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**THE NICOSIA CONVENTION: A CRIMINAL
JUSTICE RESPONSE TO OFFENCES RELATING TO
CULTURAL PROPERTY**

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SESSION III - GOOD PRACTICES AND EXCHANGE OF EXPERIENCES

The fight against offences relating to Cultural Property: Council of Europe gap analysis report

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My name is Cristina Guisasola Lerma and I am Professor of Criminal Law and Director of the Master's Degree in Law at the University of Valencia (Spain). Thank you so much Mr Kalnins, thank you and congratulations to the organisers, the Ministries of Justice and Culture of Latvia, and to my highly appreciated and respected colleague Mr Romeo Casabona, who recommended me to the Council of Europe. I'm also very grateful to the managers of the Nicosia Convention at the Council of Europe, Monica Redondo and Oscar Alarcón, for giving me the opportunity to participate in the Gap Analysis report of the Convention, which I am going to tell you about, and also thanks to Alessandro Chechi, for working together on this exciting project. It's an honour to meet you here in this unique setting, the National Library and to share this session with such relevant and important colleagues.

As I said, I have been asked to tell you about the gap analysis report of the Nicosia convention, which will be published soon. In May 2021, Prof. Chechi and I were hired by the Council of Europe as external consultants to develop a report, whose purpose was very similar to the aims of this Conference.

In the Report, an analysis and assessment were carried out on the needs of the legislation protecting cultural property in the 12 signatory or ratifying states of the Convention, as of June 2021. These 12 states were: Armenia, Cyprus, Greece, Italy, Latvia, Montenegro, Portugal, San Marino, Slovenia, Ukraine, Mexico, and the Russian Federation. Hungary signed and ratified but after the beginning of the project. With regards to the Russian Federation, it should be noted, as already mentioned that the signature was suspended from its rights of representation in the Council of Europe from 16 March 2021¹.

The report, that will serve as a roadmap to revise or adopt legislation addressing the destruction of, damage to, and trafficking of cultural objects, ends with conclusions

¹ Following the attacks on Ukraine, 2 Resolutions were adopted on March 2022 related to the suspension from its rights of representation in the Council of Europe, with legal and financial consequences.

and recommendations for these states. Therefore, the Report aims to promote the ratification of the Nicosia Convention.

This project was structured around a set of questionnaires, which was submitted to the member states signing and ratifying the convention, and in particular to a national consultant, identified by the Criminal Law Cooperation Unit of the Council of Europe. However, due to the impossibility of finding national consultants for Cyprus, Portugal and San Marino, we only received a total of nine responses. Each consultant was invited to obtain information directly from the competent national authorities or law-enforcement bodies dealing with the offences set out under the Nicosia Convention in their domestic law. The report was created based on the responses to the questionnaires.

The **highlights** of the report can be summarized as follows:

1. The legislation in place in most of the states that participated in the survey was already in line with the requirements of the Nicosia Convention.

However, different political approaches exist across the states with respect to the prevention and fight against the intentional destruction, damage and trafficking in cultural objects. This is due to the fact that the offences against cultural heritage in these states differ in frequency and intensity.

Bearing this reality in mind, we carried out an overview and needs assessment of the legal framework of the states:

Only two of them, Greece and Latvia, have enacted specific rules to implement this treaty. In Greece, a law was adopted in 2020. In Latvia, amendments were made to the Criminal Code, and to several special laws (the Law on the Protection of Cultural Monuments of 1992, the Prevention of Money Laundering and Terrorism Financing of 2008, and on Police of 1991).

After the survey was completed, Italy approved the L. n. 22 of 9th March 2022 on dispositions in matters of offences against cultural heritage, which introduces a new title dedicated to crimes against cultural property to the Criminal Code.

The nine states that participated in the survey have domestic law provisions that adequately implement the punishment of theft and other forms of unlawful appropriation.

However, regarding illicit trade, the states do not cover all the components of this offence in the same manner.

It should be noted that the legislation of every state (notably the criminal law) covers the illicit Exportation of cultural objects, and – following Regulation 2019 on the introduction and the import of cultural goods by the European Union – the EU member states participating in the survey (Greece, Italy, Latvia and Slovenia) also cover illicit importation. Moreover, it must be borne in mind that participating non-EU member states address the issue of “illicit importation” in different ways: for example, Armenia and Montenegro have legislation that adequately implements the corresponding provisions of the Nicosia Convention².

2. In relation to the cases requested by the national consultants relating to the offences set out in the Nicosia Convention, they provided information on any available jurisprudence, legal dispute or law-enforcement operation. This information confirmed that cultural heritage is targeted with alarming frequency, in both peace and wartime.

With respect to offences committed in times of armed conflict, the consultant for Ukraine reported that various offences had been committed in the part of the territory occupied by the Russian Federation since 2014 (the Crimean Peninsula): namely destruction, unlawful appropriations and excavations. It should be noted that the surveys were answered before the Russian attack on Ukraine that started in February 2022; during the Riga conference, the representatives of Ukraine referred to the big challenges that their cultural heritage is facing in times of conflict.

For the states that are not affected by armed conflict, all the consulted countries, except Armenia, reported participation in international police operations in relation to cultural objects.

Illegal importation of cultural objects has not been reported by the consulted countries. The reason could be that this offence is not common in “source” countries, from where cultural objects are typically exported.

In all the countries, it is problematic to find complete and reliable statistics on the offences relating to cultural heritage in general, and on illicit trade in particular. One reason could be that few countries have the motivation or

² Whereas Mexico, the Russian Federation and Ukraine do not.

personnel to compile these statistics of goods, stolen from museums, galleries, places of worship and private homes, removed from archaeological sites, or exported towards foreign countries. Another reason is that many crimes remain undetected or unreported to authorities: museum curators and collectors may decide not to report the theft, for fear of attracting the attention of the police or the governments of the country to the origin of those pieces, because they had been acquired in dubious circumstances.

The **main conclusions** of the report are the following:

It should be reiterated that “the added value” of the Nicosia Convention resides in the fact that it is the only international criminal law treaty “specifically dealing” with the prevention and criminalisation of the intentional destruction, damage, and trafficking in cultural property.

The report demonstrates that the legislation in place in most of the participating states was, in many respects, already in line with the requirements of the Nicosia Convention. This means that its implementation does not require enormous efforts to member states. Nevertheless, it must be emphasised that states have to ensure the full and proper implementation of the provisions of the Nicosia Convention through the enactment of new norms or the revision and adaptation of existing rules.

It is necessary that the signatory States take the necessary steps to ratify the treaty. In short, there is still a long road ahead for the Council of Europe and states to effectively prevent and criminalise adequately the offences relating to cultural property.

For these reasons, we provided a set of **recommendations** for the states that have signed or ratified it, and for those that have not.

States should consider:

1. Improving or creating tools to measure or estimate the number of offences relating to cultural property. Some difficulties have been exposed above. The absence of reliable data is a key element of a vicious circle that makes “offences against cultural objects” not prioritised by governments.

Other reasons include, for instance, that sometimes law enforcement officers could fail to register a crime as an “offence against a cultural object”; and also can fail to communicate among themselves or to the competent bodies of other states or international organisations, such as INTERPOL.

States should make reporting of cases “mandatory”, using a template from which statistics can be easily extracted. The absence of reliable data is a key element of a vicious circle that makes “offences against cultural objects” not prioritised by governments.

2. States should try to establish, not only a national database of stolen and missing cultural objects, to be linked to the INTERPOL (“Stolen Works of Art Database”), but also participate in interesting projects such as the Italian “Stolen Works of Art Detection System” as a starting project for further transnational projects or the one initiated by the Spanish national police, both presented in this conference.
3. States should seek to transform the “occasional” inter-state cooperation, that is deployed during major police operations, such as Operation Pandora, into a “permanent” operational model. Increased and stable cooperation would allow them, to better fight a phenomenon that by nature is transnational.

The Council of Europe should set up a working group to act as a “think tank”, pending the creation of the “Committee of the Parties” of the Nicosia convention. This mechanism shall be convened by the Secretary General of the Council of Europe and the first meeting shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it.

This Committee has the power to propose to the Committee of Ministers “appropriate ways to engage relevant expertise in criminal and cultural heritage matters, in support of the effective implementation of this Convention”. Furthermore, states and independent experts could cooperate within an “Observatory on offences relating to cultural property”, similar to other entities created with respect to, namely gender violence or corruption.

To conclude, I would like to end my speech with two images: one illustrates how the monuments have had to be protected in Ukraine and the other one is the Lithuanian pianist, Darius Mazintas, playing the piano in front of the destroyed House of Culture in Irpin, as a metaphor for the fact that culture cannot be buried under barbarism.