

CRIMINAL AND LEGAL PROTECTION OF THE CULTURAL HERITAGE AND THE NATURAL RARITIES IN REPUBLIC OF MACEDONIA

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Abstract: *The protection of the cultural heritage and of the natural rarities is a serious problem in Macedonia, directly related to damage and destruction of goods which are under temporary protection or belong to cultural heritage or to the natural rarities, by the removal and exportation thereof. There are also the illegal excavators within the country. They appropriate the cultural heritage: artifacts, icons and other.*

The cultural heritage and the natural rarities in Macedonia are protected by establishing crimes in this field, as well as operational activities with the purpose of identification of those criminal acts. Besides the legal and criminological protection, it is necessary to undertake preventive actions on a larger scale with the purpose of efficient protection.

Introduction

The protection of the cultural heritage in Macedonia is a serious problem from the viewpoint of the existence of crime perpetrators whose activities aim at appropriation of artifacts from our archeological sites. Their purpose is also of material type: to gain material profit or enrich their private collections. Besides the material damage, there is another one reflected in the fact that many artifacts from Macedonia are presented as belonging to other countries, thus causing great loss of our national individuality, identity and treasure.

The illegal appropriation and destruction of parts of the cultural heritage is typical in environments where diverse cultural goods are concentrated, where samples of the cultural heritage are of exceptional artistic and material value, where there is not a completely developed attitude towards the values of people's own cultural heritage. This is primarily due to the numerous shortcomings in the systemic setting for practical care and protection of the heritage. These general features are mostly present in our country as well.

Criminal and Legal Protection of the Cultural Heritage and the Natural Rarities

The national legislature of the Republic of Macedonia, in its Criminal Code, determines the protection of the cultural heritage in its Chapter XXIV entitled Criminal Acts Against the Cultural Heritage and Natural Rarities. Thus, Article 264 reads as follows: "A person who damages or destroys any good placed under temporary protection or belongs to the cultural heritage or is considered a natural rarity, shall have to pay a fine or will be convicted to prison sentence of six months to three years." The Paragraph 2 envisages the following: "A person who, without a permission of a responsible body, performs conservation or restoration activities or carries out archeological excavations or researches on goods under temporary protection or on a natural rarity despite a prohibition thereto, and due to it they are severely damaged or lose their quality, shall be convicted to a prison sentence of one to five years." The following paragraph deals with commission of a crime by a legal entity, for which a fine is envisaged.

Further, the legislator sanctions the appropriation of goods placed under temporary protection or are part of the cultural heritage or a natural rarity and refers to perpetrators who, upon archeological excavations, archive research, geological, paleontological, mineralogical or petrography researches, excavations or otherwise appropriates some material or an object which is under temporary protection as cultural heritage or natural rarity. The prison sentence envisaged to such an act is of one to ten years.

The latest changes in the Criminal Code of the Republic of Macedonia relates to certain activities regarding the protection of the cultural heritage. Thus, the Criminal Code refers to the crime

of “removal of goods under temporary protection or cultural heritage or natural rarities” entailing certain sanction. A perpetrator can be any person who, without the permission of a responsible body, removes any good under temporary protection or cultural heritage or an object representing some natural rarity, for which a prison sentence of three to ten years is envisaged. If the goods placed under temporary protection or representing part of the cultural heritage are archeological, ethnological, artistic, historic objects or an icon which is of special importance for the Republic of Macedonia the prison sentence envisaged is of at least four years. This Article envisages responsibility of a legal entity which will be sanctioned with a fine. The Code also envisages responsibility of a person who will sell, give as present or alienate some cultural heritage in state ownership, even if there are no features of any other harder act of crime, for which the sanction is a prison sentence of three to ten years.

Article 266-6 envisages “import of illegally purchased goods under temporary protection, cultural heritage and natural rarities”, referring to the materials imported into Macedonia – movable goods under temporary protection, cultural heritage and natural rarities of which the perpetrator knew, or was obligated to know or informed about its illegal import into the territory of another country, shall be sanctioned with a prison sentence of three to ten years. Besides defining the removal of some goods into and out of Macedonia, the national legislation refers to unauthorized trade with goods under temporary protection, cultural heritage or natural rarity. The Modus operandi system of this crime is: purchasing, hand-over, acceptance or exchange of objects under temporary protection, cultural heritage or natural rarity, of which the trade is prohibited or limited. This crime is sanctioned by a fine or a prison sentence of one to five years. It can be perpetrated by a group, a gang or an association or by an organized network of re-sellers or intermediaries in order to transport the objects abroad. The sanction envisaged for such crime is a fine or a prison sentence of one to ten years, and if the crime is committed by a legal entity, it will be sanctioned by a fine, and the illegally traded objects and goods will be confiscated.

The Code also refers to state-owned goods, sanctioning the alienation of the cultural heritage of special importance in state ownership. Namely “A person who sells, gives as present or otherwise permanently alienates state-owned cultural heritage of special importance, shall be sentenced to three to ten years of imprisonment.” The subject of protection referred to in this Chapter is the cultural heritage and the natural rarities but also the prohibition to import movable cultural heritage stolen from museums, sacral and other public buildings or institution on the territory of another country. The prison sentence envisaged for this crime is of three to the years. The last crime referred to in this Chapter of the Criminal Code is the one referring to the destruction or concealing of unprocessed archive material, as well as of documentary material which cannot be regarded as archive material before the important issues were identified therein.

Statistical Indicators of the Criminal Acts of Chapter XXIV in Macedonia

The official statistical indicators of the National Bureau of Statistics for the year 2012, according to the data published in the Statistic review: Population and Social Statistics, lead to conclusions about the following situations represented on tables.

In the year 2012, the number of major perpetrators was only 8:

All eight criminal charges were submitted from the Ministry of Interior. What is impressive is the number of rejected criminal charges. Five out of eight criminal charges were rejected and the prosecution motion was effectuated only concerning three of them. Considering that only the Ministry of Interior submitted the criminal charges the question arises about the reason of the rejection of the other ones? Is the reason in the insufficient support of the charges by proofs, or maybe the measures taken were not in the framework of the legal authorizations or maybe there is some other reason. Anyway, the number of rejected charges is relatively high, and this fact is to be further analyzed in order to improve the preparation of the criminal charges and their further processing into judicial proceedings.

This is especially important taking into account the current situation in the country which indicates a large presence of illegal excavators and a low number of identified acts or of raised criminal charges. In order to reduce this disproportion between the real situation and the actual criminal charges, it is necessary to take further measures of widespread activities of all responsible bodies in charge of the protection of the cultural heritage and the natural rarities in view of their protection.

The number of perpetrators in 2013 is considerably higher and amounts 14 persons against whom criminal charges have been raised for crimes with the cultural heritage and the natural rarities. As for the acceptance of the reports, the number of the submitted criminal charges in comparison with the one in 2012 is 10 whereas two perpetrators are still unknown.

T 01: Reported major persons as per the act of crime, type of decision and sex in the year 2012

Criminal acts against the cultural heritage and natural rarities	Total	Total number of known perpetrators	Women	Rejected report	Interrupted investigation	Stopped investigation	Prosecution motion submitted	Total number of unknown perpetrators
total	8	8		5			3	
Damage or destruction of goods under temporary protection, cultural heritage or natural rarities	5	5		4			1	
Removal or export of goods under temporary protection, cultural heritage or natural rarities	1	1		1				
Other	2	2					2	

T 02: Reported major persons as per the act of crime, type of decision and sex in the year 2013

Criminal acts against the cultural heritage and natural rarities	Total	Total number of known perpetrators	Women	Rejected report	Interrupted investigation	Stopped investigation	Prosecution motion submitted	Total number of unknown perpetrators
total	14	12				2	10	2
Damage or destruction of goods under temporary protection, cultural heritage or natural rarities	5	3					3	2
Removal or export of goods under temporary protection, cultural heritage or natural rarities	3	3					3	
Other	6	6				2	4	

T-03: Reported adults persons – known perpetrators, as per crime groups and ethnicity in the year 2012

	Total	Macedonians	Albanians	Turks	Roma	Vlachos	Serbs	Bosnians	Other	Unknown
Total	8	5	1	-	2	-	-	-	-	-
Women	-	-	-	-	-	-	-	-	-	-

The ethnicity table reveals that from the total number of perpetrators (eight of them) in 2012, five were Macedonians, one was Albanian and two of them were of Roma ethnic affiliation.

T-04: Reported adults persons – known perpetrators, as per crime groups and ethnicity in the year 2013

	Total	Macedonians	Albanians	Turks	Roma	Vlachos	Serbs	Bosnians	Other	Unknown
Total	12	7	1	2	-	-	1	-	1	-
Women	-	-	-	-	-	-	-	-	-	-

As for their ethnic affiliations, the number of perpetrators coincides with the demographic situation of the country, namely, the highest number of them (seven) are Macedonians, one was Albanian, two are Turks, one was of Serbian and one of the other ethnic affiliations.

T-05: Convicted major individuals as per the type of crime and type of sanction in the year 2012

Criminal acts against the cultural heritage and natural rarities	Convicted	Women	Fines-total	Principal - prison	Principal - fines	Fine	Secondary - fine	Secondary – ban on practicing a profession	Secondary Relegation of a foreigner	Secondary Alternative measures
total	3	1	1	-	-	-	-	-	1	2
Removal or export of goods under temporary protection, cultural heritage or natural rarities	1	1	1	-	-	-	-	-	1	
Other	2	-	-	-	-	-	-	-	-	2

Of the two above-mentioned alternative measures, two are probations – 6-months to 1 year of prison sentence with the application of the measure of confiscation of objects. The evidence reveals that all three perpetrators committed their crimes by themselves. Men were from 30 to 39 years of age, and the lady was 40 to 49. As per ethnicity, two perpetrators were Macedonians and one of the other ethnic affiliations. Referring to education level, they had completed secondary education, two of them were unemployed and there are no data of one of them.

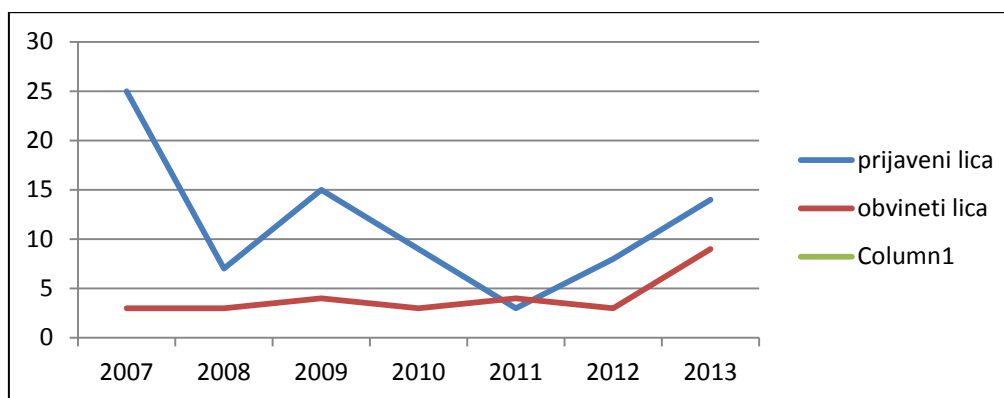


Fig. 1. Number of reported and charged persons in 2007-2013

The analysis of the data can lead to the conclusion that the difference between the two categories is big, which means that certain number of individuals reported for crime regarding cultural heritage have not been prosecuted. In future this should be a subject of interest of the security services and bodies, which should provide sufficiently reliable proofs of each criminal act, to enable the Court to reach a verdict sanctioning the perpetrators.

As for the development of the procedure, the authors of the work also made a comparative year-by-year analysis in the period from 2007 to 2013 (Fig. 2).

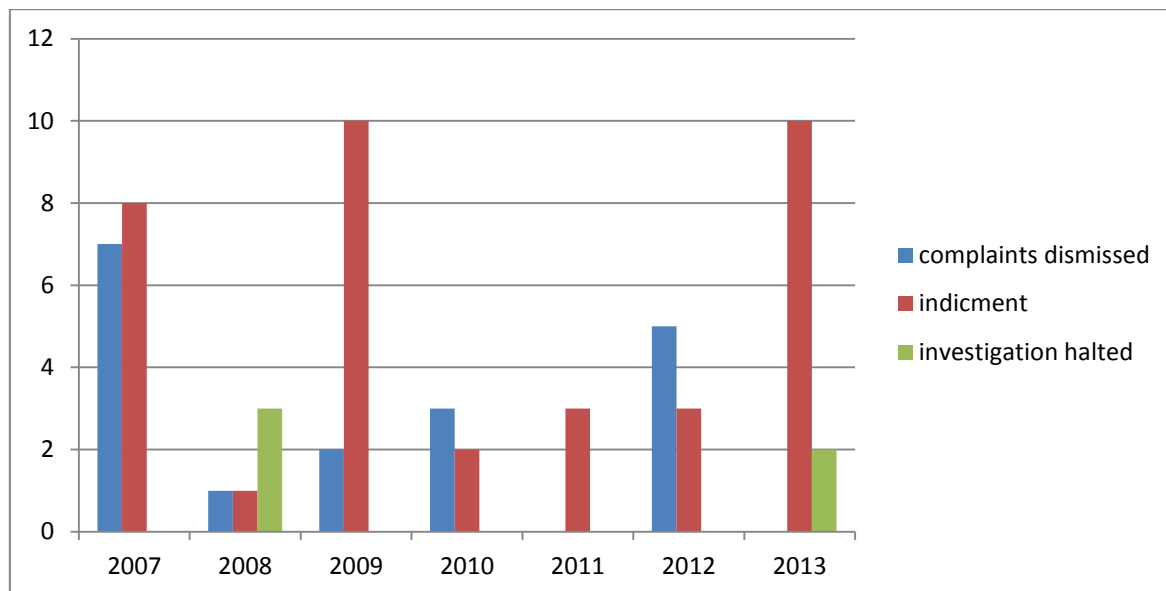


Fig. 2. Number of reports in the period of 2007-2013

The analysis of the data given in Fig. 2 can lead to the conclusion that the number of rejected investigations is higher than the number of the submitted acts of accusation (e.g. in 2012). This is a worrying situation which again reveals the unprofessional approach to the procedure of providing quality criminal charges which would result in acceptance. The situation is not satisfactory as the reports concerning some of the above mentioned cases were refused or rejected.

Analysing the sanctions it can be concluded that the punitive policy of the Courts is lenient, and the sentences are probative. This is not the method of preventive actions, neither on the special prevention, nor on general level, i.e. prevention of other persons from becoming perpetrators.

As for minor perpetrators, there is only one such person evidenced as perpetrator of a crime in damaging and destruction of goods under temporary protection, cultural heritage or natural rarities, on whom a sentence proposal was submitted.

Nine people were convicted in 2013, with prison sentences, fines and alternative measures. It can be concluded that there is organized criminal in the field of protection of the cultural heritage, and it is necessary both to prevent this type of crime in future, as well as to introduce more repressive measures towards the perpetrators.

T-06: Convicted major individuals as per the type of crime and type of sanction in the year 2013

Criminal acts against the cultural heritage and natural rarities	Convicted	Women	Fines, total	Principal - prison	Principal - fines	Fine	Secondary - fine	Secondary-ban on practicing a profession	Secondary Relegation of a foreigner	Secondary Alternative measures
total	9	-	4	1	3	-	-	-	-	5
Export of goods under temporary protection or cultural heritage or natural rarities	3	-	3	-	3	-	-	-	-	-

Export of goods under temporary protection or cultural heritage or natural rarities	1	-	-	-	-	-	-	-	-	1
Alienation of cultural heritage of special importance in state ownership	1	-	-	-	-	-	-	-	-	1
Other	4	-	1	1	-	-	-	-	-	3

Conclusion

The Law on Protection of the Cultural Heritage was passed in Macedonia in April 2004, and certain amendments and changes were carried out in the Penal Code of the Republic of Macedonia in 2006. However, the weak and barely existing penal policy increased the audacity of some people who dared to excavate the archeological localities, not taking any care of whether they were excavating unprotected archeological localities or if those localities had already been protected by law. Such excavations lead to thefts of valuable objects of the cultural heritage, but also some of the immovable units are damaged or destroyed. Another problem is the absence of a Law on Collectibles. Some of the newly arisen business people invest in old objects and coins, making their own collections and in certain way, thus supporting and financing the illegal excavations.

As the majority of the archeological localities, churches and monasteries in Macedonia have been built outside the populated areas, they are more accessible by the illegal excavators and the security of the buildings and localities is one of the important components in the prevention and timely identification of such crimes. It is therefore necessary that the responsible institutions in the country pay special attention to this important component in order to improve the level security of the buildings and localities.

Education is one of the important elements contributing in the preservation of our cultural heritage and treasure. But it is also necessary to simultaneously educate the employees of the institutions and organizations responsible to preserve the cultural heritage as well as to timely identify and prevent the perpetrators of such criminal acts. Young people should, since their first days at school, be raised to cherish and respect their cultural heritage and treasure and strive to promote it worldwide.

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