

## TWO CASE STUDIES IN THE ILLICIT TRADE IN ANTIQUITIES

### *YASA DIŐI ESKİ ESER TİCARETİ, İKİ VAKA ÇALIŐMASI*

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**Abstract:** With its rich heritage over a long history, Anatolia has an important place in world cultural heritage. However, a significant part of these historical treasure have been the victim of unprofessional excavation or have been looted and smuggled abroad due to a late awareness of historical and cultural heritage. The situation is the same all around the world. Archaeological sites considered the common heritage of the world are damaged irreparably. The stolen antiquities are sold with high prices in international illegal markets; and their exhibition is considered a matter of prestige by collectors, museums or countries. Under these conditions international contracts or bilateral agreements have not been sufficient to ensure the return the smuggled antiquities. As long as countries keep exhibiting the stolen antiquities, the business in smuggled antiquities will not cease. In this study, antiquities smuggling in the world and in Anatolia has been investigated in terms of the economic dimension of illegal trafficking; and the policies concerning the return of the Weary Heracles statue and the attempts concerning Bergama Artefacts that are still being exhibited abroad are compared.

**Keywords:** Illicit Trade • Antiquities • Trafficking • Smuggling • Historical Artefact • Bergama Artefacts

**Öz:** Anadolu'nun, uzun tarihi geçmiŐi ile dünya kültürel mirasında önemli bir yeri bulunmaktadır. Ancak tarih ve kültür mirası bilincine geç varılması sebebi ile tarih hazinesinden önemli bir bölüm ya bilinçsiz kazının kurbanı olmuş ya da yağmalanarak yurt dışına kaçırılmıştır. Dünyada da durum farklı değildir. Tüm dünyanın ortak mirası olarak kabul edilen arkeolojik siteler giderek artan yağmalanma sebebiyle onarılamayacak seviyede hasara uğramakta, tarih bütünlüğü kaybolmaktadır. Bu sitelerden ele geçirilen tarihi eserler uluslararası yasa dışı pazarlarda yüksek bedellerle alıcı bulmakta daha da önemlisi, estetik değerinin dışında hiçbir anlam ifade etmeyen bu eserlere sahip olan koleksiyonerler, müzeler veya ülkeler bunu saygınlık unsuru olarak sergilemektedirler. Bu şartlar altında da uluslararası sözleşmeler veya ikili anlaşmalar kaynak ülkelerin kaçırılmış eserlerini iade etmede yeterli gelmemektedir. Ülkeler müzelerinde, kendi topraklarından çıkmayan eserleri sergiledikçe, uluslararası pazarın kara tarafına hizmet eden eski eser kaçakçılarının iş alanları hiçbir zaman sonlanmayacak, terör, uyuşturucu gibi yasa dışı faaliyetlerin finans kaynağı olmaya devam edecektir. Çalışmada, eski eser kaçakçılığının dünyada ve Anadolu'da durumu, ticaretin maddi boyutu incelenmiş, ülkeye dönüşü sağlanan Yorgun Herakles Heykeli'nde izlenen politikalar ile halen yurt dışında sergilenen Bergama Eserleri için yapılan girişimler karşılaştırılmıştır.

**Anahtar Kelimeler:** Yasa Dışı Ticaret • Eski Eser Ticareti • Kaçakçılık • Tarihi Eser • Bergama Eserleri

The illicit trade in antiquities has been spreading rapidly all around the world destroying illegally humanities archaeological heritage. The opportunities in the developing world make trafficking easier and transportation networks and technological tools accelerate the destruction. The problem of

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the illicit trade in antiquities not only ruins site integrity, but deprives archaeological heritage of its economic value, distorts cultural identity, and becomes a financial resource for illegal activities like the trafficking in drugs, arms, smuggled medicine and cigarettes. Despite of the fact that this trade is a common problem for all countries, it affects mostly the history-rich source countries; and an internationally common legal ground cannot be constituted. While a consensus has not yet been reached on an international platform concerning the definition of antiquities, and the discussions concerning the return of these antiquities illegally exported from their countries of origin are continuing concerning matters of little significance such as the date and the method of removal of antiquities, policies to prevent smuggling cannot be operative, and an effective mechanism cannot be established. Perhaps, antiquities and historical sites are still considered only for their contribution to archaeology, anthropology or history; their impact upon society's social, cultural and educational life, as well as economic welfare is not at present taken into consideration.

While waiting for due legal process actualised through the participation and confirmation of all countries, material and immaterial losses increases, the initial step to be taken for now will be to make consistent Turkey's demand for the return of the antiquities that have been smuggled overseas. The second step is to set up an international committee with the source countries that are subjected to antiquities smuggling. In this manner, a union of forces opposed to the demand countries can be constituted. Whatever the date or the reason (war, looting, stealing) of exit from the source country is, antiquities must be returned to the country of origin.

### 1. The History of Antiquities Smuggling in the World

Although it is impossible to determine the starting of antiquities smuggling in the world and in Turkey, it is assumed to be as old as human history. It is known that mainly after wars antiquities were seized as "war booty" or were looted or destroyed<sup>1</sup>. The first evidence concerning smuggling is found on an inscription dated to two thousand B.C., written for Anittas, the son of Kussara King Pithanas. This inscription states they managed to get back a statue of a god stolen from their city<sup>2</sup>. Furthermore, it is also known that Hittites, Assyrians and Persians used to take away the antiquities of the defeated after wars as a sign of victory<sup>3</sup>.

European travellers' trips to the East to find the antiquities of lost civilisations have always been a matter of interest for the European citydwellers. While Classical period antiquities found in East Mediterranean were in demand from antiquity onwards, later antiquities belonging to Egypt, Mesopotamia, South and East Asia started to arouse attention among the Europeans. The most extensive looting and removal was conducted by the Roman Empire. It is known that Roman commanders together with antiquities experts took antiquities in Anatolia, the Aegean and Greece to Rome. This interest in the ancient world constituted the basis for the Renaissance. As the great powers that possess economic power spread around the world, their archaeologies also turn into more systematic colonisers. Setting off to collect antiquities in the beginning of the 19<sup>th</sup> century, Germany, France, England and Tsarist Russia accomplished their goal towards the end of the century. The British Museum in London, the Louvre Museum in Paris and the Royal Museum in Berlin have added to their

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<sup>1</sup> Karaduman 2007, 19.

<sup>2</sup> Zoroğlu 2008, 168.

<sup>3</sup> Akurgal 1988, 268.

collections antiquities of Greek, Roman and Eastern origins<sup>4</sup>.

In addition to the interest in antiquities, the regulations concerning their preservation were also encountered for the first time in the Roman Imperial period. However, this preservation reinforced the aesthetic and religious aspects, since archaeology had not become a science and there was, in the modern sense, no historical awareness. The Roman Empire regarded as having high aesthetic standards banned the exit of antiquities from Rome in 320, following the struggle started in 44 B.C. to prevent the demolition of old houses. The ones defying the ban were punished by a fine of 50 gold coins and the officials who helped them were punished by beating or cutting off their hand<sup>5</sup>.

## 2. The Lost Historical Heritage of Anatolia

The activities of museums and collectors started in the 17<sup>th</sup> century in Europe are considered a principal factor in the looting of Anatolia's history<sup>6</sup>. A significant part of Anatolian cultural heritage treasure was lost during the period of Ottoman rule. Ephesus antiquities, Pergamon, Hittites antiquities in Zincirli, the Trysa Monument and Tombs from Gölbaşı, Milet and Priene temples, the treasures of Troy, the Myrina Necropolis the Lykia Marbles are some of the antiquities taken overseas during that period<sup>7</sup>. Most of the antiquities found in excavations in the cities of Nineveh, Nimrud, and Babylon in Iraq within the borders of the empire reappeared in museums in Western countries. Some of the antiquities dug in Assyrian excavations were given to Germany; yet, when allies in World War I seized the ship, the antiquities were unloaded at the Port of Lisbon. The Portuguese confiscated the antiquities. Moreover, the Americans took away thousands of tablets to Pennsylvania University Museum from the excavations in the Niffer Mound between the years 1888 and 1900. The most well-known trafficking case was the smuggling of antiquities misnamed Priam's treasure in 1873 by H. Schlegelmann who had aimed to find the city of Troy mentioned in Homer's *Iliad*. Through the help of his wife the antiquities found were smuggled overseas<sup>8</sup>. The Ottoman state was unfortunately famous for its generosity under diplomatic pressure concerning matters archaeological. With the help of Ottoman policies, Western museums were filled with Anatolian antiquities<sup>9</sup>.

Starting to lose its economic and political power from the 17<sup>th</sup> century onwards, the Ottoman state, under the influence of Western culture, founded its first museum in 1846 under the leadership of Tophane-i Amire Müşiri Fethi Ahmet Pasha in the Hagia Irene Church that was used as Harbiye Ambarı (weapons warehouse)<sup>10</sup>. After the first museum had been founded, a series of measures began to be developed to preserve antiquities in Ottoman territories. In compliance with the Ceza Kanunnamesi (Penalty Code) Article 133 dated 28 Zilhicce 1274 (09 August 1858), only the destructions in religious and monumental places were punished. This article provided the only norm in Ottoman legislations concerning the law of antiquities until 1869. The first Asar-ı Atika Nizamnamesi (Regulation of Antiquities) was issued on 1<sup>st</sup> February 1284 (13 November 1869). The

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<sup>4</sup> Birsal 2015, 68; Çevik 2015, 66.

<sup>5</sup> Mumcu 1969, 53-54.

<sup>6</sup> Karaduman 2007, 19.

<sup>7</sup> Yılmaz 2015, 13.

<sup>8</sup> Komisyon 2003, 14-18.

<sup>9</sup> Hitzel 2015, 36.

<sup>10</sup> Arık 1953, 1.

Asar-ı Atika Nizamnamesi that was issued on 26<sup>th</sup> March 1290 (7 April 1874) played an important role in the loss of Anatolia's antiquities. It was comprised 36 articles. The fundamental principle was that the undiscovered asar-ı atika (antiquities), no matter where they had been found, belonged to the state. However, the ones who found antiquities under permission had the right to get one third of what they had found<sup>11</sup>. This regulation allowed the empire, the hâfir (excavator), and the landowner to get one third of the excavated antiquities each; and also enabled the excavator to do whatever they wished with their share, including taking it overseas<sup>12</sup>. The real reason why the flow of antiquities to overseas was allowed with such an article is not known; but it is certain this article accelerated the exit of antiquities from Ottoman territory. It is believed that the foreigners that had been excavating in Ottoman territory played a major role in the development of this law<sup>13</sup>. Hence, it is known that in the 19<sup>th</sup> century, foreign countries were interested in Anatolia's rich heritage; particularly, Germany and America were known to be in competition and to have urged the empire to give permission for excavation in Anatolian lands. This pressure on the empire was successful; Germans obtained permission for excavation at Boğazköy between 1905 and 1912 as a result of the close relationships between the Ottoman Palace and the Germans, and the German Emperor Wilhelm's abiding interest in archaeology. More than 10,000 cuneiform tablets were smuggled to Berlin under the excuse that they would be conserved and/or published<sup>14</sup>. Even if the flow of antiquities to overseas had been banned in 1884<sup>15</sup>, smuggling could not be prevented. Specifically, the West's interest in the East reinforced this trade in terms of supply.

When there were reactions against the hâfir's (excavator's) share given by the 1874 Nizamnamesi (Regulation), an annex of 4 articles was planned to be issued to correct this but it could not be realised in law. Although it was ensured by the Asar-ı Atika Nizamnamesi (Regulation of Antiquities) that all the antiquities belonged to the empire, the attempt to possess antiquities by "requesting" through embassies or the sovereign continued<sup>16</sup>. Also in 1921, preparing a regulation draft when İstanbul was under occupation, the attempt was made to give the hâfir (excavator) a share; and the 1874 Nizamnamesi (Regulation) was brought back<sup>17</sup>.

On the other hand, in the Republic period, we encounter a more institutional structure aimed at preserving antiquities. Especially with the legislative amendments that were adopted from the end of the 20<sup>th</sup> century, issues concerning the preservation of antiquities and preventing smuggling have been based on legal ground, and continue to be improved day by day<sup>18</sup>. The establishment of the Türk Tarih Kurumu (Turkish Historical Society) in 1931, and Türk Arkeoloji Enstitüsü (Turkish Archaeology Institution) in 1934; began the first excavation under the leadership of Atatürk in Ahlatlıbel in 1935; establishing museums; giving scholarships to students for studying archaeology abroad are among the significant achievements of the young Turkish Republic. Moreover, when the Americans who had smuggled 58 chests of antiquities by ship from Sardis in 1922, asked for the re-

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<sup>11</sup> Mumcu 1969, 66-68.

<sup>12</sup> Kuruloğlu 2010, 51.

<sup>13</sup> Karaduman 2007, 23.

<sup>14</sup> Sönmez 2012, 40; Ünal 2015, 17.

<sup>15</sup> Çal 1997, 393.

<sup>16</sup> Temelkuran 1973, 39.

<sup>17</sup> Çal 1997, 394; Karaduman 2007, 29.

<sup>18</sup> Akkuş 2009, 38.

newal of their permission for excavation in 1923, the Turkish authorities refused to give permission unless the 58 chests of antiquities were returned to the country. This determined attitude resulted in the return of the antiquities. 53 chests of antiquities, 30 Lydian gold coins, and 120 coins were returned to Turkey on 19<sup>th</sup> July 1924<sup>19</sup>.

Legislative regulations and education have not ended antiquities trafficking, but have brought about a change in its size. While temples and monumentary structures were taken overseas during the Ottoman period, smaller sized antiquities, statues, tombs, mosaics, coins were illegally smuggled during the Republic period<sup>20</sup>.

### 3. International Conventions and Protocols Aimed at Preventing Antiquities Smuggling

The traffic in antiquities smuggling in the world is mostly from the south to the north; from the east to the west; from the third or fourth countries to the first countries; that is, from the poor to the rich<sup>21</sup>. Yet, in any case, unquestionably every country wants to prevent the illegal trafficking and trade in its cultural heritage. In addition to the international conventions, countries develop bilateral protocols concerning this issue; but this has proved insufficient to prevent this trade. In the prevention of this illicit trade, rather than the plentifulness of conventions and protocols, the policies of the countries and bilateral relations are perhaps more important factors.

The Republic of Turkey is a party to the following International Conventions<sup>22</sup>:

- 14 May 1954 The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
- 14 November 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transport of Ownership of Cultural Property
- 16 November 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage
- 17 September 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage
- 02 November 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage
- 06 May 1969 European Convention on the Protection of the Archaeological Heritage
- 18 May 1974 International Council of Monuments and Sites Turkey National Committee Regulation (ICOMOS)
- 03 October 1985 Convention for the Protection of the Architectural Heritage of Europe

The Protocols that The Republic of Turkey is a party to<sup>23</sup>:

- 25 June 2009 The Accord between the Government of the People's Republic of China and the Government of the Republic of Turkey on the Prevention of Theft, Illegal Excavation

<sup>19</sup> Yegül 2008, 196; Yılmaz 2015, 35; Karaduman 2007, 37.

<sup>20</sup> Berkok 1990, 326.

<sup>21</sup> Brodie *et al.* 2000, 12.

<sup>22</sup> Kaynak: <http://www.kulturvarliklari.gov.tr/TR,43101/mevzuat.html> (31.10.2015);

Kaynak: <http://www.unesco.org.tr/?page=11:129:5:turkce> (31.10. 2015).

<sup>23</sup> [teftis.kulturturizm.gov.tr/arama?\\_Dil=1\(06.06.2018\)](http://teftis.kulturturizm.gov.tr/arama?_Dil=1(06.06.2018)).

#### and Illegal Entry and Exit of Cultural Properties

- 12 April 2002 “Cultural Cooperation Protocol” between the Republic of Turkey and the Republic of Serbia
- 06 February 2003 Agreement for the Protection, Conservation, Recovery and Return of Illicitly Traded, Exported or Transferred Cultural, Archaeological, Artistic and Historical Property between the Republic of Turkey and the Republic of Peru
- 04 March 2013 The Protocol between the Government of the Republic of Turkey and the Government of the Republic of Greece on the Prevention of Theft, Illegal Export and Import and Illegal Excavation of Cultural Property

Additionally, Interpol developed a stolen works of art database that includes all the world countries<sup>24</sup>. On the other hand, in 1991 Turkey became a member of FATF (Financial Action Task Force) founded in 1989; and within the scope of FATF 40 Recommendations, international cooperation is attempted concerning the crime of money laundering that needs to be fought on a global scale. In this context, the fight against antiquities smuggling as forming one of the crime revenue streams involved in the crime of laundering is continuing.

The Ministry of Culture and Tourism, the Undersecretariat of Customs, General Directorate of Security, General Command of Gendarmerie, Command of Coast Guard, Interpol, and Europol are among the combatting institutions. If antiquities are stolen from a museum, an archaeological site or a collection, Turkey sends the photographed inventory information of the antiquities to the General Directorate of Foundations, General Directorate of Security, General Command of Gendarmerie, Ministry of Foreign Affairs, Ministry of Customs and Trade, Ministry of Justice and to all governorates. Interpol database is also informed. If the antiquities are detected in any country, political and legal contacts are started. The process is much easier if the inventory records for the antiquities are available; whereas for antiquities with no records, such as illegally excavated material, diplomatic relations, mutual cooperation and principle of goodwill are of vital importance.

#### 4. Volume of the Illicit Trade in Antiquities

Countries are placed in 3 different categories in the trade in antiquities. The country that losses antiquities through illegal exports and is art-rich is named the “source country”, the “archaeology-rich country” or the “supply country”; the country that launders the antiquities is named the “transit country”; and the country that imports the illegally smuggled antiquities is termed the “customer country”, “demand country” or the “collector country”<sup>25</sup>. Since South African countries, India, Asia, Italy, Mexico, Egypt, Turkey and Greece are significantly rich in history, these countries are among the source countries. Being among the “import countries”, South America, South Africa, Australia, Canada and New Zealand are positioned as collectors, to meet the demands of the United States of America and the European countries. On the other hand, England, France, Germany, Switzerland and the USA are identified as transit countries. Transit countries have two types of characteristics. These countries are either places where there is an extensive antiquities trade (with the presence of national and international auction houses and collectors), or countries which provide easy transit

<sup>24</sup> Kaynak: <http://www.interpol.pol.tr/Sayfalar/interpolhizmetler.aspx> (31.10.2015).

<sup>25</sup> Borodkin 1995, 385; McCord 1995, 991.

owing to their geographical features<sup>26</sup>.

Once the smuggled antiquities are taken abroad, the process to find them becomes harder. If the size of the antiquities that are obtained from illegal excavations or collectors is small, they are sold abroad to brokers or dealers; and from them to other dealers and to collectors or museums, which makes tracing the antiquities more difficult.

People think that there are two types of markets legal and illegal. In fact, they are both the same since the illicit trade and illegal actors consciously or unconsciously are face to face with legal actors in legal markets<sup>27</sup>.

As with the illegal arms trade, the illegal drugs trade, embezzlement, bribery and computer fraud, antiquities trafficking activities provide the crime revenues for the crime of money laundering<sup>28</sup>, and it is impossible to accurately estimate the volume of money involved in laundering since the crime cannot be completely detected. However, the IMF's estimate is that the quantity of money involved in the crime of money laundering is between 2% and 5% of the world's gross national product per year, and that it makes \$2 trillion<sup>29</sup>.

The international illicit trade in antiquities is both well-organised and well-funded. It is interesting that while there are professional smuggling crime groups in Italy and Germany, smugglers in Turkey trade freely with art dealers. In the international art world the difference between criminal activity and business is somewhat unclear with the nonstop exchange between smuggler, the broker and the dealer<sup>30</sup>. On the other hand, some implicit rules of legal systems act to encourage this flow to the art market from the dealer to the collector and from the collector to the museum. The taxation system in the USA urges the collectors and the art institutions to buy antiquities. In Canada, Germany, England and Switzerland, the tax rate is zero on the export of antiques and cultural objects<sup>31</sup>. Furthermore, in Switzerland, when a work of art is kept in a bank for 5 years, it becomes the property of the owner in the end of that period; and that person is legally not a thief. This is why Switzerland is a favourite stop on the route for the business of the trade of smuggled works of art<sup>32</sup>.

The illicit trade in antiquities is rapidly growing. It is fed by demand from museums and the private collectors of Europe and North America<sup>33</sup>. It is undoubtedly difficult to determine the fiscal value of a secret trade; but, in the underground market, this trade is generally among the most consistent businesses in the world, together with the trade in arms and drugs. The illicit trade in antiquities increased from \$1 billion to \$2 billion from 1972 to 1990<sup>34</sup> was estimated to be \$6 billion per year in a research carried out in 2002. As for the period after 2012, it is indicated that providing a certain financial value for illicit trade in antiquities is impossible; and that the cocaine trade is \$72 billion and the arms trade is \$52 billion; and the trade in antiquities is estimated to be around the

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<sup>26</sup> Protz – O'Keefe 1983, 1-2.

<sup>27</sup> Alderman 2012, 605.

<sup>28</sup> Shon 2002, 7.

<sup>29</sup> Schott 2006, 6-7; Kaynak: <http://www.mfa.gov.tr/karaparanin-akalanmasiyla-mucadele-konusundaki-temel-uluslararasi-metinler-ve-olusumlar.tr.mfa>, (26.01.2018).

<sup>30</sup> Borodkin 1995, 385.

<sup>31</sup> Fisman – Wei 2009, 2, 4.

<sup>32</sup> Borodkin 1995, 387.

<sup>33</sup> Brodie *et al.* 2000, 25.

<sup>34</sup> McCord 1995, 986.

same level. There are different estimates for the volume of trade in antiquities. While Interpol's estimate is \$4-5 billion, the estimate of ISPAC (International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme) is \$6-8 billion<sup>35</sup>. It is also known that about 98% of the final market price of an object subject to the illicit trade of antiquities is left in the broker's pocket. In addition, for an object obtained from an illegal excavation the price in the final deal is determined as being 100 times the initial price. This is much higher than the value for illegal medicine. Moreover, it is admitted this trade is connected with money laundering, illegal medicine, drugs, arms and terrorism<sup>36</sup>.

The whole illegal trade is a significant aspect of international trade and the modern political economy; a dark face of globalisation. Preventing this trade requires extra legal activities. Unfortunately, the world has very little information to get to the system of this trade; and by its nature, data concerning illegal activities is somewhat difficult to obtain<sup>37</sup>.

No matter how hard countries try to prevent this trade, their efforts result in failure since there is enough ego and money to buy stolen antiquities in these markets<sup>38</sup>. While thousands of antiquities are subject to illicit trade every day, only 5-10% of the antiquities that are illegally excavated and/or exported are recovered through the application of heritage and national export laws. Recovery of illicitly trafficked antiquities takes approximately 13.4 years. Most of the antiquities that cannot be recovered eventually find their way onto the legal art market<sup>39</sup>.

For example, it is reported that in the Petèn region in America, objects bought for between \$200 and \$500 were then sold for \$100,000. This amount is the difference between the original finder and the final buyer. In addition to this, it is known that an original finder gets \$10 for a fossil turtle from the rich cultural heritage of Africa, whereas it is sold in Europe for \$16,000. It was also found an American landowner paid \$2,000 for an example of fossil dinosaur named Cretaceous Ankylosaur, whereas the final buyer paid \$440,000<sup>40</sup>.

It is necessary to give some examples concerning the methods employed in the illegal trade in antiquities. In Italy, they make use of the transportation of goods (especially car, food, marble etc.) in within ship containers transported legally. One of the methods is placing the antiquities in empty marble blocks and covering them with plaster. Another method is to draw up a false invoice. In 2006, 625 Buddha sculptures with an estimated market value of €1 million were found in Pakistan during their transport to the United Arab Emirates. The delivery invoice recorded their description as "furniture". It is impossible for the customs officers to examine all the containers of all international cargo companies against the stated consignment details, and most of the time customs officers look for drugs, not for antiquities<sup>41</sup>.

A series of realistic regulations developed internationally and providing for the participation of all countries can bring about a significant decrease in this trade. Different national laws lead to the acquittal of some antiquities smugglers. On the other hand, it is also important that the punish-

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<sup>35</sup> Haken 2011, 47-48.

<sup>36</sup> Alderman 2012, 602.

<sup>37</sup> Fisman – Wei 2009, 2.

<sup>38</sup> McCord 1995, 987.

<sup>39</sup> Falkoff 2008, 269-270.

<sup>40</sup> Brodie *et al.* 2000, 13.

<sup>41</sup> Alderman 2012, 617.

ments for those working in this illegal trade with quite high profits have not been a sufficient deterrent. On the contrary, the punishments for illegal trading in arms and drugs are higher. The growth in the trade in smuggled antiquities due to increasing demand results in an increasing number of illegal excavations and looting; and this causes irreparable destruction to the archaeological sites, and the archaeological context in the source countries<sup>42</sup>.

Museums are in the position of the final market in the trade of antiquities. The Metropolitan Museum's policy on this matter is significant. In this policy, it is stated that it is possible to make a claim with a letter (that indicates the object's features) with an attached photograph sent to the museum by the countries without evidence in the bibliography or the history of cultural and artistic objects. Such steps taken by the museums on their own initiative could be an important obstacle against illegal trade. Museums are actually the final destination for these antiquities<sup>43</sup>. According to Collin, museums and cultural institutions of this type serve as an important gateway for the entry of stolen antiquities into the visible and legalised world of art<sup>44</sup>.

In addition to the current legal regulations, a number of important measures are suggested in order to prevent the illegal trade of antiquities. The initial step to be taken is perhaps to develop mandatory reporting systems in museums. Museums have the necessary information and income for a reporting system, and stolen antiquities are often intended to be sold to museums for large profits. This indicates that museums also have secret information concerning the antiquities. However, this reporting system will not be enough for the antiquities obtained from illegal excavation. Another suggestion to prevent the illicit trade of antiquities (or art) is the method in which the museums will pretend to act like buyers. The national and international auction houses also constitute a dominant power in terms of measures. Without the cooperation of auction houses or art dealers, the attempts to prevent this trade will not be successful<sup>45</sup>. Visual broadcasts addressing the public should be used as an additional measure. All of these broadcasts do not need to be educational, but they must put forth the idea that this is not a promising activity. Furthermore, new technology and the internet accelerate and ease the sale of antiquities. It is known that antiquities are frequently sold on the website "eBay"<sup>46</sup>. Preventing this international market unquestionably requires cooperation between countries.

Another difficulty in determining the trade volume is the production of fakes, imitation antiquities. Although there is increasing demand for antiquities, the supply is limited; and this accelerates the production of fakes. When some looters or smugglers are arrested with antiquities obtained in illegal ways, some of the antiquities are reported to be fakes.

The method that is frequently used to fake antiquities is taking a cast of an original, copying it and leaving it in fertiliser to artificially age it. Additionally, the antiquities that will not reach a high price in the market can be melted and turned into rare antiquities<sup>47</sup>.

Antiquities smuggling is considered as a art crime, and is divided into 4 categories: Vandalism, forgery, theft and looting. Yet, all of these are premeditated criminal activities. Looters carry out

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<sup>42</sup> Falkoff 2008, 270-273.

<sup>43</sup> McCord 1995, 998.

<sup>44</sup> Collin 1993, 30.

<sup>45</sup> McCord 1995, 999-1000.

<sup>46</sup> Baran 2003, 8-11.

<sup>47</sup> Baran 2003, 12.

75% of these crimes; and in such a trade it is quite difficult to trace and control the historical object as evidence of a crime, without a database or a register<sup>48</sup>.

## 5. The case of the Weary Heracles Statue and the Bergama (Pergamon) Artefacts

In this section two antiquities from the illegal trade in antiquities, antiquities important for Turkey are analysed. It is not certain when the Weary Heracles statue was smuggled abroad, but its return has been accomplished. The procedure carried out with the Boston Museum of Fine Arts during the return process is examined. The other example are the Bergama artefacts that were taken overseas during the Ottoman period (the illegal export took so long that Germany claimed the procedure was legal) and are expected to be returned to their country of origin with the new world view that “history has a meaning in its country of origin”. If a consensus in a global context can be reached, and countries are urged to return those antiquities that do not belong to them, the present social and economic destruction will be halted.

### 5. 1. Weary Heracles

Heracles (called Hercules in Roman mythology) was and is one of the most popular heroes of Greco-Roman mythology. He is considered the son of Alcmena and Amphitryon, but his real father was Zeus. He does not want to be a hero himself; his god given strength caused him to unintentionally commit crime. Hera’s hatred and anger that have haunted him from birth never leave him in peace. Heracles has a lot of children. He becomes insane because of Hera and he kills his own children. After this murder, Heracles goes to see Pythia, the Oracle of the Temple of Apollo at Delphi. The Oracle orders him to work for 12 years in the service of Eurystheus. According to some thinkers, this situation answers the need to justify the torment the hero suffers or represents the “testing of the spirit” that is freed, degree by degree from the slavery of the body, and sufferings until the final deification. In mythology his 12 labours are called the 12 labours or deeds of Heracles<sup>49</sup>.

The story of the “Weary Heracles,” undeniably a significant event concerning the return of antiquities from overseas, began in September 1990 when the journalist Özgen Acar saw the upper part of a marble statue in New York’s Metropolitan Museum. There is no definite information concerning how the statue was smuggled out of Turkey. However, it was found that the Perge excavation workers had made such an attempt as they were not satisfied with their excavation wages; and in the search, another Heracles statue was reported to be taken by the villagers. This supports the possibility that the upper part of the lost Heracles statue was taken in this way and smuggled out<sup>50</sup>. As a result of Özgen Acar’s contact with the then director of the Antalya Museum, Kayhan Dörtlük, and the efforts of Prof. Dr. Jale İnan, who conducted Perge excavations, the statue was returned to our country after 30 years. The statue which is of the size of a human body was carved from marble. This “Weary Heracles” statue was made in Anatolia in the 2<sup>nd</sup> century A.D. depicts Heracles who strangled the Nemea lion, which could not be killed with any weapon, resting after his effort leaning on his club<sup>51</sup>.

The upper part of the statue was bought by two collectors, Leon Levy and Shelby White, in Ger-

<sup>48</sup> Levine 2011, 755.

<sup>49</sup> Kaynak: <http://www.aktuelarkeoloji.com.tr/herakles-ve-12-gorevi> (05.06.2018).

<sup>50</sup> Rosa – Acar 1995.

<sup>51</sup> Ekici *et al.* 2010, 108.

many in 1981 from a dealer (Mohammad Yeganeh); and in accord with the agreement, the Boston Museum of Fine Arts (MFA) obtained 50% of the right of property, the other half was left to Leon Levy. It was also recorded in the agreement that the statue would be donated to the museum after the death of Leon Levy. The statue was first exhibited in 1981, and then in 1990-1991 in the Metropolitan Museum (Glories of the Past: Ancient Art from the Shelby White and Leon Levy Collection), and in February-August 2007 in the MFA (Sculpture in Prints)<sup>52</sup>. The lower part of the statue was found by Prof. Dr. Jale İnan during Perge excavations in 1980<sup>53</sup>.

In 1990, the upper part of the statue was temporarily given to the New York Metropolitan Museum; and during its exhibition, a scientist noticed that it matched the other half of the statue in the Antalya Museum<sup>54</sup>. In 1992, the plaster model of the lower part of the statue was sent to Boston with experts and lawyers assigned by the Turkish Government in order to examine the match of the two pieces. In the test carried out with the MFA authorities, it was found that the two pieces matched perfectly<sup>55</sup>. However, the MFA authorities declared that the piece might have been broken long ago and been taken abroad before the laws that consider antiquities as under state ownership were enacted in Turkey; and they refused the demand for its return, indicating the piece was bought in a legal way<sup>56</sup>. In the period after 1992, it is known that Turkish governments were not insistent in their demand for the return of antiquities. Sometimes it is enough for the governments only to declare the property is possessed by them. It is accepted that they need to expend effort for this<sup>57</sup>. In 2003, when Levy died, the MFA obtained ownership of the statue and in 2004 made another contact with Turkey<sup>58</sup>.

Since the statue was not broken by geographical factors, the team working to establish the match of the two parts of the statue aimed to transfer models of the two pieces along with their record to computer, to show they matched. In this way, the statue would be seen as a whole and could be analysed. The work with the Turkish authorities and the Antalya Museum was completed, but access to the other half of the statue in the Boston Museum was blocked. With the help of "optoTOP-HE" coded structured light system, the digitalisation of the lower part of the statue was made in September 2005. Yıldız Technical University, Breuckman (German company), InfoTRON (Breuckman Turkey Dealer) and Remote Sensing of ETH Zurich (Switzerland) were among the institutions that contributed to the project. This is a structured light system that allows 3D objects to be restructured<sup>59</sup>. According to the working principle of this technology, light falls on the piece to be scanned with the help of the projector in the system and an image of the piece is taken with a high resolution digital camera. The images obtained are software processed and the coordinates of the points that make up the surfaces of the piece are secured<sup>60</sup>. Finally, as a result of diplomatic relations, the principle of goodwill and successful teamwork, the statue was returned to Turkey on the 25<sup>th</sup> of Septem-

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<sup>52</sup> Griffin 2011, 2.

<sup>53</sup> İnan 1981, 45-46.

<sup>54</sup> Griffin 2011, 2.

<sup>55</sup> Chechi *et al.* 2011, 2.

<sup>56</sup> Akça *et al.* 2006, 15; Chechi *et al.* 2011, 2.

<sup>57</sup> Brodie *et al.* 2000, 32.

<sup>58</sup> Chechi *et al.* 2011, 2; Griffin 2011, 2.

<sup>59</sup> Akça *et al.* 2006, 14-17.

<sup>60</sup> <http://www.infotron.com.tr/> (26.11.2017).

ber 2011. Undoubtedly, the MFA's attitude was important<sup>61</sup>.

## 5. 2. The Bergama (Pergamon) Artefacts

The story of the Bergama artefacts that were smuggled to Germany started when Carl Humann, a civil engineer, came to Samos Island from Kuşadası as a result of medical advice concerning his tuberculosis. Humann first met Strack, the German engineer who was excavating the Hera Temple in Samos and worked with him voluntarily in the excavations. Some time later, he was employed by the Ottomans as a technical personnel. While he was working in the connection of the İstanbul-İzmir highway, he chose Bergama to be the management centre of the construction site and started his first attempts in antiquities collecting. He had even assigned the road workers he was working with to collect antiquities. Humann's aim was to show the antiquities he had collected to German authorities and get permission in this way for an excavation in Bergama. On the 9<sup>th</sup> of September 1878, he achieved his aim and obtained Ottoman permission for an excavation. The amount of the excavated antiquities was so great he had the Bergama-Dikili road built and used it to carry these antiquities. Ox carts, iron carts, sleds, strong chests and approximately 40 workers helped to bring the antiquities to Dikili. Starting like this, the illegal export of Bergama artefacts continued in 1886. The regulation issued in 1884 which banned the the transport of antiquities out of the country could not prevent this transport<sup>62</sup>.

Additionally, in accordance with the 1874 the Asar-ı Atika Nizamnamesi (Regulation of Antiquities) which allowed the equal division of the antiquities among the landowner, the finder and the government, Humann bought the land of the Bergama Acropol, and paid a little amount to the Ottoman government for one third of the marbles. Humann's total shipment from Bergama to Berlin consisted of 462 chests and weighed 350 metric tons. It was reported that in the end of the first excavation season, 97 marble plates and 2000 embossed pieces belonging to the Gigantomachia Frieze were sent to Berlin; and this means that three fifths of the original plan (135 metres width, 2.30 metres height) of the Gigantomachia Frieze were brought to Berlin. Humann also sent 35 marble reliefs of the Telephos Frieze, which is smaller in size, to Berlin. Although the size of the shipment was big, bigger shipments were needed to make an architectural reconstruction with the original pieces. As it started to attract the attention of the local people, Humann had to follow an order of priority. He had to leave 50 pieces of the architectural elements for the ceiling and the beams in Bergama. Today, these antiquities can be seen around the area where the base of the altar is placed<sup>63</sup>. The statement from the first excavation report "...Additionally, besides the antiquities from the exedra of Attalos II, pieces from the Temple of Traian, we brought a fortune of architectural artefacts and whatever there were surrounding Augusteum and Gymnasium"<sup>64</sup> is clear enough show the approach to archaeology and history. From these words alone the return of the antiquities to Turkey is required, to lead the way in preventing the illegal trade in antiquities.

The following words of Humann are also of particular interest:

*"I was welcomed with joy by all, from the captain to the officer, for this service of mine for our country. We departed from İzmir early in the morning of 5<sup>th</sup> October on board of a cargo vessel with towing*

<sup>61</sup> Griffin 2011, 2.

<sup>62</sup> Yılmaz 2015, 18-33.

<sup>63</sup> Birsal 2015, 77-78.

<sup>64</sup> Yılmaz 2015, 28.

*ropes. We came back with the 40 chests in Dikili on the 6<sup>th</sup>. We brought 120 chests full of antiquities on the 11<sup>th</sup>, 19<sup>th</sup> and 23<sup>rd</sup>. We also loaded the columns and the pieces of the Athena Temple that would be erected in Berlin. Our Royal museum and treasure got richer. Plentiful of antiquities were presented to people who will make scientific research in Berlin. Second excavation trip has also ended. October 1881*<sup>65</sup>.

The excavations began in 1878 (the excavation research started in 1865, and these studies were carried out without Ottoman permission) serve as a bitter example for the loss of the heritage of a country under pressure from a western power. Just like the Weary Heracles statue, the base of the Bergama artefacts is in Bergama, while the upper part is, in this case, in Berlin. Germany named the museum in which the Bergama artefacts are exhibited, the “Pergamon Museum”, choosing the name used in the antiquity<sup>66</sup>. Although it is claimed that the Bergama artefacts were taken abroad with the permission of Sultan Abdülhamid II, it is known that Humann non-stop continued the Bergama excavations even after it was finalised with the Nizamname (Regulation) dated 9<sup>th</sup> February 1299/21<sup>st</sup> November 1884 that the ownership of antiquities unconditionally belonged to the government<sup>67</sup>. Humann also brought the Hittites antiquities around Gaziantep Islahiye to Berlin in 1888. While hundreds of rock reliefs were cut from the main rock with a thickness of 20cm; taken to the Port of İskenderun by ox carts, and from there brought to Berlin by ship<sup>68</sup>. In 1903, archaeologist T. Wiegand and H. Knackfuss brought the Marketplace Gate which they had found in the Milet excavation to Germany.

It is sad to say, concerning the illegal export of antiquities, that some writers, archaeologists and historians believe that antiquities are preserved better abroad than they would be “in the place where they belong”. No matter what, it is impossible to agree with this view. As with the case of Bergama Altar, if Humann had not discovered this place at that date, the science of archaeology, buried under the Ottoman land, had not as yet been developed. Yet it would have been discovered not much later, perhaps in the first years of the Republic and would have been preserved in its own country without destruction. If it is the looting by people that is meant above, probably no one would be brave enough to bring such big artefacts to their homes or to take them abroad secretly.

Furthermore, the Soviet Red Army seized those antiquities which were in part destroyed in the allied bombing during the World War II, together with removing the marbles of the Gigantomchia Frieze for 10 years as a war indemnity. The Pergamon Room stripped off its valuable statues and fallen into pieces, remained as a war ruin for 10 years. It’s hard to imagine such destruction if they had remained *in situ*<sup>69</sup>.

Despite of the fact that the original contexts of antiquities are not known, it is possible to understand the magnitude of the destruction when seeing them in museums. Since Humann was not an archaeologist, it is no use thinking about how he conducted the diggings and transport.

Moreover, a letter that was presented to the Sultan in 1890 and looked like a denouncement is quite important. Even though the science of archaeology had not yet developed, a considerable

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<sup>65</sup> Yılmaz 2015, 31.

<sup>66</sup> Birsell 2015, 70.

<sup>67</sup> Mumcu 1969, 73.

<sup>68</sup> Yılmaz 2015, 19-32-34.

<sup>69</sup> Birsell 2015, 83.

number of people were uncomfortable with the fuss of the foreigners. The letter concerns the antiquities that Humann brought to Germany. Some lines from the original translation of the letter are as follows: “*If they really are unvaluable then why will Monsieur Humann choose to pay for the transportation of these unvaluable antiquities to Germany for nothing. And the antiquities that the foreigners steal secretly are innumerable*”<sup>70</sup>.

Undoubtedly, the way the Pergamon artefacts were taken out of the country and the illegal export of the Weary Heracles statue are different from each other. Yet, there is no record showing which Bergama artefacts were taken abroad with Ottoman permission. Further, the reason for their transport is unimportant. Now, the new world view is that antiquities have meaning in their country of origin. It is accepted that an object or structure cannot be considered of documentary importance if there is no certain information concerning where and how it was found, its physical and stratigraphic context<sup>71</sup>.

In order to be able to understand an archaeological context more completely, the natural environment of the people comprising that culture; the biological environment consisted of animals, plants and the climate; people’s relationships with this biological environment; their ways of using the resources they have; their technology, economy and their social and cultural structure; their artistic activities should be brought to light<sup>72</sup>. This cannot be done through illegal excavations.

The attempts made concerning the return of these antiquities from Germany have continued by means of bilateral contacts with the Ministry of Foreign Affairs and in meetings since 1991. It is known that Germany’s view concerning their return is negative since Germany is not a party to any international agreement; and furthermore, they are worried that the continuity of these types of negotiations will result in the institutionalisation of the return to their place of origin of such antiquities. Germany believes they are right about this<sup>73</sup>.

Pergamon was added to the world heritage list by UNESCO in 2014. Bergama was added to the list in the category of Cultural Landscape in the 38<sup>th</sup> Session of the World Heritage Committee as a site that carries strata dating from the Hellenistic, Roman, East Roman and Ottoman periods and consists of nine components forming a Multi-layered Cultural Landscape Area; Pergamon (multi-layered city); Kybele Holy Area; İlyas Tepe, Yiğma Tepe, İkili; Tavşan Tepe, X Tepe; A Tepe and the Maltepe Tumulus<sup>74</sup>. It is hoped that this important step will lead to the return of the illegally exported part of Pergamon to this country.

## Conclusion

Cultural heritage gains in meaning when it is transferred to the future as a complete entity. This heritage, besides preserving the historical entirety of countries, contributes to the preservation and explanation of the whole history of the world and of humanity. Today, at this point, neither the absence of regulations of the past that permitted the illegal export of antiquities, nor the personal decisions of rulers of a country are acceptable. Universal agreements concerning the preservation of cultural heritage in their countries of origin have not as yet been effective concerning the return of the

<sup>70</sup> Kökdemir 2015, 101.

<sup>71</sup> Aşgari 1993, 288.

<sup>72</sup> Esin 1985, 2.

<sup>73</sup> 7/12825-19462 no’lu Soru Önergesi Cevabı, Dönem: 22, Cilt: 116, YasamaYılı: 4B: 86, O: 5.

<sup>74</sup> Kaynak: <http://www.kulturvarliklari.gov.tr/TR,44423/dunya-miras-listesi.html> (24.01.2018).

antiquities smuggled or illegally exported by “asserting so-called valid reasons” in the past. Moreover, it seems impossible to have an international consensus so long as countries do not remove the terms that legalise and support the trafficking in stolen antiquities within their own legal systems. In this respect, negotiations within the framework of good-will and bilateral agreements are reported to be effective; and the determined and consistent attitude of those countries demanding the return of their antiquities is also considered important.

One of the most important reasons why antiquities smuggling cannot be prevented at present is the desire of countries to fill their museums with antiquities that do not belong to them. It is stated in the studies on the illicit trade in antiquities that there are high rates of bribery and a disordered bureaucratic network those in the countries that constitute the source of the items in this trade. However, it should not be ignored that the USA and European countries which are the final markets also open the way for such demand with the support of their current laws.

When we cannot preserve antiquities *in situ*, we are faced with the loss of evidence of culture and the destruction of the common heritage of humankind; and a quite long period of diplomatic negotiations and a costly legal process for their return awaits us. Some examples of the cultural heritage that is to be sold at auction abroad has been bought by the Ministry of Culture. This can illustrate the magnitude of the cost. For instance, in an auction in London in 1988, the Ministry paid £41,000 for a Hittite tablet.

For some defensive reasons, Turkey is blamed with cultural ambition in demanding the return of the lost heritage in an international platform. Today, the point where science has reached is beyond this argument. Considering Turkey's demand for the return of the illegally exported antiquities just as a national will is against the nature of science. Thus, the antiquities that are far from their original forms; that are exhibited only with commercial concerns; that have lost their real identity taken from their context; and were looted certainly cannot make their proper contribution to science or to the more complete understanding of the history of civilisations.

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