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**THE ACTIVITY OF THE
PUBLIC PROSECUTION
OFFICE IN DEFENDING
CULTURAL HERITAGE:
COMBATING ILLICIT
TRAFFICKING IN GOODS
WITH CULTURAL VALUE.
OPERATION “STOLEN
SAINT DOES NOT
PERFORM MIRACLES”**

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Abstract: It introduces about the concept of Cultural Patrimony Law and its constitutional protection. It develops on the variety of cultural assets existing in Minas Gerais. The role of the Public Prosecutor's Office in combating the trafficking of goods with cultural value is discussed. It is mentioned about the operation "stolen saint does not work miracles". It concludes with an analysis of the implications and challenges of public power and society in the defense of Cultural Patromony.

Keywords: Cultural Patrimony Law; Cultural asset; Illicit Traffic; Acting; Prosecutor's Office

INTRODUCTION:

Brazil is a country of continental dimensions and is home to a plurality of cultural manifestations. Within this vast cultural framework, material heritage is mentioned, such as architectural complexes, museums, churches, sacred pieces, documents, etc.

Mention must be made about intangible heritage, which encompasses ethnic traditions, festivities, religious manifestations, dances, etc.

Landscape, archaeological and paleontological heritage is also present in several locations.

According to MIRANDA (2021), cultural heritage represents the identity of a people and that humanity, over the years, has shown concern in preserving its memory, adopting measures to protect cultural heritage.

For MENDES (2012), the cultural heritage of a people is unique and unmistakable. It is considered the nucleus of society, although it is a repository of the past, it is a guarantee of the future and survival.

The 1934 Constitution was the first in Brazil to demonstrate concern for cultural heritage, establishing concurrent competence between the Union and the States to protect cultural beauties and monuments of historical

value, preventing the evasion of works of art (article 10, III).

According to Miranda (2021), the 1988 Constitution achieved the highest level of normative evolution in the protection of cultural heritage, outlining the concept, scope, responsibility and protective instruments of cultural heritage.

Articles 215, caput, and 216, of the Federal Constitution prescribe:

Article 215. The State will guarantee to everyone the full exercise of cultural rights and access to sources of national culture, and will support and encourage the appreciation and dissemination of cultural manifestations.

Article 216. Brazilian cultural heritage constitutes assets of a material and immaterial nature, taken individually or together, bearing references to the identity, action, memory of the different groups forming Brazilian society, which include: I - the forms of expression; II - the ways of creating, doing and living; III - scientific, artistic and technological creations; IV - works, objects, documents, buildings and other spaces intended for artistic-cultural manifestations; V - urban complexes and sites of historical, scenic, artistic, archaeological, paleontological, ecological and scientific value.

The democratic regime and its nuances are consolidated, with cultural heritage playing a prominent role in the Brazilian legal system.

Recently, on November 7, 2022, the state's Cultural Heritage Code was sanctioned in Ceará.

State Law, number: 18,232/22 constituted a milestone in Cultural Heritage Law, since Ceará was the first state in the country to regulate the matter in a systematic way.

It is worth mentioning article 1 of the aforementioned Law:

Article 1. This Law establishes the Ceará Cultural Heritage Code and creates the State Cultural Heritage System - Siepac, which aims to promote, protect and carry out integrated and participatory management

of cultural heritage within the scope of the State of Ceará.

The listing now has levels of protection and greater legal security. The code provides for an inventory with restrictive effects and the registration will be completed by means of a decree with more incisive consequences in the area of protection of intangible cultural heritage.

Another advance contained in the Ceará Cultural Heritage Code is the provision for participatory inventories.

THE PUBLIC PROSECUTION OFFICE IN THE GUARDIANSHIP OF CULTURAL HERITAGE

With the promulgation of the 1988 Constitution, the Public Prosecutor's Office gains a robust and independent formation, having the power-duty to defend the legal order, the democratic regime and unavailable social and individual interests.

The Public Ministry became a permanent institution, of national character, one and indivisible.

As the Public Ministry is a body that defends the democratic regime, and the Federative Republic of Brazil is a Democratic State of Law, Parquet has become a fundamental institution of the Democratic State of Law.

The guidelines of the Democratic Rule of Law, among them, the prioritization of preventive collective protection, broad and unrestricted protection of individual and collective rights, are the parameters that guide the Public Ministry in the current constitutional situation.

According to article 129, III, of the Constitution of the Republic, it is the institutional function of the Public Ministry to promote civil investigation and public civil action for the protection of public and social assets, the environment, and other diffuse and collective interests.

For (MIRANDA) it constitutes cultural heritage, a fundamental right of the third generation, a diffuse right, as it preserves the memory and values of society, guaranteeing their transmission to future generations.

In the defense of cultural heritage by the Public Prosecutor's Office, the instruments of the Public Civil Inquiry and Public Civil Action (Law 7,347/85), Administrative Improbability Action (Law 8,429/92), Criminal Action, Popular Action (Law 4,717/65) are listed) as an inspector of the legal order, or even an author, in the event of abandonment of the action by the citizen.

Established in the Constitution of the Republic, in article 216, § 1º, the public hearing is also an important instrument for protecting cultural heritage, and the Public Prosecutor's Office must be present in the debate with the population, to reach solutions that protect cultural heritage.

THE PERFORMANCE OF THE MINAS GERAIS PUBLIC PROSECUTION OFFICE IN COMBATING TRAFFICKING IN GOODS WITH CULTURAL VALUE

According to Christofolleti (2016), cultural heritage has been dilapidated by an international trafficking scheme, being second only to the illegal trade in drugs, weapons and people, moving more than 6 (six) billion dollars in the last decade, according to data from the FBI, Interpol and UNESCO.

According to Christofolleti (2016), the most prominent organization in the field of mapping the global trafficking route, ARCA (Association for Research into Crimes against Art) is a private body operating in different parts of the planet, responsible for investigating crimes against art and cultural heritage. It is a research and extension institution whose objective is to promote the study and investigation of crimes against art

and cultural heritage.

Currently, in Christofolleti's lesson (2016), new possibilities for the practice of money laundering were found, among which trafficking in works of art and cultural goods is mentioned, which has become an effective way of diverting money to other countries, as cultural assets are not subject to much inspection. The fact that there are few specialists in works of art, countless illegal sales of works around the world and the application of light sentences (penalties for drug trafficking are much more severe) contributes to the dizzying increase in this type of trafficking.

According to Christofolleti (2016), countless other organizations aim to act effectively against the theft of works of art and heritage. It is estimated that the trafficking of cultural goods exceeds three levels of satisfaction and purposes: a) the greed of collectors, who want to decorate their homes with works of criminal origin and end up purchasing them illicitly on the clandestine market, without a receipt; b) the sale of goods for profit through money laundering, and currently, c) through artnapping, a form of theft and resale to the insurance companies themselves, considering that the loss would be greater without the recovery of the work. This practice has revealed the existing commercialism between insurance companies and museums that accept negotiations with traffickers. Regardless of the objective of the theft, the trafficking of works of goods with cultural value is becoming increasingly articulated, complex and developed.

There is no doubt that the illegal trade in works of art and historical pieces, as well as sacred art, puts our country's cultural heritage in constant danger.

Christofolleti (2016) states that as of 2016, Brazil began to occupy a prominent role in the ranking of countries with the highest rate of

theft of cultural goods in the world. In 1997, IPHAN listed 1,032 cultural objects stolen in Brazil. In 2016, the number rose to 57 thousand lost objects with cultural value.

Pandolfo (2021) highlights that most thefts occur in churches, museums and private homes, objects such as paintings, figurines, sculptures and religious items, books, coins, war materials are the most sought after.

Pandolfo (2021) also details the Bank of Wanted Cultural Assets (BCP), organized by IPHAN, with the collaboration of the Federal Police and INTERPOL. More than half of the BCP (58%) is made up of objects missing from churches (censers, censers, basins, saints' crowns, saints' earrings, images of saints, etc.). Of the various items missing from churches, 10% of the entire BCP are images of saints, 37% are banknotes and coins and 5% are other types of goods (paintings, photos, engravings, etc.).

Given this context, the Brazilian cultural heritage has been systematically ravaged by the actions of traffickers.

The Public Ministry of Minas Gerais, through the Coordination of Public Prosecutor's Offices for the Defense of Cultural and Landscape Heritage (CPPC), has been successful in recovering missing cultural assets.

Awareness campaigns broadcast on the internet, as well as direct contact with society, are actions promoted by the Public Ministry, which contribute to the recovery and protection of the cultural heritage of Minas Gerais.

It is important to mention the creation of the SOMDAR application, by MPMG, in partnership with ``Universidade Federal de Minas Gerais``.

The aforementioned technological tool is an important weapon in the fight against trafficking in cultural goods.

The detailed virtual platform has been very

popular with users and has a vast and detailed collection of missing and recovered cultural assets.

Another virtual tool used by the Public Ministry in the protection of cultural heritage is the ``Lei.a``.

Created from a partnership signed between the Public Ministry of Minas Gerais and the Association of Observers of the Environment and Cultural Heritage of Minas Gerais, it aims to expand social control through communication, increasing the power of citizens, communities, associations and entities of the civil society responsible for protecting the environment and cultural heritage.

The ``Lei.a`` also promotes face-to-face meetings in cities in the interior of the state, offering communication workshops, debate circles, training, lectures and screening of educational videos.

OPERATION STOLEN SAINT DOESN'T WORK A MIRACLE

In February 2022, the Public Ministry of Minas Gerais was successful in recovering the image of Our Lady of the Rosary belonging to the religious collection of the municipality of Itaguara/MG.

The mentioned image was listed as missing in the SOMDAR database.

The investigation was initiated, following information from ecclesiastical authorities, the Municipal Department of Culture and Tourism of Itaguara and IPHAN, reporting that the missing image of Our Lady of the Rosary was being published in an advertisement on an internet sales site.

During the investigation, the Public Ministry concluded that the image had been stolen from the Chapel of Nossa Senhora da Conceição do Pará dos Vilelas, in Itaguara, on two occasions, one in 1980 and another on June 29, 1996.

It is worth highlighting the historical and cultural relevance of the chapel, built in the 18th century, listed by Municipal Decree of 06/28/2001.

After executing a search and seizure warrant, the image was located in São Paulo (Capital), and another 16 (sixteen) sacred pieces were identified, seized to investigate their origin.

On November 29, 2022, 26 years after the last removal, the image of Nossa Senhora do Rosário was returned to the Chapel of Nossa Senhora da Conceição do Pará do Vilelas in Itaguara, through a religious celebration, festivity and participation of the local Congado. (images 1 and 2).



Picture 1. Source: MPMG



Picture 2. Source: MPMG

The operation promoted by the Public Ministry of Minas Gerais, through its Coordination for the Protection of Cultural Heritage, is an example of joint work between Parquet and society in the fight against illicit trafficking in cultural goods.

CONCLUSION

It was found that the 1988 Constitution of the Republic represented a significant milestone in the protection of cultural heritage.

With the promulgation of the “Citizen Constitution”, the role of the Public Ministry is consolidated, defending the legal order, the democratic regime and unavailable social and individual interests.

The protection of cultural heritage has advanced, with the state of Ceará being a pioneer in creating a Cultural Heritage Code.

It was found that the illegal trafficking of goods with cultural value generated around 6 billion dollars globally in the last decade, second only to the illegal trade in drugs, weapons and people.

Goods from the sacred art collection, paintings and documents appear on the list of those most trafficked by criminals.

It was found that the practice of illegal trade in goods with cultural value aims to launder money, as well as artnapping, a form of theft and resale to insurance companies.

Given the context of dilapidation of cultural heritage, the activities carried out by the Public Ministry of Minas Gerais in combating the trafficking of cultural goods were shown.

The creation of virtual platforms such as SOMDAR and “Lei.a”, dialogue with society, promotion of awareness campaigns about the relevance of memory preservation are examples of practices promoted by the Public Ministry of Minas Gerais in the protection of historical and cultural heritage.

It was reported about the operation “Stolen

saint does not make a miracle”, launched by the Public Ministry of Minas Gerais, which resulted in the recovery of the image of Nossa Senhora do Rosário, belonging to the religious collection of the Chapel of Nossa Senhora da Conceição de Itaguara.

It is imperative to point out that the protection of cultural heritage is the duty of the State and society.

The 1988 Constitution of the Republic represented a major advance in the protection of cultural heritage, however the legal system still lacks normative protection at the infra-constitutional level.

The idea of creating a Brazilian Code of Cultural Heritage must be debated by society and its representatives with the aim of systematizing and updating legislation relating to cultural heritage.

The tightening of punishment in the criminal sphere is also a necessary measure, such as the qualification of theft and reception of goods with cultural value, since the Brazilian Penal Code does not provide for any qualifier or reason for increasing the penalty in crimes against property involving cultural goods.

It is also essential to reinforce the security apparatus in churches and chapels, especially those located in the interior of the state.

It cannot be accepted that the same image is stolen more than once, as was the case with the image of Nossa Senhora do Rosário from the Chapel of Nossa Senhora da Conceição in Itaguara.

Punishments at the administrative level must be rigorous and effective in protecting Brazilian cultural heritage, so that the application of Criminal Law obeys the principle of ultima ratio.

In view of the above, it can be concluded that protecting heritage is everyone’s duty and in a context of technological revolution, it is essential to use the internet as an ally, through numerous tools, such as applications.

Protective policies, debate with society and legislative innovation are also fundamental measures in preserving Brazilian cultural heritage.

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