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## **SMUGGLING OF CULTURAL PROPERTY AS A THREAT TO THE INTELLECTUAL SAFETY OF THE SOCIETY: CRIMINAL LAW AND ITS CHALLENGES**

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### ***Abstract***

*The purpose of the article is to underpin the negative effect of smuggling of cultural objects on the intellectual safety of the society with regards to the illegal circulation and denied accessibility of cultural objects to the cultural heritage. The article analyses a legally correct circulation of cultural objects with accordance to legal framework of the Republic of Latvia and the European Union as well as role of Customs within it. The article evaluates preconditions of criminal liability for smuggling of cultural objects in accordance with the Criminal Law of the Republic of Latvia. By comparatively analysing international, regional and national laws and regulations, it is established, that applying of Articles 229 and 229<sup>1</sup> of the Criminal Law of the Republic of Latvia in practice will be problematic with regards to difficulties in defining cultural objects as objects of criminal offence and defining the scope of “illegal export” as the incriminated activity. For Latvia as a member state of the European Union, the efforts of the European Union to promote protection of cultural heritage will mean to review the passed amendments of the Criminal Law of the Republic of Latvia, which have not yet come into force, in order to effectively address the illegal circulation of cultural objects.*

*The theoretical criminal law issues assessed in this article have been determined applying an inductive research method, deriving them from individual cases of application of the law. The theoretical sources have been selected and theses have been grounded applying comparative research method. The conclusions have been made and the terms used in this article have been systematized applying logical research method.*

*Keywords: intellectual safety, cultural objects, Customs, smuggling, criminal liability*

### **Introduction**

Nowadays we are witnesses to up until now unprecedented threats to cultural heritage of civilization. Strategists of international terrorism are seeking finance options for accomplishing their criminal intents and one of their sources of income is illegal trade of cultural properties (Value of the illegally relocated cultural objects is estimated between 300 million and six billion USD (Fisman, Wei 2007, p. 2)), as terrorists take advantage of access to cultural heritage within the territories they control. Whereas, by confirming the veracity of their criminal intents, with purpose of intimidating the international society, immovable

cultural monuments are being destroyed demonstratively. For example, in the beginning of this year, combatants of Islamic State blew up the remains of Roman amphitheatre in Palmyra, built in 2<sup>nd</sup> centenary A.D., heritage of which is included in the Lists of World Heritage Sites by UNESCO. Taking into account that this cynically nihilistic attitude towards cultural heritage resembles obscurantism, activities of Islamic State are correctly described in press as belonging to post-modern Middle Ages (Zaidi 2015).

Naturally the international society and countries join forces more actively to secure the cultural heritage and strengthen sanctions against violations of circulation of cultural properties.

Thus the European Union (hereinafter – the EU) has intended to claim the year 2018 as a year of the European cultural heritage (Gomes 2017). The purpose of this initiative is to promote understanding of European history and values by securing the sense of European identity. It is anticipated to bring attention to possibilities that are brought by cultural heritage, as well as problems, that are encountered by it, for example, illegal trade of cultural objects, which endangers exploration of cultural heritage.

Latvian legislators have passed a law “Amendments in the Criminal Law” (hereinafter – CL) on June 8<sup>th</sup>, 2017, which will come into force on January 1<sup>st</sup>, 2018, which specifies the preconditions of criminal liability for illegal activity with cultural objects.

In its turn on July 13<sup>th</sup>, 2017, the European Commission has come forward with a proposal for a Regulation of the European Parliament and of the Council regarding import of cultural objects (Proposal for a Regulation 2017), which would make the member states review the issues of liability of individuals regarding illegal import of cultural objects. Provisionally the Regulation would be applicable from January 1<sup>st</sup>, 2019.

Besides the above mentioned the particular danger to cultural objects has been emphasized by World Customs Organization Illicit Trade Report covering challenges that international society is facing nowadays (Illicit Trade Report 2016). For the first time since such reports have been published (2012) World Customs Organization has discussed the circumstances of the illicit circulation of cultural objects and has described the inherent damage so broadly. In addition, emphasizing the recent years priority in Customs operations, the very first chapter of the report has been entitled “Cultural Heritage”.

The theoretical criminal law issues assessed in this article have been determined applying inductive research method, deriving them from individual cases of application of the law. The theoretical sources have been selected and theses have been grounded applying comparative research method. The conclusions have been made and the terms used in this article have been systematized applying logical research method.

## **1. Smuggling and safety of cultural objects**

Central institution which operates with deals with securing of circulation of goods is Customs. Customs, by implementing campaign of Customs control, are controlling circulation of goods between countries, thus contributing to observing of uniform importing rules of goods and preventing threats in various spheres of public life. Namely, the Customs provide safety – striving to provide a hazard-free state and striving to provide guarantees to public, in which interests it operates (Băliņa et al. 1987, p. 194).

The domain of protected public life is closely related to implementing of the Customs’ functions. Next to favouring economics, providing safety to public and nature, a function of protecting the cultural heritage must be mentioned. In the particular case the movable goods – cultural objects determine the protected interest, namely, unlawful circulation of cultural objects which threatens access to cultural properties, prohibits gaining knowledge and enriching oneself intellectually, precludes comprehending the civilization and furthering respect towards society as a descendant of civilization and towards humans,

including anyone as part of this society (Compare: Fomichev 2006, Vasiliev 2008, Bepalko 2008, p. 148). Intellectual safety of public is being endangered, by intellectual safety understanding the ability to cognize and reflect qualities of objects and occurrences as well as their mutual relations, also the ability to act in a new situation, making use of results of cognition (Intelektiv). It is essential that the threat is not always received immediately and materially. By subjecting cultural objects to danger, the harm is irreversible, taking into account, that unique evidences of human accomplishments are endangered.

Given that any regulations that apply to importing of goods, inevitably prevent its fast circulation, individuals use illegal means to accomplishing their purposes, including smuggling or bringing in of goods over border of the state that are forbidden to import or bringing in of goods that are allowed for import, but not fulfilling the preconditions for import.

If a cultural object is illegally moved, then in cases regulated by CL it becomes an object of a criminal offence – an asset or benefit, which exists in reality and which is used directly by the person for the commission of a criminal offence (Krastiņš, Liholaja, Niedre, 2008, p. 106). In each case an object of a criminal offence must be defined precisely, to create a factual basis for holding a person criminally liable. By including criminal punishment for smuggling of cultural objects in CL, a cultural object is considered as an obligatory collateral element of constituent elements of a criminal offence, since only illegal activities carried out with the help of cultural objects point at harm of the offense and a threat to certain public interests protected by CL.

It must be indicated *inter alia* that implementation of two separate functions is distinguishable by providing criminal liability for criminal offences, where the object of a criminal offence is important in qualification.

For example, Article 190<sup>1</sup> of CL is provided for smuggling of specially regulated goods and substances, thus protecting the public from the negative effects of the object of criminal offense, whereas Articles 115<sup>1</sup>, 229 in its new redaction and the additionally included Article 229<sup>1</sup> are provided for smuggling of specially protected plants and animals as well as cultural monuments protected by the state and antiquities belonging to the state, thus protecting from harm the own object of the criminal offense. In both cases, by directly using the object of a criminal offense, these activities are detrimental to the interests of the public.

Considering the aforementioned, the object of a criminal offense is determined and the according position of the punishable norm in the system of Special Part of CL. It must be considered that legally correct circulation of goods and existence of Customs is not an end in itself. Taking into account mentioned above criminal liability for smuggling of cultural objects, same as of objects provided in Article 190<sup>1</sup> of CL, should not be included in Chapter 19 of CL “Criminal Offences of an Economic Nature” only because Customs provide safety of cultural heritage, by implementing one of the functions delegated to it, and is usually connected to favouring the economic interests of the state (Čevers 2015, pp. 83-86, Bepalko 2008, pp. 147-148, Vasiliev 2008). In accordance with the newest amendments to CL, from now on by providing criminal liability for illegal export of cultural objects, which will be analysed further, criminal safety of cultural objects will be finally reflected in special article in Chapter 20 of CL “Criminal Offences against General Safety and Public Order”, considering that significance of material value of arts and culture (declared in money), is second-grade.

## **2. Definition of a cultural object**

Cultural objects are values of material world with significant intellectual meaning, whose non-material value is more important than the financially expressible, even though mainly the material value of cultural objects is what drives the illegal circulation of cultural

objects so intensively. Notion of cultural objects is given on a scale of international and regional, as well as national regulation.

In the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, cultural property is defined as property which, on religious or secular grounds, is specifically designated by each state as being of importance of archaeology, prehistory, history, literature, art of science and which belongs to some category as mentioned in the convention (Article 1). Identical explanation is given in the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Article 2).

In the legal space of the EU cultural objects are defined both in regulation and in directive. In the Council of Europe Regulation No 116/2009 on the export of cultural goods, cultural goods are referred as goods which are especially protectable in trade relations with third countries, which are included in Annex 1, as well as objects defined by the state, to protect its national arts, historic or archaeological treasures of (Article 1, third paragraph of the Article 2, Section 2). Whereas the Directive 2014/60/EU of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State, cultural object means an object which is classified or defined by a Member State, before or after its unlawful removal from the territory of that Member State, as being among the “national treasures possessing artistic, historic or archaeological value” (Article 1, Section 1).

Explanation of terms in the context of criminal law initially should be looked within national legal regulation, since they shape a unified legal system and are *apriori* mutually harmonized.

Law “On Protection of Cultural Monuments” defines cultural monuments as a part of the cultural and historical heritage – cultural and historical landscapes and individual territories (ancient burial sites, cemeteries, parks, places of historical events and the activities of famous persons), as well as individual graves, groups of buildings and individual buildings, works of art, facilities and articles with historical, scientific, artistic or other cultural value and the preservation of which for future generations is in conformity with the interests of the State and people of Latvia, as well as international interests.

However it is possible to move only movable cultural monuments, which are, firstly, individual objects (archaeological finds, antiquities, elements of immovable monuments, historical relics, works of art, manuscripts, rare printed matter, cinema documents, photo-documents and video-documents, phonograms), secondly, complex objects (historically evolved complexes, holdings and collections of separate objects which objects have an indivisible cultural and historical value), thirdly, objects which have survived in their initial state, as well as separate parts and fragments thereof (Article 2, paragraph one of the Section 2, paragraph two).

Antiquities are objects created as a result of intentional act of a human being – artefacts (for example, jewellery, weapons, tools, household objects, ceramic articles, coins in intact form or as fragments), which have been found in the ground, above the ground or in water (Article 2, paragraph three). Antiquities found in archaeological sites in the ground, above the ground or in water (dated until 17th century included) shall belong to the State, if they are stored by public museums (Article 7, paragraph four).

Law provides separate norms for activities with art and antiquities. Even though they are not defined, by systemically reviewing the legal regulation, it can be conceded that they should be included together with works of art, facilities and articles with historical, scientific, artistic value.

In its turn Regulations No 846 “On the export from Latvia and import into Latvia of cultural monuments, including State-owned antiquities and works of art” issued on 20<sup>th</sup> December, 2016 by the Cabinet of Ministers, in its Annex I provide separate categories

of cultural objects, such as cultural monuments, as well as objects of art and antiquities, but use one unified term of a cultural object (see Sections 1, 2 and 5).

It is concluded that system of cultural objects in laws and regulations is uncertain (see table No 1), which is a reason why it is not simple to distinguish the applicable law for the particular cultural object. Even though it is constituted in legal literature that the subject of a criminal offence with regards to violations related to cultural subjects is well educated and is well oriented in the legal framework (Vasiliev 2008), demands for legal techniques of criminal law should be raised, taking into account the severe consequences of criminal liability for the offender.

### **3. Regulations of circuit of cultural objects**

Before evaluating preconditions for liability for violations of regulations of circuit of cultural objects it is necessary to clarify regulations of a lawful circulation. It is prohibited to export cultural monuments, including antiquities, but it shall be possible temporarily only with a permission of the State Inspection for Heritage Protection (Law “On Protection of Cultural Monuments”, Section 4). Whereas art and antique articles are allowed for export both temporarily and permanently, however in any case a permission of inspection is necessary (Section 18) 1.

Given that import or export can only take place through a Customs control point, the Customs authorities are obliged to implement Customs controls by checking the compliance of the circulation with the requirements of the law, with the purpose of controlling the actual import or export of the items specified in the permit and the facts indicated in the declaration (Regulations No 846 of the Cabinet of Ministers).

It must be taken into account that the permit is necessary regardless of whether or not the cultural objects are moved within or outside the EU. This suggests that in this case the inherent value of the cultural object is more significant than its material value in order to protect the single market in the first place. Therefore, the legislator also has correctly pointed out in the new edition of Article 229 of CL and Article 2291 additionally included in CL – the illegal export of cultural monuments and state antiquities from the territory of the Republic of Latvia, not limiting it to the Customs territory. Therefore criminal liability under this provision will apply regardless of whether the cultural object is being shipped to another Member State of the EU or to a third country.

It is essential that special circulation procedures are limited to those cultural objects included either in Annex I to the Regulations No 846 of the Cabinet of Ministers or in Annex I to the Council of Europe Regulation No 116/2009.

Although it is difficult to distinguish cultural objects in accordance with the Cabinet Regulations just mentioned and the Council of Europe regulation, it is sufficient to establish that the cultural object in question corresponds to any of the categories included in the annexes to these two laws. For example, in cases where a cultural object meets the categories specified in the two annexes, the inspection also issues two permits (Liepa 2017, p. 26).

### **4. Liability for unlawful conduct with cultural objects**

By December 31st, 2017, *expressis verbis* criminal liability for smuggling of cultural objects is not provided. Only Article 89 of the Latvian Administrative Violations Code (hereinafter – LAPK) provides administrative liability for violation of the rules for the protection of cultural monuments and Article 896 – for the export of objects of art and antiquities from Latvia without the permission specified in laws and regulations. However, in view of the fact that there are special regulations for export of cultural objects outside the Republic of Latvia and the value of the objects can be determined, in cases, when cultural object are moved in contrary to the procedure specified in regulatory enactments, individuals

Table 1. The system of cultural objects in laws and regulations

Cultural object												
Cultural object designated as being of importance for archaeology, prehistory, history, literature, art or science:												
rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest	property relating to history, to the life of national leaders, thinkers, scientists and artist and to events of national importance	products of archaeological excavations or of archaeological discoveries	elements of artistic or historical monuments or sites which have been dismembered	antiquities more than one hundred years old, such as inscriptions and engraved seals	objects of ethnological interest	pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand)	Property of artistic interest original engravings, prints and lithographs	original artistic assemblages and montages in any material	rare manuscripts and incunabula, old books, documents and publications of special interest	postage, revenue and similar stamps, singly or in collections	archives, including sound, photographic and cinematographic archives	articles of furniture more than one hundred years old and old musical instruments
collections and specimens of zoological, botanical, mineralogical or anatomical collections, of paleontological interest	means of transport more than 75 years old, between 50 and 100 years old toys, games, glassware, articles of goldsmiths' wares, optical, photographic or cinematographic apparatus, clocks and watches and parts thereof, articles of wood, pottery, tapestries, carpets, wallpaper, arms, other objects more than 100 years old, collections of historical, ethnographic or numismatic interest	archaeological objects more than 100 years old	elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years	pictures, paintings, mosaics executed entirely by hand in any medium and on any material more than 50 years old and do not belong to their originators	original sculptures or statuary and copies produced by the same process as the original more than 50 years old and do not belong to their originators	incunabula and manuscripts, including maps and musical scores, singly or in collections more than 50 years old and do not belong to their originators, books more than 100 years old, printed maps more than 200 years old	original engravings, prints, serigraphs and lithographs with their respective plates and original posters more than 50 years old and do not belong to their originators	photographs, films and negatives thereof more than 50 years old and do not belong to their originators, archives, and thereof, of any kind or any medium which are more than 50 years old	between 50 and 100 years old furniture, musical instruments			
collections of paleontological interest regardless of the place of origin	means of transport more than 75 years old and collections of historical, ethnographic or numismatic interest regardless of the place of origin; glassware, articles of goldsmiths' wares, optical, photographic or cinematographic apparatus, clocks and watches and parts thereof, articles of wood, pottery, tapestries, carpets, wallpaper, arms***	archaeological objects more than 100 years old regardless of the place of origin	art and antique articles more than 100 years old regardless of the place of origin; pictures, paintings, mosaics executed entirely by hand in any medium and on any material***	Archeological antiquities dating back to the 17th century regardless of the place of origin	original sculptures or statuary produced by the same process as the original**	incunabula and manuscripts, including maps and musical scores, more than 100 years old, books, singly or in collections, more than 100 years old regardless of the place of origin	original engravings, prints, serigraphs and lithographs with their respective plates and original posters**	archives, including elements thereof more than 100 years old of any kind or any medium regardless of the place of origin; photographs, films and negatives**	furniture, musical instruments**			

\*The cultural objects mentioned are covered by this regulation only if their value corresponds to, or exceeds, the financial thresholds under the regulation  
 \*\* Between 50 to 100 years old cultural objects created by people mentioned in units of arts and culture of Latvia, if they do not belong to their authors or producers and if their origin is related to the Republic of Latvia  
 \*\*\* Regulations No 846 issued on 20<sup>th</sup> December, 2016 by the Cabinet of Ministers

would be held liable under the according paragraph of Article 190 of CL. It must be noted that according to paragraph two of Article 9 of LAPK, administrative liability for administrative violations occurs only if criminal liability is not provided for these violations. Attention also should be drawn to the fact that disposition of Article 190 of CL refers to both goods and other values subject to Customs clearance as the object of a criminal offense. It is to be expected that „other values” are part of the goods subject to Customs clearance because any object to be declared is subject to Customs clearance and Article 190 of CL is intended to ensure Customs control. However, taking into account that the legislation is not verbose, it is possible that this regulation for the unequivocally maximum safety provision is intended to cover all allegedly unlawfully moved objects, including cultural objects as values.

The question remains whether all constituent elements of a criminal offense are detected, if the object of group of Article 190 of CL is the interests of the national economy, but smuggling of cultural objects does not endanger them in any way. According to Section 1, paragraph one of the CL, only a person who has committed an offence which is set out in CL and which has all the constituent elements of a criminal offence, may be held criminally liable.

From January 1st, 2018, amendments to CL will come into force, according to which the disposition of Article 229 of CL has been supplemented with the threat of criminal liability for the illegal export of a cultural monument that is protected in the Republic of Latvia or its illegal expropriation, if it causes significant damage to the State or the public interest. CL is supplemented with a new criminal offense in Article 2291 “Unlawful activities with State-owned antiquities” providing criminal liability for illegal acquisition, possession, transfer or expropriation of them outside the Republic of Latvia. Although it has not yet been possible to apply the regulation in practice, it can already be concluded that its correct application will create a lot of uncertainty.

One of the main problems related to the object of the criminal offense, because, as can be concluded from the aforementioned, the definition of a cultural object is already completely dissipated in the laws and regulations of this legal field.

An indication of such cultural monuments, which are in state protection, was already included in the original edition of Article 229 of CL. Prof. Valentia Liholaja, commenting on the constituent elements of the criminal offense in this article, pointed out that the cultural monuments located in the territory of the Republic of Latvia are in state protection by implementing measures ensuring the preservation of the cultural heritage (Krastiņš, Liholaja, Niedre 2009, p. 523), from which it follows that the CL norm covers all cultural monuments. However, in light of the rational legislator principle, the legal norms can not be verbose, as the words “state protected” narrow down the understanding of a cultural monument, the definition of which is provided in the law “On Protection of Cultural Monuments” for the purpose of criminal law.

The state has undertaken to protect all objects that are relevant to the features of cultural objects (for example, the prohibition on the destruction, removal and conversion of cultural monuments (Article 3), the obligation to preserve a cultural monument (Article 11)), but, given the punitive nature of criminal law, it is necessary to establish additional conditions indicating special protective measures taken by the state. Not for nothing there is lighter, that is, administrative liability which provides punishment for unlawful actions with any cultural monument without limiting indication “protected by the state” (Articles 89-894 of LAPK). In the author’s opinion, the state’s special concern for the protection of the cultural monuments indicates its inclusion in the list of state protected cultural monuments (See: Regulations No 474 “Regulations on the accounting, protection, use, restoration of cultural monuments and granting of status of degrading objects” issued on 26th August, 2003 by the Cabinet of Ministers). Also, in the opinion of inspection, the protection of the

cultural monument is confirmed by its name's location in the list of protected cultural monuments (Liepa 2017, p. 24).

Thus, according to Article 229 of CL, criminal liability is provided for the illegal export (temporary removal without permission or permanent export, if only temporary export is permitted) of a movable cultural monument from the Republic of Latvia, which, is included, firstly, in the list of protected cultural monuments provided by the state, or, secondly, complies with the categories of objects included in Annex I to Regulation No 846 of the Cabinet of Ministers or in Annex I to Council of Europe Regulation No 116/2009.

However, it is important to ascertain whether criminal liability is also provided for the illegal export of art and antiquities from the Republic of Latvia. As stated above, they are part of cultural monuments, but special constituent elements of an administrative offense are provided in Article 896 of the LAPK. Paragraph 17 of the annotation of the Regulations No 846 of the Cabinet of Ministers also provides that the inspection has rights to hold a person liable in accordance with the mentioned provision (Initial impact assessment report, 2016). It can be assumed that, in observance of the principle of superiority of criminal liability over administrative liability, a person shall be held criminally liable for the unlawful movement of such objects of arts and culture that are in conformity with the features of cultural objects listed in the annexes to the abovementioned regulatory enactments.

The legislator has not provided the ways of committing a criminal offense, namely, the words "illegal export" shall mean export of any cultural objects that was committed contrary to the procedure established by law. Interestingly, in the 1995 UNIDROIT Convention as well as in the Directive 2014/60/EU of the European Parliament and of the Council, for the purpose of maximum protection of cultural heritage, illegal export is understood as not only export carried out in contravention of the procedures established in the state, but also not returning the cultural objects in accordance with the time period specified in the permit of temporary removal (accordingly Article 5 Section 2 and Article 2 Section 2). However, in the absence of a prior intent of the individual of not returning the exported cultural objects after the expiration of the term of temporary removal, the individual can not be held criminally liable for illegal export. If a cultural object is temporarily exported in accordance with the terms specified in the permit, then it can not be considered, that it was unlawfully exported. A subsequent intention of an individual to refuse to return a cultural object can not in any way affect the lawfulness of its removal. These are cases of violations of rules of relocation, which are less harmful and therefore the punishments provided are lighter, but the new regulation of criminal law does not impose liability for them, although there are similar cases included in CL, for example, in Articles 190 and 191.

The mentioned problem can also be seen in the context of the new Article 2291 of CL, but only in this case, the object of a criminal offense is established unmistakably, namely, the criminal liability concerns the export from the Republic of Latvia of antiquities belonging to the state, not private individuals, temporarily without permission or permanently, if only temporary export is permitted, as they are clearly defined in the law "On Protection of Cultural Monuments".

## **5. Proposal for regulation of European Parliament and of the Council on the import of cultural goods**

Unlike the 1975 UNESCO Convention, 1995 UNIDROIT Convention as well as Council of Europe Regulation No 116/2009, which with accordance to their preambles, are primarily aimed at the protection of cultural heritage due to its invaluable significance, the European Commission intends to strengthen the control of the circulation of cultural objects through the Regulation of European Parliament and of the Council on Import of Cultural Goods (13.07.2017) mainly for the reasons of combating terrorism and organized crime, given that the terrorist operations are financed from the income generated by unlawfully



marketed cultural objects. This raises a rhetorical question of whether the EU would have paid more attention to the protection of cultural heritage, even if the international community had not been faced with a direct physical threat to the health and life of its members by terrorist attacks.

This regulation intends to establish a complete system of rules on the illegal circulation of cultural objects in the EU, in parallel with the Council of Europe Regulation No 116/2009 which lays down export regulations for cultural goods, by providing common import regulations, more precisely, Customs control measures for imported cultural goods declared for release for free circulation or subject to other Customs procedures, excluding transit.

By maximally impeding reckless and careless carriers, import of cultural objects into the EU will only be permitted if they are presented with an appropriate import licence at the Customs office proving the removal of objects from the country of origin in accordance with the requirements of its regulatory enactments, or an importer's attestation has been submitted, which includes a declaration by the possessor of the goods that the removal of the objects from the country of origin has taken place in accordance with the requirements of its regulatory enactments, depending on the compliance of the imported cultural objects with the categories included in Annex I to the regulation.

Countering the activities of terrorist groups, this regulation again redefines the definition of a cultural object, towards which the protection of the new regulation will be directed. The new regulation will protect cultural objects that are listed on the concept of the aforementioned conventions, but oldness of which is at least 250 years old.

It is foreseen that Customs will check the conformity of the import license with the goods presented, as well as whether the import attestation complies with the requirements of the regulation and the goods presented. At the same time, Customs officers would, of course, be entitled to exercise already known procedural activities (physical examination, expertise, request for additional information, detention and confiscation of goods). It would be significant to use the opportunity to establish a specially designated Customs office to effectively organize Customs control over the norms of regulation and of cultural goods in general. In this case it would be easier to exercise the right of inspection to participate in the work of Customs authority, controlling the lawfulness of the export of cultural monuments, specified in the law "On Protection of Cultural Monuments" Article 26, paragraph 2, Section 10.

In the context of the topic under review, it is essential that Article 10 of the draft regulation provides introducing of liability for violations of the regulation, namely, the submission of false attestments and submission of false information in general with the purpose of obtaining the Customs authorities' permission to import cultural objects into the EU. Taking into account the ambitious goal of the European Commission when preparing the proposal, it is unlikely that any lighter form of legal liability than criminal liability would be adequate for enforcing the demands of the EU.

Although, when preparing the previously analysed amendments to the CL, their developers were unlikely to have been aware of the EU's initiative in context of the new regulation, due to latest international developments, it is surprising that dispositions of Articles 229 and 2291 of CL are limited only to unlwaful export of cultural goods outside the Republic of Latvia, not including their unlawful import. Thus it can be concluded that the new amendments to CL are, in principle, are outdated even before they have entered into force.

### **Summary and concluding remarks**

Unlawful movement of cultural objects endangers the safety of its various forms. If

the financial resources obtained through the sale of unlawful cultural objects are used to maintain the infrastructure of terrorism, then the physical safety of the international community is in fact threatened globally, whereas denying the public access to cultural objects due to their unlawful circulation, the intellectual safety of members of the public is being threatened individually.

Chaotic use of terms in regulatory enactments makes it difficult to identify a cultural object in order to establish the basis for criminal liability for its unlawful movement, thus deficiently exploiting the potential of the legal framework.

The latest amendments to the Criminal Law, which have not come into force, stand in front of modifications – already now a series of problems of correct application are identifiable and they are not fully meeting the expected requirements of the EU.

## References

Amendments to the Criminal Law, Law of the Republic of Latvia, passed 08.06.2017. *Latvijas Vēstnesis*, 22.06.2017, No 124

Bāliņa, R, Čirule, V, Ēdelmane, I, Grase, I, Guļevska, D, Gūtmanis, Ā, Kagaine, E et al. 1987, *Latvian language dictionary*, Rīga: Avots (in Latvian)

Bespalko, V 2008, On the object and subject of smuggling of cultural property, *Rossiyskiy juridicheskiy zhurnal*, 2/2008, pp. 146-154, <http://www.ruzh.org/?q=node/4&kodart=1278> (in Russian)

Council of Europe Regulation No 116/2009 on the export of cultural goods, *Official Journal of the European Union*, L39, 10.02.2009, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:039:0001:0007:en:PDF>

Criminal Law, Law of the Republic of Latvia, passed 17.06.1998, *Latvijas Vēstnesis*, 08.07.1998, No 199/200

Čevers, T 2015, *Criminal Law Aspects of Smuggling* (in Latvian), Rīga: SIA “Pārdaugavas Juridiskais birojs”

Directive 2014/60/EU of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State, *Official Journal of the European Union*, L159, 28.05.2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0060&from=EN>

Fisman, R, Wei, S.J. 2007, “The Smuggling of Art, and the Art of Smuggling: Uncovering the Illicit Trade in Cultural Property and Antiques”. NBER Working Paper Series. Working Paper 13446. Cambridge: National Bureau of Economic Research, <https://doi.org/10.3386/w13446>

Fomichev, S 2006, *Smuggling of cultural property*, *Dissertatsiya na soiskaniye uchenoy stepeni kandidata juridicheskikh nauk*. Ul'yanovsk: Ul'yanovskiy gosudarstvennyy universitet, <http://www.dissercat.com/content/kontrabanda-kulturnykh-tsennostei> (in Russian)

Gomes, H 2017, *European Year of Cultural Heritage in 2018: celebrating the diversity and richness of our European heritage*. Retrieved, February 9, 2017, viewed October 13, 2017, from The European Council, Council of the European Union website, <http://www.consilium.europa.eu/lv/press/press-releases/2017/02/09/cultural-heritage/>

Illicit Trade Report 2016, World Customs Organization, <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr-2016-en.pdf?db=web>

Initial impact assessment report (annotation) 2016, Regulations of the Cabinet of Ministers “On the export from Latvia and import into Latvia of cultural monuments, including State-owned antiquities and works of art”, December 20th, 2016, <https://likumi.lv/ta/id/287626-noteikumi-par-kulturas-piemineklu-taja-skaita-valstij-piedereso-senlietu-makslas-un-antikvaro-prieksmetu-izvesanu-no-latvijas> (in Latvian)

Intelekts, retrieved October 13, 2017 from tezaurs.lv, Internet dictionary, <http://tezaurs.lv/#/sv/intelekts>

Krastiņš, U, Liholaja, V, Niedre, A 2008, Criminal Law. The General Part. Third Supplemented Edition, Rīga: Tiesu namu aģentūra (in Latvian)

Krastiņš, U, Liholaja, V, Niedre, A 2009, Criminal Law. The Special Part. Third Supplemented Edition, Rīga: Tiesu namu aģentūra (in Latvian)

Latvian Administrative Violations Code, Law of the Republic of Latvia, passed 07.12.1984, Ziņotājs, 20.12.1984., No 51

Liepa, L 2017, "Movement of cultural objects outside the borders of Latvia", Jurista Vārds, 32, August 1, 2017, pp. 24-26 (in Latvian)

On Protection of Cultural Monuments, Law of the Republic of Latvia, passed 12.02.1992. Ziņotājs, 05.03.1992., No 10

Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods (2017/0158(COD)) 2017, [http://eur-lex.europa.eu/resource.html?uri=cellar:e1fd9ba7-67a8-11e7-b2f2-01aa75ed71a1.0003.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:e1fd9ba7-67a8-11e7-b2f2-01aa75ed71a1.0003.02/DOC_1&format=PDF)

Regulations Regarding the Registration, Protection, Utilisation and Restoration of Cultural Monuments and the Granting of the Status of an Environment-Degrading Object, Regulations No 474 of the Cabinet of Ministers of the Republic of Latvia, passed 26.08.2003., Latvijas Vēstnesis, 29.08.2003., No 118

Regulations Regarding Exportation of Cultural Monuments, Including State-owned Antiquities, Art and Antique Articles from Latvia and Importation Thereof into Latvia, Regulations No 846 of the Cabinet of Ministers of the Republic of Latvia, passed 20.12.2016. Latvijas Vēstnesis, 23.12.2016., No 251

The World Heritage Committee Decision: 38 COM 7A.12. 2014, General Decision on the World Heritage properties of the Syrian Arab Republic, <http://whc.unesco.org/en/decisions/5954>

UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, [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)

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995, <http://www.unidroit.org/instruments/cultural-property/1995-convention>

Vasiliev, D 2008, Smuggling of cultural property: criminological research, Dissertatsiya na soiskaniye uchenoy stepeni kandidata yuridicheskikh nauk. Moskva: Moskovskaya gosudarstvennaya yuridicheskaya akademiya, <http://www.dslib.net/kriminal-pravo/kontrabanda-kulturnyh-cennostej-kriminalogicheskoe-issledovanie.html> (in Russian)

Zaidi, M 2015, "Daesh: the post modern non-state", The International News, July 8, 2015, <https://www.thenews.com.pk/print/50110-city-district-government-karachi>