

Recent Developments in the Netherlands after the Conference *Illegal Trade Rotterdam 2004*

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The State Inspectorate for Cultural Heritage supervises on a national level the preservation and safeguarding of national cultural heritage. The Collections Division of the State Inspectorate is among others the responsible authority for the European cultural legislation. The State Inspectorate works closely together with Dutch Customs and is instrumental in the professional training of cultural contact persons at Dutch Customs. In the past ten years the Netherlands has gained a lot of experience concerning the illicit traffic of cultural goods. The conclusions and recommendations of the Conference *Illegal Trade in 2004* led to new activities in this field, not only at a policy level, but also at the executive level and for law enforcement.

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THE STATE INSPECTORATE FOR CULTURAL HERITAGE

The State Inspectorate for Cultural Heritage in the Hague is a department of the Ministry of Education, Culture and Science. On a national level it supervises the preservation and safeguarding of national cultural heritage: (1) collections of visual arts, natural history, ethnology and numismatics, (2) archaeological findings from excavations, (3) state archives, and (4) architectural monuments. The State Inspectorate has four Divisions (Collections, Archaeology, Archives, and Monuments), each supervising one of these specific fields. The Inspectorate ensures compliance with the law and promotes improvements to the management and care of cultural heritage and its proper handling. When necessary, the Inspectorate takes action in the event of incidents and calamities.

The core business of the Collections Division of the State Inspectorate is the supervision of the state-owned collections kept by the (privatized) state museums of several Ministries and the Netherlands Institute for Cultural Heritage (ICN). It monitors the registration, conservation and storage- and risk management. Objects of national importance that are not part of the State collection are protected by the Cultural Heritage Preservation Act of 1984. The Collections Division checks the presence of these objects. Furthermore, the Division is also the responsible authority regarding European legislation for cultural goods

and in the near future will also take on the same function for the UNESCO Conventions of 1954 and 1970.

DEALING WITH EU LEGISLATION ON CULTURAL GOODS

Concerning the European Union (EU) legislation on cultural goods, the State Inspectorate works closely together with Dutch Customs since the implementation of the legislation in 1993* [1]. As of 4 July 2000, a Framework Agreement** has been in force between the Ministry of Finance and the Ministry of Education, Culture and Science, in which agreements in the field of policy and implementation have been set down. The Agreement has been revised in 2006 and will be officially confirmed in 2007 by the Secretary-General of the Ministry of Education, Cul-

* Council Regulation (EEC) No. 3911/92 of 9 December 1992 on the export of cultural goods, Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State and Council Regulation (EC) No. 1210/2003 of 7 July 2003 concerning certain specific restrictions and financial relations with Iraq and repealing Regulation (EC) No. 2465/96 (with restrictions on the trade in the cultural heritage of Iraq).

** Framework Agreement concerning the co-operation between the Ministry of Education, Culture and Science and the Ministry of Finance when supervising the import and export of cultural goods.

Recent Developments in the Netherlands after the Conference Illegal Trade Rotterdam 2004

ture and Science and the Director-General of Customs of the Ministry of Finance. The State Inspectorate is instrumental in the professional training of cultural contact persons at the Dutch Customs to make them more aware of the importance of the national and international protection of cultural goods, cultural legislation and ways of determining possible illegal export out of the EU. Moreover pilot projects are organized regularly for targeted control during important events, such as the autumn auctions at large auction houses and international art fairs. Since 2000, the Dutch Customs and the State Inspectorate have worked together on a strategic and operational risk analysis in which risk indicators for (il)legal traffic in cultural goods are formulated. The system of risk indicators is used to determine the profundity of controls by the Customs. The Customs does the primary control at the (external) borders and the Inspectorate performs the second-line supervision.

PROBLEMS CONCERNING IMPORT

In the Netherlands the Inspectorate and the Customs have legal tasks and authority concerning the export of (protected) cultural goods to non-European Union countries. But until now there is no legislation that gives them the authority to deal with the import into the Netherlands of cultural goods that have been unlawfully removed from a third country.

In the past ten years the Netherlands regularly faced illicit traffic of cultural goods. In general it can be said that most of the cultural goods are discovered at Schiphol International Airport in Amsterdam and at the port of Rotterdam. Most objects were discovered during regular customs control. The most significant cases of 'illegal import' in the Netherlands were sculptures stolen from the temple Banty Chmar (Angkor Wat temple complex, Cambodia), atlases stolen from libraries in Russia and Ukraine and cultural goods robbed from Thailand and Cambodia. In addition, objects from Argentina, Moldavia, Pakistan and Afghanistan have been seized. Every year the Inspectorate is faced with some 15 to 20 cases of illegal import of cultural goods, discovered by the Customs during routine checks.

In a number of cases, confiscated cultural goods were returned to their rightful owners. But not in every case it was possible to prove the unlawful export from the country of origin (although in some cases it was clear that the objects could not have left the country without the permission of the authorities). Besides problems with determining the provenance of the objects, it also became clear that neither the Inspectorate, nor the Customs had the legal instruments and competences to act adequately. With the approval of the Public Prosecutor it was in some cases possible to return the seized cultural goods to the country of origin if theft or fencing could be proved. Not on the basis of specific cultural law, but on the basis of our national criminal law. Not only the above mentioned, but also other problems encountered in fighting illicit traffic

gave reason to organize a Conference on this issue during the Dutch Presidency of the European Union in 2004.

CONFERENCE ON ILLEGAL TRADE ROTTERDAM 2004

The Conference *Illegal Trade: Fighting Illicit Traffic in Cultural Goods within the European Union* in Rotterdam (8-9 November 2004) was organized by the Ministries of Finance, Justice and Education, Culture and Science. The Research Report *Illicit Traffic in Cultural Goods in the Netherlands* was presented to the participants (100 from 29 European countries) and to a representative of the European Commission during the Conference. The reason for the publication of the Research Report was the concern in the Netherlands (but also in other EU member states and in the European Parliament) about the worldwide illegal trade in cultural goods. This causes irreparable damage, not only to the western countries, but especially to economically less developed countries all over the world. The Research Report tries to give more insight into the nature, size and role of illegal trade into and from the Netherlands and served as a starting point for the discussions during the Conference. Invited were colleagues from Police, Customs and various cultural institutions to discuss about possible improvements in the co-operation between all relevant agencies and about the effective employment of legal instruments. The main conclusions and recommendations* were:

- the need for a central register for stolen cultural goods in every EU member state, accessible for law enforcement officials in all member states;
- the authorization of the Customs of the member states to inspect and investigate cultural imports and to hold them for verification;
- European and national institutions are obliged to create a uniform way of operating in terms of control efforts;
- better co-ordination at a European level concerning the determination of 'ownership';
- the desirability of nationally conducted studies into the nature and scope of illicit traffic in cultural goods in each of the member states;
- the need of co-ordinated combat against organized crime.

ACTIVITIES SINCE THE CONFERENCE

In the Netherlands the conclusions and recommendations of the Conference have led to new activities in this field, not only on a policy level, but also on the executive level (State Inspectorate, Customs) and as regards law enforcement (Police). An interdepartmental steering com-

* *Illegal Trade, Fighting Illicit Traffic in Cultural Goods within the European Union*, The Hague, 22 February 2005. The recommendations were focused on: 1) Policy issues, 2) Legislation, 3) Databases, 4) Law enforcement and 5) Preventive measures.

M.M.C. van Heese

mittee was installed to work on solutions for improvement. Members of the steering committee include senior officials from the Ministries of Justice, Interior and Kingdom Relations, Finance and the Ministry of Education, Culture and Science. The aim of the steering committee is to contribute to the improvement of the co-operation between all institutions involved in the fight against illegal trade in cultural goods. It is the task of the committee to tune the various initiatives and to take care for an effective implementation of the recommendations of the Conference both at a national and at an international level.

For the State Inspectorate as well as the steering committee the most important priorities after the Conference are: 1) a better control system at the external borders of the EU, 2) exchange of information, experience and knowledge between Customs, Police and the Inspectorate, 3) research for risk analysis, 4) better co-operation between Customs, Police and the Inspectorate and 5) legal instruments to stop illegal import.

Besides this all, a concrete and important question was how to gain a better idea of illegal flows of cultural goods into and out of the Netherlands.

The Ministry of Justice has therefore financed an investigation into the art trade as a continuation of the results of the Research Report and the conclusions of the Conference. The aim of the investigation is to examine the vulnerability of the art trade for organized crime (especially financial-economic crime) and to make an analysis of the current legal aspects and strategic possibilities to fight illegal art trade. The investigation has started in August 2006 by an external research bureau. An advisory commission which consists of high ranking officials from the fields of museums, Justice, Police, Customs and the art trade supports the research bureau. The investigation consists among others of literature search, interviews with art dealers, supervisors and maintainers and a study into the art sale through internet. The expected results must give more understanding of the art trade, of risks and weak spots within the branch for organized crime, as well as more insight into the (in)effectiveness and (im)possibilities of the current legal system and into the (in)effectiveness of public control. The results of the investigation will be expected in the first half of 2007.

Another initiative taken after the Conference was a promise to the Parliament by the Ministers of Justice, Interior and Kingdom Relations and Education, Culture and Science to reinstall the database for stolen cultural goods after the removal of this service at the National Criminal Investigation Department (KLPD, National Police Agency) in Zoetermeer five years ago. The database studies started in 2006. Orientation visits have been paid to the colleagues in France and Italy* to study the technical possibilities on for instance image seeking, authorisation levels for use by the Customs and the Inspectorate

* Office Central de lutte contre le trafic des Biens Culturels (OCBC), Paris; Comando Carabinieri Tutela Patrimonio Culturale, Rome.

and by the art trade and the public. A special website is also one of the options. But the database will be in the first place for the sake of the Police. In 2007 the database must be operative in the Netherlands.

In the past years the Inspectorate and the Customs have worked together on an operational and a strategic risk analysis, in which risk indicators for (il)legal trade in cultural goods are formulated. Risk analysis has been placed high on the agendas in 2006 and 2007. It is necessary to get a better idea of the size, nature and flows of cultural goods in order to control in a better and more efficient way. Information is a crucial instrument in this: for instance about pre arrivals, pre departures, art fairs, cultural goods with a high risk profile, like protected works of art from Iraq, Afghanistan and EU member states. For the coming years targeted control will be a priority as part of the Customs Enforcement Plan of import and export of cultural goods. The so-called Risk Matrix will be an important tool as part of the Customs Enforcement Plan and contains among others information about categories of cultural goods, modus operandi and control systems.

FURTHERMORE

In July 2004 the State Secretary of Culture and Media and the Minister of Justice decided to ratify the UNESCO Convention of 1970. Since then great efforts have been made to implement the Convention, as well as the First Protocol of the Hague Convention in new Dutch laws*.

In 2005 a national Database for Registration of Incidents for Cultural Heritage (DICE, Database Incidenten Cultureel Erfgoed) has been set up at the Royal Library in The Hague with the financial support of the Ministry of Education, Culture and Science. The aim is to create an incident registration to enable the analysis of not only theft but also of other threats like fire and water damage to cultural heritage (museums, archives, libraries and monuments). The registration must enable institutions to get more insight into the size and nature of incidents and trends in order to take appropriate measures. The database must thus support an integrated security policy by cultural heritage trustees**.

TOWARDS A NEW METHOD OF SUPERVISION

In order to give new input to the Customs Enforcement Plan and the risk analysis, a special two-days brainstorm session under the title 'To Maintain Together in a Smarter and More Efficient Way' is planned at the beginning of 2007. The input of colleagues from several institu-

* Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970; Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954.

** for further information www.erfgoedincidenten.nl and: dice@kb.nl.

Recent Developments in the Netherlands after the Conference Illegal Trade Rotterdam 2004

tions in the field of law and order must give the Inspectorate, Customs and Police food for thought to fight illegal trade in cultural goods. The umbrella question is 'which barriers must take an art robber or a fencer in order to be successful' and crucial points of attention during these days are: information, control, branch, process and co-operation. The outcome of the first day will form the input for the second day with a more policy character.

The whole session, as well as the results of the investigation into the vulnerability of the art trade for organized crime and the databases for stolen cultural goods and heritage incidents, must lead to a long-range policy plan for better and more effective control and efficiency in co-operation between the different interdepartmental supervising institutions.

RECOMMENDATIONS

In Europe art theft and illegal trade in cultural goods are realistic problems. There is a good market for these cultural objects in the (rich) western European countries. Therefore it is necessary to combine efforts and to take measures in order to stop the illegal trade. The Inspectorate and the steering committee believe that solutions can be found by effecting:

- co-operation, communication and the exchange of information; they are of immense importance between Police, Customs and cultural institutions;
- studies on the nature and scope of illicit traffic in cultural goods; risk analysis is an essential tool in customs control of cultural goods; these analyses have to be developed, used and structurally updated;

- documentation on the provenance of objects; this is necessary for customs control and for the issuing of export licences by authorities;
- a central register for stolen cultural goods; this central database for stolen cultural goods should be accessible by all law enforcement officials;
- improvement of security measures and registration of the collections of archives, libraries, ecclesiastical institutions and archaeological sites, as well as registration of protected cultural goods;
- enlargement of the competences of Customs and the Inspectorate with legal measures in order to act adequately.

CONCLUSION

Since 2004 the Netherlands have tried to combine efforts between policy makers and supervisors at the executive level of different Ministries to find new ways to stop illicit traffic of cultural goods. The conclusions and recommendations of the 2004 Conference are herewith observed. The coming activities and the results of all these efforts will hopefully give us the means and possibilities in the next years to be more effective in the fight against art theft, illegal art trade and illicit traffic of cultural goods.

REFERENCES

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