Abstract: The aim of this research is to show how different groups of stakeholders are suffering as a result of heritage crime. Research primarily addresses Latvian situation (with international comparisons) in relation to archaeological sites as the most vulnerable, however, the findings can be applicable to other heritage objects and broader territory as well. Most of these stakeholders are currently limited in, if not denied, access to justice and rights for an effective remedy within the traditional criminal law system. Insufficient level of social awareness of socio-economic benefits and rights stemming from integrity, development, and use of archaeological sites together with existing legal constraints results in poor self-recognition by individuals and groups as victims of heritage crime. While suffered parties abstain from protecting their rights, there is lack of information and proactive action from public authorities including law enforcement. Current research analyses the nature and scope of immediate harm resulted from the damage of archaeological sites and the extended consequences of the heritage crime for the different stakeholders’ groups. It points at the inefficiency of standard retributive approach and evaluates benefits of restorative justice elements in reaching justice for heritage crime victims. The results could be used for better recognition of benefits, and therefore rights, stemming from intact archaeological sites, amending legal regulation, providing access to justice for suffered individual and collective parties, allowing recognition of mass victimisation and facilitating prevention of heritage crime.

Keywords: archaeological damage, heritage crime, reparations, socio-economic justice, suffered interests

1 Introduction

Cultural heritage crime is sometimes perceived as a victimless crime (e.g. Lostal, 2021a; Manacorda & Visconti, 2013; Munesam). While there might be no immediately seen victim, scientific literature (Brooks, 2002, 2004; Frey, 1997; Licciardi & Amirtahmasebi, 2012; Throsby, 1995, etc.), international heritage protection documents (from Hague Convention 1954 to Faro Convention 2005), and previous research of the authors prove existence of extensive range of interests associated with the integrity and development of cultural heritage sites¹ (ibid.; as well as Kairiss & Olevska, 2020, 2021a,b, 2022). Damage and destruction of

¹ Sites and objects are hereinafter used interchangeably meaning cultural heritage immovable objects.
heritage objects inevitably harm these interests, thus victimizing respective parties. However, challenges arising out of this statement are multifaceted.

Primarily, socio-economic value of heritage sites is often not obvious (e.g. Holtorf, 2011) both for the society and the law enforcement. The easiest way to show the value of heritage sites is in monetary terms. For instance, the economic and social values of Colosseum have been estimated at EUR 76.8B (Deloitte Finance, 2022), which is 2.36 times as much as whole Latvia’s GDP (Country Economy, 2022). For sure, there are thousands of sites less popular than Colosseum with different level of potential (e.g. Kairiss & Olevska, 2021a); however, the scientific literature and empirical analysis show undeniable social value and economic benefit of investing in historic environment (e.g. Dümcke & Gnedovsky, 2013; Klamer, 2014). Therefore, type and extent of harm caused by damage or destruction of historic sites is frequently underestimated.

Respectively, the suffered parties might not consider themselves as crime victims, thus restricting themselves from their rights to remedy. Besides unclear (not obvious) value of historic sites, this might be fostered by discouraging attitude of law enforcement officers, lengthy proceedings, poor awareness of suffered parties’ rights – to name just a few. Countries having guides to encourage owners, managers, guardians of a heritage site, or community group to make a victim impact statement (as it is, for instance, Historic England, 2018c, p. 8) in case of a heritage crime is not so frequent phenomenon.

Besides, the types and number of victims under traditional criminal law are constrained. While, e.g. Latvia, criminalizes damage and destruction of heritage sites as a crime against public order, thus underlying collective interest in their protection, individual victims suffering direct harm are the only ones considered as victims within the domestic criminal proceedings. At the same time, lack of case law, complexity in proving the scope, and nature of caused harm as well as restrictive attitude of judicial system towards large numbers of claims from comparatively remote plaintiffs make it practically impossible for the other (including, collective) parties suffered as a result of a heritage crime to access justice and protect their rights outside criminal law system (e.g. within the civil proceedings).

The aforementioned issues at least partially stem from the insufficient priority given to the heritage crimes in many countries (e.g. Latvia (Kairiss & Olevska, 2020); United Kingdom (Assessment, 2017; Poyser & Poyser, 2017); the Netherlands (Monument Supervision, 2022), etc.).

The current research is thought to add to the discussion on the type and scope of harm caused by damage and destruction of heritage sites to the victims and the most appropriate remedies the suffered parties can be entitled to within the different regulatory and judicial frameworks.

From the theoretical perspective, the manuscript appeals to the theories of rights (e.g. Mackay, 1996) and restorative justice (e.g. Zehr & Mika, 1997; Zehr, 2002) from the legal domain and concepts of value (e.g. Throsby, 2007) and public goods (e.g. Samuelson, 1954; Weisbrod, 1964) from the economic domain. The article is a consolidation of the previous multi-year research of the authors identifying the economic and non-economic interests of cultural heritage stakeholders, types of suffered harm, and legal constraints in recognizing these suffered parties as victims in criminal processes (Kairiss & Olevska, 2020, 2021a,b, 2022). The results of the research are based on the analysis of the international and Latvian case law, extensive review of scientific literature, and comparative analysis of the legal framework (Criminal Codes of 29 European countries were analysed in terms of criminalisation of damage to/destruction of heritage objects3 and practice (approach of 12 European countries in terms of existing system of assessment of damage done to heritage objects4).

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2 For example, Historic England report of 2010 showed direct contribution of an additional £1.60 to the local economy over a 10 year period compared to £1 invested in the historic environment (https://historicengland.org.uk/content/heritage-counts/pub/hc-eng-2010/).
3 See partial results below (incl. footnotes 5 and 6).
4 Kairiss and Olevska (2020).
2 Self-Identification and Recognition as a Victim of Heritage Crime

Heritage sites can be a subject of crime as any other immovable property; however, the caused harm is often greater, because of the additional socio-economic values carried by these sites (Historic England, 2016, p. 4). Many European countries acknowledge this by criminalizing damage/destruction of heritage objects as aggravated (or specially separated out form of) property damage. Others, however, consider compromising integrity of cultural heritage sites as a crime against public interest, order, health, morality, or external environment.

Differences in legal approaches impact the determination of victims within the criminal proceedings. While Latvia positions damage/destruction of immovable cultural objects under the crimes against public order, the only designated victim of these crimes is generally the state represented by National Heritage Board. The authors have not established that owners have ever been addressed as potential victims by the police or tried themselves to claim suffered harm within the criminal proceedings in case of illegal intervention into their owned archaeological sites in Latvia. The same concerns more remote parties, including scientists, NGOs, and/or local community. Even if a person or group feels harmed by the illegal activity, lack of information, failure to understand long-term consequences of the crime, inability to submit collective claim within the criminal proceedings, little chance to receive monetary compensation, or obtain moral satisfaction, restraints in who can be designated a victim, deterrence of law enforcement agencies to actively search for victims and pro-actively inform them about their rights as well as other constraints, discourage these parties from trying to get redress for the suffered harm. This assumption has been checked through the survey performed by the authors among the members of the Latvian Society of Archaeologists (the LSA) (hereinafter – the Survey). According to the Survey results, 80% of respondents consider themselves as suffered parties in case of damage to or destruction of an archaeological heritage object. The answers (multiple choice of predefined answers and/or own answer was possible) show that the archaeologists feel suffered predominantly as heritage lovers (85%), members of the society (80%),

6 Latvia (Criminal Law, Art.229), Norway (Penal Code, Art.252), Iceland (General Penal Code, Art.177), Finland (Penal Code, Chapter 48, Art.6; Finland also has one norm in Various harmful acts/Damage), Russia (Criminal Code, Art.263, 243), Belarus (Criminal Code, Art.344, 345), Hungary (Act C of 2012 on the Penal Code, Art.357; Hungary also has one norm in Property crimes), Croatia (Criminal Law, Art.319, 320), Malta (Criminal Code, Art.325; Malta also has one norm in Crimes against Historic Heritage), Italy (Penal Code, Art.733; Italy has also norms in Crimes against Historic Heritage).
7 E.g. Criminal case No. 11817006218, Criminal case No. 11817004716, Criminal Case No. 11100009615. For details see Kairiss and Olevska (2021a).
8 Even though the law states that this is the obligation of the owner to renovate and restore a cultural monument at his or her own expense (Article 26, Cultural Monument Protection Law), analysis shows that money is not requested within the criminal process, but occasionally later on through the monuments’ restoration support schemes (Kairiss & Olevska, 2021a).
9 According to part 2, Section 95 of the Law on Criminal Procedure of the Republic of Latvia “A victim in criminal proceedings may not be a person to whom moral injury was caused as a representative of a specific group or part of society.”
10 Forms of punishment under Latvian Criminal Law do not provide for any form of moral or symbolic reparation (Article 36), while Criminal Procedure Law provides that compensation for moral harm can be applied for only in monetary terms (Article 350).
11 The requirement to go through a process of formal recognition is considered one of the issues that limits victims’ access to certain rights (Evaluation of Directive 2012/29/EU, 2022).
12 Latvian Society of Archaeologists (LSA) is a public organisation that unites around 70 professional archaeologists, archeology-related specialists, students, and those interested in this field, representing all institutions where archaeologists work in Latvia. This Society was selected for the purposes of the survey for two reasons: (a) archaeological objects are the most vulnerable of all the heritage objects and the most impacted by illegal activities in Latvia, (b) those professionally working and/or interested in the integrity and development of archaeological objects are united into the legal entity (organisation) which allows to perform targeted survey. The survey was conducted from 2nd to 10th March 2023, n = 20 (29% of all members of the LSA).
representatives of a scientific community (70%), representatives of the LSA or other NGO (70%) as well as professionals who are deprived of/restricted to the possibility of researching the archaeological object (60%). When asked in which of those statuses the respondents think it would be correct to officially recognize them as victims of heritage crime, the top answers included the “members of the society” (70%), “professionals who are deprived of/restricted to the possibility of researching the archaeological object” (55%), and “heritage lovers” and “members of the scientific community” (both ~45%). These answers directly correspond to the following types of harm: (a) emotional distress, decrease in cultural-historical value, disruption of culture suffered by archaeologists predominantly socially (as members of the society and the scientific community, as well as heritage lovers) and (b) restriction of research/earning opportunities suffered by them predominantly economically (as professionals). While archaeologists mention different damage/destruction cases as those that echoed the most on them, several answers mentioned that all the respective cases of damage and destruction of archaeological objects should be considered as causing suffering to the archaeologists, since e.g. “any excavated, looted, or vandalized archaeological object is partially or completely ‘taken away’ from us as professionals.”

Besides, when asked why the LSA had never claimed to be recognized as a victim in archaeological heritage crimes, the head of the LSA mentioned (referring to the LSA as a part of the scientific community and the only NGO unifying archaeologists of Latvia) the following constraints (interview with M. Kalniņš):

- absence of relevant experience (involvement in criminal proceedings, etc.);
- lack of information about the rights of the LSA as a victim in criminal proceedings;
- legal/judicial obstacles to be recognized as a victim;
- the complexity of assessing the damage/loss caused to the LSA;
- non-provision of information from the persons directing the criminal proceedings about the possibilities of the LSA to apply as a victim in the relevant criminal proceedings.

Despite the above, the issue of pro-active screening for victims by the law enforcement is, inter alia, a question of available resources. It is considered therefore that criminal process cannot be viewed as a mechanism for redress for all the suffered parties (interview with G. Kūtris). However, for instance in UK, an owner, manager, or guardian of a heritage asset or community group should be encouraged to make victim impact statements (Historic England, 2018c, p. 5) to give themselves a voice in the criminal justice process by helping others to understand how the crime has affected them (Joint Agency Guide to the Victim Personal Statement, 2018, p. 3).

### 3 Types of Victims in Heritage Crimes

While research on victimological issues of heritage crimes is lacking (Poyser, Poyser, & Doak, 2022), along with the development of the more stakeholders’ inclusive concept of cultural heritage (Olivier, 2019) and closer attention to the interests of the parties concerned (Kairiss, 2020; Kairiss & Olevska, 2020), the types of heritage crime victims become more visible.

Obviously, the party suffered in heritage crime traditionally does not fit into the image of an “ideal victim” (Christie, 1986, pp. 18–19). This victim is not the little old lady hit by a big offender for money to buy drugs on her way home in the middle of the day after having cared for her sick sister (ibid.). This might also add to the lack of universal readiness to be given the complete and legitimate status of being a victim. However, undeniable victim of a heritage crime meets five criteria of a meaningful concept of a victimisation (Strobl, 2004, p. 300):

1. Damage or destruction of a heritage object (“the event”) is unambiguously identifiable;
2. The event forms harmful impact on the integrity of the object;
3. The event is not caused or controlled by the victim;
4. The event in the majority of cases can be attributed to a certain offender;
5. Damage and destruction of a heritage object is universally criminalized (e.g. Wangkeo, 2003, pp. 196–197).

There has been a number of attempts to classify victims of cultural heritage crimes by policy guidelines, scientific literature, and international legal practice. Thus, for instance, a Guide for Law Enforcement...
Officers drafted by Hertfordshire Constabulary (UK) lists the owners, local communities, the nation, and those who care for the sites as victims of heritage crimes. A guide to prosecutorial and alternative interventions adds future generations to the range of victims (Historic England, 2018b).

One of the most recent heritage crime victims’ typologies (Poyser et al., 2022, p. 11), based on extensive interviewing of heritage crime officers, heritage practitioners, and victims throughout England and Wales, distinguish personal (immediate and remotely located), professional or practicing, community or communal, and future (future generations) victims. The ICC, in Al Mahdi case, for the first time, faced with the necessity to define groups of victims of the direct attacks against religious and historic buildings, defined (Al Mahdi Judgment, para. 80; Reparations order, para. 54):

direct victims:
1) guardian families who were responsible for the maintenance of the sites and
2) the faithful inhabitants of Timbuktu.

indirect victims:
1) people throughout Mali and
2) the international community.

Despite the above recognition of broad range of victims of heritage crimes, national criminal law systems are generally not that victim-embracing. For instance, Latvian Criminal Procedure Law accepts only individual persons as victims of crime to be under certain procedure recognized by the person directing the proceedings and requests each victim’s separate acceptance to the particular status¹³. The law places emphasis that a victim in criminal proceedings may not be a person to whom moral injury was caused as a representative of a specific group or part of society.¹⁴

4 Victims’ Rights in Criminal Process

The role of crime victims in the criminal process has evolved substantially during the last decades. Thus, there has been observed an increase in scale and size of NGOs representing victims’ rights, increased focus of mass media, and, in some countries (at least in the USA), even the practice of naming many “tough on crime” legislative measures after specific victims (Ginsberg, 2014, p. 923). This trend is generally called victim-centred approach (or “victim-centred justice”), which means a model of criminal justice that accords due consideration to victims ensuring their proper integration into international and national criminal justice processes as well as respecting and enforcing their rights to truth, justice, and a remedy are respected and enforced (McDonald, 2006, p. 241).

This increasing role of crime victims in criminal proceedings along the way was supported at the international level, initially by the soft-law mechanisms (e.g. UN GA Resolution 40/34¹⁵ or 1985 CoE Recommendation R (85)¹⁶), later by hard-law instruments (e.g. Council Framework decision 2001/220/JHA, and then the so-called Victims’ Rights Directive (Directive 2012/29/EU)).

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¹³ Criminal Procedure Law, Sec.96.
¹⁴ Criminal Procedure Law, Sec.95, Part 2.
¹⁵ The Resolution acknowledged, among others, several basic principles, including ensuring access of victims to justice, their fair and respectful treatment, provision of fair restitution and compensation, as well as comprehensive assistance throughout the process. Victims in the Declaration are defined broadly as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power” (Art.A, part 1).
¹⁶ Recommendation provided guidelines to the competent authorities and the courts in ensuring rights and treatment of victims throughout the criminal process. According to the Recommendation, fundamental function of criminal justice is to meet the needs and to safeguard the interests of the victim (Preamble).
The growing acknowledgement that victim-centred approach is crucial for the success of international justice can also be observed in the latest international case law and discussions (coalition for the ICC 2014; Katanga Reparations Order [esp., para.160]; Ntaganda Reparations Order [esp. para 218]).\textsuperscript{17} The ICC defines a victim broadly as “someone who experienced personal harm, individually or collectively with others, directly or indirectly, in a variety of different ways such as physical or mental injury, emotional suffering, or economic loss.” (Lubanga Judgment, para.14(ii)). It has also recently acknowledged that repairing the harm caused to the victims is of primary importance, regardless of the mode and extent of liability of the convicted person (Ntaganda Reparations Order, para. 218; Lostal, 2021b).

Despite the victim-embracing approach of the ICC, domestic criminal law is generally not that flexible and inclusive. For instance, there is no pro-active work on the suffered parties by the police or prosecution in Latvia (interview with G. Kūtris, I. Kronberga), while the State represented by the heritage authority is the only recognized victim in cases of damage/ destruction of archaeological sites regardless of the ownership, function, or socio-economic impact of the site.\textsuperscript{18} Thus, while on the one hand there is a growing socio-economic significance and increased investment in protection and development of heritage objects\textsuperscript{19} (reflected both in legal acts and policy documentation), on the other hand there is a lack of support for the suffered parties.

5 Rights of Suffered Parties for an Effective Remedy

Despite traditionally acknowledged retributive character of the criminal process, it is also acknowledged that “lack of reparation for victims and impunity for perpetrators are two sides of the same coin” (Van Boven, 1999, p. 16).

The basic right of a victim of crime for an effective remedy is reflected in different international documents\textsuperscript{20}. This right is considered to have both procedural (the right to be recognized as a victim and access justice) and substantial (the right to have the committed wrong remedied) dimension (Van Boven, 2009).

5.1 Compensation

For several decades now international legal acts require the respective state parties to ensure that victims of crime are compensated (i.e. UN GA Resolution 40/34 (1985); Directive 2012/29/EU). This compensation requirement is mainly applicable to cases of violent intentional crimes (i.e. to those victims who suffered physical harm), and is supported by the established national compensation schemes (for cases where victims are unable to obtain compensation from the offender; see Directive 2004/80/EC, Milquet, 2019, p. 14). Nevertheless (even without taking into account the existing implementation issues\textsuperscript{21}), the payment of a pre-defined sum for experiencing certain violent crime is considered not enough to remedy the harm caused. In his report on how to improve access to compensation for victims of crime, Special Adviser to the President of the European Commission for compensation to victims of crime (Milquet, 2019, pp. 9–10)

\textsuperscript{17} Besides, there are explicit references to the victims’ interests in the basic normative documents of the ICC (e.g. Rule 86, Rules of Procedure and Evidence of the ICC; Articles 64, 68 (1), Rome Statute).
\textsuperscript{18} Case materials and judgements (Criminal cases [case materials and judgements] of Latvian Courts: K73-1745-19 [Zemgale District Court], KA05-0099-18/13 [Vidzeme Regional Court], K08-0176-15 [Vidzeme District Court]).
\textsuperscript{19} Only with co-financing of EU structural funds as of 2017, EUR 120 M + have been invested in the protection and development of cultural and natural heritage in Latvian municipalities (ES Fondi).
\textsuperscript{20} Human Rights Declaration, Art.8; Covenant on Civil and Political Rights, Art.2; Human Rights Convention, Art.13 and others.
\textsuperscript{21} For details see VSE Analysis (2019).
proposed four “paradigm shifts” (“major principles”) aimed at strengthening victims’ rights, including in particular:

1) **a shift from compensation to reparation** (the broader concept of reparation including recognition, restitution, support, and care);
2) **a shift to the priority of state compensates first** – where the state compensates victims first and later recaptures it from the offender;
3) **a shift from disparities and lack of cooperation to stronger cooperation, coordination, and harmonised minimum standards** (including setting up national and EU centres and coordinators for victims of all crimes);
4) **a shift from the needs-based approach towards the rights-based approach** – where the victim is no longer pleading for help but rather demanding that the state takes seriously human rights of the individuals living on its territory.

While heritage crimes might have tremendous effect on psychological and economic condition of the victims, they usually do not comprise direct physical harm. Therefore, these crimes are classified as non-violent and irrelevant to national compensation schemes. However, the above shows that even well-established system of monetary compensating victims of violent crimes is eventually being considered imperfect, since it fails to acknowledge the position of victims and comprehensively remedy the harms caused to them.

### 5.2 Reparation

The concept of comprehensively remedying the victims for the suffered harm other than through direct compensation of physical injury is not new. For instance, UN GA Resolution 40/34 (1985) provides for offenders to make fair restitution to victims, their families, or dependants. Such restitution includes the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimisation, the provision of services and the restoration of rights (Art.8). UN GA Resolution 60/147 (2005), recognizes the right of victims of gross violations of international human rights and humanitarian law to benefit from remedies and reparation (Preamble), which should be adequate, prompt, appropriate, effective, and proportional to the harm suffered (Principle 11). Reparation might include the following forms (Principles 18–23):

1) restitution (measures to restore the victim to the original situation),
2) compensation (appropriate and proportional monetary measure for, e.g. loss of earnings, social benefits, material, and moral damages),
3) rehabilitation (medical and psychological care, legal and social services)
4) satisfaction (satisfactory measures in all their multiplicity)
5) guarantees of non-repetition (e.g. strengthening the independence of the judiciary, promoting the observance of codes of conduct, and ethical norms).

In general, reparation is considered a moral imperative which aims to mend what has been broken and contribute to individual and societal aims of rehabilitation, reconciliation, consolidation of democracy, and restoration of law (Redress, 2007, p. 6). As Hugo Grotius wrote “in applying punishments, we must have regard to two things: that for which, and that for the sake of which. That for which is what is deserved; that for the sake of which is the advantage to come from the punishment” (Neff, 2012, Book II, point 28).
As was acknowledged by the ICC\textsuperscript{22}, reparations may neither “enrich” nor “impoverish” the victim, but adequately repair the harm caused, to the extent possible. Overall, the fundamental goal is that reparations are meaningful to the victims (i.e. appropriate, adequate, and prompt\textsuperscript{23}). From this point of view, granting multiple modalities of reparations for the same harm suffered by the victims shall not be regarded as over-compensation\textsuperscript{24}. Thus, the objective of reparation proceedings is remedial, not punitive; its goal is not to punish the offender but indeed to repair the harm caused to others\textsuperscript{25}.

In the Al Mahdi case, the court had determined the following reparations:

<table>
<thead>
<tr>
<th>Harm Type</th>
<th>Modality</th>
<th>Victims</th>
<th>Reparation Type</th>
<th>Modality</th>
<th>Monetary Liability of the Offender*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damage to protected buildings</td>
<td>Community of Timbuktu</td>
<td>Collective reparations</td>
<td>Rehabilitation of the sites of the protected buildings</td>
<td>97,000 EUR</td>
<td></td>
</tr>
<tr>
<td>Consequential economic loss</td>
<td>Those whose livelihoods exclusively depended upon the protected buildings***</td>
<td>Individual reparations</td>
<td>Compensation</td>
<td>2,120,000 EUR</td>
<td></td>
</tr>
<tr>
<td>Moral harm</td>
<td>Mental pain and anguish</td>
<td>Community of Timbuktu</td>
<td>Collective reparations</td>
<td>Rehabilitation****</td>
<td>483,000 EUR</td>
</tr>
<tr>
<td>Mental pain/anguish and disruption of culture</td>
<td>Community of Timbuktu</td>
<td>Collective reparations</td>
<td>Rehabilitation to address the emotional distress + symbolic measures (memorial, commemoration, or forgiveness ceremony)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moral suffering</td>
<td>People throughout Mali (represented by Malian State)</td>
<td>Collective reparations</td>
<td>Symbolic measures (memorial, commemoration, or forgiveness ceremony)</td>
<td>1 EUR</td>
<td></td>
</tr>
<tr>
<td>Moral suffering</td>
<td>International community (represented by UNESCO)</td>
<td>Collective reparations</td>
<td>Symbolic measures (memorial, commemoration, or forgiveness ceremony)</td>
<td>1 EUR</td>
<td></td>
</tr>
</tbody>
</table>

*The total experts-estimated consequential economic loss was calculated as the amount of 44,600,000 EUR (from the time of the attack until the reconstruction efforts completed in 2015), which the court considered clearly overstated in relation to what Mr. Al Mahdi can be held liable for (Al Mahdi Reparations Order, para 119).

**Posted on the court’s website; hard copy of the apology available to victims upon request.

***Guardian families who were responsible for the maintenance of the sites + those whose livelihood was to maintain and protect the protected buildings. Certain business owners may also qualify.

****Community-based educational and awareness raising programmes to promote Timbuktu’s important and unique cultural heritage, return/resettlement programmes, a “microcredit system” or other cash assistance programmes to restore some of Timbuktu’s lost economic activity.

\textsuperscript{22} Reparations mandate of the ICC is ensured by the Article 75, Rome Statute.
\textsuperscript{23} Katanga Reparations Order, para.15.
\textsuperscript{24} Ntaganda Reparations Order, para. 99.
\textsuperscript{25} Ntaganda Reparations Order, para. 224.
With regard to implementation of these reparations, it should be noted that since Mr. Al Mahdi was indigent, the Trust Fund for Victims was to provide the money for the reparations.²⁶ While individual reparations foresaw only monetary compensations, collective reparations embraced, inter alia, rehabilitation of doors, windows and enclosures, logistical support, workshops, a support fund for the buildings’ maintenance, assistance for the return of victims to Timbuktu, an Economic Resilience Facility, programme for psychological support (2019 Decision of the ICC, para 113).

It should be noted that, for instance, Latvian archaeologists asked within the Survey to identify the most adequate retributive or reparative consequence for the damage to/destruction of the archaeological heritage object primarily mentioned “punishment of the guilty person (imprisonment, fine, forced labour, etc.)” (90%), “compensation fee from the guilty person for putting in order/conservation of the object, etc.” (65%), “compensation fee from the guilty person for diverting into state-supported heritage conservation programs” (50%). Non-material compensation from the guilty person (public apology, etc.) and symbolic events (installation of plaques, public commemorative events, memorial exhibition, documentaries, etc.) were mentioned much less frequently in 25 and 20% of answers respectively.

5.3 Symbolic Reparations

Symbolic reparations are a judicial measure used to address human rights violations (Greeley et al., 2020, p. 165). Unlike tangible – material and monetary – types of remedy, symbolic reparations are usually non-pecuniary, geared towards fostering recognition (UN Office of the High Commissioner for Human Rights, 2008). If seen in the context of types of reparations provided for by UN GA Resolution 60/147 (2005), symbolic reparations embrace the last two categories – satisfaction and guarantees of non-repetition. These measures may include, inter alia, recognition of responsibility, public apologies²⁷, public dissemination of the judicial truth, physical monuments, memorials, and plaques (Hamber & Palmary, 2009, p. 324; Symbolic Reparations Guidelines, 2017, p. 2). Within the Al Mahdi case, ICC has decided on symbolic reparations to include symbolic awards ceremony at which one euro was to be presented to the Malian Authorities and to UNESCO²⁸ and memorialisation measures (2019 Decision of the ICC, para 113).

The role of victims in allocation of symbolic reparations is top-rated, making them an active participant and beneficiary in the dual process of redressing individual violations and of positive transformation of society in the interests of collective healing” (Definition 2).

Symbolic reparations are recognized as having great reparative potential (UN Office of the High Commissioner for Human Rights, 2008). Of course, these reparations should not be privileged over other forms of redress, but they definitely should be considered as one of the components of a holistic reparations program (Hamber & Palmary, 2009, p. 325). This is especially relevant to cultural heritage crime, taking into account two peculiar characteristic elements of this type of crime:

1) the damage to or destruction of a historical object can almost never be undone. Even by using genuine materials and techniques, authenticity (including symbolic, spiritual values²⁹) of the damaged object cannot be recovered 100%. Thus, no material or pecuniary measure can fully remedy the caused harm;

²⁶ In addition to the €2.7 million award set by judges, the Trust Fund for Victims has added €1.35 million to the reparations plan (2019 Decision of the ICC, para 101).
²⁷ The experts acknowledge certain potential of apology (process rather than fact) as a modality of reparation, inter alia, due to absence of fiscal impact on the state budget. However, its impact is diminished by long term between the illegal act and the apology (interview with I. Kronberga).
²⁸ Both received the symbolic euro on 29 March 2021 (UNESCO News, 2021).
²⁹ That is, in Al Mahdi case, it was concluded that protected buildings were widely perceived in Timbuktu as being the protectors of the community from outside harm. The attack on the protected buildings not only destroyed cherished monuments, but also shattered the community’s collective faith that they were protected (Al Mahdi Reparations Order, para.86).
2) heritage crimes unavoidably affect broad range of stakeholders. While the crime affects different groups to different extent, generally all of them feel certain level of victimisation. While it is (generally) practically impossible to provide material or pecuniary redress to all the suffered individuals and groups, symbolic reparations are the ones that can provide portion of satisfaction to all of them.

While symbolic reparations are common to international law, the further research is needed to evaluate their applicability and effect within the domestic criminal law (especially, with regard to cultural heritage crime).

5.4 Matching of Restorative Justice Elements and Social Justice in Heritage Crimes

Restorative justice has many definitions (i.e. RJE Handbook, 2021, p. 3; Zehr, 2002, p. 37). One of the most commonly accepted though is the one proposed by Tony Marshall who defines restorative justice as “a process whereby parties with a stake in a specific offense resolve collectively how to deal with the aftermath of the offense and its implications for the future” (Marshall, 1999, p. 5). While criminal justice system generally accepts as victims only those directly affected by the crime, restorative justice opens its borders to broader range of affected communities (Zehr & Mika, 1997). It acknowledges the needs of victims for information, validation, vindication, restitution, testimony, safety and support as the starting point of justice (ibid.).

The principal difference of non-restorative and restorative justice systems lies in their perception of justice – while criminal justice system generally views justice as punishment, restorative justice views justice as healing (RJE Handbook, 2021, p. 4). Elements of restorative justice are being gradually introduced into the criminal justice system, as least at the international level (see the ICC reparations orders or international practice of applying symbolic reparations discussed above).

Due to peculiarities of heritage crimes (loss of authenticity of the object and vastness of victims), the retribution to the offender, in a way of a severe punishment, cannot remedy material losses and alleviate moral distress of the victims of heritage crime. Besides, many offenders are indigent, therefore increased fines do not make any difference either. Therefore, restorative justice elements seem to be the most appropriate form of rectification of an injustice caused by damage/destruction of heritage sites. Thus, in relation to the victims, interests of collective healing (including, in a way of different symbolic gestures) take their honourable place in these types of crimes. In relation to the offenders of heritage crimes, the combined reaction is considered the most appropriate approach which includes the application of secondary crime prevention methods (those aimed at changing people deemed to be at risk of future offending) and further sanctioning of the offenders depending on the cause of the committed crime (interview with I. Kronberga).

6 Heritage Crime Victims and Reparative Framework

Stakeholders may simultaneously have economic and non-economic (scientific, symbolic, cultural, etc.) interests in a particular cultural heritage object; however, which interests are determinative (therefore primarily harmed and in need of restoration in case of illegal intervention) depend on the type of stakeholders (it should be taken into the account though that one and the same person might be related to different types of stakeholders in the same time). Based on the current and previous research, as

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30 That is, destruction of international cultural heritage carries a message of terror and helplessness; it destroys part of humanity’s shared memory and collective consciousness; and it renders humanity unable to transmit its values and knowledge to future generations (Al Mahdi Reparations Order, para.22).
31 It should be noted that situational crime prevention techniques, relevant to heritage crime, are considered the best way to reduce the risk of damage to heritage objects (see, for instance, Grove & Pease, 2014; Historic England, 2018a).
well as scientific literature and case law, the authors have developed correlation framework between the types of parties victimized by damage to/destruction of heritage site, the nature of harm suffered by every victimized individual or group as well as the most appropriate type of remedy corresponding to the harmed interest (Figure 1).

It should be noted that the composition of the framework is based on the fundamental policy of the cultural heritage law (e.g. to protect the heritage [both physically and granting access thereto for persons other than the immediate owner] for the enjoyment of present and later generations [O’Keefe & Prutt, 2011]), not the particular national criminal law (so it is jurisdiction-irrelevant). Therefore, not all the mentioned parties may (and arguably should) be considered eligible victims under the national criminal law rules. For instance, Latvian case law shows that only the state has been considered a victim in cases of damage caused to the archaeological sites by illegal human intervention (Kairiss & Olevska, 2021b). Nevertheless, in the opinion of the authors, all the mentioned parties are entitled to have voice in the legal proceedings (be them criminal or civil) related to the damage/destruction of the heritage object and receive appropriate reparation of the harm caused by illegal intervention into the integrity of the object concerned. Further research is needed to analyse the possibility of certain individual and/or collective victims to access justice and remedy their harmed interests within the civil (or other) procedure.

The above framework graphically places individuals and groups victimized by damage to/destruction of the cultural heritage objects into four quadrants. Quadrants are characterized by the type of harm (material or non-material) and relation of this harm to the interest of the suffered parties (kind of harm: direct or indirect).

Each quadrant lists categories and sub-categories of suffered parties united by certain interest. The framework covers broad range of suffered parties which, however, is not deemed to be exhaustive (depending on the type of damaged object and extent of damage, other not-mentioned parties may suffer; simultaneously, not all the mentioned parties may suffer as a result of particular offence, i.e. if damaged object is not of a religious nature, religious community most probably will not be victimized).

The nature of the determinative harmed interest follows every category of suffered parties. Each quadrant is rounded out by the modality of the most appropriate reparation, i.e. provides for the most effective, adequate, and proper remedy for the particular type and kind of harmed interest.

6.1 Quadrant I

Quadrant I (parties that suffer direct material harm) comprises two categories of suffered parties:

First, individual parties with direct property link. This category may include owners or possessors. Nature of the determinative harmed interest of representatives of this group is: loss of property and/or unexpected direct expenses.

Second, individual parties with direct economic link (this category of victims depends on the particular damaged object and in certain cases might be irrelevant). This category may include, inter alia, direct descendants of the buried at the object, employed-at-the-object personnel, or scientists researching the object. Nature of the determinative harmed interest of representatives of this group are: unexpected direct expenses and, in certain cases, loss of employment.

Common reparation for the parties that suffer direct material harm is direct compensation of their expenses, which, depending on the victim, may take the form of, inter alia, restoration expenses, loss of

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32 The authors have, inter alia, broadened the classification offered by Poyser et al. (2022) within the context of the more detailed typology of suffered parties, as well as added the types of harm suffered by each group and respective remedy for each type of victims.

33 Besides, the suffered harm claimed and approved by the courts does not correspond to any of the suffered harms identified by the authors within the current research.
the object (property), decrease or loss of direct income from the use of the object, salary, or other reward for performing duties at the object.

6.2 Quadrant II

Quadrant II (parties that suffer indirect material harm) comprises multicomponent category of suffered parties, i.e. individual parties with dependent economic link. These parties suffer loss of economic opportunity. Thus, for instance:

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34 One and the same person can belong to different types of victims, e.g. representative of a local community may be at the same time a craftsman, trading souvenirs or providing local food to visitors.

35 Victims suffering economic harm may be (mostly are) at the same time also subjects of non-material harm.
– object-related businesses (hotels, catering, tourism-related merchants, tourist guides, etc.) suffer as a result of decrease in visitors/tourists, craftsmen (local food and souvenirs producers) lose their market.
– decrease in turnover of local businesses and loss of workplaces result in decrease in tax payments to the authorities.
– object-related cultural institutions (museum, library, research centre, etc.) lose visitors and research material.
– overall downturn, resulted in the damage/destruction of heritage object, negatively impacts prestige of the area, as a result, object-dependent investors (for instance, real estate developers) may lose substantial income.

Common reparation for the parties that suffer indirect material harm is compensation of the objectively calculated lost economic opportunity for time until the object is put back into operation and the level of well-being (number of visitors, work places, etc.) is restored. However, it should be noted that the possibility to receive reparation directly depends on (a) the precise and documented amount of financial losses and (b) the causal relationship between the fact of damage/destruction of a heritage object and financial losses suffered by the party concerned.

6.3 Quadrant III

Quadrant III unites parties who suffered direct non-material harm. These parties can be divided into two categories of victims: collective and individual parties with the closest geographical and functional connection to the damaged object.

Category 1 (collective parties) suffers mental pain (including anguish, emotional distress) and discomfort (resulting from decreased standard of living, decreased prestige of the area, and similar reasons). This category includes local inhabitants, local religious community adherent of certain faith (relevant to cases of damage of religious objects), and particular cultural heritage-related scientific community.

Individual parties with closest connection to the damaged cultural object are e.g. object-related NGOs, certain religious organisations, heritage authorities on behalf of the state (those responsible for protection and care of cultural-historical sites).

Common reparation for the parties that suffer direct non-material harm might be represented by fine (solely or as a part of more complex criminal punishment) directed at special cultural-historical objects’ protection funds. The suffered parties may receive redress in a way of grants or other budgetary allocations from special financial programs for different (i.e. targeted) culture-related activities, including strengthening of protective capacities. Respective payments to funds within the criminal procedures are foreseen in criminal legislation of several countries (e.g. Maltese Criminal Code, Part 2, Article 70; Polish Law on the protection and care of monuments, Part 3, Article 108).

When asked about the reparation appropriate for the LSA as a party suffered from archaeological heritage crime, the head of the LSA mentioned compensation fee from the guilty person for diverting it to the state-supported heritage conservation programs (e.g. the LSA could apply for these funds through a tender procedure) and non-material compensation from the guilty person (like public apology to the scientific community of Latvia; the questions of non-material reparation are discussed in Quadrant IV) (interview with M. Kalniņš).

6.4 Quadrant IV

Quadrant IV covers broader community and future generations who are constrained or denied access and enjoyment of the damaged/destructed heritage objects. These parties suffer indirect, non-material sui generis harm (loss of opportunity to visit, learn, or realize other object-associated non-use values) and
may comprise heritage lovers, learners of art, history, and related sciences, those adherent of certain faith throughout the world, national and international community generally as well as unborn generations. It should be noted that question of extending reparation to the unborn children of the victims was carefully considered in the Al Mahdi case. However, the Trust Fund for Victims in drafting reparations implementation plan decided to stick to the date of the attack. The reasons for that were on the one hand formal (in order not to stretch the definition of victims as “natural persons” to non-existent and inconcrete beings⁶), on the other hand – personal (in order not to provoke jealousy and tensions between the representatives of tightly knit population for monetary compensations received for years on) (Lostal, 2021a, pp. 845–846).

It is worth noting that World Future Council, foundation that works to find solutions to the challenges faced by humanity and promote their implementation worldwide through policy-making, lists heritage crimes as crimes against future generations along with razing the rainforest, arctic drilling, nuclear weapons, etc. The council states that “when (these crimes) they are committed, all of humanity is injured and aggrieved” (World Future Council).

The authors assume that at the current stage of legal development, the most appropriate reparation for the victims located in Quadrant IV are symbolic reparations. This gives these remote groups and their suffering the opportunity to be recognized and accounted for.

Besides, the authors admit that the proposed framework does not resolve the compensation issues as such (if the offenders are indigent – no compensation can be realistically received from him/her). However, it shows the most appropriate ways and types of reparations, to remedy the particular types of harm suffered by the respective parties. Besides, the precise typology of the victimized parties shows the vastness of the suffered parties and type and extent of the harm caused to them, thus unveiling the true social impact of the heritage crimes.

7 Conclusion and Recommendations

The research has shown that the scope and extent of harm caused by damage/destruction of heritage sites is inexplicit and, in many cases, hard to define for both – the society and the criminal justice system. There is an obvious need for objective and definite criteria for evaluation of types and extent of harm suffered by all the victimized parties.

Shortage of societal understanding of the social and economic values of the heritage site and their impact on the close and remote parties result in the fact that many individuals do not recognize themselves as legitimate victims of heritage crimes and do not protect/struggle for their rights. Besides, constraints existing in recognition of victims in national criminal proceedings and absence of pro-active informing to the suffered parties about their rights limit the victims’ right to access justice and obtain remedy through criminal process, while their opportunities to go through civil procedure are questionable and need further detailed research.

The research has pointed to the ineffectiveness of standard retributive approach in restoration of justice in heritage crimes. Applicability of the restorative justice elements within the national criminal proceeding should be evaluated and introduced in order to repair the harm caused to the victims to the possible extent. It should be noted, that introduction of different types of reparations within the criminal proceedings should be evaluated along with the punitive measures provided for the offender. It should be acknowledged that reparations do not enrich the victim, but should repair the harm caused adequately and in a meaningful way.

Conflict of interest: Authors state no conflict of interest.

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⁶ In Ntaganda reparations order, though the court acknowledged children born out of rape and sexual slavery to be direct victims of the Ntaganda’s crimes (Ntaganda Reparations order, paras 120–123), which opens the door to further discussions on the concept of victims in criminal law.
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**International Legal Acts**


UN GA Resolution 60/147, 2005, General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.


**National Legal Acts**

**Austria**

Belarus

Croatia
Criminal Law, available at: https://www.zakon.hr/z/98/Kazneni-zakon.

Czech Republic
Criminal Law, available at: https://www.zakonyprolidi.cz/cs/2009-40? text=trestn%C3%AD+z%C3%A1kon%C3%ADk.

Estonia

Finland
Penal Code, available at: https://finlex.fi/fi/laki/ajantasa/1889/18890039001? search%5Btype%5D=pika&search%5Bpika%5D=rikoslaki#L11.

France

Greece

Hungary
Act C of 2012 on the Penal Code, available at: https://net.jogtar.hu/jogszabaly?docid=A1200100.TV&searchUrl=/gyorskereso%3Fkeyword%3D2012.%C3%A9vi%C3%B6t%2520t%C3%B6rv%C3%A9ny%2520a%2520B%C3%A9ntet%25C5%2591%2520t%C3%B6rv%25C3%25A9ny%2520a%2520B%25C3%25C5%2591%2520t%C3%B6rv%25C3%25A9nyv%25C3%25A9nyv%25C3%25A9nyv%25C3%2591l.

Iceland

Italy

Latvia

Lithuania
Malta

Moldova

Norway

Poland

Portugal

Romania

Russia
Criminal Code, available at: https://rulaws.ru/uk/.

Slovakia

Slovenia

Case Law and Documents of the ICC


National Case Law
Vidzeme District Court (Alūksnē), materials of criminal case no. 11817004716.
Vidzeme Regional Court, judgement, case no. KA05-0099-18/13, as of 13 December 2018, retrieved from: https://manas.tiesas.lv/eTiesasMvc/nolemumi.
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Zemgale District Court (Bauskā), materials of criminal case no. 11817006218.

Interviews
Interview with G. Kūtris, head of the Department of Criminal Law at the University of Latvia, ex-head of the Constitutional Court of the Republic of Latvia
Interview with PhD I. Kronberga, parliament secretary of the Ministry of Justice, associate researcher and specialist in the areas of criminal punishment policy and punishment execution
Interview with PhD hist. cand. M. Kalniņš, the heritage specialist of the Department of the circulation of cultural goods of the National Heritage Board of the Republic of Latvia, archaeologist, the Head of Latvian Society of Archaeologists.