

## CRIMINAL LAW PROTECTION OF CULTURAL PROPERTY FROM A COMPARATIVE PERSPECTIVE: SOME ITALIAN LESSONS FOR THE HUNGARIAN LEGISLATION

Krisztina FARKAS

### Abstract

The cultural properties are complex objects of cultural, economic and investment mechanism. The acts against them appear as an interdisciplinary problem, the combat against these diverse actions can be realized by the regulations of the various areas of law. However, the threatened values, the size of the damages and the related crimes with great weight make the intervention of criminal law necessary. Italy is characterized by one of the wealthiest cultural heritages of the world. For this reason, Italy takes a leading role in fighting against actions violating these values. This protection is realized at different levels and by several measures. In addition, the Italian system is characterized by special police forces dedicated to law enforcement in this field. The Italian and Hungarian system have been examined and compared them in the field of the criminal law protection of cultural property in order to give appropriate suggestions and to make the Hungarian protection system more effective. The paper will introduce the constitutional bases, the legislation, the organization system, and practical experience in both country and compare them. With the help of this comparative analysis, it will be possible to improve the protection of cultural properties in Hungary and hopefully it will give useful advice for other countries.

The cultural properties are complex objects of cultural, economic and investment mechanisms. The acts against them appear as an interdisciplinary problem, the combat against these diverse actions can be realized by the regulations of the various areas of law. The particularity of cultural properties lies in the fact that actions against them require a comprehensive, multi-disciplinary and interdisciplinary approach. Legislation on cultural properties is also multi-layered, with multiple jurisdictions, leading primarily going through administrative law, constitutional, civil, criminal, international and European law. The threatened values, the size of the damage and the related crimes with great weight makes the intervention of the criminal law necessary (Kármán, 2016)

In recent decades, not only the individual states, but also the international organizations and the European Union have been focusing on protecting these values, by means of international treaties and other state acts provide mutual assistance to each other primarily in the areas of theft, illegal trade and counterfeiting. One of the most recent results of this is the Council of Europe Convention on Offenses relating to Cultural Property adopted on 3 May 2017. This document can be considered a milestone, as it is the first international convention specifically to criminalize the destruction and illegal trafficking of cultural property. In spite of all this, the topic is still scarce and sporadic in everyday life.

Within the framework of the G7, culture ministers met for the first time on 30-31 March 2017, with the title "Culture as a Dialogue among People" to promote intercultural conversation and the shared responsibility of states to protect cultural values. At the meeting, the G7 acknowledged and strengthened Italy's cultural leadership, and issued a joint statement that is committed to the international community's commitment to preserving, restoring, and combating human trafficking.

Italy is characterized by one of the wealthiest cultural heritages of the world. According to the statistical data, on average, more than 33 cultural values per 100 square kilometers are found in the country, with a slightly increasing trend (Quelle: Rapporto Bes 2016: 129). In terms of the richness of archaeological finds including the already discovered and yet uncovered sites, literature compares Italy with an "open-air museum" (Proulx, 2013). Moreover it is also characterized by the plenty of the relevant legislation, which, on the one hand, appears in the specific provisions of the general codes and on the other hand in special legislations, whether for preventive or repressive purposes. It is not surprising, that Italy takes a leading role in fighting against actions violating these values and has created a special protection system that can be considered unique in the world. This protection is realised at different levels and by several measures. In addition, the Italian system is characterised by a special police force dedicated to law enforcement in this field. Thus, when a country seeks more effective solutions to protect its cultural values, whether organizational or legal, the examination of the Italian defence system cannot be ignored. The research was based on the assumption that Italian cultural heritage protection has a long tradition, so it can provide adaptable solutions for Hungarian legislation and law enforcement.

The paper will introduce the Hungarian and Italian criminal legislation, organisation system, practical experience and compare them. With the help of this comparative analysis, it will be possible to make the protection of cultural properties in Hungary more effective and hopefully it will give useful advice for other countries.

## **1. CONSTITUTIONAL BASIS FOR CULTURAL HERITAGE PROTECTION**

The international cultural heritage protection law and its domestic legal component have proceeded in tandem with the development of international human rights laws and norms (Mackenzie – Yates, 2017: 220). Cultural rights are part of the second generation of human rights and they can be interpreted wider and narrower. In a broader sense, they also include the right to education. In the narrower sense cultural rights are the right to participate in the cultural life, to enjoy the benefits of the progress and application of science, and to protect the moral and material interests of the author of a scientific, literary or artistic work (Kardos, 2002: 29). The

criminal law protection of these rights is considered in narrow sense. Although, historically the formulation of cultural rights as human rights has begun in international law – notably during the preparation of the Universal Declaration of Human Rights – it appears in some states' constitution. The most important wording of cultural rights to date is Article 27 of the Universal Declaration and Article 15 of the UN International Covenant on Economic, Social and Cultural Rights (Kardos, 2002: 29).

The protection of cultural rights derives both in Italy and Hungary from the Constitution.

### 1.1 ITALY

“The consciousness and social development of the community and the individual create the need for a nation to create the possible strongest regulation concern the culture” (Orlando, 2008). This recognition shaped the Italian legislator when it recognized the protection of culture at the constitutional level. As a result of the constitutional declaration, Italy has become famous as a “country of the culture” (Orlando, 2008). The Italian Constitution<sup>1</sup> declares the protection of these values among the fundamental principles. The basic principles, first, lay down the core values that reveal the spirit of the constitution before the first part. The importance of these principles is illustrated by the fact that they cannot be the subject of any revision of the Constitution (Mezzeti, 2011: 89).

The in often quoted and referenced declaration is realised in two paragraphs: “The Republic promotes the development of culture and scientific and technical research” [Art. 9 (1)]; and “It safeguards the natural landscape and the historical and artistic heritage of the Nation” [Art. 9 (2)]. Based on the literal interpretation, the first paragraph refers to cultural activities and the second one to the protection of cultural heritage. These two paragraphs are the core of the principle (Ainis, 2009). However the term “republic” includes not only federal, but also provincial, county and local culture organizations related to the basic principle.

Two theories have unfolded during the interpretation of Art. 9 Constitution. The first years after the entry into force of the Constitution were characterized by a static-conservative approach and focused on conserving existing values. The interpretation is based on paragraph 2 Cost. (namely the protection). This theory has been replaced over time by a so-called dynamic approach, which recognized both of these paragraphs in a complex way to protect these values (Demuro, 2002: 30). Art. 9 par. 1 Cost. prescribes the promotion and development of culture and research, whereby the state undertakes to promote the cultural, scientific and technical development of the country by promoting culture (and research), competing with more developed countries, avoiding models and methods and objectives that limit the freedom of art and science. Art. 9 par. 2 Cost. “opens a wider door” than the cultural and natural heritage concept (Del Giudice, 2016). The feature of the declaration is that it defines the concept of cultural heritage and cultural property more broadly than general legislation, thus providing a basis for a broad protection (Rimoli, 2017: 104).

<sup>1</sup> Costituzione (Gazzetta Ufficiale 27 dicembre 1947, n. 298)

## 1.2 HUNGARY

The Fundamental Law of Hungary<sup>2</sup> declares that “Natural resources [...] and cultural artifacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations” [Art. P (1)]. Furthermore, the Fundamental Law also disposes “the freedom of scientific research and the artistic creation” [Art. X (1)]; and “the right to public education” (Art. XI).

The right to public education as constitutional right involves the right to cultural heritage. The state committed itself to education at the earliest, but its role has been growing also in such fields of education that cannot be classified to the definition of the rights to education (Sári, 2005: 271). It includes – among others – the protection and preservation of cultural heritage for the after-world, the saving and securing of getting to know the movable cultural properties. To fulfill these constitutional obligations, the state has to create a modern legal background and legal institutions, furthermore based on laws; the state shall set up and maintain the organisation system needed to perform these tasks (Szabó, 2013: 66–67).

The right to cultural heritage protection is in connection with the freedom of scientific research and the artistic creation. The detection, assessment, conservation of the movable and immovable properties (archaeological findings, works of art, fine arts creations etc.) belonging to the protection of cultural heritage requires severe scientific and artistic work. The freedom of science and art – as cultural rights – forms also the part of rights to education declared in the Fundamental Law (Szabó, 2013: 67).

## 2. BASIC TERMS

There are several terms related to the protection of cultural property, which need to be defined and delimited. The term “cultural property”, on the one hand, is of a summary nature and on the other hand contains different meanings; however, there is no independent definition in criminal law, so there is a need to use the concepts of other fields of law. However, it is not enough to collect the wide-ranging meanings and components of the term, but it is also used at international and European level (Cosi, 2008: 155). The plural of the term already indicates that it is not enough to collect its branch reports and components (Demuro, 2002: 17).

As a first thought, there is a definition of culture, which is already in difficulty. There are many interpretations of it; it does not exist in a unified position to define it. The reason for this is primarily due to the complexity of culture, but the different disciplines and researches start from different approaches, with different basic assumptions, thus defining different definitions. Therefore, in relation to this concept, it is necessary to state that, in a broad sense, a part of the concept of culture is the cultural heritage.

Which items qualify as property? In general terms, any object that has an extension, has a commercial, moral, or even spiritual value, can be either movable or immovable (Iannizzotto, 2006: 15–16). The use of the two words – “cultural property” – has been incorporated into the common language; it has several meanings, e.g.: artistic and historical values, works of

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<sup>2</sup> The Fundamental Law of Hungary (25 April 2011) is the Hungarian Constitution

art, antique objects, natural beauties, without a precise definition of the content of the terms (Iannizzotto, 2006: 15–16).

In this paper, the definitions used in the relevant legislation are described as they are justified in the criminal assessment of the subject.

## 2.1 ITALY

The basic terms are defined by the administrative law, namely in the Code of Cultural Heritage and Landscape (Legislative Decree No. 42 dated 22 January 2004, hereinafter: L.D. 42/2004). The first term, which has to be determined, is the cultural heritage. This is an umbrella term, it contains different properties. According to the law “the cultural heritage constitutes cultural property and natural property” (Art. 1 par. 1) Cultural property are determined in two manners. In general term: “cultural properties are all movable and immovable things regulated in art. 10, 11, which based on a statute or other law carry artistically, historical, archaeological, etnoantropological, archival and other individual value” (Art. 2 par. 2). In addition, the law contains an enumerated, non closed list of these properties: e.g. museums/galleries collections, archives and documents carrying historical interests, frescos, guns, pictures, sculptures (Art. 10–11). The natural properties are “in art. 134 defined real estates, which express the historical, cultural, natural, morphological and aesthetic value of that real estate, and goods based on other laws” (Art. 2 par. 3). The research takes a look at just the protection of cultural property.

## 2.2 HUNGARY

The basic terms are defined by the administrative law, like the Italian regulation, namely they defined by the Act LXIV of 2001 on the Protection of Cultural Heritage (APCH). The law beyond the terms of cultural heritage and cultural property contains also the notion of art work. The cultural heritage has a broad meaning in the Hungarian law as well, it contains the following values: “archaeological heritage, military history researchable by archaeological methods, historic values, national memorial, priority national and their settlement-defence environment and cultural property” (11. explanatory point APCH). The next term is the cultural property. The properties classified in this term are hard to grasp: “the prominent and characteristic material, visual, recorded, written memories and other evidences of Hungary’s history – except for real estate’s – of the genesis and development of lifeless and living nature, of the humanity, of the Hungarian nation and artworks” (10. explanatory point APCH). According to the law a distinction can be made within the cultural property between the outstanding and characteristic memories and works of art. There is no definition of works of art in the APCH. However the original artwork is defined by the Act LXXVI on Intellectual Property: “works of the fine arts (e.g. picture, collage, painting, and sculpture), works of the applied art (e.g. tapestry, ceramics, glassware) and works of art of photography, if original made by the author or an original copy.”

The notion of works of art is not included in the law, the professional language lists under this term works of fine arts, applied arts and folk art. However, the limitation of the “prominent and characteristic memories” is more difficult. Here they are objects (taking into account the case law of the EU Court of Justice) “which have the essential features of a collection debt: relatively rarely can be found; not normally used for their intended purpose; different from the normal

trade of items with similar value in use, exchange traders in the context of special transaction; and represent significant value” (Buzinkay, 2007: 13).

There is another distinction between archaeological heritage and archaeological finds. It is considered to be an archaeological heritage: “human existence was created before 1711, but is still present today trace, that can be found both on the surface of the earth and under the surface of the earth and waters, as well as in the cavities. An archaeological heritage becomes an archaeological finding if someone already has it detected, excavated, regardless of whether the movable item was moved from the place of finding or not” (34, 37 explanatory points APCH). It can be seen that the basis for the delimitation is the date of genesis: the item is before 1711 archaeological findings, after 1711 belongs to cultural property. Exceptions are the movable items that were before 1711 and have been preserved in an art collection; they are also cultural property.

### **3. ORGANISATION SYSTEMS**

In both states the organisation system based on ministerial level and the criminal law protection is realised by special police forces. At first sight the basic institutions are similar, they have similar functions, but looking closer significant differences can be discovered in both areas.

#### **3.1 ITALY**

##### **3.1.1 MINISTRY OF CULTURAL HERITAGE AND ACTIVITIES (MiBAC)**

The protection of cultural property is basically realised by two organizations. The Ministry of Cultural Heritage and Activities is responsible for managing the whole organization system of cultural property protection. The creation of a specialised ministry can be considered as a milestone when its predecessor, Prime Minister Giovanni Padolini, was founded in 1974 by the Ministry of Culture and the Environment. The Ministry has undergone many changes since its establishment (Baldon Zanetti, 2017: 33). Its current structure and operation is determined by the 2014 Restructuring Act<sup>3</sup> and subsequent its 2018 amendment<sup>4</sup>.

There is an important characteristic that the special police force to be discussed in the next subchapter is under direct supervision of the Minister, and it acts as a direct cooperative body with the Minister. The MiBAC is made up of different units: consisting of central bodies, central advisory bodies, central institutes, special institutes, and local bodies, which ensure the functioning of different subareas and levels of cultural management. In close cooperation with MiBAC, representatives of the Carabinieri Command for the Protection of Cultural Heritage participate in the work of the various internal bodies of the Ministry, such as the Standing Special Committee on the Protection of National Cultural Heritage, the Crisis Management and National Coordination Unit, and the Restoration Committee. (Colasanti, 2017)

<sup>3</sup> Decreto del Presidente del Consiglio dei Ministri 29 agosto 2014, n.171

<sup>4</sup> Decreto-Legge 12 luglio 2018, n. 86

### 3.1.2 CARABINIERI COMMAND FOR THE PROTECTION OF CULTURAL HERITAGE (TPC)

The most important body in the field of criminal protection of cultural properties is the special police force the Carabinieri Command for the Protection of Cultural Heritage [(Comando Carabinieri per la Tutela del Patrimonio Culturale (TPC)]. As a military entity, it is hierarchically subordinate to the General Command of the Carabinieri. However it takes not only military but also other activities, including police tasks, also the protection of cultural heritage.

The TPC has been in existence for nearly fifty years since May 3, 1969. Significant damage caused by crimes in archaeological, artistic, and historical heritage and in natural values has led to the urgent need to establish an organization (Iannizzotto, 2006: 279). It should be noted that the unit was established one year before the adoption of the UNESCO Convention from the year 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. The Convention that even has proposed that States Parties establish one or more bodies in their territory for the purpose of protecting cultural property against illicit import, export, and transfer of ownership, if not already in place. Thus, Italy was the first in the world to introduce police protection specifically for this area, ahead of the Convention (Comando Carabinieri..., 2008).

At the time of its establishment, the TPC special investigative authority of 16 carabinieri has evolved into a broad, multi-level, nation-wide organisation system. The TPC consists of two central bodies, 15 territorial units, and an additional unit in Syracuse. The Central Office (Comando TPC Roma) is located in Rome, where the Secretariat and Personnel Department, the Operations and Data Processing Department, and the Services Department perform various management, personnel and administrative tasks. The central body is the Operative Department (Reparto Operativo), within there are also three separate departments: the Antiquities Department, the Archaeological Department and the Department of Counterfeiting and Modern Art. There are currently 278 units in the country, with over 300 carabinieri working (Fichera, 2017: 58).

The most typical tasks of the organization were summed up by Mossa as the commander of the TPC implicitly (Mossa, 2014): supervision of archaeological sites and commercial activities; special investigative activities to recover cultural properties; management the “illegally stolen cultural property database”; special advisory activities for MiBAC and its regional bodies. In this framework it performs the following most typical tasks: investigating crimes committed in the field of cultural goods (such as theft, theft, illegal excavation, counterfeiting); the recovery of lost or illegally exported cultural properties, including searches abroad, within the framework of international conventions and cooperation with the State; contribute to the detection of violations of the rules on natural resources; checks antique exhibitions, catalogues of auction houses (including on-line catalogues); performs preventive activities in archaeological areas with local military units. The TPC’s special activities in the field of protection of cultural property were primarily developed in the course of the investigation, including its experience, often extending abroad.

Above these fields, the TPC has significant educational activities both in Rome and abroad. In addition to training and counseling, they held research workshops and seminars to exchange information with many countries around the world. The TPC is open to society. They hold regular press conferences that give the civilian population an idea of how effectively the organization works. Creating catalogues of discovered items to display alongside the exhibits with the images and data in the printed press.

### **3.1.3 FINANCE POLICE IN THE PROTECTION OF ART (GUARDIA DI FINANZA – GDF)**

The other police body is the Finance Police, which is primarily responsible for the area of economic crime, but also plays a role in the protection of cultural heritage. As a result of its main activity, the organization is under the supervision of the Ministry of Economy and Finance. The GdF acts as a police officer (*la polizia giudiziaria*) as well as exercises public order and public security protection functions. It carries out cultural heritage protection activities in this area, primarily in view of the economic interests of illegal trade in the art market. Within the Finance Police, these tasks are coordinated and managed by the National Archaeological Heritage Group of the Rome Tax Police Unit (*Gruppo Tutela Patrimonio Archeologico del Nucleo di Polizia Tributaria di Roma*) with national competence. The Archaeological Heritage Group has both a crime prevention and law enforcement function: conduct investigations; intervenes in checking the fulfillment of tax obligations imposed on antique shops, galleries and art dealers; verifies the legal transactions of art works that are necessary to identify possible tax evasion; supervise the fulfillment of the anti-money laundering obligations of auction houses, art galleries and antiques (Rotondo, 2010: 2).

## **3.2 HUNGARY**

In Hungary the cultural management tasks are divided between two bodies. There is not a Ministry specialised in management of cultural heritage, but this task is integrated in two organisations.

### **3.2.1 MINISTRY OF HUMAN CAPACITIES**

The central body of cultural management role in this field is integrated into the Ministry of Human Capacities [16/2018. (VII. 26.) Order of the Ministry of Human Capacities]. The State Secretary for Culture exercises professional and political governance. Performing his/her task the State Secretary responsible for the preparing, drafting laws; he or she is liable for saving, scientific detection and making cultural property a public treasure and for other relevant state tasks. The work of the Secretary of States has been helped since 8 October 2018 by the Under-Secretary of States. This is a new position to coordinate professional work in the different filed belonging to the Ministry.

### **3.2.2 PRIME MINISTER'S OFFICE**

The other body responsible for cultural heritage management is integrated in the Prime Minister's Office. The organisation system changed in 2018, based on the new Organizational and Operational Rules [(14/2018. (VII. 3.)). Order on the Organizational and Operational Rules of the Prime Minister's Office]. Within the office, four units are responsible for the cultural management subject being under governance of the Under-Secretary of States, namely the Assistant Secretary of State for Heritage Protection Affair, the Institution Coordination Department, the Department of Cultural Heritage Protection and Development and the Department of Heritage Protection. The last two units have a role in the cultural heritage management.



### **3.2.3 NATIONAL INVESTIGATIVE OFFICE SUBDIVISION FOR PROTECTION OF CULTURAL PROPERTY**

In Hungary also a special police force has been operating to act against offenses against cultural property since 1998, namely the Subdivision for Protection of Cultural Properties of National Investigative Office. At the time its creation, it was a Subdivision for Protection of Property and Cultural Property, the unit attained its present form only in 2014, since that time it has focused only on the cultural property protection.

However, this unit has exclusive competence only in the most serious crimes, that is if the theft is committed in respect of a particularly considerable value (between fifty million plus one and five hundred million forints, approx. between 150 000 Euro and 300 000 Euro). The object of the theft is a library, archives, museum, build-and sound-archive in possession or maintenance of the state, the local government, the national minority self-government, the public body and the public foundation. In other crimes, the unit has competence only if the National Police Headquarter refers the case to its competence. In practice, referring to them occurs many times. In most cases – less serious cases – investigative authorities proceed with general competence, which do not have special knowledge.

The other problem is that in the unit work there are only ten police officers, which number cannot provide an effective activity.

The subdivision carries out the investigation of priority cases, the detection and they also have tasks related to searching for properties. In addition, it coordinates the police activities related to heritage protection. The unit is also involved in professional training of police officers; it plays a role in crime prevention, in elaborating methods and experiences to help art protection.

### **3.2.4 NATIONAL TAX AND CUSTOMS ADMINISTRATION**

The National Tax and Customs Administration also plays an important role in the protection of cultural heritage. It conducts detection, investigative and crime prevention activities in the field of crimes and information technology as defined by the criminal procedure law. Its most important activity in the field of cultural property is the exploration at the external border of the European Union.

In order to protect cultural property, the National Tax and Customs Administration cooperates with the National Investigative Office and with the cultural administration. The predecessor of the Department of Heritage Protection of the Prime Minister's Office, the Cultural Heritage Office concluded in 2006 a cooperation agreement with the Hungarian National Police Headquarters and with the predecessor of the National Tax and Customs Administration, which agreement renewed in 2012.

Within the framework of cooperation, the cultural administration provides professional assistance, support to law enforcement agencies, participates in training, information and preventive activities.

## 4. DATABASES

### 4.1 ITALY

One of the cornerstones of the criminal protection of cultural property is the special electronic database created and further developed by TPC, which has operated under the name LEONARDO since 2015. The D.L 42/2004. states that the Ministry of Culture has established a database of data on stolen cultural goods (art.85). The TPC is the first to make the most effective use of detection by using this modern digitalised database.

Within the TPC, a separate department operates the database that is user-friendly and capable of handling a large amount of data. The shaping of the system can be divided into three phases. The first period was the cardboard archive that was created in 1969. Each object had a cardboard with known data and, in best cases a black and white image. However, this old method, also known in Hungary, was followed in 1980 by the first telematic implementation, and after several modifications, the last and the current status changes were made in 2006. In 2015, a new, improved version of the database, the LEONARDO, was launched. There is no limitation period in LEONARDO, so from the outset every item is included. Foreign affairs are only included in the database if they concern Italy or TPC. The system includes the following tools: data entry, information retrieval, and statistical analysis, automatic comparison of images, location and numerical placement of results. There are currently 1,239,953 hits in the database, of which 669,638 pictures, 64,815 stolen objects and 6,432,699 object descriptions (Comando Carabinieri..., 2017).

The civil version of the LEONARDO database is available as an iTPC application. It can be downloaded the world's unique application to smartphone, laptop, or tablet. Its main function is to be able to check the database for stealing before buying an art object.

### 4.2 HUNGARY

In Hungary a database exists concerning of stolen and missing artworks. The database is operated within the Prime Minister's Office by the Department of Heritage Protection. This database is partly public. On the one hand it is a public search tool to make available the details of any cultural object that may be subject to ownership, acquisition, special obligations and consequences to stakeholders (art owners, art dealers, collectors, buyers). In the search engine the data of the declared, stolen, missing objects, sets of objects, or collections with the descriptive data can be accessed; photos are needed to identify them. The Department of Heritage Protection reports significant successes, by means of this database notable amount of stolen, missing artwork was found (Buzinkay, 2018).

In Hungary has created a special organisation against counterfeiting since 2008, the National Board of Counterfeiting. The organisation is a common platform for all the authorities and stakeholders involved in the protection and enforcement of intellectual property rights in Hungary. It was established due to the regulation named Government Decree No. 287/2010 (XII. 16.) on the National Board Against Counterfeiting. The members of the Board are both Governmental institutions and Non-governmental organizations.

Based on the initiative and with the assistance the National Board of Counterfeiting, the Association of Hungarian Antique and Art Dealers set up the "database of works of art of doubtful origin" in 2014. This database can contribute to the success of the combat against counterfeiting of art of works (Kármán, 2014: 23).

## 5. LEGISLATION ON CRIMINAL LAW PROTECTION

### 5.1 ITALY

Since the early 1900s, Italy has introduced legal mechanisms to protect cultural values. These were primarily administrative procedures, the significance of which was in recognizing values, controlling their use, and balancing the various interests. These procedures had already attracted the attention of other countries and served as a model for protecting their own cultural values for a long time (e.g. Greece, Spain). This protection has been complemented since the 1960s by the function of the development of cultural heritage, which “based on the awareness that these values should be available to the public as widely as possible: cultural objects are tools for culture, knowledge, research and education” (Casini, 2017: 17).

There is no uniform typology of acts attacking cultural assets that require criminal protection (Demuro, 2002: 79–80). Criminal protection relies on a set of norms that differ in their origin, system placement, content, and purpose. Thus, it is no wonder that regulation is fragmented and not homogeneous (Mirri, 2017: 130–131).

The Italian regulation is extensive but fragmented. The norms are basically divided into two areas of law – administrative law and criminal law – and two codes – the “Legislative Decree 42 of 2004 on the Protection of Cultural and Natural Goods” and the Criminal Code. The criminal law is intended to provide a broad protection, since ranging from less serious crimes to serious offenses, ranging from distant threats to acts causing damages extends the scale.

#### 5.1.1 CODE OF CULTURAL HERITAGE AND LANDSCAPE (LEGISLATIVE DECREE NO. 42, DATED 22 JANUARY 2004

Acts against cultural property are, on the one hand, misdemeanors, of which general feature is that they are less serious crimes and do not cause harm, but endanger the protected value (Art. 169-172 L.D. 42/2004). Felonies, however, are more serious acts that damage the protected value beyond the violation of administrative rules (Mirri, 2017: 130–131; Gambogi, 2013: 16).

Misdemeanors are:

- a) unlawful actions (Art. 169 L.D. 42/2004);
- b) unlawful use (Art. 170 L.D. 42/2004);
- c) unlawful placement and removal (Art. 171 L.D. 42/2004);
- d) breach of regulations on direct protection (Art. 172 L.D. 42/2004);
- e) breach of regulations on archaeological researches (Art. 175 L.D. 42/2004).

Felonies are:

- a) breach of regulations on alienation (Art. 173 L.D. 42/2004);
- b) unlawful import or export (Art. 174 L.D. 42/2004);
- c) unlawful possession of cultural property owned by the state (Art. 176 L.D. 42/2004);
- d) cooperation in the recovery of cultural goods illegally exported (Art. 177 L.D. 42/2004);  
and
- e) counterfeiting of art works (Art.178 L.D. 42/2004).

The counterfeiting of art works is one of the most legal facts. It is primarily aimed at protecting the integrity of cultural and artistic heritage, which can suffer damage as a result of the circulation of false art works. Similarly, the legal object to be protected is the protection of the interests and the trust of the order and integrity of trade flows. The facts contain three different types of acts.

### 5.1.2 CRIMINAL CODE

The most serious forms of attacking behaviour are the destruction and elimination of cultural property, against which the criminal code provide protection by property crimes primarily through of theft and vandalism (Demuro, 2006: 102).

Many of the crimes against property in criminal code (Royal Decree No. 1398 dated 19 October 2004, hereinafter: c.c.) belong to this field, which may be the subject of cultural property specified in article 10 L.D. 42/2004:

- a) theft in private apartment by using actual force against a thing (Art. 624bis c.c.). The crime covers actually the crime against theft by using actual force against a thing; In addition, qualified and privileged cases of theft may also be considered.
- b) vandalism (Art. 635 c.c.); the offense orders the destruction, causing damage, or rendering useless of movable or immovable property against a person by violence or threat (Demuro, 2002: 87).
- c) disfigurement and staining of things belonging others (Art. 639);
- d) handling stolen goods (Art. 648 c.c.);
- e) money laundering (Art. 648bis c.c.), and
- f) utilization of money, goods or assets of unlawful origin (Art. 648ter c.c.).

Among the misdemeanors (misdemeanors against social activity of public administration) the vandalism of national archaeological, historical or artistic heritage (Art. 733) is the first crime aiming specifically at protection of cultural property. In practice, the provision applies to actions against cultural property with minor value. The introduction of these misdemeanors was considered a milestone, but it has little practical importance.

## 5.1 HUNGARY

In Hungary the criminal law protection of cultural property is realised by criminal code.<sup>5</sup> Part of the legal facts aims expressly at the protection of these objects, the other

### 5.1.1 CRIMINAL CODE –CRIMINAL OFFENCES AIMING ESPECIALLY PROTECTION OF CULTURAL PROPERTY

- a) Assault on Protected Property (Art.153 c.c.). This crime is regulated in the chapter of war crimes. This felony provides protection for non-military and militarily unprotected facilities during the war time. The qualified case ensures protection if the assault is di-

<sup>5</sup> Act C of 2012 on Criminal Code

rected against cultural goods protected under international treaty. Furthermore, if the criminal offense is committed in connection with cultural goods placed under special or enhanced protection by international treaty, or the immediate surroundings thereof.

- b) Vandalism of Historic Monuments or Protected Cultural Goods (Art. 357 c.c.). This crime aimed directly at protection of cultural property. The object of this felony is historic monuments or protected cultural goods which are defined in the administrative law, in APCH. Any person who vandalizes a historical monument or any object classified as protected cultural goods he owns, or an archaeological site located on his property is punishable. Qualified cases are the destroying, causing irreparable damage to a historical monument he owns, as a result of which it loses its character as a historic monument; or causing irreparable damage to any object classified as protected cultural goods or an archaeological site he owns. This is an open legal fact, namely the legislator defined only the result of crime, not the criminal behaviour, so it can be realised by any acts or omission (Sinku, 2018).
- c) Criminal Offenses with Protected Cultural Goods (Art. 358.c.c.) This felony has the significance in the practice. This crime provides also direction at protection of cultural property. The object of this felony protected cultural goods which defined in the administrative law, in APCH. The felony has four criminal behaviours: 1) alienation without prior statutory consent; 2) failing to report changes in the ownership as prescribed in the relevant legislation; 3) exports without authorization, or exceeds the limits of the export permit; 4) without an export permit, exports objects which are considered cultural goods and for which an export permit is required, or who exceeds the limits of an export permit.

### 5.1.2 CRIMINAL CODE – OFFENCES AGAINST PROPERTY, AS QUALIFIED CASES

The Hungarian Criminal Code regulates qualified cases, if the object of crime involves objects classified as protected cultural goods or archaeological findings. The APCH defines the meaning of the protected cultural goods or archaeological findings. In the following felonies, cultural property and archaeological findings has been regulated as qualified cases:

- a) theft (Art. 370 c.c.)
- b) vandalism (Art. 371 c.c.)
- c) embezzlement (Art. 372 c.c.)
- d) fraud (Art. 373 c.c.)
- e) unlawful appropriation (Art. 378. c.c.)
- f) handling stolen goods (Art. 379.c.c.)

Within the National Institute of Criminology an empirical research has been conducted in 2018 about the criminal justice practice of the protection of cultural property, which introduced in detailed the main features of this issue in the Hungarian criminal law.<sup>6</sup>

<sup>6</sup> See in detailed in this collection of essays Kármán Gabriella: Experiences of the Hungarian Criminal Jurisdiction Concerning the Illicit Trafficking of Cultural Properties.

## 6. EFFORTS TO REFORM ON THE LEGISLATION IN ITALY

The importance of the issue is illustrated by that two bills are currently going to seek to eliminate the inconsistency and incoherence of the current system. Parulli is the current commander of the TPC and Coccoluto, the Deputy Head of Cabinet of the Ministry for Cultural Heritage and Tourism, at the G7 experts' meeting in 2017, explained that the legislation in force is neither in the structure of the offenses nor in terms of applicable sanctions are not adequate (Parrulli – Coccoluto, 2017: 65). Consequently, in December 2016, Dario Franceschini, Minister of Cultural Heritage and Andrea Orlando Minister of Justice, submitted a bill to the government entitled "Reforming the system of penalties for cultural offenses".

On 22 June 2017, the House of Representatives (C 4220) adopted the bill, which is under way C 2864 before the Senate since 6 November 2017. The draft would incorporate the Chapter VIII bis "Crimes against Cultural Heritage" into the Penal Code. The provisions would provide direct protection of cultural heritage through eleven criminal facts, which would include more serious forms of attacks on these values.

The essence of the initiative was clearly outlined by Demuro: "Now there is an opportunity for the Government and Parliament that should not be missed. The proposed innovations are essential both at the substantive level and during the investigation and trial, and cover all possible crimes." (Demuro, 2017: 194)

This proposal has been stucked. However, on March 23, 2018, a new legislative period (XVIII) began after the political elections. In this context, on 18 July 2018, the Justice Committee of the new Parliament submitted a bill to the Assembly, which was adopted by the Assembly on 18 October 2018. The new Proposal essentially renewed the bill pending on 6 November 2017 under the C 2864 Senate, similarly to the Criminal Code, which contains 14 crimes under the title "Crimes against Cultural Heritage", also intended to provide direct protection and contains more severe penalties. The 2018 proposal follows the same goal and punishes the same acts, contains more than three facts from the past bill.

## 7. COMPARISON AND CONCLUSION

The criminal law protection of cultural properties can be realised by a complex system, starting from the constitutional declaration, through the organisations system till the legal regulations. Italy and Hungary have created this regime, in which significant differences can be observed. Based on the study, it can be stated that the Italian organisation system, especially the special police force – the TPC – contains a number of solutions to follow that can provide us with useful experience.

Italy has more tradition and experience in the field of protection of cultural property, which appears firstly in the constitutional declaration, and in the organisation system, especially in the activity of the special police force, the TPC.

The protection of cultural property derives both in Italy and Hungary from the Constitution. The Italian one provides an exact declaration of cultural heritage and cultural property, making a broad meaning of them possible. The Hungarian Constitution declares these rights in the framework of the freedom of scientific research and the artistic creation, further in the right to public education.

The basic terms which have to be clarified are regulated in Italy and Hungary in administrative law. The regulations of both countries give a broad definition to make a broad protection possible. It is difficult to determine in the practice in Hungary whether an object is classified under one of the definitions.

Both organisation systems are divided in administrative institutions and police forces, but they are very different. The Italian ministry specialized for the cultural heritage and activities is responsible for managing the whole organization system of cultural property protection. However, in Hungary these functions are integrated in the framework of two administrative bodies.

The biggest difference between the two protection systems is the special police force acting against offenses against cultural property. In both countries these authorities exist. The special Italian police force, the TPC has worked since 1969, and it is figured as a broad, multi-level, nation-wide organisation system. In Hungarian also a police force specialized in this field exists since 1989, Hungary has built this authority based on the Italian pattern. The Hungarian National Investigative Office Subdivision for Protection of Cultural Property doesn't have a general competence on investigation of crimes related to cultural property, but it can act only in more serious cases. In the Subdivision for Protection of Cultural Property maximum ten police officers work, also there is a need to extend its competence in also the number of personnel.

In most countries, the problem is caused by the fact that the public does not know about the police body that protects cultural property. As a result, they are not aware of their activities and this also promotes illegal excavations and trade, as if they find an object they do not know where to turn. However, Italy has solved this problem perfectly.

The other distinction of the activity of the Italian and Hungarian police force is the special electronic database of illegally removed cultural artefacts. One of the cornerstones of the criminal protection of cultural property is the special electronic database created and further developed by TPC, which has operated under the name LEONARDO since 2015. Hungary has created a similar database, but it is managed in the framework of administrative organisation system, operated by the Prime Minister's Office by the Department of Heritage Protection. The Hungarian investigative authorities do not have a direct access to this database; they have to ask information for the Department of Heritage Protection. This is a problem to be solved in the future. Beyond the above, the present Hungarian database has to be developed, by which the Italian database can serve useful experience.

The norms of the protection of cultural property are regulated in two areas of law – administrative law and criminal law – and two codes – in both countries. The basic definitions are found in the administrative codes.

The Italian regulation is extensive but fragmented. The Italian criminal law is intended to provide a broad protection, ranging from less serious crimes to serious offenses, ranging from distant threats to acts causing damages extends the scale. The administrative code provides beyond administrative sanctions also penal sanctions, namely criminal facts, misdemeanours and felonies. The criminal code contains one misdemeanour especially for the protection of cultural values, the other offenses are regulated as crimes against property in criminal code, which object may be the subject of cultural property specified in the administrative law.

The Italian legislation in force is neither in the structure of the offenses nor in terms of applicable sanctions is not adequate. For that reasons two bills are currently going to seek to eliminate

these problems. The draft would incorporate a separate chapter “Crimes against Cultural Heritage” into the Penal Code, which would provide direct protection of cultural heritage.

In Hungary the criminal law protection of cultural property is realised by criminal code. Three felonies provide a direct protection, the other felonies have been regulated in the framework of the offenses against property as qualified cases, if the object of the crime is cultural property and archaeological findings.

Based on the results of the research of the activity of the special police force, namely the TPC – including their organisational system and the operation – gives useful experience for the Hungarian legislation and the law enforcement bodies.

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