



How organised is the trafficking of cultural goods? Spain as case study

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Abstract

In recent years, the characterisation of the trafficking of cultural property as a form of organised crime has gained prominence in literature and EU and Member State policies on the protection of cultural heritage. Trafficking in cultural goods (TCG) is one of the EU's priorities in its efforts to combat serious organised crime. However, little research has been conducted into identifying and quantifying case law related to this phenomenon. To increase empirical knowledge in this area, this paper presents the results of a quantitative study of all TCG court cases delivered by Spanish provincial and Supreme Courts between 2014 and 2024 ($n=35$). We used the anonymised open court data that is available on the Judicial Documentation Centre database. The research aimed to determine how many trafficking cases had been tried in court, the demographic characteristics of offenders, the types of heritage crime involved and the role of criminal organisations and intermediaries in the illicit market. We found that only 25% of cases involved criminal organisations. The results confirm previous findings regarding the (relatively) disorganised nature of the illicit market in cultural goods, which is dominated by mainly locally based individuals and small groups. This work therefore highlights the need to address the prosecution of TCG holistically, given that we could not find an inherent relation between organised crime and TCG in practice. Our findings partially challenge the assertions of EU bodies and some of the specialised literature that emphatically characterise cultural property crime as a serious organised cross-border crime.

Keywords Trafficking in cultural goods · Organised crime · Cultural heritage · Sentencing · Quantitative research · White-collar crime

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Introduction

Over the last few years an increasing amount of attention has been paid to the link between organised crime and the trafficking of cultural goods (TCG). This growing attention has resulted in a noticeable collection of scientific articles, books and reports on the phenomenon. Indeed, since the 2000s, supranational bodies, policymakers, law enforcement agencies, advocacy groups and academic literature have emphasised the role that organised crime plays in TCG (see, e.g., Mackenzie 2011; Chechi 2019; Blake 2020; Yates 2021; Interpol 2021, 2022; Clooney Foundation for Justice 2022; UNESCO 2023). This viewpoint, fully endorsed by the EU (Commission 2022), gained traction in the early to mid-2010s when concerns were raised globally about the connection between the TCG and the financing of terrorist activities in conflict zones in the Middle East (FATF 2015, 2016, 2023; Jones 2018; De Bernardin 2021; Interpol 2022; Musu 2023; UNICRI 2024). The alleged connections of terrorist financing with money laundering, sanctions evasion and tax fraud reinforced the characterisation of TCG as a form of organised crime (Ulph 2011; De Sanctis 2013; Van Duyne et al. 2014; Yates 2016; Mackenzie 2020; US Senate 2020; Baranello 2021; Yates and Mackenzie 2021), which is further substantiated by the well-known effects of money laundering activities in the art and antiquities market (Van Duyne et al. 2014; Brodie and Yates 2022; Stoll 2023). The categorisation of TCG as a serious organised crime activity has gained prominence in recent years. However, these terms are not synonymous. Serious crime, inconsistently defined in EU policy documents and academic literature (Paoli et al. 2017), is not necessarily organised or mafia-like, but most often disorganised and mutable (Bigo et al. 2017). For its part, ‘organised crime’ is a concept that ‘means different things for different people’ (Brodie 2019, p. 439). It usually involves groups or networks of people who work together on an ongoing basis, hierarchically structured or loose and fluid, often motivated by financial gain. The international and European definitions both necessarily involve serious criminal offences (UN 2000; Council 2008), which is consistent with the purpose of this legislation being to promote cooperation in order to prevent and combat transnational organised crime more effectively. However, national law sometimes differs, meaning that participation in a criminal organisation with a view to committing misdemeanours or less serious offences may also be punished as organised crime. Neither the concept of serious crime nor that of organised crime involve per se a transnational, international or cross-border element. Nevertheless, EU policy documents, particularly those related to police and judicial cooperation, consistently refer to TCG in ways that imply seriousness, organisation *and* internationality (Faraldo Cabana 2024).

Despite this association, some argue that there is no inherent link between organised crime and TCG (Howard et al. 2016; Brodie et al. 2019), while the potential connections to other forms of trafficking, corruption, money laundering, terrorism and terrorist financing remain highly debated or understudied (Eber et al. 2022; Faraldo Cabana 2024). Indeed, many scholars denounce the widespread emphasis among supranational bodies and policymakers on the organised crime

nature of TCG, arguing that this produces misguided legislation which fails to acknowledge the diversity of trafficking scenarios and configurations (Balcells 2016). This characterisation obscures the complexities of a ‘grey’ market which is neither completely licit nor illicit (see Mackenzie and Yates 2017; Oosterman et al. 2021), in which individuals with legitimate business activity are professionally connected with people engaged in continuing criminal enterprises that exist to profit primarily from illicit activities, but also with opportunistic criminals. Additionally, although in key respects the illicit market in cultural goods functions as an ‘organised criminal enterprise involving transnational traffic flows’ (Mackenzie 2011, p. 83), the ‘organisation’ of cultural property crime usually involves ever-evolving interlocking networks of mainly locally-based criminality (Campbell 2013; Brodie et al. 2019). In fact, the literature consistently highlights that TCG is mostly dominated by small groups and actors that are ‘local at all points’ (using the terminology proposed by Hobbs 1998, p. 419). Serious, violent, organised criminals that exploit global market opportunities through transnational networks may form part of this profitable chain but do not define the essence of the market (Mackenzie 2011).

In this debate, our understanding of the phenomenon is often distorted due to the lack of empirical evidence. Despite increasing attention, little reliable knowledge exists on the types and level of involvement of criminal organisations in cultural heritage crime. Existing literature often makes claims about this involvement in TCG without providing sufficient supporting evidence. Criminal organisations are simply ‘assumed’ to be involved in TCG without any reference to documentation that could substantiate these claims. The lack of sufficient evidence in the vast majority of sources is linked to the general limited availability of reliable quantitative data at the national level. This hampers meaningful cross-national comparisons, which are crucial for the EU. Reliable cross-national data is important to conduct meaningful in-depth comparative analysis capable of supporting evidence-based policy making. There is a specific interest in countries of origin and destination, but also in data from transit countries and countries that appear in the operating routes. In this regard, Spain is a particularly relevant case study, because it is both a source and a transit country (Rodríguez & Yáñez 2023), subjected to high exposure to organised crime (Jaime and De Castro 2025). By analysing Spanish court data relating to crimes against cultural heritage, we aim to provide a first approach to the role of criminal organisations in the TCG in Spain, while at the same time seeking to confirm or refute the critical approach of some literature to the way in which EU policymakers understand the nature and characteristics of TCG. In doing so, we will shed light on the various criminal activities involving cultural goods and contribute to a more informed EU policy on TCG. While the focus of this paper is on the small number of offenders who are indeed members of criminal organisations, it also considers the vast majority of market participants with only loose links to organised crime. Understanding who these individuals are and how they operate can inform the development of more effective measures to combat this insidious form of criminality.

Methodology

Research questions

Considering what has been said before, in this paper we seek answers to the following two research questions:

RQ1: Which cases of TCG are brought before the Spanish criminal courts? Four related sub-questions were posed within this research question:

RQ1.1: What are the characteristics of court decisions?

RQ1.2: What types of cultural heritage crime are committed? How are they punished?

RQ1.3: Who are the offenders?

RQ1.4: What are the criminal dynamics of the analysed cases? Specifically, what sort of criminal organisations and groups are active in TCG?

RQ2: Do these characteristics correspond to the phenomenon of TCG as described in the scientific and grey literature?

RQ1 aims to map the judicial landscape regarding TCG in Spain, while RQ2 aims to contextualise the results within the current state of research on the organised nature of TCG. The next subsections describe the methodology.

Objectives

Based on the literature review, the primary objective of this study is to identify and characterise cases of TCG that have been tried in Spanish criminal collegiate courts. In other words, the study aims to establish the number of TCG cases brought to court and describe the legal characteristics of the judgements. To this end, the analysis covers the temporal and geographical distribution of the cases; the outcomes of the judgements, including reasons for acquittal and punishments imposed; the types of offences involved; the perpetrators' demographic characteristics; and the cases' characteristics, such as territorial scope, market dynamics and the type and role of criminal organisations and intermediaries. We are interested in determining whether the trade is significantly penetrated or controlled by broad-spectrum criminal gangs, or if it is a more isolated enterprise of highly specialised criminals. Additionally, we seek to determine how the trade is criminally organised, whether through the long-term centralised control and direction of command figures or more opportunistically through short-term criminal collaborations. Transnational elements of crime—offences that involve more than one country in their planning, execution or impact—are also sought.

Secondly, to answer the question of whether cases brought before the courts confirm the characterisation of TCG as serious organised transnational crime, the findings of this research were analysed in relation to previous studies and policy documents.

Procedure

To answer RQ1, we analysed the judgements—convictions and acquittals—handed down by all Spanish collegiate courts—provincial courts (Audiencias Provinciales),

high courts of justice (Tribunales Superiores de Justicia) and the Supreme Court—in cases involving TCG-related crimes dated between 1 January 2014 and 31 December 2024. We used the Judicial Documentation Centre database (CENDOJ) of the Spanish General Council of the Judiciary (Consejo General del Poder Judicial). We selected the CENDOJ database because it contains the full text of all judgements issued by the aforementioned courts. We did not consider cases that are handled exclusively through lower-level judicial channels, such as those heard by a single judge (*juzgados de lo penal*). The CENDOJ database only shows a selection of these rulings, without any explanation regarding the criteria of inclusion. Despite this, the sample is sufficiently large to be representative: it covers all collegiate court cases on TCG-related crimes and the data is collected and analysed consistently to avoid bias. As all the analysed data comes from public sources, this research did not require evaluation by an institutional ethics committee.

Specifically, we searched for all judgements concerning TCG and related offences, provided that the crime in question describes trafficking or includes an aggravating circumstance because the object is a cultural good.¹ The research thus considers different types of charges according to the Spanish Penal Code (hereinafter, *Span. PC*) and Organic Law 12/1995 of 12 December for the repression of smuggling: those brought under Articles 235.1.1^o (aggravated theft), 240.2 (aggravated burglary), 254.1 (aggravated misappropriation), 298.1 a) (aggravated receiving), 323.1 (looting of archaeological sites) and 432.2 c) *Span. PC* (aggravated embezzlement), and Article 2.2 a) of Organic Law 12/1995 on the repression of smuggling (smuggling). Specifically, the following search terms were entered in the CENDOJ database: ‘235’ O [OR] ‘240’ O ‘253’ O ‘254’ O ‘298’ O ‘323’ O ‘432’ O ‘expolio’ [looting] O ‘hurto’ [theft] O ‘robo’ [burglary] O ‘apropiación indebida’ [misappropriation] O ‘receptación’ [receiving] O ‘malversación’ [embezzlement] O ‘contrabando’ [smuggling] Y [AND] ‘valor artístico, histórico, cultural o científico’ [historical, artistic, cultural or scientific value] O ‘Patrimonio Histórico Español’ [Spanish cultural heritage] O ‘patrimonio histórico’ [cultural heritage] O ‘bien de interés cultural’ [cultural good] O ‘yacimiento arqueológico’ [archaeological site] Y ‘Código penal’ [Penal Code] O ‘Ley Orgánica 12/1995’ [Organic Law 12/1995]. This made it possible to investigate almost all crimes related to the phenomenon of illicit trafficking. We say ‘almost’ because Spain does not punish the illicit import of cultural objects of foreign origin. Whenever Spanish customs authorities detect them, no criminal proceedings are initiated. Instead, measures are taken to cooperate with the authorities of the countries of origin with a view to their restitution.

¹ An important question is what kinds of criminal activities fall under the umbrella term ‘TCG’. Criminologists disagree on what is encompassed by this term and others, such as cultural heritage crime and cultural property crime (see, for example, Chappell and Hufnagel 2014, p. 3; Balcels 2019, p. 35). In line with the Council of Europe Convention on Offences relating to Cultural Property (Nicosia Convention), our study encompasses theft and other forms of unlawful appropriation, such as robbery, embezzlement and misappropriation; unlawful excavation and removal (looting); illegal importation and exportation (smuggling); acquisition and placing on the market (trafficking and receiving); and forgery of documents. We excluded the destruction or damage of any elements of movable or immovable cultural property from our analysis unless committed with a view to importing, exporting or placing them on the market, within the meaning of Article 10 of the Nicosia Convention.

Sample

The search returned 161 judgements. To select the sample, both researchers independently reviewed all results, generated initial inclusion proposals, and subsequently resolved any discrepancies through joint discussion until consensus was reached. Following the review, those cases that, despite referring to one of the cited terms, did not correspond to a TCG case were eliminated. These were judgements that referred to damage to cultural heritage objects or buildings, but did not describe looting, theft, robbery, misappropriation, receiving, smuggling or trafficking. The final sample consisted of 35 judgements involving 83 defendants. Due to the relatively limited sample size, all judgements on TCG were analysed.

The primary variables analysed were categorised into three distinct groups:

1. those identifying the court decision: court type, geographical location of the facts (province), judgement date, number of defendants, outcome, types of TCG-related offences—aggravated theft, aggravated robbery, looting of archaeological sites, aggravated receiving, aggravated misappropriation, aggravated embezzlement and smuggling—, any appreciated aggravating or mitigating circumstances and punishments;
2. those concerning characteristics of the defendants: sex, nationality and criminal record; and.
3. those related to the criminal dynamic: the scope of the trafficking, the existence of evidence pertaining to an organised criminal partnership, the role of intermediaries, the method of introduction of the goods into the market, the final destination of the goods, and the characteristics and value of the goods.

The initial set of variables was collected in order to ascertain the number and characteristics of court cases concerning the phenomenon in Spain, as well as the sentences imposed or the reasons for acquittal. The second set was gathered for the purpose of determining the defendants' profile. Finally, the final set of variables enabled the study of the criminological characteristics of cases that reached the Spanish courts. The data was collected and compiled manually between February and May 2025, using a template developed for the specific purpose of this study. Consistency in the selection and coding process was ensured through joint discussion. The authors take responsibility for the integrity and accuracy of the data and analysis. Every effort has been made to avoid inflating statistically significant results.

Limitations

Court documents must be taken with precaution. It is possible that the prosecuted cases only partially reflect the trafficking phenomenon. It is likely that the criminal justice system is failing to detect and prosecute cases fitting the typical framework of organised crime. Prosecuting organised TCG is challenging due to several factors, including the complexity of the operations, the ability of criminal organisations to exploit legal loopholes, their use of technology to facilitate operations, the difficulty

in obtaining evidence about the illicit origin of the artifacts and the opacity of the art and antiquities market and actors. Law enforcement agencies in Spain may also lack the resources and training to effectively investigate and prosecute organised TCG. Moreover, we did not consider lower-level judicial channels. This means that the judicial data we handle does not capture the full extent of prosecuted TCG, but only approximately 20%.² This is the percentage of criminal single-judge court rulings that are appealed before the higher courts we study here. Furthermore, court judgments mostly contain information around the prosecuted person or people, creating a possibly mistaken perception that the suspected offender is a central figure (Brodie 2019). They may concentrate on a single case for which there is enough evidence to prosecute, not being able to instantiate a persistent and wider-ranging criminal operation. Some organisational traits may be underreported as legally irrelevant for the verdict. In any case, further research into the trafficking phenomenon in Spain is needed to avoid that a poor understanding of how the trade operates hinders effective policy efforts.

Results

Sample characteristics

As shown in Table 1, the cases come mainly from the provincial courts and are distributed across the whole of Spain. Temporal distribution shows two years with a peak of seven cases each, 2019 and 2023.

Typology of the prosecuted cases of TCG

83 defendants were prosecuted for a total of 114 crimes (Table 2). The majority of prosecutions were for looting archaeological sites ($n=36$, 31.58%). The next most prevalent crimes were aggravated theft ($n=26$, 22.81%), aggravated burglary ($n=19$, 16.67%), aggravated receiving ($n=11$, 9.65%), aggravated misappropriation ($n=5$, 4.39%) and smuggling ($n=5$, 4.39%). In addition to the aforementioned offences, which are traditionally associated with TCG, prosecutions for money laundering ($n=3$, 2.63%) and other offences such as weapons storage ($n=1$, 0.88%), participation in a criminal organisation ($n=4$, 3.51%), concealment ($n=1$, 0.88%) and unlawful urban planning ($n=2$, 1.75%) were also identified. In the cases examined, no convictions or acquittals were recorded for aggravated embezzlement or forgery of documents.

The following analysis addresses three core aspects of the criminal proceedings: the outcome, the existence of aggravating or mitigating circumstances, and the type and length of penalties imposed.

² The percentage is calculated by the General Council of the Judiciary each year. Data available at: http://www.poderjudicial.es/portal/site/cgpj/menuitem.52faf2c47434aca9ace1b3d7c684caa0/?vgnextoid=fda25d50dd008510VgnVCM1000006f48ac0aRCRD&vgnextfmt=default&vgnextlocale=en&lang_chosen=en.

Table 1 Sample characteristics

Court type	N	%
Supreme Court	2	5.71
Provincial Courts	33	94.29
Total	35	100
Geographical distribution	N	%
A Corunna	2	5.71
Almería	2	5.71
Badajoz	1	2.86
Barcelona	1	2.86
Bilbao	1	2.86
Burgos	3	8.57
Cádiz	1	2.86
Ciudad Real	3	8.57
Cuenca	1	2.86
Girona	1	2.86
Granada	2	5.71
Jaen	2	5.71
La Rioja	1	2.86
León	1	2.86
Lleida	2	5.71
Lugo	1	2.86
Madrid	3	8.57
Pontevedra	1	2.86
Sevilla	3	8.57
Toledo	1	2.86
Zaragoza	2	5.71
Total	35	100
Temporal distribution	N	%
2014	1	2.86
2015	3	8.57
2016	2	5.71
2017	3	8.57
2018	2	5.71
2019	7	20
2020	3	8.57
2021	2	5.71
2022	2	5.71
2023	7	20
2024	3	8.57
Total	35	100

The conviction rate in cases of TCG is high. In total, 88.57% of cases resulted in a conviction (31 out of 35 court cases and 74 out of 83 defendants), while 11.43% resulted in acquittal. It is noteworthy that within the subset of cases that resulted in convictions there are also partial acquittals for certain offences (10 of 35 judgements). In the majority of cases, the primary reason for which the accused was found not guilty was due to insufficient evidence ($n=7$), but also for incompatibility of offences ($n=2$), lack of subjective element ($n=3$) or because the perpetrator was

Table 2 Prosecuted types of cultural heritage crime and related crimes

	<i>N</i>	%
Aggravated theft	26	22.81
Aggravated burglary	19	16.67
Looting of archaeological sites	36	31.58
Aggravated receiving	11	9.65
Aggravated misappropriation	5	4.39
Aggravated embezzlement	0	0
Forgery of documents	0	0
Smuggling	5	4.39
Money laundering	3	2.63
Weapons storage	1	0.88
Unlawful urban planning	2	1.75
Participation in a criminal organization	4	3.51
Concealment	1	0.88
Disclosure of secrets	1	0.88
Total	114	100

Table 3 Reasons for acquittal

Description	<i>N</i>
Lack of evidence	7
Lack of the subjective element	3
Incompatibility of offences	2
Interruption before the appropriation of assets	2
Judicial misinterpretation of the Organic Law 12/1995	1
Facts do not fall under Organic Law 12/1995	1
Statute of limitations of the offence	2

interrupted by authorities before the appropriation of the goods ($n=2$). In the cases of smuggling, we found acquittals due to a judicial error in the interpretation of the Organic Law 12/1995 for the repression of smuggling ($n=1$) and to the statute of limitations ($n=2$). In another case, shortcomings of the aforementioned Organic Law 12/1995, which only aims to protect Spanish historical heritage, neither punishing the illegal importation nor the illegal exportation of looted movable cultural property of foreign origin, were made evident. Annex 1 contains a detailed explanation of the reasons for acquittal, which are set out below in a simplified manner (Table 3).

In the majority of cases that resulted in a conviction, no aggravating or mitigating circumstances were identified. With regard to the application of mitigating circumstances, it is notable that in 23 judgements (63.89%), no such circumstances were applied. In one instance, the presence of a mitigating circumstance was identified, namely the undertaking of remedial measures to address the resulting damage.³ In two instances, the presence of the mitigating circumstance of drug addiction was noted.⁴ It is important to note that the mitigating circumstance of undue delay was

³ Sentence of the Provincial Court of Lleida (1st Section) 370/2014 of 9 October [ECLI: ES: APL:2014:814].

⁴ Sentence of the Provincial Court of Jaen (4th Section) 211/2016 of 15 September [ECLI: ES: APJ:2016:837] and Sentence of the Provincial Court of Madrid (15th Section) 750/2018 of 26 November

applied in seven judgements. This is due to the significant length of time required to resolve cases in court.⁵ We found aggravating circumstances in five cases (13.89%): recidivism in four cases (11.11%)⁶ and abuse of trust in only one (2.78%).⁷ It should be noted that these circumstances are not defined in Spanish law in the same way as in the Nicosia Convention (Article 15).⁸

The number of punishments imposed on each defendant typically ranges from one to three, with three being the most prevalent category. Of the 74 convicted defendants 56 received imprisonment as the principal penalty (75.68%), mostly with a duration of two years or less ($n=44$). In 56.76% of the cases ($n=42$), a fine was also applied. The most prevalent fines are those of a duration exceeding three months ($n=25$, 33.78%), twelve defendants were subject to day fines of three months or less (16.22%) and five received proportional fines (6.76%). Disqualification of voting rights is an ancillary sanction in Spain that is typically imposed concurrently with a custodial sentence of less than ten years. Consequently, the penalty is identified in the vast majority of judgements that result in a prison sentence (53 out of 56). The accessory sentence of disqualification from public employment or office was imposed only once (Table 4).

The leniency of the imposed penalties is striking. It may not seem so, because imprisonment is the most frequent sentence. 56 out of 74 convicted defendants received a prison sentence (76.68%). However, most prison sentences are of two years or less (78.57%, 44 out of 56). This duration means that they can be suspended. It must be highlighted that the most frequently prosecuted cultural heritage crimes in Spain, looting and aggravated theft, do not fit in the definition of ‘serious crime’ according to Article 2b of the UN Convention against Transnational Organized Crime (Palermo Convention)—a ‘conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.’

[ECLI: ES: APM:2018:16915].

⁵ Sentence of the Provincial Court of Toledo (1st Section) 105/2017 of 6 September. [ECLI: ES: APTO:2017:807], Sentence of the Provincial Court of Ciudad Real (1st Section) 78/2017 of 2 June [ECLI: ES: APCR:2017:583], Sentence of the Provincial Court of Madrid (15th Section) 750/2018 of 26 November [ECLI: ES: APM:2018:16915], Sentence of the Provincial Court of Cádiz (4th Section) 94/2019 of 5 April [ECLI: ES: APCA:2019:1495], Sentence of the Provincial Court of Ciudad Real (1st Section) 78/2022 of 9 June [ECLI: ES: APCR:2022:954], Sentence of the Provincial Court of Sevilla (1st Section) 490/2022 of 16 September [ECLI: ES: APSE:2022:3033], Sentence of the Provincial Court of León (3rd Section) 118/2023 of 21 March [ECLI: ES: APLE:2023:480].

⁶ Sentence of the Provincial Court of Lleida (1st Section) 370/2014 of 9 October [ECLI: ES: APL:2014:814], Sentence of the Provincial Court of Jaen (4th Section) 211/2016 of 15 September [ECLI: ES: APJ:2016:837], Sentence of the Provincial Court of Madrid (15th Section) 750/2018 of 26 November [ECLI: ES: APM:2018:16915], Sentence of the Provincial Court of León (3rd Section) 118/2023 of 21 March [ECLI: ES: APLE:2023:480].

⁷ Sentence of the Provincial Court of Barcelona (22nd Section) 225/2017 of 1 March [ECLI: ES: APB:2017:3901].

⁸ Article 15 of the Nicosia Convention limits the abuse of trust to the one placed in the person in their capacity as professionals, while Article 22.6 Span. PC does not define the source of trust. Article 15 defines recidivism as the perpetrator having been convicted of the offences referred to in the Nicosia Convention. Article 22.8 Span. PC defines it as the offender having been convicted of an offence *under the same title of the Penal Code*, provided that it is of the same nature. This means that recidivism could not be applied to some offenders with criminal records.

Table 4 Punishments imposed

	Nature	Range	<i>N</i>	%
Principal penalties	Imprisonment	Over 5 years	1	0.66
		More than 2 years-5 years	11	7.24
		3 months-2 years	44	28.95
Subtotal imprisonment			56	36.84
	Fine	Day fine over 3 months	25	16.45
		Day fine of 3 months or less	12	7.89
		Proportional	5	3.29
Subtotal fines			42	27.63
Accessory penalties	Disqualification from voting rights		53	34.87
		Disqualification for public employment or office	1	0.66
Subtotal accessory penalties			54	35.54
Total			152	100

Looting is punishable with a prison term from 6 months to 3 years or a day fine of 12 to 24 months and aggravated theft with a prison term of one to 3 years. Sentences for trafficking crimes are often light in relation to the inflicted harm. Even in a case with enough evidence of a criminal organisation dedicated to looting subaquatic archaeological sites, removing the seabed without scientific rigour and damaging the sites during years, the only penalty imposed was a day fine of 3 months with an amount of 6 euros per day: 540 euros for each defendant.⁹

In most cases the artifacts are not monetarily expensive objects of great cultural worth, but relatively low-value objects in large quantities, whose illicit acquisition presumably caused extensive damage to archaeological sites. Only a few objects can indeed be catalogued as ‘ancient treasures’ or ‘masterpieces’: The Codex Calixtinus, the Aratikos Celtiberian helmets and a Picasso painting. Other important pieces are a José de Mora wood carving and the sculpture of San Narciso de las Moscas by Dalí.

Defendants’ profiles

The total number of defendants in the 35 judgements amounted to 83. According to the data obtained, in more than half of the studied court cases the criminal proceedings were brought against more than one defendant (20 judgements out of 35, 57.14%), although rarely more than two (Table 5).

The availability of data concerning the defendants is constrained by limitations related to data protection. The age of the subjects is the most challenging variable to identify, yet there is also a paucity of information regarding pertinent aspects such as the countries of origin. Defendants’ nationality is not mentioned in 71 cases out of

⁹ Sentence of the Provincial Court of Cádiz (4th Section) 94/2019 of 5 April [ECLI: ES:APCA:2019:1495].

Table 5 Number of prosecuted defendants by case

Number of defendants	<i>N</i> (judgements)	%
1	15	42.86
2	11	31.43
3	4	11.43
4	3	8.57
5 or more	2	5.71
Total	35	100

83, 85.54%. This observation typically signifies their nationality as Spanish. Though definitive confirmation remains elusive, the fact that their national identity document is mentioned points in this direction. In a mere eight cases it was expressly indicated that the defendants were of Spanish origin (9.64%). Defendants identified as foreigners came from Europe (3 from Italy, 3.61%) and the Americas (two from the US, 2.41%, and one from Costa Rica, 1.20%).

In most of the studied cases the defendants were male (77 out of 83, 92.77%). In our sample, there is only one case in which the only defendant is a woman.¹⁰ In the other cases (5 out of 83, 6.02%), women are always accompanied by men.

Information regarding defendants' criminal record is available in 75 out of the 83 cases. Only 5 of them (6.02%) had a criminal record relevant to the application of the aggravating circumstance of recidivism.

Criminal dynamic

In 74.29% of the judgements ($n=26$), there was an absence of any element of internationalisation. The entire criminal cycle—acquisition of the goods through the illicit excavation of archaeological sites, theft or robbery and subsequent sale, if applicable—occurred within the Spanish national territory. Only one judgement contained detailed information pertaining to the way in which foreign goods were placed in the Spanish market and their ultimate destination.¹¹ Objects of Spanish origin were exported in 14.29% of the cases ($n=5$). Destination or transit countries were Germany, Hong Kong, Italy, the UK and the US.

In 9 out of 35 cases (25.71%) there was involvement of a criminal network. Two cases are worthy of particular attention due to their intricate nature, with a total of 11 defendants implicated in each.¹² In both cases, despite having participated in groups that existed for a period of time and acted in concert with the aim of committing cultural heritage crimes, seeking to obtain a financial benefit directly or indirectly, the defendants were not charged with participating in a criminal organisation (Articles 570 bis ff. Span. PC) or with unlawful association (Articles 515 ff. Span. PC). This is

¹⁰ Sentence of the Provincial Court of Barcelona (22nd Section) 225/2017 of 1 March [ECLI: ES: APB:2017:3901].

¹¹ Sentence of the Provincial Court of A Coruña (6th Section) 102/2015 of 23 March [ECLI: ES: APC:2015:668]. The objects, a set of pre-Columbian artifacts, were imported from Peru to Spain and then exported to Germany.

¹² Sentence of the Provincial Court of Cádiz (4th Section) 94/2019 of 5 April [ECLI: ES: APCA:2019:1495] and Sentence of the Provincial Court of Cuenca (1st Section) 67/2019 of 30 April [ECLI: ES: APCU:2019:366].

particularly striking in the first case, in which the organised looting of wrecks in the waters off the coast of Cádiz went on for years.

We found two cases in which an antique dealer commissioned other men to steal the cultural objects so that he could resell them in his shop.¹³ Only in one of them were the defendants convicted for the crime of unlawful association.¹⁴

Interestingly, 8 of the 9 judgements with more than two defendants described the involvement of intermediaries in the criminal dynamic. In most cases they are art and antiquities market professionals: the owner of an antiques shop who directly bought the looted item knowing its illicit origin to sell it in Facebook;¹⁵ an antiques dealer who, unaware of its illicit origin, bought from a restorer the wood carving he had been commissioned to restore and instead misappropriated, and tried to sell it;¹⁶ and several art market actors that collaborated in transporting and then marketing the illicitly exported cultural good through another professional dealer,¹⁷ an auction house and a gallery.¹⁸ It is remarkable that auction houses were used to put the pieces into the market in 5 cases (14.29%). There are only two examples of an auction house, a professional dealer or a museum acting as a barrier to the entrance of the trafficked goods in the licit art market.¹⁹

Other rogue intermediaries are not art market professionals, but simply opportunistic criminals that receive stolen goods and then sell them to antiquarians,²⁰ or col-

¹³ Sentence of the Provincial Court of Lleida (1st Section) 370/2014 of 9 October [ECLI: ES: APL:2014:814] and Sentence of the Provincial Court of León (3rd Section) 118/2023 of 21 March [ECLI: ES: APLE:2023:480].

¹⁴ Sentence of the Provincial Court of León (3rd Section) 118/2023 of 21 March [ECLI: ES: APLE:2023:480].

¹⁵ Sentence of the Provincial Court of Bilbao (1st Section) 228/2023 of 19 January [ECLI: ES: APBI:2023:228].

¹⁶ Sentence of the Provincial Court of Granada (2nd Section) 447/2024 of 9 October [ECLI: ES: APGR:2024:1447]. The restorer was charged with the crime of misappropriation. The antiques dealer, unaware of the piece's illicit origin, was acquitted of the crime of receiving.

¹⁷ Sentence of the Provincial Court of Zaragoza (6th Section) 199/2018 of 16 July [ECLI: ES: APZ:2018:1157]. In this case, the first defendant, after looting an archaeological site for decades, sold some of the pieces to the second defendant, owner of an antique shop and restorer of pieces. He contacted a second intermediary in Switzerland, also an antique dealer, to whom he sold some of the pieces. In turn, the second intermediary sold the pieces in Switzerland, the UK, France and Germany. The first intermediary was charged with the crime of money laundering. The second intermediary was not prosecuted because he was deceased.

¹⁸ Sentence of the Provincial Court of Madrid (16th Section) 225/2019 of 5 April [ECLI: ES: APM:2019:4446]. The middleman was not charged with any crime because of the statute of limitations of the offence.

¹⁹ Sentence of the Provincial Court of Madrid (1st Section) 398/2020 of 1 September [ECLI: ES: APM:2020:9138]. They simply asked for the export license of the smuggled Picasso painting. On this case, see Capote Pérez (2023). In Sentence of the Supreme Court (1st Section) 1927/2020 of 19 June [ECLI: ES: TS:2020:1927], the museum reported the placement on the market of several looted Celtiberian helmets to law enforcement authorities.

²⁰ Sentence of the Provincial Court of Toledo (1st Section) 105/2017 of 6 September [ECLI: ES: APTO:2017:807]. The antiquarian was not prosecuted.

lectors that inform the looters of the value of the pieces and put them in contact with third parties interested in buying them.²¹

Goods are placed onto the market through online sales platforms and sites such as eBay in 14.29% of the cases ($n=5$), showing that the internet has allowed for the creation of a nearly infinite number of storefronts for cultural objects, cutting out many of the key intermediaries that were once vital to the functioning of the art market (Brodie et al. 2021).

Discussion

Too little is known about the scope and scale of organised cultural property trafficking across the world today. According to the specialised literature, in many cases there is evidence that organised crime is involved at all stages of illicit trafficking (Proulx 2011; Campbell 2013; Chechi 2019; Brodie and Yates 2019): directing looting, moving objects from archaeological sites to local markets, stealing art pieces from private owners and museums, exporting objects from the country of origin, interfacing with the professionals of the international art market, and so on. Terrorist groups are said to be generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, archives, museums, libraries and other sites, while at the same time destroying and damaging those cultural objects and artworks that offend their religion. It is known that armed conflicts increase looting activities in the territories at war (Hardy 2015).²² Moreover, there is also evidence of the use of the same trade routes and networks for different illicit goods (Brodie et al. 2019; Sargent et al. 2020). However, a significant number of authors also highlight that empirical data of the involvement of organised crime in TCG is scarce, and in many cases relatively site-specific and anecdotal (Balcels 2014; Bull 2016; Sargent et al. 2020; Greenland 2021). The scale of organised looting, theft, trafficking and smuggling and the amount of money generated from these activities is still unclear, as well as the precise nature of criminal organisations' involvement in these activities.

Court files are a staple of organised crime research, but they have rarely been used in studies on art crime (Mackenzie 2019, p. 849). For this paper, we made use of the opportunity posed by the publication of full court decisions that have merely been anonymised for data protection purposes, leaving untouched the facts description and the motivation. The results have been presented here with the aim of further characterising how the illicit trade in cultural goods might function and be criminally organised in Spain, considering the limitations and possible distorting effects of the information at hand. Using this material, compelling evidence has been found to suggest the involvement of criminal organisations in one in four judgements (25%

²¹ Sentence of the Provincial Court of Cuenca (1st Section) 67/2019 of 30 April [ECLI: ES:APCU:2019:366]. Because the collector's role was to locate the items and placing them in the market, he was charged with the crime of receiving.

²² The fact that both internal and external armed conflicts are fertile ground for organised crime, including TCG, is already well known since the Second World War (Brodie 2003; Campbell 2013; Howard et al. 2016; Pryor 2016).

of the judgements). The data analysis yields four key conclusions regarding this involvement.

- Firstly, in many cases the subjects' contribution to crime is related to their occupation. The subjects in question are a very heterogeneous group, including antiquarians, art dealers, historians, restorers, businessmen, farmers, seamen or scuba divers, united by the fact that they utilise their job position or professional resources for the purpose of committing illegal acts related to looting and trafficking.
- Secondly, the result of role specialisation is in most cases a collaborative, albeit rather small, fluid and loosely organised partnership. Interaction between individuals of these social networks can be mostly described as business relations aimed at profit maximisation. These groups are structured like any other legitimate business, and every kind of cooperation is possible as long as it is the way to maximise profit. Members are mostly professionals and workers with no previous criminal record. Art market specialists acting as intermediaries assume a pivotal role in the criminal dynamic. In the sample, they are needed to gain access to and place the items on the licit art market, the need of specialisation in this stage precluding the defendants from acting alone. These professionals can be characterised as brokers, positioned between the illicit source market and the licit destination market, possessing the necessary cultural competencies and expert knowledge of the legal and financial systems of the country or countries involved that enable them to organise and manage transactions. Sometimes, they are fully aware of the illicit nature of the material they are buying or selling and the criminality of the people they are collaborating with; however, there also cases in which criminal intent could not be proven.
- Thirdly, during the study period, we found evidence of just two cases of a well-defined, hierarchical criminal organisation in which members have a previous criminal record. These long-term partnerships consisted of a handful of local thieves who acted in concert for a period of time, following orders from a controlling figure of committing cultural heritage crimes for financial or material gain. In this type of organisation, the owners of antiques shops emerge from the reporting as important organising figures in their own right, responsible for planning the thefts.
- Lastly, the fact that only in two cases art market professionals acted as an effective barrier to the entrance of the goods in the licit market shows that the business culture of the art market still consent exploitation for the purpose of TCG (Flynn 2016; Dundler 2021).

To finalise the analysis of the typology of organised crime involvement, the mobility of actors between different crime types is interesting. The mobility is both functional—i.e. based on what is needed to optimise involvement in cultural heritage crime, such as illicit arms possession or unlawful association—and purely financial—i.e. based on the need to acquire stolen property to later sell it, as in receiving, or to launder profits, as in money laundering.

In general, then, the assumption that TCG is *mainly* committed by criminal organisations is not confirmed. In the sample, individual criminality is far more common than organised crime. Additionally, the sample illustrates that cases of collaboration between individuals are mostly based on sporadic and opportunistic partnerships. In this sense, the cases documented are consistent with the concept of disorganised crime, whereby crime stems from flexible, situational alliances rather than stable, hierarchical structures.

However, the main lesson to be learned from this paper is not the importance of unorganised involvement in the TCG, but rather the distinctive role played by apparently respectable offenders that facilitate or benefit from the illicit trade during the course of their professional activity in those cases where an organisation could indeed be identified. In particular, art market actors who use the specialised access afforded by their legitimate occupation to serve as the primary point of entry for looted antiquities and stolen works of art for financial gain. Even though this conclusion refers specifically to prosecuted cases rather than to the overall phenomenon, it aligns with a significant body of specialised literature that posits that TCG should be examined not only or not principally as a form of organised crime, but as a white-collar crime, defined in terms of the offence, the offender or both (Hansen 2009). Defined in terms of the offender, individuals that are wealthy, highly educated, socially connected and employed by and in legitimate organisations are typically involved in TCG. Defined in terms of the offence, cultural property crime is an unlawful form of entrepreneurship, governed by profit goals and business rationales, vocabularies and rules that require expert knowledge and normalise illicit behaviour while minimizing the harmful consequences (Balcells 2014; Mackenzie 2019; Oosterman et al. 2021). While TCG is not necessarily a white-collar crime in itself, our data shows that it often becomes one at the market end of the supply chain. In any case, the EU has identified precisely this final phase as a priority area for intervention, given the many ways in which the art market serves criminal organisations, such as commercialising cultural objects tainted by illegality and using them as collateral or payment for drugs and money, as well as accumulating assets in safe havens like freeports and laundering money. Due to the well-known similarities between the art market and the financial sector (Oosterman et al. 2021), it can be hypothesised that imposing due diligence obligations and preventive regulatory requirements on market professionals, creating an effective supervisory framework and improving traceability and the reliability of information on an object's origin and history are measures that could mark a significant turning point in the pursuit of robust protection for cultural heritage.

Conclusion

The results of this research offer an initial overview of the TCG cases that reach Spanish higher courts. Most of them do not fit in the definition of a 'serious organised transnational crime' according to the European and international legal framework. On the one hand, those more frequently committed are not punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. On the other hand, the data shows that the cases that make it to trial concern mainly individu-

als. They are mostly committed by only one or two people. The identified criminal organisations exhibit two distinct typologies. The first is an opportunistic network of professionals with no previous criminal record simply ‘doing businesses with illicit artifacts’. The second is a more traditional group of known criminals dedicated to loot or steal the artifacts, headed by a well-connected market specialist that introduces the objects in the licit market. Thirdly, most cases do not involve any cross-border activity. We can conclude that, in view of the cases analysed, TCG in Spain is not primarily the domain of structured criminal organisations. Looters and thieves are better characterised not as organised criminals but rather criminals that need a certain level of collaboration from others to profit from the crime. Such partnerships are mainly established with market stakeholders that actively buy and sell looted and stolen cultural objects, but also with legitimate professionals that in other ways open the market to criminal trading, confirming that ‘the world of art dealing is replete with these instances of white-collar crime’ (Oosterman et al. 2021, p. 7).

These results are relevant, because a poor understanding of how the illicit trade functions and operates hinders effective policy formulation. They are consistent with the findings of Spanish prevalence studies conducted on other forms of organised crime, such as human trafficking (Salat 2022). They also confirm the results of case studies in other relevant countries, which demonstrate that the looting and trafficking of cultural property is not usually an organised crime issue (Balcells 2023), and that stakeholders at the market end of the illicit trade are linked to (other) white-collar crimes such as forgery, money laundering and tax fraud (Chappell and Polk 2009; Yates 2016). More importantly, this paper contributes to EU heritage protection strategies by identifying a key area for improvement, namely the need to control white-collar criminal entrepreneurship in the art market.

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Declarations

Competing interests The authors declare no competing interests.

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