

ON THE ACTIVITIES OF AUTHORITIES INVOLVED IN COMBATING ILLICIT TRAFFICKING IN CULTURAL PROPERTY: INTERNATIONAL EXPERIENCE

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Abstract

In recent times, trafficking in cultural property, its looting and destruction, is one of the main threats to the heritage of all mankind. Proceeds from the sale of cultural property are often used to finance terrorist activities (Berger, 2018; Neil Brodie, 2017; Neil Brodie & Sabine, 2018; Hausler, 2018).

If the financial resources obtained through the sale of unlawful cultural objects are used to maintain the infrastructure of terrorism, then the physical safety of the international community is in fact threatened globally, whereas denying the public access to cultural objects due to their unlawful circulation, the intellectual safety of members of the public is being threatened individually Čevers and Čevers (2021).

Illicit trafficking in cultural objects is a subject both in the legal and regulatory framework, as well as in many scientific debates (Mackenzie & Yates, 2016). According to Interpol estimates, trafficking in cultural property is so large-scale that it is second only to drug and arms trafficking (Berger, 2018; Fisman & Wei, 2009). This, in turn, involves the analysis of case studies, choices of the relevant theory and practice that project the modern activities of the bodies engaged in combating illicit trafficking in cultural property Kerr (2020).

The purpose of the paper is to determine the specifics of the institutional organization of such struggle in some foreign countries based on the study and generalization of international experience in combating smuggling of cultural property.

The work used various general scientific methods and methods of logical knowledge: systematic, analysis and synthesis, abstraction, and formal-logical approaches.

The study identifies the main features in the organization of the activities of bodies engaged in combating criminal encroachments on objects of special cultural value. The main aspects of the activities of such bodies, their objectives, tasks, and measures taken to protect cultural property from criminal encroachment are mentioned.

The strengthening role of the activity of individual countries in the practice of suppression and investigation of crimes related to trafficking in cultural property is noted.

Key words: Cultural property, trafficking in cultural property, investigation of smuggling of cultural property,

Introduction

Since the middle of the last century, states concluded that the smuggling of cultural property has an increased public danger, because it damages not only the economic development of states, but also violates the rights of citizens to access to culture (heritage).

In 1969, Italy was the first country to create a specialized law enforcement body serving as an important mechanism for the effective protection of cultural heritage: the Carabinieri Command for the Protection of Cultural Heritage (Comando dei Carabinieri per la Tutela del Patrimonio Culturale). Their Command for the Protection of Cultural Heritage (TPC) acted on the basis of the 1970 UNESCO Convention, which stipulated the measures to be taken to prohibit and prevent the illegal import, export, and transfer of ownership of cultural property (Bertinelli & Costantini, 2005).

Wide-scale organization of such bodies in a number of countries began relatively recently, since 2015, through the creation of a specialized unit in the law enforcement agencies, the activity of which consists in detecting, suppressing and preventing criminal acts in the considered sphere, as well as the implementation of international cooperation (Plywaczewski, 2011): since 2002 the National Center for the Protection of Cultural Heritage within the Federal Police (Argentina); since 2004 - the Division for Combating Crimes in the Field of Art within the Federal Police (Argentina). However, since 2005 there is a specialized body of the Federal Office of Culture (Switzerland); since 2010 there is a unit for the investigation of crimes against cultural heritage within the judicial police (Ecuador); since 2015 there is a Unit for the investigation and prosecution of trafficking in cultural property (Mexico); since 2016 there is a unit for the investigation of crimes against wildlife and cultural heritage (Sweden) (Makariev, 2022).

Main part

Speaking about the organization of activities to combat trafficking in cultural property, it should be noted that in some countries the authority to investigate trafficking in cultural property falls within the competence of customs authorities, who conduct an initial investigation and then pass the case to the police (for example, Germany), in other countries, if there are signs of smuggling, customs pass directly to the police investigation (Italy, Netherlands, Spain, Sweden).

In addition to the police and customs, some foreign countries have a special body responsible for the protection of cultural heritage (e.g., the Netherlands, Sweden). Such bodies are usually established under the Ministry of Culture and may have a supervisory function in relation to law enforcement agencies not only in the field of crimes related to trafficking in cultural property, but also such crimes as their destruction, damage, robbery, and theft.

Not all national law enforcement agencies have a specialized unit for investigating crimes related to cultural property (including trafficking in cultural property).

There are four groups of countries according to the availability of a specialized unit in the law enforcement structure:

- 1) Countries with a long-established and specialized (more or less) police unit with a stable staff (e.g. Italy, Romania);
- 2) Countries that have a specialized unit, but its staff has been decreasing in recent years (e.g. Belgium);
- 3) Countries that used to have a specialized unit, but it was (recently) eliminated or terminated after the retirement of officers (e.g., Switzerland);
- (4) Countries that have a recently established specialized police unit (e.g., Sweden) (Niel Brodie, Yates, Slot, Batura, & van Wanrooij, 2019).

The availability of a specialized unit in a country seems to be related to how high the level of trafficking in cultural property is in the country and whether combating it is on the list of political priorities. Countries with an established specialized unit are strongly committed to protecting their cultural property and are often countries of origin. In countries where a specialized unit existed but was liquidated or its staff was reduced, combating trafficking in cultural property was not a top priority, so after the liquidation or reduction, the relevant

personnel were transferred to agencies engaged in the fight against organized crime or counter-terrorism.

Specialized units are organized depending on the administrative division of the country. Some countries have regional specialized units (e.g., Germany), some have regional units combined with a central authority (e.g., Italy). Most of them have one central body (e.g. Austria, Norway, and Spain).

Regarding the competence of specialized units, in some countries their competence includes exclusively the investigation of crimes against cultural property (e.g., Austria, Germany, Italy, and Spain); in others they investigate crimes related to trafficking in all types of illegal goods: drugs, firearms (e.g., Norway) or organized crime (Bulgaria). It seems to depend not only on political priorities, but also on the size of the country (i.e., smaller countries are more likely to "pool" competencies) and perhaps on the perceived frequency of this type of crime.

In the United States, the FBI established a rapid deployment Art Crime Team in 2004 in the aftermath of the looting of the National Museum of Iraq in Baghdad. 22 special agents, each responsible for addressing art and cultural property crime cases in an assigned geographic region.

Several agents on the team investigate art crime matters full-time, the majority of the team participates as a collateral duty; working art crime investigations in addition to their regularly assigned cases.

The programme is managed by the Criminal Investigative Division at FBI Headquarters in Washington, DC. A full-time supervisory special agent manages the programme and a subject matter expert supports the team through analysis and training, and manages the National Stolen Art File. The Department of Justice provides prosecutorial support through the Office of Human Rights and Special Prosecutions. The Department of Justice also provides online training in prosecuting cultural property cases.

The FBI is responsible for the National Stolen Art File (NSAF), a database of information related to thefts of cultural property in the US and overseas. Begun in 1979, the database was upgraded and expanded in 1998 to incorporate investigative information, including modus operandi, prosecution information, and suspect descriptions with images.

The NSAF is used by local, state, and federal law enforcement agencies to report stolen cultural property and to identify recovered art and artifacts ([Manacorda & Chappell, 2011](#)).

We should separately note the peculiarities of organizing activities of the authorities engaged in combating criminal encroachments on objects of special cultural value in China. Since the 1980s, the Chinese government has been fully aware of the importance and value of cultural property and has sought to prevent its export through a legal regime designed to keep the most valuable cultural property inside the country ([Huo, 2016](#)). In the process of combating trafficking in cultural property, the Chinese government has accumulated valuable experience in improving its law enforcement mechanism.

The State Administration of Cultural Heritage (SACH) is one of the department of the State Council, aimed to protect, utilize and manage the cultural heritage of China ([Kamermans et al., 2004](#)).

The SACH has so far set up seventeen professional institutions in charge of examination and verification for the entry and exit of cultural objects across the country. Only those cultural objects that have satisfied the requirements of the laws and administrative regulations & rules would be issued export or entry permits. Should these institutions find any evidence of illegal traffic, they would report it to the customs and the public security authority immediately ([Prott, 2011](#)).

Specialized units of the Chinese Customs Police are directly tasked with preventing, detecting, and suppressing smuggling of cultural property. These units are managed by the Anti-Smuggling Administration. The legal status of the customs police to combat smuggling

was established in July 2006 in the amendments to the Customs Law of the PRC, where the PRC Criminal Code, the PRC Criminal Procedure Code, the PRC Customs Law [M. \(2014\)](#) were defined as the legal basis for its activities.

The goals and objectives of the customs police are the detection and investigation of smuggling crimes (and, of course, the performance of related verification activities and procedural actions).

In accordance with the Customs Code of the People's Republic of China, the state implements a smuggling apprehension system with the unified apprehension, investigation and comprehensive management. Customs authorities are responsible for organizing, coordinating, and managing the work of detecting and apprehending contraband. It is also noted that all territories and all agencies shall support the customs in the lawful exercise of their powers; unlawful interference in the execution of the law by the customs is unacceptable.

As we can see, the preservation of cultural heritage in China is under special control of the state. A special place belongs to the customs authorities, which make a significant contribution to the implementation of measures aimed at preventing and suppressing the illegal export of Chinese cultural heritage from the country.

Let us turn our attention to some aspects of the organization of activities to detect, investigate, and suppress illicit trafficking in cultural property.

As it is known, the initial stage of the investigation of criminal cases on the fact of illicit trafficking in cultural property in the Russian Federation is the stage of initiation of a criminal case, which has its own specifics due to the special nature of this type of criminal activity. In European countries and in the USA, the institution for the stage involving the initiation of a criminal case does not exist: instead of the criminal proceedings stage, the law enforcement authorities proceed to the immediate investigation of a crime after the receipt of a report on a crime to them ([D.V & E.A., 2017](#)).

A report of a crime may come from:

- Customs authorities apprehending persons conveying cultural property illegally when passing through customs control.
- Border authorities apprehending persons conveying cultural property when crossing the customs and state borders illegally;
- Witnesses or victims.

However, crimes related to trafficking in cultural property are mostly "victimless crimes"; therefore, one of the important elements of detecting such crimes is the monitoring of the art market.

An exemplary and comprehensive approach to market monitoring is carried out in Italy, where about 40% of cultural monuments protected by UNESCO (more precisely, by the Carabinieri Command for the Protection of Cultural Heritage (hereinafter - Italian Carabinieri)) are concentrated ([Logvinets, Katorgina, Khlebnikova, Mamin, & Ponomarenko, 2020](#)). The Italian Carabinieri have a specialized IT department, whose mandate includes checking Internet markets, visiting dealerships and even flea markets. It should be noted that the relevant websites are checked manually.

Despite the effectiveness of such extensive and comprehensive checks, most national police structures of foreign countries cannot afford them due to a lack of resources.

Countries such as Belgium, Cyprus, and Norway do not have the capacity to systematically monitor the sale of antiquities on the Internet: they do this only when they receive information pointing to illegal goods offered online.

Often, in order to identify and authenticate cultural property, employees of specialized units seek the assistance of representatives of museums, universities, and researchers.

Researchers are engaged by law enforcement authorities to check objects or to give advice directly and also on an ad hoc basis whenever the authorities come across something suspicious and need assistance (e.g. Germany, Norway) or through formal requests through the

national Ministry of Culture (e.g. Romania, Switzerland). Requests through the Ministry take longer than direct requests, increasing the length of investigation in this category of cases. The experience of the Czech Republic should be noted: its specialized unit employs part-time academic experts. It is thought that the involvement of academic and museum experts for the identification, authentication, and evaluation of seized material is more in demand than employees for tracking online markets.

Thus, cooperation with external (academic) experts is to be encouraged and requires adequate funding.

The next area of partnership in the fight against illicit trafficking in cultural property is cooperation with various national authorities and agencies. Signs of trafficking in cultural property may be detected by customs officials, who, as mentioned earlier, may or may not conduct a preliminary investigation, which is then passed on to the police for more thorough investigation. The exchange of data and information between the relevant agencies is crucial at various stages of an investigation.

When it comes to combating trafficking in cultural property, communication flows between the various national law enforcement bodies and agencies are established not in all countries.

In some countries, police and customs agencies work being isolated from each other and rarely coordinating their actions or meeting each other. This hinders an effective understanding of the phenomenon of trafficking in cultural property at the national and international levels. In countries with a federal structure, regional police without a specialized unit may not have access to a central database of lost and stolen cultural property. It should be noted that, in some countries, customs and police do not have access to each other's databases, which may contain information necessary for the quick and efficient investigation of trafficking in cultural property offences (Niel Brodie et al., 2019).

In other countries, national cooperation between different law enforcement agencies is quite effective and regular.

In Norway, for example, police and customs cooperation includes weekly meetings in which information is exchanged between the two sides. Although the Norwegian police and customs do not share a common information system, they have established an effective form of cooperation that allows them to exchange information easily. Belgian law enforcement agencies have a similar platform for informal cooperation.

In general, the exchange of information between national stakeholders is perceived as an effective way of strengthening and maintaining links and helps to coordinate action in the fight against trafficking in cultural property.

A problematic area of cooperation is the interaction of specialized units with art and antique dealers, auction houses, collectors, etc. This is primarily due to their reluctance to cooperate with the police.

However, there is positive experience of such cooperation. The Inspectorate of Cultural Heritage of the Ministry of Education, Culture and Science of the Netherlands organizes regular meetings with representatives of industry associations to discuss current issues in order to develop a unified approach to combating the illicit trafficking of cultural property.

In the Netherlands, the police have a good working relationship with the Royal Association of Dealers in Ancient Art (Koninklijke Vereeniging van Handelaren in Oude Kunst - VHOK). The Dutch police regularly use the expertise of VHOK members to establish the authenticity, provenance and value of objects. Members of the association have also provided their expertise during a Cyberpatrol's action within the Pandora III operation (Niel Brodie et al., 2019).

Conclusion

Taking into account the positive foreign experience, we conclude that the bodies engaged in combating illicit trafficking in cultural property have their own specific features of organization, and the system of cooperation between national law enforcement bodies, agencies, representatives of museums, universities, auction houses, etc.

We consider the following to be the most effective elements of the institutional organization of the fight against criminal encroachments on objects of special cultural value:

- Creation of separate specialized units for investigating crimes related to cultural property (including illicit trafficking in cultural property);
- A mechanism of inter-agency cooperation to facilitate contacts between the relevant authorities;
- Creation of a national database of stolen and missing cultural property linked to the Interpol regular reporting database (Bertinelli & Costantini, 2005);
- Developing national "red lists" of their cultural heritage most at risk of illicit trafficking;
- Organizing regular meetings between relevant stakeholders (e.g. police, customs, researchers, museum representatives) for training, information exchange, and to ensure operational needs.
- Making part of the national databases available to the public.

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