

# PREVENTING AND COMBATING ARTEFACTS' TRAFFICKING. DOCUMENTING SOURCE OF PROVENANCE – A CASE STUDY

**Abstract:** Why is it important to document the provenance of cultural heritage assets?

The antiquities' market has been confronted lately with important problems generated by the accusations, scandals and controversies regarding the suspicions of the illegal origin of the artifacts in the collections of museums or private collections attested.

Global antique trading is estimated at billions of dollars annually, so ensuring the legality of origin plays a vital role in guaranteeing ownership for a potential new buyer, which can be in good faith. It is not surprising that this type of trade has been the object of the interest of terrorist organizations or organized crime groups, interested in obtaining important revenues for the financing of illegal activities. The sale and purchase of artifacts continues to represent from this perspective a continuous risk for museums, art dealers, auction houses and collectors.

The phenomenon of illegal trafficking of cultural heritage assets is not new, for thousands of years the plundering of antiquities has been a problem of all civilizations. When artifacts are stolen, they are first and foremost lost in value, often eliminating the connection with the context in which they were discovered. The theft of the artifacts would not be possible and would not have the current magnitude if there was no sales market on which significant revenues could be obtained. The robbers, thieves and smugglers of artifacts are connected to the antiquities market through intermediaries, which creates the appearance of legality in order to facilitate the illegal export by producing fake documents, attesting the provenance and allowing the sale / purchase on the antiques market at high prices. The intermediaries are the most important link and they come from: art dealers, curators and museum staff, art collectors, businessmen, civil servants.

**Keywords:** *provenance, illegal trafficking, illegal export, faked documents, organized crime groups, terrorist organizations, inconsistencies of legislation, grey market.*

## INTRODUCTION

In view of the high number of heritage goods, counterfeit or with the documentation of counterfeit origin, introduced on the market in conjunction with the evolved technology in counterfeiting and in relation to the costs involved in testing and expertizing authenticity, an extremely high precaution is required when purchasing artifacts from the free market, but also from antique merchants.

On the other hand, the artifacts, which hold documents of provenance, can be forged or have the falsified documentation, the only

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guarantees regarding the authenticity to be obtained from the verification and other sources of the documents of origin and the analysis carried out by an expert in the field.

The documentation of provenance preserves the historical value and importance of cultural heritage assets by preserving the traceability and the connection with the context of origin. At the same time, it is the only way in which the authenticity of the artifacts can be certified and avoided counterfeits and forgeries, created to mislead good faith buyers. Another effect is that the artifacts, which have the documented provenance, are valued at higher prices on the market of cultural heritage goods.

This paper contains one recent relevant case which shows the inconsistencies of legislation regarding the provenance of the artifact.

Kouros Statuette - is a 2 m marble statue representing a young Greek antique fighter purchased by the J. Paul Getty Museum in Malibu in 1984 after 14 months of study with the amount of \$ 10 million, originally dated in the 6th century. "Kouros" means young man in Greek.

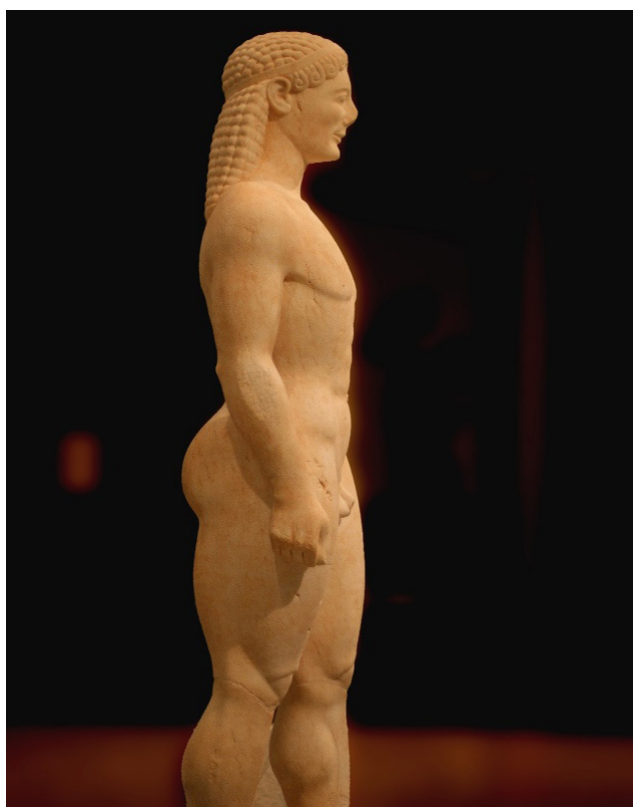


Fig. 1 Statuette kouros<sup>1</sup>

The Kouros was initially purchased in September 1983 by a loan until the acquisition Jiri Frel, the Getty Museum curator, from Gianfranco Becchina, was approved. No clear place of origin was identified for the piece, although it was indicated as coming from the collection of Swiss resident Jean Lauffenberger from 1930 and came with a documentary source containing written letters held by Lauffenberger since the early 1950s, which testify to the

<sup>1</sup> [https://www.google.com/search?q=getty+kouros&rlz=1C1GCEA\\_enRO783RO783&source=lnms&tbn=isch&sa=X&ved=0ahUKewjv57OvosDgAhVPposKHekwDPoQ\\_AUIDigB&biw=1517&bih=695&dpr=0.9#imgrc=8exMu9JAJwIjGM](https://www.google.com/search?q=getty+kouros&rlz=1C1GCEA_enRO783RO783&source=lnms&tbn=isch&sa=X&ved=0ahUKewjv57OvosDgAhVPposKHekwDPoQ_AUIDigB&biw=1517&bih=695&dpr=0.9#imgrc=8exMu9JAJwIjGM): (accessed 25.10.2018).

property. After an inspection by more than thirty experts and despite the reservation regarding the proportions of the statue and possible stylistic anachronisms, the Getty Museum decided that the statue was authentic. A crucial finding was the discovery, based on the scientific analysis of the statue's surface, which revealed the magnesium component of dolomitic marble (calcium magnesium carbonate). The purchase of Kouros for \$ 9.5 million was approved in January 1985 and was publicly announced in 1987 by Trustee Marion True. Immediately after the purchase, however, it was denounced as false<sup>2</sup>.

A subsequent investigation of some letters, which should constitute the documentation of provenance, revealed that they were forgeries. Then, in 1990, came the hypothesis that a supposed Italian counterfeiter, Fernando Onore, created and sold the Kouros of a Calabria intermediary, who in turn sold it to the Italian art dealer Gianfranco Becchina for \$ 100,000. Jeffrey Spier, a scholar and antiquities expert, published an article in the same period, revealing the existence of a smaller kouros of smaller dimensions, which resembles the anatomical aspect and proportions of the Kouros owned by the J. Paul Getty Museum. Spier suggested that both pieces were made in the early 1980s - products of a workshop in Rome and even carved from the same marble block. It was also established at the same time that magnesium could in fact be artificially removed from dolomite marble and that its absence should not be considered as a clear proof of authenticity. The comparative analysis performed on the stone of the Getty Kouros and the false one discovered by Jeffrey Spier revealed that they do not come from the same stone block or from the same stone quarry, and the technical analysis revealed major differences regarding the sculpting techniques: the traces executed on the counterfeit were made with modern tools, while Kouros Getty was not made with contemporary tools. Other important differences resulting from the analysis were: for the surface of the fake kouros, the appearance of age was created by immersing in acid bath, while the age of the surface of the Getty Kouros is much more complex. Expert Jeffrey Spier could not reproduce Kouros Getty's aging process and thus proved beyond doubt the false character. In fact, until now, the surface of Kouros Getty could not be realized in any laboratory<sup>3</sup>. With a discredited origin and accumulated doubts about the authenticity of the Kouros, in 1992 Getty transported her to Greece, where she was the centrepiece of an international colloquium, convened in Athens on May 25-27, 1992, with the intention of deciding of its authenticity. Unfortunately, the ninety invited experts, including scientists and connoisseurs, have failed to reach a consensus. In 2012, Kouros was described on the Getty Museum's website as "a Greek statue, dating to approximately 530 BC or a modern fake."<sup>4</sup>

Whether the statue is authentic or a fake cannot be stated with certainty even today<sup>5</sup>.

<sup>2</sup> <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed 25.10.2018).

<sup>3</sup> <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed 25.10.2018)

<sup>4</sup> <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed on 25.10.2018 )

<sup>5</sup> <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/>

If we admit that the Kouros statue is authentic, then the following international legal provisions of the 1971 UNESCO<sup>6</sup> Convention have been violated:

- Article 5 para. b emphasizes that the statuette is not in a national inventory nor in the list of important public or private cultural goods whose export could be a depletion of cultural heritage<sup>7</sup>;
- The statuette was transported without special certificate, attesting that the export is authorized by the country of origin according to Art. 6 letter. a<sup>8</sup>;
- Article 8 provides for the application of criminal or administrative sanctions to any person, who is guilty of committing a crime, a provision that has not been respected in the case of the network involved<sup>9</sup>;
- Article 10 paragraph a, which obliges antique sellers subject to criminal or administrative sanctions to keep a register mentioning the origin of each cultural good, the name and address of the supplier, the description and the price of each sold item, which is completely missing in this case<sup>10</sup>.

Art dealer Gianfranco Becchina is guilty of false statements, as well as of the initial illegal purchase, being the one who knows relevant clues as to the true origin of the statue. If Kouros is genuine a possible reason for not revealing them is the criminal consequences that would appear in the situation of establishing the place of origin and thus of the country whose cultural heritage would have been harmed, in this case possible Greece or Italy, whose authorities would have started legal return procedures, but also criminal investigations<sup>11</sup>.

If we accept, hypothetically, that the place of origin of the statue is Greece, in the light of the existence of similar works of art from ancient times, although it was not established with certainty, and the Greek state did not initiate the return requests in the absence of evidence on excavation and export illegal in Greece, then the provisions of the law on the cultural heritage of Greece would be applicable, the statements of law 3028 not being respected<sup>12</sup>:

- Article 10 paragraph 1<sup>13</sup> specifies that any activity that leads to the direct or indirect destruction of certain goods is prohibited;
- Article 21 para. 3 provides that the ancient artifacts, resulting from excavations or archaeological excavations, regardless of the date of discovery, belong to the state and are excluded from

commercialization<sup>14</sup>;

- Article 24 para. 1 shows that the person, who finds or acquires an artifact dating before 1453, has the obligation to immediately declare it to the nearest archaeological authorities, the police or the port, to whom he will make it available<sup>15</sup>;
- Article 27 para. 1 emphasizes that the owners of cultural assets must inform the Heritage Service of their existence, location, intentions and allow periodic inspections<sup>16</sup>;
- Article 28 paragraph 1 specifies that the transfer of ownership of an artifact must be notified to the Patrimony Service, which will issue a permit, and the non-observance of this provision has the effect of cancelling any acts performed<sup>17</sup>;
- Article 31 paragraph 1 provides that the owners of antiquities must hold the title of collectors issued by the Ministry of Culture<sup>18</sup>;
- Article 31 paragraph 4 obliges collectors to keep a register containing descriptions, photographs of objects and collections, and after that there should be a copy at the Heritage Service, which will be updated every 6 months with the latest news<sup>19</sup>;
- Article 31 paragraph 6 prohibits collectors from possessing antiques, which come from thefts, illegal imports / exports, and if this happens they must inform the competent authorities<sup>20</sup>;
- Article 32. paragraph 4 shows that the antique dealers must have a register of them that shows the origin, data, descriptions, photos, sales prices, transfers, all being reported to the competent services<sup>21</sup>.
- Article 32 para. 5 specifies that the trading of cultural assets must be based on the documents of origin; Article 34 para. 1 strictly prohibits the export of monuments from the territory of Greece<sup>22</sup>;
- Article 34 para. 7 provides that the export is allowed only with the agreement of the Ministry of Culture and of the Council for a temporary period of 4 months respectively 6 months<sup>23</sup>.

Even in the situation of admitting the authenticity and provenance of the country of origin of Greece, the return of the statue would not have been possible, because

<sup>14</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>15</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>16</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>17</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>18</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>19</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>20</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>21</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>22</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>23</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

(accessed 25.10.2018)

<sup>6</sup> <http://legislatie.just.ro/Public/DetaliuDocumentAfis/50685> (accessed on 25.10.2018)

<sup>7</sup> <http://legislatie.just.ro/Public/DetaliuDocumentAfis/50685> (accessed on 25.10.2018)

<sup>8</sup> <http://legislatie.just.ro/Public/DetaliuDocumentAfis/50685> (accessed on 25.10.2018)

<sup>9</sup> <http://legislatie.just.ro/Public/DetaliuDocumentAfis/50685> (accessed on 25.10.2018)

<sup>10</sup> <http://legislatie.just.ro/Public/DetaliuDocumentAfis/50685> (accessed on 25.10.2018)

<sup>11</sup> <https://traffickingculture.org/encyclopedia/case-studies/gianfranco-becchina/> accessed on 25.10.2018

<sup>12</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

<sup>13</sup> <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).

in the situation of a request submitted by the Greek state, it would not have been processed by the US authorities in the absence of a bilateral agreement according to the CCPIA<sup>24</sup>. Greece is not among the 13 countries with which the US has bilateral cultural heritage agreements.

Scientific and stylistic analysis indicate the age and ancient origin, but the lack of documentation of origin and export violates the law on trading.

If we accept the prospect of the forgery from a legal point of view, the legal provisions of the USA and Switzerland<sup>25</sup> regarding the making of forgeries and the deception of good faith buyers are applicable. In order for these legal provisions in the criminal sphere to be enforced, it is necessary to have an injured party, who must file a complaint before the law enforcement bodies in order to start the investigations and establish the culprits. The legal entity prejudiced above all would be the J. Paul Getty Museum, which did not constitute an injured party and did not file a complaint regarding the existence of a forgery or fraud. If he had accepted the prospect of the false and the prejudiced entity would have filed a criminal complaint, then the criminal investigations would have targeted the seller - the art dealer Gianfranco Becchina and all those involved in the network from the presumptive author of the work.

Analyzing the case based on the established data it turns out that: the artifact was purchased by the J.P. Museum Getty from Gianfranco Becchina, in September 1983, after thorough checks, which lasted 14 months, but the acquisition was declared public only after almost 4 years in 1987, at which point the suspicions of counterfeiting appeared. The tests applied by the contestants could not prove that it was a fake, and the suspicions did not support scientific arguments<sup>26</sup>.

The symposium organized in Athens in 1992 by the J.P. Museum Getty and the analysis of ninety experts did not reach a consensus on authenticity. Antiquarian Gianfranco Becchina sold authentic artifacts to major museums from 1980-1990, including Ashmolean, Louvre, Boston Museum of Fine Arts, Metropolitan Museum, Princeton University Museum of Art, Toledo Museum of Art, and J. Paul Museum. Getty. He provided antique artifacts for collectors George Ortiz, Leon Levy and Shelby White, Merrin Gallery in New York, Noriyoshi Horiuchi and Dietrich von Bothmer of the Metropolitan Museum of Art. Gianfranco Becchina was convicted by the Italian authorities for illegal trafficking in cultural heritage goods, an aspect that would not have happened if they had trafficked forgeries. Indicating the traceability of Kouros Getty, which would lead to the documentation of provenance and the establishment of authenticity, would produce criminal effects for all involved and the request for restitution by the country of origin, so the loss by the current owner. In conclusion, the indications held tend towards the authentic character of the Getty Kouros, with the suspicion of the interested maintenance of the debate around the authentic character<sup>27</sup>.

<sup>24</sup> [https://www.archaeological.org/pdfs/sitepreservation/CPAC\\_OverviewAIA.pdf](https://www.archaeological.org/pdfs/sitepreservation/CPAC_OverviewAIA.pdf) (accessed on 25.10.2018).

<sup>25</sup> <https://www.lexology.com/library/detail.aspx?g=00ec704c-fdce-4c25-a51d-0ce270c5229a> (accessed on 25.10.2018).

<sup>26</sup> <https://www.nytimes.com/1991/08/04/arts/art-absolutely-real-absolutely-fake.html?pagewanted=all&src=pm> (accessed on 25.10.2018).

<sup>27</sup> <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/>

## CONCLUSIONS

The application on the cultural heritage market of the origin filter by establishing the obligation to present the property documents, by which the origin is verified, has the effect of a dramatic decrease of the illegally obtained artifacts presented for sale with the consequence of diminishing the archaeological poaching actions. An important component of this filter is the provision of the presentation of an export certificate at the time of removal from the country of origin and of the import to the destination country, thus being considerably limited smuggling with cultural heritage objects.

At the same time, it should not be ignored that counterfeiters take advantage of technological developments and use the latest discoveries to create very good quality source documents, which can be confused with the original ones. Another effect of the technological evolution is the counterfeit of cultural heritage assets by reproducing at a higher level of technical expertise, which requires thorough and corroborated research for detection.

As a result, it is necessary to verify both the documentation and each stage of the transfer of ownership up to the time of origin, and the suspicions will be presented to an expert, who can assess whether a technical-scientific analysis is required by applying specific tests.

Awareness of the population regarding the illicit character of the traffic of cultural heritage goods by informing about the legal obligations to document the origin will lead to a reluctance to involve in the illicit trade with artefacts without origin documentation. The concept of awareness must have two components in mind: 1) raising public awareness through mass media and 2) forming a culture of cultural heritage protection for younger generations, which will form the future manager of this heritage.

At the end, it can be said that documenting the provenance of cultural heritage assets is the cornerstone of preventing and countering smuggling and illicit trade in artifacts.

## ACKNOWLEDGMENTS

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(accessed on 25.10.2018 )



## REFERENCES

## Online sources

1. [https://www.google.com/search?q=getty+kouros&rlz=1C1GCEA\\_enRO783RO783&source=lnms&tbm=isch&sa=X&ved=0ahUKEwvjv57OvosDgAhVPposKHekwDPoQ\\_AUIDigB&biw=1517&bih=695&dpr=0.9#imgrc=8exMu9JAJw1JGM](https://www.google.com/search?q=getty+kouros&rlz=1C1GCEA_enRO783RO783&source=lnms&tbm=isch&sa=X&ved=0ahUKEwvjv57OvosDgAhVPposKHekwDPoQ_AUIDigB&biw=1517&bih=695&dpr=0.9#imgrc=8exMu9JAJw1JGM): (accessed 25.10.2018).
2. <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed 25.10.2018).
3. <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed 25.10.2018).
4. <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed 25.10.2018).
5. <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed 25.10.2018).
6. <http://legislatie.just.ro/Public/DetaliiDocumentAfis/50685> (accessed on 25.10.2018).
7. <http://legislatie.just.ro/Public/DetaliiDocumentAfis/50685> (accessed on 25.10.2018).
8. <http://legislatie.just.ro/Public/DetaliiDocumentAfis/50685> (accessed on 25.10.2018).
9. <http://legislatie.just.ro/Public/DetaliiDocumentAfis/50685> (accessed on 25.10.2018).
10. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
11. <https://traffickingculture.org/encyclopedia/case-studies/gianfranco-becchina/> accessed on (25.10.2018).
12. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
13. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
14. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
15. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
16. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
17. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
18. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
19. <https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Greece/3028eng.pdf> (accessed on 25.10.2018).
20. [https://www.archaeological.org/pdfs/sitepreservation/CPAC\\_OverviewAIA.pdf](https://www.archaeological.org/pdfs/sitepreservation/CPAC_OverviewAIA.pdf) (accessed on 25.10.2018).
21. <https://www.lexology.com/library/detail.aspx?g=00ec704c-fdce-4c25-a51d-0ce270c5229a> (accessed on 25.10.2018).
22. <https://www.nytimes.com/1991/08/04/arts/art-absolutely-real-absolutely-fake.html?pagewanted=all&src=pm> (accessed on 25.10.2018).
23. <https://traffickingculture.org/encyclopedia/case-studies/getty-kouros/> (accessed on 25.10.2018).

## Photos:

FIGURE 1.

[https://www.google.com/search?q=getty+kouros&rlz=1C1GCEA\\_enRO783RO783&source=lnms&tbm=isch&sa=X&ved=0ahUKEwvjv57OvosDgAhVPposKHekwDPoQ\\_AUIDigB&biw=1517&bih=695&dpr=0.9#imgrc=8exMu9JAJw1JGM](https://www.google.com/search?q=getty+kouros&rlz=1C1GCEA_enRO783RO783&source=lnms&tbm=isch&sa=X&ved=0ahUKEwvjv57OvosDgAhVPposKHekwDPoQ_AUIDigB&biw=1517&bih=695&dpr=0.9#imgrc=8exMu9JAJw1JGM): (accessed 25.10.2018).