

EXPERIENCES OF THE HUNGARIAN CRIMINAL JURISDICTION CONCERNING THE ILLICIT TRAFFICKING OF CULTURAL PROPERTY

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Abstract

The aim of the present research is to explore the measures of the Hungarian law enforcement for the protection of cultural property. Provisions, civil and criminal wrongs in this field are regulated by public administrative and criminal law. In this project the issue is examined from an international perspective with special emphasis on the Italian solutions. The main purpose of this research is the analysis of the criminal justice practice. One of the most serious cases among the offenses against cultural properties are referred to in literature as the illicit trading of cultural property. However, illicit trading of cultural properties is an ambiguous expression; the literature usually means transnational crime against cultural properties (antiquities) under this term. There are no specific provisions for illicit trading of cultural properties in the Hungarian Criminal Code. The literature uses it as a collective term for different criminal offences. In 2018, an empirical research on crimes committed against cultural properties between 2012 and 2016 has been conducted. The offenses examined were theft, robbery, dealing in stolen goods, criminal offenses with protected cultural goods and budget fraud. In addition, the personal and organisational requirements to combat the illicit trading of cultural properties has been studied, and recommendations based on the results were outlined.

I. CRIMINAL LAW APPROACH IN THE PROTECTION OF CULTURAL GOODS

In the field of the protection of cultural goods an integrated approach involving the criminal law approach has spread worldwide. Therefore, it is important to examine first the process which led to the criminal law regulation of the protection of cultural goods.

In Hungary, constitutional principles lay down the protection of cultural values, it is reflected in administrative law and then in criminal law as *ultima ratio*. On the other hand, according to the literature, the punitive dimension obtained a specific focus in international law.

According to the former approach, it is important to explore how the constitutional principles are reflected in the domestic administrative regulations. There are several provisions in the

Hungarian Fundamental Law which have effect on the protection of cultural goods, but the most powerful one is Article P, paragraph 1:

“All natural resources, especially agricultural land, forest and drinking water supplies biodiversity – in particular native plant and animal species – and cultural assets shall from part of the nation’s common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.”

These principles are codified in Act LXIV of 2001 about the protection of cultural heritage. These administrative regulations provide a background to the civil and criminal law regulations. The ultima ratio role of criminal law is usually referred to on the part of the legislation: it is articulated, that the administrative provisions and sanctions have primary role among legal rules. What makes criminal law provisions necessary?

There are three factors: first, the types and values of the damage caused; second, the level of risk posed to society; finally, the links with organised crime. However, another approach, which is closely related to this issue is the international law provided solutions to the protection of cultural propertises according to the following factors (based on Manacorda’s approach: Manacorda, 2011: 19–23)

- art crime is frequently transnational crime: cultural goods are part of cultural heritage, the various crimes are committed against the property of nations, also a mankind
- the most serious crimes are characterized by transnational dimension: namely the illicit trade of cultural goods
- There is a correlation with the organized crime (dealing in stolen goods, money laundering, financial and tax offences)

Cultural assets are the subjects of the sovereignty of states. The UNESCO Convention in 1970 laid down the need of the self limitation of national sovereignty over the common value of mankind.

UNESCO and UNIDROITS conventions contain provisions on illicit trade of cultural goods:

In accordance with Article 2 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970, Paris):

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country’s cultural property against all the dangers resulting there from.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

By means of the Article 8: The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6(b) and 7(b) above.¹

¹ Article 6 The States Parties to this Convention undertake:

“(a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995, Rome) regulates the most dangerous acts against cultural property, it aims to “contribute effectively to the fight against illicit trade in cultural objects by taking the important step of establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of cultural heritage in the interest of all”.

In 2003 at the General Conference of UNESCO it was declared, that: “States should take all appropriate measures in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against those person who commit or order to be committed, acts of international destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organisation”².

II. EMPIRICAL RESEARCH ABOUT ILLICIT TRAFFICKING OF CULTURAL PROPERTY

Our research focused on illicit trade of cultural property, because this act creates significant risk of damage to cultural property, and has a strong relationship with organised crime. By examining the illicit trafficking of cultural goods – analysing more offences at the same time – a more detailed overview about the acts against cultural property can be obtained.

The first question that need to be clarified is the definition of „illicit trade of cultural property”. Literature doesn’t deal with this conceptual question. The “nordic research” says “cultural heritage crime” includes the theft of cultural objects, illegal excavations, illicit removal of cultural objects and trade with stolen or illicit removed cultural objects. (Korsell et al., 2006: 14)

On the grounds of the Conventions above it is about illicit transfer of ownership, theft (unlawfull excavation) and thereafter illicit import or export. Although the term “illicit trade” word for word does not contain fraudulent transactions abroad; in my opinion illicit trade means illicit transfer of ownership of cultural goods within its own country and abroad. The present article is based on the research conducted in this latter sense.

The phenomenon of “illicit trade of cultural goods” in Hungary is studied from the perspective of criminal law and criminology to identify the current features of illicit trade through a research with a questionnaire. In order to get a complete picture of the Hungarian situation, an empirical research of criminal records by means of questionnaires was conducted in 2018. The empirical way was chosen because only few such researches can be found (e.g. Italy, US, Norway and Australia) as opposed to the high number of theoretical works.

cultural property exported in accordance with the regulations;

(b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;

(c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7 The States Parties to this Convention undertake:

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.”

² UNESCO Declaration concerning the International Destruction of Cultural Heritage, 17 October 2003

There are several difficulties with empirical research due to some special features of illicit trade of cultural goods, such as the lack of clear definition of it, or the lack of precise statistics. For example, Manacorda (Italy) also writes about the latter problem:

“Crimes variously related to artistic, cultural and archeological assets present a very diffuse phenomenon, nationally as well as internationally and little is known about their nature and extent.” (Cited Manacorda: Polk, 1999: 20) „Today, we still do not have a systematic approach to the gathering of criminal statistics which would permit an accurate analysis of such crimes, most of which are likely to be unreported or »hidden statistics« (chiffre noir)” (Cited Manacorda: Brodie et al., 2000: 20)

The above mentioned problems of definition and statistics are solved in this article by selecting the following crimes: theft, dealing in stolen goods, robbery, budget fraud, criminal offenses with protected cultural goods (see definitions below), since there is no offence of illicit trade of cultural goods in the Hungarian Criminal Code. In order to examine current cases with final and binding decisions, cases between 2012 and 2016 were selected, and out of these cases the ones which had cultural goods as the subject of the crime were collected.

Theft (Section 370 of the Hungarian Criminal Code) shall mean when a person takes away a thing to which he is not entitled to from somebody else in order to unlawfully appropriate it. According to Paragraph (3) the penalty for a felony shall be imprisonment not exceeding three years if: a) the theft is committed in respect of a considerable value; b) the theft involves a minor value and: ba) it is committed by either of the means referred to in Sub-paragraphs ba)-be), bb) it involves objects classified as protected cultural goods or archeological findings, bc) it involves religious objects, bd) it involves objects placed in memory of or with, the dead, in cemeteries and other burial sites, be) it involves precious metal; or c) it involves petty offense value or less, and it is committed at a place of emergency.

Dealing in stolen goods is regulated in Section 379 (1) of the Hungarian Criminal Code. Any person who – for financial gain or advantage – obtains, conceals or collaborates in the selling of: a) any non-Community goods obtained through budget fraud and withheld from customs inspection; b) excise goods under tax evasion; or c) any property that originates from theft, embezzlement, fraud, misappropriation of funds, robbery, plundering, extortion, unlawful appropriation, or from another receiver of stolen goods; is guilty of dealing in stolen goods.

Robbery according to Section 365 (1) of the Hungarian Criminal Code: Any person who takes away a thing to which he is not entitled from the person of another, against his will: a) by force or threat against life or bodily integrity of such person; or b) by disabling such person by rendering him unconscious or incapable of self-defense; is guilty of a felony punishable by imprisonment between two to eight years. (2) Where a thief caught in the act applies force or threat against life or bodily integrity in order to keep the thing, it shall be construed as robbery as well.

Budget fraud in Section 396 of the Hungarian Criminal Code is committed by any person who:

- a) induces a person to hold or continue to hold a false belief, or suppresses known facts in connection with any budget payment obligation or with any funds paid or payable from the budget, or makes a false statement to this extent; b) unlawfully claims any

advantage made available in connection with budget payment obligations; or c) uses funds paid or payable from the budget for purposes other than those authorized; and thereby causes financial loss to one or more budgets, is guilty of misdemeanor punishable by imprisonment not exceeding two years.

Criminal offenses with protected cultural goods is according to Section: 358 (1) of the Hungarian Criminal Code Any person who: a) alienates collector's items or any part of a protected collection without prior statutory consent; b) fails to report changes in the ownership of protected cultural goods, collector's items or protected collections as prescribed in the relevant legislation; c) exports protected cultural goods, collector's items or protected collections without authorization, or exceeds the limits of the export permit; is guilty of a felony punishable by imprisonment not exceeding three years. (2) Any person who, 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 shall be punishable in accordance with Subsection (1).

III. EXPERIENCES OF THE EMPIRICAL STUDY

The experiences of the empirical study have to be explained in a more detailed way by using 273 cases for the purpose of this research.

The illicit trafficking of cultural goods consists of two separate types of acts: the unlawful acquisition of ownership of cultural goods, and thereafter the unlawful transfer of ownership. To examine this phenomenon, it was advisable to draw up a list of indicators. According to the definition as starting point, the research was based on the following factors:

1. Were the acts intentionally committed to obtain the cultural goods?
2. Which were the typical conducts of the criminal offences with protected cultural goods?
3. Was there an intention to sell the cultural goods?
4. Was there a transnational feature of the case?
5. Was there other data about the commitment of similar crimes?
6. Was a professional (e.g. art historian, art dealer or appraiser) involved?
7. What was the value of the stolen goods?

1. Acts committed to obtain cultural goods

According to the statistics, the following crimes were committed against cultural goods: theft, criminal offences with protected cultural goods, dealing in stolen goods, robbery, budget fraud. (See Figure 1)

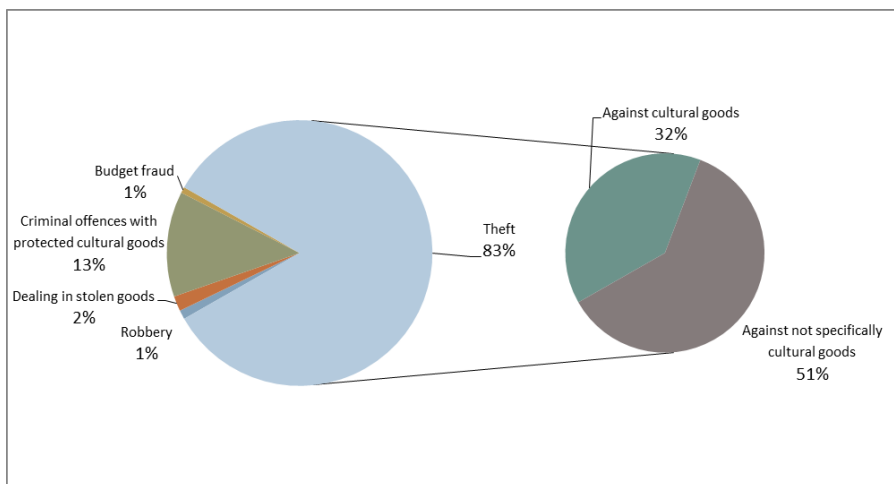


Figure 1

The highest number of cases are connected to theft. However, these cases can be further categorised based on the intention of the perpetrator:

- 1) whether the acts were committed to obtain the cultural goods;
- 2) or, the purpose of the criminal act was only to steal something valuable, as it can be detected in most of the cases; in a certain part of these cases the perpetrator accidentally found cultural goods on the scene of the crime, and in other cases the stolen objects are not at all cultural goods (in the statistics these crimes appear as such due to the ambiguous definition of the term „against cultural goods”)

It is also necessary to deal with some special features of the thefts which were committed with the intent to obtain cultural goods. Although it is rather impossible to draw far-reaching conclusions from the *modus operandi* of the crimes, it is advisable to highlight the most interesting cases:

Special features of some cases (thefts) against cultural goods)	Number of cases
From a collector	3
From an art shop	1
From a museum	6
Within the family	6
From a church	3
From a library	2
From a sculpture	5
From premises used or handled by perpetrator	3
As a tenant	5
As an antique dealer	3
With metal detector	5
Through deceiving the owner	2

When the purpose of the criminal act was not specifically to steal cultural goods, it has to be emphasized that rather frequently the burglar finds valuable objects or even cultural goods during committing the burglary.

Objects against which the criminal acts are committed

Besides examining the *modus operandi* of these crimes another important research issue was to identify the different types of cultural goods against which the criminal acts were committed. (See Figure 2)

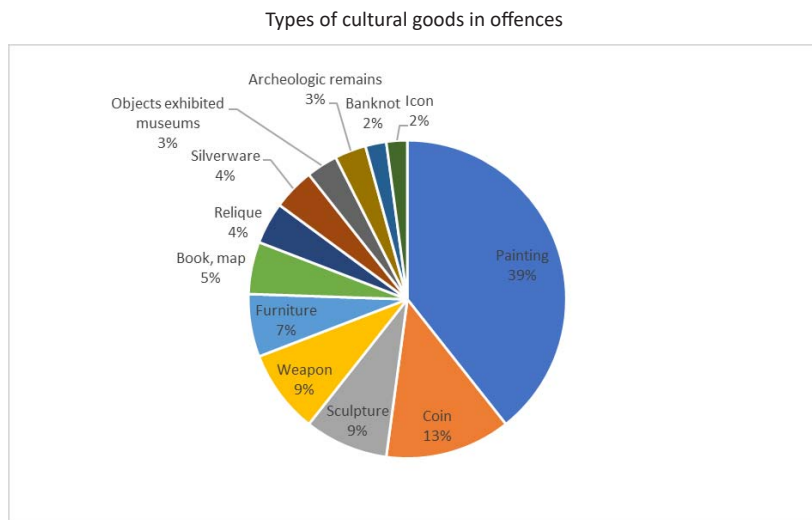


Figure 2

2. Typical conduct element of criminal offences with protected cultural goods

The criminal offences with protected cultural goods were committed by the following conduct: a person exports objects which are considered cultural goods and for which an export permit is required. [Criminal Code Section 358, article (2)].

The investigation of these offences need specific knowledge from the investigating authorities in the course of the identification of cultural goods. It makes the training in these fields reasonable.

3-4. Was there an intention to sell the cultural goods? Was there a transnational feature of the case?

It can be concluded only in a small proportion of the cases that the perpetrator had a serious intent to sell the stolen cultural goods. In other words, the perpetrator wanted to sell the stolen goods to a professional (e.g. an art trader) at its real value. There were only 19 cases when this intent was proven and in only 7 cases the stolen goods were sold to an antiquity shop abroad. However, it is more typical that the perpetrator sold the stolen cultural goods way below its real price.

5. Was there other data about the commitment of similar crimes?

There was only two series of offenses during the examination period.

6. Was a professional involved?

There was no involvement of professionals in the cases. In some cases the perpetrator of the tricky theft or a fraud was an antique dealer; he went into flats, viewed paintings, and diverted attention of the owner to be able to steal it.

7. The value of the stolen goods

Out of the several topics of the research, the value of the stolen goods is a relevant aspect that needs to be presented. The amount of value – in the examined cases against cultural goods distributed as follows:

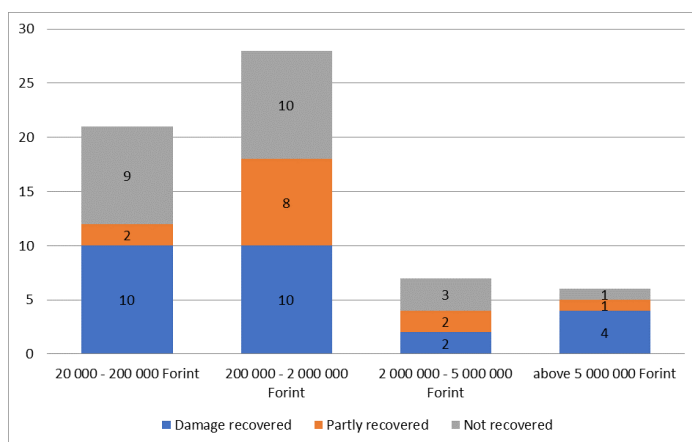


Figure 3

The value of the stolen goods was in most cases:

HUF 20.000 – 200.000 (EUR 60 – 600) or

HUF 200.0000 – 2.000.000 (EUR 600– 6000).

Only six out of the examined cases were beyond the value of HUF 5 million.

The bar chart shows, that in the majority of these cases the losses were recovered.

IV. The main conclusions of the research

- The illicit trade of cultural goods is a serious problem. The number of the cases is low, but the specific characteristics of the phenomenon is the high latency. It did not enable reliable overall conclusions to be drawn. Yet, perhaps it is possible to summarize the main findings in line with the illicit trade of cultural property.
- Paintings, coins, sculptures, weapons, furnitures, maps and books belong to the category of stolen cultural goods.

- The perpetrator of the theft does not have intent or expressed plan to sell the cultural goods in most cases, or it was not proven. The small minority of the cases is characterized by transnational relations.
- Criminal offences with protected cultural goods are committed often out of neglect, with an intent to export without licence.
- It cannot be concluded that the illicit trafficking of cultural goods occurs only rarely.
- The relevance of cultural goods for the investigation officers is not very well known. There is a special unit at the Police: National Office of Investigation – Art Treasure Unit, but it proceeds only in the most serious cases. The other investigators are not specialized in this field. Although a specific training was held within the framework of an EU funded project in 2010, it is not part of the regular education system.

It seems to be necessary to raise awareness and to gain real knowledge of the problem. The aim of this project is to provide school-work for trainings. The role of the experts is outstanding in these cases, the clear definition of their tasks and competence is very important. Information to all “actors of this scene” (from the collector to the art dealers) can contribute to the prevention, too.

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