

## THE LAW AND PRACTICE REGARDING COIN FINDS

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PROTECTION OF CULTURAL HERITAGE IN TURKEY

The history of the protection of Turkish cultural heritage officially began with the introduction of the antiquities bylaw of 1869 (*Asar-ı Atika Nizamnamesi*). This bylaw banned antiquities from being taken out of the borders of the Ottoman Empire without first receiving a special permission. It also introduced regulations for conducting archaeological excavations. The next bylaw is from 1874 and is considered to have been a very important step towards protection, and to have brought limits to the extent of the Sultan's power in these matters. However, at the time there was significant objection raised against the 3<sup>rd</sup> article in the first part of the bylaw, which stipulates that artifacts found in archaeological excavations were to be equally distributed in thirds between the excavator, landowner, and the state. An attempt made on 8 February 1875 to modify this bylaw failed.

On 21 February 1884, a newly revised bylaw of antiquities (*Asar-ı Atika Nizamnamesi*) was introduced, which established that antiquities were property of the state, and could only be taken abroad in exceptional circumstances with an official permission.

On 23 April 1906 minor changes were made to some articles of this bylaw, which was formulated in such a way as to address needs that would arise many years into the future. It remained in use for nearly half a century into the Republican period and became the basis for today's Law no. 2863 on the Protection of Cultural and Natural Heritage.

Guidelines for the protection of immovable antiquities not clearly defined in this bylaw were further developed and clarified in the bylaw of the protection of monuments (*Muhafaza-i Abidat Nizamnamesi*) of 28 July 1912. On 31 January 1915 the bylaw was completed with an interim law.

After the collapse of the Ottoman Empire and the subsequent foundation of the Turkish Republic in 1920, the constitutions of 1921 and 1924 stipulated that laws of the Ottoman period would remain effective until new ones were introduced. An addition to these laws was made in 1951 with the establishment of the Law of the Formation of the High Council of Immovable Antiquities and Monuments. The protection of antiquities was further revised by Law no. 1710 on Antiquities adopted in 1973.

Today the regulations for the protection of cultural heritage are specified by Law no. 2863.

The aim of this law adopted on 21 July 1983 is to provide the basis for identifying movable and immovable cultural and natural heritage, and to establish the legal regulations, functions, and procedures for its protection.

The definition of cultural heritage, which is the subject of this article, is stated in the first article of the law (Var. 14/7/2004–5226/1 art.) as: “all movable and immovable assets of scientific, cultural, religious, and artistic value found either on land, underground, or underwater, from the prehistoric and historic periods; or those of the prehistoric or historic periods which have a unique scientific or cultural significance from the perspective of their place in social life.”

The definition of sites where this heritage is found is described by the 3<sup>rd</sup> article, which identifies a protected site as, “a place considered necessary to protect, which is the product of civilizations of the prehistoric to present day, and which has social, economic, and architectural features that reflect the city and ruins of the city of those periods; a place of social settlement with a concentration of cultural heritage; a place where important historical events transpired; or an area identified as having unique natural characteristics”.

The 4<sup>th</sup> article of the law sets forth that, “when one discovers, or is informed of, or made aware of this type of heritage, one is obligated to inform, at the latest within three days, the nearest museum directorship, the village headman (*muhtar*), or the local administrator of the presence of this heritage”. The duties and responsibilities of the relevant authorities for the next step in this process are also described in the same article of the law.

Another important matter is related to the subject of ownership. The law’s 5<sup>th</sup> article explicitly states, “existing immovable heritage requiring protection which belongs to the state, public institutions, and organizations; as well as any found in the ownership of real and legal persons governed by specific jurisdiction; and any movable and immovable cultural and natural heritage which may appear in the future are considered the property of the state”.

The definition of movable cultural and natural heritage is provided in the 23<sup>rd</sup> article of the law, which according to its clause A (Var. 17/6/1987–3386/9 art.) includes, “all types of cultural and natural assets of the geological, prehistoric, and historic periods which from the perspective of geology, anthropology, prehistory, archeology and art history have a documentable value and which reflect the social, cultural, technical and scientific characteristics and achievement level of their periods”. Also included within the scope of this definition are all types of animal and plant fossils, human skeletons, and small finds, metal objects, pictures, books, documents, insignia, coins, medals, tools, instruments, etc.

An important detail regarding coins described in this article of the law is that, “only coins of the reigns of the Ottoman sultans Abdülmecit, Abdülaziz, Murat V, Abdülhamit II, Mehmet V (Reşat) and Vahidettin are, according to this law, permitted to be bought and sold within the country without being subject to registration. It is emphasized that apart from these, all other coins are subject to the general provisions of the law.

Included among the movable cultural heritage requiring protection “as a result of its importance for national history are documents and objects of significant historical value belonging to the National War of Independence and the foundation of the Turkish Republic, and personal items, documents, books, writings and similar movable objects belonging to Mustafa Kemal Atatürk”.

Cultural heritage of an ethnographic nature defined in clause A of the 23<sup>rd</sup> article of the law are free to be purchased, sold and transferred within the country; and the details of this process are set by regulations.

Similarly, movable cultural property belonging to the National War of Independence, history of the Turkish Republic, and Atatürk, can also be purchased by relevant official institutions within the country. However, under any circumstance when such assets are being taken out of the country, their inspection is done by museums of the Ministry, and at some customs exits by designated expert staff. Upon the completion of the inspection, items whose status is questionable to leave the country are to be returned to their owners on the condition that they are reevaluated within the country. The state reserves preferential right with regard to the artifacts identified in this article of the law and those which are free to be purchased and sold according to this law.

In the 24<sup>th</sup> article (Change: 17/6/1987–3386/10) of the law it is clearly stated that “movable cultural and natural heritage” in need of protection considered to be property of the state must be kept by the state and in museums, and that their protection and evaluation is the responsibility of the state. According to the same article of the law it is emphasized that such assets found in the possession of real and legal persons can be purchased at their value by the Ministry.

The 25<sup>th</sup> article of the law defines the principles and procedures for movable cultural heritage that must be protected in state museums. The regulations for museums, private museums, and collectors are set by the 26<sup>th</sup> article. Real and legal persons are permitted to keep and display movable cultural heritage on the condition that they strictly follow the provisions set forth in the permission issued to them by the Ministry of Culture and Tourism. These museums are accorded the status of a state museum with regard to

the protection of movable cultural heritage. Their purpose and function, and the form and conditions of their administration, as well as their supervision and inspection are also determined by regulations.

Real and legal persons can with a permission document issued by the Ministry of Culture and Tourism create collections consisting of movable cultural heritage that needs to be protected. However, collectors must report all their activities to the Ministry of Culture and Tourism, and, in accordance with the regulation, record the movable cultural heritage in an inventory book.

### **Requirement to notify authorities**

Public entities and organizations (municipalities, provincial administrations, foundations, real and legal persons) with movable cultural and natural heritage amongst their properties and estates to be sold, or those that are to be subject to sale at auctions, must, according to article 30 of the law, first inform and show them to the state museums. The Ministry of Culture and Tourism may purchase collections consisting of cultural and natural heritage at the price to be established by a committee formed by the Ministry. Those which have been transferred to the State Treasury and are deemed necessary to be included in museum collections are transferred to the Ministry of Culture and Tourism according to the provisions of the regulations on State Movable Properties. In such cases, the Military General Staff must be informed and shown collections consisting of cultural assets related to military history, weapons, and military materials. Of these, the cultural assets deemed necessary to be transferred to the Treasury and included in collections of military museums shall be transferred to the Ministry of Defense according to the provisions of the regulations on State Movable Properties.

### **Restrictions on taking movable cultural and natural heritage abroad**

Article 32 of the law clearly stipulates that movable cultural and natural heritage that require protection in the country are not allowed to be taken abroad. This article permits artifacts to be temporarily exhibited abroad only if deemed appropriate in the interest of the country, provided that they are returned to the country after exhibition. Such permission is subject to a resolution of the Cabinet of Ministers to be taken upon consideration of the recommendation of the Ministry of Culture and Tourism and the decision of a scientific committee organized by the Ministry of Culture and Tourism consisting of chairpersons of Archeology and Art History departments of higher education institutions. The terms and conditions regarding the matter shall be specified under regulations to be established jointly by the Ministry of Culture and Tourism, the Ministry of Defense, and the Ministry of Foreign Affairs.

According to the 33<sup>rd</sup> article of the law, the transfer of cultural assets from abroad into the country is freely permitted.

Permission for survey, soundings and excavation is described under article 35 of the same law, which stipulates that the right to do survey, soundings and excavation solely belongs to the Ministry of Culture and Tourism.

The survey permit for Turkish and foreign teams and institutions whose scientific and financial competency is accepted and approved by the Ministry of Culture and Tourism shall be issued by the Ministry of Culture and Tourism; while the permit to conduct soundings and excavation shall be issued with a resolution of the Cabinet of Ministers upon the proposal of the Ministry of Culture and Tourism. This article of the law also specifies the responsible entities, duties, etc., and details regarding these types of activities. This same article also has regulations about the regions where underwater cultural and natural heritage are required to be protected. Diving for purposes of sport in such protected regions specified by the Ministry of Culture and Tourism and published by the resolution of the Cabinet of Ministers is banned.

Articles 36–49 include other provisions for excavations. Article 41 concerns artifacts found in excavations. According to this article, all movable cultural and natural heritage discovered in excavations conducted by an excavation team and institutions is required to be transferred at the end of the excavations each year to a state museum designated by the Ministry of Culture and Tourism. Relevant regulations for institutions are also specified in this article.

According to the regulation in article 50 of the law, citizens of the Republic of Turkey who want to search for treasure, can be issued a license to search for treasure, on the condition that they do not do this in places which are specified in article 6 of this law as areas with immovable cultural and natural heritage to be protected, nor in registered and protected sites and cemeteries. A person is not permitted to search in more than one location at a time and this permission cannot be transferred to someone else. Another person cannot be deputized for the job as well. It is also obligatory to specify the date of the search and to be under the supervision of security officers and the relevant museum. This article of the law also provides further guidelines on this matter.

The sixth section of the law is about bonuses and fines. Bonuses to be given to those who find cultural heritage and the guidelines for the relevant regulations are specified in article 64. The conditions and the amounts of bonuses are also determined and declared by the Ministry of Culture and Tourism.

Article 67 (change: 23/1/2008–5728/410 art.) includes regulations about those who act contrary to the requirement to inform, and who engage in the illegal trade of cultural heritage. Accordingly:

“Those who deliberately violate the requirement to inform regarding cultural and natural heritage and or do so without an excuse shall be punished with imprisonment for six months to three years.

Those who attempt to sell, give, buy, or accept cultural and natural heritage that has not been declared shall be punished with imprisonment for two to five years and be subject to a judicial monetary fine of up to five thousand days. In this case, they cannot also be punished for the offense defined in the first paragraph.

Those who trade without permission movable heritage that is authorized to be traded shall be punished with imprisonment for six months to three years.”

Those who violate the ban on exporting abroad are specified in article 68 (change: 23/1/2008–5728/411 art.). According to this article, “Those who take cultural and natural heritage abroad in violation of this law shall be punished with imprisonment for five to twelve years and be subject to a judicial monetary fine of up to five thousand days”.

The 69<sup>th</sup> article of the same law (Different: 23/2008–5728/412) stipulates that according to the guidelines of the 29<sup>th</sup> article of the law, those who oppose the inspection and examination of their workplace and depots, and, according to the 41<sup>st</sup> article, the excavation team and institutions who violate the requirement at the end of excavation each year of transferring all the movable cultural and natural heritage found during the excavation to a state museum designated by the Ministry of Culture and Tourism will be sentenced to six months to one year of imprisonment and a judicial monetary fine.

The status of those who own private property is regulated by the 70<sup>th</sup> article (Different: 23/1/2008–5728/413). According to this article, those who violate the 24<sup>th</sup> article of the law are sentenced to one to three years of imprisonment and subject to a judicial monetary fine of up to three thousand days.

The punishment for those who violate the rules governing excavation, soundings and surveys is specified by the 71<sup>st</sup> article (Different:23/1/2008–5728/414). Those who violate the 38<sup>th</sup>, 42<sup>nd</sup> and 43<sup>rd</sup> articles of the law are subject to a judicial monetary fine of no less than one hundred days.

According to the 74<sup>th</sup> article (Different: 23/1/2008–5728/416), those who conduct excavations and soundings without permission with the aim of

finding cultural heritage, are sentenced to one to five years of imprisonment. Those who search for treasure without permission are sentenced to three months to two years of imprisonment. However, if the aim is to smuggle the artifacts abroad, or if the crime is committed by the people who are authorized with the security of the cultural heritage, then the punishment doubles.

According to the 75<sup>th</sup> article (Different: 23/1/2008–5728/417), the seized artifacts are consigned to a museum.

### **Detector**

According to the relevant article of the Malta Act, to which Turkey is also a part, even if it is for an archeological purpose, detectors can only be used when necessary for scientific pre-research, and their use requires permission. In all other cases the use of detectors is banned.

The preservation of cultural heritage in Turkey is granted by Law number 2863 as well as the 63<sup>rd</sup> article of the present constitution.

### **Further Reading**

On the website of the Republic of Turkey Ministry of Culture and Tourism ([www.kultur.gov.tr](http://www.kultur.gov.tr)) under ‘Kültür Varlıkları ve Müzeler Genel Müdürlüğü İle İlgili Mevzuat’ further information and the full text of the law regarding the protection of heritage in Turkey are provided.

Z. Ahunbay, *Tarihi Çevre Koruma ve Restorasyon*, Istanbul 1996.

S. Güran, “The Judgement on the Elmalı Hoard”. ADALYA V, 2001–2002, pp. 249–254.

S. Kanadoğlu, *Kültür ve Tabiat Varlıklarını Koruma Hukuku*. Ankara 2003.

A. Mumcu, Eski Eserler Hukuku ve Türkiye. *Ank. Ün. Hukuk Fak. Derg.* XXVI/3–4 (1970). pp. 45–78 ve XXVIII/1–2 (1972), pp. 41–76.

H. D. Szemethy, *Die Erwerbungs geschichte des Heroons von Trysa, Ein Kapitel Österreichisch –Türkischer Kulturpolitik*, mit einem Beitrag von Ş. Pfeiffer-Taş, *Wiener Forschungen zur Archaeologie*, Band 9, Wien 2005, with further literature.