

THE ISSUE OF CULTURAL OBJECTS DESCRIPTIONS UNIFICATION IN THE LICENSING AND REGISTRATION DOCUMENTS OF UKRAINE AND THE EU AS A METHOD OF SMUGGLING PREVENTION

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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.

This scientific paper is dedicated to the analysis based on a comparison of the cultural objects description structure in the licensing and registration documents used in Ukraine and the European Union.

The author has carried out a comparative analysis of the documents verification process, identification and registration procedures of cultural properties being transferred across the Customs border of Ukraine on permanent or temporary conditions, which are used in the international and national practice.

Cases of import, export and transit of cultural properties through the customs border of Ukraine were considered in detail. The author described cases of expert evaluation, on the basis of which a decision about the possibility or impossibility of cultural property export is taken.

The author highlights the lack of necessary photographs during cultural property movement across the customs border, which have undergone the state expert evaluation and are allowed to be exported from the country, as well as many museums catalogues of Ukraine do not have photos of the cultural objects belonging to museum collections.

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

In conclusion, the author states that a priority task to be solved is creating a unified database, built by the same rules of artefacts description and definition of a single procedure for the cultural property registration. The European system of cultural objects description should become an example of unique cultural property identification.

Keywords: identification, cultural property, registration, Object ID, Standard export license.

Introduction

Generally, in international agreements, national legislation and in the scientific doctrine the concept of "cultural property" is used along with the concepts of "cultural asset", "cultural heritage".

The concept of "cultural heritage", which appears in some UNESCO documents, corresponds to the concept of "cultural properties". However, one should not attach too much importance to terminology, because in difficult cases customs authorities may always ask for clarification from the competent agencies specializing in evaluation, identification

and protection of cultural property (Nowak 2015). Similarly to the concept of "cultural property", the concept of "cultural asset" is applied to the movable and immovable objects. In this paper we will consider the legal issues relating to movable cultural property.

However, immovable cultural objects not only in the field of archeology, but in many other cases may become a subject of international traffic, in other words, to go from the immovable category to movable one.

In conditions of today's globalization, information and telecommunication revolution, a transparency of borders, a rapid and large-scale movement of capital and people from country to country the number of attacks on the cultural heritage of people is growing in the world. Significant amount of cultural heritage is already lost to the national culture forever. Smuggling business is now thriving having got features of a transnational crime. Its social danger has also increased several times.

In order to conduct an effective work against "cultural" smuggling it is essential to know exactly what is to be protected from criminal actions, and consequently it is necessary to identify and describe the cultural properties correctly (Morar 2015). Therefore, there is an urgent need for creating such a control system of cultural properties preservation that would ensure their safe storage, professional description, a thorough control mechanism on their movement across the state border of Ukraine and such technologies that comply with modern international standards of search and stolen cultural properties return.

1. Cultural heritage and international organizations specializing in the combat against theft of cultural properties

Cultural properties are objects of material and spiritual culture having an artistic, historical, ethnographic and scientific value subject to preservation, reconstruction, protection, a list of which is determined by the Law of Ukraine "On export, import and return of cultural property" (The Law of Ukraine No 1068-XIV from September 21, 1999).

The category of cultural properties includes things that have specific features, which sometimes can't be estimated.

Among these features are:

- antiquity, in other words, items made in the past epoch;
- uniqueness (the one and inimitable thing of its kind, exceptional for its artistic and other qualities or become a rarity, made manually, on an individual basis);
- increased consumer costs;
- historical, artistic, cultural, scientific, museum or other property;
- the status of historical and cultural monument, protected by the state;
- nationwide and state importance (Bulatov 1995).

1.1 Classification of cultural heritage objects

Along with the Convention 1954 (Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict) a broad definition of the "cultural property" concept was given by the UNESCO Recommendation "On the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property" (Recommendation of UNESCO Convention from 19 November 1964). In terms of this Recommendation "cultural properties" are considered to be movable and immovable property, which has a great importance for the cultural heritage of each country. These items are works of art and architecture, manuscripts, books and other items, which are interesting from the point of view of art history or archeology. It is ethnological documents, typical specimens of flora and fauna, scientific collections and important collections of books and archives, including musical archives.

Cultural objects can be classified by various grounds. This Recommendation specifies for the first time on the cultural properties division into two categories: movable and immovable (Martynenko 2012).

Immovable cultural heritage object is an object, which cannot be moved to another location without losing its value from the archaeological, aesthetic, ethnological, historical, architectural, artistic and scientific points of view and saving its authenticity, but in this paper the author will focus on movable subjects.

Movable objects related to immovable cultural heritage are elements, groups of elements of the cultural heritage object, which can be separated from it, but make up a single whole and the separation of which will result in the loss of archaeological, aesthetic, ethnological, historical, architectural, artistic, scientific or cultural value of the object.

The legislation of Ukraine proposes the following cultural objects classification for the purpose of moving them through the customs border of Ukraine (import, export, transit). Cultural properties of Ukraine in terms of their origin are:

- cultural properties created within the territory of Ukraine by citizens of Ukraine;
- cultural properties created within the territory of Ukraine by foreigners or persons without citizenship who permanently reside or resided within the territory of Ukraine;
- cultural properties identified within the territory of Ukraine;
- cultural properties imported into the territory of Ukraine, which are acquired by archaeological, archaeographic, ethnographic, natural science and other expeditions with the consent of the relevant authorities of the origin country of such properties;
- cultural properties imported into the territory of Ukraine, which are acquired as a result of a voluntary exchange;
- cultural properties imported into the territory of Ukraine, which are received as a gift or purchased legally with the consent of the relevant authorities of the origin country of such properties;
- illegally exported cultural objects of Ukraine, which are outside its territory;
- cultural properties evacuated from the territory of Ukraine during wars and armed conflicts and not returned back (Akulenko 1987);
- cultural properties temporarily exported from the territory of Ukraine and not returned to Ukraine;
- cultural properties moved into the territory of Ukraine as a result of the Second World War as a partial compensation for the losses caused by the occupants.

1.2 Protection of cultural heritage

In Ukraine the state control in the sphere of cultural heritage protection is entrusted to the Cabinet of Ministers of Ukraine (its status and powers are defined in the Law of Ukraine "On the Cabinet of Ministers of Ukraine" (Law of Ukraine from 27.02.2014 No 794-VII)), as well as to other authorities. They are:

- specially authorized bodies of cultural heritage protection;
- the central organ of executive power in the sphere of cultural heritage protection;
- body of cultural heritage protection of the Council of Ministers of the Autonomous Republic of Crimea;
- bodies of cultural heritage protection of regional, Kyiv and Sevastopol city state administrations;
- bodies of cultural heritage protection of district state administrations;
- bodies of cultural heritage protection of local government.

1.3 International organizations specializing in the combat against theft of cultural properties

One of the main intergovernmental international organizations engaged in the fight against the theft of cultural properties is INTERPOL – International Criminal Police Organization.

The main activities of INTERPOL are the following: registration, including keeping the register of stolen cultural properties and their international search.

INTERPOL disseminates worldwide information about stolen cultural properties and since 1999 this information has been recorded on CDs (The Stolen Works of Art CD Rom).

Revealing the theft, the Bureau of INTERPOL of a particular country reports information about the date and place of theft, gives the description of stolen items and its photos to the headquarters of the organization, together with a request for distributing the notification. The information is supplied in the standard form in written and printed versions in English and French (so-called GRIGEN ART Forms Card developed by INTERPOL for this purpose). Then this information is entered into INTERPOL database, after which the notice appears. Notices are communicated to all INTERPOL member-states for further dissemination to the police, Customs, museums, auction houses, among antique dealers and pawnshops workers (Boguslavsky 2012).

Other international intergovernmental organization taking a number of measures to combat the illicit trade of cultural properties is the World Customs Organization (WCO).

It develops and adopts international conventions, the most important of which is the International Convention on mutual administrative assistance in the prevention, investigation and combating of Customs offenses from June 9, 1977 (Nairobi Convention 1977). Annex XI to this Convention is specifically dedicated to the assistance in activities against cultural property smuggling.

First of all, the mechanism established by Annex XI allows contracting parties on their own initiative to carry out a mutual information exchange in regard to:

- 1) actions that are suspected to be a smuggling of cultural properties or can promote it;
- 2) persons who are involved in such transactions or are suspected of doing it;
- 3) new tools and methods used for smuggling of cultural properties.

Focusing on the unique identification of cultural objects with the help of their professional and detailed descriptions in the shipping documents, adopted in the EU and in the world, should be taken into account by Ukrainian Customs authorities. The solution of this important state task is impossible without the active cooperation of all stakeholders of the process: the museums, the Ukrainian Ministry of Culture, the State Fiscal Service of Ukraine, which exercises control over the legal movement of artefacts across the border.

In order to make the cooperation between various departments more effective, it is necessary at least to follow unique rules of registration and creation of a database, built on common principles of description/cataloging of the artefacts stored in the collections of museums in Ukraine. It is important to correlate the data from the museum inventory books and maps, scientific and unified passports of cultural objects to those contained in the certificate allowing export / temporary export of cultural property across the state border of Ukraine. This certificate is issued by the Ministry of Culture of Ukraine.

The Software-Information Complex (further – the SIC) "Movement of cultural objects" developed by the order of the State Fiscal Service of Ukraine as a part of the registration system of cultural properties being moved through the customs border of Ukraine should provide a consistent solution of this important national task. The SIC allows registering and identifying cultural objects, taking into account European and international experience; forming a unified database of cultural properties transferred across the border;

searching and viewing the required information; providing opportunities for further investigation of stolen cultural properties (Kalashnikova 2013).

2. Export of cultural properties

Export of cultural properties is made in the following sequence (Martynenko 2012):

1. Claimed to be exported (temporary exported) and returned after temporary export cultural properties are subject to mandatory state examination. The order of state expert evaluation of cultural properties and the amount to be paid for it were approved by the Resolution of the Cabinet of Ministers of Ukraine on August 26, 2003 No 1343, acting with corrections amended according to the Decision of the Cabinet of Ministers of Ukraine from April 17, 2013 No 233 (Decision of the Cabinet of Ministers of Ukraine No 233 from April 17, 2013).

An expert evaluation is a study, inspection, analytical research, quantitative or qualitative assessment by a highly qualified specialist, institution, organization, requiring special knowledge in the relevant area of social activity, the results of which are made in the form of an expert opinion. Carrying out an expert evaluation is a difficult procedure because the process of art works identification, unfortunately, cannot be clearly established from the side of formal description and depends on the professional level and professional expert intuition (Gorbik 2007). This situation definitely effects on the accuracy of decision-making.

Rejection of an individual or entity, which is applying for export (temporary export) of cultural properties, to submit cultural properties declared for export to the state expert evaluation is regarded as the applicant's rejection of their export. If the result of the state expert evaluation gives reason to include a cultural object declared for export in the State Register of national cultural heritage, examination materials are sent to the appropriate executive authority.

2. The Ministry of Culture, at the request of the owner of cultural properties or an authorized person, makes a decision on the basis of the state expert evaluation conclusion about the possibility or impossibility of cultural objects export. The Ministry of Culture reports about its decision to the applicant in a writing form within one month from the date of the request acceptance.

3. If a decision about the possibility of cultural property export (temporary export) is adopted, the owner of cultural properties or an authorized person is issued a certificate of the established sample on the right to export (temporary export) cultural objects.

4. Cultural objects being exported from Ukraine shall be declared in accordance with the legislation of Ukraine to the Customs authority, which carries out control over their movements and customs clearance. Carrying out control, an art expert and a customs official compare cultural properties being presented with the information contained in the certificate and an attached list and photos. The certificate remains with the Customs authority having carried out the customs clearance.

If during the customs control the cultural properties submitted by owner do not match the information contained in the certificate and / or attached list and photos, an art expert on the reverse side of the certificate makes the statement that "cultural properties subject to export do not correspond to that presented for control", puts a stamp of a personal numbered seal, a date, a signature in the stamp of the seal and withdraws this certificate.

When withdrawing the certificate an art expert makes an act of withdrawal of the certificate (in two copies), signed by the owner of cultural properties, an art expert and a customs official. The withdrawn certificate together with the act are transferred to the Ministry of Culture of Ukraine, which brings in the Register of violations of the order of cultural properties movement across the state border of Ukraine data about the cultural property owner with the further provision of such information to law enforcement authorities. The second copy of the act remains with the owner of cultural objects.

In accordance with Article 14 of the Law of Ukraine "On export, import and return of cultural properties" it is not allowed to export (<http://zakon2.rada.gov.ua/laws/show/1068-14>):

- cultural properties entered in the State register of national cultural heritage;
- cultural properties included in the National Archival Fund;
- cultural properties included in the Museum Fund of Ukraine.

3. Methods of cultural properties smuggling detection

Methods of cultural properties smuggling detection on motor transport include the following:

- usage of technical means of Customs control;
- visual inspection of a passenger;
- cooperation and exchange of information with Customs administrations and other public authorities of foreign countries;
- Customs examination of cultural properties.

Among the abovementioned methods of smuggling prevention the last one – Customs examination of cultural properties – needs a special attention. It is a Customs officer at the border who has to check the legality of cultural properties transfer, identify the objects presented for control with those which exportation is allowed in the **cultural properties export (temporary export) certificate** from the Ukrainian territory. In the conditions of total absence of any art experts at Customs check-points, a Customs officer is responsible for identifying the cultural properties presented for control.

Customs examination of cultural properties is an inspection of cultural properties presented for control in order to identify them with those objects of material and spiritual culture, which export (import) is permitted under such shipping documents as **Certificate, List, photos** (Kalashnikova 2006).

Customs examination of cultural properties consists of next operations:

- shipping documents examination;
- identification;
- registration.

4. A comparative analysis of the national and international system of cultural objects description and registration

Customs procedures effectiveness as an important part of solving the cultural properties smuggling problem depends on the perfection of the system of Customs control over the cultural objects movement and principles of its functioning.

Under the Customs Code of Ukraine (further – CCU) a risk management system establishment is determined as one of the priorities. While solving this problem the Customs authorities apply the risk management system to determine cultural properties to be controlled, Customs control methods applicable to them as well as the amount of Customs control. Among the problems requiring immediate solutions the need for creating a risk management system information database of Customs authorities has been identified (Customs Code of Ukraine 2012).

It is known that one of the most popular risk objects are cultural properties, which price is usually quite high. So taking into account risks associated with the cultural properties movement and control improvement over this process becomes an important task of the country. The fulfillment of this task requires a scientific development and researches and their subsequent practical usage throughout all public services involved in the process of the national cultural heritage preservation (Kalashnikova 2013).

It is worth underlining that the most acute problem of Customs and law enforcement agencies is an absence of an official system of cultural properties accounting and monitoring and, as a consequence, an absence of a generated database of movable cultural properties, which is necessary to carry out the state control over national cultural heritage preservation in Ukraine today. One can only imagine how many objects of cultural heritage were taken out from the country without any concealment, because Customs officers could not really identify and evaluate them. Gathering up information about cultural properties through the data bank creation (a registry) would be a huge step forward in preventing the illicit export of cultural properties (Morar 2015).

Comparative analysis of existing national and European export and control system over cultural properties movement as well as the Interpol system of stolen cultural properties accounting has proved that domestic system is inadequate and should be improved by means of adopting the international experience.

In order to solve this problem, a scientific research work (further – SRW) “Development of methodical, hardware and software system of cultural properties identification for their registration and control while being moved across the Ukrainian Customs border” was being made in the State Research and Development Institute of Customs from 2011 till 2013. The research is a part of a multidisciplinary program of the State Fiscal Service of Ukraine and the SRW integrated program of the University of Customs and Finance. The SRW head is Olga Kalashnikova, a chief of the Department of Cultural Studies and Customs Identification of Cultural Properties. This research work, according to the scientists, can not be only like information in the Unified automated information system (further – UAIS) for the identification of cultural properties but also like information about their movement across the state border of Ukraine (Kalashnikova 2012).

The results of this research work are as follows:

- a coding system of cultural properties being moved through the Customs border of Ukraine, considering Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA), EU and INTERPOL coding, has been developed;
- “Cultural properties movement” system as a basis for a Registration system of cultural properties has been designed;
- a list of works that describe introduction of the Registration system of cultural properties into UAIS.

Further steps to improve efficiency of the Customs control over cultural properties should be taken in the development of a single unified registration and cataloging of cultural heritage, since an effective cooperation between the Ministry of Internal Affairs, INTERPOL, the State Fiscal Service of Ukraine and the Ministry of Culture is impossible without it (Kalashnikova 2014).

Article 362 of the Customs Code of Ukraine specifies that one of the risk analysis objects is a goods specification (Customs Code of Ukraine 2012). That is why a correct description of such goods is the next task to be solved.

This issue was considered in Kalashnikova’s article “Comparative analysis of international and Ukrainian cultural properties registration and identification systems” (Kalashnikova 2013). The author analyzes the existing execution order of Customs control over the cultural properties movement in Ukraine, which is defined in the Law of Ukraine from 21 September, 1999 № 1068-XIV “On export, import and return of cultural property” (The Law of Ukraine No 1068-XIV from September 21, 1999) and in the Regulation to the Decree of the Ministry of Culture and Arts of Ukraine from 22 April, 2002 № 258 “On the procedure of rights registration to export, temporary export of cultural properties and monitor their movement across the state border of Ukraine” (Decree of the Ministry of Culture and Arts of Ukraine No 258 from April 22, 2002). According to these legal and regulatory provisions an official of Customs clearance unit (during Customs

control) checks presented cultural properties against the information containing in a Certificate, an attached List and photos, issued in accordance with the requirements specified in Chapters 2 and 3 of the Regulation. The Certificate remains with the Customs authority, which carried out the Customs clearance.

The Law of Ukraine № 1068-XIV (Article 13) and paragraph 4.2 of the Regulation provide a list of documents that accompany cultural properties. The Certificate should be checked at the Customs office. It is attached with:

- a list of imported cultural properties;
- 13x18 cm photographs (according to Ukrainian rules this photo has only one perspective – objects' front without a scale bar).

The Resolution of the Cabinet of Ministers “On approval of the sample certificate of cultural properties export (temporary export) from the territory of Ukraine” № 984 from June 20, 2000 determines the Certificate form, the fourth paragraph of which implies a description of a cultural object, including (Resolution of the Cabinet of Ministers No 984 from June 20, 2000):

- 1) object name;
- 2) technique employed;
- 3) material used;
- 4) size;
- 5) date of completion.

Therefore it can be concluded that a Customs officer, not being an expert in the field of art, can detect for sure only one parameter – size.

The scientists working at the SRW “Development of methodical, hardware and software system of cultural properties identification for their registration and control while being moved across the Ukrainian Customs border” made an analysis of the existing system of cultural properties import/export control in the EU as well as the system of INTERPOL containing data on stolen cultural properties. It has shown that these systems have many differences from the system used in Ukraine (Kalashnikova 2012).

Among these differences there are three essential ones, including:

- 1) a detailed description of the specification features of a cultural object;
- 2) fundamentally different requirements to the cultural object photos;
- 3) focus on a detailed description of the visible features of a cultural object, which is absent in the Ukrainian permit documents (Kalashnikova 2013).

According to the Regulation of the European Council (Commission Regulation (EEC) No 752/93 from March 30, 1993; Commission Regulation (EEC) No 656/2004 from April 7, 2004), the EU Standard export license contains 26 graphs, where from 9 to 16 graph it is a detailed specification of a cultural object. For better identification of a cultural object the Standard export license contains graph 17 “Other characteristics”: “Give any other information on **essential aspects** that could be useful for identification, e.g. historical background, conditions of creation, former owners, state of preservation and restoration, bibliography, electronic code or marking”. Graph 20 “Material or technique” requires information, given in this graph, to be as accurate as possible: “Indicate the materials used and specify the technique employed (e.g. oil painting, woodcuts, charcoal or pencil drawing, moldings etc.)”.

The main form of cultural properties descriptions of such organizations as INTERPOL, the FBI, UNESCO and the International Council of Museums in the effective fight against illicit trafficking of cultural objects is an *Object ID*.

International standard for describing art, antiques and antiquities (Object ID) is an easy-to-use standard for recording data on the art objects. It helps institutions, companies and individuals to understand how to run a unified documentation on art and antiquities, seek

cultural objects in case of theft, smuggling or loss. This International standard contains questions from nine categories, a written description and photographs.

The Object ID section “Write a short description” is an addition to the nine categories and photographs. It mentions that “This may contain any additional information to help identify the object (e.g., color and shape of the object, the place of creation)” (Object Identification Card: <http://archives.icom.museum/object-id/>).

The second difference is that the Regulation (EU) stipulates clear requirements to the photo in the Standard export license. The photo is pasted into the Standard export license in graph 24. Graph 24: “Paste color photograph (at least 9x12 cm). In order to improve the identification of three-dimensional objects photos taken from different perspectives may be required” (Commission Regulation (EEC) No 752/93 from March 30, 1993; Commission Regulation (EEC) No 656/2004 from April 7, 2004). Moreover, competent authorities may require other photographs.

In the first section of Object ID “Take photos” it is stated that “the photos are extremely important to identify and search for stolen items. In addition to the photographs of the general view of the object, take close-up view photos of any inscriptions, notes, any damages or restoration interventions. If possible, place a scale bar or object with a certain size in the image” (Object Identification Card: <http://archives.icom.museum/object-id/>).

Therefore, both in the Standard export license and in the Object ID photo is paid a lot of attention. It is not surprising as it greatly facilitates the work not only for Customs officials, but also for representatives of the agencies engaged in the process of stolen cultural properties search. Moreover, without properly taken photos INTERPOL does not initiate the process of cultural properties search. In other words, the absent of the picture makes the lost object elusive, impossible to find and return.

Take an example of the picture “The Kiss of Judas” (“The Taking of Christ”) by the famous Italian artist Caravaggio. It was stolen from the Odessa museum in 2008. Due to the absence of accurate description and photographs INTERPOL did not even start the search process (see picture 1).

Today in Ukraine, unfortunately, not only cultural objects having undergone the state expert appraisal and permitted for being exported are not accompanied by the necessary photographs, but also museum catalogues do not have the pictures of the cultural objects



Picture 1. The Kiss of Judas (Caravaggio, 1598)

being included in the museum collections. Consequently, a large number of stolen cultural properties from Ukrainian museums are not included in the INTERPOL database.

Considering that there is no any single register of cultural properties, Ukraine cannot even put in a claim for the cultural heritage of the Crimea, because there is no clear information.

The last difference of Ukrainian description system of cultural properties in the shipping documents from international standards is connected with the fact that both in the EU Standard export license and in *Object ID* a lot of attention is paid to visible physical characteristics of the object, which greatly facilitates the work of Customs officers since, as a rule, Customs officers do not have enough knowledge in the field of art (Kalashnikova 2013).

Summary and concluding remarks

Therefore, comparing the cultural properties description system used in Ukraine with that adopted in the European Union now, we can state that the Ukrainian system is much worse.

The first task to be solved is to create a single database built up under the same rules of artefacts description and definition of a common procedure for the cultural properties registration, which will give an opportunity to theoretically summarize cultural objects as well as make conclusions about cultural-historical development process.

The European cultural properties description system is an example of the unambiguous identification of cultural properties due to their perfect description in the shipping documents and it should be adopted by the State Fiscal Service of Ukraine.

With a view to gradually solve this problem the State Fiscal Service of Ukraine ordered a software and information complex “Cultural properties movement” created by a research team of the University of Customs and Finance headed by professor O. Kalashnikova. With the help of this complex it is possible to identify and record the cultural properties being moved across the Customs border with regard to the international experience, gradually accumulate information in a single database of moving objects as well as find and look through relevant information.

However, an important task of the complex integration into the UAIS and its practical usage by the Ukrainian Customs authorities is on the agenda. This subject needs further research.

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