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Habilitation report for Dr Alicja Jagielska-Burduk

Thank you for the invitation to be a member of the committee for the habilitation of Dr Alicja Jagielska-Burduk and the materials forward as part of the package submitted for the review.

This report is in compliance of this obligation. I remain available to the review panel, should it be required, at a time convenient to the members of the panel.

In the report I address the following: (1) the sole authored English language monograph entitled *Cultural Heritage as a Legal Hybrid: Between Public and Private Law* (Springer 2022); (2) other English language academic publications; (3) international leadership and activities related to public law in the field; (4) international leadership and activities related to private international law in the field; (5) other related leadership and activities in support.

Sole authored, English language monograph

The sole authored, English language monograph entitled *Cultural Heritage as a Legal Hybrid: Between Public and Private Law* (Springer 2022) is an important contribution to the field of cultural heritage law –public and private law – as required of a habilitation candidate.

There are several elements which contribute to this assessment including: (i) that it is forward-focussed and innovative in its legal analysis and therefore genuinely original; (ii) it confidently and competently addresses public and private law issues; (iii) it has a global outlook, engaging legal developments (jurisprudence and scholarship) across multiple jurisdictions.

Originality of scholarship

Dr Jagielska-Burduk follows in the fine tradition to the formulation of international and domestic legal protection of cultural heritage by Polish legal scholars and jurists over the last two centuries. Like her predecessors she draws on a deep and broad understanding of public and private law to propose a way forward in the development of the current law and its limitations at the international and domestic levels, particularly in respect of Poland.

Scholarship addressing the legal protection of cultural heritage is dominated by expositions which are often backward looking (dominated by a focus on the existing law and its development), narrowly defined and often focussed on the protection of specific types of cultural heritage (e.g. world heritage, intangible heritage etc), and a not-always effective engagement of research across disciplines.

The originality of *Cultural Heritage as a Legal Hybrid: Between Public and Private Law* is that it is the opposite of these characteristics.

Dr Jagielska-Burduk's monograph ambitiously, consistently and successfully sets up the current state of the field and its challenges, explains how these are being addressed in law today (with particular reference to Poland), and draws on innovations in other fields of jurisprudence and legal scholarship to propose law reform. It is a wonderfully brave task which yields much food for thought for those working in the field today and will no doubt be the subject of fruitful legal debates for years to come. I know that it has inspired the formulation of a dedicated workshop by Dr Sophie Vigneron, to be hosted at Kent Law School, in 2024.

The monograph has six substantive parts. Chapter 2 sets up the legal concepts and their protection with particular reference to civil law practice. The definition of cultural heritage in law is a not insubstantial, and evolving, task which has challenged leading scholars across multiple jurisdictions. Dr Jagielska-Burduk not only provides the reader with a thorough grounding in this multidisciplinary literature, but then sets it within the key legal concepts (e.g. *res*) in private, civil law principles which are foundational. In Chapter 3, lays out in detail the significant legal challenges facing the legal protection of cultural heritage by looking forward and taking an expansive view. She examines the growing debates on the repatriation of human remains from museum and other collections and the law related to the human body; the protection of cultural heritage related to space and space law; intangible heritage and its protection; the growing concerns related to new technologies in the field arising from artificial intelligence and e-commerce and protection of cultural objects; and challenges for intellectual property in the field as it relates to the cultural legacy of Chopin. This chapter covers a vast swath of jurisprudence across many specialist fields – it is all done with thorough competence, demonstrating a deep understanding of each area of the law, which are engaged clearly and critically – for the purpose of revealing the challenges of cultural heritage law today and pushing the field forward.

Chapter 4 and 5 are the crux of the reformist heart of the monograph. Dr Jagielska-Burduk lays out a way forward for cultural heritage law which marries elements of public and private law – the hybridization of public and private law – for the common good. While these chapters focus on Polish law, like comparative law research which proves invaluable for jurists and scholars in other jurisdictions, it is written in a manner which makes it accessible and relevant beyond its specific national jurisdiction. She explains how private law rights are modified in civil law to address the protection of the common good with mineral, water and animal rights used as examples. Emphasizing the significance of holistic understandings of cultural heritage, she maps out how cultural heritage in all its forms is legal protected in contemporary Polish law and international law instruments. Chapter 5 breaks this process down further to examine the current

Polish law in critical detail in how it is or is not effectively meeting the challenges in legal protecting cultural heritage law today as she has identified them. As always this is an expansive and ambitious analysis covering museum and archival collections, national treasures, archaeological artefacts, and treasures trove in public and private hands. All of this exposes the challenges for established legal principles addressing cultural heritage. It tests the very notion and limits of 'property', with Dr Jagielska-Burduk emphasizing the possible application of *res extra commercium* in the civil law context. A possibility informed by the groundwork laid in the opening chapters.

The final substantive chapter 6 reinforce the central proposition of the monograph – the evolution of the legal protection of cultural heritage through the hybridization of public and private law principles. This significant evolution addressing and modifying private law property rights and increasingly recognition of the common, shared responsibility and interest in cultural heritage law is consider at the international level through the Underwater Heritage Convention, World Heritage Convention and 1954 Hague Convention for Protection during Armed Conflict and work of the International Criminal Court; and domestic law through the examination of the recognition of access to heritage, rights of future generations, private-public partnerships, and role of private actors. As Dr Jagielska-Burduk ably and convincingly demonstrates in this monograph 'the process of legal emancipation for cultural property is in progress' (p 320). As she explains throughout this book, this legal emancipation covers: what is being protected, why it is being protected, and how it is being protected. The process at the international and Polish national levels is still a work-in-progress. Her scholarship will aid substantially in our understanding of these challenges and possible solutions going forward.

Competence in public and private law

Dr Jagielska-Burduk's monograph demonstrates her deep understanding and capacity to articulate and apply public and private law across a range of subject areas beyond those specifically related to the legal protection of cultural heritage. This is an important and rare skill in this field of practice and scholarship, but a vital one if its objectives are to be realistically achieved. Indeed the intersection and cross-fertilisation of private and public law is the crux of her thesis. She demonstrates this knowledge most specifically and in depth in respect to the operation of Polish law, but ventures beyond this national law and practice when seeking to support her arguments. She proficiently explains and analyses common law and practice as it operates in this field.

Dr Jagielska-Burduk engages at length with public international law (through her examination of key culture conventions at the UNESCO and EU levels, and related treaties covering human rights, for example) and private international law rules particularly as they relate to movable heritage. All of these elements are essential to the arguments she is making in support of her thesis for the effective legal protection of cultural heritage, now and in the future. However, I must emphasize that it is rare for scholar to be able to articulate and deploy concepts and principles across all these areas of law, as effectively as occurs in this monograph.

Global outlook across multiple jurisdictions

While Dr Jagielska-Burduk's monograph focuses on the operation of Polish law concerning cultural heritage, her book written in English is important for an international

audience. Poland and Polish law on cultural heritage reflects the objectives and challenges of many, if not most nations, especially in the civil law tradition; and those trying to transpose key regional and international culture conventions into national law. Therefore her thoughtful and detailed critique of Polish law and its implementation is of interests to practitioners, scholars and lawmakers beyond Poland.

It is also manifest through the monograph that Dr Jagielska-Burduk has a deep knowledge and understanding of the current domestic law of multiple jurisdictions, civil law and common law. This knowledge is deployed throughout the book to illustrate and strength her arguments. It is not surprising that a leading, international academic press saw fit to publish this important and original volume.

Other scholarly publications

It is clear from the portfolio of publications submitted in support of her habilitation application, Dr Jagielska-Burduk has an extensive research track record of scholarly publications over many years, sole and co-authored, in the fields of cultural heritage and art law and practice, published in multiple languages (e.g. Polish, French). For the purposes of my review, I will confine myself to the English language publications.

Dr Jagielska-Burduk has contributed to a wide range of important topics in the field of culture, cultural heritage and cultural rights particularly in respect of international law. Her important co-authored entry on 'Cultural Rights' with A Jakubowski for the *Encyclopaedia of the Philosophy of Law and Social Philosophy* (2021) provides a timely exposition of an area of human rights law which had been long neglected (despite important contributions by Polish legal scholars) until the recent past. The piece clearly and systematically explains recent developments in the law on cultural rights that are shaping this area of human rights law and places them within an critical analysis of philosophical thought which helps our understanding of these developments. Her sole-authored chapter entitled 'Cultural Heritage, Education, and Research in the European Union' (20??) provides a clear, comprehensive and scholarly analysis of the scant laws and thicket of policies of the European Union across the fields of Culture, Heritage and Education. This chapter displays her deep understanding of the operation and challenges of EU law and policies in these fields, its evolution over time, and growth across these areas of competence in ways that was unimaginable at the commencement of the European project. As with the monograph, Dr Jagielska-Burduk does not simply describe the law; but provides a nuanced critique of its operation and limitations.

Dr Jagielska-Burduk's significant contribution to the scholarship on the legal regulation of market relating to cultural heritage particularly cultural objects is manifest from her contributions to the earliest editions of the *Santander Art and Culture Law Review* including with W Szafranski and Jozwiak, the articles 'The possibility for the appearance of restrictive agreements on the Polish art market' (2016) and with Szafranskii, 'Single Licence for Permanent Export from the Age and Value Requirements' Perspective – between Cultural Heritage Protection and the Art Market in the Polish Legal System' (2019); and sole-authored article entitled 'Purchase of a cultural object from a non-owner: selected problems' (2015). Her expertise in this field of civil and common law issues together with private international law concerns arising within the art market was demonstrated in her 2023 co-authored chapter (with Prof D Fincham) on Article 3 of the 1995 UNIDROIT Convention concerning claims for restitution of stolen objects, to be

published by Oxford University Press. Reflective of Dr Jagielska-Burduk's sound knowledge of legal practice in the field, these scholarly publications provides a real-world analysis of the problems and possible solutions encountered by legal interventions in regulating the transfer and return of cultural objects.

I appreciate that the English language publications of Dr Jagielska-Burduk's research are only the tip of the iceberg of her contributions to this field.

International leadership and activities related to public law in the field

The international standing of Dr Jagielska-Burduk's scholarly contribution to the field of public law for the legal protection of cultural heritage is reflected in her position as UNESCO Chair in Cultural Property Law and the various roles that UNESCO, especially the Culture and Education Sectors of this United Nations' Organization have entrusted to her over the years. This reflects the esteem her scholarly contribution to public law, particularly through the culture conventions and their implementation, is held by her peers. For example, she co-authored the specialist advice for UNESCO on the operation of 'due diligence' in respect of the transfer of movable heritage. She has been invited to be an keynote speaker and conference panelist in international conferences hosted in Europe, Asia and the Americas and her guidance has been instrumental in building research collaborations across the globe, which have attracted competitive research funding.

Dr Jagielska-Burduk's commitment to public law in the field of the legal protection of cultural heritage is manifest in her establishment and ongoing editorship of what has become a leading journal in the field, the *Santander Art and Culture Law Review*. This scholarly journal has attracted contributions by leading international academics in the field and addressed the most important, contemporary academic discourses, today. Its significance is reflected in its journal and impact rankings.

Dr Jagielska-Burduk's contribution to public law in this area is also reflected in her role in the establishment and ensuring the ongoing sustainability of specialist summer schools, which attract seminars and talks by the leading intellectuals and practitioners in the field on themes that are cutting-edge.

All of these contributions by Dr Jagielska-Burduk embody her commitment and leadership in enriching our knowledge and critical understanding of public law in this field and building the capacity of others to do so.

International leadership and activities related to private law in the field

The international standing of Dr Jagielska-Burduk's scholarly contribution to the field of private law and private international law for the legal protection of cultural heritage is reflected in her international leadership roles as Polish correspondent to UNIDROIT and co-chair of the Legal Committee of the International Art Market Studies Association (TIAMSA), and national leadership role at part of the Executive Committee of the Polish Bar Association. These positions reflect the esteem with which her legal, scholarly contributions to the field of private law, nationally and internationally, by her peers. She was an invited speaker to the Global Thematic Webinar on the protection and restitution of cultural property within G20 Culture projects under the Indian Presidency in 2023.

Under Dr Jagielska-Burduk's editorship, the *Santander Art and Culture Law Review* has published important volumes on important current concerns like the implementation of the recent EU Law on the regulation of the transfer and return of cultural objects; and restitutions claims for cultural objects in European collections removed during colonization. Each volume has successfully secured contributions by leading scholars from all around the world, to ensure their relevance to a global audience.

Dr Jagielska-Burduk has been invited to present public lectures and seminars on private law issues concerning the legal protection of cultural heritage in many countries throughout the world. In her role as co-chair of TIAMSA's Legal Committee she has contributed to the development of their international summer school programme on the legal issues arising from the art market.

These initiatives by Dr Jagielska-Burduk reflect her commitment and leadership in enriching our knowledge and critical understanding of private law in the field of cultural heritage and art law and capacity-building in others. Her long-standing capacity to attract funding including competitive funding, reflects the recognition of the value placed by public and private bodies on her important work.

Other related leadership and activities in support

It is clear from the portfolio submitted, that Dr Jagielska-Burduk has consistently and repeatedly demonstrated her capacity for leadership and the highest scholarly standards in the furtherance of our knowledge and critical understanding of the role of public and private law in the effective legal protection of cultural heritage at the national and international levels. This leadership and contribution has been manifest in her scholarly publications (across multiple languages), her co-authorship with leading law and non-law scholars, her establishment and editorship of one of the leading academic journals in the field, her establishment and management of international conferences and summer schools, her various leadership roles at the national and international levels.

Dr Jagielska-Burduk's leadership and multiple forms of contributions to these fields reflects not only the rigour and originality of her scholarly contributions but the esteem with which her scholarship is held by scholars and practitioners in Poland and many countries through the world. It has been a pleasure to learn more about these contributions as part of this habilitation process.

In conclusion Dr Jagielska-Burduk meets the requirements set forth in the Article 219 (1) 2a and 3. of the Act of 20 July 2018 Law on Higher Education and Science.



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