



## Strengthening Protection of Cultural Heritage in Albania Through Adoption of International Criminal Law Standards

**Erlanda Agaj**

Judge,  
Tirana First Instance Court,  
General Jurisdiction,  
Criminal Chamber,  
Tirana, Albania

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Received: 5 January 2025 / Accepted: 1 March 2025 / Published: 25 March 2025  
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Doi: 10.56345/ijrdv12n107

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### Abstract

*This article addresses the obligations of the Albanian legislator stemming from the Council of Europe Convention on Criminal Offences Relating to Cultural Property, adopted in Nicosia on 19 May 2017 (hereinafter "Nicosia Convention"). The Convention, as the first international treaty dedicated to the criminalization of criminal offences against cultural heritage, fills the gaps left by previous conventions, and in particular implements the unfulfilled goals of the 1985 Delphi Convention. The article highlights the limited scope of Albanian judicial practice in the prosecution and trial of crimes against cultural property, citing data from the years 2011-2023, during which 121 cases were registered, but only 24 perpetrators were convicted. Following ratification of the Nicosia Convention, Albania must criminalize a range of acts affecting cultural heritage and adopt detailed legal provisions to ensure their effective implementation. This includes harmonizing its legislation with international standards, improving judicial practices, and increasing capacity among law enforcement agencies and legal practitioners. The article argues that the implementation of the Convention will strengthen the protection of Albania's cultural heritage, increasing the number of cases investigated and prosecuted, while strengthening the country's commitment to its international obligations and the preservation of global cultural heritage.*

**Keywords:** Nicosia Convention, Cultural Heritage, Criminal Offences, judicial practice, international cooperation

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## 1. Main Aim, Objectives and Questions Addressed

### 1.1 Main aim

The main aim of this study is to assess and analyze the responsibilities of the Albanian legislator under the Council of Europe Convention on Offences Relating to Cultural Property (also known as the Nicosia Convention) and to determine what institutional, legal and practical steps Albania should take to bring its national framework into line with the requirements of the Convention.

### 1.2 Objectives

1. To analyze the Albanian legal framework implementing the Nicosia Convention and to identify gaps in legislation related to cultural heritage.
2. To address judicial practices in the field of crimes against cultural works, analyzing them from a procedural

and material point of view.

3. To increase interstate cooperation by applying useful mechanisms and respecting Albania's obligations regarding cultural heritage.

### 1.3 Questions addressed

1. The legal framework and the adaptation of the principles of the Nicosia Convention to Albanian legislation as well as to the unique cultural context.
2. Criminalization and respective punishments related to various crimes against cultural heritage.
3. International cooperation by developing efficient strategies and mechanisms against this phenomenon.

## 2. Introduction

The European project began with a vision of integration based on "super nationalism". It was the claim of states to sovereignty that was seen as the main cause of conflict in Europe (Leonard F.M Besselink, 2014). The aim of the Council of Europe, according to Article 1 of its statute, is "to achieve a closer union between its members in order to safeguard and develop the ideals and principles which are their common heritage and to promote economic and social progress". The Council of Europe pursues these aims in a large number of sectors, with the exception of national defense, but including cultural heritage, where criminal law and criminal procedure are present, in the context of increasing cross-border crime (Jean Pradel, 2009). However, a European criminal law has had its opponents and supporters. Thus, the sovereignty of states and the national characteristics of criminal law have been arguments against a common criminal law (Jean Pradel, 2009). Despite this, the Council of Europe, in 2017, took the initiative in Nicosia, Cyprus, to continue and replace (Nicosia Convention, 2017) the unfinished draft of the 1985 Delphi Convention, which never entered into force as it was not ratified by the states (European Convention on Criminal Offences Relating to Cultural Property, 1985), by adopting the Nicosia Convention. The latter can be considered the only international treaty that aims to criminalize criminal offenses related to cultural heritage, filling the gaps in other conventions in the field of cultural heritage protection (Mateusz Maria Bieczyński, 2017).

The Albanian legal framework regarding cultural heritage in Albania has been developed in accordance with the commitments of the Republic of Albania in international organizations focused on the protection of cultural heritage, as well as based on the need to combat illegal actions and inactions against works of art and culture within and outside the territory of the Republic of Albania.

As for judicial practice, it has been scarce and by law enforcement bodies, criminal offenses in the field of cultural heritage have been considered as non-serious crimes. Referring to the statistics collected and analyzed by the Reports of the Prosecutor General on the State of Crime (Reports of the Attorney General, 2025), in the period 2011-2023, a total of 121 (one hundred and twenty-one) criminal proceedings related to criminal offenses aimed at the protection of cultural property were registered and 24 (twenty-four) persons were convicted (General Crime Situation Reports of the Prosecutor General). Even in those cases where the criminal proceedings have ended with a decision to declare the defendant guilty, it is noted that the type of punishment generally applied is a fine (Court of First Instance of General Jurisdiction of Tirana, 2024; the minimum prison sentence provided for by the provisions, from 3 (three) months (Elbasan Judicial District Court, 2015) in the case of theft; to 3 (three) years of imprisonment in the case of trafficking (Elbasan Judicial District Court, 2015); and in some cases, the suspension of the execution of the prison sentence and the placing of the defendant on probation, in accordance with Article 59 of the Criminal Code (Gjirrokastër Judicial District Court, 2016), is decided. This may also have been due to shortcomings in the Albanian Criminal Code regarding actions and omissions, as well as the lack of a specific provision when the offense is committed by special subjects, who, due to their duty or profession, have an easier time committing the crime. However, with the ratification of the "Council of Europe Convention on Criminal Offences Relating to Cultural Property" done in Nicosia on 19 May 2017 (hereinafter the "Nicosia Convention"), the Albanian state must criminalize a series of acts as criminal offenses, crimes or misdemeanors, by providing detailed, clear criminal norms, which, being well known by legal practitioners (Nicosia Convention, 2017), will increase the number of cases investigated and tried.

### 3. Methodology

As for the methods that will be elaborated, they mainly consist of academic research, desk studies, statistical data analysis, while the documents that will be reviewed include court cases, laws, by-laws, international conventions and their commentaries, scientific journals, relevant reports and statistical data from public institutions such as: The General Prosecutor's Office, relevant Ministries, etc.

The study consists of: an *analytical phase* that elaborates the principles of the Nicosia Convention and its implementation in Albanian legislation; a *comparative phase*, which compares Albanian practices with international standards; and a *descriptive phase* that includes the conclusions and recommendations necessary to improve Albania's performance in the fight against crimes against cultural heritage. An important aspect is the collection of data from reliable official and unofficial sources, as well as empirical data obtained from court cases in the period 2011 - 2023.

The analytical framework includes the legal analysis of the provisions of the Convention and Albanian legislation as well as the empirical evaluation with computer methods of data obtained from various institutions. Also, the evaluation criteria are based on the compatibility of Albanian legislation with those of the countries that have implemented the Nicosia Convention. Regarding effectiveness, the appropriate judicial and institutional mechanisms related to cultural heritage are taken into account. However, the challenges and opportunities that the Republic of Albania has in the progress of the fight against crimes against cultural heritage are not left unmentioned.

In view of the above, after a detailed analysis of the legal framework, judicial cases, comparability and implementation of international practices, the study concludes with an assessment of the results achieved and with the necessary recommendations for improving the Albanian legal framework, developing efficient mechanisms, raising awareness of public opinion and relevant institutions, and the cooperation of all factors in the fight against crimes against cultural heritage.

### 4. Albanian Legal Framework on the Protection of Works of Art and Culture

Criminals commit three types of crimes: crimes of honor or passion, crimes of violence or vandalism; economic crimes (Naim Mëçalla, 2014). Criminal acts committed against cultural property can be considered crimes of passion, vandalism and economic crimes. Often a work of art can be secretly appropriated and exported to another country, due to the passion that a subject of law has for art and culture. Illegal excavations, which can damage or expose cultural heritage to infringements, are crimes of violence or vandalism, but most often the malicious attack on cultural property is aimed at economic gain, so these acts are also economic crimes.

The legal norm is so flexible that it can naturally reflect the change in reality, without the need to change the norm. But often, the legal norm is not flexible enough and fails to adapt to the new reality. This creates a gap between the law and society. A need arises for a new norm (Aharon Barak, 2016). The Albanian Criminal Code does not provide for the criminal offense of "Illegal Excavations", although these actions are socially dangerous, since in addition to the appropriation of areas where excavations are carried out illegally, there is a risk of damaging cultural assets, by fragmenting them. In a practical case (Fier Judicial District Court, 2016), on 11.02.2017, at around 15:30, the judicial police services at the Fier Local Police Directorate, based on information obtained on the operational route and observations carried out in the Apollonia Archaeological Zone, in the village of Kryegjatë, Fier, were informed that the defendants A.F. and E.F. were conducting illegal archaeological excavations at the site located near the ancient cemeteries, while at a further distance the defendant S.F. was working, who had a metal detector in his hand. When they saw that the police officers were approaching, they ran away towards the forest. The judicial police services pursued the defendants and went to search their homes, where they found several archaeological objects. The defendants were arrested, and after all the necessary investigative actions were carried out, they were sent for trial. They have been convicted of the criminal offense of "Theft of works of art and culture" in collaboration, provided for by article 138/2 and 25 of the Criminal Code.

With the adoption of Law No. 8523, dated 9.9.1999 "On the accession of the Republic of Albania to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" (Law No. 9490, 2017), taking into account that the import, export and illegal transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of these assets and that international cooperation constitutes one of the most efficient means for the protection of the cultural property of each country (Convention on the Means of Prohibiting and Preventing the Illicit Import, 1970), with Law No. 8733, dated 24.01.2001, it provided for in the Criminal Code the criminal offenses of "Illicit Trafficking in Works of Art and Culture"

(*Criminal Code, 1995*) and “*Fraud for Works of Art and Culture*” (*Criminal Code, 1995*), currently provided for by Articles 138/a and 147 of the Criminal Code. Until now, the Criminal Code in articles 138, 160, 176, only provided for the criminal offenses of “*Theft of works of art and culture*” (*Criminal Code, 1995*), “*Smuggling of cultural values*” (*Criminal Code, 1995*); “*Destruction of works of art and culture*” (*Criminal Code, 1995*). While with Law no. 44/2019, article 201 of the Criminal Code was amended, regarding the criminal offense of “*Air, water and soil pollution*”, considering that when air pollution, surface and groundwater pollution, surface or subsurface pollution, is committed in areas specially protected by law, such as areas with environmental, cultural, artistic, historical, architectural or archaeological values, the criminal offense will be considered in qualifying circumstances, consequently the punishment will be higher. The principle of legality means the provision of criminal offenses by law and the non-punishment for a criminal offense that is not expressly provided for as a crime or criminal misdemeanor (*Constitutional Court of the Republic of Albania, 2011*).

In order for an injured state to be able to intervene to protect its interests, even when the criminal offense is committed in the territory of a foreign state, by foreign nationals, the criminal legislation of many countries has also provided for the *reality principle*, which extends the effects of criminal law beyond the place of commission of the offense and the nationality of the perpetrator, based precisely on the need to absolutely guarantee the protection of national interests and security only through the implementation of national law (*Artan Hoxha, 2011*). However, due to its nature, this principle cannot be applied to all criminal offenses provided for by a given legislation, but only to those that essentially violate the common good of the world, such as crimes against humanity; crimes against independence and constitutional order; acts with terrorist purposes; money laundering, etc. Here, the Albanian legislator has taken care to include the case of the criminal offense of trafficking in works of art and culture, due to its very importance (*Criminal Code, 1995*).

The Rome Statute of the International Criminal Court also anticipates the defence of cultural heritage in its preamble, which reads: “*The States Parties to this Statute, Conscious that all peoples are united by common bonds, their cultures pieced together in a **shared heritage**, and concerned that this delicate mosaic may be shattered at any time...*”, and meanwhile defines as a “*war crime*”, among others, the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, and intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (*Rome Statute of the International Criminal Court, 1998*). This demonstrates the significance of preserving cultural legacy not only in times of peace but particularly amid continuing international or domestic conflicts. (*Roger O’Keefe, 2010*).

The International Criminal Tribunal of the former Yugoslavia condemned Pavle Strugar to 7.5 years of imprisonment for crimes of: Attacks on civilians; destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; devastation not justified by military necessity; unlawful attacks on civilian objects (violation of the laws or customs of war). In October 1991, Strugar was named commander of the Second Operational Group, which the Yugoslav People’s Army (JNA) had established to lead the military offensive on the Croatian region of Dubrovnik. Regarding the allegation of cultural property destruction, the ICTY reasoned that because Dubrovnik’s Old Town was added to the World Heritage List in 1979, all of its structures, including its walls, could be appropriately classified as cultural property. The destruction or damage of property in the Old Town on December 6, 1991, was not justified by military necessity because it was determined that there were no military objectives in the immediate vicinity of the 52 buildings and structures that were destroyed or damaged on that day, nor in the Old Town or its immediate vicinity. (*Case Prosecutor v. Pavle Strugar, 2005*).

In addition to criminalizing actions and omissions that are contrary to the protection of cultural heritage interests, the Albanian legislator has taken initiatives to foresee and punish as administrative offenses actions or omissions that are contrary to the rules, related to the inspection, protection, preservation, circulation of cultural assets, archaeological research and findings, underwater archaeological activity, use, exploitation and revitalization of cultural assets. A special and careful protection is also foreseen in the Customs Code, where from the literal and systematic interpretation of articles 139/3, 266/9 and 272 thereof, the following regulations result in favor of cultural heritage (*Law No. 27, 2018*): i) Goods, leaving the customs territory of the Republic of Albania, are subject to the application of prohibitions and restrictions for reasons of protection of national assets of artistic, historical or archaeological value and protection of industrial or commercial property; ii) it is considered smuggling to import, export or sell objects of national cultural value, in violation of the legislation in force in this field; iii) administrative resolution of smuggling (*Law No. 27, 2018*) is not allowed if the goods, the object of smuggling, are objects of national cultural value.

Despite the legislator’s efforts to have a complete legal framework, there are still legal gaps that need to be filled, also as an obligation stemming from the Nicosia Convention, which, pursuant to Articles 116 and 122, constitutes part of the domestic legal system and has primacy over domestic laws that are inconsistent with it.

## 5. The Nicosia Convention and Albanian Domestic Law

### 5.1 Overview of the Convention and its purpose

The Nicosia Convention was adopted and opened for signature on 19.05.2017 and is currently signed by 14 (fourteen) States, 8 (eight) of which have ratified it. The Convention entered into force on 01.04.2022, after the fifth instrument of ratification was deposited. The States that have signed the Convention are: Albania, Armenia, Cyprus, Greece, Hungary, Italy, Latvia, Montenegro, Portugal, San Marino, Slovenia, Ukraine, Mexico and Russia. The States that have ratified the Convention are Cyprus, Greece, Hungary, Italy, Latvia, *Mexico (Council of Europe, 2025)*. On 19 December 2024 it was ratified by the Assembly of the Republic of Albania, published in the Official Gazette no. 1 of 7 January 2025, and the law on its ratification, no. 123/2024 enters into force on 22 January 2025. (*Official Gazette of the Republic of Albania, 2025*). The latest country and the first in wartime, that ratified the Nicosia Convention, is Ukraine, on 25 February, 2025 (*Law No. 0297/2025*). The convention itself will enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of its instrument of ratification, after the instrument of ratification has been deposited with the Secretary General of the Council of Europe (*Nicosia Convention, 2017*). Italy amended its Criminal Code by the Law no. 22, dated 09.03.2022, in order to comply with the Nicosia Convention (*Law no. 22/2022*). It seems that the law started to give its benefits, as on October 2024, investigations by the specialist Naples' Cultural Heritage Protection Unit have led to a rare archaeological discovery in the centre of the city after an entrepreneur carried out illegal excavations underground at an ancient medieval church. The defendant is charged with utilising a number of his street-level properties in the city centre to make money off of the archaeological site. The illicit operations were allegedly intended to pillage and destroy archaeological sites, according to the carabinieri who placed the region under seizure. (*Cicinelli, 2024*). However, Law no. 22/2022 did not define the concept of cultural heritage and assets. Fortunately, courts have already closed this gap. (*Picci, 2024*). The Italian Court of Cassation stated that any good characterized by an intrinsic cultural value fits in the notion of cultural heritage, protected by the provisions of Section VIII-bis of the Criminal Code (*Italian Court of Cassation, Criminal Section, 2023*).

The Convention is also accompanied by an Explanatory Report (*Council of Europe, 2022*), prepared by the drafters of the Convention, with the aim of making it understandable to its readers and implementers. The Explanatory Report is not a primary binding authority, but has the nature of a secondary persuasive authority. Where there is a binding authority and there is a secondary persuasive authority, the secondary authority may be used to support the primary authority (*Sokol Berberi, 2011*).

From the list of signatory states, one of the first features of the Convention stands out. Despite being a Convention of the Council of Europe, which consists of 46 (forty-six) states of the European Continent (*Council of Europe, 2011*), the Convention has been signed by Russia and Mexico, being ratified by the latter. Therefore, the Convention is open to all states regardless of the continent where they are geographically located, because crimes against cultural heritage are a concern for everyone. The European Court of Human Rights (*Beyeler v. Italy, 1996*) has held that, with regard to works of art by foreign artists, which are lawfully located in the territory of a state and which belong to the cultural heritage of all nations, it is legitimate for a state to take measures aimed at facilitating, to the greatest extent possible, wide public access to them, in the general interest of universal culture.

The purpose of the Nicosia Convention is: to prevent and combat the destruction, damage and trafficking of cultural property, by providing for the criminalization of certain acts; to strengthen crime prevention and the criminal justice response to all criminal offences relating to cultural property; to promote national and international cooperation in the fight against criminal offences relating to cultural property; and consequently to protect cultural property (*Nicosia Convention, 2017*).

### 5.2 Assets protected by the Nicosia Convention

The Constitution of the Republic of Albania considers national heritage as one of the foundations of the Albanian State, which has the duty to respect and protect it, and considers it as one of its social objectives. Cultural heritage is the totality of cultural assets, material and intangible, of an individual, group or society inherited from the past that it preserves in the present, to be transmitted to future generations as part of the national wealth of a country, which express values, identity, knowledge, traditions, beliefs, as well as the cultural assets of the landscape (*Law No. 27, 2018*). The Albanian legal framework regarding cultural heritage in Albania has been developed in accordance with the commitments of the Republic of Albania in international organizations focused on the protection of cultural heritage (*Albania became part of*

UNESCO, 1958), as well as based on the need to combat illegal actions and inactions against works of art and culture.

According to the Convention, cultural property is movable and immovable. Movable cultural property is any object placed on land or under water, or removed therefrom, which, in religious or secular circles, is specifically classified, defined or designated by any party to the convention or in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, as being of importance for archaeology, prehistory, ethnology, history, literature, art or science. In relation to immovable property, the Convention includes any monument, group of buildings, site or structure of any other kind, whether situated on land or under water, which, in religious or secular circles, is specifically defined or designated by any Party to this Convention, or by any Party to the 1970 UNESCO Convention, as being of archaeological, pre-historic, ethnological, historical, literary, artistic or scientific importance, or listed in accordance with Article 1 and Article 11 (paragraphs 2 or 4) of the 1972 UNESCO Convention concerning the Protection of the Cultural and Natural Heritage (*Nicosia Convention, 2017*). As can be seen, the drafters of the Convention have been sufficiently careful, considering as cultural property: a) those properties which the Member States themselves consider, define, classify or designate as such; b) it itself provides primarily for cultural property; refers to other international acts of the Council of Europe, which have as their object the protection of cultural property. This provision of the Convention has two main purposes: firstly, to avoid contradictions in the legal framework of the state's parties to the Convention, and secondly, to guarantee the widest possible protection of cultural heritage.

### 5.3 Acts and omissions required to be criminalized under the Convention

The existence of law from a philosophical point of view is conditioned by the imperfection of human nature, by the necessity of protection, security and social well-being, by the need to resolve conflicts and guarantee a normal order. (*Kristaq Traja, 2018*) Thus, the unlawful and socially dangerous actions or omissions that have dictated the need to create unified normative standards, to consider them as criminal offenses, in relation to the existing ones, in the field of cultural heritage protection are: actions of appropriation of objects part of the cultural heritage, excavations, illegal removal, illegal import, export, purchase or placing on the market of stolen/excavated/imported/exported/illegally removed objects, destruction, damage, or falsification of documents related to cultural property (*Nicosia Convention, 2017*). These actions are required to be criminalized by states in their domestic legislation. As regards placing on the market, the concept of "market" includes both the black market and the cyber (online) market. This is because the Internet is rapidly transforming the way we communicate, educate ourselves, buy and sell goods and services. However, it also serves as a powerful tool in the hands of those who carry out illegal activities (*Jonad Bara, 2010*). Therefore, the Convention requires that cultural property be protected from this market as well.

Although states have the right to penalize acts or omissions that present as genuine cultural property those objects that are not in fact such, the Convention does not provide for this as an obligation. Although these activities may undermine the stability and security of the art market, they do not have a direct effect on the protection of cultural heritage (*Council of Europe, 2010*).

The culpability of perpetrators who are part of the supply chain normally depends on their proximity to the source of the illicit goods: the most indisputable would be the first link in the chain. However, as is sometimes observed in connection with the theft and handling of stolen goods, the reseller or the final link in the chain, known in international terminology as "the fence", may in some circumstances be a more serious criminal than the original supplier of the goods themselves (*Prof.Dr.Mariana SEMINI-TUTULANI, 2020*). In a court case, the Prosecutor argued that: "*We are facing the criminal offense of "Theft of works of art and culture" committed in collaboration with citizens Gj and A, and with unidentified persons, provided for by Article 138/2 and 25 of the Criminal Code, as Gj kept stolen items in the apartment together with A. The stolen items that were collected by citizen Gj are icons and church items, which are items restricted to civil circulation and not everyone, can have these items. In these conditions, citizen Gj, since he also collects items that are limited in physical circulation and very rare, has created conditions as an instigator and accessory to the criminal offense, since people who rob churches take valuable items from these religious objects and have a secure market for sale with Gj., who is licensed in this field and knows that these are works of art that are not found everywhere, he himself knows works of art very well, especially church ones, since he is a museologist. He then certifies these stolen objects and sells them. The fact that many, many church objects stolen in different parts of Albania have been found in the apartment of citizen Gj. shows that this citizen has taken and kept the items stolen from the thieves in the churches and has been a secure market for them, by later selling the stolen items in the churches.*"

However, in assessing the guilt of these perpetrators, the Convention provides that it must be provided in domestic law that the perpetrator must have known or must be proven that if he had shown due care and attention in acquiring the cultural property, he would have known of the illicit origin of the cultural property (*Nicosia Convention, 2017*). The phrase "due care and attention" refers to those cases where the perpetrator, (buyer or marketer) due to his knowledge due to his profession, private or official duty, his educational training, is able to identify a cultural property, the rules and procedures that are followed in relation to their trade. For example, for a museologist, archaeologist, marketing specialist in the field of art and culture, a curator, a collector, it is easier to identify whether a work of art and culture is stolen, extracted from an excavation, illegally imported. Therefore, these acts will be considered committed intentionally or negligently. A criminal offense is committed through negligence when a person, although not wanting the consequences, foresees the possibility of their occurrence and foolishly hopes to avoid them, or fails to foresee them, although under the circumstances he should have and had the opportunity to foresee them (*Criminal Code, 1995*).

#### 5.4 Criminal liability of legal persons under the Nicosia Convention

Article 45 of the Criminal Code provides that legal persons, with the exception of state institutions, are criminally liable for criminal offences committed in their name or for their benefit by their bodies and representatives, and the criminal offences, the relevant punitive measures applied to legal persons, as well as the procedure for their imposition and execution are regulated by a special law. Based on this delegation, the Assembly of the Republic of Albania has adopted Law No. 9754, dated 14.6.2007 "On the Criminal Liability of Legal Persons", which sets out the rules on liability, criminal proceedings and the types of punitive measures taken against legal persons for committing a criminal offence.

Article 13 of the Convention provides that: "Each Party shall ensure that legal persons can be held liable for criminal offences referred to in this Convention, when committed for their benefit by any natural person, acting either individually or **as part of an organ of the legal person**, who has a leading position within that legal person, based on: a) a **power** of representation of the legal person; b) an **authority** to take decisions on behalf of the legal person; c) an authority to exercise control within the legal person. 2 Apart from the cases provided for in paragraph 1 of the present article, each Party shall ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 of the present article has made possible the commission of a criminal offence referred to in this Convention for the benefit of that legal person by a natural person acting under its authority. "From the content of the provision, it is apparent that the drafters of the Nicosia Convention have followed the identification theory and the management failure theory in holding a legal person criminally liable in the case of offences against cultural property. According to the identification theory, if an individual who is sufficiently senior within the corporate structure to metaphorically represent the "mind" of the company commits a crime within the scope of his duties, that act and "mens rea" can be attributed to the company. The company can be "identified" with these acts and be held directly liable. The management failure theory would constitute such conduct "falling far below what could reasonably be expected of the company in the circumstances". At first glance this appears to be no more than an extension of the identification theory. Instead of looking for a failure on the part of a high-ranking individual or group of individuals, it looks for a "management failure". However, the theory continues to define management failure as "a failure to ensure safety in the management or organization of the company's activities." (Artur Prenga, 2018).

The Albanian special law is a safe "lap" for the Nicosia Convention. It offers a higher guarantee than the Convention itself. While the Convention requires that the act be committed by an individual who has a management position, the law determines that we will be faced with the criminal liability of the legal person even in those cases where the individual has a representative, management, administrative or controlling position (Law No. 9754, 2007). In this regard, the Albanian legislator is not obliged to undertake another legislative initiative.

#### 5.5 Penalties under the Nicosia Convention

Criminal punishment fulfills two different functions, that of general and specific prevention of criminal offenses, to discourage and prevent any citizen from taking actions that are contrary to criminal norms and so that the perpetrator of the criminal offense, after serving the sentence, does not take criminal actions in the future (*Constitutional Court of the Republic of Albania, 2011*). According to Article 47 of the Criminal Code, in determining the sentence, the court takes into account the dangerousness of the criminal offense, its perpetrator, the degree of guilt, as well as mitigating and aggravating circumstances. In this way, the court, when imposing the sentence, assesses which type of punishment is proportionate to the dangerousness of the offense and its perpetrator. The Albanian Criminal Code provides for these

main types of punishments: life imprisonment, imprisonment and fine (*Criminal Code, 1995*).

In the special Albanian law (*Law no. 9754, 2007*) on the criminal liability of legal persons, the following main penalties are foreseen for the latter: fines and termination of the legal person, while as additional penalties: a) closure of one or more activities or structures of the legal person; b) placing the legal person in controlled administration; c) prohibition to participate in public funds procurement procedures; ç) revocation of the right to obtain or use licenses, authorizations, concessions or subsidies; d) prohibition to publicly solicit funds and financial resources; dh) revocation of the right to exercise one or more activities or operations; e) obligation to publish the court decision.

The Nicosia Convention provides a guiding principle in determining the punishment for perpetrators who have committed crimes against cultural property. The punishment must be effective, i.e. have an impact on the perpetrator and be implemented; *proportional*, taking into account the mechanism of committing the crime; *deterrent*, i.e. have an effect on third parties, and take into account the dangerousness of the crime committed, regardless of whether the subject of the crime is an individual or a legal person. The types of punishments provided for by the Convention are as a rule “*deprivation of liberty*”, translated in Albanian criminal law terminology, “*imprisonment*”, with the exception of cases where the criminal offense consists of the following factual circumstances: a) it was excavated on land or under water to find and remove cultural property without the authorization required by the law of the country where the excavation was carried out; b) the movable cultural property was illegally imported because it has as its source an unauthorized excavation from the country of origin; the movable cultural property has been illegally imported because it has as its source an unauthorized export from the receiving State. In such cases, States may impose a fine. As regards legal persons found guilty of committing a criminal offence against hereditary property, the Convention provides for the following types of penalties: a) temporary or permanent exclusion from the exercise of commercial activities; b) exclusion from the right to receive public assistance or benefits; c) placement under judicial supervision; d) a judicial winding-up order (*Nicosia Convention, 2017*).

From the above, it is clear that regarding the types of punishments, the Albanian legislator provides for those that the Convention requires to be part of domestic law. The legislator remains responsible for specifying the type and extent of the punishment, at a minimum or maximum, for each specific offense.

#### 5.6 Aggravating circumstances under the Nicosia Convention

Aggravating circumstances are various objective and subjective factors that indicate a higher or lower degree of dangerousness of the offense and the perpetrator, which affect the amount of punishment (*Criminal Chamber of the Supreme Court, 2024*), making it more severe. Consequently, since they violate the position of the defendant, aggravating the sanction against him, unlike mitigating circumstances that are non-exhaustive, they must be expressly provided for in the law, in order to be implemented. Currently, aggravating circumstances are provided for in Article 50 of the Criminal Code and are exhaustive (*Criminal Code, 1995*). The principle of legal certainty necessarily requires a clear formulation of legal norms, since an inaccurate regulation of the legal norm, which leaves room for the implementer to give it different meanings and consequences, is not in accordance with the purpose, stability, reliability and effectiveness that the legal norm itself aims for (*Constitutional Court of the Republic of Albania, 2003*).

Article 15 of the Nicosia Convention provides that in cases where states do not have constituent (qualifying) elements of the criminal offense, they consider the following cases as aggravating circumstances: a) *the offence was committed by persons abusing the trust placed in them in their capacity as professionals*. In this case, professionals may be practitioners of liberal professions, but related to art, culture, cultural heritage. Thus, these subjects may have a license as a collector, exhibition organizer, museologist, marketing manager of works of art and culture; b) *the offence was committed by a public official tasked with the conservation or the protection of movable or immovable cultural property, if he or she has intentionally refrained from properly performing his or her duties with a view to obtaining an undue advantage or a prospect thereof*. In this case, this circumstance qualifies the fact and is a specific criminal offense, a variant of the general crime of “Abuse of office”. The act is committed intentionally and not through negligence or lack of professionalism. This is why the drafter of the convention emphasized “*if he or she has intentionally refrained from properly performing his or her duties with a view to obtaining an undue advantage or a prospect thereof*”; c) *the offence was committed in the framework of a criminal organisation*; In this case, it would be necessary to prove the existence of the criminal organization, and further, the commission of one of the acts to the detriment of cultural property. However, if the law provides that the very fact of the existence of a criminal organization constitutes a criminal act in itself, it cannot be considered as an aggravating circumstance, due to the prohibition of punishment twice for the same act. (*Criminal Code, 1995*); d) *the perpetrator has previously been convicted of the offences referred to in this Convention*.



This circumstance takes into account recidivism, which requires specific recidivism, that is, one of the acts of theft, embezzlement, import, export, illegal excavation, purchase and placing on the market must have been committed.

As noted, the aggravating circumstances provided for by the Nicosia Convention are detailed and oriented towards the highest interest of the protection of cultural heritage. From the judicial practice of the cases referred to in this paper, it is noted that the professional knowledge in the field of art and culture of the perpetrators of criminal offenses has facilitated the commission of criminal offenses in this field by them, but this fact could not be used by the proceeding body in the individualization of the sentence as an aggravating or qualifying circumstance, due to its not being expressly provided for in the law. Consequently, the approach of the aggravating circumstances defined in the Convention, in the Albanian domestic law, will achieve two goals: the prevention of the commission of criminal offenses against cultural property by professionals in this field and the correct individualization of the criminal liability of the perpetrator by the court. Judicial interpretation is the interpretation of the law that the court makes when resolving a specific judicial case to which this law applies (*Sokol Berberi, 2014*).

### 5.7 International cooperation under the Nicosia Convention

Usually, extradition cannot be carried out without the existence of an agreement between the requesting party and the party where the requested person or persons are located (*Prof.Dr. Xhezair Zaganjori, 2018*). Extradition according to Article 11 of the Criminal Code, can be allowed only when it is expressly provided for in international agreements to which the Republic of Albania is a party. Extradition is allowed when the criminal offense that constitutes the object of the extradition request is provided for as such simultaneously by both Albanian and foreign law. The Nicosia Convention has a tolerant international character and requires a high level of cooperation between states in the case of criminal investigation and prosecution. The same cooperation is also required for the force of final criminal decisions issued by these states, as regards the criminal offenses discussed in this essay.

The Convention provides that States Parties shall cooperate with each other, in accordance with the provisions of the Convention and in accordance with relevant applicable international and regional instruments and agreements, in the investigation and prosecution of criminal offences against cultural heritage. If there is no bilateral or international agreement between the Parties on extradition or mutual legal assistance in criminal matters and a State Party receives a request from another State Party to this Convention, the Nicosia Convention shall also serve as a legal basis for international cooperation in criminal matters between those States (*Nicosia Convention, 2017*).

Regarding the force of criminal decisions, the Convention provides in its Article 16 that: "Each Party shall take the necessary measures to provide for the possibility to take into account final sentences passed by another Party in relation to the criminal offences referred to in this Convention when determining the sanctions." This provision is implemented in Article 10 of the Criminal Code of the Republic of Albania, which provides that: "Criminal decisions given by foreign courts against Albanian citizens that confirm the commission of a criminal offence, unless otherwise provided for by bilateral or multilateral agreements, shall be valid in Albania within the limits of Albanian law, including the following: a) for the purpose of classifying the person who committed the criminal offence as a repeat offender;...". Therefore, Article 16 of the Convention does not impose any obligation on the Albanian state in terms of drafting legislation. However, the Albanian legislator can provide in detail for the punishments in cases with the object of criminal offenses on cultural property, considering him as a specific recidivist. Thus, despite the fact that in the foreign country the defendant has been convicted with a final criminal decision, for the criminal offense of "Theft of cultural property", while in Albania he is being tried for the criminal offense of "Placing cultural property on the market", he will be considered a repeat offender. Therefore, it should be sufficient that the crime be in the category of offenses that protect cultural heritage.

Other commitments required under the Nicosia Convention are the handover of cultural property to the State of origin upon completion of proceedings (*Nicosia Convention, 2017*), the right, but not the obligation, of the parties to consult with each other in cases where more than one party claims jurisdiction over a criminal offence in the field of cultural property, in order to determine the most appropriate jurisdiction for prosecution (*Nicosia Convention, 2017*). In this case, states should be guided by the standards of the most expeditious resolution of the case, assessing which state has collected the most evidence, in which state the main sources of evidence are located, how the evidence interacts with each other, and which state has the most human and material resource capacity for the prompt and comprehensive investigation and prosecution of the criminal act. The Convention also claims its supremacy over other instruments that states sign with each other, stipulating that agreements in other acts must be such as to be in line with the objectives and principles of the Nicosia Convention and/or they must aim to complement, strengthen or facilitate the implementation of its principles (*Nicosia Convention, 2017*).

### 5.8 Cooperation between institutions on fostering legal protection of cultural heritage

Strong interagency collaboration at the national and international levels is necessary to combat crimes against cultural heritage. Numerous organisations on a global scale support the battle against illegal acts and inactions related to cultural and artistic expression, such as UNESCO, INTERPOL, UNIDROIT, World Customs Organization (WCO), EUROPOL, UNODC, International Council of Museums (ICOM), UNSC, the International Criminal Court, the Blue Shield International, OSCE, Council of Europe, etc. International organizations play a vital role in preventing illicit trafficking of cultural property. Cultural heritage preservation requires sustained collaboration, assistance from law enforcement, and public awareness. (Boz, 2025).

Based on Spanish experience and Article 46 of the Spanish Constitution, public authorities are required to ensure the preservation and encourage the enhancement of Spain's citizens' historical, cultural, and artistic heritage as well as the assets that make it up, regardless of their ownership or legal status. Any offences against this legacy will be punished by the penal law. Here, the public authorities refer to Guardia Civil, National Police, Customs/Tax Agency, autonomous territories, courts, embassies, and ministries of cultural, museums, international institutions, and citizens. Control of imports and exports, market regulations, the application of international treaties, special police, cultural, and legal forces, national and international coordinations, new technology and databases, and trainings are some of the tools used to better combat human trafficking. (Andres, Aguila, 2025).

Regarding the global scene and the experiences of other EU countries, Albania needs to improve agency coordination. Customs, Tax Office, Museums, Ministry of Culture, Judicial Police, unit of local governance, National Institute of Cultural Heritage Registration, prosecutors offices and courts. The Nicosia Convention emphasises how important it is for officials working to prevent and combat crimes involving cultural heritage to receive training. Every agency must have the same goals, values, and understanding. Above all, however, they must sit together, train, specialise, and develop trust.

## 6. Conclusions and Recommendations

This article is an initial attempt to address the approach of Albanian legislation to the Council of Europe Convention on Criminal Offences Relating to Cultural Property, adopted in Nicosia in May 2017, otherwise known as the "Nicosia Convention", ratified by the Assembly of the Republic of Albania in December 2024, published in the first Official Gazette in 2025. The Convention is complementary to the international legal framework and replaces the unfinished draft of the 1985 Delf Convention. The Nicosia Convention can be considered the only international treaty, which has as its object the criminalization of criminal offences related to cultural heritage. For this Convention, this paper is not exhaustive, since for each institution it regulates (criminal offense, penalties, criminal liability of legal persons, aggravating circumstances, international cooperation, instigator and abettor, attempt, jurisdiction, etc.) a separate essay can be developed. The Convention is also accompanied by an Explanatory Report, prepared by the drafters of the Convention, in order to be understandable by its readers and implementers. The Convention is open to all states regardless of the continent where they are geographically located.

Currently, the Albanian legal framework regarding cultural heritage in Albania has been developed in accordance with the commitments of the Republic of Albania in international organizations and acts focused on the protection of cultural heritage. Legal protection consists of the criminalization of socially dangerous actions or omissions, as well as the sanctioning of other, less serious actions or omissions such as administrative offenses or customs violations. In practice, the number of cases investigated and judged is not satisfactory, and crimes in the field of cultural heritage are still not treated as serious crimes, given the degree of their danger. While in international level, war crimes include culturale heritage damages, too.

In addition to the efforts of the legislator, to have a complete legal framework, from the judicial practice, as will be analyzed below, there are still legal gaps, which must be filled, also as an obligation arising from the Nicosia Convention, which forms part of the domestic legal system and has primacy over the laws of the country that do not comply with it. The purpose of the Nicosia Convention is: to prevent and combat the destruction, damage and trafficking of cultural property, by providing for the criminalization of certain acts; to strengthen crime prevention and the criminal justice response to all criminal offenses related to cultural property; to promote national and international cooperation in the fight against criminal offenses related to cultural property; and consequently to protect cultural property.

The drafters of the Convention have been sufficiently careful to include a broad category of works as cultural property, for two main reasons: first, to avoid creating contradictions in the legal framework of the state's parties to the

Convention, and second, to guarantee the broadest possible protection of cultural heritage.

The criminal offences that the Nicosia Convention requires States Parties to include in their substantive criminal law are: acts of appropriation of cultural heritage objects, excavations, illegal removal, illegal import, export, purchase or placing on the market of stolen/excavated/imported/exported/illegally removed objects, destruction, damage, or falsification of documents relating to cultural property. The Convention also provides that the legislation should contain the clarification that the perpetrator must have known or it must be proven that if he had shown due care and attention in the acquisition of the cultural property, he would have known of the illegal origin of the cultural property. It is necessary to include the criminal offence of “illegal excavation or removal” in the field of cultural property in the Albanian criminal legislation and to update other offences, as well as the legal concept of “due care and attention”.

The special Albanian law on the criminal liability of legal persons who commit criminal offences in the field of cultural heritage is a safe “lap” for the Nicosia Convention. It offers a higher guarantee than the Convention itself, therefore, the Albanian legislator is not obliged to undertake a legislative initiative in this Convention.

The aggravating circumstances provided for in the Nicosia Convention are detailed and oriented towards the highest interest of the protection of cultural heritage. Consequently, the approach of the aggravating circumstances set out in the Convention, in Albanian domestic law, in particular the aggravating circumstance of the perpetrator having professional knowledge in the field, will achieve two goals: the prevention of the commission of criminal offences against cultural property by professionals in this field and the correct individualization of the criminal liability of the perpetrator by the court.

Finally, the Nicosia Convention requires a high level of willingness of states towards each other in the case of criminal investigation and prosecution, both in terms of cooperation during preliminary investigations, by agreeing on jurisdiction in cases where it is claimed by more than one party; in terms of mutual legal assistance and extradition of perpetrators; giving effect to final criminal decisions pronounced by the judicial authority of each state; returning cultural property to its place of origin after the completion of the investigations. What should be emphasized is that the Convention does not prevent the deepening of cooperation between states in this field. However, the Convention fanatically claims its supremacy in relation to other instruments that states sign with each other, stipulating that agreements in other acts must be such as to be in line with the objectives and principles of the Convention.

Interagency cooperation in national and international level is necessary for a better response to the global phenomena of cultural heritage crimes. The Nicosia Convention requires States to take measures to increase the capacity, knowledge and skills of legal practitioners in relation to criminal offences in the field of cultural heritage. In this regard, the burden falls on the competent bodies of the administration of justice (High Judicial Council, High Prosecutorial Council, School of Magistrates) responsible for the professional development of magistrates.

## 7. Annex Regarding Statistical Data on Cases Registered in the Period 2011-2023 Regarding Criminal Offenses in the Field of Cultural Property and the Number of People Convicted for these Offenses

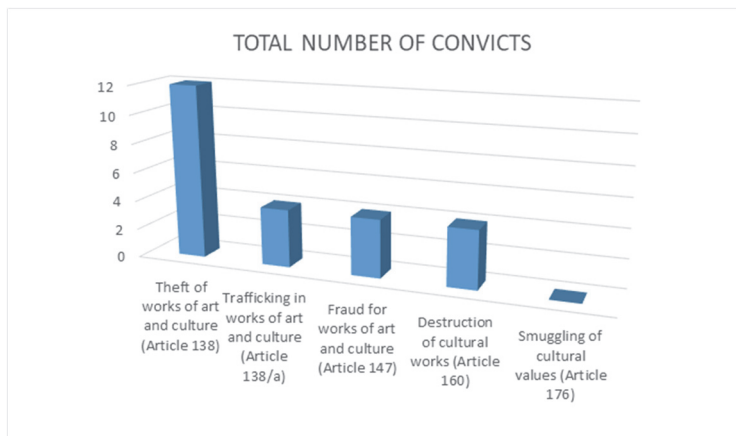


Figure 1: Number of people convicted of criminal offenses in the field of cultural property for each specific offense during the period 2011-2023.

**Figure No. 1** reflects the number of convicted persons for each year starting from 2011 until 2023 for the following criminal offenses:

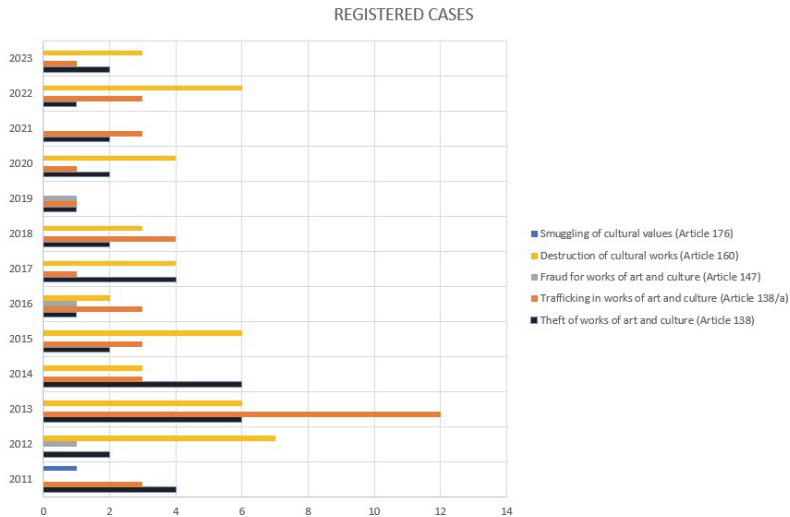
- **Theft of works of art and culture (Article 138):** Based on the above graphs, it results that the number of convicted persons for this criminal offense, respectively, in the years 2011, 2012, 2016, 2018, 2019, 2020, 2021 and 2023 is 0, while in the years 2013 and 2015 the number of convicted persons is 1. However, the highest number of convicted persons resulted in the years 2014, 2017 and 2022 with, respectively, 3, 4 and 3. Referring to the above graphs, it results that for this criminal offense the highest number of convicted persons' results compared to other criminal offenses.
- **Trafficking in works of art and culture (Article 138/a):** For this criminal offense, it is noted that in the period 2011 - 2013 and 2017 - 2023 the number of convicts is 0, while in 2014 and 2015 an increasing trend is observed, with 1 and 2 convicts respectively, which decreases with 1 convict in the following year 2016.
- **Fraud for works of art and culture (Article 147):** Based on Figure No. 1, for this criminal offense, the highest number of convicts results in 2011 with a figure of 3 convicts, which follows in 2015 with 1 convict, while in the other years of the time period 2011 - 2023 the number of convicts is 0.
- **Destruction of cultural works (Article 160):** Referring to the graphs reflected in Figure No. 1, the highest number of convicts for this criminal offense is 2, corresponding to 2011, which drops to 1 in 2014 and 2017, while in all other years of the time interval 2011 - 2023 the number of convicts is 0.
- **Smuggling of cultural values (Article 176):** Based on the above graphs, this criminal offense results in no convictions for the time interval 2011 - 2023.

Regarding the above, it can be said that for all criminal offenses reflected in Figure No. 1 there is no defined upward or downward trend during the period 2011 - 2023.



**Figure 2:** Total number of convicted persons for each criminal offense during the period 2011 -2023 for criminal offenses in the field of cultural property.

**Figure No. 2** presents the relationship between the total number of convicts in the period 2011-2023 for criminal offenses related to art and culture. More specifically, in this interval of years, the theft of works of art and culture (Article 138) predominates with a total number of 12 convicts, which is followed by: trafficking in works of art and culture (Article 138/a), fraud for works of art and culture (Article 147) and destruction of cultural works (Article 160), where all three of these criminal offenses have an equal number of 4 convicts. What is ascertained from the graphs is the criminal offense of smuggling of cultural values (Article 176), which in the years 2011-2023 results without any convicts.

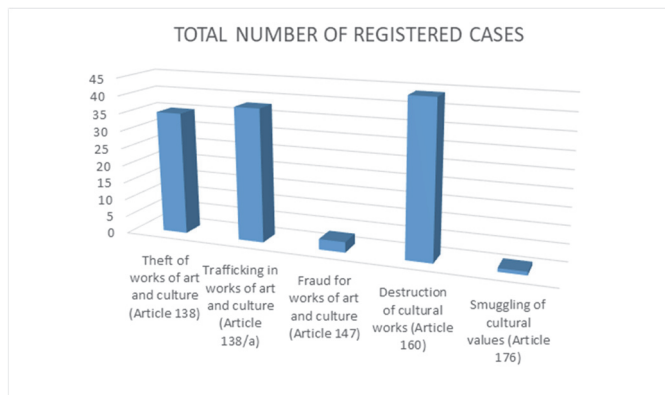


**Figure 3:** Number of criminal proceedings registered for each criminal offense in the field of cultural heritage during the period 2011-2023.

**Figure No. 3** reflects the number of cases registered for each year of the time period 2011 - 2023 for the following criminal offenses:

- **Theft of works of art and culture (Article 138):** Referring to the figure above, it is noted that in 2016, 2019 and 2022 the number of registered cases is 1, which follows in 2012, 2015 and 2018 with 2 registered cases. In 2011 and 2017 the number of registered cases is 4 and reaches the highest number with 6 in 2013 and 2014.
- **Trafficking in works of art and culture (Article 138/a):** Based on the graphs of this criminal offense, it is found that in 2012 there was no registered case, while in 2017, 2019, 2020 and 2023 the number of registered cases is 1. In contrast, in 2011, 2014, 2015, 2016, 2021 and 2022 there is an increasing trend in the number of registered cases with a figure of 3 and in 2018 the number of cases goes to 4. However, in 2013 there is a drastic increase in the number of registered cases of 12, marking the highest number of them for the time interval 2011 - 2023.
- **Fraud for works of art and culture (Article 147):** This criminal offense has among the lowest number of registered cases with almost 0, with the exception of 2012, 2016 and 2019 where the number of cases is 1.
- **Destruction of cultural works (Article 160):** Referring to the graphs above, in 2011, 2019 and 2021 no case was registered, while in 2016 only 1 case was registered for this criminal offense. However, the situation changes in 2014, 2018 and 2023 with a number of 3 cases registered and in 2017 and 2020 with 4 criminal cases. As for the maximum number of registered cases, it is reached in 2012 with 7 and in 2013, 2015 and 2022 with 6.
- **Smuggling of cultural values (Article 176):** Based on the above graphs, this criminal offense results in no cases being registered for the time interval 2011 – 2023, excluding the year 2011 where only 1 case was registered.

Regarding the above, it can be said that for the criminal offenses reflected in Figure No. 3, theft of works of art and culture (Article 138), trafficking in works of art and culture (Article 138/a) and destruction of cultural works (Article 160) mark the highest number of registered cases, while fraud for works of art and culture (Article 147) and smuggling of cultural values (Article 176) have a negligible impact in relation to the other criminal offenses cited above.



**Figure 4:** Total number of registered criminal proceedings for criminal offences in the field of cultural heritage.

**Figure No. 4** shows the total number of cases registered from 2011 to 2023 for criminal offenses related to art and culture. Based on the above graphs, it is observed that the largest number of registered cases is the theft of works of art and culture (Article 138) with a number of 35 cases, which is followed with an increasing trend by trafficking in works of art and culture (Article 138/a) with a number of 38 cases and reaches a peak with the destruction of cultural works (Article 160) with 44 cases. In contrast to the aforementioned criminal offenses, fraud for works of art and culture (Article 147) and smuggling of cultural values (Article 176) occupy a negligible weight with a total number of registered cases, respectively 3 and 0.

## 8. Acknowledgments

This work would not have been possible without the valuable contributions of many people.

I would like to thank UNESCO for the opportunity it has given me to engage in training, seminars, and activities in the field of criminal protection of cultural heritage, facilitating the deepening of my knowledge and its dissemination with my colleagues.

Also, special thanks go to the experts and representatives of UNESCO, Ms. Zeynep BOZ, Ms. Alma MRGAN-SLIPICEVIC, and Ms. Costanza FIDELBO for their guidance and cooperation during the preparation of this paper.

Thank you to the editorial staff of the scientific journal "Interdisciplinary Journal of Research and Development", *Center for Research, Development and Excellence* at the University of Durrës "Aleksandër Moisiu", for the opportunity to publish this research, which is innovative in Albanian criminal law doctrine.

Words cannot express my gratitude to my family and *closest* loved ones for their unconditional love and support.

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