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## SLOVENIAN LAW AND PRACTICES REGARDING COIN FINDS

### 1. Introduction

Since the Cultural Heritage Protection Act that came into force on March 1, 2008,<sup>[1]</sup> regulating the methods of cultural heritage protection and the regulations for integrated heritage conservation, five new supplementing Acts came into force. Two of those supplements are specifically concerning the legislation on coin finds.

The CHPA-1B, which came into force on November 30, 2012, was introduced consequently to an order by the Constitutional Court<sup>[2]</sup>, following a petition filed by the Slovenian Numismatic Society<sup>[3]</sup> and private individuals against the CHPA-1, attacking the Act's interference with coin collecting and its unconstitutionality. The Court acted in favour of collectors of coins and other archaeological objects as well as the constitutional protection of rights, as the CHPA-1 imposed excessive intervention with the law based on the property right based of the Constitution of the Republic Slovenia.<sup>[4]</sup>

The CHPA-1C, which came into force on December 27, 2013, eliminated some deficiencies which occurred by the implementation of the CHPA-1, and notably the ambiguity of certain definitions, introducing new ones such as more a precise definition of national treasure. The Act as well

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\* PhD student at the University of Primorska, Slovenia, with a thesis dedicated to ancient Roman numismatics. I am not a lawyer, and must recommend contacting one if you are going to be involved in a transaction involving Slovenian cultural heritage. I would like to thank Nada Zoran from the Slovenian Ministry of Culture for helping clarify some issues regarding the Slovenian law and practices on coin finds.

[1] "CHPA-1": The Cultural Heritage Protection Act (Official Gazette of the Republic of Slovenia, no. 16/2008) which came into force on March 1, 2008. "CHPA-1A": The Act of changes and supplements of the Cultural Heritage Act -1A (Official Gazette of the Republic of Slovenia, no. 123/08) which came into force December 29, 2008. "CHPA-1B": The Act of changes and supplements of the Cultural Heritage Act-1B (Official Gazette of the Republic of Slovenia, no. 90/12), which came into force November 30, 2012. "CHPA-1C": The Act of changes and supplements of the Cultural Heritage Act-1C (Official Gazette of the Republic of Slovenia, no. 111/13), which came into force December 27, 2013). "CHPA-1D": The Act of changes and supplements of the Cultural Heritage Act -1D (Official Gazette of the Republic of Slovenia, no. 32/16), which came into force May 6, 2016). "AnGO": The Act of non-Government Organizations – AnGO (Official Gazette of the Republic of Slovenia, no. 21/18), which came into force March 30, 2018.

[2] U-I-297/08 - The decision of the Constitutional Court on the petition of the Slovenian Numismatic Society.

[3] Numizmatično društvo Slovenije. Accessed on May 15, 2020 at <http://www.nds.si/>

[4] Article 33 and 67 of the Constitution of the Republic of Slovenia (The Official Gazette of the Republic of Slovenia, no. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99 in 75/16 – UZ70a)

lowers the required education level for amateur archaeological excavators, introduces a more transparent distribution of competence for issuing different consents and eliminates administrative barriers. An important novelty is the rewarding of honest finders of archaeological remains, since similar actions abroad had proved to stimulate finders and positively contributed to the favouring and trusting of the law and an increase in awareness of the necessity of preserving cultural heritage.

## 2. Definitions

Coins which were under the soil or water for at least 100 years fall into the category of “archaeological finds” and “archaeological remains”<sup>[5]</sup> and have properties of “heritage”. It is classified in the Rules on the Registry of Types of Heritage and Protection Guidelines<sup>[6]</sup>, as items of movable heritage type P13 (“Means for trade and banking”): means of payment, valuable papers, bonds and similar. Another category coins can fall into is “national treasure”. The Article 10 defined a national treasure as a more than 100 year old archaeological find, which originates from excavations and sites on land or under water, and the CHPA-1B added “*on the territory of the Republic of Slovenia*”.<sup>[7]</sup> The CHPA-1B and CHPA-1C added, “*in the territory of the Republic Slovenia and recognized as heritage*” to the Article 6 which indicated that “*a movable archaeological find or archaeological remain is property of the State, if it is found on the surface, under the soil or under water for at least 100 years*”.<sup>[8]</sup> All objects with heritage value must be entered in the register as an individual piece or collection.<sup>[9]</sup>

## 3. Searching for archaeological remains and violations

The first paragraph of Article 26 implies that the finder of an archaeological item is obliged to ensure that the find is not damaged and that it remains

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<sup>[5]</sup> “Archaeological remains“ are in CHPA-1, Article 3, more broadly defined as items and evidence of human activity on the surface of the land or below the soil and water, the conservation and study of which would enhance existing knowledge of the historical development of humankind and its connection with the natural environment, the main sources of information of which are archaeological researches or discoveries, and which may be assumed to have been under the soil or water for at least 100 years, and to have the properties of heritage. Professionally identified and registered archaeological remains become heritage.

<sup>[6]</sup> Rules on the Registry of Types of Heritage and Protection Guidelines (the Official Gazette of the Republic of Slovenia no. 102/10), which came into force January 1, 2011.

<sup>[7]</sup> A national treasure can also be (in context of coins) inventoried as a part of a collection of a museum which has been registered in the register referred to in Article 87 of this Act, or as a fixture or a part of a collection of a church or other religious community, or has cultural value for the Republic of Slovenia due to its importance.

<sup>[8]</sup> CHPA-1, Article 10 on national treasure, Article 26 on the finding of an archaeological remain, Article 53 on the storage of archaeological finds and obtainment of certificates of origin, Article 31 on protection approval for research and removal of heritage, Article 135 on reporting of an archaeological find.

<sup>[9]</sup> CHPA-1, Article 9.

in the site and position where it was found. The finder, the landowner and (in the case of construction work being carried out on the site of the find) the developer or manager responsible for the works, must inform the Institute for the Protection of the Cultural Heritage (hereafter “IPCH”) about the find the next working day at the latest. The CHPA-1B added two new paragraphs stating that the IPCH shall issue the finder, the owner of the land and the person who notified the find, a decision whether the archaeological remain is in accordance to this law. As previously mentioned, the owner of the movable archaeological remain which is legally recognized as heritage, is the State. An appeal against the decision of the IPCH does not hold on to the handing over the movable heritage to the competent museum.

The accidental finder of a movable archaeological find or remain which has been considered to be a heritage, can obtain a reward if he acted according to the law<sup>[10]</sup>. This applies especially in the case when the find is of exceptional significance. The reward must not exceed the value of the found object. Prior to the issue of protection approval for research or a search for archaeological remains, protection conditions must be obtained from the IPCH<sup>[11]</sup>.

Searching for archaeological remains and the use of metal detectors or other technical means, is allowed with the permission from the IPCH<sup>[12]</sup>, and such work can be conducted not by persons with the technical competence for carrying out archaeological research, but only by persons with the technical competence to search for archaeological remains. Vendors of metal detectors are obliged to inform their purchasers that it is prohibited to use them for researching archaeological remains without authorization. A person who uses a metal detector for finding archaeological objects will be fined with a penalty of € 2,000 to 40,000 with the possible seizure of his equipment.<sup>[13]</sup>

If an inspector determines that unauthorized works on heritage or a monument have been or are being carried out, he may issue one or more inspection measures<sup>[14]</sup>, with violations and penalties having been regulated<sup>[15]</sup>. A fine from € 1,000 to 4,000 will be imposed on anyone who fails

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<sup>[10]</sup> CHPA-1C, Article 26a.

<sup>[11]</sup> CHPA-1C, Article 29.

<sup>[12]</sup> CHPA-1C, Article 32.

<sup>[13]</sup> CHPA-1, Article 127, paragraphs 1 and 4.

<sup>[14]</sup> CHPA-1C, Article 115. Those measure are: all works to be halted; obtainment of cultural protection conditions, permission, permission for research and removal of and archaeological remain or heritage, if these were not obtained prior to the works; obtainment of changed cultural protection conditions, a changed permission for research and removal of archaeological remains or heritage, if the works were not implemented according to the terms or permissions or they were exceeded; remediation; or alternative measures.

<sup>[15]</sup> CHPA-1C, Articles 126 and 127.

to notify the IPCH about the finding of the archaeological remain,<sup>[16]</sup> or does not possess a certificate of its origin<sup>[17]</sup>. Anyone who encroaches the finding place or implements works or the removal of the archaeological remains without permission or protection approval is liable to a fine of € 2,000 to 40,000<sup>[18]</sup>. Damaging or destroying remains that are of special cultural importance or natural value is a criminal offence and punishable by up to five years of imprisonment.<sup>[19]</sup>

#### 4. Trading and transfer/export of cultural heritage

The trade, transfer, import and export of heritage are specifically regulated<sup>[20]</sup>. The seller of the types of heritage entered in the registry,<sup>[21]</sup> must be registered by the Ministry in accordance with the regulations governing the court register and the standard classification of activities. The aim of keeping this register is to gather accurate information on the trade in cultural heritage in order to prevent unlawful activity. The dealer must keep evidence of his purchases, sales and other transactions involving cultural heritage, a description and the selling price, the data on the previous owner and on the purchaser. He is obliged to verify the heritage's origin "with dutiful concern", which is defined as verifying the origin of movables with values of heritage based on accessible data from evidences, registries and other data on the web, institutions and the vendors.<sup>[22]</sup> It also imposes that the evidence of purchases, sales and other transactions is stored permanently. If the dealer does not register his activity, instead of a fine from € 1,000 to 4,000, he is now liable to a fine of € 2,000 to 40,000. The same applies to who fails to verify the origin of the item he is trading.<sup>[23]</sup>

The transfer of movable heritage<sup>[24]</sup> and national treasure to another country, whether a EU member state or not, is subject to an authorization by the Minister. The obtaining of a licence for import or export is regulated since 2011.<sup>[25]</sup> There are three forms of licences, temporary or permanent: (1) a standard licence that can be issued for temporary or permanent export, for a single object or group of objects; (2) a general licence (valid for a maximum of five years) that may be issued for every temporary

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<sup>[16]</sup> CHPA-1, Article 26.

<sup>[17]</sup> CHPA-1, Article 53.

<sup>[18]</sup> CHPA-1B.

<sup>[19]</sup> Criminal Code (The Official Gazette of the Republic of Slovenia no 50/12, 6/16, 54/15, 38/16, 27/17 and 23/20). Penal Code, Article 219.

<sup>[20]</sup> Articles 45, 46 and 47

<sup>[21]</sup> Referred to in the CHPA-1, article 10, paragraph 5.

<sup>[22]</sup> CHPA-1, Article 9, paragraph 1.

<sup>[23]</sup> CHPA-1, Article 127, paragraph 9.

<sup>[24]</sup> Referred to the CHPA-1, Article 10, paragraph 5.

<sup>[25]</sup> Rules on the Procedure for Issuing Licences for Export and Removal of Cultural Heritage (The Official Gazette of the Republic of Slovenia, no. 26/11), which came into force on June 7, 2011.

transfer or export of any object that is part of the permanent collection of a museum or other institution housing a collection; (3) a special open licence (valid for a maximum of five years) that can be issued for the repeated temporary transfer or export of a specific object, whose owner or possessor is a specific person or organization who will use or exhibit the object regularly. A fine of € 2,000 to 40,000 shall be imposed on anyone who does not possess a permit for the transfer or export of the movable heritage,<sup>[26]</sup> or who fails to present the permit at import.<sup>[27]</sup>

Whilst it was previously allowed to permanently export a national treasure<sup>[28]</sup>, providing that it did not impoverish the country's holdings, it is now prohibited by the CHPA-1C, with the exception of a museum exchange. Coins that are archaeological material are considered national treasure and are therefore not allowed to be permanently transferred or exported, unless for museum exchange. Coins that are not archaeological finds and are classified as national treasure or monuments or movable heritage are subject to limit trade control thresholds. The State has pre-emption right. Items of cultural heritage may be introduced or imported into the Republic of Slovenia without a license, unless the country of origin requires an export license.

If a national treasure was unlawfully removed from the Republic of Slovenia, the Ministry coordinates its recovery<sup>[29]</sup>, as well as the recovery of unlawfully removed movable heritage from another state and introduced into the Republic of Slovenia.<sup>[30]</sup> The recovery of unlawfully removed movable heritage from Member States of the European Union to the Republic of Slovenia and from the Republic of Slovenia to the Member States of the European Union is subject to The Law on the Return of Unlawfully Removed Objects of Cultural Heritage.<sup>[31]</sup> The request for heritage recovery must not be submitted later than 30 years from when it was unlawfully taken, or no later than 75 years, if it belongs to a public or church collection, another religious community, or if it enjoys special protection in the state of origin.

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<sup>[26]</sup> Pursuant to paragraph 1 of Article 46 of this Act

<sup>[27]</sup> Pursuant to Article 47 of this Act.

<sup>[28]</sup> By the new definition in Article 10 of the CHPA-1C, a national treasure is in terms of archaeology a more than a 100 years old archaeological find, which originates from excavations and sites on land or under water on the territory of the Republic of Slovenia and is recognized as heritage. It can also have the status of a monument; be a part of a more than a 100 years old displayed immovable object; inventoried as part of a museum collection, part of a collection of a public archive, a public library, a church or other religious institution; or has cultural value for the Republic of Slovenia.

<sup>[29]</sup> Pursuant to Article 48 of this Act.

<sup>[30]</sup> Pursuant to international treaties to which the Republic of Slovenia is a signatory

<sup>[31]</sup> Return of Unlawfully Removed Objects of Cultural Heritage Act (The Official Gazette of the Republic of Slovenia, no. 126/03 and 8/16), which came into force on May 1, 2004.

## 5. Solutions for coin collectors

The laws imposed by the CHPA-1 threatened coin collectors, who might see their collections become state property, and who feared not to be able to continue collecting. Declaring movable archaeological objects, or archaeological find<sup>[32]</sup>, to be state property, though merely assumed to have the properties of archaeological cultural heritage, did not conform with the Constitution, as they only become cultural heritage through society's assessment.<sup>[33]</sup> And the declaration of collections as portable monuments of national importance would lead to the nationalization of private collections.<sup>[34]</sup> Anyone with coins that are older than 100 years must possess a certificate of origin<sup>[35]</sup>; if not, the owner was obliged to report them within one year from the time the law came into force<sup>[36]</sup>. The lack of a certificate itself would be a violation of the law and liable to a penalty of € 400 to 1,200<sup>[37]</sup>, but many collectors acquire coins by means of exchange and therefore often do not have such certificates.

The Constitutional Court ordered the National Assembly of the Republic of Slovenia to remedy the established inconformity. The solutions brought by the CHPA-1B were following. A wide enough definition of the proof of origin provide adequate legal security of the archaeological finds owners (even a previous owner's or other witness' statement would suffice)<sup>[38]</sup>. The obligation to possess a certificate of origin for an archaeological object or collection, regardless of the time of obtainment, could only apply to objects found after the CHPA-1 came into force, but he must notify the Ministry about it.<sup>[39]</sup> The duty to report does not apply for archaeological finds that do not originate from the Republic of Slovenia, or that were found or otherwise obtained in the territory of the Republic of Slovenia before the

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<sup>[32]</sup> CHPA-1, Article 6, first paragraph.

<sup>[33]</sup> U-I-297/08 - The decision of the Constitutional Court on the petition of the Slovenian Numismatic Society.

<sup>[34]</sup> The question was raised whether every ordinary bronze coin, 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 (Alenka Miškec, 2011. Slovenian Laws Regarding Coin Finds. *Compte rendu* 58, p. 11-14: p. 13).

<sup>[35]</sup> Article 53.

<sup>[36]</sup> Article 135.

<sup>[37]</sup> Article 127.

<sup>[38]</sup> CHPA-1, Article 3, new paragraph 6. The new definition about the "certificate of origin" (Article 3: "a document, such as an inheritance settlement, export license, a will, a contract, a court or administrative decision, an extract from sales records, or other authentic document from which it is evident that the person obtained the archaeological find or collection. A certificate of origin can also be an expert opinion, a statement from the previous owner or other witness, or other documents, such as photographs, videos, publications, etc.")

<sup>[39]</sup> CHPA-1, Article 53, new paragraph 2. Therefore, it cannot apply for all objects found after July 31, 1945, but only for objects found after the CHPA-1 came into force.

legislation which defines archaeological finds as state property came into force, or were by the regulations before the CHPA-1 Act came into force, not defined as heritage. Even so, all archaeological finds had to be reported in one year since the CHPA-1 came into force. Therefore, in order to trade, all archaeological finds must have a certificate of origin and obtain an approval from the Ministry.

If it is determined that the coin does not originate from the Republic of Slovenia, or that it was found or otherwise obtained before July 31, 1945 when the Protection Act of Cultural Monuments and Natural Monuments<sup>[40]</sup> came into force, or that the regulations which applied at the time of its acquisition did not classify it as a State-owned heritage, then it remains in the possession of the person who owned by the time of reporting it.<sup>[41]</sup>

If the owner of the archaeological find doesn't have a certificate of origin, then the Ministry of Culture will initiate the procedure of finding out whether it complies to the definitions of becoming property of the state.<sup>[42]</sup> The decision will be based on professional opinion, grounded on the review of the find by the state (or an appointed museum). The decision of the Ministry will serve as a certificate of origin, for the need of storing on the territory of the Republic of Slovenia, but will be neither a certificate of ownership nor an export permit.<sup>[43]</sup>

All archaeological finds from the Republic of Slovenia, that were found after July 31, 1945,<sup>[44]</sup> are property of the State, unless the possessors have a certificate of how the ownership was obtained; or unless the Minister decides that they do not have cultural value for the Republic of Slovenia and are therefore not a national treasure;<sup>[45]</sup> or unless an authorized person from the IPCH, the state or the authorised museum, decides that the find does not have heritage-value.<sup>[46]</sup> The possessor of a find must allow documenting and researching the find for the needs of the professional opinion.<sup>[47]</sup>

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<sup>[40]</sup> The Official Gazette of the Democratic Federal Yugoslavia, no. 54/45.

<sup>[41]</sup> CHPA-1, Article 53, new paragraph 5.

<sup>[42]</sup> CHPA-1, Article 53, new paragraph 3.

<sup>[43]</sup> CHPA-1, Article 53, new paragraph 6.

<sup>[44]</sup> When the Protection Act of Cultural Monuments and Natural Monuments (The Official Gazette of the Democratic Federal Yugoslavia, no. 54/45) came into force.

<sup>[45]</sup> CHPA-1, Article 10.

<sup>[46]</sup> CHPA-1, Articles 26 and 135. As defined by Article 1 of the CHPA-1, heritage are resources inherited from the past which Slovenes, members of the Italian and Hungarian ethnic communities, and the Romani community, as well as other national of the Republic of Slovenia, determine to reflect and express their values, identities, religious and other beliefs, knowledge and traditions. The concept of heritage includes features of the environment which have been shaped over time by the interaction between people and place.

<sup>[47]</sup> CHPA-1, Article 53, new paragraph 4.

Coin collectors were very satisfied by the decision of the court which obliged the CHPA-1B to come into force, as it allows to continue collecting coins and other archaeological objects. With its decision, confirmed by all constitutional judges, the Court provided the constitutional protection of rights with which the former CHPA-1 and repressive bodies, in order to improve the traceability of movable cultural heritage and determine the status of movable property, interfered with.

## **6. Summary**

All excavated items after July 31, 1945 belong to the Slovenian State, and it is prohibited to search for them with the aid of equipment such as a metal detector without approval and technical competence. But an occasional finder, if he didn't damage the find or the site, and immediately informed the authorities, can receive a reward. All coins excavated in Slovenia after July 31, 1945 that are more than a 100-years old are considered national treasures can never be given a licence for indefinite export, except in the case of a museum exchange. But not all coins are classified as such, and the commerce of those that aren't is allowed, providing that the dealer ensures due-diligence and keeps records of the vendors and of the purchasers.