



# Crim ART

Crime against  
cultural goods  
and CITES

2022-2023

## *Compendium to the training program: Crime against cultural goods and CITES*



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# 1 Introduction

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Implementation of an international project "Crime against cultural property and CITES" enabled development and gathering of various legal acts, expert consultations as well as the exchange of experience and information related to this subject. To date, a series of meetings and training sessions have been held during which representatives of Poland, Moldova, Cyprus, Germany, Spain, Romania, Slovenia and the Netherlands actively participated. Polish participants included representatives of: Ministry of Culture and National Heritage, Institute of Heritage, National Archives in Krakow, National Maritime Museum in Gdańsk, University of Adam Mickiewicz in Poznań, Auschwitz-Birkenau Museum, National Museum in Krakow, Ethnographic Museum in Krakow, National Revenue Administration, Border Guard and Police. The scope of lectures and presentations covered a wide range of problems related to crimes of destruction or damage of historic buildings, falsification of relics and other activities related to counteracting and combating illegal trade in cultural goods, as well as endangered species - CITES.

Organized crime against cultural goods and CITES is not so visible to broad public opinion due to its nature and scope of undertaken activities, which poses a significant threat to citizens of European Union Member States, companies, state institutions, and consequently also to the economy. Up against the significant threats related to the above-mentioned areas of criminal activity, we as citizens are obliged to care for cultural property and endangered species in order to pass this heritage intact to the next generations. Awareness of the challenges and knowledge of possible scenarios will allow us to take pre-emptive steps and prevent potential threats.

We do hope that this study will be well received by the Readers and will become a helpful tool for educating and expanding knowledge in this field not only for people associated with cultural institutions, academic community, public administration authorities, uniformed services, as well as by other professionals related to the protection of cultural property and CITES, but will also be helpful to a wide audience of the international community.

One of the conclusions that can be drawn on the basis of the meetings and workshops conducted so far is the need to educate people who are not directly involved in the implementation of tasks related to this topic, and who may encounter cultural goods or CITES specimen in various circumstances as a part of their service, work or private experience.

Bearing the above in mind, we would like to hereby present a guide to the basic knowledge related to CITES and crimes against cultural property. We indicate in it the legislation, institutions and services related to their protection and the scope of their powers and duties. Obviously, the presented guide, due to its form, is not going to be a source of comprehensive knowledge and does



not include answers to all possible questions, however, it aims at defining the regulations and indicating institutions or specialists that have knowledge related to this problem.

The presented set of guidelines was developed as part of the project "Crime against cultural goods and CITES" CrimArt (hereinafter referred to as the project), implemented with funds from the European Union Internal Security Fund – Police, under the grant agreement 101037954. The leader of the project is the Regional Police Headquarters in Krakow, and the other members of the consortium are Federal Republic of Germany, Republic of Cyprus, Republic of Moldova.

This guide contains recommendations resulting from 5 completed trainings and mutual exchange of information between training participants and organizers. As a result of the conducted training, we have prepared guidelines in order to present topics related to combating crime against cultural goods and CITES and to indicate good practices, possible solutions and cooperation paths between institutions related to the protection of cultural goods and CITES.



## 2 Institutions dealing with protection of cultural goods and CITES

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### 2.1 International institutions

There are several institutions that oblige the Member States to cooperate and as part of their activities. An extensive cooperation is carried out regarding protection of cultural property and CITES. Within their tasks, these entities carry out a number of activities and exchange information on criminal activity related to cultural goods. Cooperation between countries mostly takes place within UNESCO and INTERPOL.

#### 2.1.1 UNESCO

The United Nations Educational, Scientific and Cultural Organization (UNESCO) was established on November 16, 1945. Its aim is to develop international cultural, educational and scientific cooperation. As a part of the activities of the organization, the UNESCO World Heritage List is kept, it is a list of cultural and natural heritage sites of "outstanding universal value" for humanity. In Poland UNESCO is represented by its Polish Committee.

You can find detailed information about the organization's activities and undertaken projects under this link: <https://www.unesco.org/en>

#### 2.1.2 INTERPOL

At the European level, it is INTERPOL that deals with crimes against cultural goods, and as part of their operations, a database of lost works of art is maintained under the name "Stolen Works of Art. Database". It is the only international database containing information certified by respective national Police agencies – this database stores records of lost works of art confirmed by authorized entities, including National Central Offices of INTERPOL. This database is also available from mobile devices using the "ID-Art" application and it can be downloaded to any mobile device.

More detailed information can be found on the dedicated website:

[www.interpol.int/en/Crimes/Cultural-heritage-crime](http://www.interpol.int/en/Crimes/Cultural-heritage-crime)



### 2.1.3 FRONTEX

Frontex, the European Border and Coast Guard Agency, is an established organization to promote, coordinate and manage the external borders of EU countries in accordance with the EU Charter of Fundamental Rights and the concept of integrated border management. Frontex supports cooperation between law enforcement authorities of the European Union countries, its agencies and customs authorities at the EU's external borders, both sea and land. Frontex focuses on preventing smuggling and countering cross-border crime. It shares all relevant intelligence collected during its operations with the relevant national authorities and Europol.

The Agency is an expert center in the field of border control. It develops training programs and specialized courses in various fields to provide border guards throughout Europe with the highest level of professional knowledge among.

The detailed information can be found on the dedicated website: <https://frontex.europa.eu/>

## 2.2 Polish institutions dealing with protection of cultural goods and CITES

Within the territory of the Republic of Poland, over the years, a number of institutions have been established to carry out numerous activities aimed at protecting cultural assets and national heritage. Within the institutions listed below, special units have been established to carry out these tasks. Close cooperation of these entities has often contributed to numerous successes in recovering stolen works of art, as well as contributed to raising legal awareness among the general public.

### 2.2.1 The Ministry of Culture and National Heritage

The Ministry of Culture and National Heritage conducts wide scope of activities aimed at heritage protection through a number of activities and programs. Within the structure of the Ministry, there are Regional Offices for Protection of Antiquities, which carry out field tasks. The information contained in the "heritage protection" subpage may be particularly useful, it contains the procedure in the event of "accidentally finding an antiquity" as well as the procedure for obtaining permission to conduct a intentional search for monuments and antiquities.

More information can be accessed at the address below (the website is in polish language):

[www.gov.pl/web/kultura/kierownictwo-ministerstwa](http://www.gov.pl/web/kultura/kierownictwo-ministerstwa)

and:

[www.gov.pl/kultura/przypadkowe-znalezienie-zabytku-i-poszukiwania-zabytkow](http://www.gov.pl/kultura/przypadkowe-znalezienie-zabytku-i-poszukiwania-zabytkow)



The Ministry of Culture and National Heritage maintains the Polish equivalent of the INTERPOL database called the "National List of Stolen or Illegally Exported Antiquities", which was created as a tool to assist institutions involved in combatting theft and illegal export of antiquities. The registry is available in Polish language at: [www.skradzionezabytki.pl/](http://www.skradzionezabytki.pl/)

## 2.2.2 National Revenue Administration

The National Revenue Administration (Polish abbreviation KAS) is responsible for managing the revenue from taxes, customs duties, fees and non-tax budgetary receivables. It also protects the interests of the State Treasury and European Union Customs Union. It provides service and support for taxpayers in the proper fulfillment of tax and customs obligations. Within its competences issued by the provisions of EU and national law, KAS also deals with issues related to the protection of human health and life, protection of endangered animal and plant species, protection of the natural environment, protection of consumers, intellectual property rights and cultural goods.

In carrying out tasks related to the protection of cultural goods and counteracting crime against these goods, KAS cooperates with national and international institutions and authorities. KAS handles also controlling the legal trade in cultural goods, but also fights with smuggling. When carrying out inspections of the cross-border transport of cultural goods, customs and tax authorities also verify their legality of origin. For this purpose, they use national and international tools and systems. These include: National list of stolen or illegally exported antiquities, Catalog of war losses, Interpol database and ID-ART application, ICOM RED LISTS, Archeo System WCO.

In order to effectively execute these tasks, officers of the National Revenue Administration participate in trainings in the field of legal regulations regarding the trade in cultural goods, identification and rules of dealing with cultural goods. They also participate in international operations against theft and illegal trade in cultural goods.

Information on all tasks performed by National Revenue Administration can also be found on the website:

<https://www.gov.pl/web/national-revenue-administration/about-us>

## 2.2.3 Border Guard

Polish Border Guard is a uniformed and armed formation formed to protect the state border and control border traffic as well as to prevent and counteract illegal migration. The Border Guard is also a formation that identifies, prevents and detects crimes and offenses related to illegal border



crossing and illegal transport of goods across the border. This also applies to crimes against cultural goods.

As part of the preventive activities, the emphasis is placed on awareness-raising trainings for Border Guard officers, which are organized periodically and have a wide scope of problems.

Information on all tasks performed by the Border Guard can also be found on the polish website: [www.strazgraniczna.pl](http://www.strazgraniczna.pl)

## 2.2.4 Polish Police

As part of the regular operations within the structures of regional police headquarters, the position of the coordinator for crimes against cultural goods was established. The primary task of such coordinator is to supervise cases of committed crimes related to cultural goods (directly or indirectly). The nationwide coverage of most crimes within the scope of interest to the coordinator means that they are interested in all information regarding crimes against cultural property and any phenomena that may contribute to their commission, regardless of the place and time of their occurrence.

As part of their duties, the coordinator undertakes preventive measures, supports projects aimed at improving the level of protection of cultural goods carried out by all institutions and private collections.

All problems presented in this study are just a set of rudimentary knowledge on "protection of cultural heritage". Under provided links an additional detailed information on various unusual situations can be found, such as cultivation of fields in areas where archaeological monuments can be revealed.

The information provided in this guide contains legislation, institutions and services operating in Poland valid upon the conclusion of the series of trainings and workshops organized as part of the CRIMART project. All the findings gathered by other members of the project consortium will also be made available.



## 3 Legislation on protection of cultural goods in Republic of Poland

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### 3.1 Definitions

#### 3.1.1 Cultural good

Cultural good – is a cultural asset, any movable or immovable object, old or modern, of significance for cultural heritage and cultural development due to its historical or artistic value.

#### 3.1.2 Museum exhibits

Museum exhibits - these are movable and immovable assets owned by the museum and entered into the inventory of museum exhibits (Polish act of 21 November 1996 on Museums).

#### 3.1.3 Antiquity

Antiquity - a real estate or movable things, its parts, being the work of human kind or related to human activity and being a remnant of a bygone era or event and its preservation is in the public interest due to its historical, artistic or scientific value (Polish Act of July 23, 2003 on the Protection of Antiquities and the Care of Monuments, article 3 section 1).

#### 3.1.4 Architectural monument

Archaeological monument - an immovable monument, which is a surface, underground or underwater remnant of human existence and activity, composed of cultural layers, containing human creations or their traces contained therein, or a movable monument that constitutes such creation (Polish Act of 23 July 2003 on the Protection and Care of Monuments, art. 3 section 4).

#### 3.1.5 Stolen Works of Art

Stolen Works of Art – it is the largest database of Interpol collecting data on stolen monuments, it is primarily used for running security checks on cultural goods.



### 3.1.6 National List of Stolen or Illegally Exported Antiquities

Polish Ministry of Culture and National Heritage maintains a national registry of stolen or illegally exported antiquities (it gathers data on museum thefts after 1970, and since 1992 it also includes losses incurred by religious associations, private collectors and other institutions).

## 3.2 Legal acts – definitions of crimes

### 3.2.1 Polish Act of 23<sup>rd</sup> of July 2003 on Protection and Care of Antiquities, article 108

1. Whoever destroys or damages an antiquity, shall be punishable by imprisonment from 3 months up to 5 years.
2. If the perpetrator of the act specified in section 1. acts unintentionally, they are subject to a fine, the penalty of restriction of liberty or imprisonment for up to 2 years.
3. In the event of a conviction for an offense specified in section 1., the perpetrator shall be subject, and in the event of a conviction for the offense referred to in section 2., may be subject to punitive measures for the indicated social purpose related to the care of antiquities in the amount of three to thirty times the minimum wage.

### 3.2.2 Polish Act of 23<sup>rd</sup> of July 2003 on Protection and Care of Antiquities, article 109

1. Whoever, without permission, exports an antiquity abroad or after exporting it abroad does not re-import it to the country during the period of validity of the permit, shall be punishable by imprisonment from 3 months up to 5 years.
2. If the perpetrator of the act specified in section 1. acts unintentionally, they are subject to a fine, penalty of restriction of liberty or imprisonment for up to 2 years.
3. In the event of a conviction for an offense specified in section 1., the perpetrator is subject, and in the event of conviction for the offense referred to in section 2., may be subject to punitive measures for the indicated social purpose related to care of antiquities in the amount of three to thirty times the minimum wage.
4. The Court may rule the confiscation of the antiquity, even if it was not a property of the perpetrator.



In Poland a deed of exporting an antiquity abroad can only become a punishable offense when such item is listed in article 51 section 1. of the Polish Act of 23<sup>rd</sup> of July 2003 - Protection and Care of Antiquities.

### 3.2.3 Polish Act of 23<sup>rd</sup> of July 2003 on Protection and Care of Antiquities, article 51 section 1

Registered antiquities require a one-time permit for permanent export if listed in one of the following categories:

- 1) Archaeological artefacts that are more than 100 years old and are part of archaeological collections or have been obtained as a result of archaeological research or accidental discoveries;
- 2) Elements that are an integral part of monuments of architecture, interior design, sculptures, statues and works of artistic craftsmanship that are more than 100 years old;
- 3) Paintings made with any technique and on any material, not covered by the categories indicated in points 4 and 5, which are more than 50 years old and their value is higher than PLN 40,000;
- 4) watercolors, gouaches and pastels made on any material, which are more than 50 years old and their value is higher than PLN 16,000;
- 5) Mosaics not included in the categories indicated in points 1 and 2, and made with any technique and on any material of drawings that are more than 50 years old and their value is higher than PLN 12,000;
- 6) Original works of graphics and matrices for their production and original posters that are more than 50 years old and their value is higher than PLN 16,000;
- 7) Original sculptures, statues or their copies made with the same technique as the original, not covered by the category indicated in point 1, which are more than 50 years old and their value is higher than PLN 20,000;
- 8) Single photographs, photographic films and their negatives that are more than 50 years old and their value is higher than PLN 6,000;
- 9) Single manuscripts or manuscripts included in collections that are more than 50 years old and their value is higher than PLN 4,000;
- 10) Single books or books included in collections that are more than 100 years old and their value is higher than PLN 6,000;
- 11) Individual printed maps and scores that are more than 150 years old and their value is higher than PLN 6,000;
- 12) Collections and items from zoological, botanical, mineral or anatomical collections, the value of which is higher than PLN 16,000;



13) Collections of historical, paleontological, ethnographic or numismatic significance of value higher than PLN 16,000;

14) Means of transport that are more than 50 years old and their value is higher than PLN 32,000;

15) Other categories not listed in points 1-14, including antiquities that are more than 50 years old and their value is higher than PLN 16,000.

In practice, when crossing the border with an object that does not require a conservator's permission, it is reasonable to have a document with an art historian's opinion as to the age of the object along with a photo and an opinion of the museum, gallery or antique shop of the value of the object.

### 3.2.4 Polish Act of 23<sup>rd</sup> of July 2003 on Protection and Care of Antiquities, article 109 a

Whoever counterfeits or alters an antiquity in order to use it in antiquities trading, shall be subject to a fine, penalty of restriction of liberty or imprisonment up to 2 years.

### 3.2.5 Polish Act of 23<sup>rd</sup> of July 2003 on Protection and Care of Antiquities, article 109 b

Whoever sells a movable as a movable antiquity or sells an antiquity labeled as another antiquity, knowing that they are counterfeit or altered, shall be subject to a fine, penalty of restriction of liberty or imprisonment up to 2 years.

### 3.2.6 Polish Act of 23<sup>rd</sup> of July 2003 on Protection and Care of Antiquities, article 110

1. Whoever, being the owner or holder of an antiquity, has not secured it in a proper manner against damage, destruction, loss or theft, shall be punishable by detention, restriction of liberty or a fine.

2. In the event of committing an offense specified in section 1., court may rule a punitive measure up to the amount of twenty times the minimum wage for the indicated social purpose related to the care of antiquities.



### 3.2.7 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 111

1. Whoever, without permission or against the provisions of that permission, is seeking hidden or abandoned antiquities, including with the use of various electronic and technical devices or diving equipment, shall be punishable by arrest, restriction of liberty or a fine.
2. In the event of committing an offense specified in section 1., the court may rule:
  - 1) forfeiture of tools and items that were used or intended to commit an offence, even if not the property of the perpetrator;
  - 2) forfeiture of items coming directly or indirectly from the offence;
  - 3) the obligation to restore the previous state or to pay the equivalent of the damage caused.

### 3.2.8 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 112

1. Whoever violates the prohibitions or restrictions in force at a cultural park or its part, shall be punished by arrest, restriction of liberty or a fine.
2. If the perpetrator of the act specified in section 1. acts unintentionally, they are punishable by a fine.
3. In the event of committing an offense specified in section 1 or 2, the perpetrator shall be subject to:
  - 1) forfeiture of tools and items that were used or intended to commit an offence, even if they were not the property of the perpetrator;
  - 2) forfeiture of items coming directly or indirectly from the offence;
  - 3) the obligation to restore the previous state or to pay the equivalent of the damage caused.

### 3.2.9 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 113

1. Whoever, as an owner or holder of an antiquity entered in the registry or another antiquity in the regional registry of antiquities, does not notify the regional conservator of antiquities about:
  - 1) damage, destruction, loss or theft of the antiquity immediately after becoming aware of the event,
  - 2) threat to the antiquity immediately after becoming aware of the threat,
  - 3) changing the place of storage of the movable antiquity, within one month from the date of this change,



4) changes regarding the legal status of the antiquity, no later than one month from the date of their occurrence or becoming aware of them,

- is punishable by a fine.

3. In the event of committing an offense specified in section 1. an additional amount of up to twenty times the minimum wage for the indicated social purpose related to the care of antiquities may be imposed.

### 3.2.10 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 113a

1. Whoever, within 14 days from the date of expiry of the permit referred to in art. 51 section 3 herein, did not notify the arrival of the antiquity on the territory of the Republic of Poland, shall be punishable by a fine.

### 3.2.11 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 114

1. Whoever prevents or hinders access to an antiquity to the regional heritage conservator executing the powers under herein Act, shall be punishable by a fine.

### 3.2.12 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 115

1. Whoever has not immediately notified the regional heritage conservator or the local authorities (mayor, president of the city) of the discovery in the course of construction or earthworks of an object for which there is a presumption that it is an antiquity, and has not ceased any works that may damage or destroy the found item and failed to secure, using the available means, such item and the place of its finding, shall be punishable by a fine.

2. In the event of committing an offense specified in section 1. an additional amount of up to twenty times the minimum wage for the indicated social purpose related to the care of antiquities may be imposed.



### 3.2.13 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 116

1. Whoever has not immediately notified the regional heritage conservator or the local authorities (mayor, president of the city or the director of the maritime office) of the accidental discovery of an item, for which there is a presumption that it is an antiquity, and has not secured, using available means, this item and the place of its finding, shall be punishable by a fine.

2. In the event of committing an offense specified in section 1., an additional amount of up to twenty times the minimum wage for the indicated social purpose related to the care of antiquities may be imposed.

### 3.2.14 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 117

1. Whoever, without a permit or through violating the conditions of the permit, carries out conservation, restoration, construction, conservation or architectural research at an antiquity entered in the register, or construction works in its surroundings, or archaeological research, shall be punishable by a fine.

### 3.2.15 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 118

1. Whoever, without permission, places technical devices, plaques, advertisements and inscriptions on a monument entered in the register shall be liable to a fine.

### 3.2.16 Polish Act of 23rd of July 2003 on Protection and Care of Antiquities, article 119

1. Whoever does not comply with the post-inspection recommendations referred herein in art. 40 sec. 1 shall be punishable by a fine.



### 3.2.17 Polish Act of 6 June 1997 - The Penal Code, article 125

§1. Whoever, violates international law by destroying, damaging or taking away cultural property in an occupied territory, or in which military operations are taking place, shall be subject to the penalty of deprivation of liberty for a period of 1 and 10 years.

§2. If the act concerns goods of extraordinary importance for culture, the perpetrator shall be subject to the penalty of deprivation of liberty for a period of not less than 3 years.

### 3.2.18 Polish Act of 6 June 1997 - The Penal Code, article 294

§1. Whoever commits an offense specified in art. 278 §1 or 2, art. 284 §1 or 2, art. 285 §1, art. 286 §1, art. 287 §1 or 3, or in Art. 291 §1 therein, in relation to property of significant value, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§2. The same penalty applies to the perpetrator who commits the offense listed in §1 in relation to property of extraordinary importance for culture.

### 3.2.19 Polish Act of 6 June 1997 - The Penal Code, article 263

§1. Whoever, without the required permit, manufactures firearms or ammunition or trades therein, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§2. Whoever possesses firearms or ammunition without the required permit shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.

A person who reveals a firearm from the First or Second World War may report it to the Department of Administrative Proceedings in any regional police headquarters and register it as a collector's weapon. Otherwise, the provisions of the Penal Code and the provisions of the Polish Act of 21<sup>st</sup> May 1999 on Weapons and Ammunition apply.



### 3.2.20 Possession of antique firearms - excerpt from the Polish Act of 21<sup>st</sup> May 1999 on Weapons and Ammunition

Art. 11 A permit, as stipulated in the Polish Act of 21<sup>st</sup> May 1999 on Weapons and Ammunition, is not required in case of:

1. Accrue ment of weapons in museum collections in accordance with separate legal regulations;
2. Possession of deactivated firearms (by an authorized company, in accordance with the technical specification indicating the method of deactivation of a given kind, type and model of firearms. Deactivated weapons are to be marked in a way indicating that they have been deactivated);
3. Possession of a firearm with separate loading made before 1885 and replicas thereof (in which the projectile material and the propellant material are not combined into a single cartridge);

All crossbows, regardless of age, require a permit unless they are part of a museum collection or have been deactivated.

A corroded copy of a firearm that has statutory, essential parts of a firearm is treated as a firearm. If an expert determines that the item is damaged and no longer has any use values, the criminality of the act does not cease, because at the time the item was seized, the person who was arrested did not have the opinion of the unit authorized to confirm the deprivation of the firearms' use values or their lack, in accordance with art. 6a of Polish Act of 21<sup>st</sup> May 1999 on Weapons and Ammunition.

### 3.2.21 Polish Act of 23rd of April 1964 – The Civil Code, article 189

If an item was found in such circumstances that the search for the owner would obviously be futile (...) and the found item is an antiquity or of archival nature, it becomes the property of the State Treasury, and the finder is obliged to hand it over immediately to the competent county authority.

### 3.2.22 Polish Act of 6 June 1997 - The Penal Code, article 261

Whoever desecrates a monument or other public place arranged to commemorate a historical event or to honor a person, shall be subject to a fine or the penalty of restriction of liberty.

§1 Whoever desecrates a corpse, human ashes or the resting place of the deceased, shall be subject to a fine, the penalty of restriction of liberty or imprisonment for up to 2 years.

§2 Whoever robs the corpse, grave or other resting place of the deceased, shall be punishable by imprisonment from 6 months to 8 years.



### 3.3 Cold cases

On November 24, 1998, a slim man in his 40s, wearing plastic-rimmed glasses, came to the library of the Polish Academy of Sciences in Krakow to read the work of Nicolaus Copernicus *On the Revolutions of the Celestial Spheres* in the reading room. At some point, he informed the Library staff that he was going to the restroom. On his way out, he hid the previously reviewed work under his sweater. Only the binding of the book, the perpetrator's bag and his ID remained on the table (later it turned out that the ID card used by the perpetrator was stolen). The work was worth at least PLN 500,000 (\$150,000 at the time).

The National Chief Commander of the Police has announced a reward of PLN 10,000 for information leading to the arrest of the perpetrators.

To this day, the case remains unsolved.

### 3.4 Recovered works of art

Thanks to the efforts and numerous projects coordinated by the Ministry of Culture and National Heritage, the following work of arts have been recovered:

1. Collection of zoological specimens and books on zoology from the pre-war collection of the State Zoological Museum in Warsaw, recovered in 2022, Museum and Institute of Zoology of the Polish Academy of Sciences



*Picture 1*

2. Albert Edelfelt "Under the Birches", painting recovered in 2021, National Museum in Warsaw  
Michał Elwiro Andriolli, 5 drawings - illustrations for "Maria" by Antoni Malczewski, recovered



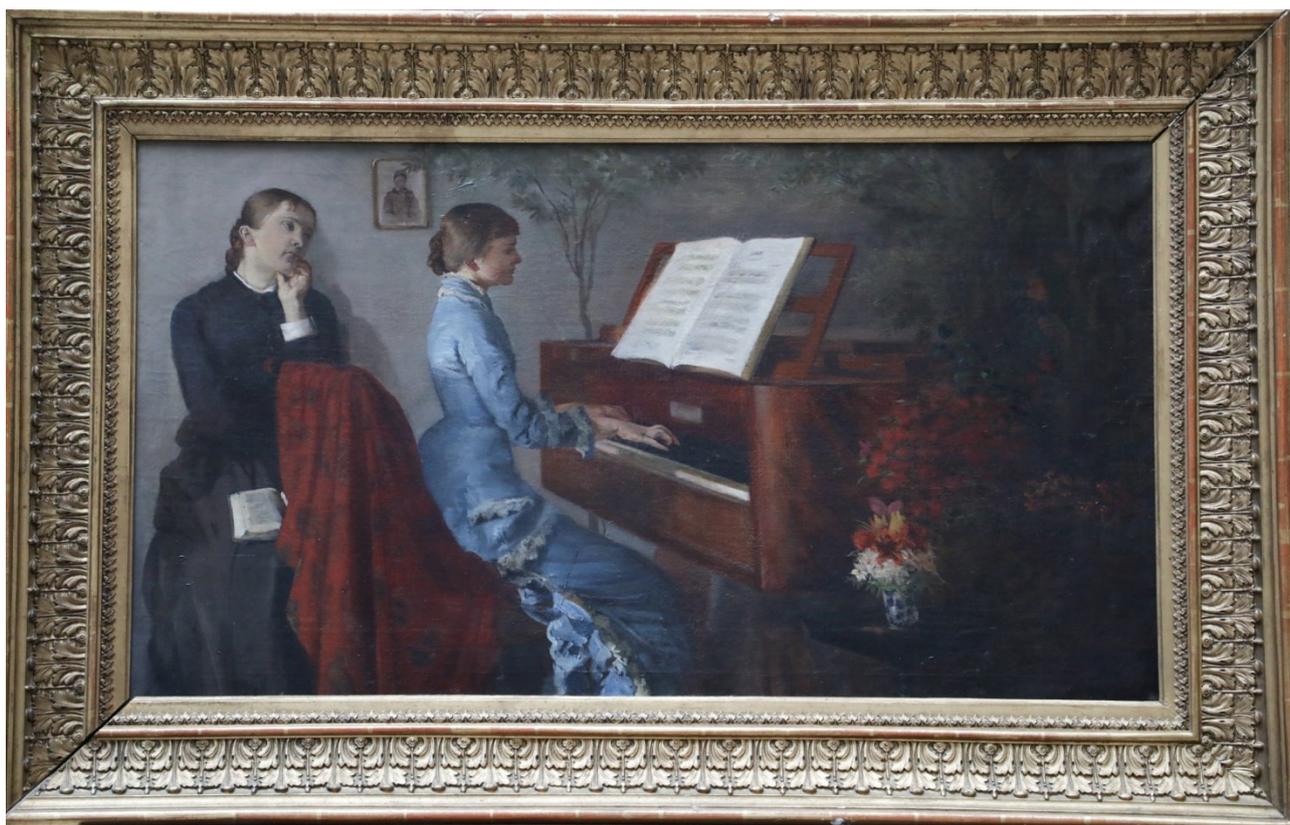
Co-funded by  
the European Union

in 2021, National Museum in Warsaw.



*Picture 2*

3. Teodor Axentowicz "Lady in Peacock Feathers", pastel recovered in 2021, National Museum in Warsaw



*Picture 3*

4. Jacek Malczewski "At the Piano", painting recovered in 2020, National Museum in Warsaw

5. Stanisław Masłowski "Gryka", watercolor recovered in 2020, National Museum in Warsaw

Marcin Zaleski "Interior of the Milan Cathedral", painting recovered in 2019, National Museum in Warsaw

6. Red-figured lekythos from the 4th century BC, recovered in 2018, National Museum in Warsaw

7. Melchior Geldorp "Portrait of a lady", painting recovered in 2018, National Museum in Warsaw

Simon de Vlieger "Rough sea with ships", painting recovered in 2017, National Museum in Warsaw

8. Women's desk and cabinet – 18<sup>th</sup>-century Chinese-style furniture, recovered in 2016, Museum of King Jan III's Palace at Wilanów

9. Card table, late 18th century, recovered in 2015, Royal Baths Museum



10. Krzysztof Lubieniecki "Portrait of a young man in a wig", painting recovered in 2015, National Museum in Warsaw



*Picture 4*

11. Jean-Antoine Houdon "Diana", sculpture recovered in 2015, Royal Baths Museum

12. Aleksander Gierymski, "Portrait of a Man in Renaissance Costume", painting recovered in 2014, National Museum in Warsaw

13. Francesco Guardi "Palace Stairs", painting recovered in 2014, National Museum in Warsaw

14. Anna Bilińska "Murzynka", painting recovered in 2012, National Museum in Warsaw



15. Aleksander Gierymski "Jewess with Oranges", painting recovered in 2011, National Museum in Warsaw



## 4 Legislation on protection of cultural goods in Federal Republic of Germany

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### 4.1 Definitions

In Germany, cultural property is defined as all objects worthy of preservation, specifically any movable object or aggregates of things of artistic, historical or archaeological value or from other areas of cultural heritage, in particular of paleontological, ethnographic, numismatic or scientific value (see Sec. 2 No. 10 of the Cultural Property Protection Act – “Kulturgutschutzgesetz“, KGSG – of 2016), or those officially listed (see Sec. 7 KGSG); the officially registered objects are those identified by the districts (“Länder” as being of national significance (see Sec. 2 No. 2 KGSG).

A second, also rather intuitive, definition in Germany is provided by the Regulation on the implementation of the Cultural Property Protection Act (KultGAVO: This Act takes a middle course by defining cultural property with generic designation, age and value, but without listing concrete objects.

However, Sec. 2 No. 1 of the KGSG also defines “archaeological cultural property” as movable objects or aggregates of things which were made or processed by humans or provide information about human life in earlier times, which are or were in the ground or underwater, or for which this can be assumed given the overall circumstances.

### 4.2 Legal acts

#### 4.2.1 Cultural Property Protection Act

Cultural Property Protection Act (“Kulturgutschutzgesetz”) of 2016 regulates a) the protection of national cultural property against removal, b) the import and export of cultural property, c) the placing on the market of cultural property, d) the return of unlawfully imported cultural property, e) the return of unlawfully exported cultural property, and f) the legally binding commitment to return cultural property in international lending.

#### 4.2.2 Criminal Laws

German criminal laws provide for two major clauses related to cultural objects.

##### 4.2.2.1 *Sec. 263 Criminal Code*

Sec. 263 of the German Criminal Code (Strafgesetzbuch, StGB) on fraud is relevant in case of art



forgery: Whoever, with the intention of obtaining an unlawful pecuniary benefit for themselves or a third party, damages the assets of another by causing or maintaining an error under false pretences or distorting or suppressing true facts incurs a penalty of imprisonment for a term not exceeding five years or a fine. Also the attempt is punishable.

In especially serious cases, the penalty is imprisonment for a term of between six months and 10 years.

An especially serious case typically occurs where the offender

- acts on a commercial basis or as a member of a gang whose purpose is the continued commission of forgery of documents or fraud,
- causes a major financial loss to or acts with the intention of placing a large number of persons in danger of financial loss by the continued commission of fraud,
- places another person in financial hardship,
- abuses his or her powers or position as a public official or European official or
- pretends that an insured event has happened after they or another person have set fire to an object of significant value or destroyed it, in whole or in part, by setting fire to it or caused the sinking or grounding of a ship.

Whoever commits fraud on a commercial basis as a member of a gang – organized crime – incurs a penalty of imprisonment for a term of between one year and 10 years, in less serious cases imprisonment for a term of between six months and five years.

#### *4.2.2.2 Sec. 267 Criminal Code*

Whether a case is on forged art or illicit import/export or domestic trading cultural objects – these objects are typically coming along with documents; such documents, if forged, are subject to Sec. 267 StGB: Whoever, for the purpose of deception in legal commerce, produces a counterfeit document, falsifies a genuine document, or uses a counterfeit or falsified document incurs a penalty of imprisonment for a term not exceeding five years or a fine. Also here, the attempt is punishable.

In especially serious cases, the penalty is imprisonment for a term of between six months and 10 years.

An especially serious case typically occurs where the offender

- acts on a commercial basis or as a member of a gang whose purpose is the continued commission of fraud or forgery of documents,
- causes major financial loss,
- substantially endangers the security of legal commerce through a large number of counterfeit or falsified documents or
- abuses his or her powers or position as a public official or European official.



As in case of Sec. 263 StGB, also Sec. 267(4) StGB foresees that whoever commits forgery of documents on a commercial basis as a member of a gang incurs a penalty of imprisonment for a term of between one year and 10 years, in less serious cases imprisonment for a term of between six months and five years.

#### *4.2.2.3 Acquisition of Ownership in Cultural Objects*

The German laws are restricting the right to obtain ownership of cultural objects, if they have not been placed on the market legally. Set out in Sec. 40 KGSG, it is prohibited to place cultural property on the market that has been lost, unlawfully excavated or unlawfully imported.

Executory contracts and transfer agreements prohibited are be invalid. Executory contracts and transfer agreements regarding cultural property exported in breach of applicable laws shall be prohibited. Anyone who has placed the cultural property on the market in violation of the ban pursuant to subsection 1 shall be obliged to compensate the acquirer for the damage and the expenses related to the acquisition and the preservation of the cultural property; however, this shall not apply if the person who has placed the cultural property on the market proves that he or she is not responsible for the violation.

## **4.3 Example cases**

In recent years, there have been several cases of criminal activities related to cultural objects in Germany. Most of these cases are on theft of cultural objects from public museums.

### **4.3.1 2002: Brücke Museum Berlin**

During the night of 04.04.2002, burglars gained access to the Brücke Museum in Berlin. Here they stole nine famous paintings, among others by the expressionists Max Pechstein and Emil Nolde. The value was estimated at 3.6 million euros.

However, the case was solved in the same year – with one of the paintings destroyed by the thieves.

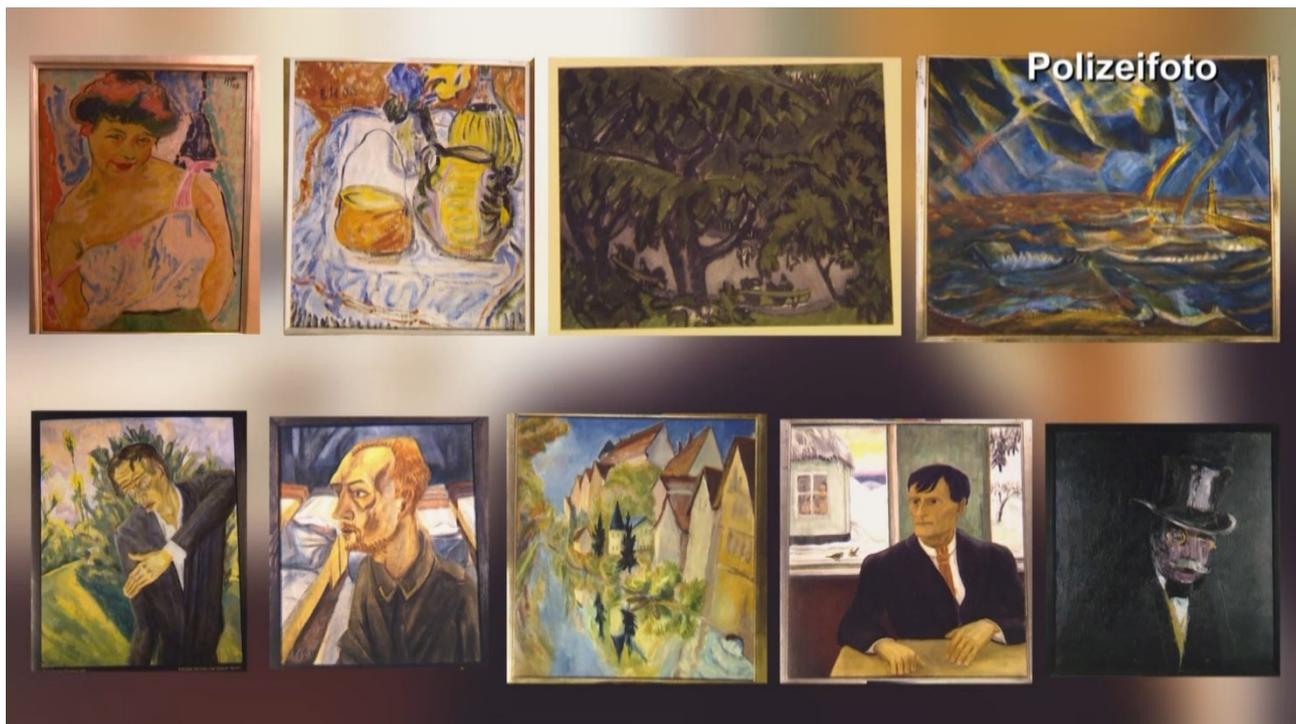


Image: The nine stolen paintings.

#### 4.3.2 2017: Bode-Museum Berlin

The gold coin weighing one hundred kilograms was stolen from the Bode Museum in Berlin in March 2017: Three young men from a well-known extended Arab family who had heaved the gold piece out of the museum were sentenced to several years in prison, and one of them is now also being investigated for the jewel theft in the Green Vault in Dresden. Only one person has not yet received justice: the owner of the coin, an art collector from Düsseldorf.

He had bought the Big Maple Leaf made of almost pure gold in 2010 and loaned it to the Bode Museum for the exhibition "Gold Giants". The coin was insured, but after the theft his insurance company refused to reimburse the entire value, a total of 4.2 million euros. The collector only received 20 per cent; from the insurance company's point of view, the Bode Museum had not sufficiently ensured the security of the coin. In fact, numerous security deficiencies came to light during the trial. For example, a window was not connected to the alarm and could also be easily levered open. An earlier burglary attempt at the same location had not been noticed.

The collector sued the insurance company - and lost in the Berlin Regional Court in 2020. But now the next higher instance, the Berlin Court of Appeal, has ruled that the owner is entitled to more money. The security deficiencies in the museum were serious, and if the insurance company had known about them, it would probably not have insured the coin, the court ruled. But the insurance



company was only allowed to reduce the amount of damages by half. The owner will now receive a total of 2.1 million euros.

The coin itself was probably sawn up and melted down, all that was found of it was a little gold dust.



Image: The stolen coin.

### 4.3.3 2022: Grünes Gewölbe Dresden

It was one of the most spectacular and audacious burglaries of the past decades - and a worst-case scenario not only for the cultural city of Dresden - also known as "Florence on the Elbe" - but for the cultural memory of the whole of Saxony: In November 2019, burglars used brute force to steal numerous treasures from the Historic Green Vault. The jewel collection, which belongs to the Dresden State Art Collections, is one of the most famous museums in Germany. The suspected robbers were caught. Now the trial against the Berlin clan members has begun.

In the early morning of 25 November 2019, several perpetrators had forced their way into the Historisches Grünes Gewölbe through a barred window. The brutality of the perpetrators, who apparently acted without any respect for art, was particularly astonishing. In one exhibition room, they struck a glass case with 56 axe blows and tore out pieces of jewellery of outstanding cultural and historical significance.

Their loot: 21 pieces of jewellery from historical jewellery sets from the time of August the Strong (1670-1733). Among them was the "Saxon White", a white diamond weighing 48 carats.



After a year of investigations in all directions, there had been a twist in the "Green Vault" case in mid-November 2020: The special commission "Epaulette", formed after the robbery, convicted members of the Berlin Remmo clan after a large-scale raid with around 1600 police officers.

Three clan members, urgently suspected of the crime, were arrested. Shortly afterwards, a pair of twin brothers, who also belong to the clan, were also convicted by the police. The sixth and final suspect, Ahmed Remmo, was finally arrested on 19 August 2021. Ahmed Remmo already had to answer for the burglary of the Bode Museum in Berlin in 2020 and was legally convicted.



Image: Excerpt of the stolen collection.

#### 4.3.4 2022: Kelten-Museum Manching

The almost 500 gold coins were the museum's magnificent showpiece, but now they are gone: unknown burglars have stolen the two-thousand-year-old gold treasure from the Celtic-Roman Museum in Manching, Upper Bavaria. The unknown burglars entered the Celtic-Roman Museum in Manching near Ingolstadt on Tuesday night.

The display case containing the treasure was broken open and the gold was completely stolen. It was only when staff came to the museum in the morning that the crime was discovered. Initially, the Criminal Investigation Department of the Ingolstadt police headquarters was called in. But because of the great value of the stolen goods, special investigators of the LKA quickly took over the case.

The display case contained 483 gold coins dating from around 100 B.C. and weighing a total of about



four kilogrammes. According to the information, the classic gold value according to the daily exchange rate has yet to be determined. The collector's value, however, amounts to several million euros. The police assume that the perpetrators will either try to sell the gold treasure illegally on the art market or that it will "in the worst case be melted down", said the authorities' spokesperson. The worst case is not unlikely: according to police estimates, the perpetrators will have a hard time selling the gold coins.

The Bavarian State Criminal Police Office expanded its investigation during the night. And: It has also taken over the investigation of the sabotage attack on an infrastructure facility of Deutsche Telekom in Manching. In the regional hub, unknown persons had cut several fibre optic cables in the same night. The result: 13,000 households and businesses in the region no longer have internet or telephone, and apparently the museum's alarm connection to the police was also cut. This is exactly what the Bavarian State Criminal Police Office now wants to check. For this purpose, investigators will also search for traces on site again today. Until now, the case was in the hands of the police. The investigations are ongoing, but it already becomes clear that this crime is comparable to the museum thefts in Berlin and Dresden



Image: The stolen numismatic collection.



# 5 Legislation on protection of cultural goods in Republic of Cyprus

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## 5.1 Definitions

"antiquity" means any object whether movable or part of immovable property, which is a work of architecture, sculpture, graphic, painting or any art in general, which has been produced, carved, written by human energy, painted or generally made in any manner and with any material before the last one hundred years and which was found, discovered or excavated in Cyprus, including the maritime zones of Cyprus, and includes any such object or part thereof which has been added, reconstructed, subsequently adapted or replaced:

Provided that for works of ecclesiastical or folk art of great archaeological, artistic or historical importance, instead of the chronological milestone of one hundred years, the year 1940 AD will be considered, regardless of their place of construction or origin;

## 5.2 Legal acts

1. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, The Hague, 14 May 1954
2. First Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954
3. Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999
4. European Cultural Convention, Paris, 19 December 1954
5. Statutes of the International Centre for the Study of the Preservation and Restoration of Cultural Property, as amended on 24 April 1963 (ICCROM), New Delhi, 5 December 1956
6. Statutes of the ICCROM, as revised by the XXIII session of the General Assembly, Rome, 21 November 2003
7. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970
8. Convention for the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972
9. Convention for the Protection of the Architectural Heritage of Europe, Granada, 3 October 1985



10. European Convention on the Protection of the Archaeological Heritage (Revised), Valletta, 16 January 1992
11. Unidroit Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995
12. Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003
13. Charter for the protection and management of the archaeological heritage, Lausanne 1990
14. Charter for the conservation of historic towns and urban areas, Washington 1987
15. Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society, Paris 2015
16. Antiquities Law (Chapter 31, 48/1964, 32/1973, 4(I)/1996, 103(I)/2012, 200(I)/2014
17. METAL DETECTORS- The Antiquities (Amendment) Law 2012
18. METAL DETECTORS-REGULATIONS 266 OF 2012
19. Designation of areas where the use of metal detectors is permitted
20. Designation of areas where the use of metal detectors is permitted-MAPS
21. The Return of Cultural Goods Law, 2016 (in Greek)
22. Export of Cultural Goods Law, No 182 (1) of 2002
23. Regulation (EU) 2019/880 on the introduction and the import of cultural goods
24. Memorandum of Understanding between USA and Cyprus, 2002
25. Memorandum of Understanding Between USA and Cyprus, as extended, 2006
26. Memorandum of Understanding between USA and Cyprus, as extended, 2007
27. Memorandum of Understanding between USA and Cyprus, 2012
28. Memorandum of Understanding between USA and Cyprus, as extended, 2017
29. 2022 AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CYPRUS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE IMPOSITION OF IMPORT RESTRICTIONS ON CATEGORIES OF ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL OF THE REPUBLIC OF CYPRUS

## OFFENSES

A person commits an offense when: -

- (1) Destroys, damages or disfigures an ancient monument or antiquity,



(2) writes, draws or engraves any inscription, plan or figure on an ancient monument or antiquity;

(Article 10, 3 years or €45,000)

(3) allows animals to enter archaeological sites;

(Article 10(2) 9 months or €4,500)

(4) places or leaves dirt or rubbish on an ancient site,

(Article 10(3) 9 months or €4,500)

(5) makes or attempts to make excavations without a permit, or

(6) buys, moves or trades antiquities that he finds that the excavation to find them was illegal or was discovered illegal.

(Article 14, 5 years or €45,000)

(7) destroys, moves or conceals antiquities during excavation.

(Article 18, 3 years or €30,000)

(8) trades in antiquities without a license,

(Article 26, 5 years or €45,000)

(9) exports antiquities without a permit;

(Article 27, 5 years or €45,000)

(10) unlawfully possesses antiquities.

(Article 33, €15,000)

## 5.3 Example cases

### Introductory Note

It is a widely accepted fact that a country's cultural heritage is severely affected by military invasion, occupation and any kind of armed conflict in general. In recent years the images of the looting of Baghdad museum have demonstrated the immeasurable damages that still occur today to a country's cultural heritage. Today, the objects that were looted from the Bagdad museum are most likely making their way into the worldwide circles of the illegal antiquities trade.

In occupied Cyprus 197 ancient monuments are registered based on the Cyprus Antiquities Law. Hundreds of other monuments and archaeological sites were about to be registered but the 1974



Turkish invasion left the procedure incomplete.

The 1974 Turkish invasion of Cyprus and the subsequent occupation of the island, has heavily affected Cyprus' cultural heritage and despite existing internationally binding treaties regarding the protection of cultural heritage, Turkey chooses to ignore the treaties and continues its destructive agenda. The damages are grave and in many cases, irreversible. The occupied museums have been looted and so have many private collections of antiquities. Churches have been vandalized; ecclesiastical icons and vessels stolen, church frescoes and mosaics have been removed and in many cases have been traced in Europe's illegal antiquities trade markets and in auctions around the world. The most serious and large-scale damage has been noted on the islands' occupied churches. Some of the churches have even been demolished, others have been vandalized and some are currently being used as stables, mosques or as part of military camps.

Following the Turkish invasion every legal archaeological investigation by the Cyprus Department of Antiquities and by foreign archaeological missions was put to a halt. When Ankara invited the foreign missions to continue their excavations in the occupied part of the island, the latter stood by the Cypriot Government's side and refused the invitation. Appreciating this gesture of solidarity, the Cyprus Department of Antiquities offered the foreign archaeological missions new locations for excavation in the unoccupied areas.

The Cyprus Department of Antiquities continuously keeps an eye on the world trade of antiquities so that any Cypriot object on sale is located and repatriated. This is made possible with the assistance and support of Museum directors internationally.

The salvation and protection of Cyprus' cultural heritage and of the cultural heritage of any country or people concerns the international community which has expressed itself through explicit conventions that are binding and are meant to help towards the protection and preservation of world cultural heritage.



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Saint Evlogios church-Saint Theodoros, Karpasia



Saint Mamas church and the cemetery-Vitsada, Famagusta



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Saint George church-Lysi, Famagusta



Saint George church and the cemetery-Genagra, Famagusta



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Saint Artemonas church-Afaneia, Nicosia



Desecrated cemetery at Trikomo, Karpasia



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Cemetery at Koma tou Yialou, Karpasia



Surp-Magar Armenian Monastery-Halefka



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Desecrated Jewish cemetery at Margo, Nicosia



Panagia Chryseleousa church-Sysklipos, Kyrenia. Used by turkish settlers as a barn



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Saint Anastasios church-Peristeronopigi Famagusta. Looted and desecrated. Used for several years as a sheep pen.



Christ Antiphonitis Monastery (12th c.) «Final Judgement» Before the invasion of 1974

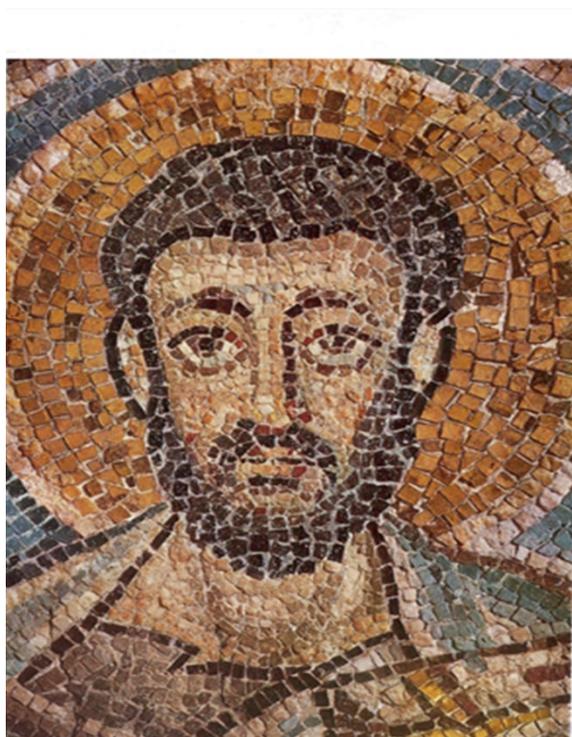


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Christ Antiphonitis Monastery (12th c.) «Final Judgement» After the invasion of 1974

## REPATRIATION



Repatriated mosaic of Apostle Mark Panagia Kanakaria church-Lythrangomi, Karpasia



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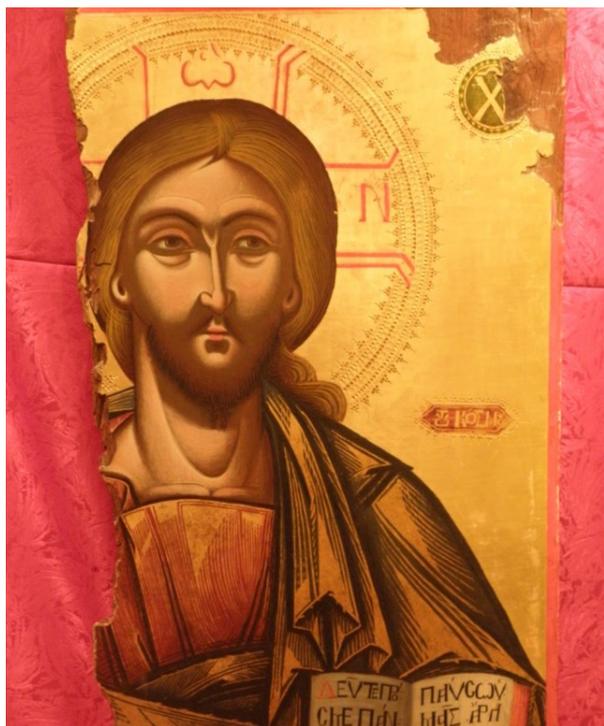
Murals repatriated from Munich. (Aydin Dikmen case)



Byzantine icon of the Apostle Peter. Repatriated from the USA on 2007  
(Charles Pankow Foundation)



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Post-Byzantine icon of our Lord Jesus Christ (18th c.)

Repatriated from London on 2011



Christ Pantocrator. Mural from Saint Euphemianos chapel at Lysi (13th c.)  
Returned on March 2012 from the Menil Foundation, Huston, Texas, USA



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The Holy Mother of God with Jesus Christ on a medallion with the Archangels Michael and Gavriel  
Mural from Saint Euphemianos chapel at Lysi (13th c.)  
Returned on March 2012 from the Menil Foundation,  
Huston, Texas, USA



Four Byzantine icons of the Apostles Peter, Paul, Mark  
and John the Theologian were repatriated from the Netherlands  
in September 2013



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In October 2013 six post-Byzantine icons were repatriated from the Von Kulmer Gallery in Augsburg, Germany



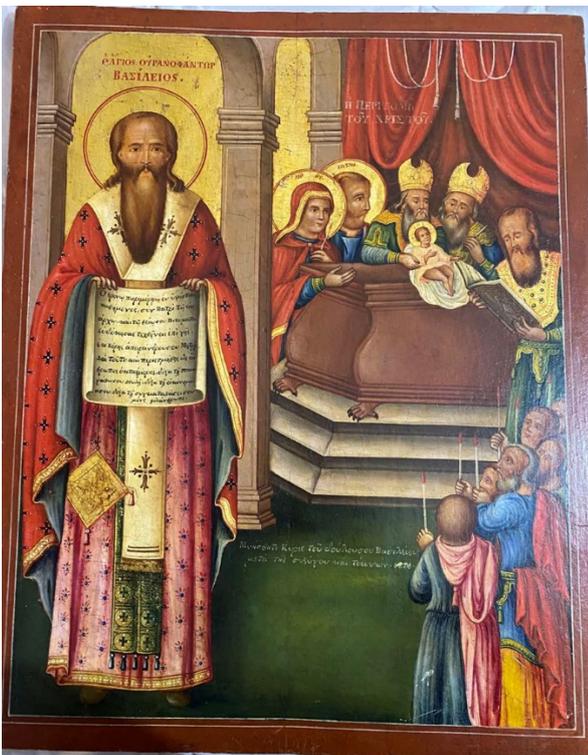
Apostle Andreas mosaic (6th c.) Panagia Kanakaria in Lythrangomi, Karpasia



Co-funded by  
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Saint George icon (1829)  
Stolen from Panagia Achiropiitos Monastery-Karavas  
and repatriated from Zurich on 2018



Saint Vasileios icon (19TH c.) Repatriated from Düsseldorf Germany in May 2022



Co-funded by  
the European Union



The icon of Christ (1500 AD) from the Antiphonitis Monastery repatriated from Switzerland in September 2022



The Royal Doors of Saint Anastasios church-Peristeronopigi, Famagusta  
Returned from the Kanazawa College of Art, Japan in September 2021



## 6 Legislation on protection of cultural goods in Republic of Moldova

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### 6.1 Definitions

**Cultural goods** are those religious or secular assets that are designated by each state as being of particular importance for archaeology, prehistory, history, literature, art or science and that are part of the following categories:

- a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
- b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- f) objects of ethnological interest;
- g) property of artistic interest, such as:
  - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - (ii) original works of statuary art and sculpture in any material;
  - (iii) original engravings, prints and lithographs;
  - (iv) original artistic assemblages and montages in any material;
- h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- i) postage, revenue and similar stamps, singly or in collections;
- j) archives, including sound, photographic and cinematographic archives;
- k) articles of furniture more than one hundred years old and old musical instruments.

**Movable national cultural heritage** – movable cultural assets of special or exceptional historical, archaeological, documentary, ethnographic, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliophile, cartographic, epigraphic, aesthetic, ethnological and anthropological value, representing material evidence of the evolution of the natural environment and of man's relationship with this environment, of the potential human creator.

By **cultural values** are understood movable cultural assets of special or exceptional historical,



archaeological, documentary, ethnographic, artistic, scientific and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliophile, cartographic, epigraphic, aesthetic, ethnological and anthropological value, representing material evidence of the evolution of the natural environment and of man's relationship with this environment, of the potential human creator.

**Cultural values of a religious or secular nature** shall mean the values indicated in the United Nations Educational, Scientific and Cultural Organization Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Values.

**Intangible cultural heritage** – all the elements of authentic traditional creation, valuable from a historical and cultural perspective, transmitted from generation to generation, expressed in literary, musical, choreographic or theatrical forms, as well as the set of practices, representations, expressions, knowledge and skills, together with the tools, the objects, artefacts, specific clothing, accessories and cultural spaces associated with them that communities, groups and, as the case may be, individuals recognize as an integral part of their cultural heritage

**Smuggling** - crossing the customs border of the Republic of Moldova of cultural values, evading customs control or concealing them from customs control by hiding them in places specially prepared or adapted for this purpose, as well as the non-return to the customs territory of the Republic of Moldova of cultural values removed from the country, if their return is mandatory.

## 6.2 Legal acts

- The Republic of Moldova ratified the Convention on measures to be taken to prohibit and prevent the illicit import, export and transfer of ownership of Cultural Property, adopted by the UNESCO General Conference in Paris on 14 November 1970, by **Law No 141 of 21.06.2007**
- Law No 280/2011 on the protection of national mobile cultural heritage
- Law No 218/2010 on the protection of archaeological heritage
- Law on Museums No 262/2017
- Law No 160/2017 on libraries
- Law No. 1569/2002 on the procedure of introduction and removal of goods from the territory of the Republic of Moldova by natural persons
- CODE No. 1149/2000 Customs Code of the Republic of Moldova
- CODE No. 95 of 24-08-2021 Customs Code
- Criminal Code of the Republic of Moldova
- Criminal Procedure Code of the Republic of Moldova
- Contravention Code of the Republic of Moldova
- Law 58/2012 on the protection of intangible cultural heritage



- Law 1530/1993 on the protection of monuments
- Law 192/2011 on public monuments
- Law 413/1999 of culture
- Law 880/1992 on the Archives Fund of the Republic of Moldova
- Law 1350/2000 regarding architectural activity
- Decision of the Government of the Republic of Moldova regarding the approval of the Culture Development Strategy "Culture 2020" and the Action Plan regarding its implementation
- The Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted on May 14, 1954 in The Hague. The Republic of Moldova acceded to the convention on 07/06/1999. Along with the Convention, the first Protocol for the protection of cultural assets in case of armed conflict was also adopted, which includes several essential provisions.
- On 16.11.1972, UNESCO adopted a new normative act, the Convention on the Protection of World, Cultural and National Heritage, the Republic of Moldova ratified it through **Law No. 1113 of June 6, 2022**, which regulates the situations related to the international protection of heritage, the collaboration of the participating states and the realization of the national protection of the cultural heritage.
- The European Convention on the Protection of the Archaeological Heritage, dated January 16, 1992, ratified by the Republic of Moldova on October 11, 2001, in force for the Republic of Moldova since June 22, 2002.
- The Convention on Safeguarding the Intangible Cultural Heritage, adopted in Paris on October 17, 2003, ratified by the Republic of Moldova on February 10, 2006.
- The International Covenant on Economic, Social and Cultural Rights of December 19, 1966 (from the 2 Covenants of the UDHR), ratified by the Republic of Moldova on July 28, 1990
- The Council of Europe's framework convention on the value of cultural heritage for society, adopted in Faro on October 27, 2005, ratified by the Republic of Moldova on September 26, 2008.
- Convention on the European landscape, adopted in Florence on October 20, 2000, ratified by the Republic of Moldova on October 12, 2001
- The European Cultural Convention, adopted on December 18, 1954 in Paris and ratified by the Republic of Moldova on May 24, 1994
- Convention on the protection of the world cultural and natural heritage, adopted on November 23, 1972 in Paris, ratified by the Republic of Moldova on June 6, 2002
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in Paris on October 20, 2005, ratified by the Republic of Moldova on July 27, 2006
- The Convention for the Protection of the Architectural Heritage of Europe, adopted in Grenada on October 3, 1985, ratified by the Republic of Moldova on October 11, 2001
- The Republic of Moldova ratified CITES on 25th March 2001 and it entered into force on 27th June



2021

- Decree No. 14 of the Ministry of Ecology, Construction and Land Use Planning validating the Regulation on import and export of wild flora and fauna covered by CITES
- Regulation No. 14 of the Ministry of Ecology and Natural Resources validating the procedure for the issuance of permits for import and export of wild flora and wild fauna species, parts and derivatives thereof, and also import, export and re-export of flora and fauna species regulated by CITES
- Law on Animal Kingdom no. 439-XIII of 27 April 1995
- Law Vegetable Kingdom no. 239-XVI of November 8, 2007
- Law no. 1102-XIII of 6 February 1997 on Natural Resources
- Law no. 1538-XIII of 25 February 1998 on Natural Protected Areas Fund
- Law no. 755-XIV of 21 December 2001 on Biosafety
- Law no. 325-XVI of 15 December 2005 on the Red Book of the Republic of Moldova

Currently, we have in elaboration the **legislative modification** in the field of cultural goods. Namely, the Government's draft decision for the implementation of Law 280/2011 on the protection of movable national cultural heritage, drawn up under Art. II of Law 285/2022 for the amendment of Law no. 280/2011 on the protection of movable national cultural heritage, according to which the Government, within 6 months from the date of entry into force of this law, will approve: "*Regulation of the organization and operation of the Service for records and circulation of movable cultural goods*" and "*Regulation on the movement of movable cultural goods*". In the period 29.11.2022-09.12.2022, to public consultation, on the public platform was published the Announcement regarding the initiation of the drafting of the Government decision for the implementation of Law 280/2011 on the protection of movable national cultural heritage (<https://particip.gov.md/ro/document/stages/anunt-privind-initierea-elaborarii-proiectului-hotararii-de-guvern-pentru-punerea-in-aplicare-a-legii-2802011-privind-protejarea-patrimoniului-cultural-national-mobil/9833>).

## 6.3 Example cases

1) Among the high-profile cases, on which a sentence has already been issued, we can mention the attempt to smuggle into the Republic of Moldova, a batch of 728 numismatic coins, an ancient sculpture, fragmented into 2 pieces, characteristic of the Sumerian culture with an age of approximately 2400 – 2800 BC and a sculpture fragment, a human head, made of marble, with an approximate age of - the end of the 1st century BC, the beginning of the 1st century AD.

Thus, the guilty persons were sentenced to 4 years in prison for each, and the goods were confiscated for the benefit of the state.

2) On 01.02.2023, a "George Kolz" model violin was found by the customs officers from Leușeni,



after they checked a minibus coming from Germany to the Republic of Moldova. It is assumed that the musical instrument is almost 300 years old (1726). **Case is still under investigation**

3) On May 2011 a citizen from the Republic of Moldova was arrested for smuggling ancient coins. The Ukrainian customs officers at the Cuciurgan customs post found a silver coin and 20 copper coins in a plastic bag, among the man's personal belongings. According to the law enforcement officers, the suspect purchased them in Odessa, and, according to experts, the seized coins date back to the century. III-I BC BC and IV-III BC.

4) On October 22, 2021, at the Chisinau Airport, during the customs control of passengers on the Chisinau-Moscow route, an undeclared violin was detected, which was suspected to be an object of cultural value. Later, during the control, two certificates dated 20.10.2021 and issued by an expert accredited by the Ministry of Culture were presented, in which it is indicated that the musical instrument was created by Giovanni Battista Guadagnini and that "it has historical value and artistic for the heritage of the Republic of Moldova." In addition, inside the case, the document of "Expertise of musical instruments", issued by the same expert, was found, indicating the value of the violin, which exceeds the amount of 2 million euros.

According to article 9 para. (3) from Law **1569/2002**, according to which - natural persons do not have the right to remove cultural values from the territory of the Republic of Moldova. On the other hand, other values in the field of art, literature, science, culture and religion can be removed from the territory of the country on the condition of presenting the authorization issued by the Ministry of Culture, specifying the cost of the object and the fact that it has no cultural value.

The person in question did not have such an authorization when the violin was found, and the Ministry of Culture, according to the official response provided to the Customs Service, communicated that until October 22, it had not issued such an authorization.

Therefore, the facts described were the basis for the initiation of criminal prosecution for attempted smuggling of cultural values, by not declaring the asset. The violin was picked up, being kept under maximum security by the Customs Service.

It should be noted that, three days after picking up the instrument, the person who did not declare it to customs, addressed to another accredited expert from the Ministry of Culture, who issued her a certificate with a contradictory statement to the one presented on October 22, 2021 regarding the value of heritage.

Moreover, he issued the appraisal report without having the violin in front of him, indicating the characteristics of the violin and its value. Later, the passenger attached the document to his application submitted to the Ministry of Culture, which issued a certificate contrary to the legal provisions, in the sense of the law mentioned above.

In the meantime, the person presented the loan contract of a violin to the prosecuting body, through her lawyer. This, however, was without the date of its preparation.



All together, they gave reasonable ground to the criminal investigation body to request, through Interpol, information about the state of belonging of this violin and whether it is not listed as stolen. For this purpose, the violin was examined (and not expertized) by a specialist from an expertise institution, with dedicated equipment, and the images obtained were sent to Interpol member states. More precisely, the examination procedure of the violin was confused with its expertise, as a result of public statements, issued by people other than the representatives of the investigating authorities. Meanwhile, information has arrived from two Interpol member states, regarding three cases of theft of violins with similar characteristics. On one of them, additional data was requested about the violin detained in the Republic of Moldova, necessary for their verification by the requesting state.

In order to establish the necessity of declaring this type of instrument, the customs authorities of the state from which the passenger arrived in Chisinau were additionally questioned. They communicated that the musical instrument was not declared, although the person had the obligation to do so.

It should be noted that the Swiss authorities did not submit the answers in time to obtain the documents of origin of the seized violin, although the person concerned referred to the fact that the owner of the violin is a citizen of that state. The Prosecutor's Office contacted, by phone, the Swiss citizen indicated in the contract, who only sent the copy of the requested documents on December 2, 2021.

At the same time, the criminal investigation body ordered the performance of complex judicial expertise, with the involvement of an international specialist in the field. This was determined by the need to establish the authenticity of the violin, the year of manufacture, the author of the workmanship, its cost and whether it represents a cultural value.

One of the discrepancies in this case consisted in the information presented in the examination reports made by the national experts, where the violin was dated 1735, although in the documents presented by the person, the year of manufacture of the violin was 1775-1785. This fact determined the need to undertake several actions, in order to establish the circumstances of the case. It should be noted that as a result of the expertise done at the request of the legal authorities, from the preliminary findings it was established that, however, it was manufactured in the period 1775-1785.



## 7 Legislation on protection of CITES specimens

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CITES stands for *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, this acronym is used for an international intergovernmental agreement that entered into force in 1975, otherwise known as the Washington Convention. The purpose of the Convention is to regulate and ensure that the existence of fauna and flora is not exposed to excessive exploitation caused by international trade.

Up to the date of this study, the CITES Convention protects over 30,000 species of animals and plants, regulates trade in living and dead specimens as well as their fragments (e.g. ivory), and products made from these species (e.g. medicines). The parties to the CITES Convention are obliged to closely cooperate in regulating trade in species listed in one of the CITES appendices. The Convention has been ratified by 172 states.

### 7.1.1 Species

Species - this is the basic category of classification and a taxonomic rank of an organism, the basic unit of the evolution of organisms, and at the same time the basic formal unit of the systematics of organisms. It is used for species in biological sense and any taxonomic unit, population as well as hybrids of that species in the first or second generation, with the exception of domesticated, bred or cultivated forms.

### 7.1.2 Endangered species

Endangered species - are plant or animal species occurring in a limited area, whose small and declining numbers are the result of the impact of unfavorable natural or anthropogenic factors.

### 7.1.3 Species of interest to the European Union

Species (plant or animal species) of interest to EU countries:

- 1a) endangered, with the exception of species whose natural range in a given territory is a marginal and which are not endangered or vulnerable in the western palearctic region,
- 2) vulnerable, likely to be classified as endangered species in the near future if the factors causing the threat persist to affect it,



3) rare, of a small population that is not currently endangered or vulnerable, but is at risk due to its occurrence within limited geographical areas or its significant dispersion over a wider area,

4) endemic and requiring special attention due to the specific nature of their habitat or the potential impact of exploitation on these habitats or the potential impact of exploitation on its conservation status;

### 7.1.4 Specimen

Specimen shall mean any animal or plant, whether alive or dead, of the species listed in Annexes A to D, any part or derivative thereof, whether or not contained in other goods, as well as any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals or plants of those species, unless such parts or derivatives are specifically exempted from the provisions of this Regulation or from the provisions relating to the Annex in which the species concerned is listed by means of an indication to that effect in the Annexes concerned.

A specimen will be considered to be a specimen of a species listed in Annexes A to D if it is, or is part of or derived from, an animal or plant at least one of whose 'parents` is of a species so listed. In cases where the 'parents` of such an animal or plant are of species listed in different Annexes, or of species only one of which is listed, the provisions of the more restrictive Annex shall apply. However, in the case of specimens of hybrid plants, if one of the 'parents` is of a species listed in Annex A, the provisions of the more restrictive Annex shall apply only if that species is annotated to that effect in the Annex;

### 7.1.5 Worked specimens that were acquired more than 50 years previously

Such specimens shall mean the ones that were significantly altered from their natural raw state for jewelry, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this Regulation and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to effect their purpose.

Specimens that fall into the category of significantly altered worked specimens are often described as “antiquities”.



## 7.1.6 Examples of worked specimens

The definition of worked specimens can be divided into the following criteria, all of which should be assessed:

1. the item was manufactured/processed before March 3, 1947,
2. the item has been significantly altered from its natural state,
3. the item can be clearly assigned to one of the following categories: jewelry, ornaments, works of art, utility items, musical instruments and does not require further shaping, crafting or processing in order to serve the purpose for which it is intended,
4. the scientific authority of a given Member State is certain that the item was acquired in that condition.

### 7.1.6.1 Furniture and instruments



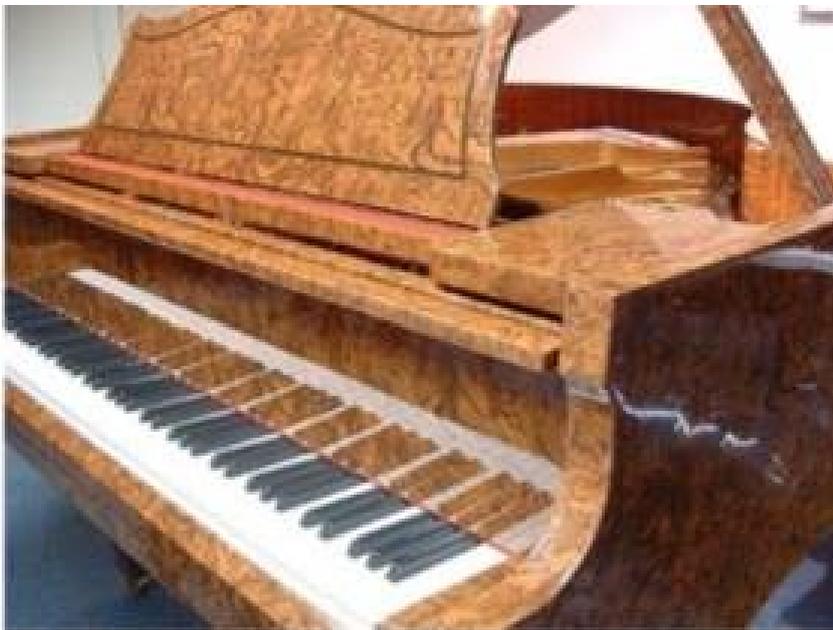
*Picture 5*

Two rosewood tables inlaid with ivory and ebony, Hoshiapur, North India



*Picture 6*

Mahogany case clock, Thomas Fowle East Grinstead, 1714 - 1830 England



*Picture 7*

Antique pianos almost always have ivory keys, but may also have ivory inlays or rosewood marquetry. Note - ivory keycaps are often replaced with the keys from pianos that are considered unsaleable in the antique restoration industry.



### 7.1.6.2 Utility items and works of art



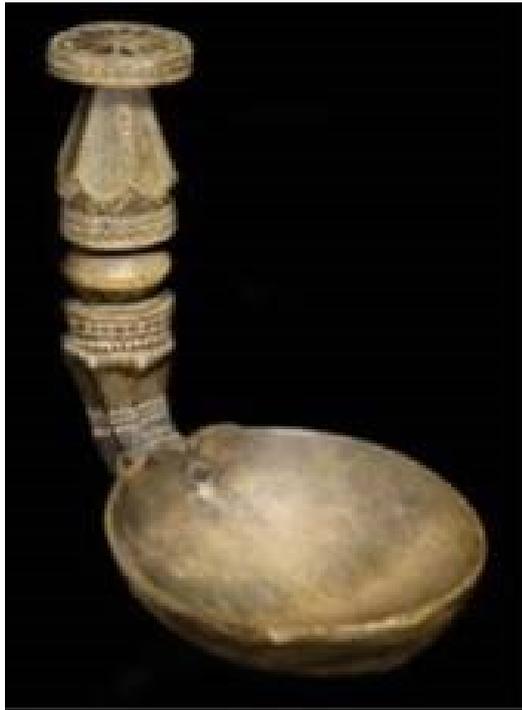
*Picture 8*

A bowl made of carved rhino horn. The age of such items is usually determined by experts from the antiques industry. Most of the items that can be seen in the recognized trade probably come from the 18th century and earlier.



*Picture 9*

Carved ivory figurine



*Picture 10*

Ceremonial spoon made of rhino horn



*Picture 11*

Men's canes with an ivory handle that were often produced in both the 18<sup>th</sup> and in the 19<sup>th</sup> century. However, care should be taken when purchasing such items on the basis of trust, as many of such items have been reworked from other ivory specimens, and in many cases they were recently produced.



*Picture 12*

Africa, 19th/20th century ritual horn made of elephant tusks and used during ceremonies



*Picture 13*

This elephant's tusk has a carving covering at least 90% of its surface and could qualify as a "worked specimen"



### 7.1.7 Examples of specimens not qualifying as worked specimens



*Picture 14*

Dinner gong 19th/20th century with uncarved tusks or parts of tusks. Although these parts are generally considered to be an antiquity, this item would not qualify as "worked." There are also numerous examples of such items that have been produced from rhino horn, narwhal tusks and tiger claws.



*Picture 15*

Rhino horn and other specimens listed in Annex A, where the horns or skulls were placed on a wooden plate, would not qualify as "worked."

Other items made from rhino horn that have not been significantly altered from their natural, original state, such as specimens in which other objects have been inserted (e.g. clocks, inkwells, barometers or other objects), would not qualify as "worked" .



*Picture 16*

Whole sea turtle shells are widely available commercially, but would not qualify as "processed" unless a stuffed animal is still attached to the shell. Varnishing or polishing the shell would not qualify as "worked". Adding mounts to be placed on the wall would also not qualify as "worked".



*Picture 17*

Sword from 19<sup>th</sup> century with the rostrum of the sawfish. Adding a handle and varnishing and polishing the sawfish blade would not qualify as "processing".



## 7.2 Legal regulations

### 7.2.1 International regulations

The most important act of international law concerning the legal protection of endangered species is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on March 3, 1973, as amended); - the current text of the Washington Convention has been published in the Official Journal of the European Union of 30<sup>th</sup> December 2021 L 473, p. 1–130.

### 7.2.2 European Union regulations

The legal regulations of the European Union are contained in a number of legal acts listed below:

1. Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 061 3.3.1997, p. 1.)
2. Commission Regulation (EU) 2017/160 of 20 January 2017 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 27, 1.2.2017, p. 1–98)
3. Commission Regulation (EC) No 865/2006 of 4 May 2006 establishing detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 166, 19.6.2006, p. 1–69).
4. Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 establishing rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006 (OJ L 242, 7.9.2012, p. 13–45).

### 7.2.3 Legislation on the protection of fauna and flora in force in the territory of Republic of Poland

The legal provisions applicable in the territory of the Republic of Poland concerning the protection of fauna and flora species are included in a number of laws and regulations:

1. Act of 16<sup>th</sup> April 2004 on Nature Protection.
2. Act of 21<sup>st</sup> August 1997 on the Protection of Animals.
3. Act of 11<sup>th</sup> March 2004 on Animal Health Protection and Combating Animal Infectious Diseases.



4. Act of 18<sup>th</sup> December 2003 on the Protection of Plants.
5. Regulation of the Minister of Environment of 16<sup>th</sup> December 2016 on the Protection of Animal Species.
6. Regulation of the Minister of Environment of 9<sup>th</sup> October 2014 on the Protection of Plant Species.
7. Regulation of the Minister of Environment of 9 October 2014 on the Protection of Species of Fungi.

#### *7.2.3.1 Polish Act of 16<sup>th</sup> April 2004 on Nature Protection, article 128.*

Whoever:

- 1) transports across the border of the European Union a specimen of a species subject to protection under the provisions referred to in Art. 61 sec. 1 [*CITES species – translator’s note*] without the document required under the provisions referred to in Art. 61 sec. 1, or contrary to its conditions,
  - 2) violates the provisions of European Union law regarding the protection of wild animal species and plants in the scope of regulating their trade through:
    - a) failure to present an import declaration,
    - b) using specimens of specific species for purposes other than those indicated in the import permit,
    - c) unauthorized use of exemptions from provisions when trading in artificially propagated plants,
    - d) offering to vend or purchase, procuring or acquiring, using or publicly exhibiting for commercial purposes, selling, keeping or transporting specimens of specific species of plants or animals for sale,
    - e) using a permit or certificate for a specimen other than the one for which it was issued,
    - f) submitting an application for an import, export or re-export permit or a certificate without informing about the earlier rejection of the application,
  - 3) contrary to the prohibitions referred to in Art. 73 sec. 1, owns and keeps or imports from abroad living animals of species dangerous to human life and health, or sells, exchanges, rents, grants donations from them or lends them to entities unauthorized to possess them
- shall be punishable by imprisonment from 3 months to 5 years.

#### *7.2.3.2 Polish Act of 16<sup>th</sup> April 2004 on Nature Protection, article 128a.*

Whoever trades in specimens of a species subject to protection under the provisions referred to in Art. 61 sec. 1 therein [*CITES species – translator’s note*], in a significant number, in such conditions or in such a way that it has an impact on maintaining the proper conservation status of the species, shall be punishable by imprisonment from 3 months to 5 years.

2. If the perpetrator of the act specified in section 1. acts unintentionally, is subject to a fine, the penalty of restriction of liberty or imprisonment for up to 2 years.



### 7.2.3.3 Polish Act of 16<sup>th</sup> April 2004 on Nature Protection, article 131

Whoever:

- 1) conducts business activity in the field of trade in animals of species subject to protection under the provisions referred to in Art. 61 sec. 1, [*CITES species – translator’s note*] and does not have or does not present the appropriate documentation confirming the legal origin of the animal,
  - 1a) captures or kills wild animals referred to in art. 49 of the Regulation of the Minister of Environment on animals under species protection section 1 point a and b, using the devices, ways or methods referred to in Art. 54 herein (prohibition of capturing or killing wild animals in a way that may cause the disappearance or disturbance of the population of these animals),
  - 2) establishes or runs a botanical garden, a zoo, a center or an animal sanctuary without a permit or against its terms,
  - 3) shuts down:
    - a) a zoological garden or a center – and does not provide the animals staying there with conditions corresponding to their biological needs,
    - b) animal asylum - does not ensure the welfare of animals staying there,
  - 4) (repealed)
    - 4a) without taking due care, allows an animal of a species dangerous to human life and health to escape,
  - 5) without a permit or contrary to its conditions, transfers plants or animals of endangered species from the botanical garden or zoological garden to the natural environment,
  - 6) (repealed)
  - 7) uses chemicals on public roads, streets and squares in a way that significantly harms green areas or trees,
  - 8) in the event of an obligation to obtain the decision on the conditions for conducting activities, conducts activities requiring the notification referred to in art. 118 sec. 1 herein, without making this notification or contrary to the decision of objection referred to in art. 118 sec. 6 point 1 herein, or without obtaining or contrary to the conditions of the decision on the conditions for conducting activities referred to in Art. 118 sec. 8,
  - 9) (repealed)
  - 10) (repealed)
  - 11) fails to notify the regional superintendent for environmental protection or the head of the local authority, mayor or president of the city about the discovery of fossil remains of plants or animals,
  - 12) (repealed)



13) contrary to the provisions of art. 125 (conditions for the destruction of plants, animals or fungi or their habitats, not covered by forms of nature protection or killing animals), kills animals, destroys plants or fungi or destroys the habitats of plants, animals or fungi,

14) without permission or contrary to its conditions, violates the prohibitions in relation to plants, animals or fungi under species protection

- is punishable by imprisonment or a fine.

#### *7.2.3.4 Polish Act of 21st September 1997 – The Animal Protection Act, article 10a*

It is forbidden to:

1. trade pets at marketplaces, fairs and exchanges;
2. running markets, fairs and exchanges with the sale of pets;
3. placing dogs and cats on the market outside their breeding or breeding facilities.

#### *7.2.3.5 Polish Act of 21st September 1997 – The Animal Protection Act, article 37*

Whoever violates the orders or prohibitions set forth in: art. 9 herein (obligations of the pet keeper), art. 10a sec. 1-3 herein (marketing pets at marketplaces, fairs and exchanges), art. 11 herein (providing care to homeless animals as own tasks of communes sec. 3), art. 12 herein (keeping livestock sec. 1-6), art. 13 herein (permission to introduce a new animal breeding technology sec. 1), art. 14 herein (use of animals for work), art. 15 herein (treatment of animals used for entertainment, performance, film, sports and special purposes sec. 1-5), art. 16 herein (prohibition of the use of animals in shows and sports bearing signs of cruelty), art. 17 herein (animal training for show and entertainment purposes sec. 1-7), art. 18 herein (keeping, breeding and presentation of animals for entertainment, show, film, sports and special purposes), art. 22 herein (acquisition of free-living (wild) animals for the purpose of dissecting their carcasses sec. 1), art. 22a herein (consent to the acquisition of free-living (wild) animals in order to create a collection of prepared corpses of these animals), art. 25 herein (duties of the driver who hit the animal) or art. 27 herein (veterinary procedures performed on animals) are punishable by arrest or a fine.



## 7.2.4 Legislation on the protection of fauna and flora applicable in the territory of Federal Republic of Germany

In Germany, the **Act on Nature Conservation and Landscape Management** (Federal Nature Conservation Act –BNatSchG) of 29 July 2009 is the most decisive normative framework. This Act incorporates, inter alia, the following EU provisions:

- Regulation (EC) No. 338/97 (=Basic Regulation for the Protection of Species of Wild Fauna and Flora), Official Journal of the European Community No. L 61 of 3.3.1997.
- Regulation (EC) No 398/2009 amending Regulation (EC) No 338/97 as regards the implementing powers conferred on the Commission
- Regulation (EU) No 2019/1010 amending Regulation (EC) No 338/97. In Article 15(4), the reporting requirements on the "implementation report" (formerly: biennial report) and on "illegal trade" are adapted to the international regulations under CITES.

The new Appendices implementing the decisions of the 18th CITES Conference of the Parties for listing amendments were published with Regulation (EU) 2019/2117 on 11.12.2019 and entered into force on 14.12.2019.

- Regulation (EC) No. 865/2006 EC Species at Risk Implementation Regulation (consolidated version as of 06.06.2015)
- Regulation (EU) No 2019/220 of 06 February 2019 amending Regulation (EC) 865/2006 (entered into force 27.02.2019). The amendments concern Article 5b and Annexes VII and VIII of Regulation (EC) No 865/2006.
- Regulation (EU) No 792/2012 ("Forms Regulation", consolidated version).
- Regulation (EU) 2019/1587 suspending the introduction into the European Union of specimens of species from certain species-land combinations.
- Habitats Directive 92/43/EEC
- Birds Directive 2009/147/EC.

According to Article 1 of Act on Nature Conservation and Landscape Management on the purposes of nature conservation and landscape management, nature and landscape in both settled and non-settled areas are to be protected – by virtue of their intrinsic value and importance as a basic necessity of human life, and also as a responsibility to future generations –, in keeping with the following paragraphs, so as to permanently safeguard

- biological diversity,
- the performance and functioning of the natural balance, including the ability of natural resources to regenerate and lend themselves to sustainable use, and
- the diversity, characteristic features and beauty of nature and landscape, as well as their



recreational value. Such protection shall include management, development and, as necessary, restoration of nature and landscape (general principle). This approach (and wording) follows the CITES Agreement (Washington, 1973).

In order to permanently safeguard biological diversity, the following actions are to be taken, in accordance with the relevant threat levels:

- viable populations of wild plants and animals, including their living sites, shall be protected, and exchange between relevant populations, and migrations and resettlement, shall be facilitated,
- threats to naturally occurring ecosystems, biotopes and species shall be countered,
- communities and biotopes, including their structural and geographic characteristics shall be preserved, in representative distributions; certain parts of landscapes shall be permitted to undergo natural dynamics.

The Federal Nature Conservation and Landscape Management Act also contains protection regulations for European bird species as well as for species for which a strict protection system is to be introduced according to the Fauna-Flora-Habitat Directive. In addition, Annex 1 of the Federal Species Protection Ordinance places under protection native animal and plant species whose existence is endangered by human access. These regulations primarily concern:

- all European bird species,
- many European reptile, amphibian and insect species, and
- a large number of plant species.

The **Federal Ordinance on the Protection of Wild Fauna and Flora** (Federal Species Protection Ordinance – BArtSchV) of 16.02.2005 was enacted on the basis of the Federal Nature Conservation Act (BNatSchG) and regulates the protection of wild animal and plant species. Within the legal system, the Federal Nature Conservation Act and the Federal Species Protection Ordinance are part of environmental law and thus belong to the legal field of administrative law. Since both regulations contain both fines and penalties for violations, they are also considered to be so-called ancillary laws of criminal law.

The Federal Species Protection Ordinance also expands and tightens the protection of species, the EU Regulation of the European Community (Regulation (EC) No. 338/97). With this regulation, the Washington Convention on International Trade in Endangered Species was enacted in all EU member states.

In addition to the individual paragraphs (17 in total), the Federal Species Protection Regulation contains a total of seven (7) annexes.

The most important appendices for the terrarium hobbyist are:

- Appendix 1 (Protection status of wild animal and plant species)



- Appendix 4 (Model for the record and delivery book)
- Appendix 5 (Species exempt from notification)
- Appendix 6 (Identification methods).

The Federal Nature Conservation Act (BNatSchG) and the Federal Ordinance on the Protection of Species (BArtSchV) contain various regulations that make it easier for the authorities to monitor compliance with species protection regulations when keeping, trading or breeding protected animals. These include the so-called obligation to provide proof for owners of species-protected animals and plants, as well as the obligation to keep records and the obligation to label.

### ***Obligation to provide evidence***

An important regulation in the enforcement of species protection prohibitions is the so-called obligation to provide evidence. It is intended to help enforce the general ban on possession of animals and plants of specially protected species under section 44(2) of the Federal Nature Conservation Act. The obligation to provide evidence according to section 46 paragraph 1 BNatSchG means that a person who possesses animals or plants of specially protected species must be able to prove to the competent authority that he or she is entitled to do so. In doing so, the person must prove to the full satisfaction of the authority that he or she can justifiably invoke an exemption from the ban on possession. If he or she is unable to do so at the request of the authority, the authority may take custody of the animals or plants, seize them or confiscate them. This regulation applies to both living and dead animals and plants, as well as to developmental forms such as eggs or larvae, and in principle to parts of animals and plants and products derived from them.

### ***Obligation to keep records***

Anyone who commercially trades in, processes or handles animals or plants of specially protected species is obliged under Section 6 of the Federal Ordinance on the Protection of Species (BArtSchV) to keep a record book. A model containing the minimum requirements of such a book can be found in Annex 4 (BArtSchV). The book must contain, among other things, the date of arrival and departure, the name of the animals and plants present in the stock, as well as the exact data of the supplier and the buyer of animals or plants relevant under species protection law. This is to record the trade route in a comprehensible manner in order to be able to withdraw illegally traded specimens of the particular species from circulation and to prevent trade in them.

Some species are exempted from the record-keeping requirement, for example certain species of mushrooms, stone crabs, lobsters, certain snails or live sturgeons. In these cases it is sufficient, according to section 6 paragraph 2 BArtSchV, if an inscription on a receipt or on the packaging indicates compliance with species protection regulations. Section 6 paragraph 2 BArtSchV provides for further exceptions from the obligation to keep records, for example for artificially propagated plant species.



If a trader is obliged to keep records, he must be able to hand over the records to the competent authority for inspection upon request.

Anyone who does not properly fulfil his or her obligation to keep records or does not hand over the records for inspection upon request by the authority commits an administrative offence that can be punished with a fine of up to 10,000 euros.

### **Labelling obligation**

The competent authorities and also private individuals should have the possibility to clearly determine the identity and origin of certain protected animals. This is to ensure compliance with import, possession and marketing bans. In order to enable identification, certain mammals, birds and reptiles listed in Annex 6 of the BArtSchV are to be marked.

Anyone who fails to comply with marking obligations or alters or removes an existing marking without the consent of the competent authority commits an administrative offence punishable by a fine of up to 10,000 euros. Currently, an extension of the marking obligation to further species is being discussed. The extension is intended to strengthen the enforcement of species protection and also ensure that the authorities are aware of the whereabouts of animals of exotic species that may be carriers of pathogens that can spread to humans. In this way, the risk of zoonoses is to be reduced.



## 7.2.5 Legislation on the protection of fauna and flora applicable in the territory of Republic of Cyprus

1. Regulations for the practice of hunters 2008
2. The Possession of Domesticated Individuals of Wild Birds or Wild Fauna Regulations of 2019
3. Training Areas of Hunting Dogs Regulations of 2019
4. Consolidated Legislation 29.12.2020
5. The Firearms Law (Chapter 15)
6. The Dog Law (Law 184(I)/2002)

### Poaching Strike

The Game Fund, as the only Service that patrols the countryside and forests of Cyprus 24 hours a day, has denounced and prevented several illegal actions in addition to poaching cases such as drug cases, illegal transport of fireworks, animal theft, smuggling and antiquities theft.

In the last 7 years more than 2,800 cases of poaching involving more than 4,000 persons have been reported by the game wardens, which involved:

- hunting during the night
- hunting in prohibited hunting areas
- hunting of protected species
- hunting with illegal means (nets, poles, sound-producing devices that emit the chirping of wild birds), etc.

Particular emphasis is also placed on the cases concerning the possession and use of nets and poles where a particular problem is identified. In combating the above phenomenon, the European Union shows particular sensitivity. The intensive efforts of the Game Fund to combat the capture of birds with nets and traps has significantly reduced the extent of the phenomenon.



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## 7.2.6 Legislation on the protection of fauna and flora applicable in the territory of Republic of Moldova



## 7.3 CITES specimens – examples of smuggling

In numerous investigations of economic crimes, traditional Asian medicine drugs are more and more often seized. It is done in three forms: as a pure agent, as a mixture of several ingredients or as patented drugs in the form of tablets, pills, patches, derived from animals of endangered species. The most serious contemporary problem is the smuggling of some endangered species to China, Taiwan, Korea, Vietnam and Hong Kong in order to produce traditional medicines.

CITES specimens can be identified by various methods of identification, including:

1. identification based on a reading from a ring or leg band (in the case of birds),
2. radio frequency identification using microchips implanted in animals (used in reptiles, birds and mammals),
4. identification based on photographic documentation,
5. identification by means of tags (numbered tags attached to hard parts of the animal's body, as in the case of corals, clams, seahorses),
6. identification based on specially developed patterns for recognizing animal species,
7. identification based on genetic testing.

### 7.3.1 Examples

Bringing trade in animals and plants under the common control of all countries of the world has been done to enhance the protection of endangered species of fauna and flora from complete extinction under the influence of ruthless pursuit of profit. The estimated profit from the illegal trade in wildlife is the third biggest, it is one of the most profitable trade branches in the world, just after drug and arms trade.

The scale of smuggling and the ingenuity of people committing prohibited acts increases every year, which contributes to the increase in expenditure on entities fighting this practice. The presented outline of protected species in this study is intended to bring closer and sensitize the officers of public services, but also to draw the attention of the general public to the illegal trade and acquisition of parts or fragments of endangered species. It is a joint responsibility of both citizens and authorities established to combat crime related to environmental protection. Selected animal species and products obtained from them are presented below.



### 7.3.1.1 *Moschus*



Picture 18

The musk of these animals is used to make perfumes, but whole specimens are also killed in the process.

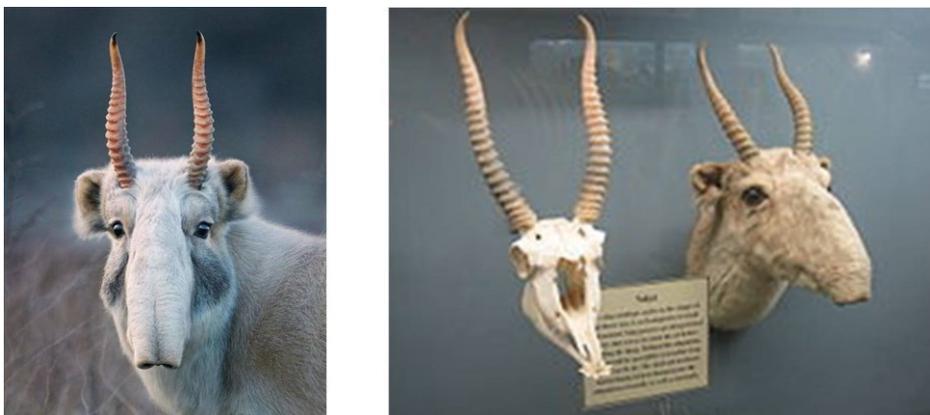
### 7.3.1.2 *Leopard and tiger*



Picture 19

Powdered body parts, claws, meat, skeleton, entrails from which wine and other products are made.

### 7.3.1.3 *Saiga antelope*



Picture 20



Killed mainly for meat, skins and horns that are powdered and made into products believed to be aphrodisiacs.

#### 7.3.1.4 Seahorses



Picture 21

Often bought as gifts or kept in aquariums. The greatest demand is in traditional Chinese, Japanese and Korean medicine (they are believed to have healing properties in respiratory diseases and impotence).

#### 7.3.1.5 The brown bear (*ursus arctos*)



Picture 22

Formerly hunted for its hides, meat, and as a big game trophy, the brown bear's most severe threats are currently habitat destruction and persecution. Bears grease was a product used to prevent baldness and stimulate hair growth between the late 17th and early 20th centuries.



### 7.3.1.6 Turtle



*Picture 23*

The plastrons (belly part of the shell) are made into glue.

## 8 Purpose of activities for the protection of cultural goods and CITES

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The aim of the project "Crime against cultural goods and CITES" was to develop and collect in one place a number of legal acts, expert consultations as well as exchange of experience and information related to the subject matter.

The thematic scope of the lectures and presentations covered a wide range of problems related to crimes related to the destruction or damage of historic buildings, falsification of antiquities and all activities related to counteracting and combating illegal trade in cultural goods as well as "endangered species" - CITES.

Educational materials, good practices and solutions used by participating services are preceded by numerous cases and years of field work in this . The project allowed for the exchange of experience and made possible establishing of working contacts between officers, which in turn will certainly contribute to more effective cooperation and prevention of both organized crime and crimes that are facilitated by lack of knowledge by general public.