigsten Punkte im Zusammenhang mit dem rechtlichen Schutz von Kulturgütern in China herauszustellen.

Schlüsselwörter: Denkmalschutz in China, chinesische Kunst, chinesisches Recht, Antiquitätenmarkt, Kunstmarkt, chinesische Kultur, Geschichte Chinas, Schmuggel von Kulturgütern, Todesstrafe in China, Chinesisches Amt für Kulturerbe

## QUESTIONS LIÉES À LA PROTECTION DES BIENS CULTURELS DANS LE DROIT CHINOIS

### Résumé

La Chine est l'un des plus grands pays sources de biens culturels au monde, qui depuis le milieu du XIXe siècle a perdu une partie de son patrimoine inestimable, que ce soit à cause du pillage, de la vente illégale ou de la destruction intentionnelle ou accidentelle. En raison de l'histoire séculaire et de la richesse des groupes ethniques, la Chine a adopté un système

hiérarchique de protection des monuments et un modèle de législation fondé sur la coexistence d'une législation globale et spécialisée, tenant compte de la nature spécifique de certains objets. La République populaire de Chine est un pays à la culture riche et à la longue histoire qui, grâce à l'amélioration constante de la législation et à l'intégration avec le système international de gestion des biens culturels, occupe une place importante dans le mouvement mondial pour la protection des monuments. Le but de cet article est de présenter les questions les plus importantes liées à la protection juridique des biens culturels en Chine.

Mots-clés: protection des monuments en Chine, art chinois, droit chinois, marché des antiquités, marché de l'art, culture chinoise, histoire chinoise, contrebande de biens culturels, peine de mort en Chine, Administration d'État du patrimoine culturel de Chine

## QUESTIONI DI TUTELA DEI BENI CULTURALI NEL DIRITTO CINESE

### Sintesi

La Cina è uno dei più grandi stati fonti di beni culturali nel mondo, che a partire dalla metà del XIX secolo perde parte del suo inestimabile patrimonio, sia in conseguenza di furti e vendite illegali che di distruzione pianificata o accidentale. A motivo della storia secolare e della ricchezza dei gruppi etnici la Cina ha assunto un sistema gerarchico di tutela dei beni culturali e un modello di legislazione basato sulla coesistenza della legislazione complessiva con quella specialistica, che tiene conto del carattere particolare di alcuni siti. La Repubblica Popolare Cinese è un paese di ricca cultura e di lunga storia, che grazie al coerente miglioramento della legislazione e all'integrazione con il sistema internazionale di gestione dei beni culturali occupa un posto importante nel movimento globale per la tutela dei beni culturali. Lo scopo dell'articolo è la presentazione delle questioni più importanti legate alla tutela dei beni culturali in Cina.

Parole chiave: tutela dei beni culturali in Cina, arte cinese, diritto cinese, mercato dell'antiquariato, mercato delle opere d'arte, cultura cinese, storia della Cina, contrabbando di beni culturali, pena di morte in Cina, Amministrazione Statale del Patrimonio Culturale Cinese

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