

## THE LAW AND PRACTICE REGARDING COIN FINDS

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### SLOVENIAN LAWS REGARDING COIN FINDS

The Cultural Heritage Protection Act (Official Gazette of the Republic of Slovenia, no. 16/2008; further referred to as “CHPA”) came into force on March 1, 2008. The act regulates the methods of cultural heritage protection and the related regulations for integrated heritage conservation.

The act is very clear on the subject of archaeological objects or remains, including coins. The first paragraph of Article 6 states that all portable archaeological finds or remains, found by any person on or under the surface of the ground, or underwater, are state property. Article 3 provides definitions of the terms “archaeological find” and “archaeological remains”. An archaeological find is a portable archaeological article that has been under the ground or underwater for at least 100 years. “Archaeological remains” is a wider term that includes all items and any evidence of human activity from past periods. Article 32, paragraph (1) states that searching for archaeological remains may be carried out only by persons with professional training for carrying out archaeological research and who have obtained permission from the Institute for the Protection of the Cultural Heritage<sup>1</sup> (further referred to as “Institute”); the use of metal detectors and other technical means is allowed under the same conditions. The second paragraph of the same article provides that metal detector dealers are obliged to inform purchasers that it is prohibited to use them for acquiring archaeological remains. The first paragraph of Article 26 states that anyone, who accidentally finds an archaeological item on or under the surface of the ground, or underwater, is obliged to ensure that the find is not damaged. The finder must inform the Institute about the find not later than the following working day. This obligation extends to the finder, the landowner, other persons entitled to the land by property law, and the investor or works supervisor in the case of construction works. The penalties stipulated in the CHPA refer exclusively to violations. A person, who does not inform the competent authorities about the find of an archaeological item, will be liable to a penalty of 1,000 to 4,000 €. A person who uses a metal detector or other technical means for finding archaeological objects will be fined with a penalty of 2,000 to 4,000 €.

<sup>1</sup> The list of categories of heritage is determined by the Ministry of Culture (CHPA, Article 9, paragraph 7).

According to the Penal Code, Article 219, paragraph 1, damaging or destroying remains that are of special cultural importance or natural value is a criminal offence and punishable by up to five years' imprisonment.

However, these provisions are not new since all laws regulating cultural heritage protection after the Second World War – during the period of the Federated People's Republic of Yugoslavia (until 1963) and that of the Socialist Federated Republic of Yugoslavia (until 1991) – similarly provided that archaeological objects found on or under the surface of the ground, or underwater, were state property (for instance, after the establishment of socialism, were part of what was called “social ownership”).<sup>2</sup> The Republic of Slovenia, established as an independent state in 1991, adopted its first act regulating the protection of the cultural heritage in early 1999; its Article 58 provided that anybody, who finds an object of presumed heritage on or under the surface of the ground, or under water, is obliged to notify the Institute, because the object is state property.

The act specifically regulated the trade in cultural heritage. The first paragraph of article 45 of the CHPA provides that persons who trade in cultural heritage, which belongs to a category of heritage from the list<sup>3</sup>, must be registered in the Register of Traders that is kept by the Ministry of Culture. The aim of keeping this register is to gather accurate information on the trade in cultural heritage in order to prevent unlawful trade. Every trader must keep evidence of his purchases and sales and other transactions involving cultural heritage. In his registers he shall enter the data on the origin of the object, a description and the selling price, the data on the owner or proprietor, and those on the purchaser of heritage. The register's aim is to ensure traceability of heritage objects, which are sold, to prevent unlawful activities.

Concerning the origin of cultural objects, the Republic of Slovenia is bound by the EU's legislation, including Council Regulation (EEC) no. 116/2009 of December 18, 2008 on the export of cultural goods. The regulations define national treasures as movables which belong to one of the categories of heritage defined in Annex I to the regulation; their removal or export from the Republic of Slovenia is limited due to their importance and measures are provided for their trade and conservation.

<sup>2</sup> The first post-war act from 1948 had a similar provision regulating the protection of cultural and natural monuments in Article 9, the 1958 act in Article 12, and the 1981 Act in Article 53.

<sup>3</sup> The list of categories of heritage is determined by the Ministry of Culture (CHPA, Article 9, paragraph 7).

Article 135 of the CHPA was undoubtedly a great novelty: it requires any person who, on the day the act enters into force (March 1<sup>st</sup>, 2008) is in possession of an archaeological find without a certificate of origin, to notify a national or authorised museum on the find within one year. The act indeed provides in Article 53 that any person who keeps an archaeological find or a collection of such finds shall possess a certificate of origin thereof. The notified museum shall issue a certificate of origin including instructions for storage. If the museum establishes that the archaeological find or collection is of local or national importance, it must then prepare a proposal to declare the find or collection a portable monument of local or national importance. Article 127, first paragraph, provides that any person who keeps archaeological finds without a certificate of origin is liable to be fined with a penalty of 400 to 1,200 €. In this way the legislators wanted to legalise all archaeological objects acquired unlawfully in the territory of Slovenia. To explain possible doubts concerning the act and Article 127, the Ministry<sup>4</sup> issued a folder entitled “Reporting archaeological finds in private possession” in June 2008. The folder explicitly mentions old coins, weapons, and tools as archaeological finds.

The provision caused quite a stir among amateur numismatists. The act indeed obliged every collector, who had coins or a collection of coins older than 100 years and who had no specific certificate of their origin<sup>5</sup>, to report these items. A particular dilemma was how to consider coins a collector had acquired through exchange, since he would have no certificate of origin in these cases. Another objection or principal criticism was that the proposals to declare collections portable monuments of national importance would amount to nationalisation of private collections<sup>6</sup>. Collectors among others raised the question whether, for instance, every ordinary bronze coin of the emperor Constantine, minted in Constantinople in 330, excavated somewhere in Europe 30 years ago, and which can be found on the market in thousands of examples of quite similar quality, matches the act's definition of heritage or even archaeological find that has to be reported. A collector who has no certificate of its origin would indeed have great difficulties in proving that the find did not originate from unlawful archaeological searches somewhere in the territory of Slovenia.

- 4 The Ministry of Culture indeed ran an advertisement campaign in the media and with jumbo posters, informing the citizens on the requirement to report archaeological finds.
- 5 A later interpretation issued by the Ministry of Culture listed as proof of origin among others certificates of inheritance, import licences, various documents like testaments, contracts, invoices, copies from the register of sales traders are obliged to keep, expert opinions, statements by previous owners or other witnesses, and other forms of documentation – photographs or other pictures, publications, and the like.
- 6 Urban Mate, *Problematika novega ZVKD-1 in njegovega izvajanja s stališča zbiralcev in muzejskih delavcev*, Zborovanje Slovenskega muzejskega društva, Bovec, 1.–3.10. 2009, Ljubljana, Slovensko muzejsko društvo 2009, 21–29.

Because of these dilemmas, the Numismatic Association of Slovenia, joined by private persons, filed a written requisition with the Constitutional Court on December 19, 2008, asking the court to consider the conformity of several provisions from the CHPA with the Constitution. In its decision (U-I-297/08), issued on April 7, 2011, the Constitutional Court stated that “*the first paragraph of Article 6, Article 53, the tenth indent of the first paragraph of Article 127, and Article 135 of the CHPA are not in conformity with the Constitution.*” The Constitutional Court criticised the legislation because “*the first paragraph of Article 6 of the CHPA does not conform with the Constitution, given that to declare a portable archaeological object or archaeological find – which is merely assumed to have the properties of archaeological cultural heritage – state property, conflicts with the right provided in Article 33 of the Constitution*”<sup>7</sup>. *Immovables and movables do not become cultural heritage all by themselves, but through man’s or society’s awareness and assessment. Item 3 of Article 3 of the CHPA indeed states that only professionally assessed and registered archaeological remains become cultural heritage. Objects which following professional examination cannot be considered cultural heritage will therefore be returned to their owner. However, this does not mean that in the sense of the first paragraph of Article 6 of the CHPA an archaeological object becomes state property as soon as it is found.*” Concerning the controversial Article 135, the Constitutional Court wrote that “*the legislator obviously acted on the basis of the awareness that individual objects, which based on the regulations valid before the CHPA came into force, should be part of the archaeological cultural heritage, were acquired unlawfully. However, by using the term “archaeological find” the act also included objects which could not be included in it, either because the owner legitimately had them in private ownership, or because it is not possible to retrospectively consider them archaeological finds.*”

However, the Constitutional Court added that the contents of the first paragraph of Article 6, Article 53, the tenth indent of the first paragraph of Article 127, and Article 135 of the CHPA were of such nature that “*they cannot be repealed. Their repeal would mean that cultural heritage objects would no longer be state property, and it would also mean to repeal the provisions in the specific sense(s) which cannot be declared to be in conflict with the Constitution.*” The Constitutional Court therefore established only that they were unlawful and set a deadline for the legislator to remedy the inconformity.

The Constitutional Court ordered the National Assembly of the Republic of Slovenia to remedy the established inconformity within a period of one year after the publication of this decision in the Official Gazette of the Republic of Slovenia; considering that the decision of the Constitutional Court was published on April 22, 2011, the one-year deadline expires on April 22, 2012.

<sup>7</sup> Article 33 guarantees the right to private property and inheritance.