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## The Problem of Non-Return of Cultural Valuables to the Russian Federation

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### Abstract

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Respect for human dignity and respect for people of his culture equivalent. Deliberate attacks on objects of cultural value - is a manifestation of contempt, and contempt is often invoked as a justification or excuse for more serious violations, the forerunner of which it often is. Destruction of cultural property can not be perceived as a simple destruction of objects. This is an attempt to destroy the cultural identity of a society. Thus, efforts to protect the cultural values of the population and, consequently, its merits are an important component of humanitarian action to provide protection to this population.

This paper overviews the crimes associated with the customs aspect of illegal actions against the cultural valuables, namely with smuggling and non-return of the same according to the legislation of the Russian Federation. It justifies the need to facilitate cooperation between the global companies fighting against illegal turnover of cultural valuables.

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**Keywords:** Cultural valuables, non-return of cultural valuables, smuggling of cultural valuables, crime, responsibility, safety.

### 1. Introduction

The counteraction to smuggling of cultural valuables is a set of procedural-legal measures associated with identification, suppression, preventative measures and disclosure of illegal movement of cultural valuables across the customs border. The majority of crimes associated with non-return of cultural valuables are solved thanks and owing to the actions taken by the customs authority



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employees, which identifies the need of global cooperation of the international companies fighting against illegal turnover of cultural valuables.

## **2. Review of Related Research**

Culture is a multiple-meaning term and its accurate meaning depends on the context. Hence, various sources give different definitions to it, and there are no any generally established frames for this term. Originally, the term “culture”, originated in Ancient Rome, was opposed to the term “nature” and included all sphere of reality being, treated by man. In contrast to animals, whose behavior is programmed at a gene level, man’s behavior is programmed both by natural and social sources, which are worked out by the generations of people, their common coherent representation of the objective reality and all practical activities, which solidify specific knowledge in individual items, prescribe assumed style and communication forms and etc. As a result of formation of an individual in social environment, we are dealing with the man representing a certain culture. As such, a cultural object is a frozen form of knowledge and experience of the specific social group. This means not only the objects that may be exhibited in a museum but all the objects satisfying the supernatural needs of the man: they reflect the peculiarities of the historic period and valuables of such society in the specific time period. This is the reason, why all these went out of use objects like shoulder yokes, chain armor, hand fans, postage stamps, gramophones and similar are valuable items. A simple mobile, which every pupil has, is a symbol of time with its globalization, unity of the media space, design and functionality. After another one or two hundred years this object will be laying down on the museum’s shelf, and its outlandish nature will amaze the visitors, but now this is an item ensuring the consistency of our culture along with many other things. No wonder that the society keeps and protects all these object-matters, and having a historic nature by itself, it gives extrinsic value to the objects of its history, to those pieces of time, in which it has been reflected and continues doing the same. If such object-matters are lost, it is like deletion of the cell storing some content from the memory, and any society, unless its value is the disposal from its own culture, will take all efforts possible to preserve everything that belongs to it.

## **3. Models Introduction**

According to the Criminal Code of the Russian Federation, there are three groups of criminal acts encroaching on cultural valuables:

- 1) theft of items of special value (Art. 164 of the Criminal Code of the Russian Federation);
- 2) Non-Return to the territory of the Russian Federation of items of the artistic, historical, and archaeological heritage of the peoples of the Russian Federation and foreign countries (Art. 190 of the Criminal Code of the Russian Federation);
- 3) Destruction or damage of monuments of history and culture (Art.243 of the Criminal Code of the Russian Federation).

In this paper we will overview the penal prohibitions associated with non-return of cultural valuables. The following two components of the crime are acknowledged as the contraband according to Art. 17 of the Principles of customs legislation of the member states of the Commonwealth of

Independent States (adopted by the Decision of the Council of the Heads of the States of the Commonwealth of Independent States of February 10, 1995).

- 1) Illegal export of cultural valuables, i.e. smuggling exercised in the following ways:
  - a) off-customs or with hiding from customs control;
  - b) with fraudulent use of documents or customs identification tools;
  - c) associated with failure to declare or false declaration of items.
- 2) Non-Return of items of the artistic, historical, and archaeological heritage of the peoples, taken beyond the customs territory of a specific state, if such return is compulsory (Decision of the Council of the Heads of the States of the Commonwealth of Independent States of February 10, 1995).

For further consideration of implementation of these two penal prohibitions in the Russian Federation legislation, we need to identify the valuables that cannot be exported from the territory of the Russian Federation without the obligation to be imported afterwards. Their list is given in Art. 7 of the RF Law “On Export and Import of Cultural Valuables” of April 15, 1993 No. 4804-1 (as amended and revised of July 23, 2013) (Federal law, 2014) and is defined in Federal Law of the Russian Federation No. 73 FZ of June 25, 2002 “On Objects of the Cultural Heritage (Monuments of History and Culture) of the Peoples of the Russian Federation”. As there are many papers published on this subject, which list the laws, we are not quoting them in our paper but refer to the regulatory documents only.

The Criminal Code of the Russian Federation determines the responsibility for illegal movement across the customs border of the Customs Union within the framework of the Eurasian Economic Community, across the State Border of the Russian Federation with member states of the Customs Union within the framework of the Eurasian Economic Community of cultural valuables on a large scale. A relevant article (226.1) was introduced into the Criminal Code of the Russian Federation by the Federal Law “On the Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation” of December 7, 2011 # 420-FZ.

Art. 188 of the Criminal Code, which earlier envisaged the responsibility for contraband, has been abrogated with introduction of the Federal Law “On the Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation” of December 7, 2011 # 420-FZ.

The crime covered by Art. 226.1 of the Criminal Code of the RF encroaches on public security and public order, which are not covered by the term “object of crime” as one of the essential elements of the crime.

The subject of such crime is cultural valuables defined in the legislative acts mentioned above.

From the objective aspect, this crime is characterized as the action involving illegal movement (import, export, transit) of cultural valuables across:

- 1) the customs border of the Customs Union within the framework of the Eurasian Economic Community;
- 2) the state border of the Russian federation with member states of the Customs Union within the framework of the Eurasian Economic Community.

The subjective aspect is the intent. The crime subject is general.

The mandatory essential element of this crime is illegally moved cultural valuables on a large scale. Federal Law of July 23, 2013 No. 245-FZ “On the Amendments to Certain Legislative Acts of the Russian Federation Regarding the Suppression of Illegal Activity in the Field of Archeology” amended Art. 226.1 of the Criminal Code of the Russian Federation and determined that the large scale of cultural valuables shall be deemed in this article of the Criminal Code their value exceeding one hundred rubles (Federal law, 2013).

The aggravation consists of the same deeds, which are made:

- by an official through the use of the official position, when the crime was committed;
- with the use of violence in respect of the person exercising customs or border control;
- by an organized group.

The responsibility in all the above listed cases is more severe and subject to p. 2 of Art. 226.1 of the Criminal Code of the Russian Federation (Martynenko, 2015).

The second penal prohibition, which we would like to draw our attention to, is described in Art. 190 of the Criminal Code of the Russian Federation, and entails the responsibility for non-return of cultural valuables to the territory of our country. The description of this document was changed by Federal Law of July 23, 2013 No. 245-FZ “On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Suppression of Illegal Activity in the Field of Archeology”.

In this case, the social relations in the field of foreign economic activity of the Russian Federation become the object of the crime. The subject of the crime is cultural valuables defined in the abovementioned laws.

From the objective aspect, this crime is characterized as the inaction, which is manifested in deliberate non-return of valuables temporarily taken out from the territory of the Russian Federation within a fixed timeframe.

The law establishes the conditions and terms for compulsory return of certain items, which may be exported for a limited period of time only. After return of cultural valuables a person in charge shall notify the Ministry for Culture that the cultural valuables have been returned to the territory of the country within 10 days after the date of customs control, after which cultural valuables are subject to expertise for their compliance to the valuables listed in the documents, safe condition and possible actions to be taken to restore inflicted damage and measures aimed at bringing this person to responsibility. Non-return of cultural values means that they were moved out legally, but they were left out on the territory of a foreign state for a time period exceeding the time period stipulated by the contract. Moreover, there are no any objective circumstances that could have hindered the return of these items (for example, acts of war or natural disasters and etc.). Once the term given for return of cultural valuables expires, the crime is adjudged complete (Rusanov, 2012).

The subjective aspect is that the crime is committed with the direct intention.

The crime subjects are those people, who hold the valuables to be returned. The crime is committed intentionally, i.e. a guilty person refuses to return them deliberately but he is aware of the regulatory requirement and his duty to return the valuables.

According to V.G. Bespalko research, the majority of criminal cases related to non-return of cultural valuables, are initiated by the report of an employee of the customs authorities, which is prepared, on the occurrence of any of the following:

- 1) exercising control over the time period for exporting the cultural valuables, when it is ascertained that the items were not submitted by the time of reverse import mentioned in the permit for temporary export, however, the export time period was not extended;
- 2) exercising compulsory expert examination, which is carried out within a 10-day period after return of cultural valuables from temporary export, when an expert identifies falsification of the exported valuables;
- 3) proceedings on the administrative offence case associated with the failure to complete the customs formality of “temporary export” and having the constituent elements of the crime provided for by Art. 190 of the Criminal Code of the Russian Federation;
- 4) investigation of criminal cases on smuggling of cultural valuables involving the deed provided for by Art. 190 of the Criminal Code of the Russian Federation;
- 5) during operational investigations, when the employees of the law-enforcement agencies possess information on preparation or commitment of the deeds provided for by Art. 190 of the Criminal Code of the Russian Federation;
- 6) during verification of mass media information associated with non-return of cultural valuables after temporary export (Bespalko, 2012).

Accordingly, the customs control is one of the key elements in identification, investigation and disclosure of cases of non-return of cultural valuables after their temporary export.

An important feature of the crime related to non-return of cultural valuables after their temporary export is the need to have criminal relations in the country of export. They are firstly required to arrange storage and further sale of cultural valuables; stage circumstances preventing further return of valuables (theft, accidents and etc.); falsify documents required to transfer the guilt onto the third parties, involved in storage or ensuring safety of cultural valuables; create a financial channel, which will be used to transfer funds received from sale of cultural valuables. All these actions require support of persons being present in the territory of the state, where these cultural valuables have been temporarily exported. The crime has a trans-border nature and is not linked to the country of export only. Sometimes the international nature of the crime is organized much better than transnational forms of safety measures taken in respect of safekeeping of cultural valuables. On the one hand, Russia is involved into the process of continuous modification of the management structures of cultural heritage, on the other hand - into the process of significant transformation of the customs service. All these changes cannot serve for the establishment of stable safety system because they require the establishment of new forms of relations between the new social institutions, reauthorization and etc. At the same time, decentralized virus transnational nature of the criminal organization allows it to function at a rather efficient level

At present, there is kept the register of cultural valuables protected by the state, which is continuously updated and renewed. However, the reverse side is not available yet, as so far there is no existing data bank, in which details on the valuables lost, stolen or illegally exported could have been

entered. Such database of items was nevertheless established at the level of international cooperation, and, as is known, Interpol system exists to specifically fight against the illegal turnover of cultural valuables through the unified information system.

Officially, the Russian Federation, being the successor of the Soviet Union, has retained its participation in many international organizations involved in the protection of cultural heritage and has ratified many of the documents in the field of protection of cultural valuables. However, the Russian Federation is not sufficiently transparent in the issues relating to cultural valuables at the level of international cooperation, and the political ambitions are often get in the way of real arrangements for suppression of illegal turnover of cultural valuables. In this regard, it is important to improve the efficiency of corresponding performance, invoke cooperation within the international organizations, fighting against smuggling of cultural valuables, and enhance activities in the framework of UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995, and other international agreements.

#### 4. Conclusion

The global measures in respect to the protection of cultural valuables are important in the complicated political situation, in which Russia has occurred these days. Nowadays much attention is given to the reliability of the history of the Great Patriotic War, as there originated the precedent of interpretation of the historical events and possibility “to rewrite the history” on behalf of that person, for whom such interpretation is advantageous. This situation is a good example that saved valuables is the event memory, material proof of indisputable facts. How many precedents more will require our history, so the ruling elite will start treating the need to ensure careful safety of cultural valuables as the form of self-retention of power?

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