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Hudák, Krisztina* – Csaba, Zágon*: A brief Survey of Illicit Art Trade of Archaeological Finds in Hungary – in the Context of Customs Control ²⁸⁴

Abstract

The paper deals with the issue of illegal trade in art objects with special regard to customs control. Frequent commodity types smuggled across borders are works of arts belonging to the category of cultural goods. In many cases, these objects have rather historical than aesthetic value. Determining the age and value of cultural goods require expertise in art. The identification of cultural goods of archaeological date (i.e. produced before 1711 as stipulated in the Hungarian legislation) and the origin of their cultural relevance as it once have been found in the soil is the responsibility of an archaeologist. Detecting illegally moving artefacts as contrabands, however, challenges the law enforcement authorities, including the National Tax and Customs Administration. Theft, transportation and trading in illicit cultural goods considered strictly illegal all over the world, still the authorities are facing tremendous difficulties while filtering out such contrabands from the legitimate trade. This article emphasises the interdependence between the archaeologists and the law enforcement and proposes how to reduce illicit trade. The author concludes the need of supplemented officer training by a package of specific knowledge such as a module in order to increase the cooperation between the parties and boost the efficiency of the contraband detection.

Keywords: customs control, cultural goods, illicit trade

Absztrakt

Jelen tanulmány a kulturális örökség kategóriájába tartozó javak, különös tekintettel a régészeti korú kulturális javak illegális kereskedelmének kérdéskörével foglalkozik. A határokon át csempészett, az illegális műkincskereskedelemben gyakori árutípusok részben műalkotások, részben azonban inkább történeti, semmint esztétikai értékük miatt minősülnek értékesnek. A kulturális javak felismeréséhez, életkorának és értékének meghatározásához szakértelem szükséges. A régészeti korú kulturális javak (a magyar jogszabályokban előírtak szerint ezek 1711 előtt készültek) azonosítása és azok kulturális jelentőségének megállapítása a régész végzettséget szerzett szakember felelőssége. Az illegálisan mozgó műtárgyak észlelése, a csempész szállítmányok kiszűrése nagy kihívást jelent a hazai büntető szervek

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számára is, beleértve a Nemzeti Adó- és Vámhivatalt. Világszerte szigorúan illegális és büntetendő a kulturális javak eltulajdonítása és illegális kereskedelme. A hatóságoknak azonban kihívást jelent ezek kiszűrése. Ez a cikk a régészek és a bűnüldözés kölcsönös egymásrautaltságát hangsúlyozza és javaslatot tesz a tiltott kereskedelem csökkentésére. A szerző arra a következtetésre jut, hogy a rendvédelmi képzést szükséges kiegészíteni speciális ismeretekkel, például egy modullal, amely segít a felek közötti együttműködés és a csempészség felderítésének hatékonyságának növelése terén egyaránt.
Kulcsszavak: vámellenőrzés, kulturális tárgyak, illegális kereskedelem

1. Introduction

The detection of trafficking in works of arts poses continuous challenges for the authorities. Illicit trade, including smuggling in works of art, is in fact, smuggling of cultural goods at the same time. In many cases, these smuggled objects have rather of historical than of aesthetic value. Determining the key peculiarities, such as the age and value of cultural goods, belong to the experts' responsibilities. The identification of cultural goods of archaeological date²⁸⁵ and of those cultural goods that are archaeological finds and originate from the soil also requires the contribution of an archaeologist.

According to the author's experiences, there are two main reasons why these illicit activities occur challenges. Firstly, cultural goods vary of object types: coins, paintings with various techniques, graphics, sculptures, furniture, musical instruments, antique books, manuscripts, diplomas, archaeological objects, fossil bones, porcelain and other materials, as well as objects of archaeological date²⁸⁶ with historical value or artistic elaboration. No expert possesses equally wide ranges of knowledge required for the identification of these types of objects in all ages of possible origin. Secondly, law enforcement authorities find the objects in an unclean or intentionally fragmented form, quite very often being concealed or declared simply as part of a group of other items. In this aspect, the challenge is how to find the needle in the haystack, meaning how an officer can recognise those few items that need specific attention.

Moreover, the lack of harmonisation of laws and procedures occurs several inconsistencies at the national and international levels. Export licences, for instance, required for shipping cultural properties out of Hungary depending on a roster of complex criteria by type, age and value of the works of arts. Object categories vary 50, 100 and 200 years and older by age in the respective EU legislation.²⁸⁷ For instance, more than 100 years old artefacts fall under export licencing if they originate from excavations and finds on land or underwater. This regulation is in line with the Common Customs Tariff of the European Union by acknowledging antiques of an age exceeding 100 years.²⁸⁸ Contrary, the Hungarian national legislation contains a general rule for archaeologists to recognise objects as cultural goods that are older than 1711 A.D. as mentioned above.

²⁸⁵ According to the Hungarian legislation that means the object is older than 1711 A.D. cf. Act LXIV of 2001 on the Protection of Cultural Heritage.

²⁸⁶ Prior 1711 A.D.

²⁸⁷ cf. Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods.

²⁸⁸ See CN 9706 in the TARIC database.

Customs is entitled to check the availability of such export licences that were issued by the competent national authority²⁸⁹ if the cultural goods are intended to export to third countries. This moment takes place under the umbrella of customs control. Customs services are involved in the implementation and enforcement of EU legislation on import and export from and to non-EU countries. No regular customs checks take place at the internal EU borders²⁹⁰, and no customs declaration is required for the circulation of goods between EU member states if the shipping route does not cross customs boundaries. This leaves a gap even if Customs would have prior been informed on the authorised transactions by the competent authority for cultural heritage protection, but it is just not the case. Customs have limited jurisdiction and therefore almost no capacities to maintain any sort of control of moving goods between EU member countries. Thus, customs may not occur inappropriate hindrance of traffic flows, and intra-EU traffic checks rarely go beyond the random sample.

Additionally, there is very little data on the types and the state of condition of archaeological objects seized by the authorities publicly available in Hungary. Individual cases, however, raise media attention and authorities keep records according to their internal rules. These records may be proven as insufficient by the identification of different items. For instance, a sound part of seizure records indicates uncleaned objects. Coins are usually brought to the attention of the authorities like this. Law enforcement officers can recognise and seize uncleaned coins often supplemented with additional items as well.

The international art market is just as lucrative as the black market of arms, drugs or fake works of art foresees increasing tendency today. Since the Gulf Wars, the archaeologically rich Iraq become incredibly vulnerable to looters,²⁹¹ and the fight against illicit trafficking in artefacts become an urgent matter for the international law enforcement community for many reasons, including the threats of money laundering and terrorism financing.²⁹² The higher number of missing artefacts had been listed in the International Council of Museums' Emergency Red List, the more effective cooperation and partnership become a reality with key international organisations such as UNESCO, the Interpol, the World Customs Organization, several EU agencies and bodies, and wide ranges of law enforcement and cultural treasure protection authorities worldwide. The aim is to boost exchanging information between the competent authorities, preventing the large-scale smuggling and recovering looted treasures as much as possible.

This criminal sector of illicit trafficking in cultural property has been developed significantly in recent years. As the profit of the illegal trade of artefacts often flowed into the illegal trade of arms, especially in the Middle East, Central and South America, both importance of this issue and attention to it have increased.²⁹³

²⁸⁹ Since 01.03.2019 the responsible authority for issuing such certificate is the Department for Inspection of Cultural Goods and Archaeology of the Prime Minister's Office.

²⁹⁰ The Hungarian revenue authority, the National Tax and Customs Administration (NTCA) monitors intra-community shipping of goods for VAT compliance purposes, but this is on the one hand, no part of customs control and on the other, it is based on risk analysis and might lead to random physical checks.

²⁹¹ cf. BBC online 2003.

²⁹² SMITH 2008.

²⁹³ HUDÁK 2017; HUDÁK 2018b

Closer cooperation between the public and private art markets needs better coordination and harmonisation of judicial, criminal and customs measures and education in this field. Nowadays, developed countries advertise themselves more favourably when they spend large sums on protecting and preserving the cultural heritage of a developing country²⁹⁴. Still, besides these, law enforcement measures are increasingly needed.

Illegal trafficking of cultural goods also falls under the heading of organised crime. Europol produces its flagship strategic crime analysis report, the Serious and Organized Crime Threat Assessment (SOCTA). The latest public version was released in 2017 that pays special attention to organised property crime, including trafficking of cultural goods. The assessment emphasised the role of emitter countries such as Syria, Iraq and Libya, where armed conflicts resulted in the intensified trafficking in the EU and the emerging threat of online trading. This trend is expected to continue due to persistent instability in the region and the lack of law enforcement resources to prevent or intercept trafficking activities in origin and transit countries.²⁹⁵ The level of risk is considered substantial by experts. There are several extrapolation-based estimations about the size of global illicit trade in cultural properties concluding its volume between 4 to 6 billion dollars annually.²⁹⁶

2. The illicit market of archaeological goods and what law enforcement does

It is difficult facing the gap knowledge on the illicit archaeological art market in Hungary. There is no central archaeological artefact surveillance system that could continuously collect and aggregate data and keep statements of incoming information. Instead, archaeology seems to be an “ad hoc” problem.²⁹⁷ Due to the finite capacities and maybe a lack of intention the Department for Inspection of Cultural Goods and Archaeology of the Prime Minister’s Office tried to manage incoming data supplies only and did not conduct comprehensive research to set protection priorities. Performing such analysis makes no part of the area of responsibility of the competent authority, and therefore they have no or just little impact on the law enforcement.²⁹⁸ In recent decades a public initiative of private collectors led to form a specific group of experts who collect mainly or exclusively archaeological objects. The number of amateur numismatists is particularly high, and it became a widespread hobby among the leaders of scientific and economic sectors of Hungary. The ground rule is publicly known that archaeological objects may not be kept at home in a private collection. Still, society tends to forgive for such an undoubtful incompliance for certain reasons.

Although it sounds strange, if the object remains in Hungary, it could be registered and kept in a private collection. Still, it is not clear whether any collector of other object types, such as brooches, crosses, figural ornaments sculptures can open their collection for the public, despite its actual non-compliance of laws. There are collectors either, whose non-compliance is better tolerated. As an exchange, if a local or national museum

²⁹⁴ BRODIE 2018, 61-65.

²⁹⁵ EUROPOL 2017, 22, 47-48.

²⁹⁶ ANDERSON 2016, 117.

²⁹⁷ Personal communication of the head of the Office for the Protection of Cultural Heritage and then of the Office for the Supervision of Artefacts in the Prime Minister’s Office, few years ago.

²⁹⁸ HUDÁK 2019, 143.

receives their entire collections, they can act as possessors until their death. Moreover, several collections remain entirely obscure, and museums never gain awareness, respectively.

According to crime statistics, the volume of art crimes has been risen and remained high since the 1990s. At the same time, the capacities of police forces follow requirements and changes slowly. Although in many countries, law enforcement's capabilities increase slightly, and this increase is far less than it could have been following the high dynamism of criminality.²⁹⁹ The two tendencies form a scissor with opening blades. This is the demand gap³⁰⁰ between the capacities and the challenges have sound responsibility for the unrecognised and unreported crime – the phenomena that criminal sciences call as latency.³⁰¹ Hungarian archaeologists usually estimate very high latency in cultural property crime, while art historians estimate somehow less, and investigative authorities speak about a few numbers of offences.

The illicit trading of archaeological finds as cultural properties, especially if the cases lead abroad, rarely connected to a lone offender. Organised criminal groups appear in the background in the most. Consequently, clients, negotiators, 'sharp-eyed junkies', metal detector users, grabbers, smugglers, dealers all participants of an illicit logistic chain, that is supplemented in the most severe cases with people whose responsibility was to maintain compliance. Law enforcement officers, security guards, museum curators turned blind-eyed and supported perpetrators.

Law enforcement has extraordinary means in their hand to be used in international cooperation in criminal matters. A bunch of international agreements, organisations and channels for criminal information exchange have already been developed, including the Naples II Convention that allows a sharp bladed arm to be used for the investigative authorities in the EU. The Interpol excels in database building on looted works of arts, while the World Customs Organization (WCO) and the Southeast European Law Enforcement Cooperation Center (SELEC), just to mention a few key players, have developed successful methodologies for international operations and training materials for law enforcement awareness-raising. The fight against the cultural property crime has become a priority for the international community. Operation Pandora I was proven very encouraging start in October 2016. The operation led to the seizure of 3 561 works of art and cultural goods, almost half of which were archaeological objects. Pandora initiated 92 new investigations and led to the arrest of 75 individuals who were involved in illicit trafficking.³⁰² The success of the Pandora operation demonstrated the importance of taking collaborative action on an international level through a harmonised approach, with several national and international agencies involved.

Operation Athena II took place between October and December 2017 already included 81 participant countries and united efforts of more than a hundred customs and police services and resulted in some 41,000 seizures of cultural goods. The regional Operation Pandora II was followed in November 2017, which was coordinated by Europol, UNESCO and the WCO on a joint manner under the leadership of the Cypriot Police and the Spanish Guardia Civil.³⁰³

²⁹⁹ NEWBURN 1995, 61-64.; CSABA 2018, 48.

³⁰⁰ CSABA 2018, 48., fig.1.;

³⁰¹ GROVE et al. 2018

³⁰² EUROPOL 2017, 48.; UNESCO 2018, 91.

³⁰³ UNESCO 2018, 80.

Based upon the auspicious international action days and the longer-term cooperation the authors concluded that the law enforcement community discovered an integrated approach on how to reduce criminal threats, and this can provide a significant impetus for the detections of international art smuggling. An integrated approach means joint customs and police efforts supplemented with archaeological experts and worldwide co-ordination, that was proven far more successful than any methodology ever before. The dissemination of best practices would be of the participants further assistance while the agencies collected valuable information on the crime sector that could be used for better targeting purposes.³⁰⁴

3. Positioning Hungary in the map of illicit arts

The situation seems to be dual: while Hungary is a relevant transit country in southeast-northwest and east-west directions, the country itself acts as a significant emitter of archaeological finds. The most popular archaeological goods of Hungarian origin in Western Europe are the spectacular archaeological objects: the precious metal objects with anthropomorphic or zoomorphic figural decorations, the roman coins and other Roman objects (bronze vessels, fibulas) and the swords and urns of the Bronze Age.

The illicit acquisition of the items mentioned above can be followed by a rapid sale or a long rest period before selling them again, and there are many examples available for both *modi operandi*. Lone offenders prefer more likely a long rest period because of the fear of being caught by the authorities. Property crime, especially serial burglaries, form the area of organised criminal groups who have connections to receiver networks and therefore are motivated in immediate selling for quick profits. Quite often the sold stolen cultural goods rest for a longer time and reappeared after 30-50 years in the market.

After its previous sporadic appearance, metal detector searches at the potential archaeological occurrences become frequent after the change of regime in Hungary. The reasons were roughly based on the lack of enforcement capacities and also because the metal detectors became extensively available due to the technological developments. A particular group of metal detector users and several popular internet forums offers up-to-date information on this topic. The lone hobby detectorists or even groups acquire archaeological objects found in the soil during illegal searches. Due to the active media attention of recent years (especially television and newspapers), the majority of the metal detectorists have sound awareness in the legislation on the use of metal detectors. Those who offer archaeological objects for sale in person and increasingly online in recent years, aware of what they commit is illegal.

Europol's SOCTA report in 2017 highlights that darknet became a key facilitator for various criminal activities. The black and grey electronic marketplaces of the internet have seen an increase in sales of all kinds of illicit goods, including archaeological items. Vendors often attempt to hide illegal goods among legal products on online platforms on the surface web. In some cases, surface web vendors redirect their customers to mirror sites on the darknet or advertise their products using false product designations or descriptions.³⁰⁵ It is also typical in Hungary that items intended for sale are placed on the net for a short time. After the application of the partner (buyer candidate), the ads become removed immediately. Online advertising of cultural goods as archaeological finds of

³⁰⁴ cf. CSABA 2017.

³⁰⁵ Europol 2017, 22.

illegal origin boosts trading. It allows separating illegal logistic chains into three main parts, i.e. the flows of commodities, information and money. This methodology reduces the risks for criminals while increasing the capacities of the supply chain.

Specialist task forces containing a few police specialists and archaeologists struggling extreme work burden may strike at these vendors occasionally. According to the experiences of the recent international actions, these task forces should be supplemented with cybercrime specialists and experts in financial crime if the operation leads to investigations against serious and organised crime.

The most information about illegal metal detector users is provided for authorities by fellow metal detectorists who are networking through friendly relationships. Quite very often authorities can learn on illegal searches from these sources that assist them in reconstruction who did searches where and when? These information bits may lead to what kinds of archaeological finds they could dig out and where did they attempt to sell them? These public relations are based on trust and proven essential in many cases. In recent years, Hungarian museums' archaeologists have established beneficial relationships in the form of annual contracts with the so-called 'museum-friendly' civilian metal detector users.³⁰⁶

In other cases, however, high-value information got lost and not used adequately for criminal intelligence purposes, partly due to a lack of human capacities, and the occasional lack of mutual understanding and trust. Some other times the connecting link is missing, and there is no one to be informed. In the recent period, the Hungarian public administration gave more prominence to the interests of investors than previously accepted. A series of erroneous or ill-considered decisions and a lack of interest undermined the administrative management of the Hungarian archaeological heritage protection after 2012.³⁰⁷

The typical smuggler of cultural goods in Hungary travels by car or by plane. Lorries are not so often used for these purposes. The storages of illegally or even legally acquired cultural properties in free-trade ports and container warehouses for tax evasion has become an international practice among large and small auction houses and private collectors.³⁰⁸ The authors think that criminals extensively use Swiss warehouses. There are probably less archeologic materials of Hungarian origin, but the perpetrators may have Hungarian ties although the preferred destination countries could be Germany and Switzerland.

4. The problems of specialisation

The topic of risk management for archaeological and other cultural objects should be integrated into the training of law enforcement officers.³⁰⁹ Although the problem of illicit trafficking in cultural treasures is taken seriously abroad, there is no higher education programme in Hungary containing methodologies on how to fight illicit trafficking, except those individual efforts done in the customs officer training at the National University of Public Service.

³⁰⁶ HUDÁK 2016.; SZABÓ et al. 2016.; RÁCZ 2017.

³⁰⁷ V. SZABÓ 2013, 794.

³⁰⁸ cf. BOVLEY – CARVAJAL 2016.; STEYERL 2015.; Artsy.net 2017.; HEMELS – GOTO, 2017.

³⁰⁹ SZABÓ 2017, 76.

For better international cooperation with foreign partners, customs and police officers should study know-how in awareness-raising training courses. Those who become the future law enforcement specialists in the sector should participate in specialised higher education, either as part of the current but supplemented education programmes, or in those that would be developed by experts of both archaeology and law enforcement studies.³¹⁰ The authors have made initial efforts in this regard and concluded that plenty of studies and training materials have already been developed and published by forerunner international organisations³¹¹ and institutions of higher education. These papers should be considered extensively.

It has of utmost importance that law enforcement officers should recognise archaeological objects in unclean or unrestored condition, as they will encounter them in the course of their future work. Thus, the sector foresees the development of higher education and museums' cooperation as happened already in other European and overseas countries.

The law enforcement higher education in Hungary follows a practical approach that is robust enough to provide students with skills that meets either their home administration needs and is in line with law enforcement policy and the higher education standards. This character also means that the management of the law enforcement agency has to consider the global changes in the methodological approach. There is no doubt, taking part in a successful international operation in recovering lost art treasures, is a prestigious event for the agency. These joint and coordinated global efforts have an impact on the targeted criminal segment. From the Hungarian point of view, it attempts to keep as many art treasures in the country as possible.³¹²

These operations; however, requires both capacities from the law enforcement agencies and extensive relations with administrative, non-governmental and educational institutions. The dual criterion is necessary to reach its objective: a mutual understanding and awareness on the work of all parties involved, and incorporation the main messages subject into the curriculum of skills developments.

5. Conclusion

The protection of cultural heritage is a very complex and challenging assignment for all participants and creates an example where a multiagency approach is required. It is important to emphasise that the effective way to act against illicit trade of cultural properties is not about the constant use of physical control but must be linked to an effective heritage protection legislation, too. The authors consider the detection and elimination of infringements just as high priority, as the detailed regulation of archaeological activities, museum affairs and commercial transactions in cultural goods dated to archaeological periods.

Probably it is the time when the stakeholder parties should analyse the weaknesses and contradictions of the current situation and initiate solutions to serve society better.

³¹⁰ BRODIE – MACKENZIE 2014.

³¹¹ e.g. WCO's 'Handbook on the Prevention of Illicit Trafficking of Cultural Heritage (PITCH)' and UNESCO's book titled as 'Fighting the illicit trafficking of cultural property. A toolkit for European judiciary and law enforcement' just to mention a few.

³¹² Even in a next action, similar to Pandora III in the fall of 2018. See Europol press release here: <https://www.europol.europa.eu/newsroom/news/over-18-000-items-seized-and-59-arrests-made-in-operation-targeting-cultural-goods>

Those solutions have to be replaced where the parties must balance on the blade thin legislation if they want to achieve their mission.

The Hungarian cultural heritage protection seems to be defenceless in many aspects, and there are procedures initially created to serve the interest of our countrymen that operate with serious compromises and gaps.

Due to the nature of the violations, it is also essential to investigate, to monitor and follow up the national, the European and international crime patterns fostering data exchange opportunities and to initiate joint investigations where appropriate.

Investigative authorities and administrative bodies have mutual interactions to develop best practices and appropriate legislation; this approach is echoing extensively in the European Union. The development of the education, however, is the area where a future influencing step can be taken. The authors believe that this is the sector where the most urgent efforts have to be invested in the future of cultural heritage protection.

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