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METHODS AND ISSUES OF CULTURAL PROPERTY SMUGGLING COMBAT ON THE RAILWAY TRANSPORT

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Abstract

This paper was presented at the 10th annual WCO PICARD conference (in the frameworks of the “Youth Forum”), 8-10 September 2015 in Baku, the Republic of Azerbaijan.

The article is devoted to the methods and issues of cultural property smuggling combat. The author has analyzed and highlighted imperfection points of the Ukrainian legislation as regards to cultural property smuggling as well as has given recommendations for its improvement in accordance with the international experience. The author has also considered basic legal and practical measures and tools, which will help prevent illicit trafficking of cultural objects.

The author has also analyzed the tools to be used in fight with smuggling of cultural property (legal and awareness-raising instruments, operational instruments).

Illegal supply chain of cultural property has been studied in detail, ranging from a supplier (for example, a black archaeologist), a smuggler (“carrier” across the border) to an addressee (private collector etc.).

To fully analyze the chosen subject definite scientific methods of investigation, namely analysis, synthesis, comparison, generalization were used.

In conclusion the author states that in order to combat smuggling effectively, it is necessary to make an electronic record of all units of museum collections. He draws attention to the discrepancy between Ukrainian requirements for processing photos necessary to move cultural objects and the requirements of INTERPOL. The author emphasizes troublesome use of the examination methods, except for vasomotor method on the railway transport.

The author recommends adopting the Model Export Certificate for Cultural Objects that has been developed by UNESCO together with the World Customs Organization.

Keywords: cultural property, UNESCO, smuggling, Export Certificate for Cultural Objects, Cultural properties ID, Object ID, WCO.

Introduction

Cultural property smuggling to the degree of public danger take a special place among all kinds of smuggling. It causes an irreparable damage to the national and cultural heritage of Ukraine, the natural international development and cultural exchange, Ukraine's relations with other countries.

Cultural heritage protection is one of the priorities of the “cultural” policy of all countries in the world, which is carried out under the auspices of UNESCO. Cultural property protection of Ukraine is guaranteed under Article 54 of the Constitution, which states that the country has to ensure the preservation of historical legacy and cultural

properties as well as takes measures to return the cultural properties being outside the country (The Constitution of Ukraine 1996). At the legislative level, Ukraine has to solve the issue of protection and prevention of cultural values illegal movement (Morar, 2015).

Cultural values are an important component of economic independence and national security. Therefore, it is important to create a system for monitoring the safety of cultural values that would ensure their reliable storage and professional cataloging thorough an effective mechanism for monitoring their movement across the border and technologies being in compliance with international standards of investigation and return of stolen cultural objects (Kalashnykova 2014).

In Article 326 of the Customs Code of Ukraine the identification methods (except for the goods description, taking photos and analysis of shipping documents) can not be used if the item is a cultural value, because they destruct or modify the cultural object appearance or any of its components. In other words, a Customs officer at the time of cultural values identification and examination may use only non-destructive analysis methods (Kalashnykova 2006).

The term “smuggling” means a deception of Customs authorities and involves the movement of any concealed goods across the Customs border. This definition is given in the international convention “On Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences”, adopted in Nairobi on June 9, 1977 (Nairobi Convention 1977).

The public danger of smuggling is in the fact that it serves as a main channel of national cultural values and unique works of art leakage abroad, which have a great historical and cultural value.

1. The reasons and conditions promoting cultural property smuggling

What is a cultural property?

Cultural properties – objects of material and spiritual culture, having an artistic, historical, ethnographic and scientific value and are subject to the conservation, protection and reproduction in accordance with the legislation of Ukraine, namely (The Law of Ukraine No 1068-XIV from September 21, 1999):

original art paintings, drawings and sculptures, artistic compositions and montages in any material, works of arts and crafts and traditional folk art;

items related to the historical events, the development of society and state, science and cultural history as well as those relating to the life and work of prominent statesmen, political parties, public and religious organizations, science, culture and art;

- objects of museum property, which were found during archaeological excavations;
- component parts and fragments of architectural, historical and artistic objects and objects of monumental art;
- old books and other publications, which have a historical, artistic, scientific and literary value, separately or in a collection;
- manuscripts and incunabula, black-letter books, archive documents, including motion -picture, photographic and sound recordings, separately or in a collection;
- unique and rare musical instruments;
- weapons that have artistic, historical, ethnographic and scientific value;
- rare stamps, other philatelic materials, separatly or in a collection;
- rare coins, decorations, medals, stamps and other collectibles;
- zoological collections, which have a scientific, cultural, teaching and educational or aesthetic value;
- rare collections and specimens of flora and fauna, mineralogy, anatomy and paleontology;
- family properties – cultural properties having the character of personal or family

items.

The reasons and conditions promoting smuggling include:

- imperfections and gaps in the existing customs legislation;
- flaws in administering and carrying out Customs control;
- corruption and abuse of power;
- improper level of a specific training for the officers engaged in smuggling prevention;
- low level of the technical support of Customs authorities;
- improper cross-border and intrastate cooperation.

It should be emphasized that it is better to prevent the cultural values smuggling, and it is possible only with a perfect legislation, unified permit documents related to the export of cultural values, a close international cooperation as well as qualified professionals involved in smuggling prevention.

There is not any national system of cultural values registration in Ukraine and therefore a generated database of movable cultural values necessary for the state control over the national cultural heritage preservation has not been created up to now.

Modern conditions of Ukraine's active aspiration for European integration require an accelerated development and implementation of the relevant principles for the movable cultural values database creation by the State Fiscal Service of Ukraine, which would be consistent with the principles of database design used by the Ministry of Internal Affairs, INTERPOL, the Ministry of Culture of Ukraine, the Security Service of Ukraine as well as taking into account the existing domestic and international legislation (Kalashnykova 2013).

The general procedure of cultural values movement across the border of Ukraine determined in the Law of Ukraine from September 21, 1999 No 1068-XIV "On export, import and return of cultural values" (<http://zakon2.rada.gov.ua/laws/show/1068-14>) and the Regulation to the Order of the Ministry of Culture and Arts of Ukraine from April 22, 2002 No 258 "On the procedure of the registration of the right to export (temporary export) cultural values and monitor their movement across the state border of Ukraine" (<http://www.visnuk.com.ua/ru/pubs/id/6115>) require a permit from the Ministry of Culture of Ukraine, in particular, the certificate of cultural values export (temporary export) from the territory of Ukraine, the form and content of which are defined in the Resolution of the Cabinet of Ministers from June 20, 2000 No 984 "On approval of the sample certificate of cultural values export (temporary export) from the territory of Ukraine" (<http://zakon5.rada.gov.ua/laws/show/984-2000-p>).

While carrying out Customs control, an art expert (if he is present) together with a Customs officer check the cultural values being presented with the information contained in the certificate of cultural values export (temporary export) from the territory of Ukraine (further – the Certificate), the attached List of documents and photos accomplished in accordance with the requirements. The documents accompanying cultural values and subject to Customs examination are indicated in the Law of Ukraine No 1068-XIV (<http://zakon2.rada.gov.ua/laws/show/1068-14>) and paragraph 4.2 of the Instruction (<http://www.visnuk.com.ua/ru/pubs/id/6115>). They include:

1. The Certificate and attached documents:

1.1 a list of cultural properties being exported;

1.2 a photograph with size 13x18 cm (except for numismatic items, bonistics, philately and faleristics which do not require the photos) accomplished according to the requirements, specified in paragraphs 2.1, 3.4, 3.5 of the Instruction.

The main accompanying document (the Certificate) in paragraphs 4 and 6 contains the cultural value features, which help Customs officials identify cultural values submitted for control. But it is obvious even not for a professional that features given in this document could be correctly identified only by an art expert. They include:

- author and country of production;
- object name;
- date of completion;
- technique;
- size;
- approximate cost ((indicated in paragraph 6 of the Certificate).

A customs official not being an art expert, can identify only one of these features—size (Kalashnikova 2013). In fact, only five art experts work throughout 220 Ukrainian Customs offices (Kalashnikova 2009).

The second accompanying document (the List) contains the same features as specified in the Certificate.

Imperfection of the current Customs control system over the movement of cultural values across the Customs border of Ukraine has led to the development of an original, unique method of description and registration of cultural values in the laboratory of cultural values identification of the University of Customs and Finance, on the basis of which the software “cultural values ID” has been created (Kalashnikova 2009).

This is an electronic control and registration system for analyzing and fixing the characteristics of different types of cultural values. The distinctive feature of the system is the ease and speed of cultural values registration. You can use the program without any special art training as it has an interface similar to the software already being used by the Customs authorities while clearing other types of goods.

The process of filling out the registration form is aimed at reducing the information entered by means of a keyboard. Besides, the program offers answers and parameters to the user (Figure 1) (Kalashnikova 2009).

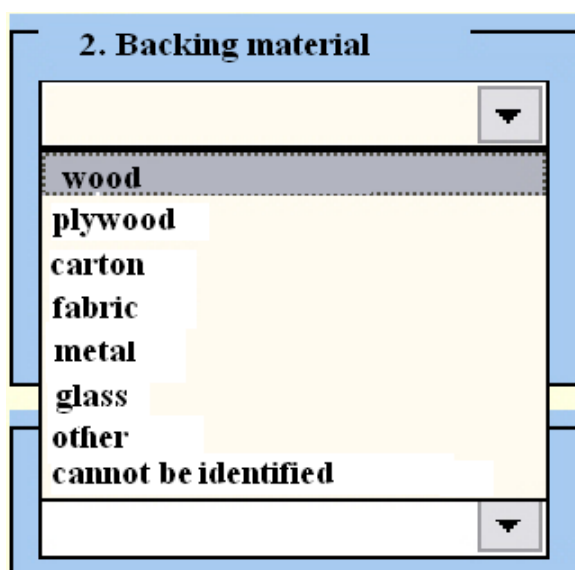


Figure 1. Example of program “Cultural properties ID” window

In our opinion, common efforts in this direction should be started with the development of a uniform system of description and identification of art works, beginning with the relevant principles of museum catalogues design, including permits being issued by the State Service controlling the cultural value movement across the state border of Ukraine and ending in the practice of Customs control.

Defining the principles of the arranged description of cultural values is one of the most urgent tasks, the solution of which will guarantee the preservation of cultural heritage

of Ukraine. Fruitful cooperation of all government agencies and active cooperation of the Ministry of Internal Affairs with INTERPOL in this area is not possible without a uniform artefacts description standard, based on the international experience and requirements of the International Council of Museums, being developed for museums, the Ministry of Culture, the State Fiscal Service.

In 2014 the Department of Customs Identification of Cultural Values of the University of Customs and Finance / Ukraine launched a scientific research “Development of the artefacts cataloging standard in accordance with the international requirements as a way of preserving the national cultural heritage”, aimed at the solution of this important problem (Kalashnykova 2014).

The analysis of the current European system of export control and the cultural values movement as well as the INTERPOL system of accounting of stolen cultural values has shown that these systems are significantly different from the rules used by the Customs authorities of Ukraine. The report “Development of artefacts cataloging standard in accordance with the international requirements as a way of preserving the national cultural heritage” specifies three differences between the Ukrainian legislation and the international standards:

1) the first difference concerns the description of the characteristic features of a cultural object in the permit documents. For example, the rules for filling in the EU Standard export license provide for not only giving detailed information about cultural objects in graphs 9-16 but also filling in graph 17 “Other characteristics” – “Give any other information on formal aspects that could be useful for identification, e.g. historical origin, conditions of execution, former owners, state of preservation and restoration, bibliography, electronic code or marking” (Commission Regulation (EEC) №656/2004 from 7 April 2004);

2) the second difference lies in the fact that both in the EU Standard export license and in the Object ID (<http://archives.icom.museum/object-id/>) (which is the main form of cultural values description of such organizations as the FBI, INTERPOL, the International Council of Museums and UNESCO), the emphasis focuses on detailed description of all visible physical characteristics of the object, in other words, on such characteristics of cultural values that can be detected not only by an expert but also by an ordinary man while making a careful visual inspection, which is important for both foreign and Ukrainian Customs officers often working without any assistance from art experts (it happens in 99% cases in Ukraine (Kalashnykova 2014));

3) the third difference concerns completely different requirements for processing photos. The officer who controls the cultural value movement should have pictures from different perspectives for an unambiguous interpretation of this culture value. The EU Council Regulation No 752/93 (656/2004) specifies the requirements for photographs to be placed in graph 24 of the Standard export license “Pasted color photograph (at least 9x12 cm). In order to facilitate the identification of three-dimensional objects photos taken from different facets are required” (Commission Regulation (EEC) No 752/93 from March 30, 1993).

However, the Regulation to the Order of the Ministry of Culture and Arts of Ukraine from April 22, 2002 No 258 “On the procedure of the registration of the right to export (temporary export) cultural values and monitor their movement across the state border of Ukraine” (further – the Regulation) recommends attaching a cultural value with only one photo of size 13x18 cm (<http://www.visnuk.com.ua/ru/pubs/id/6115>). The Regulation does not mention any necessity to place a scale bar or all the visible physical characteristics of the object: labels, tags, marks etc. on the photo. Such imperfection of the Ukrainian legislation hinders the identification of cultural objects.

The second edition of “Catalogue of cultural values stolen from state museums, reserves, institutions and private collections” is the first registry of lost cultural values of Ukraine within the last ten years (Catalogue of stolen cultural values from the state museums, reserves, institutions and private collections 1999-2009). Most of the paintings do not have any photos in this catalogue and INTERPOL is known not to search a cultural value without “correct” photos, which gives offenders more advantages.

Therefore, one of the most urgent tasks that require a rapid decision is recording in a digital form of all museum collections items, including their 3D images.

2. Instruments influencing on the illegal trade in cultural property

Instruments influencing the illegal trade in cultural property include (http://www.rand.org/content/dam/rand/pubs/documented_briefings/2011/RANDDB602.pdf):

1. Legal instruments.
 - 1.1. International conventions.
 - 1.2. Regional and national legislations.
 - 1.3. Bilateral agreements.
2. Operational instrument.
 - 2.1. Export certificates and certificates of origin of cultural objects.
 - 2.2. Databases.
3. Awareness-raising instruments.
 - 3.1. Codes of ethics.
 - 3.2. Posters.

Attempts to curtail the illegal turnover of cultural properties can be classified as legal, operational actions and awareness raising.

The legal instruments can be international, regional, bilateral or national.

Their objective is to protect cultural heritage by various methods, restrict their exports and imports, regulate the return of cultural objects.

The operational instruments are mostly targeted at dealers and Customs officials. For example, UNESCO-WCO Model Export Certificate for Cultural Objects is designed to help identify and trace cultural objects without burdening exporters and Customs officials (www.unesco.org/culture/natlaws/media/pdf/gb/gb_eec75293_engorof.pdf). Similarly, the International Council of Museums (ICOM) Red List records items commonly threatened by the illicit trade in cultural property and generally protected by legislation. It is intended to help Customs officials and buyers pay attention to those objects most at risk (<http://icom.museum/redlist/>). Databases, such as INTERPOL Stolen Works of Art Database, have also been useful in identifying and returning stolen property.

Finally, awareness-raising instruments mostly consist of publications such as ICOM’s “100 Missing Objects” series or INTERPOL biannual poster publishing some of the most wanted works of art.

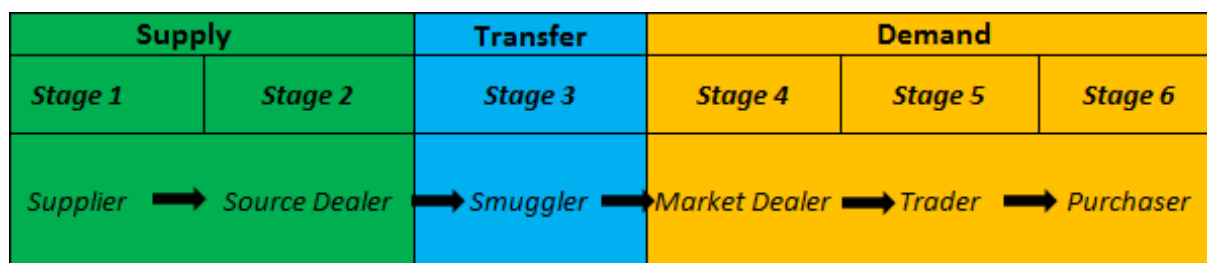


Figure 2. Six stages and three steps of illegal trade

3. The illegal turnover of cultural objects

The illegal trade in cultural objects usually involves up to six stages: two of them are connected with the supply of goods, one – with their transfer and three – to generate demand for the goods (http://www.rand.org/content/dam/rand/pubs/documented_briefings/2011/RANddb602.pdf). This chain of supply, transfer and demand typically includes five persons, although it may include an unlimited number of persons. In some exceptional cases, the trade can also entail fewer players, as it occurs with commissioned thefts where only two individuals are involved. As these smaller supply chains represent an insignificant part of the market, we will not consider them in our research.

The supply phase usually involves at least two players: a cultural property supplier and a well-networked source dealer. (The “source dealer” refers to the dealer on the supply part of the chain, while the “market dealer” refers to the dealer on the demand part of the chain. This terminology is common in literature). It can, however, involve more dealers – a broader network of contacts may be necessary to link the supplier with a dealer who is willing and able to sell illicit artefacts.

The source dealer is responsible for arranging transportation of the object via a smuggler to a market dealer. A source dealer could also be a smuggler, however in practice this is unlikely to occur for two reasons (Calvani 2009):

1. Unlike a smuggler, a source dealer should be well-educated, as he often has to create false documents certifying authenticity and conjure a provenance and ownership story, which requires knowledge of archaeology or art history.

2. A source dealer receives the greatest margin from an object’s final value, so there is no economic incentive to be involved in a more risky and less lucrative activity of carrying out an actual theft.

Smugglers illegally transport cultural property from a source dealer to a market dealer who will find a purchaser. They are incentivized to engage in the illicit trade of the “crime tax” they can levy on goods (cultural objects), since they carry a risk by transporting the object. Smugglers activities may be domestic or international and usually involve a great number of individuals, which can make the final supply chain complex and difficult to unravel. At this stage Customs officials start to combat against smuggling of cultural properties. It should be highlighted that when the transportation has an international character, smugglers often try to involve Customs officers in illegal cultural properties turnover.

4. Methods of smuggling connected with concealment from Customs control

There are two well-known types of smuggling: movement out of Customs control and concealment from Customs control. Illicit trafficking of cultural objects by rail is often carried out by means of concealment from Customs control, including:

- using hiding places (criminals often hide smuggled goods in technical cavities of a carriage by opening them with special tools, hiding smuggling and closing them again);
- using other methods that make it difficult to identify items (concealment directly on the body of a smuggler, in the human body, directly into clothing, shoes and personal belongings; in personal baggage and hand luggage);
- making items similar to other items;
- presenting false documents to the Customs authorities (<http://zakon5.rada.gov.ua/laws/show/v0008700-05>).
- The most common concealments on the train:
 - upper shelves chocked up with things;
 - conductors’ compartments;
 - empties of rail carriages;

- ventilation outlets.

5. The methods of customs control on railway transport

When Customs control is being carried out, a Customs officer uses such methods in order to detect the smuggling of cultural values on the railway transport:

- Visual diagnostics.
- Photographic research.
- Hardware and software control.
- Cooperation with law enforcement authorities.

One more method to detect smuggling is an analysis of human behavior, i.e. the psychological factor. The person hiding a cultural object from Customs clearance is nervous, has irregular breathing, illogical speech.

5.1 Visual inspection

Visual inspection of cultural objects or vasomotor method of examination, based on the fact that you can only use non-destructive methods for cultural objects identification, is the most important for the identification of a cultural object presented for Customs control with that one, which export was permitted by the State Service of Control Over the Movement of Cultural Objects. The main rules of this method are:

- research a cultural property from all angles;
- fixation of the individual characteristics and the physical features of this particular subject.

5.2 Photographic examination

- Photographic examination (from the side of the graphic art) includes:
- UV testing;
- testing of infrared radiation;
- X-ray.

UV examination does not damage works of art, which is confirmed by longstanding practice of Ukrainian museums and experts. In art practice UV rays are used to study the paint layer of pictures:

- to identify the image located below the upper layer;
- to analyze the state of the paint layer. One of the most modern technical equipments used is a fluorescent illuminator “Helling Germany Hamburg” (Kalashnykova 2006).

The examination of cultural values through the infra-red rays is based on the character of materials to pass, consume or reflect infra-red rays differently than visible light. Visually similar areas of a picture, but different in chemical composition, react differently to infrared rays. Therefore, specialists find restoration records on paintings and forgeries using photographs taken in the infrared spectrum.

An example of the technical equipment can be a mobile device “Loza” (Kalashnikova 2006).

In the process of radiography X-rays fall on the object under examination, which while passing through a picture lose intensity that depends on the material and thickness of the paint layer. Under the picture there is a film, on which a shadow image is formed. The sphere of X-ray radiography usage in art examination is quite large:

- attribution of cultural objects, since X-ray provides enough information about foundation, the structure of the paint layer, i.e. about the individual style of an artist;
- identification of the author's alterations or forgeries.

5.3 Hardware and software control

The present level of the society technological development requires a wide usage of hardware and software for recording and processing the information received from UV, infra-red and X-ray testing of cultural objects. The experience obtained has shown that the hardware and software can:

- store a huge amount of information about cultural property;
- separate authentic images from restorations;
- highlight details of a picture;
- make an attribution of cultural objects.

5.4 Cooperation between law enforcement and customs authorities

Cooperation between law enforcement and Customs authorities is governed by Article 558 of the Customs Code of Ukraine.

Customs and law enforcement agencies inform each other (if it refers to their duties) about detected smuggling or intelligence on possible cases of illicit trafficking.

International experience is acceptable for operational and investigative software to counter smuggling of cultural property. For example, the FBI makes extensive use of fictitious organizations, business and trade enterprises, corporations, private institutions and firms, which are provided with respective legends. Establishment and operation of objects with legends (enterprises, institutions and organizations) are regarded to be methods of operational and investigative activities of law enforcement agencies, according to the Law of Ukraine “On operative and investigative activity”. However, the way of their creation and the mechanism of functioning both are not explained either in this law or in any departmental order (The Law of Ukraine from 18.02.1992 № 2135-XII).

It is clear that an ordinary Customs officer can not carry out a comprehensive examination of cultural objects as well as determine their cost. It should be done by experts. A Customs officer’ task is to compare objects presented for control with those ones, which export is allowed under the Certificate. Taking into account all the difficulties of using such methods of examination as infra-red and X-ray testing on railway transport, vasomotor method takes the most important place.

Part 1 of Article 201 “Smuggling” of the Criminal Code of Ukraine charges responsibility for smuggling of cultural objects, namely movement across the customs border of Ukraine outside customs control or with concealment from customs control of cultural property is punishable by imprisonment from 3 to 7 years with confiscation of smuggling subjects (Criminal Code of Ukraine 2016).

Also vehicles involved in smuggling should be seized.

6. Forms of preventive measures

Preventive measures are necessary to eliminate the identified causes and conditions promoting smuggling include:

- the WCO international standards implementation (for example, the principle of «Single Window» (Pavlenko 2013));
- adoption of the Model Export Certificate for Cultural Values developed by UNESCO together with the WCO;
- development of a unified cultural property description and identification system;
- carrying out regular educational campaigns in order to cause people to feel a sense of respect to a public cultural heritage and increase awareness about laws and issues related to cultural values illegal trafficking;
- make proposals for Customs control improvement;
- Customs officers’ presentations for employees of organizations or institutions;
- publishing of preventive materials in the media, presentations on radio and television;

- monitoring the sale of cultural objects over the Internet.

Summary and concluding remarks

One of the most important tasks requiring a rapid decision is recording all museum collections objects in a digital form. It must be done taking into account the existence of new technologies of making 3D-images. We should also underline that Ukrainian requirements to cultural property movement do not coincide with those of INTERPOL related to photos formatting. However, INTERPOL does not search stolen cultural objects without “correct” photographs. The second edition of “Catalogue of cultural values stolen from public museums, reserves, institutions and private collections” very vividly highlights a current situation in Ukraine, where most of art objects do not have any photos.

The characteristics of cultural property is one of the main objects of risk analysis, hence the description of cultural objects should be as detailed as possible. The INTERPOL system emphasizes on a detailed description of all visible physical characteristics of an object, which can be detected not only by an expert but also an ordinary man while making a careful visual inspection. It is essential for a Ukrainian Customs officer who often works without any art expert’s assistance (in Ukraine it happens in 99% cases).

What is more, Ukraine does not use the Model Certificate, which also hinders the Customs authorities’ work. In particular, a certain package of documents and the rules of their filling to export cultural values abroad would complicate forgery of documents.

Joint efforts to combat smuggling require the development of a unified cultural objects description and identification system. In the scientific research “Development of the artefacts cataloging standard in accordance with the international requirements as a way of preserving the national cultural heritage” specialists of the University of Customs and Finance / Ukraine under Prof. O. Kalashnikova’s supervision have been making a research aimed at resolving this task of public importance. The development of a single national standard can be one of the ways to improve the Customs control procedures over cultural objects movement.

No less important is the question of poor use on the railroad of such examination methods as infra-red and X-ray testing. Consequently, one of the most important methods to be used in Customs examination is a vasomotor one (visual inspection and using organs of senses).

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