# LEGAL LIMITATIONS OF THE RIGHTS OF INTERNATIONAL ARCHAEOLOGICAL EXPEDITIONS IN THE UKRAINE

An investigation into the legal possibilities for the protection of archaeological cultural property seems in particular to make sense if - apart from an analysis of the relevant international and European regulations - the requirements of the law of countries rich in antiquities are also taken into consideration, as these laws are of great importance for the international transfer of cultural property and are at the same time rather unknown.

Today's Republic of Turkey with its more than 7 000 archaeological sites from various ages of human history is facing serious problems concerning its archaeological cultural property: There is an increasing number of illegal excavations, lootings and destruction of sites as well as treasure hunts and illegal trade with archaeological cultural property. The Turkish Law on the Protection of Cultural and Natural Property was meant to meet many of the well-known challenges and serious problems. But lots of questions still remain unsolved. This is why there seems to be urgent need for an explanatory and interpretative examination of existing Turkish law in the context of the international protective regime [1].

The Turkish Law on the Protection of Cultural Heritage covers cultural as well as natural property [2]. Cultural Properties within the meaning of the Turkish Law are all movable and immovable properties above and under ground or under water, of prehistoric or historic periods, that are related to science, culture, religion and fine arts or which are marked by the value of originality in terms of science and culture and which were objects of social life in prehistoric and historic periods (Art. 3 Turkish Law on the Protection of Cultural and Natural Property). Hence, there are basically two groups of cultural property: on the one hand movable and immovable cultural properties which are related to science, religion and fine arts and on the other hand cultural properties which have a value of originality and were objects of social life.

The law uses the term "cultural property", which replaced the previous term "eski eser". The latter means "antiquities" and had been singularly used until it was

replaced. It is a very wide concept which even exceeds the concept of "property"; the word "varlik" in current use is derived from the verb "var" ("there is") and means the mere existence of an object without any further evaluation or limitation.

A controversy at the heart of the law is the right of the state to the ownership of cultural property. This has in the meantime - although the wording is unnecessarily confusing - been recognised by the prevailing doctrine and judicature. Art. 5 of the Law on the Protection of Cultural Heritage states that movable and immovable cultural and natural properties requiring protection which are known to exits or which may be discovered in the future generally qualify as state property.

The ambiguous terminology regarding the use of the words "qualify as state property" was introduced in 1983 and since then has led to serious problems of interpretation by foreign courts. Nonetheless, it seems to be clear that the change in terminology was not intended to effect a substantive change in law, but was just a more elegant way of saying that newly discovered artefacts "are state property". It can hardly be argued that the legislator had intended to mitigate its statement by selecting this word.

Also in the Turkish Civil Code there are corresponding provisions to be found: Art. 696 governs the legal position concerning property when it comes to treasure troves and explicitly excludes "finds of scientific value" from the scope of application of this provision. For "finds of scientific value" Art. 696 Turkish Civil Code refers to special provisions in specific laws dealing with these finds. And Art. 697 Turkish Civil Code explicitly states that antiquities - amongst others - are state property.

Of high importance is furthermore the introduction and consequent use of a functioning inventory system. Without inventory, it will be almost impossible to protect archaeological cultural property. Here the protective system is extremely vulnerable: Looted sites can easily be detected afterwards, but one will never be able to establish what was there if no inventory of these objects had been made before. Only what is on the inventory can also be protected.

On the other hand, a definition of something as cultural property must not be dependent on a previous inventory. This would be fatal especially in the field of archaeological cultural property, as its existence is often not known and inventorying before the classification as cultural property is in many cases practically impossible. The Turkish Law on the Protection of Cultural Property consequently abstained from considering an inventory as a prerequisite for the classification as cultural property.

It is of major importance to cover practically all sites in Turkey as far as possible and to register them in state catalogues. It is *in praxi* not possible to monitor and control all sites permanently; hence it is even more necessary to raise the awareness of society accordingly.

In this era of globalisation when the world becomes smaller every day, an exclusively national protection of cultural property no longer makes sense. The only way to improve the situation, especially for "source-countries" like Turkey (and most of the other countries on the Mediterranean's Southern and Eastern shores), is to encourage more and better international conventions, the ratification of existing ones, a detailed comparison with other legal systems and improvement of national legal provisions where necessary.

A scientific exchange with experts in the field of archaeological research is indispensable in order to recognise these particular protection requirements and also to evaluate how to achieve a maximum effectiveness in protecting archaeological cultural heritage. I am of the opinion that without a mutually stimulating cooperation between archaeologists and jurists any legal regulation in the field of protection of cultural property is doomed to fail, no matter how many words are used and ideas are born. There is rising hope that this is now being understood also by the legislators.

[1] During the last years Turkish newspapers increasingly headline with newly excavated archaeological finds - one of the latest and most spectacular ones was a 80 cm tall, 350 kg heavy, very laboriously made marmoreal bust of Marc Aurel, (dated between 161-180 A.D.), which was found towards the end of 2008 in the ancient site Sagalassos in the southern Turkish province of Burdur. See e.g. Hürriyet, 23.8.2008, p. 24; Turkish Daily News, Weekend 23.-24.8.2008, p. 2; Cumhuriyet, 27.8.2008, p. 20. But there also is growing interest in scientific excavations in Zeugma, Didyma, Sardes, Termessos, Antandros and Selge. The "hype" began back in 2008: See "Zeugma excavations continue", Turkish Daily News, 18.8.2008, p. 20; "Didyma being excavated and restored", Turkish Daily News, 18.8.2008, p. 4; "Arkeolojik sürprizler" (Archaeological surprises), Hürriyet, 25.8.2008 etc.
[2] Here the system of the Turkish cultural property protection differs considerably from the system of Austrian protection of historical monuments, whose concept of monuments only covers objects formed by mankind.


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