

**SECTION 1 – CUSTOMS & BUSINESS PARTNERSHIP**

**JEL Classification: K33, K34, K42**

**CUSTOMS PROTECTION OF CULTURAL PROPERTY  
AS PART OF THE SECURITY POLICY  
OF THE EUROPEAN UNION**

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***Abstract***

*This paper deals with certain selected issues of the customs protection of cultural property as part of the security policy of the European Union<sup>1</sup>. This area is analysed in the context of appropriate level of protection that should be applied, having respect to the fact that the trafficking in cultural goods is to a very large extent performed by organised crime groups, which find it particularly beneficial at some times, especially times of social unrest or war.*

*A detailed study of the illicit trade in cultural property within the European Union has shown that this issue is governed by the provisions of international conventions. However, as the authors note, in accordance with the EU customs legislation control over the movement of any goods within its territory is reduced to a minimum, so the main task of customs administrations is to regulate the trade in cultural property with third countries.*

*Two approaches ('hard' and 'soft') are discussed from the perspective of the Customs Service of the Republic of Poland, which is guarding the longest land border of the EU, resulting in the conclusion that the level of protection should in fact be adjusted to the patterns of trafficking and the situation of the given country.*

*The methods used during the study are analysis, synthesis, comparison, generalization, systematic and functional analysis.*

*Observations made in this respect in the EU can be beneficial for the other countries of the world that face similar challenges, like North Africa and Middle East countries, where recently there is a lot of military conflicts and civil wars.*

*Keywords: protection of cultural property, customs laws, EU Member States, illicit trade in cultural property, import, export.*

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<sup>1</sup> The article was the base for presentation these questions during the PICARD conference in Baku in 2015.

## **Introduction**

Considerations on the subject of customs protection of cultural property as a part of the European Union's (further – “EU” or “Union”) security policy was dictated by at least a couple of reasons. First of all, the role and importance of the customs protection of cultural property as a security element across the EU is - to a large extent - underestimated and even sometimes ignored. Undoubtedly, this is due to different “optics” of the individual EU Member States on this issue. Member countries which, because of their geographical location, have no land border with third countries perceive the issue differently from countries which protect the EU external border and thus face the problem of trafficking of cultural goods. Of course, also the “internal” EU countries control customs borders of the Union in connection with the handling of air traffic. However, in this case, due to specific checks connected with counter-terrorism activities at airports, the probability of illegal movement in cultural goods through such borders is significantly less than the one occurring in connection with ground / land traffic.<sup>2</sup>

It is worth to mention that treatment of illegal movement of cultural heritage is relatively new subject of infringement. For thousands of years the appropriation of goods as part of the spoils of war was something natural. Only under international law, in particular the Hague Convention of 1954, “(...) any act of theft, pillage or misappropriation of cultural property to any form (...)” has become illegal.<sup>3</sup>

The next step in the international regulation of the problem of illegal trade in cultural objects turned out to be the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, signed in Paris on 17 November 1970. Already the Preamble of the Convention draws attention to the fact that “(...) any country which is a signatory is required to safeguard the cultural heritage located in its territory against the dangers of theft and illegal export”. And further that “(...) the illicit import, export and transfer of ownership of cultural property is an obstacle to mutual understanding between nations (...)”.

From the customs law's point of view such phenomena as illegal exports, illegal importation or, more broadly, illicit trafficking in cultural goods with circumvention of customs laws, are subject to the control and application of the relevant customs regulations and other related specialist regulations (criminal, financial, etc.). Although in the last few years, this illegal activity is no longer as widespread as it was in the mid-twentieth century and in the early nineties of the twentieth century (during the period called “Polish political transformation” and “velvet” and the “colour” revolutions in Central and South-Eastern Europe), it cannot be ignored for a number of reasons.

First of all, due to the fact that today the illicit traffic in cultural goods is dominated by organized crime groups (as opposed to individual people) conducting business internationally and using techniques and transfer channels known from illicit traffic in other goods (drugs, CITES or weapons). On the other hand, the new forms and ways of smuggling of cultural heritage allow for their swift use by transnational criminal groups for violations of customs law.

This is also threatening the national security in the most widely understood way. No doubt such illegal acts should be treated as offense involving illegal cross-border trade with third countries in cultural goods without proper documentation of the legality of their movement through customs borders. In this – and basically just in this abuse – customs authorities of the EU Member States performing its mission and carrying out basic operations concerning the control of international trade in goods with non-EU countries are required not only to combat but also to prevent this type of crime.

<sup>2</sup> Research performed using DHL Express data on air movements of goods in and out of Poland (covering January – June 2015) revealed that there is no such traffic recorded.

<sup>3</sup> Article 3 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 (available at: [http://portal.unesco.org/en/ev.php-URL\\_ID=13637&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html); accessed on October 20, 2015).

The issue lays not only in the financial dimension of this activity, yet also on money laundering from illegal sources, and thus the possibility of financing international or local terrorism, and of shaping and developing criminal phenomena on an international scale.

This primarily concerns the countries of Central and Eastern Europe that have not only marine but also a very long land borders with third countries, mainly countries arising in the territory of the former Union of Soviet Socialist Republics (Russia, Belarus and Ukraine). Huge collapse of state structures in these countries, particularly in the period since the early nineties of the twentieth century, has intensified the phenomenon of the theft and smuggling of cultural goods which are part of their heritage. What's more, a very common phenomenon was – and often still is – linked with organized customs crime: smuggling of these goods. However, in recent years an increase has been seen not only in illegal importation of such goods to the EU, but also in illegal export of cultural goods from the EU to Eastern European countries. The most common channels of movement of these assets (images, icons, prints, and other smaller national treasures) are the means of road transport – cars, buses, rail cars or trucks as well as individual travelers crossing the EU border with Russia, Belarus and Ukraine.

The other reason for a different perspective on the protection of cultural property in the individual EU Member States is the judgment of their own cultural resources. Due to historical circumstances (imperial heritage) and geographical location these are differently evaluated by - as a rule - countries in Western EU (like France, the UK, Italy, Spain) and countries of Central and Eastern EU. This is also reflected in the observable practical diversity of legal regulations as to the degree of protection of cultural goods in the various EU Member States.<sup>4</sup>

With a certain degree of simplification, one can acknowledge that both divisions outlined above overlap each other to a large extent. Countries guarding the land borders of the EU (such like Poland, Lithuania, Latvia, Estonia, Slovakia and Hungary) are also countries where the national heritage has been seriously depleted as a result of centuries of aggression of the Ottoman Empire (particularly in the case of Hungary) or the Tsarist empire (especially in the case of Poland and Baltic states). Undoubtedly, these countries were also painfully affected by the devastation that occurred during Nazi German and Soviet occupiers during the Second World War.

The question that requires to be answered is therefore: who's right - the countries that guard the land border of the EU and recognize the protection of cultural heritage as an important and essential component of the border security or the countries of Western EU, which express a more moderate view, recognizing protection of cultural heritage as one of the non-tariff restrictions in international trade with third countries, but still allowing relatively low level of protection resulting in equally low level of restrictions in the event of non-compliance in this regard?

The aim of this article is to analyze these two approaches from the perspective of the Customs Service of the Republic of Poland, which is guarding the longest land border of the EU, facing the Russian Federation, Ukraine and Belarus.<sup>5</sup> Such considerations are summarized with proposals for change / transformation regarding the action of customs administrations of the EU Member States from the point of view of the protection of cultural property. Observations made in this respect in the EU can be beneficial for the other countries of the world that face similar challenges, like North Africa and Middle East countries and their neighbours, where recently there is a lot of ongoing military conflicts and civil wars.

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<sup>4</sup> See: <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/partnerships/european-union/>; accessed on October 10, 2015.

<sup>5</sup> If not referred to other source, information presented in the paper is derived from Polish Customs Service internal sources.

## 1. What is the cultural property? Terminological problems

One problem for the Customs administrations of the EU Member States is the determination of the range of goods to be protected due to their importance to the cultural heritage of individual countries. The international law provides for the definition of “cultural property” in Article 1 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, which, together with Regulations for the Execution to the said Convention and a Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, was signed at the Hague on 14 May 1954.<sup>6</sup> According to the Convention, the term “cultural property” covers, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as “centers containing monuments”.

Similar, however not identical, definition of cultural property is provided in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property concluded in Paris on 14 November 1970.<sup>7</sup> Further, the Convention concerning the Protection of the World Cultural and Natural Heritage adopted in Paris on 16 November 1972<sup>8</sup> provides for a slightly different definition of “cultural heritage”.

Authors recognize that certain terminology-related doubts may arise from different definitions in these individual conventions. The confusion may be even more prominent at the level of various EU Member States / countries as a result of necessity to translate acts of international law into national languages. It seems, however, that one should not attach too much meaning to this particular issue as - in cases of doubt - the customs administrations should, and usually do, cooperate with the competent institutions specialized in recognizing, identification and protection of cultural goods. Legal discourse about the scope of the concepts used, such as “cultural property”, “cultural heritage” and “heritage of mankind” should of course be carried out, but without compromising the effectiveness of customs services’ actions taken against the illegal trade in cultural property.

## 2. Prevailing patterns in illicit traffic in cultural property

### 2.1. *Illicit trafficking in cultural property within the EU*

According to the authors, the fundamental problem in the customs protection of cultural property remains relatively high easiness of their illegal movement between the EU countries. This is due to – above all – freedom of movement of goods principle, i.e. movement of goods without intervention of customs services, including those which objectively are recognized as cultural goods within the customs union of the EU. The experience of, among others, Polish customs, shows that the illegal transfer of cultural property is a permanent phenomenon, having specific characteristics that

<sup>6</sup> Available at: [http://portal.unesco.org/en/ev.php-RL\\_ID=13637&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-RL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html), accessed on May 13, 2015.

<sup>7</sup> See Article 1 of the Paris Convention 1970 available at: [http://portal.unesco.org/en/ev.php-URL\\_ID=13039&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html), accessed on May 13, 2015.

<sup>8</sup> Available at: <http://whc.unesco.org/archive/convention-en.pdf>, accessed on May 13, 2015.

can be extracted from other illegal transnational activity. The analysis of the prevailing patterns in illicit traffic in cultural property, as an element of modern combating of infringements of customs law threatening the security of the EU, allows for an attempt to counteract them.

As it can be observed today, especially from the point of view of the Member States that joined the Union in 2004, the illegal movement of cultural property within the EU focuses on export of these goods from countries historically linked with the German Empire and the Austro-Hungarian Empire to today's Germany and Austria. According to Polish estimates of the National Institute of Museology and Conservation of Collections<sup>9</sup> in the years 1994 - 2014 about 8,500 works of art has been stolen or taken away from Polish territory. The Polish market of illegal art trade is estimated at about approx. 5 billion EUR.<sup>10</sup> Certainly the increase in traffic at the borders as well as the expansion of the Schengen area and related total withdrawal of controls at internal borders of the EU affected these movements.

The European Union has, of course, in place the regulations governing the illicit movement of cultural property within its boundaries, covering the provisions of international conventions. Admittedly, this is not within the scope of traditional control activities of customs services, because the EU is a customs union, in which goods move freely without interference by customs administrations of Member States, nonetheless they need to be also referred to as this allows for better understanding of the illicit trade in such specific goods as cultural property. These are: Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State<sup>11</sup> and Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods.<sup>12</sup> As can be seen, both directives apply to exports from the EU Member State to another State, not only EU member. But in view of the experience of countries such as Poland, these regulations seem to be insufficient. Nonetheless, any legislative initiative designed to increase the effectiveness of restitution of illegally displaced cultural property between the Member States of the EU (as well as any other initiative to increase controls on movement of goods), will not address the issue at all. Not only because it might be breaching the fundamental principles of the EU Internal / Single Market<sup>13</sup> but also because it would raise serious doubts about the legal aspects of a public law interference in the sphere of civil law relations. These legal doubts relate to the restriction of any subsequent property rights holders operating in good faith because of the illegal deprivation of property of the original owner.

The issue does not apply only to cultural goods lost by the “new” EU Member States in recent years. There exists a significant amount of cultural property during lost Second World War, which has still not returned to their rightful owners in the countries of Central and Eastern Europe, including Poland, Lithuania, and Czech Republic etc. This proves that even respected cultural institutions are not willing to expose and – even less – to return those of its resources for which there are concerns about their legal status. However, the efforts are not futile. The Republic of Poland, an EU member since 1 May 2004, which has lost perhaps the greatest part of their cultural properties of all the

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<sup>9</sup> Currently, National Heritage Institute based in Warsaw.

<sup>10</sup> Hołdyńska, E., *Rykoszet Schengen: tracimy zabytki*, Rzeczpospolita, September 7-8, 2013.

<sup>11</sup> OJ L 074, 27/03/1993, p. 74 – 79.

<sup>12</sup> OJ L 395, 31/12/1992, p. 1 – 5.

<sup>13</sup> Goods moving within the EU under free circulation should not be subject to routine customs controls as this breaches EU law, notably Article 34 of the Treaty on the Functioning of the European Union. The spirit of the TFEU allows for limited and targeted customs controls for goods in free circulation in areas such as veterinary, cultural etc. These controls, however, cannot be of a routine nature. The intention of the TFEU is that, irrespective of the place where they are originally manufactured inside or outside the EU, all goods, once they are in free circulation, benefit from the principle of free movement. Consequently, all measures, irrespective of their nature and their enforcement (by whom and how they are implemented) are to be analysed as to the effect they have to the principle of free movement. In case this effect makes movement of goods between member states more difficult or more costly, the member state can be subject to infraction proceedings for breaching EU law.

countries involved in the war, initiated restitution already during the Second World War.<sup>14</sup> These efforts have currently the institutional support of the Ministry of Foreign Affairs, where a team operates for the restitution of Polish cultural heritage. One of the recent successes of the team is returning to Wrocław certain works of the Flemish painter Jacob Jordaens (1593-1678) in February 2015 – oil sketch for “Saint Ivo, Patron Saint of Lawyers” (also known as “Saint Ivo, Advocate of the Poor”). The work disappeared in 1945 in the course of the war. In 2008 it appeared at auction in London. The Polish side has taken all possible measures to make the picture returned to Poland. First, it was withdrawn from the auction, which was the first success in this case. Finally, the work returned to Wrocław museum after several years of efforts of Polish diplomacy.<sup>15</sup> Similar story can be told about the painting “Madonna under the fir trees” by Lucas Cranach the Elder which returned in 2012 to the rightful owners - the bishops of Wrocław – after the post-war exile.<sup>16</sup>

The examples given above show how difficult it is to recover the lost cultural property even within the EU. Further postulation of implementation of legal solutions to facilitate recovery of lost assets may be beneficial from the point of view of countries interested in restitution. However, for the reasons outlined above, one should not expect major legislative initiatives in this respect.

From the point of view of the subject of this analysis, it needs to be emphasized however that in the sphere of both intra-EU trading (it is difficult to speak about the customs crimes even if illegal from the point of view other than customs legislation as the movement of such goods from one Member State to another cannot be interfered to by the customs services of the Member States) in widely understood cultural goods the role of customs is negligible. The basic functions and tasks of the EU customs legislation and the national customs services of EU Member States is to control trade in goods, including the goods belonging to the group of cultural and national heritage, with third countries or those which do not belong to the EU customs union.

## **2.2. Illicit trafficking in cultural property with third countries**

The analysis of the illicit traffic in cultural property between the countries of the EU and third countries turns out to be a complex issue. The traditional view, as indeed most correct, according to which cultural goods are imported from third countries into the EU, mainly to Western Europe, needs adjustment as there is also cultural property illegally exported from the EU Member States to third countries.

Transfer of cultural property in today's EU has its inglorious tradition dating back to at least the times of Napoleon Bonaparte, however one could also although reach out and to earlier events such as these that occurred in Poland in the so-called “Swedish Deluge” in the mid-seventeenth century.<sup>17</sup> The Napoleon expedition to Egypt in 1798 contributed undoubtedly to enhancing the understanding of ancient Egypt and resulted in adding the term “Egyptology” to the lexical stock of many European languages. However, the Napoleonic escapade resulted also in a massive export of various “antiquities” that never returned to Egypt. Today, they can be found mainly in France or England. The famous Rosetta Stone,<sup>18</sup> exported by the French to Paris, after the defeat of Napoleon in 1815 was taken by the English on the other side of the Channel and eventually went to the British

<sup>14</sup> Kowalski, W., *Likwidacja skutków II wojny światowej w dziedzinie kultury*, Warszawa 1994.

<sup>15</sup> [http://www.ms.gov.pl/en/c/MOBILE/news/jacob\\_jordaens\\_painting\\_back\\_in\\_wroclaw](http://www.ms.gov.pl/en/c/MOBILE/news/jacob_jordaens_painting_back_in_wroclaw), accessed on May 15, 2015.

<sup>16</sup> <http://www.spiegel.de/international/zeitgeist/missing-madonna-painting-of-elder-cranach-returned-to-polish-church-a-854266.html>, accessed on May 15, 2015.

<sup>17</sup> Monika Kuhnke, *Przyczynek do historii wojennych grabieży dzieł sztuki w Polsce*, available at: <http://www.zabytki.pl/sources/straty/wstep.html> (accessed on October 4, 2015).

<sup>18</sup> A granodiorite stele inscribed with a decree issued at Memphis, Egypt, in 196 BC, on behalf of King Ptolemy V. The decree appears in three scripts: the upper text is Ancient Egyptian hieroglyphs, the middle portion Demotic script, and the lowest Ancient Greek.

Museum in London.<sup>19</sup>

The source of the described activities may be attributed to the (past and present) economic advantage (wealth) of European countries, mainly in Western Europe, in relation to the areas from which cultural goods are imported. Illegal activities are facilitated by low level or even absence of any security of often very valuable cultural property in other parts of the world. Of course the average traveler has no chance to gain valuable exhibits without the cooperation with “representatives” from the local market. Thus, in the case of illegal imports of cultural property to the countries of the EU, we may be faced with a specifically directed “service”. In extreme cases we may be dealing with “theft on order”, when specific exhibits are commissioned to be stolen on the local market, even from museums.

The transfer of cultural property from third countries to Europe has not been completely eliminated, however it is less visible than 100 - 150 years ago. Reasons are twofold: firstly, the countries threatened by the degradation of their cultural heritage have taken some measures to protect their historical achievements by themselves. Secondly, the EU has also taken steps to prevent these issues. In connection with the war in Iraq, a Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96<sup>20</sup> came into force. It provides, inter alia, that specific restrictions are applying to trade in goods belonging to Iraq's cultural heritage with the objective of facilitating the safe return of those goods. With respect to Syria, similar regulations are included in the Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011.<sup>21</sup>

In the case of imports of cultural property into the EU one needs to pay attention to one very important issue. As a rule in the EU there is no ban on import of cultural property, as is the case with for example the general ban on the import of weaponry. Weaponry can be only imported provided the importer holds an authorization issued by the competent authorities of the member state concerned. However, based on the regulations contained in the provisions accompanying the Common Customs Tariff, there exist a ban on imports of certain goods covered by Chapter 97 (works of art, collector's items, antiques). Currently, as mentioned above, the general ban on imports applies to products of Chapter 97 coming from Iraq and Syria (as a result of complicated internal and international situation of these countries). In other cases, a ban on imports of cultural property is not generally applied. Of course, persons engaged in the illegal transfer of such goods often try to hide their activities fearing the disclosure of theirs, even if only indirect, participation in theft, engaging in the classic smuggling in result. This activity may be connected also with the need to pay the amount of tax on goods and services,<sup>22</sup> when importing cultural property to the EU.

In such cases, the attempt to circumvent customs controls at the external border of the EU directly indicates that we are most probably dealing with illegal export of cultural property from a

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<sup>19</sup> Not always, however, they were the spoils of war. From the point of view of the history of customs, the end of the nineteenth century has proven enormously valuable, when – with the raise of Egyptology – a massive process of development of archeology and interest in cryptology began and resulted in discovery of inscriptions found all over the ancient cultural property. Middle East countries have become one of the centers of such discoveries. It was there, on the territory of the former oasis located in present-day Syria, halfway between Damascus and the Euphrates, the city known in Aramaic and Arabic as Tadmor, in Greek – Palmira, existed during the first century BC to the third century AD (nowadays known for the barbaric destruction of great archaeological and architectural remains of the so-called militants of the Islamic State), where the illustrious, oldest known in Judeo-Christian-Mediterranean civilization circle, customs tariff was discovered. It was then, legally, as a gift to the Turkish Sultan Abdul-Chamida II, transported to Russia. Today, as the 15-ton customs and taxation document, it is one of the most important monuments in the collections of the State Hermitage Museum. See: A. B. Nikitin (ed.), Пальмирский таможенный тариф, Санкт-Петербург, Ахтармар, 2011.

<sup>20</sup> *OJL 169, 8.7.2003, p. 6–23*

<sup>21</sup> *OJL 16, 19.1.2012, p. 1–32*

<sup>22</sup> Only tax of goods and services is concerned as the customs duty for goods of Common Customs Tariff, Chapter 97 is 0%.

third country. Usually, it can then be proved that the attempt of imports violate EU law, or indeed international law, in the proceedings carried out by the competent authority as a result of disclosure of smuggling attempt. However, this does not happen easily – at least Polish experience shows that in the case of smuggling of cultural property into the EU, it is relatively easy to show that the person has infringed the provisions of the tax law (specifically endangered the collection of the amount of tax on goods and services due on such imports, which may be the basis for the detention of goods by customs authorities), while it is extremely difficult to accuse the importer of breaching international laws related to the illegal movement of cultural property.

According to the authors a separate discussion should be devoted to the issue of transfer of cultural property from the countries of the former Soviet Union into the EU. In this case, one can point to the perennial phenomenon of cultural disintegration that occurs as a consequence of political breakthroughs, or even wars in the given area. One of the consequences of such situation is virtually always export of cultural goods from areas affected by political turmoil or - unfortunately - wars. The cultural property lost in that manner usually does not return to their rightful owners, leading to impoverishing the cultural heritage of the local community.

In the last decade of XX century, the territories of the former Soviet Union countries became the area from which cultural property of even little material value was exported in massive volumes. The customs administrations of, among others, Poland, Lithuania, Czech Republic, Slovakia stopped significant amounts of icons that were exported from the territory of the former Soviet Union countries not only by individuals but also by organized criminal groups. This practice was possible not only because of the political disintegration of these countries, but also because of the lack of reliable documentation of cultural collections, economic conditions or lack of proper protection of cultural heritage in countries forming or reviving its statehood after the collapse of Russian communism. Today, in many cases, even if there is no doubt that we are dealing with a work created in the culture of the Orthodox, there is no evidence as to who was the original owner of such goods. Such events should not be surprising when you consider that the authorities of the former Soviet Union, except for the stake of propaganda, were not interested in protecting religious, mostly Orthodox heritage. The consequences of this policy prove to be severe for the countries of the former Soviet Union.

All countries of the EU, although to varying degrees, are threatened by the illegal export of cultural property from their territories. For customs, one of the important tasks in this sphere is to combat the smuggling of goods which constitute cultural objects. Smuggling, however, as indicated earlier, concerns illegal export or import and transit through EU territory of such goods destined "to" or imported "from" third countries, i.e. those which are not members of the EU. A more liberal policy of the given EU Member State makes the threat of illegal exports of cultural goods less severe for the persons involved, unless it is connected with theft. One can simplify that the most endangered are countries bordering the Mediterranean Sea, which is due to the available resources, including underwater, and some Central and Eastern European countries, which in the past were part of the Russian Empire. While the penetration of the Mediterranean countries can be considered a traditional course of action for anyone interested in historical heritage of the peoples living from Gibraltar to the Aegean islands, it is a new phenomenon in the areas of the former Tsarist empire.

In view of the earlier statement about the mass export of cultural property from the former Soviet Union countries to richer European countries, the observation that we are also facing the opposite direction movement of cultural goods (from the EU to the former Soviet Union countries) may seem surprising. It turns out, however, that in a relatively short period of time since the fall of communism in Russia / collapse of the Soviet Union, a sizable collector's market, interested in all the cultural assets associated with the former Russian Empire and even later with the Soviet Union, emerged. In this way, the countries that were once within the Romanov Empire appeared in the orbit

of interest of modern collectors from Ukraine, Belarus, and above all from Russia. In the case of Polish competent authorities responsible for the protection of national heritage (including the Police, the National Heritage Institute, the Customs), a whole series of cases of illegal export of Polish cultural property linked to the history of the Russian state – i.e. cultural property primarily related to the eighteenth and nineteenth century Polish history – has been recorded.

The actions undertaken by these collectors tend to be very diverse. For example one of the persons in Belarus was publishing on various web portals that it is interested in buying any memorabilia related to the history of nineteenth-century Poland and Russia. It was assumed that the person buying Polish cultural goods on the territory of the country is secured against any legal action as it acted only locally. Then, certain other individuals were moving the goods acquired on the Polish territory through the border and delivered them to the Belarusian buyer. In essence, it was organized criminal activity. Such activities resulted, among others, with appearance of “wild” archaeological sites and destruction of archeological sites already operating. In extreme cases, in the case of penetration of the military cemeteries, this ended up with desecration of human remains (which is a crime in Poland, as well as other EU countries). Such operations were stopped by the Polish authorities.

Other activities – of a purely criminal type – are also recorded. In 2005 and 2006 a break into several important museums (including the Czartoryski Museum and Kurnicki Libraries) took place in Poland. Certain souvenirs of Prince Jozef Poniatowski, who was also the Marshall of Napoleonic France and was killed in the “Battle of the Nations” at Leipzig in 1813 (such as the Cross of the French Legion of Honour, awarded to the Polish Prince) were stolen. Part of these relics was found after a few years in Ukraine. On the other hand, Ukrainian militia proceeded with inquiry in connection with the theft of cultural artifacts from the Museum of Odessa. Polish authorities’ determination led to the recovery of some extremely valuable cultural properties, connected - in this case – with the struggle for Poland’s independence in the XIX century.

Nonetheless, despite the operations and controls at the external border of the Union, the services operating at the frontiers are not able to completely eliminate the smuggling of cultural property. The experience shows that the mere disclosure of the illegal export or import of cultural property does not mean the problem is eliminated, as it is related with organized criminal groups operating the whole “supply chain”: making a burglary and theft, moving goods through borders and delivering them to the end user (“project principal”).

These groups usually have an international character, as indeed is understandable since their activity involves at least two countries. What’s more important, it has to be taken into consideration that criminals can rather easily also change the “profile” of their “business”. Hence, the potential error in - according to the authors - disregarding activities of criminal groups involved in the illegal export or import of cultural property, even if in individual cases these will be a low-value goods (like soldiers' uniforms buttons, which large quantities can be collected in former battlefields or military barracks). In the case of reduced revenue from this source, the criminal activity may focus on other, more spectacular, areas of social life. In the case of Polish land border with Belarus, Russia and Ukraine an important economic problem is smuggling of tobacco products, fuel and alcohol.

### **Summary and concluding remarks**

The EU member states have varying policies for the protection of their national heritage. Generally, the countries of Western EU are less restrictive in this respect than those admitted to the Union in 2004 and beyond. This diversity of policies and their execution stems mostly from historical factors and current supply / stock of cultural goods – these countries where it is small, seem to care more of what’s left from their history. However, the customs of these, like all other countries of the world, are required to detect and combat smuggling of all goods, including the cultural goods illegally

imported, transported and exported “to” and “from” European Union “to” and “from” third-country markets outside the EU.

This also makes difficult to apply consistent approach in the field of protection of cultural property (in many cases the coherent action simply does not exist). If a cultural artifact lost by Poland, Hungary or Lithuania during the Second World War or exported at a later date materializes at auction in London, it is only the determination of one of these country that can make this property being returned to its rightful owner. And it takes several years usually.

The other problem hindering the fight against the illegal trade in cultural property is treating this phenomenon as of little relevance from the point of view of the individual EU Member States. Undoubtedly, the short term fiscal interest and security considerations require concentration of the customs authorities’ and other bodies’ activities on combating smuggling of excisable goods (tobacco, cigarettes, fuel, alcohol), fraud related to other taxes and on the fight against international terrorism. However, organized criminal groups are able to act in different areas depending on the scale of the risk and the possibility of achieving the desired profits. Therefore disregarding the illicit trafficking in cultural property should be regarded as an error in assessing the security risks of the country, especially since this phenomenon is often linked with crimes against property (burglary and theft).

The overall conclusion of the paper could be that issue of combating illegal trade in cultural property should not be ignored or regarded as less important than the purely fiscal related illicit trade. This is due to the importance of the cultural heritage for the individual communities of any country, including its minorities. Long-term activities in this field are of great importance for the preservation of the cultural diversity of different national or ethnic groups.

Observations made in this respect in the EU can be beneficial for the other countries of the world that face similar challenges, like North Africa and Middle East countries, where recently there is a lot of military conflicts and civil wars. Legal and decisive action control of the Polish customs officers on the outside (not just land) border of the European Union can be set as example of not only the protection of cultural heritage, but also protection of the security of EU society against organized cross-border customs crimes.