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***Case Note: on the criminal case involving an attempt of illicit export of cultural goods from Brazil to Uruguay***

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**Abstract**

Case Note on the decision from the 7<sup>th</sup> Judging Panel of the Federal Tribunal of the 4<sup>th</sup> Region Habeas Corpus No. 2006.04.00.004416-9/RS Issued on April 11, 2006 Published on May 10, 2006.

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The seizure in August 2003 of 210 objects, which included antiques and art works, resulted in the prosecution of a group of individuals for **attempted illicit exportation of cultural property**.

The objects in question were being carried in a truck heading from São Paulo to Livramento, a town near the border with Uruguay. Many of the objects were considered as being part of Brazilian cultural heritage and, as such, had a special protection under the Constitution (art. 216). There was no documentation of their origin and a false declaration was made to the authorities about their true nature.

It was established by the authorities, including the judge in charge of the case, that there was a clear attempt of international illicit trafficking. Evidence indicated that the objects had Montevideo and Punta del Este, Uruguay, as the final destination. Along with Buenos Aires, the Uruguayan capital is home to a quite important antiques and art market which attracts many foreign buyers.

Also, the necessary authorization from the Institute for National Historic and Artistic Heritage (IPHAN) for some of the objects to leave the country was not sought by their possessors; and those that were found to originate from the XVII, XVIII and XIX centuries could not leave the country in any circumstance, according to Brazilian legislation on cultural heritage. A transport company specialized in the international transportation of works of art was also implicated. There was not a single document proving the ownership of the objects by the possessors or anyone else. Moreover, INTERPOL had intervened in this case as, despite being restricted

to Brazilian jurisdiction, a cooperation with the police of Uruguay could be necessary for the collection of evidence.

The federal judge-rapporteur of a decision on a “habeas corpus” request to the Court of Appeals by the defendants mentioned the importance of the 1995 UNIDROIT Convention on the matter of the international trafficking of cultural goods:

*“For its part, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, concluded in Rome, in June 24, 1995, was promulgated by the Decree n. 3166, of September 24, 1999, which determined its execution and fulfilment in all its terms. The referred Convention aimed at, among other objectives, facilitating the restitution and the return of cultural objects between Member-States, with the objective of favouring the preservation and protection of cultural heritage in the interest of all.”<sup>1</sup>*

The judge, then, delves into the subject of illegal exportation of art and its relation with organized crime, analysing the modus operandi of criminal networks, which in many instances applied to the case at hand.

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<sup>1</sup> Author’s translation.