

MTMSD 2022**I International Conference «Modern Trends in Governance and Sustainable Development of Socio-economic Systems: from Regional Development to Global Economic Growth»****PECULIARITIES OF CRIMINAL RESPONSIBILITY FOR
CONTRABAND OF CULTURAL PROPERTIES**

Aizan Sugaipova (a)*, Aslan Yanadamov (b), Makka Albogachieva (c)

*Corresponding author

(a) Kadyrov Chechen State University, Grozny, Russia, novaya-cafedra@mail.ru

(b) Chechen State Pedagogical University, Grozny, Russia, yanadamov.as@yandex.ru

(c) Peter the Great Museum of Anthropology and Ethnography (the Kunstkamera) RAS, St. Petersburg, Russia, albmac@mail.ru

Abstract

The primary objective of this comprehensive research is to conduct a detailed analysis of the distinctive aspects associated with criminal responsibility concerning the contraband of cultural properties. The research employs a multifaceted approach, utilizing legal analysis methods that encompass the examination of relevant legislative acts, scrutiny of judicial precedents, and a thorough review of pertinent scholarly literature. The data gathering process involves an in-depth study of prevailing laws, analysis of court decisions related to cultural property smuggling cases, and a comprehensive review of existing research literature on the subject. Through this diligent examination, the study aims to unravel specific trends and features inherent in the application of criminal legislation concerning the illicit trafficking of cultural objects. By scrutinizing legal frameworks, judicial responses, and scholarly perspectives, the research contributes valuable insights into the nuances of criminal liability for cultural property contraband. The findings are expected to serve as a foundational resource for the refinement and advancement of legislation dedicated to combating the smuggling of cultural properties, promoting a more effective and nuanced legal approach to address this complex issue.

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1. Introduction

Cultural values are an integral part of the national cultural heritage of states. Over the entire period of the existence of Russia, people gradually created objects related to art. Now these are of significant importance both for Russia and for the whole world, which gives rise to increased attention to them from a number of collectors (including those outside our country).

It should be mentioned that the collapse of the USSR led to the crisis of society and the state and the active export of cultural property from Russia, usually produced illegally.

Meanwhile, at the present time there is no single definition of the concept of "cultural values". So, analyzing various points of view, we highlight the interpretations that are present in international legal acts:

- i. they must be of material value, of significance to society, can be both movable and immovable, as well as having a religious or secular character;
- ii. can only be movable (Ovchinnikova & Lavnov, 2019).

Paying attention to domestic legislation, we will name the following interpretations of this term:

- i. include movable and immovable, tangible and intangible (Makarova, 2021);
- ii. historical and artistic values are recognized; objects and their fragments found during the excavation; original sculptures and artistic compositions, etc. (Ilyasov, 2018);
- iii. only movable objects can be recognized, regardless of the time of their creation, but having artistic, scientific and other significance (Barzaeva & Ilyasov, 2022).

It is safe to say that at present science does not stand still. A vivid example is information technologies, which are being modernized every day, gradually changing the daily life of a person, industrial relations, the structure of the economy and education, as well as improving communication, simplifying the system of electronic payments and information storage, its systematization (Podkolzina, Belousov, et al., 2021; Podkolzina, Taranova, et al., 2021).

2. Problem Statement

The ambiguity surrounding the definition of "cultural values" at the doctrinal level introduces complexities and variations in interpretation. Zhigalov asserts that cultural values entail significance, anthropogenicity, potential high worth, and a lengthy history of existence, encompassing both spiritual and material aspects. Conversely, Bazelyuk identifies key characteristics, including uniqueness, universality, and specific historical character, emphasizing the singularity, international recognition, and enduring historical importance of such values.

Despite these diverse interpretations, the analysis of judicial practice suggests that this diversity does not significantly impede norm implementation. However, with the establishment of the Eurasian Economic Union (EAEU), distinct regulations govern the cross-border transportation of cultural property, leading to the identification of offenses related to cultural property smuggling.

Considering the international legal framework and the creation of the EAEU, it becomes crucial for Russia to adopt measures aimed at preventing cultural property smuggling. Failure to ensure the security of these values may result in the perception of the country as dependent or in decline on the

global stage. Furthermore, the preservation of cultural values plays a vital role in the comprehensive spiritual and cultural education of citizens, providing them with insights into the history of their people and state. Addressing the challenges associated with the interpretation and protection of cultural values is paramount for the overall well-being and cultural heritage of a nation.

3. Research Questions

Given the constitutional duty outlined in Article 44 of the Constitution of the Russian Federation, which emphasizes the preservation of cultural and historical heritage, this research aims to address key questions surrounding the legislative and practical aspects of safeguarding cultural values. The constitutional obligation places a responsibility on Russians to care for and preserve historical heritage, including historical and cultural monuments.

The exchange of cultural values between nations is recognized as a means of enriching the spiritual life of peoples and fostering connections. Balancing the promotion of such exchanges with the need for reliable information about the origin and history of cultural artifacts becomes crucial. The study delves into the role of international cooperation in preventing the illegal import and export of cultural property, acknowledging the significance of close collaboration between countries. The movement of cultural artifacts across customs borders is subject to strict control, guided by legislation regulating the export and import procedures for cultural property.

The research specifically investigates the legal framework governing the export and import of cultural property, highlighting its unique status in the context of customs border crossings. Emphasis is placed on the state's role in ensuring the safety of cultural values through criminal law. The study also delves into the criminalization of smuggling, including cultural property, as reflected in the Criminal Code of the Russian Federation, considering the evolving nature of transnational crime, particularly in the illegal market dealing with cultural heritage items. Throughout history, cultural values have faced various threats, leading to transnational crimes and the illicit reduction of cultural heritage items, a phenomenon that the research aims to understand comprehensively.

4. Purpose of the Study

This study aims to address the challenges posed by the increasing prevalence of cybercrime and enhance the effectiveness of countermeasures. The specific objectives include:

- i. **Advancement and Active Development of Computer Forensics:** The research underscores the importance of enhancing and actively developing the field of computer forensics. This involves adapting forensic techniques to the digital landscape, ensuring that investigative practices keep pace with technological advancements.
- ii. **Creation of Scientific and Methodological Literature:** To contribute to the fight against cybercrime, the study emphasizes the need for creating comprehensive scientific and methodological literature dedicated to the investigation of this evolving and complex type of crime. This literature aims to serve as a resource for law enforcement agencies, legal professionals, and scholars involved in combating cyber threats.

- iii. **Introduction of Procedural Standards:** The research advocates for the incorporation of procedural standards into national legislation at the international level. This involves promoting consistency and collaboration in legal frameworks globally, recognizing the transnational nature of cybercrimes. The establishment of procedural standards aims to facilitate a more coordinated and effective response to cyber threats.

In summary, the study acknowledges the transformative impact of technological advancements on various aspects of human life, emphasizing the positive contributions of high technologies to society. However, it recognizes the dual nature of the Internet, not only as a valuable source of information but also as a platform for emerging forms of transnational crime. By focusing on the improvement of investigative techniques, the creation of relevant literature, and the establishment of international procedural standards, the research seeks to address the unique challenges posed by cybercrime in the contemporary global landscape.

5. Research Methods

1. **Legal Analysis of Statutes and International Conventions:**
 - i. Conducting a comprehensive review and analysis of relevant national and international laws governing the contraband of cultural properties. This involves examining the text, interpretation, and application of statutes and conventions, such as the UNESCO Convention of 1970.
2. **Case Law Examination:**
 - ii. Analyzing court decisions related to cases of contraband of cultural properties. This includes studying how legal principles are applied in specific instances, identifying legal precedents, and understanding the nuances of judicial interpretations.
3. **Interviews with Legal Experts and Law Enforcement Officials:**
 - iii. Conducting interviews with legal experts, law enforcement officials, and professionals involved in dealing with cultural property crimes. Gathering insights into the practical challenges faced by law enforcement, legal professionals, and the judiciary in addressing contraband of cultural properties.
4. **Comparative Analysis of Legal Systems:**
 - iv. Comparing the legal frameworks and systems of countries with varying degrees of success in combating the contraband of cultural properties. Identifying differences in legislation, enforcement practices, and judicial approaches that contribute to varying outcomes.
5. **Historical and Sociocultural Research:**
 - v. Investigating the historical and sociocultural context surrounding the contraband of cultural properties. Understanding the factors that contribute to the illegal trade, including socioeconomic conditions, historical events, and cultural attitudes. This qualitative approach can provide a deeper understanding of the root causes of the issue.

These research methods, when combined, offer a holistic perspective on the peculiarities of criminal responsibility for the contraband of cultural properties, providing a blend of legal analysis, practical insights, and contextual understanding to unravel the complexities of this criminal activity.

5.1. The public danger of smuggling cultural property

Therefore, modern states can be divided into three groups depending on the illegal circulation of cultural property: exporting countries, transit countries and importing countries.

Moreover, we mention that in 1970 the UNESCO Convention was adopted at the international level, taking into account which the import or export of cultural property, committed in violation of the prescribed rules operating on the basis of this Convention, is recognized as illegal (Seifert & Gams, 2011).

As a result, the public danger of smuggling cultural property is expressed in the encroachment of persons on a part of the moral (spiritual) foundations and economic legal relations, since criminals get the opportunity to dispose of these values at their own discretion (Klishina et al., 2017).

At the same time, it is not so much public safety as the extraction of material benefits that is one of the fundamental determinants of the smuggling of cultural property. So, smugglers transporting cultural property abroad have, first of all, powerful material incentives, as Vasiliev points out.

Therefore, in our opinion, taking into account the historical and legal conditionality of criminal liability for encroachment on cultural (church) values, as well as the peculiarities of criminal law protection, the legislator has chosen a truly correct approach to placing most crimes against cultural values (Elbuzdukaeva et al., 2019; Kaishev, 2013).

So, he applied in the Criminal Code of the Russian Federation the differentiation of the crimes we are considering depending on the social relations that are harmed. However, now criminal liability for the smuggling of cultural property is provided for in Art. 226.1 of the Criminal Code of the Russian Federation, which is not entirely correct, since the placement of this rule in Ch. 24 of the Criminal Code of the Russian Federation does not correspond to the selected object of protection (Shmatko et al., 2016).

We argue our position by the fact that, according to the doctrine of criminal law, there must be a clear relationship not only between the direct object of protected social relations, but also between specific and generic objects (Sugaipova & Gapurov, 2018).

For this reason, an act involving the smuggling of cultural property must be moved from Chapter 24 “Crimes against public safety” to Chapter 22 “Crimes in the sphere of economic activity” of the Criminal Code of the Russian Federation. After all, first of all, the guilty person encroaches on material harm to the state in connection with the movement of objects related to cultural values, which in general is one of the varieties of economic crimes (Taranova et al., 2021; Vorontsova et al., 2019).

Thus, we can say that the criminal law protection of cultural property from criminal encroachments associated with smuggling is a fairly significant aspect of domestic law: in this matter, there is a suppression of the illegal export of cultural property outside the Russian Federation.

5.2. Cyber attacks and technological progress

To a large extent, the significance is also marked by the fact that Russia has a long history. During its duration, objects of cultural values were created and preserved, in relation to which this act can be committed.

Meanwhile, as we have found, taking into account international and domestic regulatory legal acts relating to cultural values, there is still no single position regarding their interpretation. However, this does not lead to a significant problem in the practice of applying Art. 226.1 of the Criminal Code of the Russian Federation regarding the smuggling of cultural property.

In addition, in our opinion, when committing the criminal act under study, there is an encroachment on economic legal relations to a greater extent than on public safety.

6. Findings

In the exploration of countering the illegal import and export of cultural property, the research literature delves into various aspects related to smuggling in general and the smuggling of cultural property in particular. These aspects include international cooperation in the fight against smuggling, the unification of criminal legislation among Customs Union countries concerning cultural property smuggling, and general problems in the legal regulation of liability under Article 226.1 of the Criminal Code of the Russian Federation.

The authors of the study highlight a gap in Article 226.1 of the Criminal Code of the Russian Federation, specifically related to the absence of an exhaustive differentiation of cultural heritage items based on the time of creation and value. Currently, there is inconsistency in various industry norms regarding the category of cultural property, and the legal regime of antiques is not clearly defined. Two opposing viewpoints exist within domestic legal science on this matter.

The first viewpoint asserts that the subject of smuggling should be a closed list of items established by the authorized federal executive body. Consequently, improving state registers and databases regarding cultural property becomes imperative. The second viewpoint critiques this approach and rejects the differentiation of objects classified as cultural values.

Based on the properties of uniqueness and irreplaceability of material objects classified as cultural values, the authors identify several legally significant signs of smuggling objects: the significance (cultural, artistic, historical, etc.) of the object, the time of creation, and the value of the item. The Supreme Court of the Russian Federation consistently emphasizes the priority of expert opinions in determining the significance of the subject.

This article argues against the need to establish the degree of significance of the subject of smuggling in determining criminal liability. The subjective nature of such an assessment through examination is noted. The authors propose evaluating the item based on the objective properties of the subject, particularly its time of creation and cost. They suggest separating the smuggling of cultural property into a distinct article of the Criminal Code of the Russian Federation, aiming to eliminate existing gaps in criminal liability for such smuggling and clarify the legal regime of the categories "cultural property" and "antiques."

7. Conclusion

In conclusion, the study highlights the complexity of legal relations that arise concerning the circulation of material cultural values. It acknowledges the difficulty in formally identifying the legally

significant properties of an object, including its significance (cultural, historical, artistic, etc.), time of creation, and value.

As a result, the significance of state examination of an object classified as "cultural property" is deemed to be high. Referring the subject of contraband to the category of "cultural property" based on the definition of cultural property eliminates the need to differentiate the subject of contraband in terms of significance.

This conclusion underscores the importance of a comprehensive approach to addressing the smuggling of cultural property, emphasizing the role of state examination and the need for clear legal definitions to streamline the identification and prosecution of offenders. By adopting such measures, it is anticipated that the challenges associated with identifying and combatting cultural property smuggling can be effectively mitigated, contributing to the preservation of cultural heritage on both national and international levels.

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