

**ILLICIT
TRAFFIC
IN
CULTURAL GOODS**

**IN THE
NETHERLANDS**

RESEARCH REPORT



Illegal Trade
Fighting illicit traffic in cultural goods within the European Union

Research Report

Foreword

One of the issues selected to be discussed during the Dutch Presidency of the European Union was the illicit traffic in cultural goods. Since lack of factual information hampers discussions on the issue a research was commissioned in 2003 by the Ministry of Education, Culture and Science and the Ministry of Finance into the nature and scope of illicit traffic in cultural goods in The Netherlands. Part of the research was done by services of the ministries other parts were done by external experts.

Although the report focuses mainly on the situation in The Netherlands it nevertheless provides information that can be useful to others outside the national context. Therefore the report was presented to a representative of the European Commission during the conference **Illegal Trade: Fighting illicit traffic in cultural goods within the European Union** that took place in the framework of the Dutch Presidency on 8 and 9 November 2004. It is hereby also made available to others working in the field.

The recommendations of the conference underline the need for more reports like the current where it reads:

“In order to increase the level of factual information to enable policy makers to take the right policy and legislative measures and to enable the making of effective (European) risk analysis all Member States should engage in studies on the nature and scope of the illicit traffic in cultural goods in their respective countries under coordination of the European Commission.

In the light of this recommendation the Dutch initiative will hopefully be followed by others.

On behalf of the supervising board,

for the Ministry of Finance,

Jan Glimmerveen

for the Ministry of Education, Culture and Science,

Sabine Gimbrère

Introduction: Aims of the report on the illicit traffic in cultural goods in The Netherlands

For some time, there has been concern in the Netherlands, as well as in other EU member states and the European Parliament, about the illicit traffic in cultural goods. The loss of cultural heritage causes irreparable damage not only in the Netherlands and the other EU member states, but all over the world.

The preservation of cultural heritage is therefore a high priority on the national and international agenda. The Netherlands, too, supports measures to combat trafficking in cultural goods. Very little is known so far about the nature, scope and role of this illicit traffic. There is thus a great need for specific information, as this can help the various actors to decide what they can do to combat the illicit traffic in cultural goods more effectively. This report sets out to present this necessary information as clearly as possible.

The report has a dual purpose. On the one hand, it forms the basis for a material improvement in the implementation and enforcement of existing legislation. On the other hand, it serves as a basis for further national and international policy making. Although the Commission re-evaluated Directive 93/7 and Regulation 3911/92 in 1999, it did not discuss this re-evaluation sufficiently with the member states. The purpose of this report is therefore to kick-start this debate during the Dutch EU presidency in 2004 as well as in the Culture Committee, the Advisory Committee on Cultural Goods, and the Third Pillar working groups on customs cooperation and organised crime. Finally, the report is intended to underpin national policies aimed at preventing the illicit import and export of cultural goods.

Chapter 1: General concepts relating to the legal and illegal trade in cultural goods

Introduction

Trade in cultural goods has been important from a cultural, economic, social and political perspective for centuries. This is because of the significance of culture and cultural heritage to every society. Cultural goods help to determine a country's national cultural identity. That is why practically all countries wish to protect their cultural heritage.

National legislation on moveable heritage is generally confined to designating cultural goods that deserve special protection and describing the relevant methods of protection, for example export bans.

The Netherlands has a relatively liberal policy on the protection of moveable heritage. Only cultural goods that are regarded as irreplaceable and indispensable parts of Dutch culture are protected under the Cultural Heritage Preservation Act. This protection chiefly amounts to a ban on exporting an item of moveable property or a collection that has been designated by the Minister of Education, Culture and Science as a protected object without the minister's permission. In addition to this, the Netherlands has a variety of rules relating mainly to registration, conservation and risk management.

In many countries, the protection of cultural goods is a serious problem. This is caused not so much by a lack of legislation as by a lack of effective monitoring of compliance and a lack of supplementary measures like registration and security. Owing to an increased interest in cultural goods, generated by many factors including greater prosperity and passenger traffic, the illicit traffic in cultural goods is growing.

This chapter discusses a number of general notions that are relevant to the export and import of cultural goods, such as the legal and illegal trade in cultural goods and the existence of organised crime in this area. It concludes with a list of issues and recommendations relating to the trade in cultural goods and the fight against illicit trafficking in cultural goods.

The legal trade in cultural goods

The trade in cultural goods is a factor of significance to the economy: internationally it involves a substantial volume of trade and a large turnover. It is also a sector that employs a great many people. Yet no exact figures are available concerning the scope of the legal trade in art and antiques. Every source provides different figures and approaches the trade in a different manner. In addition, it is not always clear how the figures have been calculated. Nevertheless, the various sources do paint a similar picture in

relation to certain points, such as the countries with the largest turnover and the centre of the trade in cultural goods.

The Art Sales Index, which is used by auction houses, dealers and collectors around the world to determine the value of fine art (paintings, works on paper, miniatures, prints, sculpture and photography), indicates that the countries with the largest turnover in 2002-2003 were the United States, the United Kingdom and France. In terms of turnover, the Netherlands occupies seventh place (over €22 million), followed by Switzerland. In 2002-2003, there was substantial growth in Uruguay (934%) and Hungary (347%), followed at some distance by Argentina, the Czech Republic, Hong Kong and the Netherlands. The markets in Switzerland, the United Kingdom, the United States and other countries posted a loss in relation to 2001-2002. The events of 11 September 2001 caused a downturn in the economy, which was subsequently prolonged by stock market collapses and rising international tension. The art and antiques trade can be risky and depends mainly on economic factors and supply. Turnovers rose substantially prior to 2001-2002. In the United States, turnover increased by 81% over a five-year period, while the average growth in Europe was 'only' 26%. Since 2001, most auction houses have experienced fluctuations, although most are now once again displaying an upward trend.

Not long ago, the European Fine Art Fair (TEFAF), the largest international arts fair in the Netherlands, commissioned a study on the European art market, based on interviews and an analysis of statistical data. The findings indicated that in 2001 the art market was a European service industry with a turnover of €12 billion (45% of the €26.7 billion global art market), 28,600 establishments employing 73,600 people, and activities generating 61,000 additional jobs. According to TEFAF, Europe is losing its market share to the United States, mainly as a result of its fiscal environment and numerous regulations. In 1999, the total value of the import of art and antiques into the European Union stood at €1.53 billion, while the total value of the export of art and antiques from the European Union stood at €1.81 billion. The United Kingdom has the largest European art market, accounting for 56% of the total market, followed by France with 16.8%. According to TEFAF, internet trading has not developed into a significant alternative to the traditional art sector.

The art market is fragmented. Sotheby's and Christie's occupy a prominent position, accounting for 25% of the global art market and 40-45% of the market for fine art, decorative art and antiques. In the Netherlands, the auction houses have a turnover of €105.3 million (Sotheby's Amsterdam reports sales of approximately €44 million for 2003), and the dealers have a turnover of €70.2 million. The Netherlands has 40 auction houses and 300 dealers (1,100 employees), putting it in sixth place in the European Union. Between 1998 and 2001, the average price for art and antiques in the Netherlands was €7,577 per item. In 2002-2003 it was €5,855.

The Dutch central bureau for statistics (CBS) reports different figures than TEFAF. In 2001, according to CBS, there were 1,475 antique shops and 1,275 shops and 110 auction houses and sale rooms for second-hand goods, including art and antiques, in the Netherlands. In its January 2002 edition, the *Kunst & Antiek Journaal* (Art & Antiques Journal), a monthly magazine for dealers and collectors, reported that 81 permanent markets and 73 occasional markets selling art and antiques were being held in the Netherlands that month. In its April 2004 edition, it reported 48 permanent markets and 93 flea markets. This in itself indicates the existence of a large art market, but in reality the number of small fairs, auctions and markets is even higher, as many are not registered.

The above-mentioned forms of trading have recently been joined by internet sales. The largest on-line auctioneer is eBay, which cooperated briefly with Sotheby's and now has 100 million users worldwide. Twenty million items are offered for sale on eBay every day, but cultural goods account for only a small proportion of them. This appears to confirm TEFAF's conclusion that internet trading is not an alternative to the regular trade, although it is a significant new development.

It is important to note that, although it is the most important one, eBay is still just one of the many players on the internet. Numerous websites set up by dealers offer cultural goods from around the world for sale.

The illicit traffic in cultural goods

The previous section gives an indication of the scope of the visible and legal trade in art and antiques. The scope of the illegal art trade is impossible to quantify because it takes place covertly. We do know, however, that many archaeological sites are plundered, many individuals and institutions are robbed, and bans on exporting cultural goods are violated, all over the world. The existence of numerous armed conflicts also increases the risk of the theft and illegal export of cultural goods.

Although it may be assumed that these matters are well regulated in the European Union, many countries are nevertheless affected by illegal transactions. Many archaeological objects have been stolen from Italy and Greece, in particular, but other member states are also affected. In Italy, between 1970 and 2003, 932 objects were stolen from museums, 16,538 from churches, 22,696 from private owners and 2,604 from other institutions, mainly in the regions of Piedmont, Lazio and Lombardy. These stolen objects consisted mainly of furniture, religious objects, paintings, archaeological objects, sculptures and books. During the same period, 7,713 works of art stolen in Italy were recovered abroad, and 1,266 works of art stolen abroad were recovered in Italy. In France, many items of furniture and clocks are stolen from castles. Many objects are also stolen from churches, cathedrals and chapels, but the majority of thefts take place in other places, such as country houses and private homes. In total, there are approximately 7,100 thefts every year, each one involving between five and ten items. These objects disappear to neighbouring countries like Belgium, Germany and Italy, as well as to the Netherlands. The police estimate that some

80% of the stolen items are sold through channels in the northern hemisphere, the largest market being the United States. Operators in the United Kingdom and Spain are involved in the transport of illicit cultural goods to countries outside the European Union. In Austria, approximately 160 paintings, 130 sculptures and an unknown number of antiques are stolen each year, mainly from private homes and churches.

The United Kingdom is also targeted by thieves, as is Spain, which has witnessed specialised art robberies. Although specific data is lacking, the frequency of thefts from private and public collections in the Netherlands appears to be growing. Analysis of the available data indicates that the main supply of stolen cultural goods in the Netherlands originates from Central and Eastern Europe or reaches the Netherlands via those countries.

The illicit traffic in cultural goods from the new EU member states chiefly involves items obtained in art thefts in Poland, Hungary and the Czech Republic. The new member states are complying with their obligation to implement European legislation in their national legislation, but in practice further improvements are needed on various fronts, including cooperation between regulatory and supervisory agencies, improvements in the security and registration of cultural goods, and the central registration of art theft. As a result, the enlargement of the European Union in 2004 has made the European Union's new external borders vulnerable.

Thefts are also frequent in the candidate countries of Bulgaria, Croatia and Romania. It is a key problem here that many cultural goods are not registered. Moreover, controls along the external borders of these countries are in need of improvement.

A number of trends can be identified regarding the illicit traffic in non-European objects. African objects have been fashionable for years, the most popular countries of origin being Egypt, Côte d'Ivoire, Mali, Nigeria and the Democratic Republic of the Congo. Cultural goods are also plundered in Latin America, with serious consequences for local museums, churches, communities and archaeological sites. The demand for pre-Columbian objects on the global market has led to a dramatic increase in theft and robbery. In general, archaeological and colonial objects (religious art) are among the most endangered items of cultural property in Latin America.

Many Latin American countries have detailed legislation protecting cultural goods, but the monitoring of its implementation leaves much to be desired. Many countries in this region have ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. These conventions offer states the possibility of reclaiming stolen and illegally exported cultural goods in a relatively straightforward manner.

Countries in South, South-East and East Asia, such as Thailand, Burma (Myanmar), Cambodia, Bangladesh, Indonesia and China, have important items of cultural heritage and are targeted by thieves and illegal exporters. Khmer art is very popular with collectors, for example, and centuries-old graves are plundered on a large scale in China.

The campaign against the illicit traffic in cultural goods

The illicit traffic in cultural goods is a complex issue that is bound up with cultural, socio-economic and legal factors. It is partly this complexity that is responsible for our lack of knowledge regarding the nature and scope of the illicit traffic and that makes it difficult to combat.

A growing *demand* for cultural goods is fuelling this illicit traffic. The globalisation of economic relations, the growth of tourism, increasing secularisation and a loss of respect for holy places are also significant contributory factors. Moreover, high profit margins and a low risk of being caught mean that the illicit traffic in cultural goods continues to be a lucrative activity. The international instruments chiefly contain rules regarding the return of stolen or illegally exported cultural goods. In most cases, they facilitate the return of such objects to their countries of origin through simplified legal procedures. In addition, there is a growing interest in non-legal measures, like the adoption of codes of conduct, training, and public information campaigns.

The Netherlands

There are no hard figures available regarding the illicit traffic in cultural goods in the Netherlands. The Disclosures Office for thefts of art and antiques operated by the National Criminal Intelligence Department of the National Police Services Agency (KLPD/NRI) only receives information pertaining to stolen art and antiques in the Netherlands if the theft was reported to the police or if a foreign police force requests an investigation. The KLPD does not deal with protected cultural goods that are subject to an export ban or with illegal exports that do not involve theft. It is therefore not easy to say what is happening in relation to the most talked-about thefts of important works of art in recent years. Nor are there any other sources that could supply specific information on the illicit traffic in cultural goods in which the Netherlands is involved in some way.

It is likely that the Netherlands is not only directly involved in the illicit traffic – either by being targeted by illegal transactions or as a country where stolen objects end up – but that it is also an important transit country. The scope of container transport in the Netherlands and the sheer size of the key international transport hubs of Schiphol and Rotterdam render this plausible. This is illustrated by the fact that, even in the absence of specific legislation, the customs authorities make important finds while performing their

other duties, that is to say, more or less by chance. It is reasonable to expect that they would find much more if they were able to perform intelligence driven inspections.

The organised criminal trade in antiques is expected to increase, as it is characterised by large profits, a low risk of being caught and relatively minor sentences. The specialisation within organised crime identified by the police a few years ago appears to have disappeared, although a certain amount of specialisation is required in relation to art and antiques (specific customers, sources and geographical market). Art thefts are increasingly linked to organised crime, and a number of police services are linking them to trafficking in drugs, arms and human beings as far as money laundering and smuggling routes are concerned. Specific cases of this kind are already known. In this context, the extension of the legislation concerning the Disclosures Office for Unusual Transactions (MOT), whereby cash transactions valued at over €15,000 must be reported as of 28 December 2001, is an important development.

This type of crime involves a sizeable 'dark number', given the existence of a substantial black market in cultural goods that manages to evade detection by the authorities. The disappearance of certain borders due to the enlargement of the European Union is expected to boost these activities.

The Netherlands is not a party to any of the relevant international agreements, except for the First Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. In a letter dated 19 July 2004, the government has now expressed its intention to ratify and implement the 1970 UNESCO Convention. In this letter, the government acknowledges that other measures besides legislation are needed to combat the illicit traffic in cultural goods.

The Dutch law enforcement authorities do not regard the fight against the illicit traffic in cultural goods as a priority. This is undoubtedly related to the lack of hard figures regarding the nature and scope of these crimes. In the Netherlands, moreover, the illicit traffic in cultural goods is not defined as a criminal offence. The only charge that can be brought is a more indirect one, namely that of handling stolen goods. This situation will probably change in the future, however, if as announced in the above-mentioned letter, a prohibitory provision is included in Dutch legislation and the illicit traffic in cultural goods is put on a par with drug trafficking and the smuggling of human beings in the context of organised crime.

Few countries have police services that are specialised in art theft, and cooperation between police and customs authorities is frequently rudimentary. In many EU countries, the need is felt for better cooperation between the police, the customs authorities and cultural agencies. If there was better cooperation between the relevant agencies at national and international level, more information could be exchanged more quickly, developments and trends could be identified, and fewer people and countries would probably fall victim to art theft.

Conclusions and recommendations

- With the exception of the First Hague Protocol (which is only now being implemented in national legislation), the Netherlands is not a party to any of the international agreements regulating the return of stolen or illegally exported cultural goods. The return and recovery of such objects would both be facilitated if the Netherlands ratified the existing conventions.
- The existing international conventions are important instruments in the fight against the illicit traffic in cultural goods. It is recommended that the Netherlands swiftly ratify and implement the 1970 UNESCO Convention, in accordance with the commitment made to parliament.
- There are no hard figures available regarding the illicit traffic in cultural goods in the Netherlands. The disclosures office for thefts of art and antiques operated by the National Criminal Intelligence Department of the National Police Services Agency (KLPD/NRI) only processes information pertaining to stolen art and antiques in the Netherlands if the theft was reported to the police or if a foreign police force requests an investigation. This is attributable to various factors, including a lack of manpower and prioritisation issues.
- The central registration of all stolen cultural goods, which could be done in the Netherlands by the KLPD, needs to be tackled. It could be achieved by strengthening the KLPD and with the cooperation of – and the secondment of officials from – cultural institutions.
- The nature and rigour of management and control systems vary greatly between countries, even within the European Union. In addition, the police's scope for registering such thefts differs widely from one member state to the next (and in some cases it is non-existent), besides which the scope for consulting such information or for rapid and effective exchanges of information between supervisory and investigatory agencies is very limited.
- Specialisation within the KLPD will make it easier to distinguish between protected cultural goods and other works of art. It is essential for the KLPD/NRI to perform specific tasks to assist the police, for instance by arranging the efficient collection and provision of information at national and international level through a central liaison point and the central registration of stolen cultural goods, including contact with Interpol and – possibly – Europol. The same applies to the identification of trends and the timely notification of the customs authorities.
- The possibility of extending Europol's mandate should be examined.

- The cooperation between the police and cultural institutions is open to improvement. In addition, there is still too little cooperation between regular and specialised police services and the customs authorities. However, the Netherlands is systematically improving the expertise of the customs authorities, which is necessary if imports and exports of cultural goods are to be effectively monitored.
- Good cooperation between the customs authorities, the police, the public prosecution service and cultural agencies (in the Netherlands the Cultural Heritage Inspectorate) is indispensable. The relative positions of the customs authorities, the police and cultural agencies – and the cooperation between them – should be examined more closely and improved to ensure that regulatory, supervisory and investigatory tasks involving cultural goods are performed adequately.
- In the framework of the Dutch EU presidency in 2004, the government is focusing on the fight against the illicit traffic in cultural goods (effective implementation of existing legislation by means of better cooperation between relevant agencies at national and international level).

- There is no central registration of important cultural goods stolen in third countries. This information should be available to supervisory and regulatory bodies as well as to private individuals.
- The possibility of linking existing national and international databases should be examined more closely, as should the possibility of developing a central database. This could be a task for the International Council of Museums (ICOM), UNESCO or the European Commission. A central database would simplify tracing and monitoring as well as provenance research by potential buyers.

- The growing demand for cultural goods, due to increasing tourism and globalisation, fuels the illicit traffic in these objects.
- Better public information is needed to alert tourists, in particular, to the damage caused to cultural heritage by the illicit traffic in cultural goods.
- Ways should be found to expand the legal trade in cultural goods, for example, by promoting the production of replicas.

Chapter 2: Imports

Introduction

This chapter looks at the type, route and quantity of the cultural goods – whether of legal or illegal provenance – that are imported into the Netherlands.

The import of cultural goods means bringing such objects into the Netherlands or the European Union from third countries (non-EU member states). However, the ‘import’ of any item into the Netherlands from another EU member state actually constitutes intra-Community traffic rather than import. For more information on intra-Community traffic see chapter 3.

The import of cultural goods into the Netherlands

Legal imports

There is a lack of reliable data on the import of cultural goods into the Netherlands. However, it is believed that most import declarations relate to paintings and drawings, followed by sculpture and archaeological collections. More than half the declarations are submitted by transport companies, parcel services and companies specialised in transporting art. Most objects are destined for private individuals or dealers. With regard to import declarations submitted in the Netherlands, it is noteworthy that most cultural goods come from countries with sizeable art markets (Australia, Canada, Hong Kong, Japan, Switzerland and the United States). Eastern Europe, Africa and Asia are less well represented, with the exception of China and South Africa.

Illegal imports

Key causes of the illicit traffic in cultural goods include increased passenger traffic (tourism), the general public’s unfamiliarity with the legal protection of cultural goods in third countries, and the great demand for art and antiques from non-Western cultures. The illegal art trade is further encouraged by the large Dutch art market, favourable trade routes, relatively short limitation periods, the lack of legislation to combat the import of illegally obtained objects, opportunities for smuggling at airports and seaports due to a lack of intelligence driven monitoring of imports of cultural goods, the low risk of being caught, and large profit margins.

In a strictly legal sense, there is no such thing as the illegal *import* of cultural goods into the Netherlands. What is illegal is the acquisition, possession or transfer in the Netherlands of items obtained as the result of an offence. In the case at hand, this offence consists of the theft or illegal export of cultural goods in or

from another country. The acquisition, possession or transfer of items that have been obtained illegally is an offence under Dutch law, namely, the offence of handling stolen goods. It is therefore this offence that is dealt with in the Netherlands. However, theft in a foreign country can still provide a basis for seizing the objects concerned, provided there are grounds for suspecting that the person in possession of the objects also committed the theft.

As there is no legislation prohibiting the import of cultural goods stolen in or illegally exported from third countries, the Dutch authorities have no legal basis on which to monitor imports of cultural goods. Cultural goods only come to the attention of the Dutch authorities if they are discovered in the framework of regular customs or police inspections, which are conducted on the basis of other powers. In this manner, cultural goods from Thailand, Cambodia and Russia have in the past been discovered by chance.

Between 1995 and 2002, the Dutch authorities seized various cultural goods of great national and international importance (18 items from ten different countries) during regular customs inspections.

When cultural goods are seized in the Netherlands, this is still done on the basis that there are reasonable grounds for suspecting that an offence was committed under Dutch law. This offence may be theft, falsification of documents or the handling of stolen goods in relation to cultural goods that were illegally exported from a third country, provided this is regarded as an offence in the country of origin.

Not only is the import of cultural goods stolen in or illegally exported from third countries not a criminal offence in the Netherlands, but there are also no effective procedures for returning the objects concerned properly and efficiently to their place of origin. The fact that Dutch courts are not inclined to apply foreign law often constitutes an initial obstacle in this regard. In addition, Dutch private law and criminal law both contain all kinds of obstacles to the swift return of such objects.

In private law, the protection of the *bona fide* owner and acquisitive prescription interfere with the return of cultural goods. In relation to the return of objects between EU member states, however, this problem has been largely solved (see chapter 3). The announced ratification and detailed implementation by the Netherlands of the 1970 UNESCO Convention will facilitate the return of cultural goods to and by countries outside the European Union.

In recent years, attempts have been made to do something about the return of illegally exported cultural goods by way of criminal law. At the end of the 1990s, in anticipation of the ratification of the UNIDROIT Convention, as promised by the then government in 1996, temporary cooperation agreements were concluded between the public prosecution service, the police, the customs authorities and the Cultural Heritage Inspectorate. In order to bridge the period until the implementation of the existing international conventions, it was established that, if there are reasonable grounds for suspecting an offence in relation

to cultural goods discovered during a regular customs inspection, the customs authorities can seize those objects. This seizure should take place in consultation with the public prosecutor for the purpose of further investigation. However, it has emerged that the path of criminal law, which is not designed for the return of cultural goods to their place of origin but for the trial of individuals, is time-consuming, ineffective and expensive and places a burden on the criminal law system, which should be focusing on other issues. Criminal law should enter the picture when it comes to punishing those involved in the illicit traffic in cultural goods, as a supplement to private law rules aimed at the return of such objects.

The implementation of the temporary cooperation agreements has brought a number of issues to light. Although the customs authorities are occasionally able to intercept cultural goods without a specific legal framework, the processing and return of illegally traded cultural goods often run into difficulties because no such framework exists. With specific powers of inspection and an adequate legal framework, moreover, the customs authorities would be able to recognise many more illegal transactions.

Conclusions and recommendations

- The Netherlands has not ratified and implemented the international conventions governing the return of stolen and illegally exported cultural goods (in particular: the 1970 UNESCO Convention and the UNIDROIT Convention). In this regard, it has not kept up with other EU member states. At present, the government intends to become a party to the 1970 UNESCO Convention.
- The ratification and implementation of existing conventions will facilitate the return of stolen and illegally exported cultural goods to their countries of origin. It will also provide a legal basis for monitoring the illicit traffic in cultural goods. The customs authorities may be expected to find much more if they are able to carry out intelligence driven inspections.
- The Netherlands has no legislation to curb the import of illegally exported cultural goods. Nor is there any such legislation at Community level.
- It is recommended that the import and possession of cultural goods illegally exported from third countries be made a criminal offence, so that those involved in this illicit traffic may be punished in an appropriate manner.
- Although the new member states are complying with the obligation to implement European legislation in their national legislation, the security and registration of cultural goods and the cooperation between regulatory and supervisory agencies are in need of improvement.
- The member states should step up their cooperation – bilaterally and in the EU framework – in relation to the monitoring, security and registration of cultural goods.

Chapter 3: Intra-Community traffic

Within the European Union, the customs authorities do not control road and rail transport, as this falls under the free movement of goods. The customs authorities have no role in this area, which means that cultural goods can move freely within the European Union once they have crossed one of its external borders.

Introduction

The trade in cultural goods includes not only imports and exports but also intra-Community traffic: the transport of goods within the territory of the European Union. This intra-Community traffic has its own problems and rules.

As part of the creation of the internal market, it was necessary to adopt Community measures to compensate for the abolition of systematic controls along the European Union's internal borders. In 1992 and 1993, the Council of Ministers therefore adopted Regulation (EEC) 3911/92 and Directive 93/7/EEC 'to reconcile the fundamental principle of the free movement of goods with the protection of national treasures'.

Directive 93/7 facilitates the return of the cultural property of a member state that has been removed without permission from its country of origin and is located within the territory of another member state to its country of origin, without the need for complicated legal proceedings. The country of origin must submit a request for the object's return to the country where it is located within the time limit set by the directive.

The directive was introduced for good reason. In the past, legal obstacles made it difficult to return cultural property that had illegally been removed from a country.

Legal framework

This means that in derogation from – and as a supplement to – the general legislation on the intra-Community goods traffic, the only specific European legislation that applies to cultural goods is Directive 93/7. This directive provides that protected cultural goods that are unlawfully located within the territory of another member state and are listed in the annexe to the directive may be returned to their country of origin by means of a simple legal procedure.

On the basis of Articles 28-30 of the Treaty of Rome, EU member states are authorised to protect their own national cultural property and to impose restrictions on the free movement of goods for this purpose. The member states thus all have legislation that regulates or prohibits the export of certain cultural goods

in a way that differs from state to state. In the Netherlands, this was achieved by means of the Cultural Heritage Preservation Act, which provides that the permission of the Minister of Education, Culture and Science is required for the export of a very limited number of protected cultural goods. This permission does not take the form of a specially designed licence or document. In some European countries, like France and Italy, the scope of the national legislation is much wider and many more cultural goods enjoy protection at national level. By no means all these objects fall within the scope of the directive. In the case of the Netherlands, too, not all protected cultural goods fall within the scope of the directive. For example, certain objects designated as enjoying the protection of the Minister of Education, Culture and Science do not qualify for return under the directive due to their limited financial value. The question therefore arises of whether the directive provides adequate protection for cultural property that is protected at national level. In the case of the Netherlands, the sale of protected objects in a foreign country has only occurred on two occasions, both of which involved the sale of books from the Bibliotheca Philosophica Hermetica – J.R. Ritman Library in Amsterdam.

In principle, the customs authorities do not control intra-Community traffic. This makes it difficult to monitor compliance with national legislation for the protection of cultural goods (including that of the other EU member states). In fact, effective monitoring can only be carried out at the site where the protected cultural object is meant to be located. In the Netherlands this task is performed by the Cultural Heritage Inspectorate. Very little information is available concerning the nature and scope of the intra-Community transport of cultural goods.

Operation of the EU directive

There is a lack of specific information concerning the way the directive operates in practice, and its preventive effect is also difficult to quantify. The Netherlands has so far been involved in a genuine directive-related case on just one occasion. On 9 June 2004, a Dutch court rejected an Italian request for the return of a cultural object in a directive-related case.

This example shows how difficult it is to satisfy the burden of proof. A Dutch museum had purchased a suit of armour from a Swiss dealer, which meant that the time of sale was known but not the time at which the object had left Italy. The court eventually ruled that it was unproven that the object had left Italy after 1993, a key date for invoking the directive. It is noteworthy that Italy had initially not sought to settle this case under the directive, but had instead submitted a request for legal assistance and directly approached the local police. Contact between the central authorities appointed in the framework of the directive was only established later. Italy blamed this lapse on poor communication between the various Italian agencies. Other EU member states have slightly more experience with the directive.

If member states do not wish to use the scope for return created by the directive and allow the limitation period to expire, a new situation is created. In such cases, the cultural goods concerned fall under the normal regime that applies to all stolen goods.

Besides problems relating to the furnishing of proof, the return procedure – as straightforward as it appears on paper – is actually quite complicated in practice. It would be a good idea to describe the entire procedure in order to gain a better understanding of the procedures that apply in other member states. In addition, a reporting requirement for directive-related cases should be introduced, in order to establish a central EU overview and to build up expertise. This would make it possible to draw conclusions on how to improve the directive's operation.

Conclusions and recommendations

- The directive has rarely been used to date. This is partly because of a lack of coordination between all the authorities concerned and partly because of a failure to exchange information.
- The coordination and exchange of information between all the authorities involved in the fight against the illicit traffic in cultural goods – the police and the criminal justice authorities, the public prosecution service, the customs authorities and cultural institutions – need to be improved at national and European level. This will make it easier to use the scope created by the directive more effectively.
- Cases involving the illegal intra-Community transport of cultural goods, to which the directive can be applied, should be reported centrally at European level.
- Evaluations/discussions with the competent authorities in the EU member states concerning the operation of the directive (and obstacles encountered during its operation) should be encouraged.

Chapter 4: Exports

Introduction

This chapter describes in brief the nature and scope of the legal and illegal trade in cultural goods in the Netherlands and focuses in particular on the export of such objects via the Netherlands. It reflects the findings of a detailed investigation and a comprehensive risk analysis. This risk analysis was made to enable the customs authorities to carry out their inspections as effectively as possible. It can be ordered from the Customs Information Centre in the Netherlands.

On the basis of the above-mentioned investigation and risk analysis, this chapter identifies a number of policy and implementation problems and recommends measures to tackle these problems in the fight against the illegal export of cultural goods. In this context, 'illegal export' should be broadly interpreted as the export of any object without the required licence, regardless of whether it concerns the deliberate smuggling of stolen cultural goods or objects in relation to which the exporter has simply forgotten to apply for a licence.

The nature and scope of the legal and illegal export of cultural goods

Over the past two decades, the Western world has been characterised by ample leisure time, an income that is generally high enough to allow travel and non-essential purchases, and a great interest in history and prehistory. An abundance of museums and a continuous flow of information via various media sustain a flourishing market for cultural goods, which is larger than ever before. In the Netherlands, this trade is not limited to items of Dutch cultural property, but also includes objects belonging to the protected cultural property of EU member states and third countries.

The Netherlands has statutory measures that restrict and regulate the export of cultural goods. The legal framework for such exports – both legal and illegal – is composed of Regulation 3911/92 and the Cultural Heritage Preservation Act (WBC). Although the WBC defines export as the transfer of an item outside Dutch territory, the export of cultural goods will be defined, in accordance with the relevant EU legislation, as the transfer of such objects outside the European Union.

The categories of cultural goods defined in the annexe to Regulation 3911/92 form the starting point for a description of the nature and scope of the legal and illegal trade in cultural goods and, in particular, the export of such objects from the Netherlands. These categories include archaeological objects, parts of monuments, paintings, watercolours, mosaics, sculptures, photographs, manuscripts, books, maps and antiques. Despite the diversity of cultural goods, it is relatively easy to sketch a general picture of trade and export in this area.

The scope of the legal and illegal export of cultural goods cannot be determined with certainty. In terms of both size and value, however, it is clear that a large and rapidly growing volume of trade in these objects exists in the Netherlands and other EU member states. Some of the largest dealers and leading international art and antiques fairs are based in the Netherlands. Finally, there is also a great deal of interest in and demand for cultural goods, as is clear from the flood of media attention, publications and magazines and the sheer size of the supply, and visitor numbers, at websites and international fairs and auctions.

The key players in this area include not only professional dealers, antique shops and prestigious fairs and auctions, but also a large number of collectors who buy, sell and export cultural goods. Dealers constitute a relatively small group of people that know the entire market well and maintain excellent networks. The buying and selling of cultural goods takes place in a distinctly international context. Although many items obviously change hands at art and/or antiques shops and national markets and fairs, international markets and fairs are more important still. Archaeological objects and books are often sold on the internet. This on-line trade focuses mainly on markets outside the European Union, in particular the US, and to a lesser extent Japan, Switzerland and Australia. In some cases, the objects concerned have been obtained unlawfully, for instance through illegal excavations, theft or illicit traffic.

Cultural goods are usually exported in one of the following ways. Buyers (dealers and collectors) at art and/or antiques markets and fairs often export the cultural goods they have purchased in their hand luggage – generally by air but in the case of Switzerland also by road. Regular dealers and internet dealers chiefly use courier companies or parcel services (for packages weighing up to 20 kilograms). For larger objects, such as sculptures, they rely on sea and container transport.

It follows that these objects are difficult to monitor, although certain categories of objects (sculptures, paintings and maps) are sometimes transported in special protective packaging that makes them easier to spot. Other factors that further complicate monitoring can be divided into problems relating to the detection of cultural goods in the vast flow of goods crossing the border and problems relating to their subsequent identification as cultural goods falling within the scope of the WBC or the Regulation, for example:

- the origin of cultural goods, such as paintings and archaeological objects, is often unclear;
- cultural goods such as drawings are almost impossible to spot in hand luggage and are invisible to X-ray machines;
- in export declarations, objects are sometimes listed under the wrong category, described incorrectly or assigned an extremely low value (in relative terms) that deviates substantially from the price that was actually paid for them;

- sometimes there is no invoice for the transaction, or there is a second invoice indicating that a very low price was paid so that the value of the transaction does not exceed financial thresholds, making it possible to circumvent the licence requirement and ensuring that little or no import duty or value added tax needs to be paid at the time of import;
- almost no import or export declarations are made in the context of passenger traffic.

As noted above, it regularly happens that declarations are submitted containing incorrect information or are not submitted at all. This is sometimes a deliberate bid to circumvent legislation and evade customs inspection, but it has also emerged that many people in the trade have little or no knowledge of the statutory regulations and that they therefore regularly violate the WBC and the Regulation inadvertently. This is also reflected in the fact that there are far too few licence applications, with the possible exception of category 14 (regarding which business and the auction houses do appear to be well informed).

It is also obvious from the above that there is often a clear convergence of tax and non-tax offences. Customs inspections are integrated inspections that combine all the statutory measures that apply to each individual consignment in a single inspection. A qualitative improvement in the inspection of cultural goods would therefore also increase efficiency and effectiveness in the enforcement of tax legislation.

The statutory measures concerning the export of cultural goods essentially serve one purpose: protecting European and national cultural heritage. The proper enforcement of these measures is therefore of great importance, not only in view of the financial scope of the trade in cultural goods but especially in view of the enormous non-pecuniary damage that it can cause.

Enforcement

The Cultural Heritage Inspectorate (ICB) and the customs authorities bear primary responsibility for enforcing the legislation on the export of cultural goods. In a framework agreement concluded on 4 July 2000, the Ministry of Finance and the Ministry of Education, Culture and Science laid down the details of this cooperation. The ICB is responsible for granting licences and possesses the required expertise in the field of cultural property and the relevant legislation. The customs authorities are responsible for monitoring the export of cultural goods (i.e. inspecting licences and goods that require licences) and for combating smuggling. For this purpose, the customs authorities carried out a risk analysis in cooperation with the ICB. The customs authorities should thus be deemed capable of monitoring the large flow of outgoing goods in a highly targeted manner, including from the perspective of cultural legislation; moreover, the customs authorities have numerous statutory tasks relating to the protection of society, one of which is monitoring exports of cultural goods. Customs officials thus require a certain amount of specialist knowledge, besides basic (custom) knowledge, in order to carry out their duties properly. The

customs authorities have therefore appointed a number of expert officials who have been specially trained in cooperation with the ICB.

Conclusions and recommendations

- Customs inspections do not adequately target the goods flows that are most likely to contain stolen or illegally exported cultural goods.
- Customs inspections in relation to the export of cultural goods should also focus on packages sent by post.
- Profiles should be introduced for cultural goods in the SAGITTA export system (the customs authorities' automated export declaration processing system) so that it can identify declarations concerning the export of cultural goods.
- Where possible, high-risk flights, destinations and goods flows should be subjected to pre-departure analysis.
- Inspections should also be geared to the international fair calendar.
- Specific actions are recommended with regard to small aircraft traffic.

- There is a clear convergence of tax and non-tax offences. Customs inspections are integrated inspections that combine all the statutory measures that apply to each individual consignment in a single inspection. A qualitative improvement in the inspection of cultural goods would therefore also increase efficiency and effectiveness in the enforcement of tax legislation. A qualitative improvement of customs inspection is also required on the grounds that a certain amount of specific knowledge is required for the detection and initial identification of cultural goods. Finally, customs inspections can be further tailored to the specific requirements to be met by the monitoring of exports of cultural goods.
- *Expert officials.* Depending on the flow of goods, all regional customs offices must appoint expert officials; each office must appoint at least one, while busy offices should appoint several. Regular national and local consultations between expert officials are essential. The ICB should be represented at national consultations. It is important to ensure that there are always enough properly trained expert officials in the regional customs offices.
- *Training.* The customs authorities and the ICB should jointly establish a good training programme, both as part of the basic programme and in order to train the expert officials. In this context, greater use could be made of the available videos in the field of cultural property.
- *Exchange of information.* The customs authorities and the ICB should use the consultations between the expert officials to exchange information and publicise recent developments, overviews of art and antiques fairs, observed trends and goods flows, and so forth.

- *Risk analysis.* The risk analysis of the customs authorities should be regularly updated and, in particular, should be expanded on the basis of the information that is frequently available from third parties (Art Loss Register, UNESCO, etc.). The contacts between the police (National Criminal Intelligence Department), customs authorities and the ICB should be consolidated, and this could include setting up a joint framework for the exchange of information. By surfing the internet frequently and analysing the data found, the customs authorities and the ICB can improve the risk analysis and facilitate more targeted inspections.

- There is insufficient knowledge of the relevant legislation within the trade and among private individuals, one consequence of which is that it is frequently breached inadvertently.
- Public information campaigns should be tailored to the various target groups.
- Even if it only issues a caution, the ICB should register all offences in order to gain (and maintain) insight into the information that needs to be disseminated, and in order to respond more effectively in cases of repeat offending.

- Seized goods are not always stored under the most suitable conditions.
- Enough specially conditioned storage space should be available for certain goods.

