UDC 351.85:339.543

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RISKS OF MOVING CULTURAL PROPERTY ACROSS THE CUSTOMS BORDER: CHALLENGES FOR UKRAINE

The paper identifies the main threats to preservation of countries' cultural heritage, which arise during movement of cultural property. It reviews actions taken by the Interpol, the UNESCO and the International Council of Museums to control illegal traffic of cultural objects. The existing procedure for movement of cultural property across the customs border of Ukraine is evaluated, potential risks reviewed. The authors identify some problems which emerge during movement of cultural property across the customs border the present risks.

Key words: antiques; online auctions; Interpol; cultural property/objects; International Council of Museums; customs border; risks; transnational crime; UNESCO; ICOM Red List.

Problem definition. Culture as one of the governing institutions of state development enables preserving, augmenting and passing on those intellectual and material values which are basic for every society. Historically, cultural heritage shapes consistent value guides of country development and is a unifying factor for bearers of this culture. In terms of its spiritual constituent, culture is customs, behavioral norms, language and its images, beliefs etc.; the material constituent of culture is cultural objects. In the globalization context two contradictory tendencies are observed: the convergence of countries creates prerequisites for exchange of cultural property between states, alongside with that cultures become more universalized and there are challenges built up in regard to illegal traffic of cultural objects between countries and their further sale in illicit markets. Such situation requires the expansion of cooperation of countries to minimize risks and threats which are generated as a result of involving cultural property in the global illegal traffic.

Research analysis. Movement of cultural property between countries and their social, cultural, economic and legal aspects were the focus of studies conducted by such domestic scientists as M. Boguslavskyi, Y. Gaivoronskyi, Y. Dodin, V. Zverkhovska, V. Komziuk, S. Kot, I. Tuliantseva, M. Udod et al. Some aspects of the above issues were covered in special studies of international organizations which monitor traffic, including the illegal one, of cultural property in the world.

The goal of the paper is to examine illegal traffic of cultural property between countries, the main mechanisms of counteractions by international organizations and identification of risks faced by Ukraine.

Presentation of the basic material. Today preservation of national cultural property faces numerous challenges and threats because despite collective preventive actions as to its illegal traffic there are effectively operated so called 'black' markets in the world, through which commodities get into private collections. Moreover, crime in this field has grown into transnational. With the above in view, international organizations strive to continuously improve effective barriers for illegal traffic of cultural objects as trade liberalization and customs facilitation have partially opened borders for smuggling. Globally, the situation is aggravated by the use of funds obtained from illegal traffic of cultural property for financing the development of terrorism. Such mechanisms are not new since according to studies conducted by international organizations they were applied by representatives of al-Qaeda during military campaigns in Afghanistan and Iraq. Thus, in 2001-2002 alone over 10000 artifacts were stolen in Afghanistan. Similar processes took place in Syria and Egypt (in 2011 there were 18 artifacts stolen from a Cairo museum because of the insurgence).

Military and armed conflicts turn into an enabling environment for illegal acquisition of cultural objects, which we believe is another challenge for countries which cultural heritage may be endangered and those states which will become countries of transit and destination of stolen or illegally taken out cultural property. This happened in the Middle East countries where the complex military and political situation was conductive to plunder of museums and monuments of the UNESCO world heritage.

Transnational crime fighting is among the tasks of the Interpol (International Criminal Police Organization) set up in 1923, which was joined by Ukraine in November 1992 at the 61st session of the General Assembly. The Interpol began to handle the issues of detecting stolen cultural property and counteracting their subsequent traffic in 1947. Such a long period of activity enabled the organization developing an information base in the early 2016 - the Data Bank of stolen works of art (comprising information about more than 45000 items). A file of stolen cultural objects is publicly available online for not only law enforcement bodies but also registered users, that is why



a bona fide acquirer can always check the legality of future purchase of goods and avoid problems related to transfer of cultural property across the border. As to Ukraine, its border checkpoints started working with Interpol data bases in 2015 and proceed doing so.

By their joint efforts, the Interpol, the UNESCO and the International Council of Museums (ICOM, 1946) continuously develop new mechanisms for search of cultural items to be detected, prevent their subsequent sale and return to their lawful owners. Records are therefore maintained of cultural property not only in museums but also private collections.

In 2013 the ICOM developed so called 'Red Lists' (Red

Lists Database) [1] where there are artifacts entered from the territories facing military conflicts or having no proper control system for transfer of cultural property. The aim of such Lists is to inform countries and potential buyers about the potentiality of illegal traffic or purchase of cultural objects which are searched for. The Red Lists have been made for the following countries: Afghanistan, Cambodia, China, Columbia, Mexico, the Dominican Republic, Egypt, Haiti, Iraq, Libya, Peru, Syria and regions of Africa, Central America and Latin America. There were so called 'Emergency Red Lists' drawn up for Syria, Iraq and Libya, which face a particular threat of illegal traffic of cultural property (Fig. 1).



Fig. 1. Title pages of the ICOM Emergency Red Lists.

Control of illegal transfer of cultural property is not limited to only detection of their illicit traffic across the border, it also includes counteractions against their withdrawal from the territories in the zone of military and armed conflicts, document forgery, adulteration of cultural property, robbery from museums and private collections as well as illegal excavation. The basic international legal documents related to protection of cultural heritage and aimed at counteraction against illegal movement of cultural property are: United Nations Security Council Resolution 2199 (2015), the United Nations Convention against Corruption (2003), the United Nations Convention against Transnational Organized Crime (2000), the International Convention for Suppression of Financing Terrorism (1999), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property [2].

In pursuance of provisions of Article 6 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, dated 14.11.1970 (it was ratified by Decree No. 5396-XI (5396-11) of the Presidium of the Supreme Soviet of the Ukrainian Soviet Socialist Republic as of 10.02.88) [3], the World Customs Organization and the UNESCO developed a unified Export Certificate for cultural property[4] in 2005, which availability confirms the legality of export. The import of cultural property without the above Certificate shall be considered illegal. The Certificate shall be executed in five copies, it comprises 21 paragraphs and reproduces the standard EU license stipulated by EU Regulations 3911/92 and 116/2009 [5; 6].

To improve the information exchange between countries, the development of a global network of Regional

Intelligence Liaison Offices (RILO) [7], gathering and dissemination of information in the law-enforcement network (CEN) of the World Customs Organization were started on the initiative of the latter. The global network has 11 offices which major task is continuous information liaison and coordination of countries' activities in fighting against offences in the customs field. There was also initiated monitoring of cultural property movement. Ukraine cooperates with the Regional Intelligence Liaison Office in Warsaw (representing countries of Central and East Europe).

Ukraine boosts the policy of protection of cultural objects and counteraction against their illegal traffic by introducing best world practices in the national legislation. Law No. 1068-XIV 'On Export, Import and Return of Cultural Objects' of Ukraine, dated 21.09.99, stipulates that cultural property is 'objects of material and spiritual culture, which are of artistic, historical, ethnographic and scientific value' [8]. With this in view, the prevention of illegal export of objects which are cultural or historical assets of the Ukrainian people for the sake of their preservation and protection as well as counteraction against illicit import or transit of cultural objects from other countries through the customs territory remain to be the priority for the state. Revenue and duties bodies control the movement of cultural objects across the customs border of Ukraine in cooperation with other legally authorized central executive authorities.

The state policy in the field of control of cultural property movement also implies a customs constituent which is regulated by specific articles of the Customs Code of Ukraine. Thus, Article 373 of the Customs Code of Ukraine stipulates some restrictions for export of certain goods by citizens beyond the country. As to cultural property, it is

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specifically indicated that export of cultural objects [9] shall comply with the effective procedure established by Resolution 'On the procedure for export (forwarding) of precious metals (except for bank metals, commemorative and jubilee coins of Ukraine, made of precious metals), gems and goods made of gems as well as cultural objects by citizens outside the customs territory of Ukraine for the purpose of their alienation' of the Cabinet of Ministers of Ukraine [10]. According to this procedure, there are two cases for customs clearance of cultural objects established: if cultural objects do not exceed the amount of Euro 10,000 in terms of value, the availability of the Certificate [11] and written declaration shall suffice; should the value exceed the amount of Euro 10,000, the goods are treated by the customs as export.

A procedure for issuance of an export (temporary export) entitlement for cultural objects or denial of its issuance, reissuance, issuance of a duplicate and cancellation is stipulated by Resolution No. 963 of the Cabinet of Ministers of Ukraine, dated 25.11.2015 [12]. It is prohibited to take out of the country cultural objects entered in the State Register of National Cultural Assets and those included in the National Archives Fund and the Museum Fund of Ukraine [8].

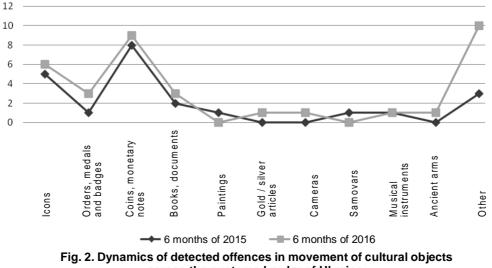
Conditions of cultural objects import (forwarding) by citizens to the territory of Ukraine are set forth in Article 374 of the Customs Code of Ukraine [9]. Thus, cultural objects with codes 9701 10 00 00, 9701 90 00 00, 9702 00 00 00, 9703 00 00 00, 9704 00 00 00, 9705 00 00 00, 9706 00 00 00 of the Ukrainian Classification of Foreign Economic Activity Goods (irrespective of the cost and transfer mode), made 50 and more years ago, shall be subject to compulsory written declaration. The above cultural objects are exempt from customs charges.

Cultural objects declared prior to export (temporary export) and returned after temporary export shall undergo a compulsory state expert examination [13]. There also exist certain risks in this context since experts and art historians determine the cultural and historical value of objects at their sole discretion, conclusions may therefore differ for lack of clear criteria for assessing the level of value and significance. In addition, there is always a risk of submission of a copy of goods for expert examination rather than the original. There is certainly a legislative capability of reexamination if results of the initial examination give rise to doubt. A list of government facilities, cultural institutions and other organizations entitled to conduct a state expert examination of cultural objects in Ukraine is stipulated in Order No. 744 of the Ministry of Culture of Ukraine, dated 11.09.2014 [14]. The Department of Museum Affairs and Cultural Objects, as part of the Ministry of Culture of Ukraine, is responsible for movement of cultural property.

Today Ukraine has to provide for barriers on the way of export (temporary export) of cultural objects and under the current socio-economic development conditions it is unacceptable for the country to follow the practice of developed states, where antiques are allowed to be taken outside the territory, provided some stipulated payments have been effected. Such liberalization policy was implemented by China, which encouraged a large-scale export of antiques to developed countries. A steady demand for antiques - ancient icons, coins, rare books etc. - leads to their illegal redistribution. As to Ukraine, the legislative definition of antiques has some inconsistency, which gives rise to yet another risks for the country during movement of cultural property. Thus, according to the Trade Regulations for Antiques [15], antiques are cultural objects created over 50 years ago, while the Notes to the Ukrainian Classification of Foreign Economic Activity Goods define antiques as objects older than 100 years (commodity item 9706), provided they are not included in items 9701-9705 [16].

Transfer of cultural objects across the customs border of the country with violation of statutory regulations presents risks for its national security and touches on the issue of preservation of world cultural heritage. The statistics of detecting the cases of illegal movement of cultural objects across the customs border of Ukraine is indicative of considerable gaps in this field. Apart from the lack of a systematized statistic base for import, export and transit of cultural objects, there is no statistics for their illegal movement by an import (export) country and by items in the Ukrainian Classification of Foreign Economic Activity Goods. In recent years the most attractive cultural objects for illegal export have been icons, coins and monetary notes, the demand for which in the world market keeps steady (Fig. 2). In the first half of 2016 it is the export of books, documents, orders and medals, which prevails in terms of value (Table 1).

In 2016 there were 4 paintings detected in the territory of Ukraine, which had been stolen from a museum in the Netherlands in 2005. Another significant event took place



across the customs border of Ukraine.

Cases of detention	Money equivalent, UAH	
	6 months of 2015	6 months of 2016
Icons	219400	15 500
Orders, medals and badges	0	31 750
Coins, monetary notes	58950	5 950
Books, documents	1390	100 000
Gold / silver articles	0	15 000
Cameras	0	7000
Samovars	3000	0
Musical instruments	219400	15 500
Other	0	31 750

 Table 1. - Money equivalent of detected offences in movement of cultural objects across the customs border of Ukraine

in May 2016, when 17 paintings were discovered in the Odessa Region, which had been stolen from a museum in Verona (Italy) in 2015 and which total value approximated Euro 20 million [17].

Cultural objects in search have been already put up for sale at Ukrainian online auctions. Thus, one of the most active buy and sell site for artifacts in Ukraine, 'VIOLITY', put up the following lot for sale: an 'Indo-Scythian coin tetradrachm of Azes I'. The bidding time was May 2015, the coin located in the city of Kyiv. A similar coin was entered by the ICOM in the Red List of Afghanistan under number 18 -'Indo-Scythian coins, silver coin of Azes I (57-20 BC)' (Fig. 3) [18]. There are some more data at the website of the VIOLIITY online auction regarding the lot 'Drachmae, 590-628, Khusrau II, Sasanides'. The bidding time was May 2015. A similar coin is represented in the Red List of Iraq of 2015 in Section 'Coins of the pre-Islamic period' - 'Sasanian silver drachm, southern Iraq, reign of Khusrau II (AD 622)' [19].



Fig. 3. Item 18 - the coin from the Red List of Afghanistan, to which the coin put up as a lot at the VIOLITY auction bear resemblance [18].

The problem of trading cultural objects through online auctions has already come into notice of international organizations which carried out investigations for 56 countries and recognized that such form of commerce presents a threat for world community as the majority of countries have no adequate information and technical bases to keep track of such sales. Towards this end, the Interpol, the UNESCO and the ICOM have jointly developed some measures-recommendations for countries to counteract illicit traffic in cultural objects via the Internet [20], which aim at cooperation of the above organizations, governmental agencies authorized to control the movement of valuables and law-enforcement bodies with trading sites in the Internet.

Conclusions

In summary, we believe that the main problems arising during the movement of cultural property across the customs border of Ukraine and exacerbating the existing risks are the following:

- Lack of statutory instruments which would regulate the customs control of cultural objects imported to Ukraine;

- Lack of a clear system for differentiation between cultural property and culture-related objects, there is no legislative definition of differences between cultural property and a national patrimony object; - Inadequacy of statutory instruments in respect of principles for identification of cultural property;

- Today there is no specialized body for institutional support, which would address the potentiality of moving cultural objects across the customs border of the country. The instability of the institutional mechanism for regulation of cultural property movement remains one of the risks as these processes involve different state authorities which lack consistent coordination of their actions;

- Non-conformity of the national Export Certificate for cultural objects with international standards and relevant legal documents.

- Lack of an electronic register of the issued Certificates for export of cultural objects from Ukraine;

- Organizational laxity and inefficiency of the customs and other types of import control of cultural objects, which merely encourages the development of the illegal market of cultural property and the use of Ukraine as a transit territory.

Strengthening of control over illegal movement of cultural objects across the customs border has to become for Ukraine as important as counteraction against traffic in narcotic substances, arms and human beings. To reduce the risks of importing/exporting such objects with violation of rules, it is necessary to expand international cooperation, which law-enforcement bodies and those state

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authorities whose statutory competences include control functions should be interested in. The major directions for extending such cooperation are: conclusion of agreements and fulfilment of the obligations already assumed by the country, introduction of a single unified Export Certificate for movement of cultural objects; taking joint preventive and controlling actions for detection of cultural objects that are moved across the border with violation of rules or are in search, promotion of information exchange. As a result, such measures will both improve the efficiency of customs control and prevent the involvement of the country in the global network of illicit traffic of cultural objects.

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РИСКИ ПЕРЕМЕЩЕНИЯ КУЛЬТУРНЫХ ЦЕННОСТЕЙ ЧЕРЕЗ ТАМОЖЕННУЮ ГРАНИЦУ: ВЫЗОВЫ ДЛЯ УКРАИНЫ

В статье определены основные угрозы сохранения культурного наследия стран, возникающие при перемещении их культурных ценностей через таможенную границу. Обосновано, что для Украины такими угрозами являются: a) отсутствие нормативно-правовых актов, регулирующих вопросы проведения таможенного контроля за ввозом культурных ценностей в Украину; б) отсутствие системы различия культурных ценностей и предметов культурного назначения; в) неурегулированность в законодательстве принципов идентификации культурных ценностей; г) отсутствие специализированного органа, который решает вопрос о возможности перемещения культурных ценностей через таможенную границу страны; д) несоответствие национального свидетельства на право вывоза культурных ценностей международным стандартам и установленным соответствующим документам; е) отсутствие электронного реестра выданных свидетельств на право вывоза культурных ценностей из Украины; ж) слабость и неэффективность организации таможенного и других видов контроля за ввозом культурных ценностей, способствующая развитию нелегального рынка культурных ценностей и использования Украины как транзитной территории.

Проанализированы меры Интерпола, ЮНЕСКО и Международного совета музеев по борьбе с незаконным оборотом культурных ценностей. Осуществлена оценка существующего порядка перемещения культурных ценностей через таможенную границу Украины и обоснованы возможные риски.

Ключевые слова: антиквариат; интернет-аукционы; Интерпол; культурные ценности; Международный совет музеев; таможенная граница; риски; транснациональная преступность; ЮНЕСКО; "красный список" ICOM.

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РИЗИКИ ПЕРЕМІЩЕННЯ КУЛЬТУРНИХ ЦІННОСТЕЙ ЧЕРЕЗ МИТНИЙ КОРДОН: ВИКЛИКИ ДЛЯ УКРАЇНИ

У статті визначено основні загрози збереження культурної спадщини країн, що виникають при переміщенні їх культурних цінностей через митний кордон. Обґрунтовано, що для України такими загрозами є: а) відсутність нормативно-правових актів, які б регулювали питання проведення митного контролю за ввезенням культурних цінностей в Україну; б) відсутність системи розрізнення культурних цінностей та предметів культурного призначення; в) неврегульованість у законодавстві принципів ідентифікації культурних цінностей; г) відсутність спеціалізованого органу, який вирішує питання можливості переміщення культурних цінностей через митний кордон країни; д) невідповідність національного свідоцтва на право вивезення культурних цінностей міжнародним стандартам та встановленим відповідним документам; е) відсутність електронного реєстру виданих свідоцтв на право вивезення культурних цінностей з України; є) слабкість та неефективність організації митного та іншого видів контролю за ввезенням культурних цінностей, що сприяє розвитку нелегального ринку культурних цінностей та використання України як транзитної території.

Проаналізовано заходи Інтерполу, ЮНЕСКО та Міжнародної ради музеїв щодо боротьби із незаконним обігом культурних цінностей. Здійснено оцінку існуючого порядку переміщення культурних цінностей через митний кордон України та обґрунтовано ймовірні ризики.

Ключові слова: антикваріат; інтернет-аукціони; Інтерпол; культурні цінності; Міжнародна рада музеїв; митний кордон; ризики; транснаціональна злочинність; ЮНЕСКО; "червоний список" ІСОМ.

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