

THE FIGHT AGAINST ILLEGAL TRAFFICKING OF CULTURAL PROPERTY IN THE REPUBLIC OF SERBIA – THE ROLE OF POLICE AUTHORITIES¹

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Abstract: This paper sheds light on a very controversial topic - the legal and security aspects of the illegal trafficking of cultural property. In the first part, the paper will depict the international legal framework dedicated to the illegal trafficking of cultural property. In the second part, the emphasis will be on the state of affairs in the Republic of Serbia and the role of the Bureau for the fight against organized crime when it comes to the aforementioned challenges. Thirdly, certain security and procedural challenges will be presented, thus highlighting the importance of strong cooperation between official authorities with the competence to fight against cultural property trafficking. Finally, possible solutions for a more effective national response in suppressing the illegal trafficking of cultural property will be put forth. The protection of cultural property gains growing importance in an attempt to develop and strengthen Serbia's cultural policy and cultural identity. It is also a topic of the national interest, especially having in mind the goals set in the new Strategy for Cultural Development of the Republic of Serbia for the period 2020-2029, which is still in the process of the adoption in the National Parliament.

Keywords: cultural heritage, illicit trafficking, cultural goods, police and customs authorities, cooperation.

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THE FIGHT AGAINST CULTURAL PROPERTY TRAFFICKING - INTERNATIONAL LEGAL FRAMEWORK

Comprehensive protection of cultural property, as the backbone of cultural policy and cultural diplomacy of the state, deserves special attention, not only during armed conflicts but also during peacetime (Pavićević, 2019). But it was not until the grand conquests and takings of Napoleon, the rise of nation-states, and the increased likelihood of destruction in modern warfare that there began concerted efforts to regulate cultural property through national laws and international treaties (Shapiro 2005). However, more and more often, even during peaceful periods, cultural properties are smuggled, illegally exported from the country, and sold at an increasingly branched-out black market (Pavićević, 2019).

Today, thefts of art and antiquities are reported to join drugs, money laundering, and the illegal arms trade as one of the largest areas of international criminal activity (Hoffman, 2006). Most often, the reasons for this criminal activity are numerous: potentially very high profits, inadequate border control, facilitated transfer of cultural goods, and the inconsistency of legal regulations with international rules and standards. Also, the lack of awareness of the growing complexities of this problem is inversely proportional to the high demand for cultural goods, especially in market countries.⁴ Unfortunately, their removal not only robs a vulnerable country of information about its history but may partially strip the cultural object itself of its identity (Ulph, 2011). Archaeological sites, artefacts, and monuments are sometimes the only witnesses of past times, meaning that, in the case of their theft, the value of historical knowledge is irretrievably lost.

At the international level, there is a complex application of soft law principles, enforcement tools, international conventions, and resolutions and there are different impositions of liability on individuals and legal persons (Caponigri, Piri, 2017). Several important international conventions were adopted, though not all focusing on the same subject-matter. In 1954, the Hague Convention⁵ was adopted as the first universal legal instrument to protect cultural property during wartime. The aforementioned imperative led to the long-standing negotiations and recommendations that gave birth to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.⁶ The 1970 UNESCO Convention was conceived as the lynchpin of an international legal framework for controlling traffic in illegally exported or stolen cultural property and is based primarily on an essentially public international law and administrative law model (Hoffman, 2006). However, those are precisely the reasons why the 1970 UNESCO Convention was not crowned with success. With the lack of congruency between the national laws and weak enforcement mechanisms embodied in non-binding diplomatic negotiations, a unified system of protection was not established, but instead, ad hoc solutions were given. The 1970 UNESCO Convention does not apply to cases involving non-state actors, it cannot protect private individuals, nor does it cover cultural property that does not belong to public collections (Pavićević, 2019).

4 Market states are those that usually advocate universal attainability and the free flow of cultural goods, such as the US, Japan, Germany, Switzerland, etc. On the other hand, states which own plenty of cultural heritage and therefore take a retentionist, nationalist view towards preserving it, include countries such as China, Italy, Mexico, etc.

5 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html, accessed 10.7.2020.

6 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html, accessed 10.7.2020.



To provide more efficient legal mechanisms, the International Institute for the Unification of Private Law (UNIDROIT) adopted the Convention on Stolen or Illegally Exported Cultural Objects in 1995.⁷ The purpose of the 1995 UNIDROIT Convention is to supplement the provisions of the 1970 UNESCO Convention by formulating uniform legal rules on the return and restitution of cultural objects to mitigate the illicit trafficking in cultural objects (UNESCO, 2018). The 1995 UNIDROIT Convention enables the framework for international court proceedings and curbs the illicit trade of cultural property from the private law perspective. The Republic of Serbia has acceded to the 1970 UNESCO Convention; however, it has still not acceded to the UNIDROIT Convention.⁸ Additionally, from the wider aspect of organized crime, important international conventions that can contribute to the elimination of illegal trafficking are: United Nations Convention against Transnational Organized Crime⁹ (UNTOC) and the 1999 International Convention for the Suppression of the Financing of Terrorism (CSFT)¹⁰. It is important to emphasize that the Republic of Serbia has adopted both conventions in 2003 and 2002. The UNTOC and the CSFT should be used, where appropriate, as a legal basis for extensive international cooperation in criminal matters pertaining to fighting all forms and aspects of trafficking in cultural property and related offences (INTERPOL, 2016).

THE STATE OF AFFAIRS IN THE REPUBLIC OF SERBIA - THE ROLE OF POLICE AUTHORITIES

The protection of cultural property is an undertaking that is generally associated with cultural heritage professionals such as archaeologists, art historians, anthropologists, and museum professionals (UNESCO, 2018). Consequently, we often forget about the role of the national actors, outside the sphere of the art world, but nonetheless crucial for the fight against cultural property - the police and customs authorities. In this context, the first national response was the formation, in Italy, of the *Carabinieri* (*Tutela Patrimonio Culturale* – TPC), the world's first police force specialized in the protection of cultural property (INTERPOL 2016).

In the Republic of Serbia, competent state bodies for the fight against cultural property trafficking in various forms are: the Ministry of Culture, the Ministry of Interior, but also the Customs Administration within the Ministry of Finance. Of course, the Ministry of Justice is competent when it comes to providing international legal assistance for civil or criminal matters, which may also be interpreted in the light of the requests for the return of foreign cultural property which is seized in Serbia.

When it comes to the Ministry of Interior, we believe that the activity of the police forces, although at first glance not so visible, is crucial in providing timely response to the criminal activities. In this regard, it is important to mention the activity of the Criminal Investigations Directorate, within the General Police Directorate of the Ministry of the Interior. In the Criminal Investigations Directorate,

7 UNIDROIT Convention on stolen or illegally exported cultural objects, Rome, 24 June 1995, <https://www.unidroit.org/instruments/cultural-property/1995-convention>, accessed 11.7.2020.

8 On the importance for the Republic of Serbia to access the UNIDROIT 1995 Convention, see more: "Legal challenges of the Republic of Serbia in the process of harmonization with the UNIDROIT Convention on stolen or illegally exported cultural objects", Vanja M. Pavićević, *Saopštenja*, Institute for the Protection of Cultural Monuments of Serbia – Belgrade, pp. 217-227.

9 <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, accessed 12.7.2020.

10 International Convention for the Suppression of the Financing of Terrorism, <https://treaties.un.org/doc/db/Terrorism/english-18-11.pdf>, accessed 12.7.2020.



under the Bureau for the fight against organized crime, operates a special unit which is responsible for the fight against illegal trafficking of cultural property. This is of utmost importance, having in mind the fact that the Balkan area is rich with archaeological sites and relics dating back to prehistoric times, the Roman and the Byzantine Empire, etc.

According to the Serbian Law on Cultural Property, property under prior protection, situated underground or in water, or taken out of the earth or from water, shall be state-owned.¹¹ This is an appropriate solution since, as in the case of archaeological looting, protection is provided in advance for the property which is neither registered nor even familiar to the authorities at the time of theft.¹² Therefore, an equal protection status is guaranteed to both declared cultural property and the property under prior protection. Hence, the case of theft of cultural property, or the property under prior protection, would fall under the Serbian Criminal Code, as an Aggravated/Compound Theft. The article 204 of the CC states that a person committing the offence of theft shall be punished with imprisonment of one to eight years if the stolen object represents a cultural asset, or an asset subject to preliminary protection or natural asset (Article 204 paragraph 1 and 2 of the Serbian Criminal Code).¹³

In the last few years, good results followed a great shift in the work of the special unit. The unit's work centered around widening of the international cooperation and the application of innovative investigative techniques in this area of crime. In this respect, we will mention a few key actions successfully performed by the Serbian special police unit. In the famous *Achei* operation, which was led by the Italian Carabinieri Department for the Protection of Cultural Heritage (*Carabinieri*) supported by Europol and Eurojust, a successful contribution of the Serbian Criminal Investigations Directorate was outlined. *Achei* operation resulted in dismantling an international organized crime group involved in large-scale trafficking of looted archaeological items¹⁴ (EUROPOL, 2019).

Another successful operation performed by the Bureau for the fight against organized crime special unit, within the framework of international police cooperation, certainly is the discovery of three precious religious objects that were stolen in 2018 from the Catholic Church in Vienna, and eventually found and seized in Kanjiža. The Bureau emphasizes that this kind of action efficiently contributes to better diplomatic relations and cultural cooperation between the two countries.¹⁵ Also, as a result of the successful cooperation between the Customs authorities and the Bureau's special unit, a large numismatic collection was discovered and consequently seized at the Gradina border crossing in 2019.¹⁶

However, the Bureau for the fight against organized crime emphasizes that this special unit is responsible from the aspect of organized crime, not from the aspect of an individual criminal offence. The Serbian Criminal Code defines an organized crime group as a group comprising of three or more persons, which exists a certain amount of time, and acts in concert with the aim of committing one or

11 The Law on Cultural Property (LCP), Art. 12. ("Official Gazette of the RS" no. 71/94, 52/2011, 99/11).

12 This criminal offence is regulated under Article 353a of the Criminal Code, as Unauthorized Archaeological Exploration, and the envisaged prison sentence is from six months to five years, including a fine, for an offence that has been perpetrated at an archaeological site or on some other immovable cultural heritage or asset subject to preliminary protection.

13 Criminal Code of the Republic of Serbia (CC), Art. 204. (Official Gazette of the RS, no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

14 The French OCBC (*Office central de lutte contre le trafic de biens culturels*), the German Bavarian LKA (*Bayerisches Landeskriminalamt*) and the British Metropolitan Police Service – London also took part in this action. Europol Press Release, <https://www.europol.europa.eu/newsroom/news/23-arrests-and-around-10-000-cultural-items-seized-in-operation-targeting-italian-archaeological-trafficking>, accessed 15/7/2020.

15 Information acquired during the research for this paper conducted within the competent bodies, July 2020.

16 *Ibid.*



more criminal offences punishable with a term of imprisonment of four years or more the purpose of which is acquiring direct or indirect financial or another type of gain (Article 112 paragraph 35 of the Serbian Criminal Code). When it comes to an individual criminal offence, in each police department, at least one police officer is trained for dealing with the individual cases related to cultural property trafficking.

THE IMPORTANCE OF STRONG COOPERATION BETWEEN COMPETENT AUTHORITIES – PROCEDURAL AND SECURITY CHALLENGES

Analyzing the above-mentioned legislation and police competencies, we consider that the Republic of Serbia is able to provide an adequate response in the fight against illegal trafficking of cultural property, thus contributing to the European and international efforts/cooperation in this regard. However, having in mind that cultural property law is a dynamic field, there is always room for improvement. To reach additional specialization, several main challenges were identified in this field.

The role of the Public Prosecutor

According to the Serbian criminal procedure law, it is the decision of the Public Prosecutor whether he/she will undertake or defer criminal prosecution, abandon charges or file and represent an indictment before a competent court¹⁷ (Article 43 paragraph 1 and 2 of the Serbian Criminal Procedure Code). However, since the prosecutors are not exclusively trained for the cultural property cases, there is a possibility that they will not recognize the specific importance of the cultural property in question, which often includes values that cannot be encompassed financially. In the case when the Prosecutor decides not to initiate further proceedings, the entire previous investigation conducted by the police would be fruitless. The Prosecutor not only has a primary role when it comes to decision making but also the burden of proof. Hence, it is important to have an ongoing dialogue between the Public Prosecutor, on the one hand, and the police and customs authorities, on the other.

However, to conduct a successful investigation that will lead to the indictment, a simple dialogue is not enough. It is crucial to actively include public prosecutors in joint training against trafficking of cultural property, along with employees of the Ministry of Culture, the Ministry of the Interior and the Customs administration. In this way, working methods could be determined directly in consultation with the police authorities, including investigation techniques, securing evidence, etc. Therefore, the responsibility cannot rest solely on the police authorities, since the Prosecutor has the final word on the case.

Customs offences vs Criminal offences?

For centuries, cultural property has been unlawfully exported or imported through various countries, regardless of whether it was stolen or not. According to the Serbian Criminal Code, whoever takes goods across the customs line evading customs control measures shall be punished by imprisonment of six months to five years and fined (Article 236, paragraph 1, SCC). However, if one consults the Commentary of the Criminal Code, one would be somewhat surprised - the attempt to smuggle goods across the border formally constitutes only a customs offense, and not a criminal offense. (Stojanović,

¹⁷ The Criminal Procedure Code (CPC), Art. 43, Para. 1, 2. (Official Gazette of RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, and 35/2019.



The Commentary of the Criminal Code, 2018). Hence, it would fall under the Article 291 of the Serbian Custom Code.¹⁸ Only if certain additional characteristics are fulfilled, such as, for example, continuous dealing with the unlawful transfer of goods, the customs offense becomes a basic form of a criminal offense. This situation could be seen as potentially problematic since in the case of customs offence only a fine would be imposed, without the imprisonment, thus the burden of responsibility could be avoided, at least during the first attempt.

Registers of the cultural property

We believe that one of the most important measures in the fight against cultural property trafficking should include comprehensive national inventories and registers of cultural heritage. Speaking of relevant international bases, only a few of them will be mentioned: the Republic of Serbia, as an INTERPOL member, has the right to use the INTERPOL Database of Stolen Works of Art and to manually enter information in the register.¹⁹ Also, within the World Customs Organization, the ARCHEO platform was established, and the Serbian customs authorities are actively using it to track illegal activities in this regard.²⁰ ARCHEO platform is a WCO's real-time communication tool for the information exchange, through which the information on seizures of cultural goods is shared with other customs services, enabling enforcement officers to learn about new smuggling methods.²¹

Since unregistered archaeological sites are often destroyed in the Balkan area, the process of collecting the data could be highly onerous, since experts cannot identify what is stolen. Some of national museums periodically conduct their registers of cultural property, but they do not have a joint, unified register (database). According to the Action plan for implementing the new Strategy for Cultural Development of the Republic of Serbia for the period 2020-2029, the establishment of a database register on stolen goods is envisaged.²² It will be followed by the training of police and customs authorities for its use, as well as identification and return of stolen goods. Updated, public, and a comprehensive national database of the stolen cultural property would represent a fundamental method for research and possible later restitution of the Serbian cultural property, especially when the property is located outside of its borders. The technology could also be used to create a mobile app that allows individuals to easily verify if a cultural object has an illicit provenance or not, as the free application *iTPC* created by the Italian *Carabinieri* Force for the Protection of Cultural Heritage (Caponigri, Piri, 2017). Auction houses, private foundations, internet service providers, museums, collectors, cultural heritage experts, and civil society members should be firstly enabled, but also willing to collaborate with police and customs authorities, thus to consult online registers of cultural property on a daily basis.

CONCLUSION

18 The Custom Code (CC), Article 291, (Official Gazette of RS, no. 18/2010, 111/2012, 29/2015, 108/2016 and 113/2017)

19 INTERPOL Database of Stolen Works of Art <https://www.interpol.int/en/How-we-work/Databases/Stolen-Works-of-Art-Database>, accessed 16.7.2020.

20 ARCHEO platform, http://www.wcoomd.org/~media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/cultural-heritage/archeo_brochure_en.pdf, accessed 16.7.2020.

21 WCO News, Serbia's valiant efforts to protect cultural heritage, <https://mag.wcoomd.org/magazine/wco-news-86/serbias-valiant-efforts-to-protect-cultural-heritage/>, accessed 16.7.2020.

22 The Strategy for Cultural Development is still in the process of adoption in the National Parliament. The draft is available at <http://www.kultura.gov.rs/lat/dokumenti/propisi-iz-oblasti-kulture/strategija-razvoja-kulture-za-period-od-2020--do-2029--godine>, accessed 16.7.2020.



Illegal trafficking in cultural property is becoming an increasingly important source of profit, linked with money laundering and financing of terrorist groups. Therefore, previously analyzed international cultural property framework is important, and - not only theoretically - it represents an opportunity for in-depth cooperation. However, to be effective, it has to be based on timely and well-structured national action, as well as on the growing awareness of the complex world of cultural property smuggling. We believe that the national response to this important issue rests on two main pillars:

- National legislation, that is harmonized with international conventions and relevant standards in this area, thus acceding to the 1995 UNIDROIT Convention;
- Cooperation and ongoing information-exchange between competent authorities, especially the police and customs officers with the Public Prosecutor office, the Ministry of Culture and the Ministry of Justice. This can be accomplished through joint capacity building and additional specialization in this multidisciplinary field;
- Establishing the register on stolen cultural property, but also a register of movable cultural property which will merge all the museums' registers at the republic level.

Having in mind that Serbia often represents the transit or the source country, rather than market country (the final destination), the Republic of Serbia must continue to provide a prompt reaction to aforementioned challenges in this area. The protection of cultural property, a topic of national interest, is increasingly gaining importance in an attempt to develop Serbia's cultural diplomacy and cultural identity.

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