The System of Organisation of Czech Archaeology and the Protection of Archaeological Heritage

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Abstract
The first legal measures for the protection of archaeological finds in the regions of Bohemia and Moravia (the historical regions of the Czech Republic) were already taken in the first half of the 19th century. The real regulation, however, arrived only with the state decree issued in 1941. The current law entered into force in 1987. The fundamental political, as well as social transformations that occurred in the Czech Republic two years later brought much higher demands on conducting rescue archaeological fieldwork. Even though the law was created in the conditions of Real Socialism with the centralized and state-subordinated economy, it is still, after more than twenty-five years, valid and applied in a democratic state and in free market conditions. Adaptations of the law in the new social and economic conditions were in most cases adopted with the approval of all involved parties. A series of regulations has been adopted that are more-or-less generally respected. Though the regulations are, generally, respected, their real enforcement still relies more on moral and ethical appeal rather than on the word of the law.

Keywords: legal acts, Czech Republic, archaeological heritage protection, contract archaeology
Introduction – Pre-WWII foundations

Foundations of the current archaeological heritage protection system were laid in 1919 when, shortly after establishment of the independent state of Czechoslovakia, the State Archaeological Institute was formed in Prague. This new state institution was subordinate to the Ministry of Education. Its major aim was conducting systematic archaeological fieldwork, focusing mainly on more extensive excavations that were beyond the capacities of regional museums. The State Archaeological Institute was intended as the leading authority in the field of quality of scientific work, and its tasks was also included the education of amateur associates in the archaeological departments in individual regional museums (see in Niederle, 1919).

However, in the period between the two World Wars, these goals were only partly achieved. The development of the Institute was significantly restricted due to two major factors: a shortage of funds prevented the employment of a sufficient number of specialists, and an absence of a legal framework, which would determine not only regulations for conducting archaeological fieldwork and treatment of archaeological finds, but also the status of the Institute. The level and quality of archaeological work remained rather low, and it was mostly due to the numerous enthusiastic amateurs, museum collaborators and various brief reports in the daily press that new discoveries were presented.¹

State Decree Nr. 274/1941

In spite of the gradual increase in the number of archaeological excavations since the 1930s (see Sklenář, 2011: 47), a law which would consolidate the approaches of participants dealing with archaeological finds, was not adopted during the entire interwar period. Among the most vociferous opponents to any regulation regarding archaeological fieldwork were mainly private collectors, who also quite often conducted excavations themselves. The State decree Nr. 274/1941 represented, in this respect, the principal turning point, since it also provided, among other things, the first legal definition of archaeological finds and clarified the status and tasks of the State Archaeological Institute. According to this law, the Institute was the only organisation that was legally entitled to conduct archaeological fieldwork and was also appointed as the major institution for the protection of archaeological monuments. Museums had frequently conducted archaeological excavations in the past, and could continue their activities, but only with the approval of the State Archaeological Institute, but

¹ Based on these fragmented and widely scattered reports, an archive was gradually built up in the Institute, until it subsequently became the most extensive professional (archaeological) archive in the Czech Republic (see in Rataj et al. 2003).
they had to employ professionally educated archaeologists. The decree also specified that the owner of archaeological finds, obtained in the course of archaeological fieldwork, is the state (at that time the Protectorate of Bohemia and Moravia).

Nevertheless, the mainsprings behind this decree are still not completely understood. From the historical evidence, it may be concluded that the Protectorate government probably followed similar ideas and intentions to those of the Dutch state, which passed similar Decree in 1940 (see Willems, 1997). Thus, the State Archaeological Institute that was not completely controlled by the Nazis, unlike the University in Prague, obtained some legal means allowing a certain degree of supervision over archaeological works of the German occupying power and its organisations such as e.g. Ahnenerbe (Vencl 2002).

Post-WWII development – Act Nr. 20/1987 on state landmark conservation

The provisions of the State decree Nr. 274/1941, regarding archaeology, were almost completely adopted in the new monument protection law (Act Nr. 22/1958 on cultural landmarks) in 1958. The only significant changes that have appeared since are those Act Nr. 20/1987 on state landmark conservation, which is still in force. The law was regarded as being very modern at the time of its adoption. It actually included several elements that were stipulated in the Valletta Convention, which was accepted five years later, in 1992 (see more in Mařík & Prášek, 2014).

The authors of the law could not predict the major political and economic transformations in the Czech Republic after 1989, and fall of the Communist regime. Paradoxically, a law created in the conditions of the totalitarian state suppressing all private civil and business activities, is still in force, after almost thirty years of democratic government and market economy. Despite a series of attempts to pass a new legal norm, only several partial amendments (mostly technical) have been adopted. Though the law was progressively adjusted to new social conditions, its limits have gradually become increasingly more visible, the foremost being weak control and sanction measures.

Institutes of Archaeology

In 1953, the State Archaeological Institute lost its ‘state’ designation and became the Institute of Archaeology incorporated into the newly established Academy of Sciences of Czechoslovakia, which centralised the majority of non-university research institutions. According to the 1987 Act, the Institute still has, in some respect, the position of the state administrative authority. All information regarding archaeological
fieldwork from the moment when application for development that could threaten archaeological finds, from reporting the launching date of the excavation to the final excavation report, are all addressed to the Institute of Archaeology. The Academy of Sciences also obtained new powers: it is the only institution with the authority to submit proposals for designation of an archaeological site or a significant find as cultural monument, and it has the power of veto in the process of obtaining a license for conducting archaeological fieldwork.

The original detached departments of the Prague Institute of Archaeology were gradually transformed to individual Institutes of Archaeology in Brno (1983) and in Nitra in Slovakia (1953). Currently, two Institutes of Archaeology are active in the Czech Republic, the Prague Institute in Bohemia and the Brno Institute in Moravia and Silesia. Both Institutes are independent and have equal legal status.

Even though the territorial division is based on good reasons, there are some serious problems in the practical fulfilment of obligations required by the law. Probably the most significant case is the absence of a unified information system for recording archaeological fieldwork and its results.

Currently, the Institutes of Archaeology and the Czech Academy of Sciences are often criticised for their role in the process of granting licences for archaeological fieldwork, as being in a conflict of interests, obstructing free competition and distorting the market environment. This criticism, however, is based on a misunderstanding of the existing archaeological heritage law and also ignores some other legal regulations. Relations of the Institutes of Archaeology with other authorised organisations can be characterised as ‘primus inter pares’. According to the law, the Institute of Archaeology is the only organisation directly entitled to conduct archaeological fieldwork, while licences to other organizations should be granted only in the case of need. The supposed application of free market principles (i.e. commercial archaeology) also represents a problematic issue. Archaeological fieldwork is not considered a business enterprise according to the Trade Act and it is not permitted to generate profit.

Licencing and licenced organisations

In addition to the Institutes of Archaeology, other organisations or natural persons (individuals) are also entitled to conduct archaeological fieldwork, based on the authorization (licence) issued by the Ministry of Culture of the Czech Republic. To obtain the licence the applicant has to employ at least one person with an MA

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degree in archaeology and a minimum of two years of working experience. The applicant also has to meet some other conditions, such as suitable facilities for the temporary storage of archaeological finds, and other equipment. However the latter is not specified in the Act.

Unlike the situation in other countries, the National Heritage Institute does not have such an important role in the organization of archaeological heritage management. The National Heritage Institute was founded by the Ministry of Culture as an expert institution, which primarily takes care of protected monuments, maintenance of inventories and preparing of expert opinions. As such it has no executive powers.

The licence to conduct archaeological fieldwork can be issued by the Ministry of Culture of the Czech Republic only upon the approval of the Czech Academy of Sciences. Approval of the Czech Academy of Sciences represents one of the most powerful regulatory measures that can influence authorisation. In its decisions, the Czech Academy of Sciences takes into account two major factors: the scientific intent of the organisation (mainly in the case of the university departments) and if there is a need for another licensed organisation in the system of archaeological heritage protection. New
licences are issued mainly for Regions where development activities and other interventions (e.g. coal mining, forest cultivation, specific agricultural works…) threaten archaeological heritage and there is not enough archaeological capacity to meet the demands for preventive works. Since, according to the law, archaeological fieldwork cannot be a profit-making activity, the licences are issued only for non-profit organisations.

When the applicant obtains the licence, he is obliged to make an agreement with the Czech Academy of Sciences, which specifies the conditions and extent of archaeological fieldwork allowed. This agreement usually designates the specific geographic area (district, region) where the licensed organisations are entitled to conduct the excavations. This agreement also specifies in more detail other obligations of the licensed organisation, which are only generally described in the Act (e.g. the responsibility for Excavation reports, which are then archived in the Institutes of Archaeology of the Czech Academy of Sciences) (Fig. 1).

Termination of the agreement by the Czech Academy of Sciences and, consequently, the revocation of licence, represent the only real sanctions. In practice, however, these terminations occur very rarely and only in the cases of long-lasting and repeated violations of the agreement by the licensed organisation. It should be also noted that almost no immediate sanctions for poorly conducted archaeological excavations exist.

![Fig. 2. Participation of licensed organisations on archaeological fieldwork in the Czech Republic since 1988.](image)

![Fig. 3. Number of archaeological fieldworks in the Czech Republic since 1988.](image)
The rather rapid development of private enterprises that occurred in the 1990s was associated with significant increase in development activities, which could not have been met by the state heritage protection organisations. The emergence of private enterprises to fill this gap was a logical solution in such situation (Fig. 2). Thus, private societies have gradually become an integral part of the system of archaeological heritage protection. In the last years, their annual share in the volume of archaeological excavations conducted has reached the level of 15-20 percent. However, the majority of excavations are still mainly conducted by regional museums (Fig 3). Altogether, 111 licensed organisations exist in the Czech Republic, of which 15 organisations have status of private enterprises.

**Conducting the archaeological fieldwork**

Since the 1990s most of the archaeological departments of regional organisations (museums and departments of archaeological conservation) were almost completely dedicated to development-led investigations. There has been a fourfold increase in the number of archaeological investigations since the end of the 1980s. Such a transformation of the social environment could not have been anticipated by the authors of the 1987 Act. In fact, the Act was relatively benevolent regarding the description of methods used in rescue excavations, with no strictly defined terms, rights and obligations and, last but not least, with a minimum of sanctions.

According to the Act, the archaeological excavation is initiated by a notice released by the developer wishing to develop within the ‘area with archaeological finds’ (legal term in the Act\(^4\)). The notice should be delivered to the responsible Institute of Archaeology of the Czech Academy of Sciences, in Prague or Brno. Even though definition of the term ‘area with archaeological finds’ is not included in the Act, in practice, a relatively extensive reading was applied: it represents an area where the occurrence of archaeological finds cannot be completely excluded, such as in the case of the open cast mines and similar areas (they do not represent an ‘area with archaeological finds’).

The obligation to announce any intervention in the ground is one of the positive characteristics of the otherwise outdated law. Although it is often overlooked by builders, more than ten thousand interventions in the ground are announced each year. Not all of the interventions develop into more extensive archaeological fieldwork.

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3 Czech Republic is divided in higher-level territorial self-governing units, thirteen regions (kraje) and one capital city (hlavní město).

4 It is not only land with positive evidence of archaeological finds but also land where archaeological finds cannot be excluded.
Archaeological finds are discovered only in 15-20% of cases. The remaining part is recorded as archaeological fieldwork with negative results. The data obtained can also be used in local planning or in verifying the risks of the encountering archaeological finds by private or public developers.

Due to rather limited capacities of the Institutes of Archaeology of the Czech Academy of Sciences notices are frequently transferred to licensed organisations active in the given regions. Notices regarding building and other activities, conducted in areas with archaeological finds that were submitted either to the Institutes of Archaeology of the Czech Academy of Sciences, can be accessed by any licensed organisation on the Internet portal The Internet Database of Archaeological Fieldwork (IDAF) (see in Mařík (2015).

Based on the notice, the Institute of Archaeology or any other licensed organisation can sign a contract with the developer for conducting rescue excavation. The licensed organisation is obliged to report the starting dates of excavations to the Institutes of Archaeology and, consecutively, also to deliver Excavation report.

Contracting parties for rescue excavations are, according to law, the developer and authorised archaeological organisation. When the agreement cannot be reached then the right to determine the conditions for rescue works is passed to the responsible regional authority. In practice, this is very rarely the case because the involvement of the government may cause several months of delays. Once the contract is signed, the state cannot control its implementation, what may have many negative effects and consequences.

Although the conduct of archaeological fieldwork cannot be considered business enterprise, the costs of archaeological fieldwork play a key role. Price dumping and underestimated costs frequently occur. As a result, there may be a reduction in quality of the fieldwork or an escalation in the costs during the fieldwork campaign. On some large scale development-led projects in the last three years, up to a threefold increase in the originally calculated costs has taken place. The situation was not caused, by rare finds, but due to the abuse of circumstances, when the developer was under considerable time pressure and was forced to accept the unethical approach of the other side. The absence of enforceable rules and effective supervision in the course of archaeological fieldwork represent a considerable problem not only to the archaeological heritage, but it also undermines the reputation of archaeology in public.

Under the current conditions the quality of fieldwork can only be evaluated from excavation reports, which are usually drawn up three years after the completion of fieldwork. The content of the find reports represents an integral part of the agreement between the authorised organisations and the Czech Academy of Sciences.

In 2010, the Institute of Archaeology CAS in Prague in co-operation with other licensed organisations developed a document entitled as ‘Rules of archaeological
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fieldwork⁵. It represents a summary of basic rules that should be followed in the course of archaeological research. However compliance, with this document cannot be enforced. Currently, the developers have begun to apply the ‘Rules of archaeological fieldwork’ and incorporate them into contracts. Thus, compliance is required by the builders, but not for reasons of archaeological heritage preservation, but mainly for concerns about the increase in control over the ongoing fieldwork and its costs.

Funding of archaeological fieldwork

It may seem strange that the Socialist government (Act 1987) had already included the ‘polluters pay’ principle for rescue works. According to the Act, expenses of rescue work should be paid by all developers with only one exception. Cost of rescue excavation caused by the non-profit project of a private individual (usually family house, garage, swimming pool, etc.) should be paid by the organisation conducting the fieldwork. A special fund was created for these cases by the Ministry of Culture (100,000 - 370,000 €). However this fund covers only about 50% of the real costs and the rest is paid from budgets of the Regions, Institutes of Archaeology and also private organisations.

This exception is currently understood by the majority of archaeologists as a certain type of relief for less wealthy developers. In fact, this is an example how the Socialist law was adapted to the market environment. Originally the authors of the Act did not presume existence of any legal person, which was not owned by state and they wanted only to differentiate the sources of the state finances that would be used for covering the fieldwork expenses. The state-owned enterprises should pay the rescue work directly, while the expenses of excavation caused by a private individual would be paid from budgets of state-owned organisations, such as museums and Institutes of Archaeology.

The total volume of expenses for conducting rescue archaeology is very hard to estimate. The contracts between developer and licensed organisation are not publicly accessible and annual reports of licensed organisations only give a general overview. The annual costs of archaeological rescue fieldwork in Czech Republic are estimated at 74 million €.

Archaeological heritage and its evidence

Currently, the Czech Republic protects eight archaeological reserves and 1309 archaeological sites as cultural monuments or national cultural monuments (see in

Tomášek, 2011). Considering the fact that more than three-quarters of protected archaeological sites were proclaimed prior to 1958 and the archaeological reserves were established between 1961 and 1966, it seems quite clear that the Valletta Convention, especially Article 2, did not have any significant influence on the preservation and protection of archaeological heritage in the Czech Republic. More significantly, evidence and protection of archaeological heritage have been affected by the implementation of electronic information systems that were launched in the 1990s. Two similar projects were launched. The first project, the ‘List of Archaeological Sites’ in the Czech Republic was created at the National Heritage Institute between 1995 and 2003 (see in Krušinová 2002; 2004). This project was originally aimed at obtaining digital maps of archaeological sites in the Czech Republic and creating an information system with assured continuous data updating. Currently, the List of Archaeological sites records more than 30,000 archaeological sites identified in the Czech Republic. The second project, the ‘Archaeological Database of Bohemia’ catalogues excavation reports on the results of archaeological fieldwork that are required by law to be submitted to the archives of the Institute of Archaeology of the Academy of Sciences of the Czech Republic, Prague (see in Kuna, 2015). Currently, the archive keeps almost 94,000 records of archaeological fieldwork. The major weakness of this database is, however, the fact that it only covers the region of Bohemia (approximately 70% of the Czech Republic) while no similar evidence system has been created for the regions of Moravia and Silesia.

A new project entitled The Archaeological Map of the Czech Republic (AMCR) aims at closing this gap in information systems. This project focuses on the creation of the backbone information system of Czech archaeology and covers administrative, as well as scientific aspects of archaeological fieldwork. Within the AMCR framework, it will be possible to monitor the progress of archaeological fieldwork from the time of notification by the developer up to the submission of the find reports. Procedures for data collecting and their archiving are harmonised for the entire territory of the Czech Republic (see in Kuna et al., 2015). The expected launch of the AMCR is in the second half of 2017.

Use of Metal Detectors

The Czech Republic, as well as other European countries, have had to deal with the widespread illegal use of metal detectors. At the beginning of the 1990s, a significant increase in a number of the metal detectors in private sphere occurred. According to unofficial estimations, more than 20,000 metal detectors have been sold in the Czech Republic (Mařík 2013). Treasure hunting of any kind was clearly forbidden already in
the law issued in 1987; however, metal detectors were not explicitly mentioned in this law. In the Czech Republic, penalties for private individuals can reach up to approximately 80 000 € and concealment of valuable archaeological finds may be punished by a fine up to eight years in prison. However, in spite of severe penalties, the legal adjustments have had a minimum impact in practice. Based on the the number of metal detector users, we may assume that tens of thousands of archaeological finds are found yearly and only a few reported to the state.

In the past few years, a positive development in the co-operation between metal detector users and professional archaeologists can be traced. Based on the survey conducted among more than half of the licensed organisations in 2015, there are more than 500 volunteers participating in both rescue and research archaeological fieldwork. They comprise both individuals and organised associations, who wish to pursue their hobby on a legal basis. The aforementioned survey has also shown that the interest in this form of co-operation is significantly larger on both sides; it is limited, however, by the personnel and the financial possibilities of the licensed organisations. Based on the existing results we can, without much doubt, state that utilisation of the potential of voluntary collaborators can be an enormous asset for the protection of archaeological heritage.

**Storage of archaeological finds**

Storage of moveable archaeological finds represents an extremely contentious problem in Czech archaeology. According to the existing Heritage Act, only the state, regional authority or municipality can become the owner of moveable archaeological finds. The legal status of the organisation conducting the archaeological fieldwork and status of its founder are the decisive criteria. The majority of regional museums were founded by regional authorities and finds as regional assets are stored in their collections. The situation is similar in the case of the centrally-administered museums such as the National Museum and the Moravian Museum (the finds became property of the state). Problems arise in the cases of organisations, which do not keep and maintain their collections. In the cases of private companies the finds they have collected are owned by the regional authorities, while in cases of state-founded institutions (e.g. universities) the owner is the state. Even the Institutes of Archaeology do not have their collections.

Most institutions holding collections have not been able to adequately respond to the rapid development boom of the 1990s and do not have sufficient space to store tens of thousands of boxes filled with archaeological material. A significant part of these finds is ‘temporarily’ stored in provisional and not entirely satisfactory
conditions; that are threatened by moisture, rodents, and by the lack of fire or flood protection. Given the highly fragmented structure of owners, no systemic nationwide-based solution can be expected in the short term. Unfortunately, the issue of the storage of archaeological finds is not a priority, even at the regional level. We can expect a fundamental change in attitude only in the event of the catastrophic destruction of one of the significant find archives.

**Conclusion**

If the national heritage protection laws from the Post-Communist countries of Central and Eastern Europe are compared, the Czech law represents a rather unique case. Even though it was created in the conditions of Real Socialism with the centralized and state-subordinated economy, it is still valid, after more than twenty-five years. In this period, the overall conception of the law has not significantly changed. As far as protection of archaeological heritage is concerned, the only amendments were mostly of technical character. The real enforceability of the current archaeological heritage legislation relies more on moral appeal, than on the letter of the law. Generally speaking, the current state of archaeological heritage care system can be defined as extremely fragile and unsustainable from a long-term perspective.

Even though a whole series of attempts at a fundamental amendment of the existing law or preparation of completely new Act have occurred since 1987, these activities have not been, for various reasons, successful. For the time being, the last example represents a bill on national heritage protection that has been in preparation since the year 2012. One of the positive elements of this bill is an attempt to incorporate in the law various structures, as well as approved mechanisms that are currently valid, but without support in the valid law.

Besides the obvious, the above-mentioned mechanisms include a concept of central evidence of archaeological fieldwork, or the principle of reporting, as well as observing of all actions threatening archaeological finds. Among negative, but logical consequences of this effort is a significant increase in bureaucratic duties. Even though a series of other problems can probably be described, approval of the current bill can be considered a prerequisite, as far as archaeological heritage protection is concerned. According to the plan of the Government of the Czech Republic, the new law could come into force in the year 2018.
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References


Web links