

**National periodic report of the Republic of Macedonia
on the implementation of the 1954 Hague Convention
for the Protection of Cultural Property in the Event of
Armed Conflict and its two 1954 and 1999 Protocols**

In reference to the UNESCO communication for implementation of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its protocols from 1954 and 1999, Macedonian National Commission is herein presenting the following Periodic Report :

Taking into consideration the period in which we live, the period of unprecedented development of techniques and technologies, the period of expansion and development of arms and means for mass destruction, the period in which war is an everyday event, the period that threatens, in many ways, to destroy man, natural wealth, as well as the wealth of cultural and historical importance, the development of a system of international legal norms and rules that will contribute to the protection of the wealth that is considered to be the value of civilization is of particular importance.

A large number of conventions dedicated to the protection of cultural heritage in the world have been adopted within the frameworks of the UNESCO. The more important of them are as follows: *Convention on protection of cultural goods in case of armed conflicts (The Hague, 1954)*, *Convention on measures for banning and obstructing illegal import, export, and transfer of cultural goods property (Paris, 1970)*, and *Convention for protection of the world cultural and natural wealth (Paris, 1972)*, all of them adopted at UNESCO conferences.

The Republic of Macedonia, being a member-country of the Organization of the United Nations (OUN) and of UNESCO, monitors and consistently incorporates in its national legislation the rules defined by international instruments and passed by this organization.

After the fall of SFRY, the Republic of Macedonia has been the contracting party of this convention by succession. The Law on ratification of the Convention for protection of cultural goods in case of armed conflicts from 1954 and its first protocol from 1954 has been published in the SFRY Official Gazette – International Contracts n. 4/56 that has been taken over by the Government of the Republic of Macedonia after the independence of the Republic of Macedonia. This Law makes a part of the legal order of the Republic of Macedonia and has been in force since 30 April 1997.

The Republic of Macedonia has ratified, in conformity with the Law on ratification, the second protocol to this convention (Official Gazette of the Republic of Macedonia – International contracts n. 13/02).

The 1991 Constitution of the Republic of Macedonia is the basic framework for the regulation of the relations for protection and use of the cultural heritage in the Republic of Macedonia, where article 56 defines that the subjects and objects of special cultural and historical significance as defined by law are of general interest for the Republic and enjoy special protection. At the same time, the Constitution of the Republic of Macedonia defines that the Republic guarantees protection, promotion, and enhancement of the historical and artistic wealth of Macedonia and of all the communities in Macedonia, as well as the goods that create it regardless of the legal regime.

1. In reference to Article 7 point 1 of the 1954 Protocol of the Hague Convention, which regulates the duties of the High contracting parties to insert in the military rules instructions that will provide respect for the Hague Convention and foster a spirit among the members of the armed forces for respect of culture and cultural goods of all nations, the General Staff of the Army of the Republic of Macedonia, being the most interested party, established a direct cooperation with the Office of the International Red Cross (MKCK) in Skopje in 2000.

Initially, the activities in the Macedonian Army started with seminars and courses held by the MKCK with the purpose of making the instructors familiar with and capable of creating a foundation for further personal integration of the International Humanitarian Law and the Law on Armed Conflicts of the Macedonian Army.

Beside the mentioned courses, scholarships were also offered to instructors from various profiles (operational officers, medical officers, and lawyers) outside the Republic of Macedonia.

After two years of active cooperation and with the direct support of the MKCK the Manual "Law on armed conflicts for the armed forces" was made with a multimedia CD in the Macedonian language for basic training and integration of the Law on armed conflicts in the Macedonian Army training. Later, other manuals for specialized trainings were made (Manual for first aid, for military doctors, a pocket plastic reminder for soldiers and military officers, Plan and Program for training in the Law on armed conflicts in the Macedonian Army).

2. In reference to Article 7 point 2 of the 1954 Protocol of the Hague Convention that regulates that the High contracting parties will strive in time of peace and within their armed forces to plan a staff that will make sure that the cultural wealth is protected, for which purpose the General Staff of the Macedonian Army, in cooperation with the MKCK, organizes seminars and courses for different categories of the staff. The seminars are organized with the aim of making the army officers, the managers, and the commanding officers in the Macedonian Army familiar with the Law on armed conflicts, the goals, and tasks in the

cooperation of the Macedonian Army and the MKCK supported by current examples from terminated armed conflicts or conflicts in course.

3. In reference to Article 25 of the 1954 Protocol of the Hague Convention that defines the duty of the High contracting parties to strive to introduce the study of the Hague Convention in the training programs of the Army in times of peace as well as in times of armed conflicts, we can inform you that the Macedonian Army has planned a number of classes on the Law on armed conflicts in the development of the programs for the courses dedicated to non-commissioned officers and soldiers in the Training Command. The same is implemented at the Military Academy where courses for officers are organized.

The adoption of the **Law on protection of cultural heritage** (Official Gazette of the Republic of Macedonia n. 20/04 and 71/04) has created a legal framework for the implementation of the constitutional conception for the protection of goods of cultural and historical importance. In this sense a unique, completed, and linked legal entity-system for the protection of the cultural heritage has been created.

In the direction of respect for the regulations of the Hague Convention, Section 8 of the Law on protection of cultural heritage elaborates the matters associated to the protection of cultural heritage in case of an armed conflict and natural disasters. In another appropriate section of the Law, the ban on requisition, repression, attack, and use of cultural heritage for military purposes has been defined as one of the general bans. Moreover, the Law defines practical rules from this area that are intended for completing some issues in the proper way. In this sense, the following have been passed:

- Rule-book for the pattern on the legitimization and the appearance of the tape on the sleeve of the official person for protection or the person in control of the cultural heritage in case of an armed conflict and their issuing mode (Official Gazette of the Republic of Macedonia n. 25/05);
- Rule-book for the contents and mode of running the national inventory of protected goods in case of an armed conflict (Official Gazette of the Republic of Macedonia n. 25/05);
- Rule-book for the national registry of cultural heritage (Official Gazette of the Republic of Macedonia, n.25/05);
- Rule-book for the use of signs for cultural heritage defined by an international agreement (Official Gazette of the Republic of Macedonia n. 56/08).

The next task is to prepare a Special methodology for assessment of damage to cultural heritage caused during and as a consequence of an

armed conflict or a natural disaster (Article 109 of the Law on cultural heritage).

Its adoption is in the function of a normative completion of the subject matter in the area of protection of cultural heritage in case of and armed conflict or a natural disaster.

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Crime associated with cultural heritage is evident in modern world. Thefts, illegal excavations in archaeological sites, illegal trade and other criminal activities are attaining an ever more expressed dimension on the national, as well as on the international level. The Republic of Macedonia as a small country with a rich cultural heritage has been also affected by the wave of criminal acts that endanger the cultural heritage.

There is a long tradition of criminal-legal protection of the goods of cultural and historical importance in the Republic of Macedonia. Considering that matters associated with criminal protection for acts against cultural goods require coordination between the Criminal Code and the national regulations for cultural heritage, the Law on changes and amendments to the Criminal Code (Official Gazette of the Republic of Macedonia n. 19/04) made essential changes in the direction of a greater criminal-legal protection for the cultural heritage.

Sanctioning criminal acts against cultural heritage is a subject in Chapter XXIV entitled "Criminal Acts against Cultural Heritage and National Rarities" of the Criminal Code of the Republic of Macedonia. Article 264 anticipates the criminal act "damage to or destruction of goods under temporary protection or cultural heritage or natural rarities," Article 265 anticipates the act "appropriation of goods under temporary protection or cultural heritage or natural rarities," while Article 266 anticipates the act "exportation abroad of goods under temporary protection or cultural heritage or natural rarities".

Most of the stipulations related to the protection of cultural goods in case of a military conflict are contained in Chapter 34 of the Criminal Code of the Republic of Macedonia (Official Gazette n. 37/96, 80/99, 4/2002, 43/2003, 19/2004, and 85/2005).

We are indicating the following changes that have been mainly completed in 2004 when, among the rest, they were in coordination with the international documents in this area:

Article 404 entitled "**Military Crime against Civil Population**" paragraph (2) says as follows:

(2) Penalty from paragraph 1 (a sentence of at least ten years or life imprisonment) will be sentenced to the one who, in war, an armed conflict, or occupation, by violating the rules of the international law will order attack on a cultural good under intensified protection or other facilities with special protection, attack on facilities especially protected by the international law, as well as facilities and plants with dangerous power like dams, embankments, and nuclear power plants, shooting at random civilian facilities that are under special protection of the international law, forbidden places and de-militarized zones; inflicting damage to the environment in long terms and in big ranges that can harm the health or imperil the survival of the population or the cultural good under intensified protection or using its immediate vicinity as a support for a military action, destruction or appropriation of a bigger quantity of cultural goods protected by the international law, stealing or selling or making vandal attacks on cultural goods protected by international law or anybody else committing one of the listed acts”.

Article 407 **“Approval or Justification of Genocide, Crimes against Humanity or War Crimes”**

Article 407 – a

Anyone who uses the information system to publicly deny, roughly minimize, approve, or justify acts listed in articles 403-407 will be sentenced to prison from one to five years.

If the denial, minimization, approval, or justification is done with the intention to foster hate, discrimination, or violence against a person or a group of persons because of their national, ethnic, or racial background or religious determination, the perpetrator will be sentenced to at least four years of prison.

Article 414 **“Destruction of Goods under Temporary Protection or Cultural Heritage”**

Anyone who, during war or armed conflicts violates the rules of the international law and destroys goods under temporary protection or cultural heritage and facilities, religious buildings or institutions intended for science, art, education or humanitarian purposes will be sentenced to at least five years of prison.

In Article 416 paragraph (1) the words “telecommunication signs” are followed by a comma and the words “signs for cultural heritage” are added.

After Article 416 three new titles and new articles: 416-a, 416-b, and 416-c are added, in coordination with the Roma Statute of the International Criminal Court that the Republic of Macedonia ratified in February 2002, which say:

Article 416-a “Organizing a group and fostering genocide and war crimes”

Anyone who organizes a group for perpetuating criminal acts as stipulated in articles 403-417 will be sentenced to at least eight years of prison.

Anyone who becomes a member of such a group as stipulated in paragraph 1 will be sentenced to at least four years of prison.

A member of the group in paragraph 2 who uncovers the group prior its criminal act will be freed from punishment.

Anyone who calls for or fosters criminal acts as stipulated in articles 403-416 will be sentenced to at least ten years of prison.

Article 416-b “Responsibility of Commanders and Other Senior Officers”

A military commander or a person in charge is held criminally responsible for all criminal acts as stipulated in articles 403-416 committed during war or any other armed conflicts, international or internal, by members of regular or paramilitary armed formations under his direct command and control, provided that he had known or under all circumstances had been obliged to and could have known that such acts are prepared or committed, or had missed to take all necessary and reasonable measures to obstruct their execution, or had missed to initiate criminal persecution of the doers of the criminal acts.

Article 416 – c “Responsibility of the Subordinated for an Act Committed by Order of the Superior”

Committing criminal acts as stipulated in articles 403 – 416 under the order of a military commander or another superior does not release the subordinated from criminal responsibility.

There will be not a punishment for the subordinated who committed a criminal act as stipulated in Articles 404 – 416 by the order of his superior or based on a legal decision provided that he was legally obliged to submit to the order or decision and did not know that it was illegal and provided that all circumstances did not make it clear that it was illegal.

Chapter 24, “Criminal Acts Against Cultural Heritage and Natural Rarities”

Article 264 “Damage or Destruction of Goods under Temporary Protection or Cultural Heritage or Natural Rarities”

Anyone who damages or destroys any goods under temporary protection or cultural heritage or natural rarity will pay a fine or be sentenced to prison for up to three years.

Anyone who makes conservation or restoration operations without the permission of an authorized body or without a permission or, contrary to the ban, makes archaeological excavations or researches or other research operations related to goods under temporary protection or cultural heritage or natural rarities because of which they have been strongly damaged or will use their characteristics will be sentenced to prison from one to five years.

If the act from paragraph 1 is committed by a legal person a fine will be paid for that.

Article 265 “Appropriation of Goods under Temporary Protection or Cultural Heritage or Natural Rarities”

Anyone who appropriates excavations, materials, or objects that represent goods under temporary protection, cultural heritage or natural rarity during archaeological excavations, archive researches, geological-palaeontological or mineral – petrographical researches, excavations or in any other way appropriates excavations, materials, or a finding that represents a good under temporary protection or a cultural heritage or a natural rarity will be sentenced to prison from one to ten years.

Anyone who has the intention to make illegal property profit and appropriates an archaeological object will be sentenced to one to ten years of prison.

Article 266 “Exportation Abroad of Goods under Temporary Protection or Cultural Heritage or Natural Rarities”

Anyone who exports any goods under temporary protection or a cultural heritage or a natural rarity abroad without the permission of an authorized body will be sentenced to one to ten years of prison.

(2) If the act from paragraph 1 is committed by a legal person, he will pay a fine.

Two new titles and two new articles are added to Article 266:

Article 266 – a “Transfer of Cultural Heritage of Special Importance in State Property”

Anyone who sells, gives as a present or in any other way transfers cultural heritage of special importance in state property will be sentenced to one to five years of prison.

Article 266 – b “Ban on Import of Stolen Cultural Heritage”

Anyone who imports portable cultural heritage stolen from museums, religious and similar public buildings or institutions on the territory of another state will be sentenced to one to ten years of prison.

The Ministry of the Interior, from the aspect of legally defined competence first of all regulated by the Law on Internal Affairs and the Law on the Police persecutes the doers of criminal acts as listed above.

Article 5 of the Law on the Police (Official Gazette of the Republic of Macedonia n. 114/06) in line 3 defines that the police officers are making actions for obstructing criminal acts, detecting and capturing their doers and taking other legally defined measures for persecuting the doer of criminal acts.

Article 1 line 2 of the Law on Internal Affairs (Official Gazette of the Republic of Macedonia n. 19/95, 55/97, 38/02, 33/03, 19/04, and 51/05 defines that the internal affairs are related to obstructing criminal acts, detecting and capturing perpetrators of criminal acts and giving them over to the authorities.

The Law on Protection of Cultural Heritage, Article 51, defines that cultural heritage of special importance in state property must not be transferred as property because of which there is a new Article 266-a in the Criminal Code that proscribes a sentence of one to five years of prison for the one who sells, gives as a present or in any other way transfers permanently the property of cultural heritage of special importance that is in state property.

Beside the listed articles, Chapter XXIII of the Criminal Code defines theft, holding back, damage to objects and hiding as a serious crime against objects of special scientific, cultural, or historical importance.

In conformity with the ratified 1970 International Convention on the measures for banning and obstructing illegal import, export, and transfer of property of cultural goods, Article 53 of the Law on Protection of Cultural Heritage defines that the cultural heritage that has been stolen from museums, religious and similar public facilities or institutions on the territory of another state must not be imported because of which Article 266-b was added to the Criminal Code, incriminating such an act.

In conformity with the Convention for Protection of cultural goods in case of an armed conflict and the Law on Protection of Cultural Heritage the protected non-portable goods must be marked with an international sign for protection. Due to these reasons, the signs for marking cultural heritage as anticipated with the Hague Convention have been added to Article 416 of the Criminal Code entitled "Abuse of international signs".

The Ministry of the Interior as a body of state administration undertakes activities in its authorities associated with protection of cultural goods in times of peace, but also in situations of armed conflicts.

The Law on changes and annexes to the Law on criminal procedure (Official Gazette of the Republic of Macedonia n. 19/04) greatly increases the authorities of the Ministry of the Interior in the pre-investigating procedure. In this direction, when there are grounded suspicions that a criminal act that is under official persecution has been committed, the Ministry of the Interior is obliged to undertake all necessary measures to find the perpetrator of the criminal act and provide all necessary evidence, findings, and documentation that could be of use for a successful criminal procedure. The Ministry of the Interior has great authorities during the investigating process as well.

According to the reforms in the police, in the Ministry of the Interior, in the Department for organized crime, a Department for illegal traffic with cultural goods has been organized with the task of undertaking all measures and activities with the purpose of preventive action aimed at protection of cultural goods, but also detecting the perpetrator of criminal acts with cultural goods.

Numerous projects for education of police administrators are implemented within the Ministry of the Interior connected with identification of the objects of archaeological and ethnological origin, timely detection and resolution of criminal acts in the area of cultural heritage and natural rarities.

The Police Academy as an institution gives its concrete contribution to the implementation of Article 25 of the Convention, which is to say during its dissemination. In the frameworks of the curriculum of the Police Academy there is the subject Police and International Humanitarian Law, where the students get acquainted with the principles of the UNESCO Hague Convention for protection of cultural property in case of armed conflicts and its two protocols.