



Countering the illicit trading of cultural goods: Recent trends, emerging issues, and LEA responses in Turkey

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Abstract

The illicit trading of cultural goods (ITCG) has increasingly drawn the attention of international community in the last two decades. The vehement interconnections between the ITCG and other notorious global threats, such as organised crime (OC), money laundering (ML), and the financing of terrorism (FT), are well documented. Turkey, as one of the prominent cradles of many civilizations with a rich cultural heritage, has been intensifying its efforts to address the problem. Nevertheless, our literature analysis indicates that based on the misconception that the ITCG has no immediate and identifiable victims when compared to that of arms trade or narcotics, both national and international responses to this end have been limited. Moreover, the lack of ratification of essential international legal instruments, such as the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the 2017 Nicosia Convention on Offences relating to Cultural Property, further limits cross-border collaboration and coordination in tackling the trading of cultural goods. Accordingly, by reviewing and incorporating relevant literature, this paper critically analyses how Turkey has established its pertinent national legal and institutional framework. Secondly, in light of statistical evidence, the article provides a critique of how relevant stakeholders and law enforcement agencies (LEAs), in particular, deal with this type of crime. By doing so, this paper highlights the obstacles they encounter and offers a number of novel solutions, which would not only eliminate the identified predicaments but also help create more effective policies that could enhance the operational aspects of countering the ITCG.

Keywords Illicit trafficking · Illicit trade · Cultural goods · Cultural heritage

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Introduction

The illicit trafficking and trading of cultural goods (ITCG) refers to unlawful practices relating to import, export, and transfer of ownership of *cultural property* (1970 UNESCO Convention, Article 3), the scope of which includes, but is not limited to, theft from museums or auction houses, looting archaeological sites through illegal excavation practices, and displacement of cultural relics on account of the war (Boz 2018) as well as illegal sale and purchase of cultural goods. In this article the term ITCG is used to encompass demand and supply activities which may involve illicit excavation, trafficking and fraudulent sale of cultural goods.

The enormity and dynamism of the licit art market, whereby cultural artefacts, along with other artworks, are sold legally, may give insight into dimensions of the demand side of the trade and the reasons that render the ITCG attractive for offenders. The global art market equalled USD 65.1 billion in value in 2021 (around USD 50 billion in 2020) with a volume of approximately 36.7 million transactions (roughly USD 31 million in 2020) relating to global art sales (Statista Research Department 2022). The United States of America (USA) (43%), the United Kingdom (UK) (17%), and China (20%) accounted for 80% of total sales in 2021 (McAndrew 2022: 28), suggesting that these could also be potential final destinations in illicit trading. Nevertheless, whilst the global art market generates such figures, it is not feasible to provide a reliable snapshot of the volume regarding the ITCG due to statistical opacity. In other words, there are not any well-grounded estimates that provide the actual magnitude of the predicament (Brodie et al. 2019: 78).

The ITCG has long been threatening the common cultural heritage of the international community, as it irreplaceably deprives people of their national and cultural treasures. Furthermore, it has substantial interconnections with other international organised criminality, *inter alia*, the sale of counterfeit artefacts, fraud, money laundering (ML), and the financing of terrorism (FT). For instance, a number of studies and official reports have demonstrated how a criminal network comprising looters, early-stage intermediaries, late-stage intermediaries, and collectors dealing with the ITCG operates with links to organised crime (OC) and terrorism (European Commission 2022; United Nations Security Council Resolution (UNSC Res) 2347 2017; Campbell 2013). Yet, paradoxically, at the same time, the risks posed by the phenomenon have long been underestimated both nationally and internationally due to the misconception that it does not give rise to as acute consequences. Arguably, this misconception resulted in underdeveloped and outdated response mechanisms both at the national and international levels which were designed in the aftermath of World War II to protect the cultural heritage in the event of armed conflict (see, for instance, 1954 Hague Convention).

The ITCG is of particular relevance and a sensitive subject matter for Turkey due to several factors. First and foremost, Turkey, which has hosted a myriad of civilizations (e.g., Neolithic, Hittite, Achaemenid, Hellenistic, Byzantine, Roman, and Ottoman, to name a few) throughout history, possesses the invaluable cultural heritage left by those

civilizations. For example, UNESCO has inscribed on the UNESCO World Heritage List 19 cultural and natural properties (UNESCO 2023c) whilst on the Tentative List 84 sites are from Turkey (UNESCO 2021). Turkey's rich inheritance not only renders it the guardian of this common cultural heritage of humankind but also makes it attractive for the ITCG. Furthermore, the geographical location of Turkey, which plays a bridging role by linking Asia, Europe, Africa, and the Middle East, facilitates the illicit trafficking of humans and goods and attracts transnational organised crime groups (Europol 2022; Toktas and Selimoglu 2012; Manacorda and Chappell 2011). Given that the ITCG predominantly requires an organised scheme intrinsically, the exploitable geostrategic position with rugged and porous borders of the country exposes Turkey to such devilments. In addition, the destabilised and war-torn neighbouring countries, such as Iraq and Syria, where illegal excavating and looting activities take place more conveniently due to lack of and/or limited control and security (e.g., the destructions of cultural sites, such as Palmyra in Syria and the ruins of Nimrud in Iraq; Council of Europe 2016), aggravate the situation and make Turkey more vulnerable. The high demand in the cultural goods (including art and antiquities) market, originating for the most part from the USA, Europe, and the Far-East, also contributes to the problem. Furthermore, the tourism sector of Turkey (e.g., approximately 30 million tourists visited Turkey in 2021; TUIK 2022a) and its logistical position for huge number of air, sea and land transit and transportation routes may desensitise customs personnel to illegal materials, including cultural goods, whilst conducting thorough checks/inspections at the border gates. Last but not least, although the recent EU-funded projects, such as DG TAXUD (European Commission 2017: 120) and ECORYS (Brodie et al. 2019: 16), have not provided any clear link between the ITCG and FT, our research reveals connections between these serious crimes. For example, during an operation conducted in Ankara in 2018, the Turkish law enforcement agencies (LEAs) seized, amongst others, 60 gold and bronze coins from the Byzantine and Roman periods and a computer with external memories, which contain digital documents and notes belonging to two terrorist organisations (TOs), namely FETO/PSS (Fetullahist Terrorist Organisation/Parallel State Structure)¹ and the PKK (*Parteya Karkeran Kurdistan*—Kurdistan Workers' Party) (CNN Turk 2018). It is also well documented that ISIS has financed its operations with funds raised by looting and trading cultural goods (Pauwels 2016; Plenderleith 2019; Tigner 2019; Kees 2020). In other words, the ITCG potentially constitutes one of the most profit-making sources of income for TOs (INTERPOL 2022: 4 and 17). Therefore, this novel paper aims to critically examine the current state of affairs relating to tackling the phenomenon, thereby identifying the obstacles, if any, stemming from the legal and institutional frameworks that hamper the operational aspects of countering the conundrum.

¹ The TO of FETO/PSS has attempted to topple the legitimate government of Turkey by killing 250 innocent Turkish citizens and injuring 2,193 of them. These victims were murdered and maimed by the Turkish State's own aircrafts, helicopters and tanks which were operated by FETO/PSS's uniformed terrorists who had been infiltrated into the Turkish State system systematically over nearly forty years. See, Republic of Turkey – General Prosecution of Office of the Supreme Court of Appeal, The Fetullahist Terrorist Organization (FETO) Behind the July 15 Coup Attempt in the Republic of Turkey, <https://www.yagitaycb.gov.tr/documents/15temmuzbrosturEN.pdf> (accessed 26 January 2023).

Whilst its rich cultural inheritance increases its vulnerability to illegal excavations, thereby locating Turkey more on the supply side of this illicit trade, its geographic location intensifies its likelihood of being a reservoir and involved in transportation and transit routes. That is not to say that the demand side of the phenomenon is not relevant for the country, but such facts render it relatively less arduous for the Turkish LEAs to counter, as the problem is (relatively) thin on the ground. For example, according to the 2019 Illicit Trade Report of the World Customs Organization (WCO),² out of 227 total cases, Antalya, Turkey, was the most popular (target) destination with 23 instances (remarkably, 20 occurrences were originating from Nizhniy Novgorod, Russia) (WCO 2020: 30 and 32). Moreover, Turkey was one of the most reported five jurisdictions (i.e., more than 15 times) to the WCO as an origin, destination, or transit point regarding the *disclosed* trafficking and trading flows (in 2019); the remaining jurisdictions were the Russian Federation, Ukraine, China, and the USA (WCO 2020: 30 and 32). It is worth emphasizing here that whilst the Russian Federation and Ukraine are located near Turkey, China and the USA are the representatives of three leading markets in the global art sales, as mentioned earlier. However, it is necessary to bear in mind that the WCO produces its reports based on the information submitted by national customs administrations which may exclude cases from other LEAs, and which may be interrelated with the effectiveness or eagerness of a given national customs agency. Additionally, detecting a smuggling incident at a location does not necessarily mean that it is the final destination; rather, it can be any point identified whilst contraband in transit that may only suggest a particular component of a broader transportation network. Lastly, counterfeit cultural goods constitute another hurdle to overcome in countering the ITCG. Although there are no detailed statistics on the fake cultural relics, the Turkish Ministry of Culture and Tourism (MCT) provides examples of counterfeit artefacts identified by category on its official website (T.C. Kültür ve Turizm Bakanlığı 2023b).

Whilst Turkey has been keen to tackle the ITCG nationally and internationally in collaboration with the global *fora*, the article revealed that the pertinent legal and institutional Turkish framework has particular shortcomings. We mainly found that LEAs encounter problems in identifying all parties involved in ITCG schemes, particularly those with transnational characteristics. Accordingly, we concluded that Turkey would benefit from amending its legal composition, establishing specific LEA units composed of expert personnel, creating specialised bureaus within the offices of chief public prosecutors, exploiting technological developments (e.g., the use of Unmanned Aerial Vehicles), and devising a robust communication mechanism between all competent authorities supplemented by public–private partnerships.

² Please note that such detailed statistics regarding the illicit trafficking or trading of cultural goods are not available within the recent WCO reports due to the impact of the pandemic (e.g., problems associated with conducting physical controls at border gates). See, for instance, World Customs Organization, Enforcement and Compliance – Illicit Trade Report 2021, https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2021_en.pdf?db=web (accessed 26 January 2023).

Methodology

This study employs doctrinal and socio-legal research methodologies. Firstly, by conducting a doctrinal analysis, the paper critically examines the essential legal instruments on cultural goods. Doctrinal legal research or ‘black letter law’³ research is known as ‘a research methodology that concentrates on seeking to provide a detailed and highly technical commentary upon, and systematic exposition of, the content of legal doctrine’ (Salter and Mason 2007: 49) and examination of law in statute books and decisions of the courts. Accordingly, in order to elucidate the position of ITCG legal framework of Turkey, a doctrinal analysis of the jurisprudence, encompassing both national and international legal materials and court decisions, is undertaken as an initial step. In doing so, the paper reveals whether and to what extent the Turkish legal regime is congruent with the global legal structure.

Next, by adopting a socio-legal (law in action) approach (Graham et al. 2017), the article proceeds with exploring the national institutional composition and, in light of official statistical evidence (i.e., secondary data), the capacity of the constituent actors to conduct (joint) operations at national and international levels in tackling the ITCG. It is necessary to note that the statistical data of ITCG, which is not publicly available, have been obtained from the Turkish General Command of Gendarmerie (GCG) by written request. The data has been sanitised and does not contain any personal information. Statistics consist of information collected by operational Anti-Smuggling and Organised Crime Departments (*Kaçakçılık ve Organize Suçlarla Mücadele Başkanlığı/KOM*) of the GCG during and after operations in 81 provinces of Turkey between 2010 and 2021. The data gathered by KOM units relates to the following criminal activities:

- Illegal excavation;
- Engaging in activities that violate the site conditions;
- Illicit trading of cultural goods; and
- Others.

However, these statistics do not capture such crimes detected at border gates, ports, or other areas that do not fall under the jurisdiction of the GCG. Therefore, it can be presumed that the scale and number of ITCG in Turkey are likely to be greater than the picture presented in this study. Whilst there are studies that provide general information relating to ITCG at international and regional levels based on different data collection methods (e.g., questionnaires – a criticised method in this domain – see, for instance, Brodie et al. 2022), this study analyses data gathered by LEAs (i.e., GCG KOMs) from the field. Because the statistics are collected from 922 district commands, our sample is a sound representation of the nature of the

³ Chaplin, in her article titled “Written in the Black Letter: The Gothic and/in the Rule of Law”, states that black letter law ‘is the term modern lawyers use to signify the law *as* law; to study black letter law is to study the text of the law “pure and simple,” free of any extra-legal influences, free of any fictions of the law’s origin’ (Chaplin 2005: 66).

problems arising in ITCG including challenges encountered by LEAs in the fight against the phenomenon. This study employs inductive reasoning (Hayes et al. 2010) in analysing the statistics whereby it identifies various criminal patterns, themes, hot spots, and organisational structure of the perpetrators. Coupled with the doctrinal/legal analysis, these findings also inform our assessment of the operational capacity of the LEAs. Because of the inherent limitations of both doctrinal and statistical analysis, we also utilised relevant academic literature written on ITCG (see, for instance, Manacorda 2008). Whilst the use of secondary data may present limitations as to how, why, and what information was collected, the criminal investigation protocol followed by the GCG KOMs ensure that the data collection method can be regarded as consistent and fit for the purposes of this study. However, the statistics cover only 11 years; therefore, we were not able to compare our findings to earlier decades.

International legal instruments on cultural goods

The key instruments of the current international legal framework on the ITCG comprise the 1954 Hague Convention, the 1970 UNESCO Convention, the 1995 UNIDROIT Convention, and the 2017 Nicosia Convention. Whilst these Conventions share the ultimate aim of protecting cultural heritage, each text focuses on a particular aspect of the phenomenon with specific concerns and priorities. That being the case, it is necessary to outline the main characteristics and principal provisions of those legal instruments, thereby unveiling whether Turkey has transposed these into its national legal framework.

As the first international treaty in this context, the 1954 Hague Convention is exclusively dedicated to the protection of cultural heritage during armed conflicts. Accordingly, it determines, amongst others, the measures that need to be undertaken by the signatory States during peacetime, before a conflict begins (e.g., entrusting certain (military) personnel with securing respect for the cultural property in their armed forces; Article 7), and in the course of the conflict (see, for example, Article 10) to protect cultural patrimony. It defines cultural property, regardless of origin or ownership, under three categories: (a) movable or immovable property of great importance to the cultural heritage, such as monuments of architecture; (b) buildings whose main and effective purpose is to preserve or exhibit movable cultural property, such as museums; and (c) centres containing monuments (Article 1). Turkey has been a party to the Convention and the First Protocol to the Convention since 15 December 1965 (UNESCO 2023b).

The 1970 UNESCO Convention aims to establish an international legal framework that endeavours to protect cultural heritage irrespective of an armed conflict and provide a regime for their restitution by the country of origin in the event of loss or theft. More specifically, it prohibits the illicit import, export, and transfer of ownership of cultural property (Article 3), where the cultural property stands for the patrimony that 'is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science', under prescribed categories (Article 1). In order to ensure the prevention of such illegal activities, it

stipulates, *inter alia*, the establishment of dedicated national services (Article 5), the introduction of certification procedures (Article 6), and the imposition of penalties/administrative sanctions (Article 8). In doing so, it seeks to increase the harmonisation across national legal frameworks and intensify the cooperation between domestic authorities, thereby reinforcing the (in situ) protection of cultural goods and ensuring their repatriation upon request from the jurisdiction of provenance. Although it contains provisions relating to the compensation of good faith buyers (see, for instance, Article 7(b)(ii)), its centre of attention does not encompass the private law aspects of cultural property protection (e.g., transactions made within the art market). Furthermore, as Renold (2018: 8) aptly observes, the Convention is not ‘self-executing’ as the provisions therein do not have any direct effect, for instance, on market entities, such as auction houses or art galleries, unless the signatory jurisdictions reflect the legal requirements in their national legal framework. Turkey signed the Convention on 21 April 1981 (UNESCO 2023a) and ratified it by enacting Law No 2863 on the Conservation of Cultural and Natural Property (CCNP) 1983, as discussed subsequently.

The penultimate international legal instrument that needs to be examined here is the 1995 UNIDROIT Convention, which was designed to complement the 1970 UNESCO Convention. It embraces the same definitional point of the 1970 UNESCO Convention in determining cultural property, *albeit* not referring to the domestic laws adopted by contracting States (Article 2). Having at its heart the objective of addressing the previously mentioned deficiencies, it formulates basic principles for the restitution and return of cultural relics between the signatory jurisdictions, whereby it stipulates, amongst others, the rules regarding (pertinent) requests of private persons and the compensation of good faith buyers. However, it imposes special limitation periods for claims for the return of stolen or illegally exported cultural objects (Articles 3(3) and 5(5)). Additionally, it is not retrospective in effect (Articles 10(1) and 10(2)), suggesting that it does not concern with thefts or illegal exports that took place before it has entered into force. It is necessary to mention here that the absence of knowledge or reasonable excuse for such unawareness concerning the illegal origins of cultural objects and proving that they devoted (adequate) due diligence when acquiring them render possessors acting in good faith in this end (Articles 4(1) and 6(1)). Given that exercising due diligence is prescribed as a precondition of qualifying for a potential compensation and that even good faith possessors have to return cultural objects once proven that they are stolen, it would be right to posit that these provisions endeavour to minimise incentives for participating in the ITCG, thereby deterring persons from involving in the illegal market. In other words, these provisions also secure the exercising of risk-based due diligence practices, which is also one of the obligations of the obliged entities operating in the anti-money laundering (AML) realm, including the art and antiquities markets. It is worth noting that the Turkish AML regime designates art dealers

and auctioneers as obliged entities for AML purposes.⁴ More importantly, Turkey regards the ITCG as a predicate crime for ML.⁵ However, Turkey, along with many jurisdictions (e.g., Germany, UK, USA, to name a few), have not signed the Convention (UNIDROIT 2021). One possible explanation for this reluctance is that the 1995 UNIDROIT Convention is ‘self-executing’ (Renold 2018: 9), suggesting that the conflicting provisions of the treaty regarding national laws, if any, may discourage jurisdictions, including Turkey, from adopting it. Another explanation for this reluctance might be the concerns/criticisms over limitation periods, compensation for possessors, due diligence, and non-retrospective characteristic of the Convention (Özel 2013), as is the case for many jurisdictions, such as the UK (The Seventh Report of the Select Committee on CMS 2000, paras 83–93).

Lastly, the 2017 Nicosia Convention, also known as the *Blood Antiquities Convention* (see, for instance, Fincham 2019), deals specifically with the punitive dimension of the phenomenon by creating criminal offences relating to cultural vandalism and the ITCG. It defines cultural property in alignment with the 1970 UNESCO Convention, *albeit* being more comprehensive, as it provides, for instance, separate definitions for movable and immovable properties (Article 2). By drawing attention to the interconnections between the ITCG and OC/FT, it establishes several criminal offences, including theft and other forms of unlawful appropriation (Article 3); illegal excavation (Article 4), importation (Article 5), and exportation (Article 6); illegal acquisition (Article 7) and placing on the market (Article 8); falsification of documents (Article 9); and destruction and damage (Article 10). Moreover, it criminalises aiding or abetting the commission of such criminal activities and attempted unlawful conduct undertaken in this context (Article 11). It is necessary to state that it also holds legal persons liable (Article 13), whereby it allows adopting a comprehensive sanctioning mechanism addressing all potential perpetrators. In other words, the 2017 Nicosia Convention aims to complement the above-examined international legal instruments by filling the inherent gaps in tackling this phenomenon by creating a shared basis and common benchmarks in criminal laws of States so that international efforts are harmonised and compatible. Furthermore, by embarking on the collective cultural heritage of all nations (i.e., regardless of being a party to the Convention), it endeavours to overcome the deficiencies stemming from the common belief that national cultural heritage is a matter of State sovereignty and/or is confined to a single jurisdiction (Bieczyński 2017). However, it could only obtain legal validation on 01 April 2022 (Council of Europe 2023a) owing to its relatively late ratification by enough jurisdictions (see Article 27(3) of the Convention), and thus its impact is yet to be seen.

⁴ See Law No 5549 on the Prevention of Laundering Proceeds of Crime 2006, art 2(1)(d); and Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (ROM) 2008, art 4(1).

⁵ Turkey adopts a threshold approach to predicate offences, whereby all offences punishable by a minimum penalty of more than six months imprisonment are considered predicate crimes. See Law No 5237 (Turkish Criminal Code – TCC) 2004, art 282 and Law No 2863 on the Conservation of Cultural and Natural Property (CCNP)1983, arts 65 to 74.

Before carrying the analysis on the pertinent Turkish national legal framework, it is worth highlighting significant differences between demand and supply jurisdictions of the ITCG, which becomes more apparent in becoming a party to the above international treaties. Whilst all States, although being ostensibly, equivalently call for a safer habitat for the collective cultural heritage of humankind, by and large, importing and exporting jurisdictions perform differently in taking concrete legal actions. More specifically, whilst countries on the supply side (with rich cultural heritage but not developed from an economic or law enforcement capability perspective) advocate for stringent international rules, jurisdictions on the demand side (i.e., developed countries with relatively meagre cultural patrimony) favour the contrary (Brown 2017; Renold 2018). This tendency brings the sincerity of international actors in tackling the ITCG into question. Therefore, bearing these facts in mind is critical in examining how Turkey has composed its domestic legal arsenal.

National legal framework of Turkey on cultural goods

As the ITCG is a transnational phenomenon, the effectiveness of each national response mechanism depends, at least to some extent, on the harmony of a given domestic legal arsenal with the international legal instruments and other national legal regimes. The origins of early legal instruments on the ITCG date back to the pre-Republic era (see, for example, Sahin 2021),⁶ which not only evidences the existence of the problem over two centuries ago but also Turkey's determination to tackle the problem. More recently, Turkey has also composed its national legal framework in line with the spirit and provisions of the 1970 UNESCO Convention, which was ratified by Turkey on 21 April 1981 (UNESCO 2023a).

The pertinent Turkish legal arsenal addressing the phenomenon comprises mainly special legislation consisting, *inter alia*, of Law No 2863 on the Conservation of Cultural and Natural Property (CCNP) 1983; Regulation for Treasure Hunting (RTH) 1984; Regulation on Ethnographic Movable Cultural Assets (REMCA) 1988; Regulation on the Classification, Registration, and Acquisition to Museums of Movable Cultural and Natural Assets Required to be Protected 2009; and Regulation on the Collection and Control of Movable and Cultural Property Required to be Protected 2010. It is necessary to state that although Law No 5607 (Anti-Smuggling Law – ASL) 2007 exclusively addresses the smuggling predicament in Turkey, the anti-smuggling of cultural goods (i.e., tackling the ITCG) falls under the jurisdiction of the above-mentioned legal framework. The exclusion of the ITCG within ASL 2007 evidences the special attention given to combatting this particular crime type and implies its uniqueness (e.g., the problems associated with identification) compared to other smuggling offences determined therein (e.g., fuel smuggling; Article 3). Additionally, although CCNP 1983 establishes criminal offences relating to

⁶ The Ottoman Empire had enacted a total of four regulations, namely *Asar-ı Atika Nizamnamesi*, that aim, amongst others, to protect cultural properties and prevent their smuggling abroad in 1869, 1874, 1884, and 1906, respectively.

the ITCG, it does not determine certain criminal conduct committed in this context, such as theft. However, this does not constitute a contradiction to the spirit and provisions of the 1970 UNESCO Convention, as the Convention does not put forward crime-specific requirements either. Therefore, particular criminal conduct, such as thefts from museums, are covered by Law No 5237 (Turkish Criminal Code – TCC) 2004. Nevertheless, TCC 2004 does not set forth any provisions relating to criminal activities committed in this context in determining the gravity of criminal offences. In other words, the commission of any crime prescribed under TCC 2004 within the scope of the ITCG does not constitute any difference (e.g., aggravating circumstances) regarding, for instance, the penalties they entail. However, as a 2011 EU study (on preventing and fighting the ITCG) aptly observes, theft, as determined under national penal codes, cannot address the phenomenon, as trafficking involves the movement of goods (CECOJI-CNRS – UMR 6224, 2011: 130). Therefore, establishing context-specific crimes, or introducing them as the aggravating circumstances of conventional criminal offences, such as theft (Article 141 of TCC 2004), would be an appropriate step for the competent Turkish authorities. There exist jurisdictions that have adopted such an approach to determining the aggravating factors of the conventional offences—see, for instance, Article 311–4-2 of the French Penal Code (i.e., *Code Pénal*) 1994, which envisages them as the aggravating factors of theft. The only provision set forth by TCC 2004 regarding the phenomenon relates to the *advance payment* (i.e., a procedure that prevents the instigation of prosecution against offenders who pay the investigation costs and other penalties within ten days of any notification by the Public Prosecutor’s Office concerning specific crimes; Article 75). Accordingly, the criminal offence of treasure hunting without permission, as envisaged by CCNP 1983, was recently incorporated into the scope this procedure in October 2019 (Official Gazette No – OGN 30928 2019). Given the elimination of the risk of being prosecuted for illegal treasure hunters, this amendment, in no uncertain terms, exacerbates the situation for Turkey in controlling the irregular treasure hunting practices of individuals.

CCNP 1983, along with its complementary regulations mentioned above, embodies the primary legal source on the conservation of cultural goods. Accordingly, it defines the cultural property as the movable and immovable property both on and beneath the ground, or under the water pertaining to science, culture, religion and fine arts of before and after recorded history or that is of unique scientific and cultural value for social life before and after recorded history (Article 3(a)(1)). As the close reading of these provisions connotes, it defines the term cultural property concerning the cultural and scientific interest it holds and harmonious with the definition set forth by the 1970 UNESCO Convention, but does not provide a list of categories and thresholds in terms of the value and age of such properties in classifying cultural goods. The definitional approach to cultural goods as adopted by Turkey is analogous to many other corresponding strategies, including the UK.⁷ Article 1

⁷ For example, the Dealing in Cultural Objects (Offences) Act 2003 in the UK defines cultural objects ‘as an object of historical, architectural or archaeological interest’ (see Sect. “[Methodology](#)”) without stipulating any age or value thresholds.

of the 1970 Convention refers to the maturity of hundred years for certain types of cultural properties (see, for instance, Article(1)(e) or (k)). Accordingly, some jurisdictions, such as Denmark, France, and Sweden, have further put forward a monetary-value threshold at the time of ratification of the 1970 UNESCO Convention (UNESCO 2023a). That is to say that jurisdictions have adopted various definitional approaches to cultural property, which may account in part for the gaps for tackling the phenomenon effectively. It can be argued that Turkey, having not set any threshold relating to determining the extent of cultural property, aims to secure and maintain a more comprehensive framework in claiming its legal interests over such properties (e.g., restitution procedures).

Turkey considers all movable and immovable cultural and natural assets to be protected whose existence is known or will transpire in the future, except for foundation properties, as State property (CCNP 1983, Article 5). It is necessary to underline here that Turkey, similar to many jurisdictions (e.g., Germany, which refers to *Nationales Kulturgut* in determining the scope of its national treasure; see Cultural Property Protection Act (*Kulturgutschutzgesetz/KGSG*) 2016, Sect. "Insights into the enforcement effectiveness"), does not utilise the term national treasure in governing its extent. The underlying rationale for this varying terminological preference across countries stems, *inter alia*, from the fact that defining cultural property is a sovereignty issue of States and that States endeavours to avoid restrictive views in determining their national treasure (CECOJI-CNRS – UMR 6224, 2011: 72). Accordingly, CCNP 1983 establishes the *obligation to inform*, which requires anyone who finds, knows or becomes aware of the movable and immovable cultural and natural assets in the land they own or use to notify the competent authorities⁸ of such property within three days (Article 4(1)). The relevant authorities who are directly informed of such a notification shall take the necessary precautions for their protection and security and notify the MCT and the nearest museum directorate in writing within ten days (CCNP 1983, Article 4(3)). Given the relatively fewer and weaker communication opportunities (e.g., the lack of internet) when CCNP 1983 was enacted,⁹ these notification periods may be considered suitable only for that era. Interestingly, although CCNP 1983 has been amended several times, none of the amendments have considered revising these provisions. In light of current technological developments, where communication has become instantaneous, it can be argued that such long notification periods should be shortened.

Movable cultural and natural assets to be protected include ethnographic cultural assets related to science, religion, and mechanical arts, including handmade tools and equipment, reflecting the social committee of the people they associate with, such as figurines and miniatures (CCNP 1983, Article 23). However, by any means, taking such assets abroad (e.g., exportation) is subject to several restrictions, such as

⁸ These authorities consist of the nearest museum directorate or the headman in the village (i.e., *mukhtar*) or the local administrative authority in other places. The *mukhtar*, along with the measures taken, informs the closest administrative authority on the same day.

⁹ For a brief overview of telecommunications history in Turkey, see *Elektrik Muhendisligi, (2007) Turkiye'de Telekomunikasyon Tarihi*, No. 430, https://www.emo.org.tr/ekler/e52547a0e7bca35_ek.pdf (accessed 3 February 2023).

controls by the museums affiliated with the MCT or the specialised staff (REMCA 1988, Article 5(3)) to be present at some customs-exit gates (CCNP 1983, Article 24(4)). Cultural assets can only be taken out of the jurisdiction for specific purposes temporarily, and Turkey reserves its right to allow the trade and/or export of cultural goods (CCNP 1983, Article 24(6)).

Arguably, the importation of cultural goods is subject to a less stringent set of rules. CCNP 1983 devotes only one article to the importation of cultural goods, whereby stipulates 'it is free to bring cultural assets from abroad' (Article 33). REMCA 1988, however, sets forth some obligations (e.g., the requirement of declaring the photographic inventory list that indicates the characteristics, such as name, type, size, etc., of such properties) in this context (see Article 6(1)). Nevertheless, there is no caveat penalising the infringement of the provisions regulating the importation of cultural assets across the Turkish *jus scriptum*. Having said that, this relatively lenient set of regulations is not uncommon across the EU either, as jurisdictions predominantly rely on the rigorous checks of the source countries undertaken within the scope of exportation controls (CECOJI-CNRS – UMR 6224, 2011: 134).

Trading in (movable) cultural goods is subject to authorisation from the MCT (CCNP 1983, Article 27(1)). Remarkably, however, the pertinent legal framework does not set forth any restrictions on importing cultural property for trading purposes and permits bringing cultural assets from abroad without any (prescribed) limitations. Similarly, taking photographs and films, moulage, and making copies of movable and immovable cultural assets in archaeological sites and museums affiliated to the MCT for the purpose of education, training, scientific research, and promotion are subject to permission of the MCT (CCNP 1983, Article 34). In other words, producing replicas of cultural goods is subject to specific limitations, which also address customer defrauding in the trade.

CCNP 1983 also determines provisions for surveying, sounding, excavating cultural goods (Article 35), and treasure hunting (Article 50). Treasure hunting is of particular importance, as it is conceivably more demanding to detect and control than the surveying, sounding, and excavation practices, thereby increasing the risks for the ITCG. Whilst surveying, sounding and excavation usually require more sophisticated equipment and collaboration between people intrinsically, individuals, on the other hand, can undertake treasure hunting by utilising simple tools, such as metal detectors, personally. Furthermore, buying, possessing, or using metal detectors is not prohibited in Turkey, *albeit* treasure hunting is subject to a licence to be obtained from the MCT (RTH 1984, Article 5). Therefore, considering the limited area of utilisation of metal detectors, regulating their trade and supervising their usage (e.g., integrating GPS devices) would be an appropriate step to be taken by the competent Turkish authorities.

Regulation for Treasure Hunting (RTH) 1984 sets the principles to be followed in treasure hunting (Article 1). It is necessary to state here that the provisions of RTH 1984 were recently amended on 21 July 2020 (OGN 31192 2020), thereby introducing more rigid restrictions in this context. For example, it outlaws underwater treasure hunting, which had been unencumbered by any restrictions previously, *albeit* underwater exploration and excavation are subject to obtaining permission (CCNP 1983, Article 35(3)). Given that Turkey is a peninsula surrounded by the Black Sea, Aegean

Sea, and the Mediterranean Sea, with big lakes in the historical sites, such as Van and İznik (i.e., Nicaea) Lakes, this amendment was long due. Treasure hunting can be carried out under the supervision of (museum) specialists and representatives from the Ministry of Interior (i.e., LEAs) and Ministry of Environment and Urbanisation (RTH 1984, Article 11), where the treasure hunter has to meet all expenditures, including travel expenses and allowances of those officials (RTH 1984, Article 12), as well as expenses related to the reinstatement of the excavated site (RTH 1984, Article 13). In other words, these stringent provisions may arguably prompt people who want to hunt treasure to undertake such activities without obtaining permission from the authorities, thereby increasing the risks for the ITCG. It would not be unreasonable to expect them to avoid such a costly procedure, especially considering the uncertainty of finding any treasure. In addition, the recent amendment to TCC 2004 has made it possible for offenders to make an *advance payment* (a form of non-prosecution agreement) for the prevention of the instigation of prosecution, thereby eliminating further legal proceedings (e.g., a potential conviction). That is not to say that the current legal framework fails to deter individuals from illegitimately conducting such activities yet addressing such issues would enhance the compliance and law enforcement ecosystem.

Another critical point that needs to be highlighted here is that the Turkish legal regime does not establish the criminal liability of legal entities (TCC 2004, Article 20) but rather determines security measures applicable to them, consisting of the revocation of the operational permit and confiscation (TCC 2004, Article 60). Additionally, Law No 5326 (Misdemeanours Law) 2005, by referring, amongst others, to the offences set forth by ASL 2007, envisages administrative penalties for legal entities regarding particular criminal conduct, such as fraud (Article 43/A). However, it fails to address the ITCG as ASL 2007 does not encompass the smuggling of cultural goods, as discussed previously. In other words, auction houses, art galleries, and other legal entities, such as private museums, cannot be prosecuted even in circumstances where they involve in the ITCG. It is necessary to note here that as of the end of 2021, there were 319 private museums in Turkey operating under the supervision of the MTC (T.C. Kültür ve Turizm Bakanlığı, 2022: 102). Therefore, this legal lacuna needs to be addressed urgently.

Lastly, eliminating the dispersed nature of relevant legal instruments, thereby creating a consolidated corpus of the legal framework in this context, would reinforce the competence and effectiveness of the current Turkish legal regime. Germany, for instance, has recently (in 2016) enacted a single piece of legislation to counter the ITCG, which is in line with the spirit of the 1970 UNESCO Convention (Minister of State for Culture and the Media 2023). That is to say that Turkey, as a signatory jurisdiction of the UNESCO 1970 Convention and a candidate country to the EU, would benefit from a similar approach.

National organisational structure of Turkey on cultural goods

Whilst Turkey has always endeavoured to counter the ITCG, its organisational composition lacks a central body entrusted with the protection of cultural heritage. This crucial duty is dispersed across various ministries and agencies therein, such as the

MCT (Presidential Decree No – PDN 1 2018, Article 277) and LEAs which operate under the Ministry of Interior and Ministry of Trade.

The MCT consists of 17 units, including the General Directorate of Cultural Heritage and Museums (GDCHM; PDN 1 2018, Article 279). The GDCHM is specifically entrusted, amongst others, with ensuring that the movable and immovable cultural properties that need to be protected in Turkey are unearthed, protected, evaluated, and promoted through archaeological research and excavations; and it must also take measures to prevent their destruction and trading (PDN 1 2018, Article 281(1)(a)). The organisational structure of GDCHM comprises, *inter alia*, the Department of Anti-Smuggling (DAS) (*Kaçakçılıkla Mücadele Dairesi Başkanlığı*; T.C. Kültür ve Turizm Bakanlığı 2023c), which is responsible for taking necessary measures to prevent cultural properties from being trafficked and to ensure the restitution of such properties that have been abroad (PDN 1 2018, Article 281(1)(a)). For instance, DAS has ensured the restitution of thousands of cultural properties from all over the world (T.C. Kültür ve Turizm Bakanlığı 2023d). However, this crucial department does not harness any operational and/or law enforcement authority, as that power belongs to LEAs only.

Turkey has four key LEAs. Three of these, the General Command of Gendarmerie (GCG; Law No 2803 on the Organisation, Duties and Powers of the Gendarmerie – ODPG 1983, Article 4), the Coast Guard Command (CGC; CGC 1982, Article 2(b)), and the General Directorate of Security (GDS; Law No 3201 on the Security Organisation 1937, Article 1) operate under the auspices of the Ministry of Interior whilst the fourth, the Customs Enforcement (CE; PDN 1 2018, Article 443), operates under the Ministry of Trade. Whilst the GDS is responsible for policing in urban areas, the GCG maintains law and order in rural areas (ODPG 1983, Article 10), and the CGC carries out policing activities throughout the country's vast 8,484 km (T.C. İçişleri Bakanlığı Sahil Güvenlik Komutanlığı, 2022: 12) coastline (CGC 1982, Article 4). The primary duties of these authorities, amongst others, include preventing the commission of any offence, including the ITCG, and anti-smuggling (i.e., prohibiting, pursuing, and investigating smuggling; ODPG 1983, Article 7; CGC 1982, Article 4; Law No 2559 on the Powers and Duties of Police 1934, Article 2).

In terms of institutional structures of the LEAs regarding anti-smuggling, the GCG, the GDS, and the CE have specific departments with primary responsibility to combat/counter smuggling and organised crime, including the ITCG. The Anti-Smuggling and Organised Crime Departments (*Kaçakçılık ve Organize Suçlarla Mücadele Başkanlığı/KOM*) of the GCG (T.C. İçişleri Bakanlığı Jandarma Genel Komutanlığı – JGNK 2019a) and the GDS (T.C. İçişleri Bakanlığı Emniyet Genel Müdürlüğü – EGM 2023a) and the Customs Enforcement Smuggling and Intelligence Directorates (*Gümrük Muhafaza Kaçakçılık ve İstihbarat Müdürlüğü/KİM*; T.C. Ticaret Bakanlığı 2023) are the dedicated units of these LEAs. Moreover, KOMs have affiliated branches that constitute the field service units, undertaking anti-smuggling activities at regional and provincial levels throughout Turkey. Nevertheless, these specialised units are not devoted only to counter the phenomenon as their mission array incorporates addressing all sorts of smuggling activities and organised crime schemes. As such, it can be argued that the LEA personnel cannot

develop sufficient levels of subject-specific expertise to respond to the ITCG. Turkey consists of 81 cities and 922 districts (T.C. İçişleri Bakanlığı 2023a), each of which hosts both gendarmerie command and directorate of security, either provincial or district, respectively. Furthermore, Turkey has a land area of 780,043 square kilometres (T.C. Millî Savunma Bakanlığı Harita Genel Müdürlüğü, 2023), with a population of approximately 84.7 million people (as of 2021; TUIK 2022b). It is the responsibility of the GCG to ensure the security and safety of 93% of the land area and 21% of the population (JGNK 2019b). Moreover, the relevant district LEAs also have additional law enforcement stations. In alignment, the CE carries out its activities at a total of 203 border gates comprising 30 land crossings, 8 railway crossings, 101 seaports, and 64 airports (T.C. Ticaret Bakanlığı 2020: 24). In other words, although these LEAs have specific departments, it does not seem possible to assign specialists to each LEA unit throughout the country.

Lastly, the joint training programmes reinforce the cooperation amongst these authorities as they allow LEA personnel from different institutions to convey their institution-specific expectations and problems to their counterparts in a face-to-face education environment. Turkish International Academy Against Drugs and Organised Crime (TADOC; EGM 2023b), established in cooperation with the United Nations Office on Drugs and Crime (UNODC) on 26 June 2000, plays a critical role in this end. Whilst TADOC and its training *modus operandi* complement the institutional composition outlined above regarding countering the predicament, LEAs encounter particular problems in tackling the ITCG effectively, as discussed below.

Insights into the enforcement effectiveness

Turkey has always been committed to tackling the ITCG both nationally and internationally. For example, within the scope of combatting the ITCG, the KOM unit of GCG undertook 3,035 operations in 2021 alone (3,255 in 2020), thereby secured a total of 131,089 cultural goods (142,793 in 2020) and arrested 6,914 suspects (8,172 in 2020; JGNK 2022: 23). Similarly, the KOM unit of the GDS executed additional 666 operations in the corresponding period (707 operations in 2020), and as a result, denied 107,939 cultural assets (132,371 in 2020), including coins, to criminals and apprehended 1,271 alleged offenders (1,260 in 2020) (EGM KOM 2022: 73).

In terms of international efforts, Turkey is a member of the HEREIN Network, a European Cultural Heritage Information Network, which aims to facilitate information processing (i.e., sharing, exchanging, and analysing) on cultural heritage and address emerging threats (Council of Europe 2023b). As a strategic partner of Europol (Europol 2021b), Turkey actively partakes in the Europol-coordinated operations devoted to tackling the phenomenon at the EU level and beyond. For example, during a recent operation, namely PANDORA V, coordinated by Europol, INTERPOL, and the WCO, Turkey, along with 30 European countries, contributed to the seizure of approximately 56,400 cultural goods and the arrest of 67 offenders between 01 June and 31 October 2020 (Europol 2021a). Additionally, Turkey

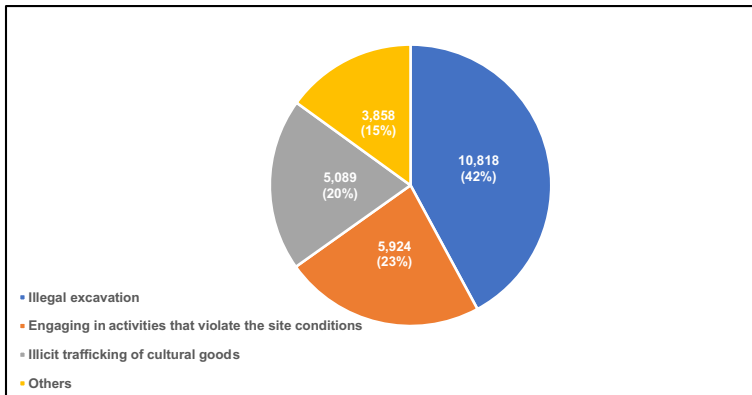


Fig. 1 The number of incidents intervened by the GCG personnel by offence type between 2010 and 2021

is a member of the Southeast European Law Enforcement Centre (SELEC),¹⁰ a regional LEA organisation composed of police and customs forces that aims to enhance regional coordination in addressing transnational organised crime, including the ITCG. It comprises eight task forces, including Anti-Fraud and Anti-Smuggling Task Force and Environment and Nature Related Crimes Task Force (SELEC 2023b). The latter task force further involves a sub-group of Crimes against Cultural Heritage Goods coordinated by the Republic of North Macedonia (SELEC 2023a). For example, through an operation codenamed PEKOM, Turkey and Bulgaria successfully dismantled an organised crime group dealing with the ITCG under the auspices of SELEC in 2017, thereby securing 4,500 pieces of cultural objects and detaining 29 suspects accordingly (SELEC 2018: 44). Turkey is also a member of the South-East European Cooperation Process (SEECP) and chaired the organisation under its Presidency Term 2020–2021 (Regional Cooperation Council 2020). Accordingly, within the scope of UNESCO’s International Communication Campaign and the framework of its Presidency Term, Turkey organised an online meeting, namely *Capacity Building Meeting on Activities and Cooperation Against Illicit Trafficking of Cultural Property*, on 14 December 2020, commemorating the 50th anniversary of the 1970 Convention (UNESCO 2020). In other words, Turkey actively seeks to carry out its obligations pertaining to tackling the ITCG nationally and internationally.

Given the immense responsibility area of the GCG, which covers 93% of the land area of the jurisdiction and incorporates most of the sites that attract offenders for illegal excavation practices, it is necessary to examine the pertinent efforts of this particular LEA. The data on the number of criminal offences determined by the

¹⁰ The member States of the organisation consist of Albania, Bosnia and Herzegovina, Bulgaria, Greece, Hungary, Moldova, Montenegro, the Republic of North Macedonia, Romania, Serbia and Turkey. See Southeast European Law Enforcement Center, <http://www.selec.org/member-states/>, (accessed 3 February 2023).

Table 1 The number of suspects referred by the GCG personnel to prosecution authorities by offence type between 2010 and 2021

Offence type	Number of incidents	Number of suspects	Number of suspects per offence type
Illegal excavation	10,818	39,366	3.64
Engaging in activities that violate the site conditions	5,924	7,295	1.23
Illicit trafficking of cultural goods	5,089	9,367	1.84
Others	3,858	6,906	1.79
Total	25,689	62,934	2.45

pertinent Turkish legal regime (i.e., CCNP, 1983) indicates that the GCG intervened in 25,689 incidents between 2010 and 2021.¹¹ A closer examination of such data demonstrates that three offence types, namely illegal excavation (10,818 incidents), engaging in activities that violate the site conditions (5,924 incidents), and the ITCG (5,089 incidents), make up approximately 85% of all crimes committed in this context (see Fig. 1 below). Admittedly, detecting illegal excavating and the ITCG is more demanding than identifying activities violating site conditions, as the GCG personnel can uncover the latter group of violations by simply patrolling site areas or monitoring CCTV. In other words, illegal excavation and the ITCG constitute the most pervasive and challenging types of crime for the GCG personnel in this context in Turkey.

As evident in Table 1 below, the GCG personnel intervened in approximately 11,000 illegal excavation incidents and referred roughly 40,000 suspects to prosecution authorities between 2010 and 2021. These statistics suggest that each illicit excavation involves the participation of 3 to 4 persons, suggesting that offenders act in teams. Concerning the ITCG, on the other hand, the GCG forces intervened in around 5,000 incidents and caught approximately 9,400 offenders, signifying that each scheme involves roughly two culprits. However, given the broader network required for such practices, the number of offenders associated with these incidents identified in Turkey suggests that the GCG personnel encounter problems in identifying all parties involved in such criminal schemes. That is to say that whilst operations undertaken by the GCG personnel may be effective in apprehending *looters* and *early-stage intermediaries*, such practices may show deficiencies in identifying *late-stage intermediaries* and *collectors who are involved in the trading of cultural goods*. This relatively limited effectiveness stems from the fact that late-stage intermediaries and collectors operate abroad and occupy the demand side of the predicament in most cases. Undeniably, addressing this issue entails improved interagency cooperation (nationally and) internationally, suggesting that the current international

¹¹ The analysis undertaken in this part of the study has been based upon the data, which is not publicly available, shared with us by the GCG generously.

Table 2 The prevalence of the predicament within the GCG responsibility area by city order between 2010 and 2021

Order	Province	Number of incidents	Number of suspects
1	Antalya	1268	2455
2	Izmir	1137	2540
3	Konya	1089	2488
4	Muğla	1050	1696
5	Nevşehir	917	1208
6	Manisa	824	1913
7	Rize	821	879
8	Çanakkale	806	1331
9	Mersin	685	1345
10	Afyonkarahisar	661	1617
⋮	⋮	⋮	⋮
40	Şanlıurfa	243	529
41	Ordu	242	736
⋮	⋮	⋮	⋮
80	Şırnak	29	70
81	Hakkâri	14	32
Total		25,689	62,934

collaboration efforts outlined above fail to address the transnational dimension of the phenomenon effectively.

The data on the number of criminal offences committed in this context indicates that such illegal activities¹² occur predominantly in eight cities, namely Antalya, İzmir, Konya, Muğla, Nevşehir, Manisa, Rize, and Çanakkale (see Table 2 below). It is worth noting that of those eight provinces, five cities (i.e., Antalya, İzmir, Muğla, Rize, and Çanakkale) have a coastline, suggesting that the prevention of the ITCG requires the active involvement of the CGC in these jurisdictions. Additionally, of those remaining three cities, two provinces, namely Konya and Manisa, neighbours Antalya and İzmir, respectively. In other words, the predicament is mainly prevalent in the west (i.e., Aegean Sea) and south coastal line (i.e., Mediterranean Sea) in Turkey. However, notwithstanding this prevalence, the CGC does not incorporate a dedicated unit in this context, as discussed before.

The GCG personnel seized approximately 640,000 cultural goods in Turkey between 2010 and 2021. Whilst those cultural goods were in various forms, including but not limited to tablets, objects, and sculptures, to name a few, coins (530,000) made up around 83% of all goods captured. Although these statistics may signify the prevalence of coins regarding the phenomenon, there may be other predicaments for LEAs that can prevent them from effectively identifying all cultural goods in peril, thereby distorting the true extent of the problem. Accordingly, in what follows, the

¹² For the purposes of this article, cities with more than 800 incidents have been regarded as the provinces where the phenomenon is most prevalent.

Table 3 The gratuities envisaged for the informants (Law No 1905 1931, Article 1)

The value of the cultural good(s)	Percent
Up to 5,000 TL	30
Up to 25 000 TL, for the portion over 5,000 TL	25
Up to 50,000 TL, for the portion over 25,000 TL	15
Up to 100,000 TL, for the portion over 50,000 TL	10
For the portion over 100,000 TL	7,5

article underlines the main hurdles impeding a more effective enforcement mechanism in Turkey.

Problems encountered by LEAs

In most instances, identifying illicit cultural goods requires a knowledge background from a myriad of disciplines, including archaeology, (art) history and forensics, and linguistics, intrinsically. Accordingly, Turkey endeavours to furnish LEA personnel, especially those who serve within particular divisions (e.g., KOMs), with the necessary level of expertise and knowledge on the prevention of the phenomenon.¹³ Nevertheless, due to the small number of such experts and the immense distribution of rural areas, which also predominantly host cultural heritage, it is not practical to assign them in a way to operate in such regions uninterrupted. That is not to say that the monitoring or detection over those sites are tenuous, yet the limited number of expert staff increases the likelihood of failing to identify cultural goods. For example, it would not be unreasonable to expect the possibility of failing to distinguish a piece of jewellery (i.e., artefact from the Hellenistic era) from its contemporary counterparts by (novice and inexperienced) LEA personnel in a scenario where a woman wears them simultaneously, even without the inconvenience of the exigency of hiding them. In alignment with the necessity of a satisfactory level of accumulation of knowledge, the ability to develop an adequate level of expertise is another crucial factor, which would enhance the probability of being successful in such a situation for LEA staff. In other words, the more personnel can occupy their position within the dedicated KOM departments, the more they can build-up discipline-specific experience, which is of utmost importance to this end. However, each LEA rotates its personnel periodically, and the GCG, in particular, does so more frequently. Consequently, LEA personnel cannot surpass these vital qualifications and experiences at a certain level, where the risk posed by the ITCG can be minimised.

The intelligence capabilities of LEAs comprise one of the most significant determiners of the success in tackling criminal activities, including the ITCG. The reports and information provided by citizens constitute an extensive means of intelligence

¹³ See, for instance, Turkish International Academy Against Drugs and Organised Crime (TADOC), <https://www.egm.gov.tr/kurumlar/egm.gov.tr/IcSite/tadoc/BrochureENGLISH.pdf> (accessed 3 February 2023).

avenue for LEAs. As may be anticipated, providing an incentive mechanism to notify LEAs of illegal activities threatening the wellbeing of cultural heritage for citizens may increase the likelihood of obtaining more relevant information, thereby diminishing the associated risks accordingly. However, although CCNP 1983 determines the provisions for gratuities envisaged for those who find cultural assets,¹⁴ it would be apt to posit that those figures are far from being generating sufficient levels of incentivisation for such disclosures (see Table 3 below). Therefore, it can be argued that the current inducement premia cannot give rise to extra motivation for persons to notify relevant stakeholders of the associated threats. Additionally, in light of the inducement premia displayed below, another significant point that needs to be highlighted here is that the actual value of cultural relics can never be gauged correctly. Whilst some cultural goods may be of high value in money, others may have a significant sentimental, religious and/or scientific and historical importance and worth, *albeit* without any or with just a moderate monetary value. That is to say that such calculations innately fail to recognise and assess the immaterial dimension of the value aspect accurately as gratuities are predominantly determined based on the material criteria. The table below indicates the gratuity ratios envisioned for informants and whistle-blowers.

The period of three days concerning the reporting obligation in notifying the competent authorities of the relevant cultural goods constitutes another, perhaps the most crucial, problem faced in tackling the ITCG. Admittedly, such an exploitable deficiency represents a tremendous legal lacuna for most of the culprits. For example, apart from the perpetrators that have been detected red-handed (e.g., during an illegal excavation), an offender can straightforwardly avoid being accused of involving in such crime schemes by asserting that their interest in the cultural good(s) is a recent matter. Regardless of when they have obtained (or been informed of) cultural goods, offenders can bypass LEAs or the judiciary under the current legal framework as long as they claim that they have just acquired such (knowledge or) cultural assets within the last three days. Therefore, such a timeframe provides invaluable opportunity for perpetrators as it allows them to sell cultural goods and thereby carry on their illegitimate businesses uninterruptedly.

The counterfeiting of cultural goods is another dimension of the predicament that further undermines the overall competency of LEAs in tackling the phenomenon. It is not an uncommon practice for offenders to produce fake cultural goods and thereby defraud customers. Possessing counterfeit cultural goods does not make anyone guilty of a crime *per se*. For instance, numerous museums, such as the Museum of Anatolian Civilizations (*Anadolu Medeniyetleri Müzesi*) or the British Museum, to name a few, host giftshops on their premises (or online)¹⁵ wherein they sell replicas of the objects they display. Therefore, it is conceivable that anyone who possesses fake cultural assets may claim that they collect or sell such products without

¹⁴ Law No 2863 on the Conservation of Cultural and Natural Property (CCNP) 1983 sets forth (art 64(e)), amongst others, the rewarding of informants who notify authorities of the (hidden) cultural assets as per the provisions of Law No 1905 1931.

¹⁵ See, for example, The British Museum Shop, <https://www.britishmuseumshonline.org/replicas.html> (accessed 3 February 2023).

breaching any legal provisions, including offenders. Similarly, the online sale of cultural goods constitutes an additional aspect of the problem that requires dedicated efforts to counter the difficulty effectively. Lastly, the lack of a central unit entrusted with the protection of cultural heritage and the associated potential delays in the information exchange between LEAs may prevent generating prompt responses to counter the illicit (online) trade due to such communication issues.

Conclusions and policy recommendations

Considering the crucial role of the accumulation of knowledge, networks and the level of expertise LEA personnel can develop over time in a given region, establishing specific units which are not subjected frequent relocations would be an appropriate approach to enhancing the capacity of Turkey in this end. Supplementing these units by recruiting expert personnel would further augment such efforts. For example, even those expert archaeologists spend decades in a single site to understand and analyse the artefacts and other findings of a given period or civilisation. Therefore, it would be unreasonable to expect LEA personnel to develop the necessary expertise in a few years in a complex and variant subject area such as cultural goods. The Carabinieri Headquarters for the Protection of Cultural Heritage (*Comando Carabinieri Tutela Patrimonio Culturale—TPC*), the national centre of information and analysis for all LEAs in Italy relating to the protection of cultural heritage (Ministero della Difesa 2021), is a good example in this context. As a military policing force dedicated to tackling heritage crime, the Carabinieri TPC consists of three basic units, namely the Archaeology Unit, the Antique Unit, and the Forgery Unit (Rush and Millington 2015), suggesting the need for further specialization within the LEAs in ensuring an effective tackling mechanism. Additionally, creating a national hub, which is similar to financial intelligence units devoted to AML efforts, that incorporates experts from all necessary fields, such as archaeologists, art historians, anthropologists, and museum professionals, would indubitably be of added value. That is to say that the creation of a specialised LEA unit would result in a more effective national framework dedicated to combatting the ITCG.

The judicial duties of LEAs in Turkey start when a crime occurs, and they execute their duties as judicial security forces (*adli kolluk*) on behalf of the public prosecutors (Turkish Criminal Procedure Code 2004, Article 164). Therefore, the knowledge and experience of public prosecutors in dealing with the ITCG cases become more prominent as they direct LEAs to trail the offenders or the cultural heritage under consideration. This does not necessarily mean that the public prosecutors do not have essential expertise, yet their specific investigation plans are imperative in setting the direction for LEAs. Therefore, establishing specialised bureaus within the offices of chief public prosecutors, and assigning prosecutors whose principal responsibility is to investigate such crime cases would be an appropriate approach. Turkey implements such a procedure for investigating domestic violence cases (T.C. Adalet Bakanlığı, 2019) but not for the ITCG.

Enhancing the communication practices of the competent authorities (e.g., establishing a central agency or introducing common databases, which allows them to be

notified of criminal conduct in this context simultaneously) and strengthening their capacity to conduct joint operations are additional crucial steps that should be taken without delay. Furthermore, such combined efforts should also include a broader network of organisations and private parties. For example, it is a prevalent method for offenders to carry on their transactions via conventional mail. Accordingly, reinforcing the co-operation with the (public and private) postal services is of utmost importance. Likewise, bolstering the collaboration with other organisations that operate in rural areas, such as the General Directorate of Forestry, would be another appropriate approach as affiliated personnel undertake their duties predominantly in the countryside, where illegal excavation practices befall. More importantly, establishing a robust public–private partnership mechanism should be another priority of the jurisdiction. For example, the Ministry of Interior has created various mobile applications (e.g., *Uyuma Mobil Uygulaması*; T.C. İçişleri Bakanlığı, 2023b) to intensify its cooperation with citizens in addressing drug smuggling. Developing a similar strategy would enhance public awareness in this context, thereby increasing the effectiveness of pertinent national efforts. Similarly, amending the national legal regime in force, plugging the previously mentioned exploitable gaps, and revising the current incentivisation schemes would ensure a more effective combatting capacity regarding the ITCG.

Lastly, the MCT continuously improves the physical safety of cultural sites (T.C. Kültür ve Turizm Bakanlığı 2023a). Yet, the abundance of such places¹⁶ renders it an arduous and very expensive task to conclude amelioration projects without eliminating associated risks in the necessary period. Therefore, enhanced observation capabilities may play a crucial role in this end. Turkey has been successfully utilising Unmanned Aerial Vehicles (UAVs) to address many problems, including human trafficking. Devoting UAVs for the sole use of such purposes may not be practical or budgetary but including the associated risky regions in the patrol routes of UAVs would be of significant value. In alignment, increasing the number of camera traps in potential excavation areas would reinforce the observation capabilities of the jurisdiction.

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Data Availability The data utilised in this study is not available publicly. It can only be obtained by individual request to the Turkish General Command of Gendarmerie.

Declarations

Competing interests The authors have no relevant financial or non-financial interests to disclose. No funding was received for conducting this study.

¹⁶ As of the end of 2021, there were 22,233 archaeological sites in Turkey. See Republic of Turkey, Ministry of Culture and Tourism, Statistics 2021, <https://kvmmgm.ktb.gov.tr/TR-44973/turkiye-geneli-sit-alanlari-istatistikleri.html> (accessed 26 January 2023).

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Legal instruments

International

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970
- Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954
- Council of Europe Convention on Offences relating to Cultural Property (Nicosia Convention) 2017
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995
- UNSC Res 2347 (24 March 2017) UN Doc S/Res/2347

Turkey

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- Law No 2559 on the Powers and Duties of Police 1934
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- Law No 2863 on the Conservation of Cultural and Natural Property (CCNP) 1983
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- Regulation for Treasure Hunting (RTH) 1984
- Regulation on Ethnographic Movable Cultural Assets (REMCA) 1988
- Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism (ROM) 2008
- Regulation on the Classification, Registration, and Acquisition to Museums of Movable Cultural and Natural Assets Required to be Protected 2009
- Regulation on the Collection and Control of Movable and Cultural Property Required to be Protected 2010

Other National Legal Instruments

- (France) French Penal Code (*Code Pénal*) 1994

(Germany) Cultural Property Protection Act (*Kulturgutschutzgesetz/KGSG*) 2016
(United Kingdom) Dealing in Cultural Objects (Offences) Act 2003

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