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# Summary from the Nordic seminar “Cultural heritage crime: regulations and legal practice in the Nordic countries”

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On 12 and 13 December 2017 the Ministry of Culture invited legal and cultural experts from the Nordic countries to a seminar to share experiences and discuss potential for Nordic cooperation across national and professional boundaries to focus efforts and measures to prevent cultural heritage crime, counteract the funding of extremist groups and contribute to better protection of the world’s cultural heritage.

A summary from the seminar is provided below.

## **On the seminar, its participants and topics**

The seminar “Cultural heritage crime: regulations and legal practice in the Nordic countries” is part of following up the Nordic conference on illicit trade in cultural artefacts which was held in Oslo in 2015 in response to an initiative from the Nordic ministers of culture, see the ministerial statement from the meeting of the Nordic ministers of culture in Torshavn in May 2015 on following up UN security council resolution 2199 (Feb. 2015). The seminar formed part of the sector programme for the Norwegian presidency of the Nordic Council of Ministers in 2017 and was organised by the Norwegian Ministry of Culture in cooperation with the Faculty of Law at the University of Oslo with support from the Nordic Council of Ministers.



*Credit: The Ministry of Culture*

About 60 participants from all five Nordic countries attended the seminar, mainly representing authorities in the fields of culture, customs and police, as well as legal and cultural heritage experts. Opening speakers from all the Nordic countries contributed to the programme. Director General Christine Hamnen from the Ministry of Culture welcomed the attendees, followed by State Secretary Marianne Hagen of the Ministry of Foreign Affairs, who opened the seminar on behalf of the Norwegian government.

## **The programme covered three main themes**

1. The significance of cooperation across national and professional boundaries

2. Regulations and legal practice in the Nordic countries
3. The road going forward – approaches, needs and measures to prevent cultural heritage crime in the Nordic countries

## Summary presentation

### Section Director Håkon Roland, Museum of Cultural History (KHM) in Oslo

Dr Roland opened his talk by speaking about the challenges faced by the Museum in the interface between legislation and legal practice.

As Norway's major museum of cultural history, KHM is the national institution authorised to make administrative decisions on the export of archaeological and ethnographic artefacts. As a result of its position, the museum handles many of the problems associated with illicit cultural artefacts, particularly in respect of defining responsibilities (controls, police reports, expert advice, notifications, etc.).

*- Should the museum report matters to the police, and if so, who follows this up? Who is responsible for the development of consistent practice over time?*

Provenance (assessment; criteria) is a fundamental concept in cultural heritage crime.

*- Who defines "best practice"? Who carries the burden of providing proof?*

It is important to have a shared understanding of what this means and what the implications of other key concepts such as "due diligence" and "good faith" are.

*- Should all cultural artefacts with inadequate documentation be regarded as "illicit"?*

*- How should we coordinate knowledge on different national rules, documentation requirements etc.?*

*- What to do with artefacts where the country of origin is unknown?*

*- What objects should be refused an export permit due to inadequate provenance documentation; where does one draw the line?*

- *Who should investigate the provenance and assess legal considerations in respect of artefacts' movements across national boundaries?*

These are complex matters that involve both questions under civil law, national legislation over time and in different periods, international regulations and international affairs. We must acknowledge that there is a link between objects found in Norway and the export and import of illicit artefacts from abroad. These are not two separate worlds, but overlapping areas that need to be seen in conjunction with each other.

### **Head of the Council of Europe's Criminal Law and Counter-Terrorism Divisions, Carlo Chiaromonte**

Mr Chiaromonte presented the Council of Europe's Convention on Offences relating to Cultural Property. The objective of the Convention is to complement existing conventions in as far as these have loopholes and fall short of covering criminal offences. Under the new Convention, member states commit to criminalising the entire chain of actions involved in the illicit cultural trade, from looting, smuggling and resale to handling offences and in some cases also the purchase of illegally sold objects.

The objective is to establish a shared framework to facilitate cross-border cooperation. Mr Chiaromonte particularly emphasised the significance of the Convention's "area of impact" being defined as significant cultural heritage in all member states of UNESCO's 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* – not merely those states that have acceded to the Council of Europe's Convention.

This legal change sends a powerful signal that we all have a joint responsibility for safeguarding the world's cultural heritage. In addition to the criminal sanction provisions, the Convention sets up a number of preventive measures which member states can implement to prevent crimes. The Convention, which also allows for accession by countries outside of Europe, was presented to the Council of Europe's Council of Ministers for signature in 2017. So far, 10 countries have signed the Convention.

## **The Director General for Cultural Heritage Jørn Holme, Norway**

Mr Holme opened his talk by discussing regulations and legal practice in respect of cultural heritage crime in Norway. He distinguished between cultural heritage crime affecting cultural monuments, differentiating this from cultural crime, which is related to the illicit trade, import and export of cultural property.

Mr Holme referred to the important criminal provisions in section 242 of the Penal Code on aggravated cultural heritage crime (with a maximum penalty of six years), section 352 subsections 2 and 3 on aggravated vandalism (with a maximum penalty of 15 years) and the criminal provisions in section 27 of the Cultural Heritage Act (with a maximum penalty of two years).

In the cultural heritage crime field, the principal problems have been church arson and the demolition of houses that are protected by law or other measures, damage to protected cultural monuments owing to system failures at the procedure/control system level, illegal metal detecting and theft from churches and museums.

The Director for Cultural Heritage briefly presented the Directorate's new guidelines for the use of metal detectors and gave an overview of several Supreme Court judgements.

In 2017, the Supreme Court handed down a sentence of 14 days' immediate prison sentence for the misappropriation of 22 metal objects (movable cultural artefacts that are the property of the state found through metal detection over a period of several years) and violation of the obligation to report finds under the Cultural Heritage Act as well as the illicit importation of a Stone Age axe from Sweden.